

**BEFORE THE HON'BLE LOKAYUKTA
JUSTICE MANMOHAN SARIN**

COMPLAINT NO. C-1148/Lok/2011

In the matter of Suo Moto Cognizance of a Press Report Titled "Sting Operation Ke Baad Parshadon Mein Macha Hadkamp" appearing in "Nav Bharat Times" Dated 07-12-2011

AND

In the matter of Inquiry Under Sec. 7 read with Sec. 2(b) of The Delhi Lokayukta & Upalokayukta Act, 1995, in respect of Conduct of Shri Ravi Prakash Sharma, Municipal Councillor, Respondent herein.

1. Shri Abhijat Bal, Advocate, Amicus Curiae with Ms. Mansi Sharma, Advocate.
2. Shri Alok Kumar, Shri J.C. Gupta, Shri Vinay Gupta, and Shri Vikas Khurana, Advocates, for Shri Ravi Prakash Sharma, Municipal Councillor, Respondent.

REPORT

Cognizance and Issuance of Notices

1. Suo moto cognizance was taken of a report titled "Sting Operation Ke Baad Parshadon mein Macha Hadkamp", appearing in "Nav Bharat Times" dated 7-12-2011. Vide Order dated 7-12-2011, notices were issued to the Editor and City Correspondent of "Nav Bharat Times" to produce complete records of interview and other evidences in relation to the press report. Notices were also directed to be issued to the Managing Director and Correspondent of Channel IBN-7, who had carried out the telecast of the sting operation showing involvement of Municipal Councillors participating in negotiations regarding carrying out of illegal and unauthorized constructions for illegal gratification. The reporters of Cobra Post, who had been deputed by the Channel IBN-7 to carry out the sting operation,

were directed to produce the original footage/records of the sting operation.

Commencement of Proceedings

2. Pursuant to the notices issued, the advocate of M/s. TV18 Broadcast Ltd, which owns Channel IBN-7, appeared with two reporters of Cobra Post owned by M/s. Shri Bhardwaj Media Pvt. Ltd, who had carried out the sting operation under an arrangement with Channel IBN-7. The statements of the reporters who had carried out the sting operation were duly recorded on oath. The Deputy General Manager of IBN-7, Mr. Sachin Dev, CW-3, also tendered the original footage contained in the DVDs, as Ex.CW-3/1, Ex. CW3/2, Ex. CW3/3 and Ex. CW3/4. The DVD of the telecast programme was also tendered as Ex. CW3/5. The transcripts of the recorded conversation of the meetings and negotiations with Respondent Councillor and 7 other Councillors were also tendered. After viewing the DVD recording of the conversation of reporters with the Councillors and perusal of the transcripts of the same, vide Orders dated 21-12-2011, it was held that case for inquiry under Sec. 7 r/w 2(b),(i), (ii), (iii) & (iv) of the Act was made out and notice to the respondent and other Councillors returnable on 16-01-2012, were directed to be issued. The file of each Councillor was directed to be segregated and registered as a separate complaint.
3. The Respondent entered appearance through Shri J.C. Gupta, Advocate, and filed his reply-cum-written statement. Considering the nature of the controversy and issues arising for consideration, it was found expedient and in the interest of justice to appoint an Amicus Curiae and Shri Abhijat Bal, Advocate, was so appointed.

In view of the ensuing municipal elections, Respondent Councillor made a fervent plea for expeditious disposal of these

inquiry proceedings so that if allegations are not proved, he stands exonerated without delay, so as not to affect their election prospects.

Procedure adopted for Inquiry

4. The Counsels and parties were heard and their suggestions considered regarding adoption of the procedure in the inquiry so as to conform to the principles of natural justice, while expediting the inquiry, yet giving the fullest opportunity to the parties to present their respective case. A consensus emerged on the procedure to be adopted which is re-produced below for facility of reference:-

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- (i) All the Counsel and parties shall endeavour to abide by the time given for completion of pleadings. In fact the Respondents and the broadcaster have all stated that they would take not more than one to three weeks so that the entire pleadings can be completed within a month at the maximum.
- (ii) Regarding the authenticity and correctness of the recordings which have been produced, it has been agreed that individual footage in each of these cases would be played in court before the Presiding Officer with best equipment as available with the Broadcaster to make the sound clear and discernable so that some of the gaps noticed in the transcripts at present are filled up and an attempt is made for an agreed transcript to emerge. It is prayed by the Counsels that viewing should be spread over one week and individual recordings be viewed and parties heard.

