

BEFORE THE HON'BLE LOKAYUKTA  
Justice Manmohan Sarin  
Complaint No. C-385/Lok/2010/

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In Re :- Lokayukta on its own motion in the matter of inquiry under section 7 read with section 2(b) of the Delhi Lokayukta and Upalokayukta Act, 1995

And

Re: Inquiry into conduct of Sh. Achal Sharma, S/o Sh. Om Prakash Sharma, R/o S-80, Vijay Vihar, Uttam Nagar, New Delhi - 110059 (Councillor Ward No. 128)

- Respondent

1. Mr. Anil Grover and Mr. Rakesh Kumar Garg, Advocates for the Respondent.
2. Mr. S. Rajappa, Advocate- Amicus Curiae.

**REPORT**

**Facts**

1. Suo Moto cognizance was taken vide order dated 17.06.10 of news report titled, 'Parshad Ne JE Ve Uske Sahyogion Ko Peeta', which appeared in the issue dated 9.6.2010, of daily 'Dainik Jagran' and report titled 'JE Ne Nigam Parshad Par Lagaya Marpeet ka Aarop' appearing in issue dated 9.6.10 of daily 'Nai Duniya'. Notices were directed to be issued to the Councillor Sh. Achal Sharma as also to the editors of 'Dainik Jagran' and 'Nai Duniya', directing them to preserve the evidence and material, including shorthand notes of interviews of the concerned persons, tape recordings etc on the basis of which the said reports had been written and published.

Notices were also issued to the reporters i.e. authors of the news reports for recording of their statements. The Respondent-Councillor in the meanwhile entered appearance through Sh. Rakesh Garg, Advocate and sought time for filing reply.

2. Reply was filed on behalf of Respondent Sh. Achal Sharma duly supported by his affidavit on 27<sup>th</sup> July, 2010. It was averred

110

in the reply that a false and frivolous FIR No. 189 dated 8.6.2010, had been registered against the Respondent under section 186/353/332/34 IPC. Respondent thereupon applied for and was granted anticipatory bail by the Court of Addl. District and Session Judge, New Delhi. It was averred that disclosure of the defence by him before the Lokayukta would prejudice the defence in the criminal case and violate the right of maintaining silence. Respondent would face double jeopardy by parallel proceedings before Lokayukta and criminal prosecution. It was prayed that the proceeding before the Lokayukta be dropped and Respondent be not compelled to disclose his defence to his prejudice.

3. FIR against Respondent was claimed to be a counter blast to number of complaints lodged by him against the concerned Asstt. Engineer (AE) and Sh. Hansraj Meena, Junior Engineer (JE) of MCD (Building) of taking bribes and permitting unauthorized constructions by builders. The complaints lodged against the JE and AE were produced with the reply. Respondent claimed that at the time of demolition of property No. T-77, Vijay Vihar, Respondent was not even at the spot since he had taken his wife for treatment to Vimhans Hospital. It was further averred that news items as published were self contradictory as no incident as reported could take place in the presence of local police. The false and frivolous case had been lodged to blackmail and compel Respondent to withdraw the complaints filed against Sh. S.K. Goyal, AE and Sh. Hansraj Meena, JE for illegal acts in collection of money/bribe from builders of the area for permitting unauthorized constructions. The allegations of manhandling and beating of Sh. Hansraj Meena and others by the Respondent and his associates was denied. There was no act of physical violence against anybody by the Respondent or his associates.

4. In due course, statement of Sh. Hansraj Meena was recorded, who was cross examined on 22.11.10. The statement of Sh. Ashok Kumar, Beldar as also Sh. Purshottam Singh, ASI and Sh. Virender Singh, SI were recorded. Both were cross examined on behalf of Respondent. Statement of the Respondent was recorded on 5.1.2011.

