

**BEFORE THE CHIEF ELECTION COMMISSIONER(BPP)**

**COMMODORE ASPI MARKER**

**Complaint No.1 of 2022**

Mr. Kersi Randeria ..... Complainant

V/s.

1. Mrs. Armaity Tirandaz,

2. Mr. Viraf Mehta

3. Mr. Xerxes Dastur

}

..... Respondents

1. Mr. Kersi Randeria (**'Complainant'**), in his capacity as member of the Donor Register, Trustee of the BPP and a candidate for the elections scheduled on 29<sup>th</sup> May 2022 (**'Election'**), filed a complaint dated 24<sup>th</sup> March 2022 before the CEC alleging that three Trustees of the BPP namely, (1) Mrs. Armaity Tirandaz, (2) Mr. Viraf Mehta and (3) Mr. Xerxes Dastur (**'Respondents'**) by passing the resolutions dated 21<sup>st</sup> February 2022 and 22<sup>nd</sup> March 2022 have breached the provisions of (i) Clauses 15 and 26 of the Code of Conduct (**'CoC'**) which amounted to a 'corrupt practice' being a serious electoral offence within the meaning of Clause 27 of the CoC; as also (ii) Clause 17.8 of the Scheme of Election (**'Scheme'**). The Complainant has prayed that the EC should initiate suitable action against the Respondents, who are now candidates at the forthcoming Election.
2. Upon receipt of the Complaint, the CEC convened a hearing on Tuesday, 29<sup>th</sup> March 2022 at 3:00 p.m. in the BPP Board room when the CEC along with five ECs, the Complainant and the Respondents were present.
3. Before setting out the submissions made by the Complainant and the Respondents, it is relevant to set out the background of this matter.

- 4.1 The BPP is one of the largest landlords of Mumbai in respect of nearly 4400 tenements in Parsi colonies. While nearly 2500 of these flats have been let out by the BPP on a monthly contractual tenancy basis (**'Tenancies'**); 1900 flats are governed by the terms of L & L Agreements. A tenant is protected by law (Maharashtra Rent Control Act) while a licensee does not have statutory protection and is governed by the L&L. A tenant has, therefore, superior legal rights than a mere licensee.
- 4.2 Since the last nearly fifteen years, discussions have ensued that this distinction should be removed and the BPP should convert all licenses under L&L into Tenancies.
5. At the hearing, Mr. Randeria made the following submissions:-
- (i) At the outset, Mr. Randeria said that he was not against converting L&L into Tenancy. On the contrary, he wanted the BPP to bear the burden of stamp duty payable by the licensees upon such conversion under the Maharashtra Stamp Act which according to him is around Rs.175 crores, so that the economically weaker sections of the community also could avail of this benefit, even though they may not be in a position to pay such stamp duty. However, he was against the attempt of the Respondents to push these measures with undue haste on the eve of the elections with the clear objective of inducing voters to vote for them at the forthcoming Election;
  - (ii) This attempt by the Respondents was a 'major policy decision' which the Trustees are prohibited from taking between the date on which the election is advertised and the date on which the election is held, in terms of Clause 17.8 of the Scheme, which Mr. Randeria alleged had been breached by the resolution passed on 22<sup>nd</sup> March 2022;
  - (iii) Mr. Randeria further alleged that the Respondents had breached the verbal undertaking given across the bar to the Bombay High Court on 12<sup>th</sup> January 2022 to the effect that no major policy decision would be taken by the outgoing Trustees;

- (iv) That the resolution passed on 21<sup>st</sup> February 2022 was 'conditional, vague and unimplementable'; Mr. Randeria referred to the following words in the resolution 'Subject to the BPP receiving legal and tax opinions and confirmation' in support of his contention that the resolution was 'conditional';
- (v) That on 12<sup>th</sup> January 2022 (interim order passed by the Bombay High Court), it was indicated and known to all that the final hearing of the election petition was to commence on 22<sup>nd</sup> February 2022 (that is just one day after the date on which the Respondents passed the 21<sup>st</sup> February 2022 resolution) and all the Trustees had signed Consent Terms dated 12<sup>th</sup> January 2022 for elections to be held for all the seven vacancies. In other words, on 21<sup>st</sup> February 2022, it was widely known to all concerned that the elections were just round the corner.
- (vi) In support of his submissions, Mr. Randeria relied upon the following documents, namely, the extract of the minutes of the meeting of the Trustees held on 21<sup>st</sup> February 2022 as also on 22<sup>nd</sup> March 2022; certified copies of which have been taken on record by the EC;
- (vii) In particular, Mr. Randeria relied upon the following extracts of the minutes of the meeting held on 21<sup>st</sup> February 2022;