Wherever it is not possible to have an agreed transcript, the Broadcaster and the Respondent,

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each may give their version with regard to the particular words uttered. This forum would then decide the controversy. Accordingly, in case the broadcaster and the Respondent are at variance, each would have the option to present its version of the transcript. Beyond the discrepancies in the transcript, Counsel and parties submit that they are not questioning the authenticity or demanding any other requirement with regard to the proof of the recordings. Considering the nature of the inquiry before the Lokayukta formal proof of these recordings is dispensed with.

- (iii) Parties are agreed that based on the pleadings and transcripts as finalized, the Lokayukta would fix the date of hearing in the individual cases.
- (iv) Parties are agreed that any common issue of law or facts which arises for consideration in their inquiries would be dealt with together by the Lokayukta and while the evidence and arguments in relation to each of the cases or transcripts will be separately taken up.
- (v) It is also agreed that while the authenticity of the conversation and their transcripts would be established in the above manner, parties would be at liberty to point out any personal animosity or motive on the part of the reporters for having carried out the sting operation.”

None of the Counsels made any suggestion or request for alteration or modification in the above procedure, which was accepted by all.

Finalization of Transcripts of Recording

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- 5. The Office of the Lokayukta made arrangements for viewing of the DVDs containing copies of the original footage referred to

as the “raw footage”. The raw footage as recorded in the DVDs were played and re-played several times in the presence of the Respondent Councillor and the Counsels for Respondent and Amicus Curiae and the Advocate for IBN-7 Channel. In the instant case, the only difference of opinion between IBN7 Channel and the respondent’s version is with respect to the last line of transcript. This Forum found few words of the last line inaudible and even though IBN7 Channel’s Counsel Mr. Mrinal Bharti had claimed that the same were discernible and audible, this Forum found the same as inaudible. However, that does not appear to affect the meaning of the sentence which remains discernible. The above difference of opinion is being reproduced for sake of record and reference:-

“ शर्मा – वो रीजनेबल हो जाएगा। ज्यादा बात करने का कोई फायदा नहीं मैं बुला के उससे कह दूंगा ये काम है ये तेरे को दे रहे हैं। और जो भी (not audible) सारी आपकी डील करा दूंगा।)

रिपोर्टर – पक्का।

Mr. Bharti urges that the words are actually “और जो भी काम है वो करके सारी आपकी डील करा दूंगा।

The Counsels for the Respondent are not agreeable to the inclusion of the words “ और जो भी काम है वो करके ” in between.

6. A consensus emerged on what was the actual version as audible from the footage. After making corrections in the transcript, the same was also read over to the parties by the undersigned. Registry was directed to prepare transcript of final version and make available copies to the parties, which is Mark “GF”.

It would be appropriate at this stage, to summarize the transcript as finalized which recorded the conversation between the Respondent and the reporter/builders.

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Respondent who was near the Shankar Vihar Prachin Hanuman Mandir was accosted by the reporters posing as builders (hereinafter referred to as "reporter/builder"), seeking help for the construction to be started by them in his constituency. The Respondent immediately asked them to inform after starting the work. Thereupon the reporter/builders told the Respondent of the difficulties faced by them in their earlier work at Mandawali from the JE of MCD. The Respondent Councillor again assured that there would be no problem and he would tell the JE etc. The reporter/builders requested the Respondent Councillor to tell them the estimate of amount so that they could budget the same. Respondent/Councillor assured them that it would be done on reasonable basis and upon the reporter/builders telling that they had faced a demand of Rs. 8.00 Lacs from the previous JE, the Respondent assured that it would be reasonable and there was no "loot" in his constituency. Upon the reporter/builders insisting on knowing the amount, the Respondent Councillor told them not to talk superfluous things and he would fix the entire deal on a reasonable basis. The reporter/builders had informed the Respondent Councillor that they were going to construct without any sanctioned plan since the same was time consuming. Despite knowing this, the Respondent Councillor continued with his assurances and also asked them to meet him in a day or two. The Respondent Councillor assured all help in settling and arranging the matter with the JE on a reasonable basis.