5. Respondent moved an application for permission to summon the record of his official mobile phone No.9958693128 together with location as disclosed from connectivity with the cell tower and record of all calls made and received from the said phone on 8.6.2010. Respondent sought to demonstrate that he was not even present near the location of the site at the time of incident. Notice was issued to M/s Bharti Airtel (Service Provider) for producing the said record. The record of calls as received and made from the said mobile phone on 8.6.10 between 9.00 AM to 1.30 PM was produced and duly exhibited.

6. considering the nature of controversy and the evidence that had come on record, it was considered appropriate and in the interest of justice to have an Amicus Curiae to assist the forum in this matter. Accordingly, Mr. S. Rajjapa, Advocate, 91, Lawyers Chamber, Supreme Court, New Delhi was appointed as an Amicus Curiae. Arguments were heard on 16<sup>th</sup> and 17<sup>th</sup> of August, 2011 and the matter reserved for report.

**Evidence in support of allegations under section 2 (1) (b) of the Act against the Respondent.**

7. Suo Moto cognizance in this case was taken on the basis of news reports in 'Nai Duniya' and 'Dainik Jagran', Ex. CW1/1 and Ex. CW2/1, respectively. Statement of reporters Sh. Dhananjay Kumar (CW-1) of 'Nai Duniya' and Sh. Varun Kumar (CW-2) of 'Dainik Jagran' were recorded on 28<sup>th</sup> July, 2010.

8. Sh. Dhananjay Kumar deposed that he was the author of the news report CW1/1. He had gathered the information

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regarding the incident by making inquiries from Binda Pur Police Station. He stated that IO of the case informed him that JE is said to have been assaulted by Municipal Councillor in connection with the demolition of a house. Sh. Dhananjay Kumar deposed that he contacted Sh. Achal Sharma, Respondent, who denied the factum of any assault on JE and claimed that it was a counter blast to three complaints made by him against the JE on 8<sup>th</sup> February, 2010, 15<sup>th</sup> March, 2010 and 31<sup>st</sup> March, 2010 for complicity in illegal constructions and receiving illegal gratification and bribes. Mr. Dhananjay Kumar stated that he contacted the JE, who said that Respondent and his associates had assaulted him and his team. JE denied demanding any bribe. The house in question i.e. P-77, Vijay Vihar belonged to a Washerman (Dhobi), 3<sup>rd</sup> floor of which was under construction and was subject matter of the demolition. JE had also disclosed names of associates of Respondent as Satish Garg and Mukesh Garg. Reporter admitted in cross examination that he had no personal knowledge, since he did not witness the incident.

9. Similarly Sh. Varun Kumar (CW-2) Reporter of 'Dainik Jagran' proved his report Ex. CW2/1 and stated that on hearing that JE had been beaten by a Councillor, he made inquiries from SHO and obtained a copy of the FIR. He based his report on the FIR. He did not speak either to the JE or Respondent.

10. Sh. Hansraj Meena, JE (CW-3) deposed that he was posted as JE (B) West Zone from 9<sup>th</sup> June, 2010 and after the incident was relieved on 2<sup>nd</sup> August, 2010, on administrative grounds and posted at the Headquarter Branch of West Zone. He deposed that demolition order had been passed in respect of P-77, Vijay Vihar and on 8<sup>th</sup> June, 2010, he took the police force from Binda Pur, Police Station and proceeded for demolition of the house. He did not recall the name of the owner of the house. There were 4-5 labourers working at the premises, who came down on