*"Mr. Dastur (one of the Respondents) was of the view that any way we cannot implement the decision immediately and discussion on the same should be taken as a first step, the modalities and other procedures have to be looked into and fixed at a later stage."*

*"Mr. Dastur was of the opinion that since we have committed before Justice Kathawala that we the outgoing Trustees would work as usual until the end of the term but would not make any 'major policy decision'. Therefore, we can start discussions on the matter but no final decision can*

*be taken at present that to taking into consideration the opinion of our legal team.”*

*“Mr. Dastur clarified that it be taken on record that only discussions be held and not a final decision”.*

(viii) As regards the resolution passed by the Respondents on 22<sup>nd</sup> March 2022 approving the request for conversion for the L&L to Tenancy received from five BPP licensees (all of whom are voters on the General Register having a right to vote on the forthcoming Election), Mr. Randeria alleged that these five licensees were ‘friends and supporters’ of the Respondents; and this was a brazen violation of the CoC, after the Bombay High Court had passed its order on 1<sup>st</sup> March 2022 sanctioning the Scheme and the CoC; and after the date on which the election was advertised in the Parsi Media (19<sup>th</sup> March 2022), and the same was therefore violative of Clauses 15 and 26 of the CoC. The same was also violative of Clause 17.8 of the Scheme by virtue of being a major policy decision.

6. Mr. Viraf Mehta and Mr. Xerxes Dastur, on behalf of the Respondents made the following submissions:-

(i) That the proposal to convert L&L into Tenancy was in the public domain since the elections of 2008 as evidenced by the election manifesto issued by candidates in 2008, as also in articles written in the Parsi Media by the Respondents for the last three years; and therefore, this is not a new proposal or policy decision by the Trustees;

(ii) As regards the resolution passed on 21<sup>st</sup> February 2022, the question of Clauses 15 and 26 of the CoC or Clause 17.8 of the Scheme being applicable simply does not arise, as the Scheme (along with the CoC) came into effect only on 1<sup>st</sup> March 2022 on which date the Bombay High Court sanctioned the Scheme. Hence,

even if this amounted to a 'major policy decision', there was no prohibition on 21<sup>st</sup> February 2022, upon the Trustees doing so;

- (iii) That the resolution of 21<sup>st</sup> February 2022 cannot be termed as 'conditional' only on the ground that it was subject to receipt of legal and tax opinions subsequently. As a matter of fact, the legal opinion of Mr. Jehangir Mistry of Mulla & Mulla dated 14<sup>th</sup> February, 2022 was tabled before the meeting;
  - (iv) The resolution passed on 22<sup>nd</sup> March 2022 approving the conversion of three L&L into the tenancies was merely an implementation of the decision already taken by the Trustees on 21<sup>st</sup> February, 2022 and therefore, it was not violative of Clauses 15 and 26 of the CoC or Clause 17.8 of the Scheme.
  - (v) It is incorrect to state that such conversion was done for select individuals. The 21<sup>st</sup> February 2022 resolution had been widely publicised in the community and these five persons (subsequently several more) had come forward by e-mail to the BPP to convert their L&L into Tenancies. The conversion of L&L to Tenancies was an option and not a compulsion. All persons desirous of converting L&L to Tenancies would in fact have to agree to convert their refundable deposit into a donation; and bear the stamp duty and registration charges for the same. Hence, there was no inducement to any voter and that there was no violation of Clauses 15 and 26 of the CoC.
  - (vi) Mr. Mehta stated that Mr. Randeria himself had attempted to induce voters by advocating that stamp duty payable upon such conversion, should be borne by the BPP, and not by the licensees.
7. The CEC, in consultation with the five other ECs, has evaluated the submissions made by the Complainant and the Respondents and examined the documents on record. The discussions and the decisions of the CEC are as follows:-

