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BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin
Complaint No. C-304/Lok/2010

In Re :- Lokayukta on its own motion in the News report titled "PARSHADO NE D.C. KARYALAY KIYA SEAL, Published - in Dainik Jagran.

In the matter of inquiry under Section 7 Read with 2 (b) of Delhi Lokayukta and Uplokayukta Act, 1995 against.

1. Sh. Ravi Parkash Sharma, S/o Sh. Hari Dev Sharma, aged 61 years, Municipal Councillor, Ward No. 228.
2. Sh. Rajesh Gaur, S/o Late Sh. Toli Ram, aged 63 years, Municipal Councillor, Ward No. 231.
3. Sh. Hari Chand Kardam S/o Late Sh. Bhagwan Sahai, Aged 46 years, R/o Pocket D-1/63 A, DDA Flats, Kandi Gharoli, Mayour Vihar, Phase-3, Delhi.
4. Sh. Vinod Kumar Binny, S/o Sh. R. P. Singh, aged 38 years, Municipal Councillor, Ward No. 214.
5. Sh. Sumesh Kapoor, S/o Sh. Satpal Kapoor, aged 46 years, Municipal Councillor, Ward No. 235.
6. Smt. Prabha Singh, W/o Dr. N. M. Singh, aged 46 years, Municipal Councillor, Ward No. 212.
7. Ms. Lata Gupta, W/o Sh. Rakesh Gupta, aged 36 years, Municipal Councillor, Ward No. 223.

Noticee/Respondents

1. Ms. Tamali Wad, Amicus Curiae
2. Sh. R. M. Sinha, Advocate for the Noticee /Respondents.

REPORT

1. Suo moto cognizance was taken of the newspaper report titled as "PARSHADO NE D.C. KARYLAYA KIYA SEAL" appearing in 'Dainik Jagran', dated 20th February, 2010. It was, inter-alia, stated in the report that the office of the Deputy Commissioner, Shahdara (South) Zone, MCD, Delhi was sealed by Councillors following a tumultuous Ward meeting that was abandoned. It was reported that the

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Chairman of the Zonal Committee and Councillors were demanding transfer of Brig. Rajender Singh, Deputy Commissioner, Shahdara (South) Zone, MCD, Delhi. As per the Councillors, it was not possible to administer the Zone with the incumbent Deputy Commissioner. Some of the Councillors are reported to have sealed and locked the Office of the Deputy Commissioner, Shahdara (South) Zone, MCD, Delhi. Photograph of the sealed and locked office room was published in the newspaper. The above incident was following the protest, against sealing and demolition action, against unauthorized constructions in the Shahdara Zone. Some Councillors claimed that while on one hand, sealing and demolition action was undertaken, on the other hand unauthorized constructions were being carried out blatantly. It was claimed that wherever Municipal Corporation Officers received hefty bribes, demolition and sealing action was not taken.

2. The alleged obstructions in discharge of duties of a public officer, by locking or sealing his office, apart from being an offence under IPC, prima-facie amounts to violation of norms of conduct and integrity by a "Public Functionary" i.e. Municipal Councillors. It is an "allegation" within the meaning under Section 2 (b) (i) of the Delhi Lokayukta and Upalokayukta Act, 1995 calling for an inquiry. Accordingly, notice was issued to Brig. Rajender

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Singh, Deputy Commissioner, Shahdara (South) Zone, MCD, Delhi to inform the names of Councillors to this Forum, who had sealed and locked the office and thereby prevented him for discharging his public functions and duties. Notice was also given to the concerned correspondent/author of the report through the Editor of 'Danik Jagran' City to appear before this Forum for giving information in respect of the aforesaid incident, as reported.

3. Brig. Rajender Singh furnished, in response, a report vide letter no. 2276/DC/Sh(S)/2010, dated 4/3/2010, naming the aforesaid Respondents/Councillors as the person responsible for locking and sealing of his office. He further alleged that Mr. Ravi Prakash Sharma, Chairman, Ward Committee, Shahdara (South) Zone MCD, Delhi along with Mr. Rajesh Gaur, Ms. Lata Gupta and others had been trying to get him transferred ever since his joining. Ward meeting was sought to be disturbed on issues other than those on Agenda. Mr. Ravi Parkash Sharma, Chairman of Ward Committee also allegedly led a mob/crowd opposing a sealing/demolition programme and had insulted the MCD staff. He alleged that during the meeting on 19/2/2010, the Chairman raised the issue of sealing programme carried out by the MCD a day before. Other Councillors also joined him. Sh. Rajesh Gaur allegedly threw the mike towards him in a dangerous and

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menacing manner and also raised vociferous and threatening slogans against him. The report submitted by Brig. Rajender Singh was taken on record.

4. Notice was issued for inquiry under Section 7 Read with 2 (b) (1) of Delhi Lokayukta and Upalokayukta Act, 1995 to the Respondents/Councillors. A consolidated reply was filed on behalf of the Councillors, denying the allegations and giving the circumstances justifying the protest and 'Dharna' against the conduct and behaviour of the Deputy Commissioner. Individual affidavits of the Councillors were also filed. The procedure in the inquiry was determined. Evidence was agreed to be led by affidavits. Ms. Tamali Wad had been appointed as Amicus Curiae in the present case.

