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COMMON CAUSE

VOICE OF "COMMON CAUSE"

EFFECTIVE ACTION THROUGH COMMON PLATFORM

COMMON CAUSE organisation, in its humble way, has demonstrated how problems inflicted on the people can be effectively ventilated and resolved through a common platform.

There has been emergence of tens of the thousands of societies, associations and organisations in the country during the past few years. This is a very healthy and welcome development. Each such organisation is performing its task in its own area of operations, whether it relates to consumerism or to pensions or to neighbourhood and welfare matters, etc. Without collective action the individuals feel handicapped in getting their voice heard or to pursue the problems affecting them.

While this is a healthy symptom of the vibrant functioning of democracy it is of paramount importance that there should be closer involvement in these platforms of the various people who can make contribution to the effort and operations of these collective bodies. There are large number of people who are experienced, who possess enormous background of administrative functioning or of handling various types of civic problems, and who have time available to them on retirement from active service, It is very unfortunate that they donot consider it necessary to involve themselves in the collective effort and in the operations of these organisations and associations. Their involvement can take the shape of undertaking detailed study of individual problems which they can select on the basis of their background and experience, preparing comprehensive and self-contained notes on these problems for enabling the organisation to initiate action by taking the matters to the concerned departments of the government or municipal authoritles etc. or for seeking redress through the court. Without the preparation of such background material and detailed study of the problems, mere transmission of complaints can be meaningless and frustrating.

We look forward to the involvement of larger number of experienced and knowledgeable persons and would be grateful for their writing to us about their interests,

Meanwhile, we reproduce in this issue of the periodical various matters which have appeared in the weekly colum contributed by the Director of COMMON CAUSE in "STATEMAN" newspaper. This column appears every Thursday.

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REORGANISATION OF DELHI

There is quite a lot of talk these days about how the political and administrative setup of Delhi should be reorganized. The Sarkaria Commission is likely to soon come to grips with this problem. It has issued a well considered and comprehensive questionnare. Individuals, groups associations and political parties are busy preparing replies to it.

It is no easy task to conceive the ideal set-up for Delhi. For more than three decades this problem has surfaced but without solution. The fact is that this problem has been far too much in the hands of politicians and political parties; citizens in general have not applied themselves to it. It is time that citizens, shorn of their political or ideological predilections and affiliations, express their views on some of the basic issues of this problem.

The present state of affairs is obviously very unsatisfactory and disquieting. Delhi is sitting virtually on top of a volcano. Its expansion has for years been an uncontrolled and undirected sprawl. It is bursting at the seams, practically in every facet of its existence. The inflow into it is of staggering dimensions, with the result that slums are overtaking all planning effort.

Its sanitation, water supply, electricity supply, transport, telephones, sewerage, education and housing are all vying with each other in getting choked. One shudders to think what the shape of things will be in even another ten years. It is impossible to envisage the scene, say, 50 or 100 years hence.

The present set-up is so unsatisfactory that if a group of experts was assigned the task of devising the worst for a metropolis of eight million people, they could not have done worst. The surprising thing is that it has still not totally collapsed.

For dealing with the various problems of Delhi there is no unified authority : each one of these has to be dealt with in the concerned Ministries of the Union Government. There is no provision in the set-up of Delhi for fund allocation and budgetting for the various requirements of the metropolis; these have to be referred to the respective Ministeries, and Parliament must vote thereon.

This is why the average citizen feels disgruntled. There is harassment at every turn, in the matter of electricity supply and billing, in assessments for levy of house tax, in flouting of fundamentals of city transport, in regulation of building construction, provision of housing and connected amenities etal.

The issues raised by the Sarkaria Commtssion include certain fundamental ones. Delhi has a special status as the capital the country, the seat of its Parliament, the centre of foreign diplomatic missions, a place where people of different regions and languages and ways of life congregate. Should it. for this reason be controlled by the Union through a local administration or should it have its own Legislative Assembly and Council of Ministers? The existing political and administrative set-up has led to a multiplicity of authorities and bodies with over lapping functions, confounding the citizens and clogging its functioning.

Does the existing Executive Council serve any useful purpose ? What should the role of the Lieutenant Governor be? Should he operte as a consititutional head or should he have other responsibilities too ? Can a unified authority be created, out side or within the Union Government, which should provide a "single window" approach to tackling the problems of the metropolis ?

Delhi with its vast population and spread has, undoubtedly. an over-centralized administration. There is one Deputy Commissioner, sitting in Tees Hazari. for redressal of the grievances of the entire populace. A similiar situation obtains in regard to

different departments and functions, leading to inconvenience and irritation. Should Delhi not be divided into five or six districts, with Deputy Commissioners and other district authorities to deal with various public purposes including civil supplies, revenue, sales tax, registration, law and order etc ? Should not civil and criminal justice be correspondingly decentralized ? Also why should there be the present confusing mess of unplanned functional decentralization : there are six police districts. ten Municipal Corporation zonns six zones of civil supplies with no co-terminus territorial boundaries.

The Corporation is a blundering behemoth which instead of being a service organization, is often accused of having become a virtual den of mismanagement, malfunctioning and harassment. Its electric supply undertaken rightfully earns the wrath of consumers for long and excessve billing and misuse of the power of disconnexion. Its property tax department specializes in creating problems of anomaly, distortion aberration and discrimination in assessments. Its water supply is in a mess. Its staff lacks motivation except that of lucre, say cynics, The question is whether it should continue in its present shape of an elected body, which is inevitably politically oriented, or delegate its various functions to officials under the authorities of the Delhi administration ? Should the municipal body operate from its existing unwieldy headquarters or would it be better to have separate corporations for separate zones, operating on common principles of functioning, assessments etc.

Then there are so many other authorities: the Delhi Development Authority. Land and Development Offfce, Delhi Arts Commission etc. all dealing with formulation of urban and town planning standards and implementing building controls. They have grown and gathered momentum, as well as moss over the past many years. What role, if any, should they have ?

The New Delhi Municipal Committee is another cog in the wheel. Its area in an island within the overall spread of the Corporation. Is it necessary that NDMC continue its separate existence merely because in this area there exists largely the property of the Union Government as well as the foreign missions etc? Separate administration of MCD and NDMC areas leads to strange anomalies . There is visible discrimination in the matter of say property tax assessvis-a-vis one side of the road which is NDMC area and the other MCD. How are these to be reconciled?

These are major problems before the Sarkaria Commission. Problems which you and I and everybody else face daily in Delhi. Answers to these problems should not be the preserve only of political parties or organisations and institutions. It should be your concern too. You as the concerned citizens should communicate your views to the Sarkaria Commission. c/o the Ministry of Home Affairs, Secretariat, North Block, New Delhi.

OWNERS VS TENANTS

Bungling by the politicians and government has brought about a confrontation between landlords and tenants. The situation will worsen because of the misconceived amendments proposed in the rent control law.

It has taken almost 10 yeers for the Government to bring the proposed amendments before Parliament. The committees and commission appointed were used only for stalling the decision. On the last day of Parliament session the amendment Bill was hurriedly introduced, once again postponing the day of reckoning.

P. R. EFFORT

The public relations effort, accompanying the introduction of the amendment Bill, promises roses all the way. The interests of the tenants and landlords are sought to be balanced, says the blurb of "objects and reasons". the existing housing stock

would now be kept in a state of repair, litigation between tenants and owners would be reduced and there would be expeditious disposal of disputes.

In handling the problem the politicians have their eyes glued only on the votes, believing that tenants have more votes and must the pampered. A lawyer friend remarks that the mountain has been in labour for years and produced only the proverbial mouse. He describes the declared expectations as "suggestio falsii" in legal terminology implying that all the stated claims are false.

