

**BEFORE THE HON'BLE LOKAYUKTA  
Justice Manmohan Sarin  
Complaint No. C-169/LOK/2009**

**Lokayukta on its own motion in Re: Appointment of Sweepers  
in Sanitation Department of MCD**

**Report**

**Cognizance and initiation of Inquiry**

1. Avarice fuelled by alleged misuse of official position by the then Municipal Councillor of Ward No. 68, Ms. Praveen Massy was instrumental in getting sanction of 21 posts of Safai Karamcharis for the ward and appointment of her blood and other relations, associates and party workers etc. on the said posts.

A complaint in this regard made by Mr. Haresh Beniwal, a Safai Karamchari, ultimately led to an investigation by Economic Offences Wing. On a news report titled "High Court slams MCD for delaying probe against the Councillor", appearing in Express News Line" dated 18.05.09, suo moto cognizance was taken and an inquiry under section 7 of the Delhi Lokayukta and Uplokayukta Act, 1995 was initiated.

**Notice and Reply of the Respondent**

2.1 Notice was issued to Ms. Praveen Massy, former Municipal Councillor. Notice was also issued to the MCD for production of the relevant record.

2.2 Ms. Praveen Massy appeared and filed a reply dated 30.07.09, stating that she was a Councillor representing Dallupura Ward No. 68, a reserved constituency, for the period 2002-07. Appointments of Sweepers (Safai Karamcharis) in MCD were made by the Commissioner of MCD. She had no role to play in the appointment of said Safai Karamcharis in the MCD. Whatever had been published in the newspaper against her was at the instance of political rivals, with a view to tarnish her political image. CBI had

already conducted an inquiry and given her a clean chit in March 2008 and these proceedings should therefore be dropped. MCD produced the available record.

2.3 Vide order dated 31.07.09, respondent Ms. Praveen Massy was asked to file an affidavit declaring whether the Safai Karamcharis appointed vide order bearing No. 488/SS/SH/Sant/2005 dated 01.08.05, were relatives or closely associated with and/or personally known to her. Further whether she had made any recommendation in respect of the said 21 persons. She accordingly filed an affidavit dated 27.08.09, wherein she stated that out of the appointed candidates, only 6 candidates were her relatives namely:-

<b>Sl.No.</b>	<b>Name of person</b>	<b>Father/Husband name</b>	<b>Relation</b>
i)	Mr. Ajay	Sh. Chhote Lal	Son
ii)	Mr. Sunil	Sh. Laloo Ram	Brother
iii)	Ms. Renu	Sh. Vijay Kumar	Daughter-in-law
iv)	Ms. Kavita	Sh. James	Sister-in-law
v)	Mr. Vinay Kumar	Sh. Chotey Lal	Son
vi)	Ms. Nisha	W/o Sh. Ajay	Daughter-in-law

She further averred that the said 6 candidates were old daily wagers of MCD, who were duly selected on merit and that she had not made any recommendation for their selection. Apart from the said 6 candidates, no other candidate was her relation or closely associated with her. Most of the candidates were local candidates and she being the Councillor of the ward, was known to them.

3. Vide order dated 04.09.09, Mr. Sanjeev Mahajan, Advocate was appointed as an Amicus Curiae to assist this forum in the inquiry. Mr. R.C.Verma, Advocate entered appearance on behalf of Ms. Praveen Massy. The first witness Sh. Haresh Beniwal, CW-1 was duly cross examined by the advocate on behalf of Ms. Praveen Massy.

#### **Public functionary withdraws from scrutiny**

4. It is pertinent to mention that Ms. Praveen Massy stopped appearing before this Forum w.e.f. 22.09.09. Despite repeated opportunities given to her to participate in the inquiry and the matter

being adjourned vide orders dated 22.09.09, 14.10.09 and 29.10.09 to enable her to cross examine Sh. Babbal, CW-2 and Sh. S.K.Sharma, CW-3. She did not participate in the inquiry proceedings despite the service of communication/notices on her and her counsel and fullest opportunity being accorded.