Completion of Pleadings

7. Pleadings were also completed. Copy of the Press Report appearing in "Nav Bharat Times" dated 7-12-2011 is annexed hereto as **Annexure-I**. Copy of the Order dated 7-12-2011 is annexed hereto as **Annexure-II**. Copy of Reply-Cum-Written Statement filed by the Respondent is annexed hereto as



Annexure-III. The Respondent and his Counsel as well as the Amicus Curiae and Counsel for IBN-7, all submitted that the matter be proceeded with on the basis of the transcript of the original footage as finalized after viewing and no further evidence needs to be led by them or the Respondent. The said statement was made by the respondent's Counsel on the basis of instructions by the respondent. However, the Respondent wanted to make a statement and apart from that he did not wish to lead any evidence. The transcript of conversation as finalized and agreed to between all parties and marked 'GF' subject to the above observations is annexed hereto as **Annexure-IV**. The statement of the respondent on oath was also recorded on 17-02-2012. Copy is annexed hereto as **Annexure-V**.

Submissions of the Respondent

8. The main plank of the submission of Mr. Gupta, who was heard on 2-3-2012, 9-3-2012 and 16-03-2012, has been that the entire recorded conversation should be considered in the background that it was a citizen approaching a public functionary for help. The Councillor, an elected representative was duty bound to redress the concerns and difficulties of citizens and while doing so, he was bound to be polite and courteous. In the entire conversation, the respondent was assuring the reporter/builder that he would speak to the concerned Jr Engineer to ensure that no difficulties are encountered by the reporter/builder who wanted to commence construction in his constituency. Mr. Gupta submitted that every public functionary was interested in development in his constituency and if a builder wants to take up a venture there, it would provide employment and work to the labour force and the Councillor would encourage it. A striking feature in the entire conversation is that there is no demand made by the Councillor for himself and he has only promised to remove the difficulties faced in the construction

work. Not only did the Councillor not demand any amount, but he did not express his expectation of any amount.

9. With a view to crystallize his submissions, an outline of submissions, was submitted on behalf of the respondent, which is annexed hereto as **Annexure-VI**. In view of the fact, that it is not the telecast which is being considered, but the entire recorded transcript as demanded by the respondent for a proper evaluation of the context, the plea regarding answering respondent being wrongfully clubbed in the telecast with others has no relevance. Accordingly, Respondent's Counsel did not press Point-7 of outline of submissions.
10. As noted earlier, at the request of the respondent, for a better understanding and appreciation of the context in which the conversation took place, the entire original footage and transcript thereof be considered and not the telecast, the submissions in the reply-cum-written statement concerning the telecast are not being dealt with. Moreover, if the respondent has any grievance with regard to being defamed by the telecast he can avail of appropriate remedy at law.

For the purposes of assessing whether the conduct of Public Functionary as manifested and revealed in the conversation makes out an allegation, within the meaning of Sec. 2 (b), the transcript as finalized is being considered only. Hence, the averments and pleas raised in the written statement, in relation to the telecast, are not being considered.

11. Another plea on which some stress was laid by the Ld. Counsel is that the Councillors under the Delhi Municipal Corporation Act, 1957, do not have any authority to either sanction, supervise or interfere with the construction or building activities, which is a function of the officials of the Municipal Corporation, under the Act. In the absence of any authority in sanctioning, supervising or controlling the construction, it was

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claimed that the Councillor has no role in it and the Councillor's role is confined to sanitation, maintenance of roads and provision of necessary infrastructure in their wards. Councillor is neither equipped nor vested with discretion or authority to provide any favour to any builder in the matter of approvals and sanctions for buildings or construction.