5. The statement of Brig. Rajender Singh was also recorded in due course. Brig. Rajender Singh, Deputy Commissioner, Shahdara (South) Zone, MCD, Delhi was also permitted to file response to the consolidated reply of the Respondents/Councillors. The statement of Sh. Sudhir Kumar, Senior Reporter, Dainik Jagran, was recorded on 5/3/2010. Mr. Sudhir Kumar, Senior Reporter, 'Dainik Jagran' was recalled to clarify any aspect and to give an opportunity to Respondents to cross examine him. Notice was issued to the TV Channels which were reported to be having the footage and had done the video recordings of

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the meeting and the incident of the sealing of the office of Deputy Commissioner. The Video footage recorded by the 'CCN Cable Network' was filed in this Forum. Statements of Sh. Vinod Kumar (Cameraman), Sh. Mukesh Gupta (Reporter) and Sh. S. K. Sinha of 'Yes TV' were also recorded. Compact Discs (CDs) were viewed on 16th December, 2010 and played for the benefit of all concerned. Copies of the same were provided to the Councillor Sh. Ravi Parkash Sharma, who received them on behalf of all the Respondents-Councillors. Respondents were duly given opportunity to cross examine the witnesses including Sh. Sudhir Kumar the original reporter.

Apart from Brig. Rajender Singh, one Dr. Naveen Rai Tuli, S/o Sh. S. N. Tuli, was also examined.

6. In defence, statements of Sh. Ravi Parkash Sharma, Sh. Rajesh Gaur and Sh. Sumesh Kapoor were recorded and they were cross examined.

7. It is at this stage, on 12th May, 2011, after initial resistance, that the possibility of making amends was mooted which, ultimately led to the filing of an application by the Respondents on 1st August, 2011. By this application, duly signed by all the Respondents/Councillors and their Counsel, it has been verbatim stated as under:

"a. The above inquiry proceeding initiated under Section 7 Read with Section 2 (b) of the Delhi Lokayukta and

Uplokayukta Act are pending before your goodself and evidence has been recorded.

b. We the above named Paarshads do hereby state that on 18.2.2010, we were all disturbed over the action of the Dy. Commissioner Brig. Rajinder Singh and his being non-responsive to what we considered our just demands. We accordingly decided to peacefully demonstrate and with this intent proceeded on a sit down 'dharana' outside DC's Office and raised slogans. This resulted in a surcharged atmosphere.

c. We unconditionally express our regret that as a result of our sit down 'dharna' the ingress and egress to the DC's office room got blocked. We had not intended to do so but it was an inadvertent consequence of our action, for which we unconditionally express regret.

d. We shall ensure that any protest by us in future to vindicate what we perceive as citizen's rights shall be peacefull and strictly in accordance with law."

8. Based on the evidence led so far, it did not clearly emerge as to who actually had locked the Office of Deputy Commissioner or who had tied the handkerchief with red colour stated to be of lipstick. However, what clearly emerged from the evidence recorded as also the

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video recorded was vociferous slogans being raised by the Respondents and other Councillors and their supporters. However, sit down 'dharna' outside the Deputy Commissioner room that had been done by the Respondents/Councillors and others did result in blockage of the ingress and egress to the Deputy Commissioner Office.

MS In a democracy, right to peacefully protest or demonstrate is accepted as a legitimate method of voicing public grievances, it is also the Constitutional obligation of the duly elected representatives to put forward the grievances of their constituents in as effective a manner as possible. However, this cannot be permitted to take form of either causing obstruction in the discharge of public duties of public officers or preventing ingress or egress to their office. Any such action needs to be avoided. Here the Councillors, at a belated stage, have stated that they had only intended to proceed on a sit down 'dharna' and it was not their intention to cause any obstruction or blockage of ingress and egress. However, since the ingress and egress got blocked, they have unconditionally expressed their regret. They have also undertaken to ensure that any protest by them in future to vindicate what they perceive as citizen's right shall be peaceful and strictly in accordance with law.

9. The object of these proceedings is to enforce adherence to the norms of integrity and conduct among public functionaries.

In the instant case, the public functionaries have expressed their unconditional regret for their action and given an assurance for their future conduct. There appears to be realization of their responsibilities. In these circumstances, ends of justice and the objective of Statute would be met by acceptance of the regret and closing the matter.

10. In this case, suo moto cognizance was taken and an inquiry was held into the conduct of Public Functionaries i.e. Municipal Councillors, by this forum. Recently few media reports and misinformation by certain interested quarters have sought to create an erroneous impression that Lokayukta in Delhi is to inquire into cases of corruption only i.e. cases of bribe, graft and illegal gratification and not any other misconduct of public functionaries. It is claimed that Lokayukta is not to act as 'moral policeman' or inquire into allegations of misrepresentation or corrupt practices, which are to be inquired by Election Commission.

NS It is considered necessary to clearly state the parameters of jurisdiction of Lokayukta under the Delhi Lokayukta and Upalokayukta Act, 1995, to dispel these erroneous impressions. Lokayukta, no doubt, inquires into cases of corruption or of possession of assets disproportionate to the known sources of income among public functionaries. Besides there is a clear mandate of the Statute to inquire into allegations, against 'Public Functionaries', of failing to act in accordance with the norms of integrity and conduct which ought to be followed by them [refer section 2(b)(i)] . Further, Lokayukta may

inquire into the cases of abuse and misuse of position or power for causing gain or loss [refer Section 2(b)(ii)]. Apart from the above, any act which is actuated by improper or corrupt motive or personal interest can be inquired into. Cases of indulging in favouritism, nepotism and lack of faithfulness are also included. [ref Section 2(b)(iii) & (iv)]. The above jurisdiction is in addition to any remedy under any other law (refer Section 18). Deliberate propagation of a wrong or erroneous legal position does not behove either a responsible media or experienced legislators. It does not augur well for the democratic polity.

It would be seen from the foregoing that the ambit of jurisdiction of the Lokayukta encompasses almost all facets of conduct of public functionaries in public life. The legislative intent being that while the conduct inside the House is within the domain of Legislators, misconduct in public life is left to Institutions such as the Lokayukta. The above, it is hoped would clarify the position.


(Justice Manmohan Sarin)
Lokayukta

Dated: 8th August, 2011
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