### **MCD's Version**

5.1 As per the record produced by MCD, Sh. D.S.Patwal, President, Durga Park Sudhar Committee (Dallupura) had written to Ms. Praveen Massy for cleaning of the drainage system of Durga Park. Respondent Ms. Praveen Massy vide her letter dated 08.06.05 requested Sh. Ravi Dass, DNC, CSE, MCD for taking necessary action in the matter. It was on the basis of the said letter that process for appointment of 21 Safai Karamcharies in question was initiated.

5.2 In the brief report, Ex.CW-3/1, submitted by CW-3, Sh. S.K.Sharma, Asstt. Commissioner Shadara (South Zone), it is stated that the Commissioner, MCD vide his order dated 05.07.05, had approved engagement of 21 Safai Karamcharis i.e. 15 Safai Karamcharis, 5 Nala Beldars and one Cartman in Shahdara (South Zone) in the Sanitation Department of MCD for the area of Dallupura in Ward No. 68, represented by Ms. Praveen Massy initially for 89 days. The order stipulated that the posts will be filled up by senior most substitute sweepers. Accordingly, no formal applications for recruitment/appointment were invited. Appointments were not made in accordance with seniority and 20 persons were picked up randomly and appointed as daily wager Safai Karamcharis and Nala Beldars. However, Sh. Satish S/o Sh. Itwari appointed as Cartman was a fresh candidate since there was no Cartman in the existing list of substitute Safai Karamcharis.

5.3 The original complaint dated 23.03.06 of Sh. Haresh Beniwal addressed to Dy. Commissioner of Police, Economic Offences Wing was forwarded to the Director of Vigilance, MCD by Sh. P.K.Mishra, ACP (Admin.), Economic Offences Wing, vide his letter dated 25.06.07, for taking necessary action as deemed fit. The original complaint along with above letter was forwarded by

Executive Engineer (Vig.), Unit-VI, Vigilance Department of MCD vide his letter dated 14.12.07 to the Dy. Commissioner, Shahdara (South Zone) for taking appropriate action. However, it appears that neither any investigation was conducted by the Economic Offences Wing of Delhi Police or Vigilance Department of MCD nor by the Dy. Commissioner, Shahdara (South Zone), MCD, culminating in the observations by the High Court as reported in the news report and the inquiry initiated by this forum.

### **Witnesses**

6. The following witnesses have been examined in order to ascertain the veracity of allegations against Ms. Praveen Massy and her role:-

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|------|------|--|
| i)   | CW-1 | Mr. Harish Beniwal                                       |
| ii)  | CW-2 | Mr. Babbal   |
| iii) | CW-3 | Mr. S.K.Sharma, Asst. Commissioner, Shadara (South Zone) |

### **Evidence adduced and Analysis**

7.1 CW-1, Mr. Haresh Beniwal testified that he was President of Delhi Pradesh Safai Mazdoor Trade Union (Regd.), Shahadra (South Zone) and had complained against the respondent in the year 2006 against the appointment of 21 persons in Ward No.68. These appointments were not made as per the seniority list maintained and were based on nepotism and favouritism. Those who were related to or close to the respondent were appointed. He has deposed that complaint dated 23.03.06, Ex.C-1 was signed by him. Earlier complaints lodged through their organization were Ex.C-2A to C-2E. He stated that 21 persons were appointed vide order dated 01.08.05 and all of them were either relatives, employees, party workers or closely associated with the Respondent. The appointments are described as misuse of position by Public Functionary. The persons appointed were already having vocations

and were well settled. They did not work as Safai Karamcharis but drew the wages. He has given the details of persons appointed, their parentage and relationship with the Councillor, which are reproduced below in a tabulated form, for facility of reference:-

