

BEFORE THE HON'BLE LOKAYUKTA
(Justice Manmohan Sarin)
Complaint No. C-649/Lok/2011

Sh. Prem Chand	Complainant
Vs.	
Sh. Farhad Suri, Councillor	Respondent

ORDER

1. By this common Order, I shall decide the question of maintainability of six complaints filed by Sh. Prem Chand, seeking inquiry under Section 7 read with Section 2 (b) of the Delhi Lokayukta and Upalokayukta Act, 1995.

The six complaints filed against Sh. Farhad Suri, former Mayor and presently leader of Opposition in South Delhi Municipal Corporation, are, "Complaint No. C-649/Lok/2011, Complaint No. C-650/Lok/2011, Complaint No. C-651/Lok/2011, Complaint No. C-1060/Lok/2011, Complaint No. C-1217/Lok/2012 and Complaint No. C-1218/Lok/2012, all tilted as "Sh. Prem Chand Vs Sh. Farhad Suri, Municipal Councillor".

In all these Complaints, the Complainant Sh. Prem Chand has levelled allegations against Sh. Farhad Suri, Respondent, that being a 'Public Functionary' he has misused his position to obtain gain or favour for himself and / or the Company, wherein he is a Director, namely M/s. Cool All Beverages Pvt. Ltd. The said company is running an Ice Factory at Plot No. 242, Industrial Area, Patparganj, Delhi-110092, which had been leased by the owner of the plot Sh. Hari Prakash, through his Attorney, the Complainant herein Sh. Prem Chand.

The common thread of the facts in all the Complaints and the specific facts and allegations in individual Complaints are being noticed for facility of reference hereinafter :-

2. The common facts in all the above said complaints are that the company M/s. Cool All Beverages Pvt. Ltd. had taken on rent the premises no. 242, Industrial Area Patparganj, Delhi-92 from the complainant in the year 2003

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for a period of five years. The rent agreement was executed on 20-05-2003 between the owner of the plot Sh. Hari Prakash through attorney Sh. Prem Chand the complainant and Sh. P.S. Sarin, Director of M/s. Cool All Beverages Pvt. Ltd. The complainant later on came to know that Sh. Farhad Suri, Councillor MCD and Sh. Dheeren Navlakha were also Directors in the said company and were running the Ice Factory under the name and style of M/s. Cool All Beverages Pvt. Ltd. . Admittedly Sh. Farhad Suri is a 'Public Functionary' as defined in Section 2 (m) of the Delhi Lokayukta and Upalokayukta Act, 1995 (herein after refer to as the Act), who is engaged in the day to day affairs of the company M/s. Cool All Beverages Pvt. Ltd..

3. It is alleged that the Directors of the company M/s. Cool All Beverages Pvt. Ltd. have committed forgery to obtain electricity connection and the factory licence to run an Ice factory in the premises taken on rent. In this regard FIR No. 371/05 under section 420/465/468/471/120B/34 IPC has already been registered at PS Anand Vihar.
4. It is alleged that the Directors raised unauthorized construction in the tenanted portion. The tenancy therefore was terminated vide legal notice dated 22-12-2004 and 27-10-2004. Pursuant thereto a suit for ejectment and recovery of damages was filed which was pending when complaint was filed but decreed subsequently. Appeal against the Decree is pending in High Court.
5.
 - (i) In complaint No. C-649/Lok/2011 it is alleged that the Respondent and the other Directors of the company obtained electricity connection from BSES Yamuna Power Limited without disclosing about the termination of the tenancy. The Respondent and the other Directors of the company without the consent and the "No Objection Certificate" of the landlord obtained new electricity connection vide K.No. 1230KC010255, on ground floor of plot no. 242, Industrial Area Patparganj, Delhi-92. It is urged that the consent and the NOC of the Land Lord is the mandatory requirement under the Electricity Act and Delhi Electricity Reform Act, 2000. It is alleged that obtaining electric connection without

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the NOC of the landlord is an offence under Section 136 (1) (b) of the Electricity Act, 2003. This connection has been obtained in connivance with the officials of BSES Yamuna Power Limited, who are also liable for the offence under Section 150 of the Electricity Act, 2003 for abetment. Despite the complaint in this regard, no action has been taken by the DISCOM.