12. It was also urged that the menace of unauthorized construction had thrived on account of lacunae in the legislation and inaction and complicity of municipal staff and police.
13. Coming to the transcript of conversation as recorded, it was urged that the respondent was having the conversation while standing on a public road and with others present. There was thus nothing clandestine or improper which could be inferred in such an open conversation, which was not in conspiratorial or clandestine manner. It was urged that despite the reluctance of the respondent who was all through endeavouring to get over with the matter and to put them off, the reporter/builder pursued the matter relentlessly, with the pre-determined object of somehow extracting and putting words into the mouth of the Respondent. It was urged that the conversation carried the features of entrapment as the reporter/builders were only working towards pre-determined questions in an attempt to get answers, which they wanted. The conversation had all the features of entrapment being practiced with the sole object of sensationalizing and improving their TRP ratings for purposes of earning profit. It was also urged that the recorded conversation and the words spoken by the respondent do not constitute an "allegation within the meaning of Section 2(b)" of the Act. There was no passing of any consideration or illegal gratification. There was no actual project or building, all were make belief. Hence, Counsel argued, it cannot be said that the respondent has acted or abused or misused his position and power to obtain any gain or favour for himself or that he was

actuated by improper or corrupt motives or personal interest in the discharge of his functions. Counsel argued that since building activity did not come within the discharge of functions of the Councillor, assuring a party that he would not suffer unnecessary harassment, cannot be regarded as abuse or misuse of power, or being actuated by improper or corrupt motives. There is no settlement on terms involving monetary consideration. It is a case where a motivated deception has been practiced on the respondent with a view to somehow trap him.

Statement of Respondent made on Oath

14. Respondent wanted to explain the circumstances in which the conversation took place. He submitted that in the month of September, 2011, he was standing outside Shankar Vihar Prachin Hanuman Mandir, in connection with the drive for collection of funds for Ramlila-Dusherra celebrations. Other members of the Ramlila Committee were also present. He said that when he was talking on his mobile to someone, who was desirous of booking the Community Hall, he was accosted by two persons seeking his help saying that they were small time builders in Ghaziabad. They were not known to him and wanted his help in raising construction, without facing problems and difficulties with MCD. Respondent informed that Preet Vihar was an approved colony and sanctioned plan was required, for any new construction.
15. It is in this background, that the transcript of conversation, as per the respondent ought to be considered. The Amicus Curiae sought certain clarifications from the Respondent. It was put to the Respondent whether he did not consider it improper for the persons representing themselves as builders approaching him, since Councillors as per his own version did not have authority to approve or permit any building activity? Respondent replied in the affirmative that he did consider it improper but being a public functionary and elected representative, he can be

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approached by anyone even on the road and he was not expected to slap such persons. On a query as to in what manner, he as a Councillor could help a builder desirous of commencing construction in the constituency, the Respondent replied that he can help in contacting the Architect or Structural Engineers if such problems were faced but it had to be within the ambit of law. He stated that when anyone approaches him with a problem regarding non-clearance of plans or structural drawings, he tries to sort it out depending upon the difficulties being faced. He clarified that for commencement of construction, it is only the sanction of building plans, the issue of compoundable or non-compoundable or unauthorized construction arises only on completion of construction. He stated that he had no interest or relationship with the persons who had approached him. The reference to 'budget' was the budget of the said builders.

Evaluation of the Transcript & Conduct of the Respondent

16. Having noted the background, version and perspective of the Respondent in which the conversation took place, and the submissions made as well as the contents of the Respondent's statement and having heard the Amicus Curiae on the interpretation and meaning to be given to the transcript as also on the conduct expected of a Municipal Councillor, let us analyze and evaluate the transcript and his conduct.
17. The first thing to be noted is that when the reporter/builders approached the respondent Councillor, they told him that they were commencing construction in his area and wanted some help from him. The response of the Councillor was not one of hesitation but reassuring. He said it does not matter and wherever they wanted to start they could start construction and then tell him, to which the reporter/builders responded that they were planning to start after a week. Here again, the respondent responds and says that "he will speak to the JE" and "Usko"

(not identified). This portion of the conversation negates any impression of a hesitant or unwilling Councillor. This is immediately followed by the reporter/builders telling about the problems they faced in Mandawli from the JE upon starting work. Here again, the response of the Councillor is reassuring when he tells that "he would tell the JE everything and there will be no problem". The reporter/builders now suggest that they would do the rest as per the Councillor's wishes. The suggestion of the reporter/builders is quite apparent. The Councillor responds by saying that they will settle it and make the JE sit across and finalize with him.

