

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

**COMPLAINT NO. C-1116/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 Ajit Singh Tokas, Councillor, Respondent herein.

1. Shri Akshay Makhija, Advocate, Amicus Curiae with Ms. Sanjugeeta & Ms. Mahima Behl, Advocates.
2. Shri Anish Dayal, Shri Bipin Singh, Shri Ranbir Dutta & Shri Sanjay Tokas, Advocates, for the Respondent.
3. Shri Mrinal Bharti, Advocate, for TV18 Broadcast Ltd. With Shri Sachin Dev, Deputy General Manager (Corporate Affairs), TV 18 Broadcast Ltd.

**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

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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 as CW-1 and CW-2. 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 as produced, vide Orders dated 21-12-2011, it was found 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 Anish Dayal, Shri Bipin Singh, Shri Ranbir Dutta and Shri Sanjay Tokas, Advocates and filed his reply to the Notice for suo moto inquiry. 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 Akshay Makhija, Advocate, was so appointed.

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In view of the ensuing municipal elections, all Respondent Councillors made a fervent plea for expeditious disposal of these inquiry proceedings so that if allegations are not proved, they stand 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.

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

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Counsel for TV 18 Broadcast Ltd had tendered in Court the DVDs stated to be containing the footage in respect of Shri Ajit Singh Tokas and Ms. Jai Shree Panwar, another Councillor. After providing due opportunities to the Broadcaster to cross check the DVD with footage as tendered along with the transcripts, the case was listed for viewing of the footage on 7-2-2012 and for completion of pleadings.

**Finalization of Transcript of Recording**

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 Channel IBN-7. The script of the conversation of the Respondent and the reporter was a fairly long one. It required hearing and re-hearing to discern the exact words spoken. The task of arriving at a consensus on transcript after hearing and viewing of the raw footage, had become cumbersome and consumed a lot of time. The viewing of the DVD had commenced at 11.30 AM and continued till 4.30 PM with lunch break on 7-2-2012. It was directed to be continued on 8-2-2012 at 11.00 AM. Certain minor differences had emerged which were duly noticed and recorded. First one was whether the respondent had said, "Aap logon ne bhi rahne ke liye banana hein" or "Aap logon ne bhi rahne ke liye nahin banana hein". The voice at this particular point gets drowned by the sound of a hammer in back ground and it is not possible to decipher clearly whether the word "Nahin" was spoken or not. However, looking at the context and the visual expression of the Respondent, the possibility of the word "Nahin" is there.

Secondly, the recorded portion as it appears at 18.20.25 to 18.21.51 does not appear in the transcript provided by the Channel. However, the parties are in agreement that this part of the recording is not relevant to the present inquiry and can be

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ignored. The lines appearing around 17.57.41, the words spoken by Mr. Ajit Singh Tokas, are, "Meri taraf se koi dikkat nahi hein. \munirka mein aaye ho to aapko pata bhi hoga ke yehan...". The Channel's version does not contain the word, "yehan". Mr. Dayal, Counsel for the Respondent, submits that the lip movement indicates the words, "Yehan na koi lena hain, na koi dena hein", and can be discerned from the lip movement.

In view of the contention on behalf of the Respondent and to remove any doubts, the recording was replayed on 27-02-2012. The word "yehan" was audible but rest were inaudible. Even though the lip movement indicates muttering of some words, it was not possible to conclude or infer that the word spoken were "Yehan na koi lena hein, na koi dena hain". It may be noticed at this stage, even if the above words as claimed by the Respondent are not found to be audible here, these have been said by the Respondent elsewhere after 17.59.10 and before 18.00.37 twice. Therefore, whether the words were said here also or not is not of much consequence.

6. Subject to the above observations, 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".

#### **Summary of Transcript**

For facility of reference, the conversation between the Respondent and the Reporters (hereinafter called the reporter / builder), as per the finalized transcript, is being summarized. The reporter / builders approached the Respondent at his home. After introducing themselves as builders from Ghaziabad they informed the Respondent of their proposal to carry out construction in his area and the difficulties faced by them in

