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BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin
Complaint No. C- 244 /LOK/2009

Smt. Sunita Bhardwaj, Original Informant

Vs.

Smt. Sheila Dikshit, Chief Minister of Delhi

REPORT

FACTS OF THE CASE

1. A complaint filed by Ms. Sunita Bhardwaj on 22-10-2009, against Smt. Sheila Dikshit, Chief Minister of Delhi was fixed for preliminary hearing on 12-11-09, when the Complainant sought leave to amend the complaint. As the case was at initial stage and notice was not yet issued, leave was granted. Accordingly the Complainant filed the present amended complaint on 16-11-09.

2. The Complainant alleges that the Respondent was Chief Minister of Delhi during the earlier tenure of Delhi Assembly for the period 2003-2008. Assembly elections were due in the year 2008. Respondent, with an eye on the forthcoming assembly elections, published several booklets and advertisements etc. in various newspapers during March, 2008 claiming that 60000 flats were ready for handing over the possession to the poor and slum dwellers. The said flats were neither ready nor the land on which the said flats were to be constructed was acquired by the government, when the indiscriminate advertisements were published by the government and voters were being misled.

3. According to the Complainant, under the earlier "Residential Flats Registration Scheme, 1985" announced by the government for allotment of houses to the houseless and slum dwellers, as per information received under the RTI Act, 2005, 27,693 applicants had applied out of which only 5662 got flats till September 2008. Remaining applicants were still in the waiting list. Due to massive public propaganda made by the Respondent, there was rush of applications by the unsuspecting public. 277518 application forms

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were received under 'Rajiv Ratan Awas Yojana' till the closing date i.e. 10-09-08. No land has been acquired for construction of houses under Rajiv Rattan Awas except for one village i.e. Pooth Khurd. Thus, the claim by the Respondent about 60000 flats being ready was false, misleading and an attempt to cheat the general public and to procure their votes on false promises. The total land acquired for the construction of houses under Rajiv Rattan Awas by the government till 2008 was only for 9439 houses. Therefore the claim for the construction of 60000 houses made immediately prior to the assembly election is a gross misuse of the public authority.

4. The Complainant alleges that the Respondent has thus abused and misused her position to obtain gain or favour to herself and her political party by misrepresenting to the public on the issue of allotting 60000 flats to the poor. She was actuated in the discharge of her functions as such public functionary by improper or corrupt motives for her personal interest. She has also acted in a manner which lacks faithfulness as she misrepresented to the voters by giving misleading and false information for the purpose of securing votes. She failed to act in accordance with the norms of integrity and conduct, which ought to be followed by the Respondent as she is occupying the chair of Chief Minister of Delhi. She has thus made herself liable for an inquiry into her conduct u/s 7 of the Delhi Lokayukta and Upalokayukta Act, 1995 and for submission of report and recommendations against the Respondent u/s 12 of the Act. She also prayed that recommendations for fixing accountability of public functionary through appropriate legislation may be made.

Notice to the Respondent and her reply

5. Notice was issued to the Respondent u/s 7 read with section 2 (b) of the Act. Notice was also issued to the Secretary, Urban Development to produce all the records related to the printing of brochure / advertisements and record in relation to the scheme, "Rajiv Rattan Awas".

6. The Respondent appeared through her counsel and on 16-12-09, moved an application, inter-alia, for recall of Show Cause Notice. Reply to the said application was filed by the Complainant on 21-12-09. The

application was dismissed vide order dated 23-12-09, for reasons set out in detail therein.

7. The Respondent filed additional reply on 18-01-10, wherein it is stated that the complaint was a part of well thought out strategy of a principal rival political party, to which the Complainant belongs, against the Respondent, who is the Chief Minister of Delhi and has won an unprecedented three consecutive assembly elections starting from 1998 onwards. During her tenure, Delhi has witnessed monumental development work and Delhities had the advantage of an interactive and receptive government. These difficult goals could not have been achieved by the Respondent had she not conducted herself with integrity and in consonance with the high standards of probity expected of public functionaries. Since various efforts to malign and defame her failed, the principal rival political party has now resorted to frivolous litigation to score political points and malign the Respondent as part of political vendetta.