A major amendment proposed is that all premises residential and commercial which are at a rental of more than Rs. 3,500 a month will be exempt from the rigours of the rent control law. In fixing this limit whom does the Government expect to succeed in deceiving ? The proposal relates to amendment of the Delhi Rent Control Act. In Delhi, there are 600,000 houses and 70,000 commercial premises. These are exclusive of the unauthorised colonies, slums and squatters. Out of these there are not more than 4,000 houses, and a few hundred recently constructed commercial flats, which are on rent of over Rs. 3,500. The means that practically 99% of all the premises will remain as hitherto.

Tho second important proposed amendment is to enable increase of rent by 10 per cent every three years. Of course not for the previous period. Where the rent is frozen at Rs. 50, or 100 or even Rs. 200 the landlords (they want to be known as owners, not landlords) will be able to increase the rent by Rs. 5, Rs. 10. Rs. 20, after three years. The Government claims that the amendment will provide incentive to the owners to keep the premises in a reasonable state of repairs. Once again. whom does the Government expect to deceive ? The owners will in fact continue hoping that the structures will crumble and disintegrate for enabling the land to be released; the land is valuable.

The third important proposed amendment is that new constructions will be exempted from the rent control law for 10 years. This is a sensible proposal. It should have been brought in years ago, for giving a fillip to the construction work. But new constructions are increasingly being subjeced to the heavy. burden of property tax by the municipal authorities, which frightens the owners and to this extent the expectations of expansion of the pool of accommodation for rental will remain diluted.

A welcome amendment is the provision that there will be only one appeal against tha court decision and that too only on a point of law. This provision too should have baen made years ago. The courts are clogged by rent control cases; there are 40,000 in the Delhi courts - evidence of the tenslons that have been allowed to build up between the tenants and owners The need is to instal a machinery which would enable these cases to be decided on the basis of conciliation, compromise and arbitration.

Specific provisions are sought to be made through the proposed amendments, to enable the owners among Government servants and personnel of the armed forces to get back their houses from the tenants on retirement. This provision is expected to be challenged in the courts on the ground that it causes discrimination, extending the concession only to certain sections of the people and thereby violates the specific provision which lays down equality before the law as a fundamental right.

The most obnoxious provision sought to be incorporated in the amendments is that of limit fixation of Rs. 3,500 This limit is being apparently suggested on the consideration that tenants paying rents below Rs. 3,500 a month are the weaker sections and need the protection of the rent control law. A person paying rent of Rs. 3,000 would have a monthly income of not less than Rs. 10,000. And, this affluent tenant needs protection. The concept of limit was introduced by the Jha Commission which had gone into the problem with meticulous care. It had suggested a limit of Rs. 1500; the owners wanted Rs. 1,000 and even that was considered high It is obvious that in fixing the limit of Rs. 3,500 the Delhi rent control law will become the most absurd in the country. The problem is primarily of

single-house owners who do not have any other accommodation and who need it for the expanding family.

The amendments sound as if they have been tailor made to suit certain vested interests. This was alleged when the Executive Council of Delhi messed up the amendments which had originally emanated from the Government of India, based on the recommendations of the Jha Commission. People see through the proposed amendments, such as the one relating specifically to protection of "private trusts", as protection to vested interests.

REAL SUFFERERS

The problem is undoubtedly a complicated one. It has been made more complicated by the Government and politicians. The poorer owners and tenants are the real sufferers. In the controversy their interests are trampled upon. Tenants among the weaker sections will eventually suffer the most, once the existing tenancies terminate, because no owner will be willing to risk giving his premises to anybody on rent.

The single-house owners will continue to cry their hearts out, for not being able to get back premises once rented. The courts will continue to remain clogged with disputes. Relations between owners and tenants will remain strained. And rental housing, expansion of which for the low income and middle income groups is sought in the National Housing Policy announced in Parliament the other day, will remain a dream.

DESU IN THE DOCK

DESU, the Delhi Electric Supply Undertaking, has for long been operating above and beyond the law. It has now, in an important matter, been brought to book. The other day a senior officer of DESU telephoned asking me whether the refunds of certain disputed cases should be sent through me or whether I preferred direct payment be made to the concerned consumers. On my preferring the latter, three cheques of refund aggregating to more than Rs. 75,000 have been sent direct to the consumers.

The matter had been taken to the Delhi High Court from the platform of COMMON CAUSE. There were complaints that DESU had extracted heavy amounts from the consumers, ranging from Rs. 6000 to Rs. 38000, on the ground that their meters had stopped working and that on replacement they had been billed for the period since the stoppage of meters till their replacement on the basis of average consumption subsequent to the replacement. The consumers had no option except to make the demanded payments because they faced the threat of disconnection of electricity supply.

We challenged these demands and the procedure in two writ petitions and secured a verdict in favour of the consumers. DESU chose to file appeals against the verdicts. Meanwhile, they refused to refund the payments on the plea that appeal had been filed. Matter was again taken to the court for initiating contempt proceedings for defiance of the court directive for refund of the payments. This has now culminated in the refunds, with interest.

These cases have raised important issues which would be of interest to electricity consumers in general. The judgements in these cases have application throughout the country. In Delhi alone there are more than a million consumers of electricity. There are 26 lakh meters installed in their premises, some having more than one meter. Some time or the other some meters go out of order, become defective in recording consumption, or stop operating. The consumers complain about the meters having stopped or become defective; the inspectorate take their own time in checking the meters and long time in effecting replacement. Often months pass by in spite of repeated demands of the consumers.

This delay is caused by the shortage of specific staff charged with the responsibility, and the large size of the problem.

On replacement of the defective meter DESU bills the consumer on the basis of consumption average subsequent to the replacement. The demand may sometimes emanate long after the meter replacement; in some cases the demand has been raised even 4/5 years after the replacement when the matter came to the notice of DESU management either through some audit objection or otherwise. Demand is then made for the entire period, from the date when the meter is supposed to have stopped or become defective till the date of its replacement. In some cases the demand has been of the order of Rupees twenty to thirty thousand and more. Notices issue, threatening disconnection of electricity, and the consumers are thereby coerced to pay.

Certain important points of law, involving rights of the consumers, arise. Firstly, whose responsibility is it to maintain and check the meters? Secondly, if a meter has become defective, who is to determine whether it is defective? Thirdly, on a defective or stopped meter, can the electricity supply company raise the demand against the consumer on its own? Fourthly, is there a limitation on the quantum of demand that can be raised in such a situation? Fifthly, is there a limitation on the period during which the demand can be raised, or whether it can be raised any time, even after years of the contended consumption of electricity?

These are important matters, and consumers of electricity should be acquainted with the answers to these questions. It is clearly laid down in the Indian Electricity Act, the top enactment dealing with all matters of general importance relating to electricity supply in the country, that the responsibility for the correct maintenance of the meters is squarely laid down on the electricity company where the meters are provided by it. It is for the supply company to ensure that the metres are occasionally inspected and checked to see that they are satisfactorily functioning. When any meter becomes defective or stops it is the responsibility of the supply undertaking to replace it.