Now comes the talk regarding the money, where the reporter/builders request for money required to be told as they have to plan or budget it. Here the response of the Councillor, if it was a bonafide conversation, where only help was to be extended by a Public Functionary, would have been a reprimand or rebuke stating that no consideration was involved. On the other hand, the response of the Councillor is that estimated budget would not be a 'loot', at which the reporter/builders inform that in their last work, a demand of Rs. 8.00 Lacs was made. The Councillor assures them that "here there is no loot", to which the reporter/builders state that they do not have that kind of a budget here and want to know when they should meet him at home. The Councillor then talks about his religious and temple work and his honesty therein and tells them that it would be reasonable for them. Further, they could talk to the JE. The reporter/ builder persist in wanting to know about it so as to budget it, to which the Councillor responds that estimate would be done and there is no loot in the work. The Councillor later on tells them not to talk so much and that they would have a reasonable amount and the whole work would be done. At this stage, the reporter/ builder also inform him that they were not getting plans sanctioned since the same takes a long time. Hence, was again an opportunity for the Councillor

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to say that if construction was to be done illegally, without sanctioned plan, he had nothing to do with them or cannot help them. But the Councillor does not do that. On the other hand, says, “they had come to him and whatever he has heard he would tell the concerned person and he would take care”. The reporter/ builders then ask when they should talk to him. The Councillor tells them to come day after or after some time. He tells them to come in the morning or in the evening. The reporter/builder now enquire that four floors are to be constructed and for each lintel what would be the charge, would it be done in 1.5 Lacs. The Councillor then replies reassuringly “ शर्मा : आप आ तो जाओ आपको जो मदद जब आप काम कर रहे हो जो मैंने आपको एक बात कही है उसके लिए क्यों मेरे से फालतू बात करवा रहे हो । मैं कोई मतलब फालतू बात करने का कोई फायदा है क्या । काम करते हो मैंने कहा रीजनेबल हो जायेगा । रीजनेबल का मतलब लूट-लूट तो तुमने बता दी । मैं लूट तो नहीं बता रहा हूँ ना ।

रिपोर्टर : हां ठीक है ।

शर्मा : वो रीजनेबल हो जाएगा । ज्यादा बात करने का कोई फायदा नहीं मैं बुला के उससे कह दूंगा ये काम है ये तेरे को दे रहे हैं और जो भी
..... (inaudible) सारी आपकी डील करा दूंगा ।

रिपोर्टर : पक्का । ”.

The above words are clear, categorical and admit of no ambiguity. These contain an assurance that the entire deal would be settled on reasonable terms, in contra-distinction to the figure mentioned by the reporter/builders which they paid in their last contract and referred to repeatedly by the Respondent Councillor as “loot”. The role and conduct of the Councillor as a facilitator in settling the terms on reasonable basis for illegal construction, needs no further amplification.

18. The aspect of inaudible words has been noted earlier. The respondent herein did not agree to the words, which as per IBN-7 were spoken, on the plea that they were not audible. At the same time, the respondent did not offer, while the onus was on

him, to tell what he had said. Even if the inaudible portion is not considered, the part which is significant is "Sari aapke deal karadoonga". A reading of the entire conversation in its context and background, leaves no doubt that the Councillor has offered to contact the JE in helping them in constructing the building. This assurance of help has continued even after learning that the construction was to be without sanctioned building plan. Not once, but repeatedly, he has assured the reporter/builder that a reasonable settlement would be reached, in contra-distinction to 'loot' as described by the Councillor, when he was told about the demand of Rs. 8.00 Lacs by the reporter/builder in their previous work at Mandawli. Having learnt that the construction is without sanctioned plan, the Councillor re-assured that he would speak to the concerned person and the whole thing will be handled within a reasonable amount and manner and he would have the whole deal fixed. There is not even an iota of doubt left that the Councillor had offered to act as a facilitator for unauthorized construction and offering to have the same done on what has been termed by him "reasonably and not loot". This is clearly a violation of the norms of integrity and conduct expected of a Councillor under Sec. 2(b)(i) read with Sec.7 of the Act.