8. It is averred that the booklet which is only an application / registration form and is the main basis for filing the complaint has been deliberately misquoted and inaccurately translated from Hindi to English and selectively read with dishonest motive in order to induce this Hon'ble Forum to issue notice. Respondent filed what she claimed to be the true translation of the application / registration form. It is averred in the reply by the Respondent that the correct translation of the relevant excerpts in English would be that houses are to be constructed to provide shelter. Further, it was stated that the time had come to start the process of handing over of houses by inviting applications for allotment. The Respondent produced her version of the English translation claimed to be an official version. However it turned out to be from M/s Transprint India, a private agency empanelled with Government of NCT. The Complainant disputed this translation. With a view to put the controversy to rest, a direction was issued, vide order dated 18.1.10 to the Registrar of the High Court of Delhi to provide translation of the Brochure. In due course, the translation as received from the official translator of High Court was taken on record. It is the translation by the official translator of the High Court which is being relied in this order.

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9. Respondent's contention regarding the Booklet/Brochure is that it is nothing but an application form for registration under the 'Rajiv Ratan Awas'. 'Rajiv Rattan Awas' is the title for the housing scheme of GNCT of Delhi and is part of Jawahar Lal Nehru National Urban Renewal Mission (JNNURM) of Govt. of India. Under the JNNURM, four lacs flats have been targeted to be built for the urban poor. At the time of issuance of booklet / registration form there were 12 projects that were to be implemented in the NCT of Delhi by the Govt. of National Capital Territory of Delhi, which were approved by the Govt. of India under the JNNURM.

These 12 projects would provide approximately 62000 flats through the "Rajiv Rattan Awas". Therefore the registration form only expresses the bonafide intention of government to construct and handover flats to the poor and slum dwellers. On the date of issuance of booklet / registration form, GNCT of Delhi, had valid approvals, sanctions and Detailed Project Reports (DPR), mentioned in the booklet registration form.

10. Respondent contends that the registration form clearly reveals that 60000 houses will be constructed to provide shelter to the same number of families in due course. The registration / booklet cannot be construed or read as a representation on behalf of the Respondent that the flats are ready to be handed over as alleged by the Complainant. It did not per-se announce a fresh scheme but only furnished particulars of an existing scheme. The booklet could be purchased by paying Rs. 100/- by those who were eligible and desirous of availing the scheme. Sub Clause 3 of clause 4 states that the purpose of the registration form is to collect information of eligible poor and slum dwellers, who have been living in Delhi since 01-01-98. Sub clause 4 of the said clause states that the houses being constructed by DSIDC in Narela, Bawana, Bhorgarh, Ghogha and Baprola will be allotted soon. Therefore, a perusal of the entire registration form / booklet can by no stretch of imagination lead to the conclusion that the Complainant has maliciously sought to canvass.

11. The advertisement in the newspapers on 3.8.2008 which preceded the distribution of the application/registration form booklet stated that the houses were to be constructed. Advertisements were published to ensure due and maximum publicity of the said scheme so that the benefit of the

scheme does not devolve to a selected few but the entire eligible population of Delhi is aware of the said scheme. The advertisements bring out the fact that house/flats are to be constructed. The work of designing and printing of the brochure was done by the DSIDC after approval of Finance Department. 3,15,979 brochures were printed and after due approval of Finance Department, Urban Development Department released the payment of Rs. 66,67,427/-. (Sixty Six Lakh Sixty Seven Thousand Four Hundred Twenty Seven) Out of the above mentioned number of brochures 3,15,979 were sold accruing Rs. 3,15,97900/- to the government.

12. Respondent states that the special registration scheme of 1985 does not have any connection with Rajiv Rattan Awas / JNNURM. The Slum & JJ Department is under the MCD and the Respondent as Chief Minister of Delhi did not exercise control over it. Complainant was well aware that GNCT of Delhi has land available for more than 9436 units as alleged but she has deliberately concealed these facts from the forum. She has with oblique motives, not filed the advertisements despite making repeated reference to them in her complaint.

13. The Respondent has denied that the booklet / registration form makes the tall claim that 60000 flats were ready for handing over to poor and slum dwellers. She has further denied that only 9436 houses were available under Rajiv Rattan Awas Yojna . A total of 62000 flats would be made available in due course under the Rajiv Rattan Awas Yojna. Out of these 62000 flats, 9436 flats were ready.

14. Respondent also alleged that the Complaint is not accompanied by affidavit, it being false and misleading. She has pleaded for taking action against Complainant u/s 9 (2) of the Act.

The Complainant has filed rejoinder wherein she has controverted the averments made in the reply and reiterated those made in the complaint.

VERSION OF THE GOVERNMENT

15. Meanwhile, Urban Development Department has produced the record on 18-01-10. On 18-01-10, the GNCT of Delhi was directed to place

affidavit of the concerned responsible officer giving the information / particulars / details together with the supporting documents with regard to Rajiv Rattan Awas for 60000 flats. On 05-02-10 affidavit of Dr. R.P.S. Yadav was filed. On 24-02-10 he filed an additional affidavit, which was taken on record on 26.2.10.