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seeing the police force. They requested him not to start demolition work since Respondent would be coming. He deposed that he had reached the spot at about 10.30 AM or so. Respondent along with 4-5 associates reached the site in about 15-20 minutes and started abusing them. One of the associates of the Respondent held him by the collar and another kicked him in the stomach. Respondent slapped Beldar Ashok Kumar. Sh. Achal Shamra, personally did not hit him, but abused him for carrying out demolition. Demolition was being carried on the 3rd floor. Policemen present told the Respondent and his associates not to assault them. Policemen tried to separate Respondent and his associates so that they would not hit, but did not succeed. Finally the head constable and other policemen were able to escort demolition team safely to the police station. A restive crowd of 50 persons/residents had collected there. JE deposed that he along with the Beldar i.e. his Assistant Ashok Kumar and the truck driver were taken to the police station. The demolition action failed. Only puncturing of the roof with a hole of 3-4 feet had been accomplished, when the Respondent reached and foiled the demolition. JE deposed that having faced the ordeal of assault, he did not go to the site again. In any case, he was relieved of the charge on 2nd of August, 2010, 11. JE deposed that respondent had called him earlier and told that before entering the Ward or visiting any premises, JE should take his permission. JE had informed the AE and EE of assault. FIR was registered. He and Sh. Ashok Kumar Beldar were taken to Deendayal Hospital for MLC. The report made by him to the AE with noting by the EE was sent to the Commissioner MCD. The report was exhibited as CW3/1-4 (Colly). JE stated that his transfer could be on account of the influence of the Respondent Councillor, who was also Vice Chairman of the Ward Committee, but he had no proof of the same.

118

12. JE was cross examined at length by the Learned Counsel for Respondent regarding booking of unauthorized constructions, processing of complaints received by the JE against unauthorized constructions etc. The basic thrust of the cross examination was that the Respondent had been making complaints against JE and AE for complicity in unauthorized constructions and collecting illegal gratification.

Respondent also questioned the JE on the priorities followed in demolition. He enquired when the case for demolition of property ie. P-77, Vijay Vihar, was processed and completed. The suggestion that Respondent had not come to the site and abused JE was denied. JE also denied that Respondent had not slapped Beldar Ashok Kumar as also that the Respondent did not cause any obstruction in carrying out official duties.

Questions, such as total number of demolitions done so far and the time taken for demolition after completing file, number of building plan sanctioned etc. were disallowed as having no bearing or nexus to enquiry at hand.

13. The other witnesses examined in support of the allegations against the Respondent were Sh. Purshottam Singh ASI (CW-4) and IO of the FIR No. 189/2010 and SI Virender Singh (CW-6). Sh. Purshottam Singh ASI being the IO in the case confirmed that he had recorded statement of SI Virender Singh who had been assigned the job of providing protection to the demolition team. The statements of JE and Beldar Ashok Kumar were also recorded. I.O. deposed that Respondent was formally arrested and released on bail. Apart from Respondent, Sh. Rajiv Kapoor, Sh. Shashi Bhushan and Sh. Samir Sharma were also arrested. He undertook to and sent the photocopies MLC of Sh. Ashok Kumar and Hansraj Meena for being placed on record.

14. SI Virender Singh produced the file in relation to the FIR No. 198/10. He deposed that he was part of the Quick Rescue

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Team from the police station, having one Head Constable, five Home guards and one woman Home guard provided to the demolition squad. SI Virender Singh deposed that the demolition started from 3rd floor i.e 4<sup>th</sup> lintel level. Demolition was going on peacefully till the Respondent along with 4 persons came. Despite being stopped they proceeded to the 3<sup>rd</sup> floor. They indulged in abusive language and started quarrel. JE Meena and one of the labourers were assaulted. SI tried to separate and stop the Respondent and his associates. SI's mobile phone also fell down in the melee. After separating the Respondent and his associates, they brought JE and labour downstairs. He called the IO informing that Councillor had a fight with the MCD personnel. Respondent had immediately started physical assault on reaching, as such there was no time to prevent assault.

15. SI Virender Singh stated that he recognized only the Respondent. During the cross examination, he admitted that when demolition work had started, he was on the ground floor and went up to the 3<sup>rd</sup> floor where JE, labourers and one constable was there. Hammers and cutters were being used on the 3<sup>rd</sup> floor for demolition. SI Virender Singh denied the suggestion that Respondent Sh. Achal Sharma was not at the site or that he had not used any abusive language. Witness denied that his mobile phone which fallen, had not been retrieved from the office of the Respondent.