The Complainant also alleges unauthorized use of electricity which is an offence under Section 135 (1) (b) of the Electricity Act, 2003. The complainant states that the electricity connection on the ground floor was installed for the manufacturing of ice cubes by ignoring the fact that the plot was allotted by the Government of NCT of Delhi for manufacturing readymade garments, as per the covenant of the Lease Deed. Besides the electricity connection was installed without an NOC of the Health Department of MCD and Fire Service Department.

- (ii) In complaint No. C-650/Lok/2011, the complainant has alleged that the Respondent by using his official position has obtained the factory licence from MCD to run an ice factory in the tenanted premises, while he was the Mayor. By using his official status he obtained this licence without an NOC from the landlord.
- (iii) In complaint No. C-651/Lok/2011 the Complainant had alleged that the Ice Factory was being run by the company initially by extracting ground water from the bore well. The Lt. Governor of Delhi issued a Notification under the Environment Protection Act. In terms of said Notification DC (East) sealed the ground water boring of the company. However the company is still using the ground water taken from outside which is also violation of the Notification. Thus the Respondent is misusing his position for illegal procurement of ground water for running the Ice Factory.
- (iv) In Complaint No. C-1060/Lok/2011 another unlawful act of the Respondent alleged is that the company M/s. Cool All Beverages Pvt. Ltd. has unlawfully and unauthorizedly occupied the top floor of the property without consent of the owner and also kept heavy

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machines and water tanks. The company also unauthorizedly connected the electric meter installed on the ground floor with electric lines of the top floor for functioning of the machines which is also an offence under Section 138 (1) (a) of the Electricity Act, 2003. It also amounts to unauthorized use of electricity under Section 126 (b) (v) because there is usage of electricity for the premises or the areas other than those for which the supply of electricity was authorized.

- (v) In Complaint No. C-1217/LOK/2012 the complainant alleged that the Respondent by use of his official status obtained the consent of Delhi Pollution Control Committee for running the ice factory by making a false representation regarding the lawful tenancy of the company although the tenancy was terminated on 22-12-2004 through a legal notice and by way of efflux of time on 30-05-2008. The company had moved an application before Delhi Pollution Control Committee on 16-02-2010 and concealed the fact of termination of tenancy and submitted the Rent Agreement along with the application.
- (vi) In Complaint No. C-1218/Lok/2012 the complainant has alleged that the Respondent, while being Mayor of Delhi had obtained factory license on 10-05-2005, under the DMC Act which was subject to NOC of Health Department and Chief Fire Officer. The ice factory is being run in the tenanted premises despite District Health Office writing that there is no provision for grant of license for ice cube manufacturing unit. The Factory License Department was also informed to take action against this unit. However, under the political influence of the Respondent not only the license was granted but no action was also taken on the report of District Health Office.

6. In nut shell, the Complainant alleges that Sh. Farhad Suri, respondent a prominent Councillor in MCD, being a 'Public Functionary' has abused his position to obtain gain and favour for his company M/s. Cool All Beverages Pvt. Ltd. of which he is a Director, managing the day to day affairs of the company in following manner :-

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- (a) He got installed the electric connection without the NOC of the landlord and diverted the electric connection to the top floor of the property without the consent of the landlord. The company is still using electricity unauthorizedly in a portion of the premises, which does not form part of tenancy.
 - (b) By using his position as Mayor of the city, he obtained factory license for Ice Factory in the year 2005 without NOC of landlord.
 - (c) Running ice factory by bringing ground water from outside in violation of Notification of Lt. Governor of Delhi and despite order of SDM under Section 133 of CRPC.
 - (d) Committed breach of term of agreement by unlawful occupation of terrace, making additions / alterations and causing damage to building
 - (e) Obtained consent of Delhi Pollution Control Committee to run ice factory by misusing his official position as 'Public Functionary' and by false representation regarding tenancy and concealment of fact of termination of tenancy.
 - (f) Obtained factory license from MCD under Section 416(41) DMC Act though as there is no provision for grant of license to ice cube manufacturing unit.
7. On receipt of the Complaints and after going through the contents thereof along with the documents Show Cause Notice were issued as to why an inquiry be not held under Section 7 read with Section 2 (b) of the Delhi Lokayukta and Upalokayukta Act, 1995. The Respondent filed a reply to the each complaint along with his affidavit and documents. The admission denial of the documents submitted by the respective parties was completed. The complaint filed his affidavit by way of evidence. The counsel for the Respondent however submitted that the preliminary objection in all the complaints as to the maintainability of the complaints, should be decided first. With the consent of both the parties the arguments were heard on the maintainability of the complaints.
- MS 8. The preliminary objection to the maintainability of the complaint is based on the submission that the jurisdiction of the Lokayukta extends to a Public