According to affidavit of Dr. R.P.S. Yadav, Jt. Director, U.D. filed on 24-02-10, the flats constructed under the scheme of Low Cost Houses, component of JNNURM is titled as Rajiv Ratan Awas in Delhi which is implemented in Delhi under the state level nodal agency i.e. U.D. Deptt. Govt. of NCT of Delhi. Dr. R.P.S. Yadav has given details of eleven projects of DSIIDC and four projects implemented by Slum & JJ Department, MCD. The crux of the details given in his affidavit is being discussed in the part, 'Evaluation of the Conduct of the Respondent'.

16. On 11-03-10 both parties submitted that no separate evidence is necessary and they would like to argue on the basis of material on record. Written submissions have been filed by both the Complainant and Respondent.

POINTS FOR CONSIDERATION

17. From the pleadings of the parties and affidavits filed on behalf of the Govt. the following points, which would have a bearing on the conduct of the Respondent, arise for consideration :-

- a. Whether at the time of publication of the advertisements and the booklet/application form 60000 flats were ready or could have been made ready, within a reasonable time, for handing over of their possession to the applicants?
- b. Whether in the booklet/application form, there was a misrepresentation by the Respondent to the effect that 60000 flats were ready for handing over of possession to the poor and slum dwellers, with a view to woo the voters in the ensuing assembly elections?

18. I have heard Ms. Sunita Bhardwaj, Complainant in person and Sh. Mehmood Pracha, Ld. Counsel for the Respondent and have also perused the record.

CRUX OF ARGUMENTS OF THE COMPLAINANT.

19. Complainant argues that the allegations made in the complaint against the Respondent stand substantiated by the records submitted by the Urban Development Department. According to her Rajiv Ratan Awas was independent of JNNURM Scheme but Rs. 341.38 lacs allocated under JNNURM, which was meant for distribution to Dy. Commissioners, was misused for the printing of brochures / forms and advertisement of Rajiv Ratan Awas with prime motive to woo the urban poor and slum dwellers comprising around 20 lac voters. She has pointed out the differences in the low cost housing scheme under JNNURM and Rajiv Ratan Awas stating inter-alia, that the low cost housing under JNNURM is neither a finance scheme nor a scheme of fixed plot size of 20 sqm as has been projected for Rajiv Ratan Awas Yojna. Similarly the fixed four storied EWS houses for slum dwellers under the control and ownership of Slum Department of MCD have nothing to do with Rajiv Ratan Awas Yojna. DSIIDC is primarily providing houses to industrial workers. She has argued that the Respondent has intentionally misrepresented and falsely stated in the brochure that 60000 houses were ready, which was factually wrong, in order to mislead and woo the voters.

ARGUMENTS ON BEHALF OF THE RESPONDENT

Motivated complaint as part of political vendetta

20. Ld. Counsel for the Respondent has assailed the complaint as being part of a well thought out strategy of a principal rival political party i.e BJP against the Respondent, who has won an unprecedented three consecutive Assembly Election starting from 1998 onwards. The Complaint is alleged to be part of the political vendetta to somehow malign the Respondent and contain her popularity.

CHALLENGE TO THE AMENDMENT OF COMPLAINANT BY RESPONDENT.

21. Ld. Counsel for Respondent submits that there are material differences between the initial and amended complaints and the record does not reflect as to how and under what circumstances the Complainant requested to file an amended petition and was allowed to do so. Respondent assailed the allowing of amendment without a formal application and said that same was not in accordance with the due process and not permissible. It is urged that amendment was allowed at the back of the Respondent by a non-speaking order and no specific grounds are given for allowing the amendment. It was further alleged that there were material differences in the original Complaint and the amended Complaint as filed. The pith and substance of original Complaint was misuse of public fund and authority by indiscriminate advertisements and the alleged wastage of public funds thereon. Moreover, in the amended complaint the focus has been changed totally to misrepresentation in the Brochure/Registration Form regarding availability of 60,000 houses, which is labelled as misrepresentation and thereby exhibiting lack of integrity and violating the norms of integrity.