If a meter has become defective then a specific procedure prescribed under the law has to be followed, It is laid down in Section 26 of the Indian Electricity Act that where a meter has become defective, either the consumer or the supply undertaking can apply to the specific officer designated under the Act as Electricity Inspector to the Government, to determine whether it is defective or not. The designated officer alone is competent to determine this fact. And, it is specifically laid down in the Act that if a demand of electricity consumption for the past period has to be raised against the consumer on the basis of defective or stopped meter it cannot be raised for a period of more than six months, That is the limitation definitely prescribed. DESU has been totally disregarding this limitation, and there are cases where demand for years has been made on the basis of some meter having stopped or become defective. When the demand is made by the supply undertaking unilaterally without reference to the designed officer, or where the demand is for period of more than six months, such demand is illegal and would stand to be quashed.

Where any such demand is made on the basis of consumption average subsequent to the period of defective meter, it is wrong because it is laid down in the conditions of supply, under which the electricity is supplied by the Delhi Undertaking, that the demand has to be based on the corresponding seasonal period prior to the defect in the meter. Thus. for instance, if the defect came about in the month of December, the average cannot be made in respect of the season of May and June because in those months the demand may be higher because of fans, coolers, etc.

On one major point the High Court has declined to accept the contention of petitioners. Our contention was that where the demand is made after a period of more than three years, the supply undertaking is debarred from raising the demand under Section 455

of the MCD Act. The High Court has held that this is not so; the supply undertaking can raise a demand for a consumption period which may have been more than three years ago. On this point there can be difference of opinion, but this is where the matter stands at present It is obviously in the interest of supply undertaking and its finances that it should not allow long periods to elapse before raising the demands. We are aware that long months. and even a year and more, go by as in the cases of trans-yamuna colonies, that DESU fails to send the bills. Whereas it has been held that the supply undertaking can raise the demands even after the period of three years, it is clear that where the payment is not made for a period of more than three years from the raising of demand, the undertaking cannot recover the amount by resorting to any processes of court.

The Madhya Pradesh High Court, in a similar case, had earlier quashed the demand of electricity supply undertaking. We had relied on the judgement of Madhya Pradesh High Court, on the basis of which the Delhi High Court had given its verdicts mentioned above The supply undertaking of Madhya Pradesh had taken the matter to Supreme Court in appeal; the appeal has since been rejected. Consequently, the consumers are now in a stronger position to contest such wrong demands of the supply undertaking based on defective or stopped meters. Where any consumer has received demand which is contrary to the above-mentioned specific provisions relating to stopped or dafective metres, the remedy for him is to contest it in the court of law, on the basis of above-mentioned decisions of the Delhi High Court. These decisions are reported in Delhi Law Times, Volume 32 of 1987, on pages beginning 27 and 73.

While it is for the consumers to claim their rights in this matter it is also the duty of the consumere as citizens to see that they help to detect cases where any unscrupulous consumer delibarately stops or spoils a meter for faciliating theft of electricity. It goes without question that there are quite a few cases, particularly of bulk consumers of electricity in the small sector of industrial functioning, where considerable lot of theft of electricity takes place through these strategems, often with the complicity of subordinate staff of the undertaking. This is most reprehensible and it is for the consumers to raise their voice against such unsocial practices, and to facilitate the detection of such cases. While thus. the consumers assert their rights, they must perform their duty as citizens in this regard.

A DEPARTMENT THAT WORKS

There is one government department that works. The present establishment cannot claim credit for its creditable performance because this department is one of the oldest and has been working in its own silent way for many long decades. This is the postal department.

An occasional complaint gets ventilated through newspapers columns that a letter or post card took days, or weeks, to travel to its destination. That makes news. But people have not been told of the astounding magnitude of the work which gets performed with efficiency. To this extent the public relations work of the postal department has been inadequate.

Let us look at the performance. During 1987-88 the department has delivered the following: 70 crore postcards, 97 crore inland letters, 17 crore letters, 24 crores single newspapers; its foreign post received 52 crore letters and 6 lakh parcels, and sent out 19 crore letters and 3 lakh parcels. These figures are mind boggling. Take only the postcards. Lay the 70 crore postcards and to end. This will girdle the entire earth, twice over. Take the inland letters. Laid in piles of ten feet height they will fill 500 rooms and cover the entire area of the Parliament building.

Performance of this department includes many

other items. Money Orders 14 crore; registered letters 29 crore; parcels 7 crore; parcels of books etc. 5 crore. The transactions registered in its savings accounts during the year were : 27,36,24,842 figures of aggregate amount runing into hundreds of crores.

Let us look at its spread. It operates through 1½ lakh post offices, comprising the largest postal network in the whole world, larger than of China, USA and USSR. The number of post offices at the time of independence was 22,000; it has multiplied seven times, reaching out to over 1¼ lakh villages.

It has 6 lakh employees. second biggest employer in the country next to the railways.

PROBLEMS

The department has its problems. The major problem is that it is operating on a big annual deficit, of the size of over Rs. 200 crores. This arises primarily from the fact that it has throughout been operating on the basis of charging low prices for its services. Some figures in this context are revealing, and the fact is that political considerations have been weighing against professional requirements. The services connected with, say, the postcard, including the cost of the card, cost of carrying it and delivering it, computes to 65 paise. But, the department charges 15 paise, losing 50 paise on every postcard. The consideration obviously is to give the services most inexpensively to the weaker sections, but this consideration in the present context is doubtlessly misconceived and misdirected. A man in the village may perhaps be writing two postcards a month. Even if he is charged 50 paise per postcard, instead of the present 15 paise, he will have to afford at most 70 paise more per month. Certainly, in the present circumstances, when the impact of minimum wages has started penetrating to every corner, an extra payment of 70 paise per month cannot be argued to add a real burden on the poor villager. It is, therefore, fit and proper that this matter should be reconsidered by the department, and political considerations should al accept the point that the price of postcard can raised. There are strong views that this price shou be raised to 40 paise.

Likewise, there is need to reconsider the tari for certain other services. Inland letter, which presently priced at 35 paise, needs to be increase to 50 paise. The envelope has already been, in the recent past, increased from 35 paise to 60 paise. Newspaper postage is another item which need reconsideration. Price of newspaper has very subs tantially increased, but the postage remains very meagre although the newspaper vendor takes hefty percentage. Similary, the postage of magazines needs to be reexamined.

A satisfying feature of the functioning of postal department is that it has recently set up high-powered committee of experts to examine the entire range of its problems, its services, and the probiems of determining what measures need to be taken by it to improve its services and the finances. I have had the privilage to appear befor the committee and give the views on behalf of Common Cause on a variety of subjects incorporated in the comprehensive qnestionnaire which the committee has issued. Our view is that the prices of postcards and inland letters should be raised to 40 paise and 50 paise raspectively. and that the postage rates of articles like newspaprs and magazines should be reconsidered. Through these measures the deficit of the department should be reduced as much as can be reasonably possible.

A very important consideration before the post department is the question as to how far it should cor tinue to expand its services in the rural areas eve where the services lead to further expansion of deficit and where the income is very much less than the the expenditure. At present the coverage in the rural areas is to the extent that 1¼ lakh villages out of total 6 lakh villiages, have been provided post offices. The rural postal net work does, however, cover all villages as postal official visits the attached villages, in most cases on daily basis, to provide the postal services.

Important considertion is that most of the post office established in the rural areas have only about one hour's work a day; their employees are grossly under utilised. When this is the actual position, further establishment of post offices in the villages, without regared to the requirements of workload and merely on political considerations, is obviously wrong. Certain norms have presently been adopted by the department, of establishing post offices at the headquarters of gram panchayats if the population of the group of villages is 3000 in the normal areas and 1500 in hilly and tribal areas if there is no post office within three kilometres; and of establishing the post offices in a village or group of villages having a population of not less then 5000 in normal areas and 2500 in hilly, backward and tribal areas provided there is no post office within three kilometres. It has also been laid down that at least 50 percent of the expenditure should be forthcoming from income of a normal post office and 25 percent in hilly or tribal area. We feel that these norms are very well devised and these should be strictly adhered to.