Functionary as defined in Section 2 (m) of the Act by the Government of NCT of Delhi and the Lokayukta can initiate an inquiry under Section 7 of the Act only if any of the acts of the Public Functionary falls within the meaning of the "allegation" as given in the Section 2 (b) of the Act. The sine qua non for the inquiry under Section 7 of the Act is that the Public Functionary must be directly connected with the act alleged and such act falls within the definition of the term "allegation" as defined in section 2 (b) of the Act. The submission of the Respondent is that he was merely a Director of the company M/s. Cool All Beverages Pvt. Ltd., having only one percent of the share holding. He was not involved in the day to day functioning of the company and does not qualify even as an "Officer of the Company" as per Section 5 of the Companies Act. It was submitted on behalf of the counsel of the Respondent that he never drew any remuneration, never participated in the day to day management and was not even signatory to any of the document concerning the functioning of the company M/s. Cool All Beverages Pvt. Ltd. No document was ever executed by the Respondent, concerning the factory, licence, electric connection, tenancy, pollution control and other permission and clearances which were in fact executed by Mr. P.S. Sarin Director on behalf of the company and Mr. Dhiren Navlakha, CEO of the company. As regard the allegation that an FIR was registered against the Respondent for having committed forgery to obtain electricity connection and the factory license vide FIR No. 371/05 PS Anand Vihar, it was submitted that the closure report in the said case has been filed. To the allegation that BSES Yamuna Power Limited granted electricity connection to the Respondent who had applied for the same without disclosing about the termination of tenancy, it was submitted that such plea has already been dismissed by a Civil Court against the company.

9. The submissions made by the counsel for Respondent were considered by the Forum and were sought to be countered by the Counsel for the Complainant. It was submitted by the counsel for the Complainant that the Respondent Sh. Farhad Suri was responsible for management of the company, being Director. He submitted that there is a statutory presumption that a Director is responsible for management of affairs of the company. Therefore the Respondent cannot escape liability for various acts of commission and omission by the company. He submitted that it was only

due to the influence of the Respondent that the company could get electricity connection from BSES Yamuna Power Limited without even having an NOC from the owner and despite the tenancy being terminated. It was further submitted that the Respondent now claimed to have resigned as Director of the company on 2nd April, 2012 but it would not affect his liability, for the acts complained against are of the period, when being a Director, he was actively involved in the day to day working of the company.

10. To decide the question of maintainability of a complaint under the Act, it is not necessary to delve in detail on factual merits. It is the allegation against the Public Functionary and his conduct within the meaning of Section 2 (b) which has to be seen.

The 'Public Functionary' has been defined in Section 2 (m) of the Act and includes the Chief Minister or a Minister; a Member of Legislative Assembly; Chairman, Vice Chairman, Managing Director or a Director of Government Corporations, local authority or a company under the control of the Government or any Commission or body set up by the Government which is owned and controlled by it and also Member of the Municipal Corporation of Delhi.

11. Secondly, the act imputed to the Public Functionary must fall within the definition of the term "allegation" as defined in Section 2 (b).

Lokayukta can initiate inquiry against a 'Public Functionary' if the allegations falls within the term of allegation as defined in the Act. Allegation as defined in Section 2 (b) of the Act means:

- (i) failing to act in accordance with the norms of integrity and conduct which ought to be followed by the public Functionary,
- (ii) abuse or misuse of position to obtain any favour etc. to himself or any person being actuated in discharge of his function by improper or corrupt motives or personal interest,
- (iii) Corruption favoritism or nepotism, lack of faithfulness etc.
- (iv) Having pecuniary resources or property disproportionate to known source of income etc., held by Public Functionary himself or any member of family.