16. Ashok Kumar Beldar, (CW-5) deposed that he along with JE and other staff after taking the police force had gone to the site, where the JE had identified the building to be demolished. Few policemen remained down and some had gone up to roof. He stated that when the roof was being punctured, people from adjoining houses jumped over and raised hue and cry. He deposed that he had not met Sh. Achal Sharma before and did not recognize him. He was told by the persons collected there

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that the Respondent and his associates had reached. They assaulted JE first. He deposed that he was also hit by fists and kicks. Police help was sought and they were brought down by policemen and escorted to police station. He sustained simple injuries without bleeding. Demolition could not be completed as there was a restive crowd gathered. Police could not control it.

#### **Evidence on behalf of the Respondent**

17. Respondent personally appeared and deposed on oath that he had lodged Complaints EX. RW1/1, Ex. RW1/2 and Ex. RW1/3, signed by him against the AE and JE, giving particulars of unauthorized constructions being carried out and collection of illegal gratification therefrom. He had further sought that spate of unauthorized constructions be brought to halt. The issue of unauthorized constructions was raised by him in the Ward Committee meeting also but to no avail.

18. Respondent deposed that on 18.6.10 he had taken his wife to VIMHANS hospital for a check up at about 9.00 AM. He stayed in the hospital for ½ an hour or 45 minutes after reaching hospital. He described the news reports as incorrect and stated that he had with him mobile No. 9958693128 provided by MCD. He stated that he reached the demolition site around 12.30 PM and not before. Prior to that, he was elsewhere as is evident from record of mobile phone call produced in evidence. After dropping his wife at home, he noticed a commotion since the demolition site was near to his house. He had not known about the demolition and had not called the JE on phone. On reaching the site, he found that demolition had been carried out and demolition squad had left. Part of the lintel was broken.

It was inquired from the Respondent that since demolition had already been completed as claimed by him and the squad had already left, then there would be no reason for the JE to lodge report alleging assault by him and his associates. Respondent answered that only reason was the Complaints that

10



he had lodged against the JE for illegal constructions and proceeding with demolition contrary to the settled protocol. He said he took anticipatory bail since police came to enquire about him at his residence. He was not accompanied by any associates or builders at the site but only members of the public had gathered.

19. Statement of Tarun Khanna of the Bharti Airtel was recorded, who produced the complete record with regard to the calls recorded by cell tower in respect of the mobile phone No. 9958693128 on 8.6.10 between 9.00 AM to 1.30 PM indicating location of cell phone.

20. MLCs of JE Hansraj Meena, Ashok Kumar Beldar disclosed history of physical assault. Reports reveal it to be cases of simple injuries with. Swelling in one case was on lip and in the second case swelling was in the zygomatic region. The treatment given was anti-inflammatory drugs, painkillers, antibiotics and tetanus injection. Hence MLCs, prima facie support the case of assault and simple hurt.

#### **Evaluation of Pleas and submissions in defence on behalf of the Respondent.**

21. At the outset, it is to be noted that the objection raised by the Respondent that that the present proceedings entailed disclosure of his defence, which would prejudicially affect criminal trial is not sustainable. Section 18 of the Act provides that proceedings under this Act are in addition to any other remedy or proceedings under any other law. Further that the proceedings under section 2(1)(b) here are in respect of the allegations essentially entailing misconduct and breach of norms of integrity and/or conduct expected of a Public Functionary or the class of Councillors. Such misconduct may or may not amount to an offence under the IPC.

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Attention of the learned counsel was also drawn to the judgement of High Court in WP(C ) No. 1367 of 2010, title Sat Prakash Rana Vs. The Lt. Governor and another dated 10.03.2010 by Hon'ble Justice Dr. S. Muralidhar, wherein challenge to proceedings before Lokayukta, on the ground of simultaneous criminal proceedings going on the same cause of action had been repelled. In view of the above decision and the settled legal position, Learned Counsel for the Respondent did not press the above objection and plea.