<b>Sl.No.</b>	<b>Name of person</b>	<b>Father/Husband name</b>	<b>Relation with the Respondent</b>
i)	Mr. Rakesh	Sh. Sardare	Nephew
ii)	Mr. Hari Singh	Sh. Jaipal	Domestic Helper & Party Worker
iii)	Mr. Avinash	Sh. Chuni Lal	Son-in-law
iv)	Ms. Kavita	Sh. James	Sister-in-law
v)	Mr. Sunil	Sh. Laloo Ram	Brother
vi)	Mr. Jamuna	Sh. Bhupender	Party Worker
vii)	Ms. Sushma	Sh. Prem Singh	Party Worker
viii)	Ms. Rekha	Sh. Vijay Khalariya	Party Worker
ix)	Mr. Suraj	Sh. Pritam	Driver
x)	Mr. Ajay Kumar	Sh. Chhote Lal	Son
xi)	Ms. Renu	Sh. Vijay	Daughter in law
xii)	Mr. Vinay Kumar	Sh. Chhote Lal	Son
xiii)	Ms. Nisha	Sh. Ajay Kumar	Daughter in law
xiv)	Ms. Meena	Sh. Vijay Kumar	Daughter in law
xv)	Ms. Krishna	Sh. Saran Lal	Party Worker
xvi)	Mr. Preetam	Sh. Babu Lal	Driver and Party Worker
xvii)	Mr. Mukesh	Sh. Ved Prakash	Party Worker
xviii)	Mr. Tilak Raj	Sh. Piare Lal	Party Worker
xix)	Mr. Sudhir	Sh. Manender	Party Worker
xx)	Mr. Hari Kishan	Sh. Bhane Ram	Driver
xxi)	Mr. Satish	Sh. Itwari	Party Worker

7.2 He further stated that none of these appointments were on merit and this was a case of misuse of authority and power and nepotism. The appointments were required to be made from the list of substitute Sweepers maintained by the office as per office order, which was not done.

7.3 During his cross examination, by the respondent, he denied the suggestion that at that time when these appointments were made there was no approved list of seniority of substitute Safai Karamcharis. He also denied that out of 21 persons appointed, only 6 were relations of Ms. Praveen Massy. He further denied that name of the said 21 persons appeared in the list of substitute Safai Karamcharis. He also denied that Ms. Praveen Massy had no role in appointment of these 21 persons. He named Mr. Brij Mohan and Ch. Pratap Singh, Sanitation Superintendents, Sh. Ebrahim Khan, Assistant Sanitary Inspector, Late Sh. D.K.Bhardwaj, Sanitary Inspector and Sh. Om Prakash, Supervisor MCD as officers who had acted at the behest of Ms. Praveen Massy. He gave the names of 16 more persons who had been subsequently employed as being associated with the Councillor.

7.4 CW-2 Mr. Babbal has deposed generally on the same lines as CW-1, Sh. Haresh Beniwal. He testified that he was working as Safai Karamchai in MCD since 1988. He was working in Ward No. 68 from 1998 to 2004. Ms. Praveen Massy got elected in the year 1997 as Municipal Councillor and then he came to know her. He was deputed by his Inspector to work with Ms. Praveen Massy as a Chauffer and to do miscellaneous chores. He kept on going to her as per requirement for 2 to 3 days in a week for about 2 to 3 years. Being a visitor to her house he recognized her family members and her relations. He has given the relationship of twelve persons appointed vide order dated 01.08.05, with the respondent as under:-

<b>Sl.No.</b>	<b>Name of person</b>	<b>Relationship with Respondent</b>
i)	Sh. Rakesh	Nephew
ii)	Sh. Hari Singh	Domestic worker

iii)	Sh. Avinash	Son-in-law
iv)	Smt. Kavita, W/o James	Sister in law
v)	Sh. Sunil	Brother
vi)	Sh. Ajay Kumar	Son
vii)	Smt. Renu, W/o Vijay Kumar	Daughter in law
viii)	Sh. Vijay Kumar	Son
ix)	Smt. Nisha, W/o Sh. Ajay Kumar	Daughter in law
x)	Sh. Krishna	Usual visitor
xi)	Sh. Pritam	Habitual visitor
xii)	Hari Kishan	Party worker

Regarding the relationship or association of other persons appointed as "Safai Karamcharis", with the respondent, he expressed lack of knowledge. He further stated that none of these persons have been seen by him ever working in Ward No. 68. However, they were drawing their salaries regularly.