22. It would be appropriate to deal with these objections here itself. The Complainant was permitted to amend the Complaint, vide order passed on 12.11.09. On the said date, Complainant had prayed to incorporate specific pleas with regard to the action and conduct of the Respondent/Public Functionary, falling within the ambit of "allegations" as defined in Section 2(b) (i) to (iv) of the Delhi Lokayukta and Upalokayukta Act, 1995. The case was at its initial stage and notice even had not been issued. Leave was granted to Complainant to file amended Complaint incorporating the pleas as desired including prayer for conduct of an inquiry. The Respondent had raised similar objection while seeking recall of the order issuing notice and questioned allowing of the amendment without formal application. While dismissing the said application, it was observed as under:-

"It may be noticed that the inquiry before the Lokayukta is in the nature of a fact finding inquiry where maximum latitude is given to unearth the truth.

The power conferred on the Lokayukta for the inquiry has been held to be wider than those of any court of law. In the instant case the amendment was sought when, even notice had not been issued and the Complaint was at its initial stage only. The Complainant wanted to incorporate specific pleas as regards the actions and conduct of the Respondent/Public Functionary.....”

Parties must get the fullest opportunity to plead and set up their case and therefore, amendment was permitted. It did not cause any prejudice to the Respondent who has been given the fullest opportunity of rebutting the case as set up. The amendments sub-serve the ends of justice and there was no procedural fetter in the way of grant of amendment.

Coming to the second objection of there being material differences and shifting of the focus to misrepresentation, in the amended complaint, even in the original complaint, the plea regarding misrepresentation in claiming 60,000 flats being ready for distribution had been taken. As regards the Complainant not fully agitating the plea regarding misuse of funds by indiscriminate advertisements, it cannot be said that Complainant has not taken the said plea. However, the Respondent cannot have a grievance if Complainant does not urge the plea with same vigour or for that matter does not press it at all. The objections taken regarding allowing of amendment are thus misconceived and without merit.

PLEA REGARDING INTERPRETATION OF REGISTRATION FORM AND ADVERTISEMENTS.

23. Respondent's Counsel urged that the Complainant with malafide intention has filed only application form and not the advertisements which were concealed. Reference was made to advertisements appearing on 3rd August, 2008, which mentioned that flats are being constructed at various places in Delhi. It is urged that registration form was not in the nature of an advertisement. It was an application form with object and purpose of receiving application and to collect information about the eligible urban people to identify them. Reference was made to the clauses of the

application form giving various features of the houses which at point 6 mentioned: "houses would be of 3 to 4 storey", Hindi translation of which is : "मकान भूतल प्लस तीन से चार मजिलों के होंगे।"

Again the registration form under the heading 'Rajiv Ratan Awas' mentioned that it is proposed to construct 62000 flats for urban poor and slum dwellers at various places. Hindi translation of which is जिसके अंतर्गत लगभग 62000 फ्लैटों का निर्माण गरीबों व स्लम वासियों के लिए निम्न स्थानों पर प्रस्तावित है।"

It is also mentioned that 10000 flats are under construction at 'Ghoga' and 'Baprola'.

Similarly, reference is made to other clauses of the form which indicate and reveal that houses are to be constructed. Further, a reference to Sub Clause 3 and 4 of Clause 4 of the Registration form makes it clear that 60000 houses were stated to be under construction. A complete reading of booklet / application form would reveal that it no where provided that 60000 flats were ready and applications were being invited for allotment. It clearly shows that Rajiv Ratan Awas Yojna is a housing scheme of GNCT of Delhi which is a title given to JNNURM, a scheme of Govt. of India. At the time of issuance of booklet there were 12 projects to be implemented in Delhi which were approved by Govt. of India under JNNURM. It is, further urged that in the scheme of things, prospective purchaser would first see the advertisements which appeared in leading newspapers and preceded the issuance of registration form. On reading the advertisements, he would be aware that houses are to be constructed. It is only on seeing the advertisements if one was interested, then he would spend Rs. 100 to buy the registration form. On complete reading of the registration form and with the prior knowledge of the advertisements, a prospective purchasers would not be misled into believing that the houses are ready on the basis of the interpretation of the message as contended by the Complainant.

24. Regarding the 1985 Registration Scheme, he submitted that it was not a planned scheme of GNCT of Delhi and not under JNNURM. The amount spent on advertisement was 42.53 lacs and not 341.38 lacs as stated by the Complainant. The total expenditure of Rs. 349.74 lacs was incurred by U.D. Department under JNNURM out of which Rs. 241.38 lacs was transferred to all the 9 DCs of Delhi for establishment and management of collection

centre. A sum of Rs. 65.83 lacs was released to DSIIDC for printing of brochures and application forms and Rs. 42.53 lacs were paid to news agencies for publication of the scheme. Initially there was a provision of 100 lacs during the year 2008-09 and in order to meet the requirement Rs. 241.318 lacs for the establishment of collection centre in various Districts, an additional amount of Rs. 141.38 lacs was allocated by the Finance Deptt. of Govt. of NCT of Delhi.

