

SUBSTANCE OF THE CASE IN COMPLAINT NO.
C-244/LOK/2009 TITLED “SMT. SUNITA BHARDWAJ,
COMPLAINANT V/S SMT. SHIELA DIKSHIT, CHIEF MINISTER
OF DELHI, RESPONDENT”, UNDER SUB- SECTION-7 OF
SECTION-12 OF THE DELHI LOKAYUKTA AND
UPALOKAYUKTA ACT, 1995

1. The Complainant, in her Complaint dated 16-11-2009, claimed that the Respondent Chief Minister, Smt. Shiela Dikshit, falsely misrepresented to the public on the eve of elections that 60000 houses under the Rajiv Ratan Awas Yojna were ready and the process of allotment was to be commenced. The above misrepresentation was in the message under the name of the Respondent Chief Minister with the photograph of the Chief Minister and the then Minister for Urban Development Shri Raj Kumar Chouhan. The Complainant alleged that the Respondent was actuated by improper motives for personal and party's gain and the false and misleading information was given for securing advantage in the ensuing elections in October, 2008.
2. The Respondent in defence alleged the complaint to be a part of political conspiracy of a rival political party to tarnish her image. She claimed that the Complainant has wrongly translated the message to give it a wrong and misleading meaning. She produced English translation of the message with her reply purporting it to be from the Language Department's official translator of Govt. of NCT. The Respondent claimed that the correct translation was that "Houses were to be constructed-----". She filed the said translation duly verified in her reply as true to her knowledge, and accused the Complainant of filing a false and misleading translation, to get the notice issued.
3. The Respondent claimed that there were indicators in the remaining clauses of the Registration Booklet or subsequent advertisements through which prospective purchaser would have known that the houses were yet to be constructed.

4. Inquiry was conducted in accordance with the principles of natural justice, giving full opportunity to the Complainant and the Respondent.
5. On inquiry into the complaint, it was found that the Respondent had failed to act in accordance with the norms of integrity and conduct expected of a public functionary specially, the Chief Minister. After examining the record and considering the pleas in defence as also the factual position regarding the state of actual construction of houses, produced by the Government of NCT, it was found that 60000 houses were neither ready for being handed over or otherwise built. As on 24-02-2010 only 7635 houses had been built and land acquired only for 9439 houses.
6. It was also found that the English translation filed by the Respondent claiming it to be from the Language Department's official translator was in fact from Transprint India, a private agency, who was claimed to be an approved agency. The translation filed as true to her knowledge was found to be a wrong translation on obtaining the version from the official translator of High Court of Delhi which exposed the falsity of Respondent's claim, in fact, such a plea and defence, verified as true to her knowledge, actually aggravate the misconduct.
7. Vide Report dated 18-07-2011, it was recommended to Her Excellency, the Hon'ble President of India, Competent Authority in the instant case, to administer a caution to the Respondent to be careful in future, in view of the present instance.
8. The action taken by the Competent Authority, i.e. the Hon'ble President of India, was communicated through the Under Secretary, Government of India, vide Communication bearing No. U-17020/17/2011-UTL, Government of India, Ministry of Home Affairs dated 11-11-2011, as under:-

“.....that the report of the Lokayukta has been examined carefully. The comments of the Government of NCT of Delhi as well as response of the Chief Minister, Govt. of NCT of Delhi on the report of the Lokayukta were also obtained (copy enclosed) and taken into account while analyzing the

report. After weighing the facts and circumstances of the case, it was found that there was no evidence of any malafide intention on the part of Chief Minister, Govt of NCT of Delhi. However, it was observed that the Department of Urban Development, Government of NCT of Delhi was not as careful as it should have been in releasing the brochure relating to construction of houses for weaker section of the society. Accordingly, the President has decided that the Department of Urban Development, Government of NCT of Delhi may be advised to be more careful in preparing such publications in the future.”