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12. Coming to the Complaints, it is alleged that the Respondent is responsible for the acts of the company M/s. Cool All Beverages Pvt. Ltd. being its Director. So far as the status of Respondent is concerned, indisputably he is a Public Functionary as defined in Section 2 (m) of the Act. Therefore he would be liable for the acts which fall in the definition of the term "allegation". The complainant has levelled allegations that the Respondent had committed illegality and irregularity and obtained benefit to the company M/s. Cool All Beverages Pvt. Ltd. being its Director and having the status of a Public Functionary which he used for the benefit of the company.
13. The legal position is that a company is a juristic person. It has an identity independent of its Directors. Since a company is a juristic person, it has to be manned by persons who carry out its aim and objectives. A company cannot function on its own. Acts are done by the persons who are responsible for running of the company. Section 5 of the Companies Act therefore defines "officer responsible" for the acts of the company and enumerate the categories of such persons i.e. the Managing Director, Working Director or person specially authorized by the Board of Directors etc..
14. A Director Simplicitor cannot be held liable for the act of the company if he is not a Managing Director, Working Director or officer responsible and / or is otherwise not associated with the day to day functioning of the company. This liability would arise from being in charge of and responsible for conduct of business of the company at time when the act alleged committed, and not on the basis of merely holding a designation or office in a company. A Director cannot be attributed knowledge of everyday working of the company.
15. In the present case the Counsel for the Respondent has filed a copy of the Form 32 showing that the Respondent has resigned from the Directorship of the company on 2nd April, 2012 and even prior to that the Respondent was having only one percent share holding in M/s. Cool All Beverages Pvt. Ltd. in his name and has no controlling interest or stakes to run and manage the

affair of the company. The affidavit of the Respondent was also filed wherein he has stated that he never drew any remuneration by way of salary from M/s. Cool All Beverages Pvt. Ltd. The complainant has not controverted these submissions except stating that Respondent was managing day to day affairs of the company. Though in the complaints it is not explained how Respondent was concerned with the day to day affairs of the company. The documents on which the complainant has relied i.e. Rent Agreement etc. are not executed by Respondent.

16. The question therefore is whether the Respondent Sh. Farhad Suri can be held responsible for the acts alleged against the company because he was one of the Directors of the said company? The Ld. Counsel for the Complainant submit that by application of the principle of vicarious liability a Director is responsible for the acts of the company because he is also beneficiary of the acts of the company. He relied upon the judgment in Anant Raj Industries Ltd. Vs. State 187 (2012) DLT 248 in support of his argument. The judgment relied upon in fact deal with the issue of criminal conspiracy and had held the Directors of the company responsible for they being a part of criminal conspiracy and at the same time upholding the proposition that wherever by legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the statute concerned.

17. It was further submitted that Lokayukta can inquire into the allegations against a Public Functionary which are the subject matter of an FIR or criminal investigation. He submit that the registration of the FIR 371/05 PS Anand Vihar in which the Respondent Sh. Farhad Suri was an accused is sufficient for maintaining the complaint and making an inquiry under Section 7 of the Act. His reliance is on the case of Sh. Sat Prakash Rana Vs. Lt. Governor of Delhi AIR 2010 Delhi 100. The judgement relied on however lays down that Lokayukta "can inquire into an allegation which form subject matter of an FIR and he need not wait for the outcome of criminal proceedings". Meaning thereby, Lokayukta can hold an inquiry simultaneously in a matter which is also the subject matter of a criminal investigation. It does not say that Lokayukta is bound to hold an inquiry in

the matter which is subject matter of an FIR against a Public Functionary.

The contentions of the counsel for the complainant and the respondents have been considered. The allegations against the respondents are made simply because he happens to be a Director of the company M/S Cool All Beverages Pvt. Ltd.. This forum has been chosen because the Respondent is also a public functionary. First, the liability of a Director of the company for the acts of the company needs to be considered. A company may have many Directors on its board not all of them are engaged in the conduct of the business of the company. It is only those Directors who are actively engaged in the conduct of the business of the company, like the Managing Directors and other officers discharging the duties assigned are held responsible for the Act of the company. There cannot be any presumption of the respondent being engaged in the conduct of the business of the company. The company being a legal entity has a separate identity from its Directors. In this case, no doubt the respondent is the Director of the company but because of this designation only he can not be held liable for the act for the company. Nothing has been placed on record which demonstrates or prima facie attributes any specific conduct to the Respondent within the meaning of "allegations". The company had entered into a Rent agreement in the year 2003 through its Director Sh. P. S. Sarin. Later on the company has obtained an electrical connection from B S E S Yamuna Power Ltd. through its CEO Mr. Dhiren Navlakha. Thus, the respondent is not the signatory of any documents which are made the basis of the allegations by invoking the principle of vicarious liability. The respondent cannot be held liable for those acts of the company for which he was not responsible.