7.5 CW-3, Sh. S.K.Sharma, Assistant Commissioner, Shahdra (South Zone), MCD has, inter-alia, testified that the MCD (HQ) had directed that 21 vacancies be filled as per the seniority list of substitute Safai Karamcharis maintained. Only Sh. Ajay and Smt. Renu figure in the substitute list while other 19 did not even figure in the list. Even the said 2 persons were not eligible on the basis of seniority. He has also filed a brief report regarding appointment of 21 employees which is Ex. CW-3/1, Office order dated 01.08.05, Ex.CW-3/2, regarding engagement of 21 Safai Karamcharis and giving their relationship with the Ex. Councillor, copy of seniority list dated 30.09.98, Ex. CW-3/3, photocopy of note submitted by Sanitary Inspector recommending appointment of 21 Safai Karamcharies, Ex.CW-3/4 and details of payment of salary made from August, 2005 to September, 2009 in respect of 21 employees, Ex.CW-3/5. He also stated that the names proposed to be appointed were not in accordance with seniority list (Ex.CW-3/3) which was the only seniority list available in their record. The proposal for appointment was finally approved by the Addl. Commissioner, DMS (HQ) MCD and Director in Chief, MCD. The names and particulars given in

Ex.CW-3/2 and their relationship with the respondent is the same as reproduced in Para 7.1

7.6 Both CW-2 and CW-3 were not cross examined by the respondent since she had stopped appearing before the forum w.e.f. 22.09.09, without any cause and did not appear despite repeated service of notices on her and her counsel.

No evidence or record of any investigation by the CBI in the above matter or it having given any clean chit to Respondent has been produced before us.

7.7 On 25.11.09, Sh. S.K.Sharma informed that he has visited the site on two occasions i.e. on 05.11.09 and 20.11.09. On 05.11.09 none of the employees were available but on 21.11.09 when the roll call was called they came from nearby places. At the time of taking roll call these 21 persons were not having any broom or other equipment of cleaning with them and were not wearing working attire. From the testimony of CW-2 and information given by Sh. S.K.Sharma on 25.11.09, it appears that 21 Safai Karamcharis had not been working in Ward No. 68. There is no reason to disbelieve the testimony of CW-1 to CW-3 in this regard. Even otherwise considering the normal course of human conduct and behaviour, it appears unlikely that close relatives of a municipal councillor like son, daughter in law, brother etc. would be working as Safai Karamcharis in the area which is represented by the municipal councillor.

7.8 From the aforesaid it would be seen that all the 21 persons appointed as Safai Karamcharis vide order dated 01.08.05 were in some way or the other related to or associated with Ms. Praveen Massy, the respondent. Their relationship or association with the respondent has been given by CW-1, 2 and 3. The testimony of these witnesses to the above effect has gone un-rebutted and un-impeached. There is also no dispute that the said persons had not been appointed as per the seniority list which is Ex.CW-3/3. In fact except Sh. Ajay and Smt. Renu, the names of remaining persons did not even figure in the substitute seniority list of Safai Karamcharis.



Appointment of all the 21 persons as per office order dated 01.08.05 was clearly not as per seniority list. The only factor common to all the 21 persons is their relationship or association with the respondent. The initiation and sanction for engagement was at the behest of the respondent. The appointments, contrary to the seniority list, of persons who were relations or associated with the Public Functionary could not have been done without misuse of official positions as Municipal Councillor.

### **Submissions by Amicus Curiae**

8.1 I did not have the benefit of any arguments on behalf of the respondent since she opted to remain absent w.e.f. 22.09.09 and did not participate in the inquiry after filing initial reply, affidavit and cross examination of one witness. Amicus Curiae has filed his submissions in writing wherein, while marshalling the evidence that has come against the respondent, he submitted that the appointment of 21 "Safai Karamcharis" as per order dated 01.08.05 was bad in law. It had been done ignoring the seniority list. There has been misuse of authority and power by Ms. Praveen Massy to secure appointment of said "Safai Karamcharis".

8.2 The Ld. Amicus Curiae submitted that the extent of hold and influence which a Municipal Councillor wields was amply demonstrated in this case. Despite there being a clear direction that the appointments were to be made as per the seniority list, the name of 21 persons were recommended by the Sanitary Inspector Sh. D.K. Bhardwaj, upon which there was yet again a direction given that "it should be ensured that the names proposed to be appointed were the senior most substitute employees". This confirmation was also wrongly given and the appointments made. The Ld. Amicus Curiae, therefore, submitted that stringent action was required to ensure that such flagrant violation of procedure did not take place and that the Corporation ought to proceed against the officials who had acted at the behest of the Councillor or were guilty of not placing the correct position or verifying the correct position on

record. The concerned officials in this connection are Sh. Brij Mohan & Ch. Pratap , Sanitary Supdt, Sh. Ibrahim Khan, Asstt. Sanitary Inspector, Late Sh. D.K. Bhardwaj, Sanitary Inspector and Sh. Om prakash, Supervisor, MCD.