9. It was considered that the case deserved making of a Special Report upon the case to the Hon'ble Lt. Governor, in terms of Sub-Section – 3 of Section-12 of the Delhi Lokayukta and Upalokayukta Act, 1995. Accordingly, a Special Report dated 20-03-2012, upon the case was made to the Hon'ble Lt. Governor.
10. For the sake of brevity, the allegations made by the Complainant, the defence taken by the Respondent, the findings arrived at by this Forum and the action taken by the Competent Authority are summarized in the table below:-

S. No	Allegations made by the Complainant	Defence taken by the Respondent	Findings of the Lokayukta	Action taken by the Competent Authority
1.	The message in the Application Form was of the Respondent	Admitted by the Respondent	Held the message was of Respondent	Not clearly stated. However, Department of Urban Development, GNCTD, advised to be careful in future.
2.	There was misrepresentation in the message and the averment regarding 60,000 flats being ready was false.	There was no misrepresentation in the message. Message wrongly translated by Complainant	Held there was misrepresentation in the message and the averment regarding	From the direction regarding advice to the Department of Urban Development, it is clear

		and being selectively read. Message to be read with complete application form and other advertisements which make it clear that houses were "yet to be constructed".	60,000 houses being ready was false. Respondent has filed wrong translation.	that the Competent Authority concurred with the findings of Lokayukta.
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11. The issue raised by the Complainant before this Forum is of misrepresentation by misleading and false contents of a message which stands alone. The question was not whether people were actually misled or not. The present complaint is not a petition under The Representation of the People Act, 1951, challenging an election. It is a complaint under the Delhi Lokayukta & Upalokayukta Act, 1995, pointing out a misconduct by the Respondent in making a false representation in a prominent message with her photograph and under her name. Respondent contended that the matter had to be considered from the perspective of electoral laws and the complaint was liable to be dismissed in view of the Respondent having won three consecutive elections signifying the faith of the electorate in her and her policies. Further that she could not have won if she had not conducted herself with integrity and honestly.

The above may be accepted as an effective campaign strategy. However, it cannot be the basis for judging misconduct under the Delhi Lokayukta & Upalokayukta Act, 1995, which has statutorily defined various species of misconduct in the definition of "allegation" under Sec. 2(1) (b).

12. In the instant case, the Respondent has owned the message and, in fact, sought to justify it by a false translation of her message. It was nobody's case that there was any inadvertent error on the part of the Respondent in releasing the message or she had not approved of the same as per her specific directions. In these circumstances, there was

no occasion for the Ministry of Home to advise or attribute the misconduct to the Department of Urban Development, which is really an abstraction, and recommend to Her Excellency, to issue the advisory to the said Department to be careful.

This Forum, in this case, despite the gravity of the misconduct, considering the current political scenario and the fact that it was not unusual for the political parties to hold out sops and promises on the eve of elections, and the need first to build a strong public opinion on issues regarding desirability of observing ethical conduct, recommended only a caution to be administered to the Respondent, which was indeed minimal and deserved the acceptance and concurrence of Her Excellency.

13. Without prejudice to the foregoing, it is observed that the processing of the report of Lokayukta was in violation of prescribed statutory procedure. Under Sec. 12 (2), the Competent Authority is required to examine the report and intimate the action taken or proposed to be taken “on the basis of the report” (emphasis supplied).
14. The above clearly indicates that it is only the report which is to be considered, which incidentally had all the evidence, defence, submission of the parties and findings of the Lokayukta. On examination of the above material in the report, the Competent Authority is to take a decision. The Act neither contemplates nor provides for a further inquiry or comments being sought from the indicted persons or the Government Department or production of extraneous material, which may or may not have been produced during the inquiry, to form the basis of the decision making process on the part of the Competent Authority. The report of the Lokayukta is recommendatory in nature and it is solely within the discretion of the Competent Authority to accept the report or not to accept the report. Of course, in case of non-acceptance, Competent Authority is to state the reasons there-for to avoid the vice of arbitrariness. In appropriate cases, if certain aspects require any clarification or further investigation, Competent Authority can remand the matter to the Lokayukta. However, no further inquiry or consideration of other material apart from the Report is permissible.

15. In view of the foregoing, this Forum, in Special Report dated 20-03-2012, observed and recommended as under:-

“In these circumstances, it would appear that the Hon’ble President was not properly advised with regard to the factual position and the admitted position and role of the Respondent which led to advice of caution being given to the Department of Urban Development instead of the Respondent for her message. It was neither the case of the Complainant nor the Respondent that there was any negligence on the part of the Urban Development Department or its Officers. The Respondent had duly owned her message and had not claimed that the Department was responsible for this. She had rather justified the message.

It is, therefore, prayed that this matter may be sent, in the first instance, to the Hon’ble President for reconsideration and administration of caution to the Respondent as originally recommended, failing which, it be placed before the Assembly under Sub-Section (6) of Section-12 of the Act”.


(Justice Manmohan Sarin)
Lokayukta

Date: ^{20th} ~~20th~~ March, 2012

Hemant