In the over-all it is desirable that the department should continue to explore innovative changes which can lead to the improvement of services and reduce the expenditure on providing these. In western countries, for instance, magazines are increassingly being despatched in polythane wrap bags. These greatly reduce the weight, enable the contents to be straigh away inspected and save on paper and theraby on the wood stock. There is also scope for registration forms to be filled in by the customers, thereby saving the time of counter clerk. The present procedures related to the withdrawal of money from savings account need to be streamlined and improved for avoiding the irritations that are presently complained about. Such like innovative ideas need to be encouraged by the department.

This department is doing a good job. The very fact that people do not complain, as they do about services like transport or electricity supply, for instence, is a measure of its performance. It is necessary that the departmet should continue to project its appropriate image to the people, and for this purpose it needs to overhaul its public relations services. It is a departments that works. Let people know that it does so and continues to strive to do better.

RIGHT TO APPEAR IN COURT

One welcome development emerging from the Delhi lawyers' strike was the initiative being taken by some judges, in the lower courts as well as in the Delhi High Court and the Supreme Court, to directly hear the parties, try to bring about settlement of the disputes where possible, and to decide the cases without waiting for the lawyers to appear. In hearing the parties directly, without the intermediacy of the lawyers, the judges obviously, in the interest of providing expeditious justice, started shedding the niceties and complications of the law for arriving at their decisions. There were reports that the parties who appeared before the judges went back satisfied at the sympathetic hearing they secured.

In this context it is necessary that people should know their right to appear and to be represented in court. Till now a general impression prevails that in pursuing a case, particularly in the High Court and the Supreme Court, the presence of a lawyer is absolutely essential and that parties cannot themselves appear, nor request another person, who is not a lawyer, to represent them. Of course, this is not to imply that lawyers are redundant. They are indispensable: their intermediacy, knowledge of the law, advocacy, presentation of the case, are invaluable and irreplaceable. But there are occasions and cases wherein the appearance of the parties themselves can lead to quicker and real justice, more on the principles of reconciliation and arbitration rather than based on technicalities and complications of the law.

Both in criminal and civil cases the parties to the

case, the complaint and accused in the criminal case and the petitioner and respondent in the civil case, have the inherent right to be heard in person in every court, right upto the Supreme Court. Knowing that these individuals, parties in the cases and disputes, do not have knowledge of the law and its complexities, there is generally an inclination on the part of judges to hear them with sympathy and consideration. It is equally important to know that a party to the dispute has also the right to request that a person, other than a lawyer, be permitted to represent him in court; it is upto the court to grant him the permission, and in ordinary circumstances the court may not reject the request provided the person representing is not doing this as practising a profession.

TO ACT AND PLEAD

For civil cases the important provision in this connection is contained in Rule 2 of Order III of the Civil Procedure Code. It says that a party or his "authorised agent", i. e. a person authorised through a power of attorney, can put in appearance before the court, or make an application or act on his own behalf or through the "authorised agent". There have been certain decisions of High Courts that the right conferred by this provision to authorise an agent to "act" on behalf of a party does not include the right to him to also "plead". Whereas he can make applications, appear, seek adjournment etc. he cannot, for instance, examine and cross-examine witnesses, nor can he argue the case. This restriction has obviously been placed to ensure that the work which has to be performed by a professional lawyer should not get appropriated by unscrupulous persons who may in the garb of such authorised agents exploit the interest of litigants.

There is, however, an over-all qualification to this restriction, and it is necessary that everybody shonld be aware of the exact position. Whereas it is desirable that litigants must not thus get exploited by persons who may adopt the practice of appearing as "authorised agents" through powers of attorney, the courts have been empowered to permit a person, other than a lawyer, to appear on behalf of a party and to do all acts including the right to plead This flows from a provision made in the Advocates Act which regulates the wotk, conduct etc. of the lawyers and the operations of the various Bar Concils and the Bar Concil of India.

The Advocates Act, enacted in 1961 in replacement of the old Legal Practioners Act, for consolidating the law relating to legal practitioners and to provide for the constitution of Bar Conncils and All India Bar Council, prescribes inter alia, under Section 29, that there shall "be only one class of persons entitled to practise the profession of law, namely, advocates". Section 33 of this Act further states that no person shall "be entitled to practice in any court or before any authority or person unless he is enrolled as an advocate under this Act". To these provisions there is an addition and this rider is of paramount interest in the present circumstances. It is contained in Section 32 which provides that "any court, authority or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case". This provision implies that any person, other than an advocate, can be permitted by the court to appear on behalf of a party to the proceedings, The provision is applicable both in criminal cases as well as civil cases because it is made applicable to "any court". It is also applicable to all courts, whether of district level or in the High Court or in the Supreme Court.

The over-all position in the law, therefore, is that (i) only advocates registered as such under the Advocates Act can practise the profession of law, (ii) only advocates are entitled to practise in a court, and (iii) a party is authorised under Rule 2 of Order III of Civil Procedure Code to be represented in a civil court by an authorised agent who is empowered to to appear and "act" on his behalf (but not to "plead", as held in certain judgments). Amidst these limitations there is the clear provision of Section 32 of the Advovates Act that a court can accord permission to any person, who is not an advocate, to appear before it in any particular case, The word "appear" herein has obviously a wider connotation, implying that the person representing a party can do all such

acts which would normally be done by the advocate, upto the stage of presenting the case before the court in oral or written arguments.

SUPREME COURT JUDGEMENT

This position has been very clearly upheld in the Supreme Court judgement (AIR 1978 SC 1019) in which Mr. Justice V.R. Krishna Iyer in 1978 held that it is open to a person, who is party to a proceeding, to get himself represented by a non-advocate in a particuiar case, and where a person in thus permitted he is entitled to plead even though he may not be an advocate. It is cleary stated in this judgement that it would not be appropriate to shut out representation by any person other than the party himself where an advocate is not appearing for the party. This has been held to be in consonance with the comprehensive programme of legal aid services which in a sense is an important obligation of the State. A chosen friend or relative would thus be well within the law to represent a party in court. Such person cannot practise the profession of habitually representing parties in court, because a non-advocate specialising in practising in court on a professional basis would be violating the Advocates Act. Mr. Justice Krishna Iyer in this judgement specifically referred to the definition prescribed under Section 2 (q) of the Criminal Procedure Code wherein "pleader" is defined as "a parson authorised by or under any law for the time being in force, to practise in such court and includes any other person appointed with the permission of the court to act in such proceedings". This definition is also in consonance with the provisions of Sections 302, 303 and 304 of the Criminal Procedure Code which ara indicative of the policy of the legislature in ragard to this matter.

Against the background of this exposition of the relevant provisions in the civil and criminal law, and the specific provisions of the Advocates Act, it is clear that a party to a proceedings in a court has complete authority to appear and plead for himself, and he is also entitled to appoint a relative, friend or any other person in whose competence he has faith, to represens him with the permission of the court. In the present day when a large number of persons have developed special knowledge and background on a vast variety of subjects, be it chartered accountancy or company secreteryship or any such, and are in a position to acquaint themselves with the pros and cons of a case as well as with the requisite provisions of the law, it is certainly possible for a party to secure the assistanc of such a person who could represent his interest in the court as an alternative to the appointment of a lawyer or in the absence of availability of the lawyer.