Pleas in Defence

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- (i) As regards the contention that there is no statutory function assigned under the Delhi Municipal Corporation Act, 1957, to the Councillor for approving and supervising construction, while the same may be so, it is a matter of public knowledge and of which even judicial notice can be taken that the menace of unauthorized construction in Delhi, would not have advanced and reached alarming proportions, without the complicity and at time indifference and inaction of the municipal staff,

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police and the Councillors and nexus with builders. It is idle to contend that the Municipal Councillors are not concerned with the building activities in their areas. Numerous instances of patronage of unauthorized construction and even assault on municipal staff, where their instructions are not carried out, have been found by us.

In any case, in view of the clearly admitted and recorded version of transcript, it is idle to contend that the Councillor was not having any role or could not have had any role in facilitating unauthorized construction.

- (ii) As noted, pleas which are concerned with IBN7 providing blank DVD or the replacement being manipulated or morphed or questioning the veracity of the recorded conversations as also averments concerning Respondent being clubbed with others to his disadvantage and resultant prejudice and bias are not being dealt in view of the decision of this Forum arrived at with consensus, to consider the individual conversations, which each of the Councillor had, and not the telecast. The transcripts of original footage containing conversation were played and re-played till consensus was reached on the correctness and authenticity of the transcript. It is only this finalized transcript which has been considered for the purpose of this report. Hence with the consent of the learned Counsel for Complainant, the pleas as noticed above in the written statement concerning the telecast or in relation to the recording of the interview and the submissions of DVDs and errors therein are not being considered.
- (iii) Apart from the above pleas, which were taken, Ld. Counsel submitted that the Respondent neither claimed

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nor was a beneficiary of any gratification, which is said to have been agreed in the conversation with the reporter/builder. It was submitted that it was an attempt to create a sensation to lash out in concert on an innocent person, who was sought to be trapped into this conversation. It was an attempt on the part of the IBN7 to sensationalize the issue and increase their TRP ratings. It is claimed that the Respondent dealt with the matter in a very routine and casual manner.

- (iv) Mr. Gupta further argued that the reference in the transcript to the sentence containing the word 'Kaam' in the following lines in the transcript refers to execution of construction work.

“ शर्मा : देखिये पहली बात मतलब दो ज्यादा बात करने का मतलब नहीं है । बहुत आपका रीजनेबल काम आपको मतलब हो जायेगा और आप जब करोगे वो रीजनेबल हो जायेगा सारा । ”

The above argument has only to be stated to be rejected. In the preceding para, the reporter/builder is asking for an estimation and budget of what it is going to cost them for ensuring that there are no hurdles from the MCD. Besides, even in this sentence, the word “reasonable kaam”, refers to the total reasonable settlement, which in the subsequent passage and in the concluding para are described as “deal”.

It is highly improbable that 'Kaam' would refer to construction work because construction was not what the Councillor was undertaking to get done. The entire tenor of the conversation regarding construction i.e. Rs. 1.5 Lac per floor and 4 floors, would dispel this notion. “Kaam” refers to the proposed settlement with the J.E so that there are no hurdles in raising construction. While it is true that nowhere in the entire conversation the Respondent asked for any money for himself or make

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any direct demand for himself, the posture adopted was that he would get the deal done with the JE.

Mr. Abhijat Bal, Ld. Amicus Curiae had submitted that usually the stratagem adopted is to have the entire amount of gratification collected either through the JE or Beldar etc. which is later on distributed. This avoids any direct involvement of the Senior Officers / Councillor etc. What Mr. Bal has submitted is highly plausible. However, what clearly emerges in this case is that the Councillor admittedly offered to act as a facilitator for unauthorized construction to be carried out. This by itself, without anything else, in my view, is sufficient to hold violation of norms of conduct and integrity by the Respondent.

- (v) It has been alleged that in the current political scenario, a Public Functionary is expected to cater and to look after the difficulties of their constituents or others who may be interested in doing development or construction work in their constituency. The Respondent was only performing his public duty. May be, in doing so, in his enthusiasm, he overstepped the norms. But he was only helping a member of his constituency. This he considered as part of his public duty.