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Mandavali. Respondent assured that there would be no difficulty from his side but they have to look after the others and police. There was discussion regarding difficulties from the JEs and the Special Task Force for unauthorized construction. On being informed that the Councillor at Mandavali had guaranteed no trouble from MCD, the Respondent stated that the said Councillor must have taken money otherwise why should he give assurance? He further stated that since he was not going to take anything, he would not be giving any guarantee. However, he assured to give whatever help was possible, without any guarantee since there was no "lena-dena" there. The discussion continued regarding the amount paid to Mandavali councillor, the respective location and comparison between them and the commercial rates, details of the plots, the owners and the price. When Respondent informs that councilors and MCD people take money as in Mandavali, the reporter / builders state that at least there was no head ache as nobody would come to site to create trouble. Respondent again states that he would help and they may first do the work. Reporter / Builders went on to say that they would enter the transaction only when he approved. Respondent then states that he was not discouraging them and there was no difficulty from his side and that if somebody gains it does not affect his health. At this stage reporter / builder asked Respondent to tell the amount so that they could budget it. Respondent replies that only when the Councillor has to take money that he can tell the budget but when he does not have to take (money) how can he tell the budget but his blessing would remain with them. Respondent also assures that if they run into difficulty, he would help by telling the concerned persons. The reporter / builder then express their apprehension that since the project was on the main road police would come. Respondent tells them that the police does not listen to the Councillor and they will have to independently handle but when the MCD

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people come, he would see. The Respondent goes on to an in depth discussion on the number of flats, type of construction, details of investment, roads, locations, sizes, permissible heights, parking requirements, number of floors, cost of construction and condition of the house. He suggests that if the condition of the house is not good, it can be handled with MCD at the initial stage by obtaining a "dangerous" certificate and permission for maintenance. He then asked the reporter / builders that if they were making 100% profit then what was the problem in tackling the MCD and at this rate in any case within five six months they would earn 15-17-18 lakh rupees per month. Again there is a discussion about the position in Munirka Village, his estimation of the project not being worth more than Rs. 2 crores, malpractices of the dealers, the methodology of construction etc. The Respondent advises the reporter / builders to keep on finishing the construction floor wise and that if they get the "dangerous" building certificate from the MCD, there would be no problem. He also tells them that first they should try to raise two lintels and the third one can be followed thereafter.

From the foregoing, what would be seen is that the Councillor while maintaining the position of not taking any money and being unwilling to give any guarantee, takes keen interest in the project of illegal construction and goes about suggesting ways and means such as having the building declared as dangerous and to obtain certificate to that effect to raise construction. He further suggests that they should raise a floor, give it finishing and proceed to the other one and once they raise two floors, the third one can be easily raised within the overall heights.

A question which arouses the curiosity is if the Councillor was not to take any gratification or consideration for himself then where was the occasion for him to take this

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unusual interest and discuss at length and advise persons hitherto unknown to him on cost benefit ratio, reasonableness or otherwise of their acquisition, manner of construction and the stratagem for deviously carry out unauthorized construction through the mechanism of procuring dangerous building certificate.

### **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 dated 16-02-2012 together with the Notice issued to the TV 18 Broadcast Ltd. by the Counsel of Shri Ajit Singh Tokas, as also the response thereof are annexed hereto **Annexure-III (Colly)**. The Respondent and his Counsel as well as the Amicus Curiae and Counsel for TV 18 Broadcast Ltd., 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. The transcript of conversation as finalized and agreed to between all parties i.e Mark GF is annexed hereto as **Annexure-IV**.

### **Submissions of the Respondent**

8. Counsel for the Respondent made submissions on 27-02-2012, 28-02-2012 and 12-03-2012. Mr. Makhija, Amicus Curiae, also made his submissions on 09-02-2012 and 16-03-2012, when the matter was fixed for 19<sup>th</sup> March, 2012 and there upon after hearing both the Counsels, the matter was reserved for Orders.
9. At this stage, it may be noticed that the objection taken in the reply regarding complete unedited version in relation to the notice not being received and there being gaps in the transcript

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as also the copy of the Nav Bharat Times report not being supplied no longer subsists and stands withdrawn, in view of the consensus having been arrived on the correctness of the transcript of conversation as finalized and formal proof regarding the same, being dispensed with. Respondent had also been given the opportunity to give his version of the conversation, wherever they felt that the recorded version was missing, not clear or discernible. It is only after taking into account these that a consensus was arrived at. The Nav Bharat Times issue was made available during the course of proceedings. Hence none of the preliminary objections in this regard remain. The objection of the Respondent regarding there being no deal or that the order to issue notice, clubbing all of them together, also does not sustain in view of the fact that now what is being considered are the individual transcript of conversation for the purpose of determination of whether an allegation was made out within the meaning of Sec. 2 (b)(i) of the Act or not.