One only hopes that in the circumstances as they have now developed, including the circumstances thrown up by the lawyers' strike the courts at all lavels will be more generous in allowing the appointment of non-advocates to act and plead in specific cases where they are appointed by the parties to the proceedings This will be a healthy development for all concerned. This development will be greatly facilitated if the courts also, as a general rule, adopt the procedure of accepting written arguments. It will undoubtedly be greatly welcomed if the courts take positive interest in encouraging conciliation and arbitration wherever possible. Of course, the suggestion that the courts should more generouly accord permissions for appointment of non-advocates is based on the fundamental assumption that a non-advocate would be appointed only in a specific case and that such non-advocates would not be specialising in practising on a professions basis, becuase in the system of judicial administration as it exists at present. the intermediacy of lawyers is indispensable and inescapable.

A SAMPLE WRIT PETITION

We have recently filed a Writ Petition in the Delhi High Court. It seeks to present the arbitrariness of the Delhi Municipal Corporation wherein they have sent notices to a number of owners of vacant housihg plots, increasing manifold the rateable value, for purposes of assessment of property tax, and making the position totally impossible for the owners of such plots.

We have felt that the members of COMMON CAUSE should know how a Writ Petition on a subject of such common importance to the people is formulated for highlighting the problem and incorporeting in it the grounds and the prayers. To this extent this reproduction of the writ petition would be useful as reference material.

We are reproducing the paragraphs of the main text of the writ Petition without the annaxures, affidavit index etc. In this particular Writ Perition the Petitioner is COMMON CAUSE and the Respondents are : Assessor & Collector of Delhi Municipal Corporation. Commissioner of the Corporation and Lt. Govenor of Delhi.

COMMON CAUSE
a registered Society
through the Director H. D. Shourie ... PETITIONER

VERSUS

1. Assessor & Collector
   Delhi Municipal Corpcration
2. Commissioner
   Delhi Municipal Corporatian
3. Lieutenant Governor of Delhi ... RESPONDENTS

PETITION UNDER ARTICLES 226 & 227
OF THE CONSTITUTION OF INDIA.

TO

THE HON'BLE CHIEF JUSTICE AND HIS
COMPANION JUDGES IN THE DELHI HIGH COURT

The humbie Petition of the Petitioner above-named most respectfully sheweth as follows ;—

1. That the Petitioner is a Society registered under the Societies Registration Act, which has taken up various common problems of the people for securing redressal. It has inter-alia taken to the Courts certain matters of general public interest for seeking redress. Through three Writ Petitions the Petitioner secured judgements from the Hon'ble Supreme Court extending certain pensionary benefits for more than two million Cantral Government pensioners, including restoration of pension commutation, extension of family pension benefits for pre-1964 pensioners and the extension of pension liberalisation measures to pre 1979 pensioners who had remained deprived of these. Through a Writ Petition in the Hon'ble Supreme Court, the Petitioner had taken up the problems relating to anomalies and discriminations in the assessment of rateable values for the levy of property tax by the Delhi Municipal Corporation, Respondent No. 1 (hereinafter referred to as (MCD) which led to the guidelines laid down in the well known judgement of Dr. Balbir Singh & Others Vs. MCD (1985 S C 351). Through another Writ Petition in this Hon'ble Court the Petitioner has also secured a decision quashing the demands made by Delhi Electric Supply Undertaking based on defective and stopped metres. Another Writ Petition submitted by the Petitioner relating to the accumulated criminal cases in the courts of the country is at present pending before the Hon'ble Supreme Court. Petitioner has thus established its locus standi for taking up citizens' causes for seeking redressal.

2. That although certain matters of general importance relating to the assessment of rateable value of premises in the area of MCD, for the levy of property tax, have been settled under the above-mentioned judgement of the Hon'ble Supreme Court, cited as Dr. Balbir Singh & Others Vs. MCD (1985 S.C. 351), there are still certain matters of serious nature which are causing great cencern, harassment and irritation to the owners of propertres in regard to such assessment. In the present Writ Petition the Petitioner seeks to submit before the Hon'ble High Court a matter which has arisen from recent actions of MCD wherein they have sent notices of re-assessment of rateable value on vacant plots for the purposes of lavy of property tax These notices of re-asssment are of such nature which have caused widespread alarm and resentment and are such which could only be considered as having been based on arbitrary decision of the MCD, leading to serious anomalies, aberrations, distortions and discriminations.

3. That the rateable value of vacant building plots is to be computed under the provisions contain-

ed in Clause (2) of Section 116 of the MCD Act which provides as under :—

"The rateable value of any land which is not built upon but is capable of being built on and of any land on which a building is in the process of erection shall be fixed at five percent of the *estimated capital value of such land*".

(emphasis supplied).

4. That the words "estimated capital value" have not been defined anywhere in the MCD Act. The MCD, in issuing the notices of re-assessment of the rateable value of vacant building plots, is ostensibly calculating it as five percent of the present market price of the respective plots, thereby equating the "market price" with the words "capital value". In certain such notices issued by the MCD the reason given for the re-assessment has been clearly stated to be the re-assessment on market price of the land,

5. That the words "estimated capital value" appearing in Clause (2) of S. 116 of the MCD Act are obviously differentiable from the world "market price". While laying down the basis of determination of the rateable value for purposes of assessment of property tax, under Clause (1) of S. 116 of the MCD Act, specific provision has been made that the rateable value should not exceed the annual amount of standard rent fixed under the Delhi Rent Control Act wherein, under Section 6, it has inter alia been laid down that the "standard rent" would be calculated as a ratio of the ' reasonable cost of construction and the market price of land comprised in the premises on the date of commencement of construcion". Obviously the legislature did not intend that the words "estimated capital value" of a vacant plot, referred to in Clause (2) of S. 116 of the MCD Act, should be equated with the market price because the vacant building plot is unproductive to the owner, and it is on this account that the words "estimated capital value" have been specifically used in Clause (2) of S. 116 of the MCD Act dealing with vacant plots. It is incorrect for the MCD, therefore, to determine the rateable value of vacant plots on the same basis as the market price of land, and the action of MCD in disregarding this distinction and basing the re-assessment of rateable value on the market price of the vacant plots is totally arbitrary, wrong, capricious and unlawful.

6. That provisions of S. 126 of the MCD Act are utilised where the assessment of rateable value of any premises is proposed to be altered on the grounds given therein. It is obvious that where no alteration or addition has come about in the property, as in the case of building plot which continues lying vacant, there is no justification for the alteration of rateable value under the provisions of Clause (d) of S. 126 of the MCD Act, It is also not being contended by the MCD in issuing notices for re-assessment of the rateabie value that there was any erroneous valuation or that the previous assessment was made through "fraud, mistake or accident", which would involve the provisions of Clause (f) of S, 126 of the MCD Act.

7. That very serious anomalies hava come to the notice of the Petitioner arising from the re-assessment by MCD of the rateable value of vacant plots. for which notices have recently been sent to the owners. These anomalies are typified from the following illustrations which have come to notice.

(i) In one case the rateable value of vacant plot, which had been fixed at Rs. 810 for many years. has suddenly now been altered to Rs. 45,000, with the reason given as : "re-assessment of the plot at the present market value".

(ii) Another vacant plot of 1100 sq. yds. of rateable value fixed at Rs. 80, has been re-assessed at rateable value of Rs. 1,63,670.

(iii) A plot of 297 sq. yds. of previous rateable value fixed at Rs. 740, has been re-assessed at the rateable value of Rs. 61.000.

(iv) A plot of 550 sq. yds. assessed previously at Rs. 830 R. V., has now been re-assessed Rs. 2,20,000 R V.