8.3 The Ld. Amicus Curiae in this regard also made some suggestions for consideration in terms of Section 16 of the Delhi Lokayukta and Upalokayukta Act, 1995 for bringing about improvements in procedure and to curb malpractices. The Ld. Amicus Curiae suggested that any candidate aspiring to be Municipal Councillor be required to disclose and declare whether he or she has any near relation employed with the MCD or working as a registered contractor or supplier with the MCD. The near relation being confined to immediate family i.e wife/Husband, Mother-in-Law, Father-in-Law, Son, Daughter, Sister-in-Law and Daughter-in Law etc. He submitted that failure to make a disclosure or giving incorrect information should invite penal consequences in terms of debarments for specified period from contesting elections.

8.4 The Ld. Amicus Curiae also submitted that any near relation should be barred from being engaged in the Constituency or Ward of the Councillor unless the selection is through regular departmental selection process or through Service Selection Board etc. Another worthwhile suggestion made was that "safai karamcharies" be issued photo identity cards and their duty roster be communicated to the concerned Resident Welfare Associations so that a check could be kept on their regularly attending and performing work. The above recommendations would be duly adverted to. The assistance rendered by Amicus Curiae deserves to be appreciated.

### **Conclusion and Recommendations:**

9.1 In view of the oral testimony of CW-1, CW-2 and C-3, duly supported by documentary evidence on record, it has been duly established that the Respondent misused her official position to obtain gain for herself and her relations and associates. It was with

improper and corrupt motive that she got sanctioned 21 posts of "Safai Karamchari" and got most of these filled by her relatives and associates vide order dated 1.8.05. From the facts and circumstances brought on record the above inference and conclusion is inescapable. It may be noticed that barring 4 persons out of 21, namely Smt. Meena W/o Sh. Vinay Kumar who did not join after appointment, Smt. Sushma W/o Sh. Prem Singh, who expired after working till November, 2005, Sh. Suraj S/o Sh. Pritam who has been abstaining from March, 2006 and Smt. Nisha W/o Sh. Ajay Kumar, abstaining from July, 2006, rest had drawn their wages from August, 2005 till September, 2009 and till their recent termination as detailed hereinafter. A total sum of Rs. 28,73,286/- is stated to have been paid to these appointees. These persons appointed were either relatives, party workers or associated with the Respondent, amply showing nepotism and favouritism. The Respondent had accordingly failed to act in accordance with the norms of integrity and conduct which ought to be followed by "public functionary". It may also be observed that not subjecting herself to scrutiny and by withdrawing from the inquiry without any cause, per se is conduct which would fall foul of the requirement in terms of Section 2(b)(i) of the Lokayukta and Uplokayukta Act.

9.2 The appointment of 21 "Safai Karamcharis" being bad in law, it was expedient in the interest of justice that the services of 21 "Safai Karamcharis" be discontinued. It appears that during the course of the proceedings MCD realized the mistake in appointment of aforesaid 21 Safai Karamcharis. Vide its letter No. 2154/DC/Shad(SZ)/16 dated 28.01.10, the Dy. Commissioner, Sahadara (South Zone), MCD has informed that the services of 21 "Safai Karamcharies" i.e. 15 "Safai Karamcharies," 5 "Nala Baildar" and 1 Cartman who were working at Durga Park Mohalla, Dallupura of Ward No. 214 (Old Ward No. 68) have been withdrawn vide their office order No. 11996/AC/Shadara (South)/2010 dated 22.01.10.

The appointments of these "Safai Karamcharis" were made in the year 2005 initially for 89 days for cleaning up of drainage system of Durga Park. The same continued from 2005 till termination

on 22.01.2010. From the Zonal office record of MCD produced before us, there is nothing to suggest that there was a review or reappraisal of the need for their continuation during this period. Accordingly, there is need to put in place an internal procedure or mechanism for review of the requirement and continuation whenever such adhoc posts are created at periodical intervals rather than the same continuing for long periods on assumed continuous functional requirement.