EVALUATION OF THE CONDUCT OF THE RESPONDENT AND CONSIDERATION OF THE POINTS IN ISSUE.

25. The question of the allotments made under the 1985 housing scheme and people who are in the waiting list under the said scheme would not be relevant since the same does not have any immediate bearing on the conduct of the Respondent, which is under inquiry in the present case.

The question as to how much land has been acquired for construction of houses under the 'Rajiv Ratan Awas' for poor and slum dwellers in India as asked by the Complainant in her application under RTI Act, may not provide complete answer since for construction of houses, land could be already available and fresh acquisition of land would be required only as per need. Though in reply to the said query DSIIDC has informed vide their letter dt. 25/30-09-2008 that land has been acquired only in one village i.e. Pooth Khurd, they have also informed that the land handed over to the agencies for construction of the houses under the Rajiv Ratan Awas Yojna was for 9436 houses only. It is open to the Government to allocate available land otherwise than by acquisition.

It is worthwhile to mention that in her reply, while referring to the Special Registration Scheme of 1985, the Respondent has stated that the Slum and JJ department is under the MCD and the respondent i.e. Chief Minister of Delhi does not exercise control over it. Whereas in the affidavit filed on 24-02-10 by Dr. R.P.S. Yadav, Jt. Director, U.D., he has also given details of the project being implemented by the Slum & JJ Department, MCD.

From the affidavit of Dr. R.P.S. Yadav it can be seen that even on the date of filing of affidavit i.e. 24.02.2010, so far as Govt. of Delhi is concerned only 7635 houses were ready whereas 5227 houses were under

construction. The proposal in respect of 24756 houses was being processed. There was a stay by the High Court with regard to 10328 houses and the projects for construction of 9904 houses have been shelved since these fell on ridge areas. *Admittedly not a single house under Rajiv Rattan Awas has been allotted till date.* There appears to be no doubt that at the time of Publication of advertisement/application form, 60000 houses were neither ready nor could have been made ready within a reasonable time of publication of the application form. This is reinforced by the fact that even at the time of filing of the affidavit that is about two year after publication of the form, 60000 houses were not ready. It is also not even the case of Respondent that at the time of Publication of Application Form 60000 houses were ready. It is on this premise that the message of the Respondent published in the booklet has to be considered.

26. Both the parties have differently interpreted the application/registration form to suit their respective cases as set up. According to the Complainant, the Respondent has in her message on page 3 of the application form categorically stated that instead of 50000 houses, 60000 houses were ready to become the roof over the heads of those many number of families and that time has come to start the process of handing over these 60000 houses to those citizens of Delhi, who were actually entitled for the same. On the other hand counsel for the Respondent has argued that a complete reading of the application form makes it clear that 60000 houses were stated to be proposed to be constructed. The booklet is described as an application form for registration under the "Rajiv Rattan Awas". On the cover of it has the colour printed photograph of smiling youngman and old woman. It carries the caption

"Delhi Government,
Sapney Kare Sakar, Delhi Sarkar,
Sach Hoga Sapna Jab Hoga Ek Ghar Apna"

On the inside of the cover page it carries "Rajiv Rattan Awas" and underneath;

"A residential Scheme of NCT of Delhi having got
inspired from the achievements and encouragement from

Jawahar Lal Nehru National Urban Re-construction Mission Scheme of the Government of India.

If it is truth.....

That your annual family income is upto Rs.60,000/-

And you have been living in Delhi for the last 10 years.

Even then your family has no any private plot or a pucca house.

Then you can have a house of your own.

Delhi Sarkar.

Sapney Kare sakar. Delhi Sarkar."

Thereafter, on the next page is the message from the Chief Minister with her photograph and the photograph of Sh. Raj Kumar Chauhan, another Minister of Government of Delhi. It would be seen that the message as reproduced herein after is complete by itself and stands alone. It has not been made subject to any of the terms and conditions of clauses to follows.