22. Mr. Grover next submitted that the cognizance taken by the forum on the basis of the news reports EX. CW1/1 and Ex. CW2/1 was essentially on the premise that said reports were true having been witnessed by the reporters. This he submitted was the logical inference from reading of the news report and in particular he refers to the sentence:

जेई अवाधिकृत रूप से बन रहे मकान को तोड़वाने गया था, जिसका स्थानीय पार्षद ने विरोध किया। जेई ने सरकारी आदेश का हवाला दिया, फिर भी पार्षद ने विरोध किया। इंजीनियर व उसके सहयोगी मकान तोड़ने में तब भी लगे रहे तो पार्षद ने उन्हें बुरी तरह से पीटा।

The above portion of report which appears in direct form, it is urged is suggestive of having been authored by someone, who had witnessed the incident. However, when the reporter deposed, he clearly stated that he had no personal knowledge of the incident. Accordingly, it was urged that the initiation of suo moto cognizance itself was vitiated by the above assumption which was found to be untrue.

The above submission is misconceived. Cognizance under the Act can be taken on receiving a complaint or other information or suo moto. Exercise of suo moto jurisdiction can also be on the court noticing some press report or finding some information which requires further inquiry. In the instant case, the press report clearly reveals the registration of an FIR for assaulting of a public servant and obstruction in the discharge of public duties by a Councillor. This itself was sufficient without

anything more, for making an inquiry into the matter. Moreover the second report clearly mentioned that the Councillor was accused of assault, while the report also gave Councillor's version of the JE demanding illegal gratification and his denial of assault. Hence it was clear that the incident had not been witnessed by the reporter.

23. Coming to the third submission on which Mr. Grover laid emphasis was a defence in the nature of alibi and claim of absence of Respondent at the time of the demolition and alleged assault.

Respondent's claim that he was not present at the demolition site between 11.00 Am and 12.30 in the noon. He had taken his wife to the VIMHANS hospital and in proof has submitted the record of his official mobile telephone and the locations as shown. It is claimed that it was only around 12.15 PM that he reached near Indra Pak, Uttam Nagar in the vicinity. He dropped his wife at residence and on noticing a commotion went to the demolition site, where the demolition had taken place and the squad had already left. It is urged that the electronic evidence is credible and could not have been preplanned or fabricated. Based on JE's statement that he had reached the demolition site around 10.30 AM and after 15-20 minutes, the Councillor had arrived. This is said to be falsified by the mobile phone record. As against the claim of not being present based on mobile record, there is direct evidence of the JE and Ashok Kumar, Beldar. The latter although did not recognize the Respondent but stated that he has been informed that it was the Respondent who came along with his associates and had assaulted the JE and his team. There is also the direct evidence of SI Virender Singh who has deposed how he tried to separate the Councillor and his associates from JE and his team, who were being assaulted and finally succeeded in escorting them down. Further that the Councillor had also left by the time



he could escort the team downstairs. Hence there was no question of apprehending the councillor then. SI has deposed about the falling of his mobile phone in the melee. The mobile phone was later collected from the office of the Respondent. The MLCs of the public hospital of the JE and Beldar corroborate assault on the team.

24. The aforesaid direct and cogent evidence cannot be ignored or disregarded on the basis of mobile phone records especially when the possibility of mobile phone not being carried by the Respondent personally cannot be ruled out. The same could have been in possession of a family member, or another person. The MLC reports show blunt injuries and treatment by anti inflammatory drugs, pain killers and tetanus. This is in consonance with the nature of assault as described namely by fists, slaps and kicks. There is no earthly reason for public servants such as two Inspectors of Police i.e. two government officials to depose falsely, followed by arrest and investigation. Investigation of FIR and filing charge sheet in criminal court, support the case of assault.

25. It was submitted on behalf of Respondent -Councillor that the JE had proceeded against the demolition of Washerman's house contrary to settled protocol and in a vindictive manner on account of illegal demands not being met. The JE had deposed that he did not even know the name of the owner/occupier of premises to be demolished. The case file did not carry the name. It was not even mentioned in the notice except the description as owner/occupier of the premises. No evidence was led by Respondent or has come on record to show any prior knowledge on the part of the JE that the said demolition would annoy the Respondent-Councillor or that the owner/occupier enjoyed the patronage of Respondent. Action for demolition as per JE was planned for execution on the file being complete. It was neither picked out of turn nor it was a

malicious act. The version of the JE is that the Respondent was annoyed because the demolition was being carried out in his Ward without his permission as demanded by him.