(v) A plot of 800 sq. yds. of previous rateable

value of Rs. 720, has been re-assessed at R.V. of Rs. 2,00,000.

(vi) A plot of rateable value fixed at Rs. 80 has been re-assessed at the R.V. of Rs. 1,13,950.

(vii) A plot of rateable value previously fixed at Rs. 220 has been re-assessed at R.V. of Rs. 60.000.

8. That in examining these facts relating to the plots mentioned above as illustrations, following points need to be specifically examined :—

(a) The R.V. in each of these cases had been previously determined by the MCD. The previous R.V. continued to be maintained at this figure for some years from the time of its determination.

(b) The property tax was paid on the basis of this previously determined R.V. for years in some of these cases till 1985-86 when the property tax on R.Vs of less than Rs. 1,000 was exempted. Thereafter, the property tax was not levied by MCD on such plots. R.V. had remained unchanged.

(c) There has been no alteration on the above mentioned vacant plots; the position having remained the same as it was when the R.V. was previously determined.

(d) In examining the figures of new R.Vs proposed for these respective vacant plots it will be necessary to keep in view the fact that the rate of property tax is 30 percent of the R.V. where R.V. is more than Rs. 25 000. This means that the owners of these plote will be expected to pay the property tax annually at amounts which may range upto about Rs. 60,000 where the R.V. has been re-assessed at the figure of about Rs. 2,00,000. The arbitrariness in the re-assessment of vacant plots at these fantastic figures is self-evident, making the position impossible for the owners of these respective vacant plots.

GROUNDS

9. It is submitted that the re-assessment notices issued by the MCD during the past few weeks to a number of owners of vacant building plots in Delhi are based on some decision of the MCD which is arbitrary and violative of the provisions of Article 14 of the Constitution of the country, on the following among other grounds. The said grounds are without prejudice to one another :—

(1) Through these re-essessment notices the rateable values of a number of vacant plots have been revised from small amount, of less than about Rs. 1000 which did not attract property tax on account of the general exemption accorded in respect of properties of rateable value less than Rs. 1,000, to amounts which are 50 to 150 times the original R V., which would necessitate payment of property tax to an extent ranging upto even about Rs. 60 000 a year in some cases where the rateable value has been re-assessed at about Rs. 2,00.000 from the previously determined R.V. of about Rs. 800. This is indicative of the size of the problem created by the arbitrary decisions of MCD.

(2) These re-assessment notices have been issued on the basis of alleged market price of the respective building plots. Provision for assessing R.V. in the case of building plots is contained in Cl. (2) of S. 116 of the MCD Act, reproduced hereunder :—

"The rateable value of any land which is not built upon but is capable of being built on and of any land on which a building is in the process of erection shall be fixed at five percent of the estimated capital value of such land".

(3) The words "estimated capital value" appearing in the above clause (2) of S. 116 of the MCD Act are being equated in this context with the words "market price" which appear in the relevant Section 6 of the Delhi Rent Control Act, 1958 referred to in Clause (i) of S. 116 of the MCD Act. The very fact that the words ' capital value" have

been used in connection with the vacant plots which are unproductive, as distinguished from the words "market price" relating to the land whereon premises have been constructed (vide provision in Section 6 of Delhi Rent Control Act, 1958) clearly shows that these words are not to be equated with each other, and the legislature obviously intended that the rateable value of a vacant building plot, which is lying unproductive, cannot be determined on the same basis as rateable value of constructed premises.

(4) It is also noticeable that the MCD had itself previously determined the R.V. of vacant plots, obviously basing it, In each respective case, on the "estimated capital value". Such rateable value continued to be operative in the case of these vacant plots till the recent issue of new re-assessment notices. The R.Vs of most of the building plots were less than the amount of Rs. 1000 and whereas all the previous years the MCD continued to charge the property tax on the basis of such determined R.V. in each case, they were exempted from the payment of property tax from the year 1985-86 consequent upon a general exemption having been accorded wherein the properties of less than Rs. 1,000 R.V. were exempted from the payment of property tax.

(5) That in the case of all these building plots no change whatsoever has come about since their R.V, was thus previously determined by the MCD. Re-assessment can be made by MCD only where, under Clause (d) of S. 126 of the MCD Act, there has been any alteration, or under Clause (f) of the same Section where the R.V, has been previously assessed errpneously or through fraud, mistake or accident. None of these reasons operate in the cases of the building plots in respect of which re-assessment notices in large numbers have been sent by the MCD during the last few weeks.

(6) The Petitioner has received information of a number of cases where the R.Vs. have been re-assessed on such basis. These include the glaring examples of the nature mentioned in foregoing para 7 of this Petition. These are illustrations of the arbitrariness and capriciousness adopted by MCD in making these re-assessments which are manifestly unlawful.

10. The Petitioner submits that it has not filed any other such Writ Petition in this Hon'ble High Court or the Supreme Caurt or in any other High Court of the country asking for similar relief.

11. That the Petitioner submits that the Hon'ble High Court has jurisdiction under Articles 226 and 227 of the Constitution of India to try and entertain the Petition which is of general public importance.

PRAYERS

The Petitioner, therefore, prays that this Hon'ble Court may be pleased to ;—

1. Quash the notices of re-assessment of rateable value of vacant building plots wherever they have been issued by MCD on the basis of present market value of the plots by altering the rateable values previously fixed by MCD in respect of such plots on the basis of estimated capital value;

2. Issue an appropriate writ order or direction under Article 226/227 of the Constitution directing the Rcspondents No. 1 and 2 that the rateable values of vacant building plots should not be based on the present market price but should be based on the price originally paid, if no change has come about on the plot, which would comprise the estimated capital value of the vacant plots as provided undr Clause (2) of S. 116 of the MCD Act.

3. Pass such other and further order or orders or grant such further or other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case.

4. Order for the costs of the Petitioner.

MCD, THEATRE OF THE ABSURD

Here is a glaring example of absurdities prepetrated by the Delhi Municipal Corporation. One can understand the anxiety of its House Tax Department to raise revenues. In fact citizens have to get attuned to municipal taxation since it enables the civic authorities to render essential services. But absurdities, aberrations, distortions, anomalies and discrimination; in the process of raising revenues must stop. Citizens have to wake up to resist absurd demands.

T.K. Mukerji of Green Park, New Delhi, has brought to my notice the demand which he has received for raising the rateable value of his vacant plot of 500 sq. yd. in Greater Kalish, New Delhi, from Rs. 830, which has been operative so far to Rs. 2,20,000, practically overnight. He purchased this plot 20 years ago for Rs. 10,000. It is now being assessed at the fantastic market price of Rs, 16 lakhs, 160 times the original price. On the basis of this assessment he will have to pay over Rs. 60,000 a year (Rs. 5,000 a month) as property tax (popularly known as house tax).

A number of similar absurdities have been communicated to me by owners of plots who, for reasons of non-availablility of funds or family circumstances or problems of outside posting could not earlier build on them and who are now facing problems of a nature they never even imagined. Mr. S.P. Luthra of Maharani Bagh has written about his plot in Punjabi Bagh which he was allotted as a member of the Refugee Housing Cooperative Society. The rateable value previously determined by MCD on this plot was Rs. 80; it is now proposed to be increased to Rs. 1,65,670, necessitating payment of house tax of over Rs. 50,000 a year, Mr. D.R. Kapoor has a plot of 297 sq yd in Mansarovar Garden. Its rateable value operative till now is Rs. 740. This is proposed to be increased to Rs. 61,000, necessitating payment of house tax of about Rs. 20,000 a year. Mr. Rajender Luthra owns a plot in Rajouri Garden. Its rateable value is proposed to be increased 50 times to Rs. 45,000, which will necessitate payment of house tax of Rs. 15,000 a year.