27. The relevant portions of the application form containing message of the Respondent in Hindi reads :-

आपको याद होगा पिछले वर्ष दिल्ली सरकार ने राजीव रत्न आवास योजना की शुरुआत की थी। हमने प्रण किया था कि वर्ष 2008 के अन्त तक लगभग 50000 सस्ते और स्वच्छ मकान दिल्ली की मेहनतकश जनता को सौंप दिये जायेंगे। आज मुझे यह बताते हुए गर्व हो रहा है कि आपकी सरकार के वादे के अनुसार 50000 की जगह 60000 मकान इतने ही परिवारों के सर की छत बनने को तैयार है।

इस लक्ष्य की प्राप्ति के लिए हम आभारी हैं केन्द्र सरकार के जिसने आर्थिक अनुदान के साथ साथ तकनीकी सहयोग से दिल्ली सरकार का मार्गदर्शन किया।

समय आ गया है कि इन 60000 मकानों के दिल्ली के उन नागरिकों को सौंपने की प्रक्रिया आरंभ कर दी जाये जो इनके वास्तविक अधिकारी हैं। अंत में आपसे अनुरोध करती हूँ कि इन

मकानों की प्राप्ति के लिए आपनी पात्रता के बारे में सच कहिये ताकि आपका शहर आपकी कल्पना के अनुरूप ढल सके। इस अवसर पर मैं आपको यह भी बताना चाहती हूँ कि सरकार का प्रण इन 60000 मकानों से अंश मात्र ही पूरा होगा। सरकार सन 2012 तक कुल 400000 (चार लाख) मकानों के निर्माण और समुचित हाथों में उनके आवंटन के प्रति कटिबद्ध हैं।

आइये संकल्प लें कि हम दिल्ली को इस सदी का अद्भुत शहर बनाकर विश्व के मानचित्र पर इसे चमकता हुआ देखेंगे।”

शीला दीक्षित
मुख्यमंत्री रा0 रा0 क्षेत्र दिल्ली

The English translation of the same by the official translator of the High Court of Delhi reads as under :-

“It will be in your memory that Delhi Government had commenced Rajiv Rattan Awas Scheme last year. We had determined that upto the end of 2008, approximately 50000 cheap and clean houses would be given to the hardworking people of Delhi.

Today I am feeling proud while telling you that 60000 houses, instead of 50000 are ready for providing shelter to the even numbers of families as per the promise of your Government.

We are thankful to the Central Government for obtaining this target who guided the Government of Delhi by giving economic grant as well as technical cooperation.

Time has come that process of handing over of these 60000 houses be started to those people of Delhi who are actually entitled for it. In the end, I request you to reveal the true facts about your eligibility for obtaining these houses so that your city could take a form according to your dreams.”

On this occasion, I want to tell you that these 60,000/- houses would fulfil the resolution of the government only partially. The government is determined to construct 4,00,000/-

(Four lacs) houses and to do allotment of those houses in the hands of the people who are actually eligible for them.

Let us resolve that we would see Delhi in a shining form on world's globe, after making it a magnificent city of this country.

Sheila Dixit

Hon'ble Chief Minister

NCT of Delhi."

28. A bare perusal of the message of the Respondent on page 3 of the application form reveals the following categorical statements made by her :-

- (i) That the Government had resolved that by the end of year 2008 approximately 50000 cheap and clean houses would be given/handed over to the hardworking people of Delhi,
- (ii) that as per the promise of government, 60000 houses, instead of 50000 were **ready** for providing shelter to those many number of families, and
- (iii) that time has come when the process of **handing over of these** 60000 houses to those citizens of Delhi, who were actually entitled for the same, be started.

The statement at (i) read with (iii) above makes it clear that the Government's resolve was to handover 50,000 houses by the end of year 2008 to the people of Delhi. It is in contradistinction to proposal for construction of houses in future i.e 4 lac houses. The statement at (ii) above is categorical about the fact that 60000 houses were ready to provide shelter to the same number of families. The statement at (iii) also makes it clear that the time has come (when the message is being made) to start the process of handing over these 60000 houses to the citizens of Delhi (emphasis is supplied). Thus, it is clear that houses were stated to be ready for handing over Houses can be handed over only if the same are ready. Further the use of word 'these' indicate that 60000 houses were identifiable and the process to hand over the same was to be started. It is amply clear that 60000 houses have been stated to be not only ready but that the process of handing over these houses to the industrious people of Delhi be started. The message of the Respondent is unambiguous. It may be further seen that in later part of her message it is stated that these 60000 houses would only partially fulfill

the resolution of the Government and that the government is determined to construct 4 lacs houses and allot them to the deserving people by the end of year 2012. There is thus clear distinction in the message between 60000 houses which were stated to be ready for handing over and 4 lac houses which were proposed to be constructed by the end of year 2012. Admittedly on the date of publication of the application forms containing the aforesaid message of the Respondent, 60000 houses were not ready and she being the Chief Minister would have known this fact. The message of the Respondent has positive assertion that 60000 houses were not only ready but that the process of handing over these houses to the industrious people of Delhi was to be started. This assertion was neither true on the date of publication of message nor even today. Positive assertion of a fact, which the person making the assertion knows to be not true amounts to misrepresentation.