26. In such matters, even preponderance of probability is sufficient to proceed for an action for misconduct. However in the present case, there is cogent evidence to prove the misconduct i.e obstructing demolition, misbehaviour and assault by the Councillor and his associates

27. One of the grievances raised by the Respondent was complicity of the municipal staff and Engineers, namely, AEs and JEs of Zone in encouraging spate of unauthorized constructions and taking illegal gratification. Respondent claims to have made three complaints, Ex. RW1/1, EX. RW1/2 and Ex. RW1/3. These complaints, apart from seeking transfer of municipal staff, gave particulars of alleged unauthorized construction in 8 properties in Ex. RW1/1. The aforesaid grievance even if true cannot provide any justification to the Respondent for obstruction in demolition and taking law into his hands. The lodging of FIR against the Respondent was claimed to be a counter-blast to the aforesaid complaints lodged by the Respondent-Councillor.

The spate of unauthorized construction in our metropolis takes place only when the Municipal staff, building owners, public functionaries and the police act in tandem. Unauthorized construction cannot take place and assume these proportions if there was serious opposition from any of the above or they performed their duties as required. After the liberalization of the Municipal Laws, grant of increased FAR etc, time has now come for vigorous enforcement of Municipal Laws. The government municipal authorities should put in place a system where the concerned Public Functionaries and Public Servants in whose time the unauthorized construction takes place should be held accountable. This is apart from bringing about a general

118

awareness and desire for observance and respect for municipal laws.

28. In the instant case, allegation of failing to act in accordance with the norms of conduct, which ought to be followed by Public Functionary i.e. Councillor, is established, in as much as, the obstruction in demolition and assault on the demolition team is established. No apology or regret come on the part of the Respondent Councillor. On the other hand, a plea of alibi in defence had been set up, which virtually amounts to denial in the involvement in the incident, leaving no scope for expression of regret once the plea of alibi is taken.

Learned Counsel for the Respondent, at the fag end, submitted that Respondent would in future try to be careful in his conduct while dealing with municipal staff and the public.

29. Unfortunately, despite condemnation and indictment by this forum, cases of assault on public servants and obstruction in discharge of their public duties by public functionaries, namely, elected representatives in Delhi have been occurring frequently. This forum had earlier recommended, in the cases of Mr. Bharat Singh, Mr. Sat Prakash Rana and more recently in Sh. Ravi Prakash Sharma, Councillor and others, that norms and rules of conduct in public life be framed for the Legislators/ Councillors which could serve as a constant and subconscious reminders to the Public Functionaries. However, the said recommendations are stated to be still under process awaiting implementation, although one year has elapsed.

30. In view of the foregoing discussion, Respondent is indicted for his misconduct in obstructing demolition, with his associates and assault on members of demolition team. It is recommended that

- (i) His Excellency be pleased to issue a censure to the Respondent for his conduct as aforesaid.

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- (ii) Recommendation for immediate framing and implementation of the Code of Conduct for elected representatives i.e. for Legislators and Councillors in public life is again reiterated.
- (iii) It is also recommended that a direction be issued to Municipal Commissioner that the complaints (Ex. RW1/1, Ex. RW1/2, Ex. RW1/3) made by the Respondent-Councillor, are investigated independently to ascertain the extent of unauthorized construction, fix responsibility therefor and proceed in respect of these cases in accordance with law.
- (iv) It is also recommended to His Excellency, the Lt. Governor that as an immediate measure, an orientation programme be organized on 'Ethical Values and Conduct in Public Life for Public Functionaries'. The institution of Lokayukta can share its experience and expertise in the matter along with other experts.

  
(Justice Manmohan Sarin)  
Lokayukta

Dated: 2-9-2011  
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