This is an altogerher new fiat, invented by the MCD, obviously for the laudable objective of raising more revenue, put disregarding the law as well as the implications of discriminations and anomolies involved. The law is contained in a clause of Section 116 of the Delhi Municipal Corporation Act, which clearly lays down that on a vacant housing plot the rateable value shall be fixed at five percent of its "estimated capital value". The words "capital value" in this context have been clearly distinguished from the words "market price". MCD officials are basing their new assessment on the words "market price" which the owners contend is manifestly illegal.

It is these types of problems which recently necessitated resort to the Supreme Court by the public interest organization Common Cause for clarifying the issue on behalf of the owners. All sorts of inequities were being heaped on them by the MCD officials in their arbitrariness. Where a house is constructed in stages, the construction in the first phase having been undertaken 20-30 years ago when land prices were reasonable and the second phase in the immediate past wnen land prices have skyrocketed, the MCD started charging proportionate property tax based on the escalated land prices. This was obviously extortionate and illegal. The relevant provision in the law is that the rateable value has to be based on "the cost of construction and the price of land on the date of commencement of construction". This matter was taken to the Supreme Court and the verdict secured was that the price of land cannot be taken twice over and the relevant figure is the land price when the original construction took place.

Houseowners of recently constructed self-occupied houses have been the hardest hit by these manipulations of the MCD. They are saddled with disproportionate property tax merely because they were not born earlier and could not construct the

houses when the building plots were inexpensive and contruction cost reasonable. Naturally, they ask why should there be a differential between two contiguous houses or houses in the neighbouring localities, or in DDA colonies which have been constructed at different stages, merely because one was constructed earlier and another later, for the services they receive from the municipal authority are the same. A typical example of a serious anomaly, out of the multitude of such ones, is that of assessment of the Asiad Games Village flats auctioned by DDA. The 1,000 sq ft flats were sold at about Rs. 7,50 lakhs each, including the land price of Rs. 2.50 lakhs and construction cost of Rs. 5 lakhs, both exorbitant. The taxes payable for such a flat aggregate Rs. 22 000 a year tncluding house tax, lease hold and maintenance charges etc.

Owners contend that they breathe the same air and use the same water supply, sewerage and roads, as other owners. Why then should the owner of an older construction pay a house tax of say only Rs. 1,500 while the owner of a new construction, in the same neighbourhood and for a simliar building, be expecetd to pay a house tax of Rs. 50,000? Is it any justification, as MCD officials argue, that because the owner of a new costly construction can afford such expenditure he must pay more? If the difference was minor, the owners would accept it but where the demand is impossible they cannot but hit back.

This matter too has been sorted out by the Supreme Court in a judgment holding that the rateable value of a recently construted self-occupied house cannot exceed that of similar construction in the locality. But the MCD goes on arbitrarily disregarding this verdict.

The owners who have received absurd demands of re-assessment of vacant plots have submitted objections in accordance with prescribed procedure. On rejection of their objections which can well be foreseen, they will join battle for taking this matter to court for securing a verdict on the difference between "capital value" and "market value" in respact of these vacant plots.

NEW WRIT PETITIONS

WRIT PETITION ON 59th AMENDMENT

A Writ Petition has been filed by COMMON CAUSE in the Supreme Court challenging the 59th Amendment effected in the Constitution of the country. The raison detre for our taking up this matter is that in the various Writ Petitions which we have taken to the Supreme Court or the High Court we have invariably invoked the provisions relating to fundamental rights enshrined in the Constitution. It is obvious that remedy against inequity, arbitrariness, discriminations, distortions and aberrations will become impossible if these fundemental rights are abrogated, in any territory of the country. The Petition came before the Supreme Court on 11th May and was straightaway admitted and it was decided that it should be placed before the Constitution Bench of five judges for hearing. It is expected to come up for the haaring after the summer vacations. Mr. Soli Sorabjee, the known senior advocate, appeared on behalf of COMMON CAUSE.

ANOTHER WRIT PETITION

From the platform of COMMON CAUSE we have filed another Writ Petition, this time in the Puniub & Haryana High Court at Chandigarh. In this Writ Petition the respondents are the Haryana State Government and certain colonisers who are building housing colonies in the area of Gurgaon district of Haryana which adjoins Delhi. This petition seeks to articulate the problems and difficulties of the 20,000 odd persons who have during the past few years purchased plots in the housing colonies which are being developed by some colonisers. These people have invested about Rs. 200 crores in buying these plots. They have eagerly been looking forward to building their houses. Over the past couple of years their problems have been exacarbating because the

colonisers have passed on to them additional charges communicated to them by the State Government towards provision of external development services. The internal services, of roads, sewerage, water supply connectio ns etc, are being provided by the colonisers. There was stipulation that the charges for external services would be passed on to the plotholders as and when these are communicoted by the State Government. but these charges for external development services were never anticipated to be of the magnitude that they have been communicated by the State Government. These charges were originally levied at the rate of about Rs. 65 per sq. metre, then they were revised to Rs. 137 and recently have been increased to Rs. 155. The complaint of the plotholders is that the State Government has not yet started providing the external services although they have collected from the colonisers about Rs. 30 crores, that they donot know how much more demand will emanate from the State Government, and that in the meanwhile no sanctions are being accorded to the building plans of the plotholders. In the Writ Petition prayers have been embodied to the effect that the court should determine the justification for the increase of charges for external development services and should ensure that the State Government provide these services expeditiously. The Writ Petition has been admitted by the High Court and is expected to come up for hearing in the next 2/3 months.

FOR PENSIONERS

A very large number of pre-1973 pensioners have addressed letters to the Minister Mr Chidambram. They have sent copies to COMMON CAUSE. Taking into consideration the strong views expressed in these letters about the inequity being prepetrated on them and the devprivation caused through the manipulation by submission of Review Petition by the government as reported earlier in these colums, I wrote an article entitled ''PENSIONERS FEEL BETRAYED''. It appeared in the important Delhi newspaper "HINDUSTAN TIMES". This article is being reproduced below so that the pensioners all over the country may know what it contained.

A week thereafter the government arranged to get an item released in the same newspaper under the heading ''DOUBLE PENSION FOR 2 MILLION". recounting in it all that has been done for the pensioners in the last 3/4 years, giving the impression that it was only through the munificience of the government and its great concern for the pensioners that their pensions have been substantially increased, practically doubled, without mentianing anything at all that the changes resulted from the Supreme Court judgement. Soon thereafter an article has appeared in the same newspaper from Mr, I. K, Rasgotra, Secertary of the Pensions Department. In it he has inter alia stated the following in respect of the demand of pre-1973 pensioners for implementation of the judgement of the judgement of Central Administrative Tribunal :

"The decision of the Central Administrative Tribunal in the application filed by the Rajasthan All India Service Pensioners Association seeking the benefit of the arrears of pension and enhanced gratuity was rightly contested by the Government in the Supreme Court by filing a S. L. P. In accordance with the well-defined law on gratuity, the Supreme Court set aside the decision of the Central Administrative Tribunal relating to gratuity. However, the Supreme Court did not pass any judgement on the decision of CAT relating to pension as it was stated to be not contested by the Central Government. On the Supreme Court's observations in regard to pension the Government of India filed a review petition.