29. Even if there are certain clauses in the application form which may indicate that 60000 houses were not ready, the message by the Chief Minister was capable of dominating the will of poor and illiterate public. This is especially so with the excellent track record of the Respondent of having won three consecutive elections victories and the credibility and sway which she has over the masses. Any such message coming from Chief Minister of a State has the potential of being believed by the people at large, especially the poor, homeless who are aspirants of a house at low rates. As far as the masses are concerned her words carry more weight than any legal clauses in print. The message of Respondent published in her name along with her photograph stand out prominently in the application form.

Ld. Counsel for Respondent has taken great pains in making this forum to go over the complete application form, clause by clause, to show that by a complete reading of the form and reading the message of the Respondent in conjunction with other clauses of the form would shows that 60000 houses were not ready but were proposed to be constructed.

At best, even if the submission of the Respondent's Counsel that the advertisements published prior to the publication of the printed Registration Forum, contained statement regarding houses to be constructed and the various terms of the Brochure which tend to bring out that the houses were yet to be constructed, all these can only provide a defence that the Voters or the masses may have not been misled to vote on this premise. However, the

same does not in any manner negate or dilute the element of misrepresentation contained in the message of the Respondent. Such pleas could at best show the likelihood of confusion that may arise in view of conflict between the clauses and the message. Again that would not take away the factum of misrepresentation contained in the message. These are not proceeding under the Representation of Peoples Act where we are concerned with whether it was a corrupt practice or not. We have only to assess whether the said message, as given by the Respondent, contained any misrepresentation or not? And whether the said misrepresentation was in breach of the norms of conduct and integrity expected of 'Public Functionaries'.

30. Besides, from the above pleas and submissions of the Respondent it would at least follow from the message of the Respondent she herself did not reveal the complete truth that 60,000 houses were not ready but were proposed to be constructed. Poor people and slum dwellers can not be expected to undertake such an exercise as has been done by the Ld. Counsel for Respondent. This is not a case of interpretation of a contract between two consenting parties who may have agreed upon ambiguous or conflicting clauses of an agreement. The case in hand is of a unilateral message / promise being held out by a Chief Minister to the poor and homeless citizens. Such people cannot be expected to read the message of the Chief Minister along with the complete application form, clause by clause, compare the conflicting paragraphs and discern the actual state of affairs. Gullible public can be easily misled by statements of Public Functionaries holding high positions. Ironically, in her message the Respondent urges the public to truthfully state about their eligibility but she herself is not practising what she preached.

Half truth or exaggerated claims amount to misrepresentation. The Respondent has promised to the public something which was not existing.

31. The Respondent has not shown any contrition or expressed any regret for her message or taken the plea of it being a bonafide inadvertent error or claim it as being unhappily worded. Rather the Respondent vehemently defended the message and put forward an incorrect translation from a private agency empanelled with the Government and sought to justify it. The

circumstances which have come on record reveal that it was not a mere chance that the announcement and timing of inviting applications under the "Rajiv Rattan Awas" scheme coincided with the ensuing elections. The misrepresentation in the message of Respondent does not appear to be an innocent or inadvertent one. It was a tactical misrepresentation. Instead of putting the burden on public at large to inquire into the facts and know the truth, it was incumbent upon the Respondent to tell them the truth about the scheme in the first instance and in plain terms. Even if the ultimate plan was to actually provide 60000 houses to the poor and homeless as argued by Ld. Counsel for Respondent it was pre mature to project that 60000 houses were ready for handing over and take advantage of the peoples expectations raised on misrepresentation and promises, which are belied.

32. Truthfulness and straight forwardness is the fundamental norm of integrity and conduct which ought to be followed by the Public Functionaries especially those who hold high positions. Article 51A of the Constitution of India makes it obligatory for every citizen of India to cherish and follow the noble ideals which inspired our national struggle for freedom. This is more so in case of Public Functionaries. The foremost ideals which inspired our national struggle for freedom was truthfulness, altruism and selflessness. Leaders are expected to keep the public and national interest on top priority and not to be guided in their actions by personal or party interests.