18. Moreover, whatever acts are alleged against the company either they have been adjudicated upon or are pending adjudication. The contentions of the complainant are already subject matter of the litigation before court of law. The question of lawful tenancy of the company along with related question of raising unauthorized construction and expanding the area of tenancy are pending before the High Court in Appeal filed against the Decree passed in suit of ejection and damages by the complainant. Likewise in the FIR registered against the company and its Directors, the police has filed a cancellation report, though matter is still pending in the court for

consideration of this issue. These competent courts would decide these contentious issues between parties as per law. This forum cannot be used to adjudicate for settlement of the personal dispute of the complainant with M/S Cool All Beverages Pvt. Ltd. of which the respondent was a Director. The complainant had filed a civil suit against B S E S Yamuna Power Ltd. and the respondent in which the court has already held the company M/S Cool All Beverages Pvt. Ltd. was granted electric connection by B S E S Yamuna Power Ltd. in terms of the statutory provisions without the NOC from the landlord/complainant herein. The copy of the Judgement in MCA No. 3/11 decided on the 07/06/2011 has been filed by the respondent which is admitted by the counsel for the complainant. The respondent has also filed the copy of the statement of the complainant with Suit No. 1226/08 dated 30/11/2010 which has been admitted by the counsel for the complainant. In this statement he has admitted that he had filed twenty cases against M/S Cool All Beverages Pvt. Ltd. out of which only six are pending and rest of them have been dismissed.

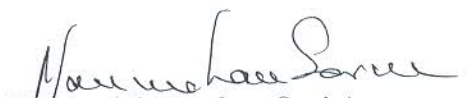
19. Although while considering the maintainability of complaint it is not necessary to go into the merit of the case otherwise. But a reference to the above facts is considered necessary because the complainant has not come with clean hands and intends to use this forum to decide a dispute between the parties concerning their rights and obligations arising out of documents executed by the company of which the respondent was a Director. This forum cannot be used for this purpose under the Act.

This forum is not intended to be a substitute for settlement of inter se disputes between the parties. The institution is to inquire into complaints of corruption and wrong doings by Public Functionaries including complaints of misuse and abuse of power. This forum cannot be made an arena for settling scores in private disputes. Understandably every citizen, including a Public Functionary, has a right to seek remedies to defend himself before competent court in our legal system. The institution of lokayukta is to address grievance or complaints emanating from corruption, maladministration, misuse or abuse of position, non observance of norms of integrity and conduct. It is only when the conduct of a Public Functionary amount to an allegation within the meaning of the Act that Lokayukta would assume jurisdiction.

20. An inquiry can be conducted against the Public Functionary if his own conduct amounts to an allegation within the meaning of Section 2 (b) of the Act. In the instant case, no such conduct has been attributed to the Respondent personally which would become actionable under the Delhi Lokayukta and Upalokayukta Act, 1995. The allegations that have been made against the Company of which the Respondent was neither a Managing Director nor a working Director nor a specially authorized Officer by the board. He happens to be a Director with 1% share holding but did not draw any remuneration. There is nothing on record to suggest and prima facie show his involvement in the management of the company in as much as not even a single document is claimed or alleged to have been signed or executed by Respondent which are the subject matter of the various complaints by the Complainant. In these circumstances, no such case for holding out any inquiry under Section 7 of the Delhi Lokayukta and Upalokayukta Act, 1995, for acts amounting to "allegation" within the meaning of Section 2 (b) of the Delhi Lokayukta and Upalokayukta Act, 1995 is being made out.

21. The preliminary objections of Respondent are allowed in all six complaints. The complaints are dismissed as not maintainable. Let copy of this order be placed in all the files.

Date : 30-11-2012


(Justice Manmohan Sarin)

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