9.3 The Code of Conduct of elected representatives needs to provide for integrity, primacy of public interest and transparency. The elected representatives ought to act with objectivity and choices should be made on merit. They ought to always take decision in public interest. Their decisions should not be aimed at gaining financial or other material benefits for themselves, their family or friends. Public functionaries are expected to discharge their public duties so as to sub serve public interest and not their private interest. The expectation from them is that they would do the right thing in the most difficult situations. Openness and accountability is necessary to reinforce public confidence in the manner in which they are discharging their obligations. The underlying theme is always respecting public trust reposed in them. In the instant case the respondent has in a brazen manner abused her position in appointment of her close relatives and associates for the post of "Safai Karamcharis" while it was never intended that they would work as such. This fact ought to be brought to the knowledge of her constituents, colleagues in the Corporation and public at large. It is therefore recommended that the above fact be widely publicized in the media to have a salutary effect.

9.4 It is also considered worthwhile that the prospective candidates for the post of Municipal Councillor be required to disclose the names of any near relations, namely, wife/Husband, Mother-in-Law, Father-in-Law, Son, Daughter, Sister-in-Law and Daughter-in Law etc. who is employed with the Corporation and / or is a registered as contractor or supplier with the Corporation. The

non disclosure or incorrect information should invite debarment from contesting election for specified period.

9.5 Electorate has a right to know about the misconduct and malpractices indulged in by their elected representatives so that they can make an informed choice at the time of elections. It would therefore be in the interest of society that MCD put a separate page on their website giving therein name (s) of the Councillors who have been held guilty of any offence by any Court of law or have been indicted for any misconduct or misdemeanor by Lokayukta or any statutory body, tribunal, forum etc. If any such councillors contests any election, the public stand informed of their misconduct or misdemeanor.

9.6 It is also recommend as suggested by Amicus Curiae that the names and photographs of 'Safai Karamcharis' along with their wards be also put on the website of the MCD and displayed with current duty roster on a notice board at a prominent site in their area of duty or operation including with Resident Welfare Associations so that a vigil can be kept on absentee employees. The above should complement the manual system of attendance where fudging and manipulation of attendance is otherwise simpler.

9.7 The present case has again brought to fore an urgent need for framing and codifying the norms of integrity and conduct for the elected representatives both in discharge of their duties and otherwise. Presently, there is no code of conduct, rules or norms prescribed for conduct of the elected representatives. The existence of norms and guidelines could serve as a subconscious reminder to the elected representatives of the norms of behaviour and conduct which is expected from them and transgression of which would be actionable

9.8 Earlier in case No. C-111/Lok/2009 titled Lokayukta on its own in Re Bharat Singh, this forum has recommended to His Excellency, the Lt. Governor of Delhi to initiate the process for

framing and codifying the Rules of Conduct governing the elected representatives of the Legislative Assembly of NCT of Delhi and the Municipal Corporation of Delhi, in public life and outside the Assembly. It is therefore considered expedient under section 16 of Delhi Lokayukta and Uplokayukta Act, 1995, primarily as a matter of reform to recommend and reiterate to His Excellency, the Lt. Governor to expedite the process for framing and codifying the rules of conduct governing the elected representatives or the Legislative Assembly of NCT of Delhi and the Municipal Corporation of Delhi in public life and outside the Assembly and the Corporations.

10. It is also recommended to the Hon'ble Lt. Governor that he directs the Commissioner, MCD to initiate departmental action against the officials who were involved in appointment of 21 "Safai Karamcharis" as per order dated 1.8.2005 and lacked the moral courage to perform their duties with diligence, objectivity and integrity and in particular officials, namely Sh. Brij Mohan & Ch. Pratap , Sanitary Supdts, Sh. Ibrahim Khan, Asstt. Sanitary Inspector and Sh. Om Prakash, Supervisor, MCD for processing these appointments contrary to the stipulations and / or failing to verify names as per the seniority list and proceed against the delinquent officials in accordance with the law as permissible even after their superannuation.

The feasibility of recovery from the concerned "Safai Karamcharis" may also be examined.

11. A copy of this report be sent to His Excellency, the Lt. Governor.

-Sd/-

**(Justice Manmohan Sarin)**  
**Lokayukta**

**Dated: 23/03/2010**

sr/rk