33. Justice H.R. Khanna, former Judge Supreme Court of India, in his report on inquiry into charges against former Ministers of Orissa including three Chief Ministers, while dealing with the arguments advanced on behalf of the ex Chief Ministers that there was no code of conduct for the Ministers and as such they should not be held to be guilty of any impropriety, expressed the view that there are certain basic rules of conduct which have to be followed. They are a part of general norm of ethics and public morality. It is no answer to a charge of a breach of those rules of conduct that they have not been codified. He observed:

"Another and a very vital principle which must be kept in view is that a person on being a Minister becomes the custodian of public interests. A great trust devolves upon him and he owes it to the exalted office he

occupied that he should so formulate his policies and plan his activities that there is no possibility of a clash between his personal interest and public interest. This is especially true in the set up of a nascent democracy like ours wherein the role of a Minister has got to be that of a pioneer rather than of a pirate, of a public sentinel rather than of a self-seeker of one dedicated to the public weal and not one obsessed with the desire of personal gain. The moment a Minister gets into a situation wherein there may be conflict in his person and the public interest he is bound to make the tongues wag and his conduct must necessarily become the subject of the criticism and censure. The old adage that the Caesar's wife should be above suspicion is equally true of the Ministers in a democratic set up.

He concluded his report by observing,

"Lastly, I may observe that no codification of rules of conduct or declaration of assets can ensure rectitude among Ministers and other men in public life. What is needed is a climate of strong public opinion wherein none may dare to deviate from the path of rectitude. The ramparts of a clean and healthy administration are in the hearts of the people; laws can punish only occasional lapses. Judge Learned Hand in a classic passage observed :

I often wonder whether we do not rest our hopes too much upon our Constitution, upon Laws and upon Courts. These are false hopes, believe me these are false hopes. Liberty lies in the hearts of men and women; when it dies there, no Law, no Court can do much to help it. While it lies there it needs no Constitution, no law, no court to save it".

What is said about the liberty in the above passage holds equally true of purity in public life and administration.

34. Ld. Counsel for the Respondent had contended that once there was no violation of the Election code of Conduct, the publication was not a corrupt practice under the Representation of Peoples Act, the same criteria would apply for determining the norms of integrity and conduct under the present Act. For the reasons as discussed in para 33 and the clear position that an action may not be a corrupt practice but it could still fall foul of the present act and being held as violative of the norms of integrity and conduct expected of the 'Public Functionary' under the Delhi Lokayukta and Uplokayukta Act, 1995. The two legislations are distinct in scope and ambit

35. The facts of this case indicate that the misrepresentations in the message of the Respondent was with a motive to woo the voters and public in the election to gain an advantage for self and party. In the present inquiry allegations especially which involve the element of intention or motive are not required to be established with mathematical exactitude. These are to be decided, considering all the facts of the case on the touch stone of preponderance of probability. Applying the above test, it is considered that the Complainant has been able to establish that the Respondent has misused her position for gain or favour to herself and her political party by misrepresenting to the public on the issue of allotting/handing over 60000 flats to the poor. She was actuated in the discharge of her functions as such public functionary by improper motives for her personal and party interest. She has also acted in a manner which lacks faithfulness as she misrepresented to the public including the voters by giving misleading and false information for the purpose of advantage in the ensuing elections. She thus failed to act in accordance with the norms of integrity and conduct expected of the 'Public Functionary' occupying the august the chair of Chief Minister of Delhi.

36. In the current political scenario, it is not unusual for the party in power or the Government of day at the behest of 'Public Functionaries' to announce welfare schemes or measures or promise reliefs, holding out sops, proximate to the ensuing elections, but before the deadline under the Model code of Conduct for Elections comes into force. Such announcements thus may not fall foul of the Representation of People's Act and the election code. However, the same does not provide protection from Section 2 (b) of the Act. stipulating adherence to norms of conduct and integrity expected of 'Public Functionaries' with straight forwardness and truthfulness being stellar requirements. Indian society is often found to be tolerant towards corruption and unethical practices in politics and governance. Moral priorities currently in our society as yet get a back seat. It is high time that people stand up against unethical practices and build up a strong public opinion to ensure that public functionaries adhere to high standards of integrity and conduct. However, this change cannot come overnight and it will take time. Therefore the least which ought to be done is to tell the truth

about the misconduct of a public functionary and to publicly deprecate it. Considering the above and the entire circumstances of the case, it is appropriate to recommend to Her Excellency, the President of India to administer a caution to the Respondent to be careful in publication of her messages in future in view of the present instance. It is recommended accordingly.


(Justice Manmohan Sarin)
Lokayukta

Date : 18th July, 2011.