"It has been alleged that the counsels of the Government and the pensioners had reached an understanding that the latter would give up the claim for increase in gratuity and the Government would not contest

the claim of increase in penson. It may be clarified that there was no such understanding reached or authorised by the Government. Further it is preposterous to assume that such an understanding would have been arrived at, particularly in view of the fact that the Supreme Court had already defined the law on gratuity in the writ petitions 3531-34, 4831-33 and 4293 of 1983 and later in the SLP No. 14179-80 of 1985 State Government Pensioners' Association Vs State of Andhra Pradesh. Briefly the Supreme Court in its verdicts confirmed that gratuity being a one time lump-sum payment related to the point of retirement and therefore is not subject to revision on the basis of subsequent changes.

"It will be observed that first, the Government is not involved in a litigation with the generality of pensioners as is being made in the press. Secondly, the pensioners. involved in the litigation seeking payment of arrears belong to the privileged class who had enjoyed higher salaries in a low cost environment. To pay them the arrear is, therefore. neither justified nor reasonable even on ground of social justice. particularly when the benefit of the higher ceiling has already been passed on by the Government to pensioners from 1.4.1979."

In connection with the these observations appearing in the article of the Secretary of the Department of Pensions I have promptly written the following letter to him. This letter is self-explanatory. Attention is particularly invited to the copy of letter which is enclosed with it. Pensioners will note from this letter of the government which has been addressed to a pensioner as to how they still keep up the tradition of maintaining discrimination between the pensioners, stating that only the pensioners who took the matter to the Central Administrative Tribunal could claim the benefit of judgement and not those who did not, even though all of them stand on the same footing and claim equality before the law under article 14 of Constitution of the India, Pensioners will come to know in due course the action we take on these present developments.

Letter to Mr. I. K. Rasguotra

I have read your article in today's Hindustan Times and the inspired release of 13th June in the same newspaper. There are quite a few points in it which need to be controverted, but I do not propose entering into a slinging match. On one point every pensioner agrees. The Pensions Department of the Government has done a splendid job since the annouceement of Supreme Court judgement in December 1982 on our case, So much for the pensioners had never previously been done.

Mr. Chidambram has been the recepient of all the praises, blessings and good words of the pensioners for having done all this for the pensioners. You have also been extremely helpful in solving their problems. It is unfortunate that all this good work is at present getting besmirched by the episode of the government attitude relating to deprivation of a rightful meagre benefit to the pre-1973 pensioners.

I wonder whather the attached letter of your Department has come to your notice. It has been issued to a pensioner and I have its original. You will assuredly recognise in it the blatant discrimination against which we successfully fought in the above-mentioned Supreme Court case. I feel that the government will be put in a very embarassing position by the placement of this latter before court."

Copy of the letter forming enclosure of the above letter addressed by the Pensions Department to Mr. K.R Parthasarathy of No. 11, Mayur Sambandum Street Rangarajapuram, Madras-24 :

"Sub : Pre-1.1.1973 pensioners.

Please refer to your letter of 20.4.88 on the subject. The judgement of the CAT is applicable only to the petitioners to the original application and the judgement is not applicable to the Central Government pensioners in general. It is, therefore, regretted that the judgement of CAT cannot be made applicable."

Sd/- C.A. NEDUNGADI
Desk Officer

PENSIONERS FEEL BETRAYED

Old pensioners, above 73 years and more and at the fag end of their lives, are very bitter. They retired before 1973. Though a measure of pension liberalisation was introduced with effect from 1-1-1973, they were denied the benefit. They took the matter to the court and won the case, but by a neat slight of hand the flow of these benefits to them continue to be stopped.

These pensioners feel distressed and disillusioned. "Surprised and shocked" is how Mr. B. G. Murdeshwar, former Law Secretary of the Government of India, and now a pensioner, mildly describes the game played on them by the goverement. Maj-Gen, S. Prakash, 75, beset with 100 per cent disability says: "The Government has broken the agreement blatantly. It could never be imagined in our widest dreams that we would live to see such inequities, and that too by our own government." These views are echoed by many others,

Hundreds of letters have been addressed to the Minister of State for Home Affairs, Mr. Chidambaram, from every place in the country. These old pensioners are particularly angry at the way the deprivation, according to them, has been manipulated by the government.

The benefits extended in the measure of liberalisation introduced in 1973 were small. These were: the pension calculation formula was modified to be 33/80 of the last pay drawn, improving it slightly over the previous formula of 33/80, there was previously an overall ceiling of Rs. 675 per mensem on the pensions, this ceiling was increased to Rs. 1,000; and, thirdly, the qunntum of gratuity on retirement was increased. Government had in its wisdom prescribed that these benefits would accrue only to those who retired after 1-1-1973, and those who had retired earlier would not be entitled to them. Subsequently, an instalment of liberalisation was introduced in 1979. Government had again laid down that the benefits involved in this measure of liberalisation would flow only to those who retired after 1-4-1979. This latter restriction was challenged in the Supreme Court by the public interest organisation Common Cause and it decreed in favour of the pensioners. It was laid down by the Supreme Court that all pensioners constitute one class and that liberalisation introduced by the Government should be given to all pensioners irrespective of the dates of their retirement. Government had thereupon given the 1979 liberalisation benefits to all pensioners who had been deprived of them.

The pre-1973 pensioners, on the same grounds, continued to claim the bene its of the 1973 measure of liberalisation. Eventually, they took this matter to the Central Administrative Tribunal which has been specifically set up by the Government of India for solving such problems. The Tribunal gave verdict in favour of the pensioners, on the strength of the Supreme Court judgment relating to the 1979 liberalisation benefits. The government, in stead of implementing the Tribunals. decision within three months, filed an appeal on the last day before the Supreme Court. When the appeal came up for hearing, an understanding is stated to have been reached between the counsels of the Government and the pensioners that the latter would give up the claim for the increase of gratuity and the Government would not contest the claim of increase of pension. On the basis of this understanding the Supreme Court, in its judgement, did not record any decision on the matter of pension whereas on gratuity it held that the claim for increase was not maintainable The pensioners were happy that at least they would be able to derive the slight benefit of increase of pension relating to the period 1973 to 1979.

To their horror the government filed a review petition before the Supreme Court. In it the position taken was that there had been a 'misunderstanding" and a "communication gap" due to which the matter of pension was not contested by the Government.

There was no alternative for the Supreme Court excepting to hold, in the circumstances that, the question of pension had not been taken up in the appeal and that it was still open.

It is this act of the Government which the pensioners claim to be nothing short of treachery. They had remained deprived of the benefits of the 1973 liberalisation for 15 years. Now that these benefits have been declared in their favour by the Central Administrative Tribunal, the Government has manipulated that they will continue to be deprived of these. The financial implications of these benefits are meagre. The payment due to them is mainly of a non-recurring nature, comprising arrears payable for the period 1973 to 1979. Those who had retired before 1973 are now only a few; none of them is less than 73 years of age, and they are living literally on borrowed time.

"This is a lowdown trick to gain unworthy needs", writes a retired ICS Officer in his letter to Mr. Chidambaram. The pensioners ridicule the plea taken by the Government before the Supreme Court that there was a "communication gap" and a "misunderstanding". Lt. Gen. J.K. Khanna has written from New Delhi that pensioners feel cheated at this volte face of the Government.

The pensioners have in general been happy with Mr. Chidambaram, (or the expeditions implementation of the Supreme Court judgments giving various benefits for which the pensioners had fought every inch of the way and had won against all possible obstructions put by the Government. But, all these words of praise are now drowned in the anguish communicated in these hundreds of letters which have been sent to Mr. Chidambaram by name. The pensioners are now asking : "Will the Government still keep obstructing the flow of legitimate rights to them, and will they have to again knock at the doors of the courts for establishing their rights"?

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