This brings to the fore again the need for orientation courses and for framing and finalization of a Code of Conduct for Municipal Councillors in public life, so that they clearly understand the conduct and norms expected of them. It may be noted that this Forum has in a number of cases made this recommendation which has also been accepted by His Excellency, the Hon'ble Lt. Governor, and is awaiting implementation.



However, the present case is one not admitting of any doubt or ambiguity regarding misconduct. In fact, for such clear cases, reference to any Code of Conduct or norms may not be necessary as one's conscience is sufficient guide to tell whether it is the right and honest thing to do or it is a dereliction of duty. The oath taken at the time of assuming Office of Councillor, which enjoins him to bear true faith and allegiance to the Constitution of India as by law established and to faithfully discharge the duty, which he is about to enter, is also a valuable guide. The above conduct, by no means can be called a faithful discharge of duties.

Plea of Entrapment

- (vi) Ld. Counsel for the Respondent has submitted that a sting operation by a private agency is by and large unpalatable and unacceptable in a civilized society. He submitted that a sting operation cannot be initiated to induce or tempt an otherwise innocent person to commit a crime or to entrap him to commit a crime. He relied on the observations made by the Hon'ble Supreme Court of India in RAMANUJAM SINGH V/s STATE OF BIHAR, AIR 1956 SC 643, which are as under:-

“Whatever the criminal tendencies of a man may be, he has a right to expect that he will not be deliberately tempted beyond the powers of his frail endurance and provoked into breaking the law; it is one thing to tempt a suspected offender to overt action when he is doing all he can to commit a crime and has every intention of carrying through his nefarious purpose from start to finish and quite another to egg him on to do that which it has been finally and firmly decided shall not be done. The very best of men have moments of weaknesses and

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temptation, and even the worst times when they repent of an evil thought and are given an inner strength to set Satan behind them.”

Referring to the present case, the Counsel submitted that the Respondent who was on another mission was accosted by the reporter/builders. There was absolutely nothing wrong in the Respondent entertaining a person who wanted to raise construction or do development work in his constituency. The Counsel submitted that the Respondent only tried to help them while acknowledging the hard realities of prevalent corruption and telling the reporter/builders how the work could be done. The reporter/builders proceeded with asking questions on a set line, drawing out the responses which they wanted.

Mr. Bal, while refuting the above submissions, rightly submitted that the plea or defence of inducement or entrapment was really not available to the Respondent. This was not a case where the Respondent was lured or induced into doing something. The Respondent on his own was ready and willing to participate and carry forward the conversation. In fact, as it would be seen from the perusal of the transcript and viewing of the video, the Respondent himself was extremely reassuring of his help and commitment in ensuring that there would be no hurdles from MCD on construction without sanction. In these circumstances, Mr. Bal submitted that one of the fundamental requirements of entrapment, that it was an act which the Respondent was probably otherwise not willing to commit, would not be available in this case. It was also not a case where the predisposition on the part of the Respondent could be ruled out. In fact, the offer to help and facilitate the

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construction was almost voluntary. This offer continued without any inducement even after the reporter/builders had stated that they were not going to have the building plan sanctioned. The observations made by the Hon'ble Supreme Court of India in Ramanujam's case (supra) cannot be applied in the instant facts.

Mr. Bal rightly submits that if the respondent's version, that he had neither demanded nor there was any contemplation of any illegal gratification in the matter, was to be believed, then the conduct of the Respondent would not be what it had been. Mr. Bal also pointed out that the construction of a building without sanctioned plan was an offence under Sec. 461 of the DMC Act, 1957. Section-332 prohibits erection or commencement of erection of any building without sanctioned plan, while Section-334 provides for application for repairs, additions or alterations to a building. Violation of Sections 332 & 334 of the DMC Act, 1957, under Sec. 461, read with Schedule-XII, is punishable with imprisonment for six months with fine. Thus, the Respondent was willfully going ahead with an illegal act of facilitating illegal construction through the engineering staff of MCD on terms to be settled by him, wherein he could be reasonably expected to derive benefit.