- i. The Complainant has as set out herein, stated that the conversion of L&L to Tenancies amounts to a major policy decision. The Respondents have denied this. In the event the Complainant is right, the matter, by virtue of Clause 17.8 of the Scheme would be outside the jurisdiction of the CEC and the ECs as the same would have to be agitated before the Judge in Chambers of the Hon'ble Bombay High Court. We, therefore, do not express any view in respect of the above proposition. This is because the determination of the same is not relevant to the present complaint. This, again, is because the crux of the present complaint is whether the resolution passed on 22<sup>nd</sup> March 2022 (independently or in conjunction with the resolution passed on 21<sup>st</sup> February 2022) is in violation of Clauses 15 and / or 26 of the CoC which the CEC is empowered to decide.
- ii. The Scheme came into effect only on 1st March 2022 and therefore the resolution dated 21st February 2022 passed by the Respondents was / is beyond the scope of the authority of the EC. It is pertinent that the resolution dated 21<sup>st</sup> February 2022 though technically outside the purview of the Scheme and CoC, was passed only one day prior to the final hearing of the election petition. This is a fact of some significance as will be borne out below.
- iii. The resolution dated 22<sup>nd</sup> March 2022, approves the conversion of three L&Ls to Tenancies in respect of persons who are voters on the General Register. The same was passed by the Respondents after the Scheme and the CoC had come into effect on 1<sup>st</sup> March 2022. In fact, the resolution dated 22<sup>nd</sup> March 2022 was passed after the date of election (29<sup>th</sup> May 2022) was advertised in the Parsi Media as required by the Scheme on 19<sup>th</sup> March 2022.
- iv. In light of the above, the issue for determination by the EC was whether the resolution dated 22<sup>nd</sup> March 2022 approving the conversion of the three L&L into Tenancies independently or in conjunction with the resolution passed on 21<sup>st</sup> February 2022 violated Clauses 15 and 26 of the CoC. The above clauses deserve to be cited in verbatim:-

Clause 15:-

*No inducement, financial or otherwise, shall be offered to the voter. None of the contesting candidates shall offer dinners or food or liquor or refreshments at their campaign meetings or at the time of the voting after filing their nominations. Only water may be provided by the candidate at election meetings.*

Clause 26:-

*Any act or attempt to commit an act of bribery, undue influence, intimidation of voters, impersonation, blackmail, or such other similar act, shall constitute a 'corrupt practice'. Any 'corrupt practice' that is established shall amount to a serious electoral offence.*

- v. Clause 15 states that no inducement, financial or otherwise, shall be offered to the voters. While Clause 26 states that any act or attempt to commit an act of bribery, undue influence or such other similar act constitutes a 'corrupt practice' which, if established, amounts to a serious electoral offence;
- vi. What the issue of conversion of L&L to Tenancy means, in respect of the voters, is briefly set out: A tenant is protected by law while a licensee does not have statutory protection and is governed by the L&L as set out above. Now, such of the voters who choose to exercise the option of conversion of their respective L&L to Tenancy get an undoubtedly superior legal right to the premises they occupy. This superior legal right to the premises they occupy is granted to them just before the elections and effectively for no consideration at all. It is pertinent that the stamp duty and the registration charges to be paid by such voters can never be construed as consideration for being granted a substantially superior legal right to the premises being occupied by them.

- vii. The Respondents have themselves submitted that the proposal to so convert licenses into tenancies has been widely discussed and debated by candidates and others since 2008.
  - viii. Considering that this proposal to convert L&L into Tenancy was a matter of discussion for so many years in the past, passing the resolution on 21<sup>st</sup> February 2022 just the evening before the final hearing of the election petition was to commence the next morning, does indicate that the resolution was passed keeping in mind the imminent elections and the curbs which were proposed to be imposed post the Scheme and CoC coming into force.
  - ix. The actual act of conversion of three out of the 1900 BPP licensees, on 22<sup>nd</sup> March 2022 when the CoC was in force, has to be seen in this light. When this is done, there is no doubt that the actual act of conversion does, broadly amount to a premeditated inducement to the voters within the meaning of Clause 15 of the CoC.
  - x. The Resolution dated 22<sup>nd</sup> March 2022 must also be seen independently of the Resolution dated 21<sup>st</sup> February 2022. Seen even in this light, the same would constitute an inducement to the voters within the meaning of Clause 15 of the CoC.
  - xi. However, given that the act of conversion of existing L&L to Tenancy is not opposed by the Complainant per se – in fact the Complainant supports the same and objects only to the timing of the same - the act of conversion cannot be deemed to constitute a 'corrupt practice'. Consequently, the act of conversion also does not fall within the ambit of Clause 26 of the CoC, and is, therefore, not a corrupt practice.
8. Having regard to all the facts and circumstances of this matter, the newness of the Scheme (only three weeks old when 22<sup>nd</sup> March 2022 resolution was passed) and the long history of the matter; presently the purpose and the spirit underlying the role of the Election Commission and the integrity of the Election process, the CEC passes the following directions and orders:-



- a. The matter relating to the conversion of the L&L into tenancy for three BPP licensees, on 22<sup>nd</sup> March 2022, shall not be further acted upon, until new trustees assume office;
- b. No further L&L application of this nature shall be processed/converted or acted upon, until new trustees assume office.

Commodore Aspi Marker

Chief Election Commissioner

08 Apr 2022