20. The Supreme Court of India in its latest judgment in R.K. ANAND V/s REGISTRAR, DELHI HIGH COURT, (2009) 8 SCC 106, while dealing with stings and telecast of sting programmes, observed in Para-179 as under:-

“Looking at the matter from a slightly different angle we ask the simple question, what would have been in greater public interest; to allow the attempt to suborn a witness, with the object to undermine a criminal trial, lie quietly

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behind veil of secrecy or to bring out the mischief in full public gaze? To our mind, the answer is obvious. The sting telecast by NDTV was indeed in larger public interest and it served an important public cause.”

Applying the above criteria, it would be seen that to expose the menace of corruption, nexus of builder mafia and the local politicians, i.e. Councillors and the municipal staff, in the rampant unauthorized constructions sweeping across our metro, a great public cause is served by the said exposure. Here was a public functionary who was more than willing to offer his help, hence, the operation carried out by the IBN-7 in exposing the menace of unauthorized construction due to the nexus of the builder mafia, politicians and municipal staff was a laudable cause and justified the sting operation.

21. In view of the foregoing discussion, it is clear that the Respondent Councillor has knowingly offered to act as a facilitator to carry out unauthorized construction and give his help by assuring that he would handle the Jr. Engineer of MCD. Further, he has gone about clearly holding out that the above would be done on a reasonable basis, in contra-distinction to “loot”. The latter expression was used by the Respondent Councillor on hearing of the amount which the Reporter/builders claimed to have been demanded by the JE in their previous work at Mandawali. Construction of a building without sanctioned plan is in contravention of Sec. 332 and is punishable under Sec. 461, read with Schedule-XII of the Delhi Municipal Corporation Act, 1957. The action of a public representative in offering to act as a facilitator for construction without sanctioned plan would be in contravention of the above provision. Hence, undoubtedly, a violation of the norms of conduct and integrity required to be observed by Municipal Councillors or public representatives under Sec. 2(b) (i) of the Act.

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It would also be appropriate to deal with the plea which is often urged in support of public representatives in such matters, namely, that it is a part of their duty owed to their constituents to help them. Thus, Councillors per force end up giving guidance and help in such matters. It is also urged that having regard to the current political scenario and prevalent societal norms and moral standards, such help is rendered in routine to persons known to or close to the public representatives or those who are party workers.

It is time to clearly state that it is not part of a public duty owed by a Councillor to give encouragement to unauthorized construction by promising help in such ventures. On the other hand, it is his public duty to bring to the notice of the authorities any instance of construction without sanctioned plan or attempt for the same which comes to his knowledge. It is no defence to urge that unauthorized construction is rampant and commonly resorted to. Even if it is commonly done, it is high time that the right thinking members of the society, raise their voice and send a clear signal to the Public Representatives and those in power, that such dereliction of duty would not be countenanced. The desire to appease the constituents or furthering of so-called electoral prospects by extending such help cannot override the norms of conduct and integrity, which are expected to be followed and which their oath of office enjoins them to observe.

22. It may also be noticed that this Respondent along with others had earlier also been proceeded with for misconduct i.e. for allegedly sealing and locking the office of the Deputy Commissioner of MCD and blocking the ingress and egress of the Deputy Commissioner, in Case No. C-304/Lok/2010. In the said case, the Respondent along with others had expressed his regret for his action and gave assurance for his future conduct. It then appeared that there was a realization of his

responsibilities by the Councillor and the regret was accepted and a quietus was applied to the said matter. The present case has shown that the earlier regret has not had the desired effect.

Recommendation

23. In view of the finding recorded hereinbefore, the conduct of the Respondent Councillor as evidenced from the transcript of conversation, Mark "GF", clearly amounts to violation of norms of integrity and conduct in terms of Sec. 2(b)(i) read with Sec. 7 of the Delhi Lokayukta & Upalokayukta Act, 1995. It is, therefore, recommended to His Excellency, the Hon'ble Lt. Governor, that a reprimand be issued to the Respondent Councilor for his misconduct as found above.


(Justice Manmohan Sarin)
Lokayukta

Date: 22nd March, 2012