10. It is in the above background that the submissions of the Ld. Counsel for the Respondent need to be considered.

Ld. Counsel for the Respondent, Mr. Anish Dayal, submits that the reporter/builders had approached the noticee twice before but were rightly denied any audience by the Respondent. In the additional reply filed by the Respondent, it was claimed that having not being successful in getting an audience earlier, they used the reference of another senior resident, who had once held the post of the President of the District Unit of the BJP party. The proposed site being considered by the alleged reporter/builder belonged to former District President, who was one of the co-owners. The Respondent therefore entertained them now. The other reason given for entertaining the reporter/builder was that because the Respondent had to attend a funeral of a deceased villager and

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did not have any other work at that time, he leisurely continued with the conversation . The aspect of reference may be clarified. During the proceedings it was enquired from the Respondent as to whether the reporter/builder had claimed that they had been referred to by the former BJP President, the Respondent answered it in the negative. It was only during their discussion that he learnt that one of the co-owners of the plot was a former District Unit President and did not have any direct reference.

11. Mr. Anish Dayal, submitted that there was no violation of the norms of conduct and integrity by the Respondent. Despite the reporter/ builder repeatedly requesting the Councillor to indicate what would be required so that they could budget it, his categorical response has been "Mujhe na kuch lena hein, na dena hein". This has been reiterated at another place when he tells them, "What budget he could give them when he was not to take or give anything". Thus, the Councillor in clear, categorical terms had spurned and refused the offer of money or consideration. Mr. Dayal submitted that the Councillor being a public figure has to be diplomatic and courteous while dealing with members of the public. He was, therefore, being polite, diplomatic and ambivalent. It was usual for politicians to hold out the assurance of being helpful in future or of helping as much as they can without any commitment.

12. Regarding the long conversation in which he has been inquisitive and collecting information, he submitted that for someone in public life it was necessary to be aware and knowledgeable about the happenings in the society and surrounding and he was only gaining information with regard to various practices adopted. There was no betrayal or violation of any norm or integrity by him. When a public person like the Respondent is accosted by a person who proposes to build in his constituency and wants to seek his help, the Respondent without seeking any gratification for himself or firm

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commitment of any help carried on with the conversation which, inter alia, involved acknowledgement and accepting corruption in the MCD system. Besides the Respondent himself was in property business and he went on with the conversation on account of his interest since he wanted to gather information. **Mr. Dayal submitted that candour ought not be substituted for complicity.** Mr. Dayal also submitted regarding discussion of illegal construction that it was a hard reality that a Councillor on account of political reasons and to keep the constituents on his right side hardly ever questions any unauthorized construction going on and it is only when a complaint is received that it taken up for forwarding to the Commissioner.

13. Mr. Dayal next submitted that assuming that this Forum finds that the Councillor had endlessly carried on with the conversation regarding unauthorized construction and gone into details of evaluating the cost and profit of the contractor and the same at worst would be an act of indiscretion. It cannot be assigned ulterior motives and treated as a breach of integrity and good conduct, especially, in the light of the Respondent clearly declaring that there was no bargaining here in his constituency and he had nothing to take or give and he would not take any guarantee.

14. Mr. Dayal submitted that though the definition of integrity and conduct under Sec. 2 (b) (1) of the Act was fairly wide, but in this case, there was no demand of illegal gratification or consideration. He submitted that this was really a case where a Councillor is entertaining reporters masquerading as builders, who have come with the reference of a former District Unit President and explaining the various modes of construction in the area. Even with regard to the discussion on dangerous building or repair or maintenance he was only telling the builder /reporter of one of the modes adopted for carrying out

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the construction, while enquiring what was the condition of the building. Mr. Dayal also submitted that as a Councillor he had only legislative functions and all executive powers with regard to sanction of building or supervision or demolition of building etc. vested with the Commissioner and his officers.

15. Mr. Dayal submitted that a Municipal Councillor has several compulsions emanating from his duty towards the constituents whereby he ends up entertaining such requests. However, unless they are accompanied by any demand or direct involvement there is no violation of norms of integrity and conduct. These were really in the nature of hearing out a party or giving them various options available. Given the current standards, he said this ought not be regarded as falling within the meaning of "allegation" under Sec. 2 (b) (1) of the Act. This was specially so since there was not yet any Code of Conduct framed to guide the Councillors in performance of their private/public duties and activities involving inter play with the society. Mr. Dayal submitted that at best this could be an act of indiscretion for which an advisory could be issued.

16. Mr. Dayal next submitted that without prejudice, the alleged misconduct attributed to the Respondent was a direct result of inducement given and persistent inducement which drew its colour and flavour from entrapment. Mr. Dayal submitted that four elements under which a defence of entrapment can be made out; firstly, violation of a statute as a result of entrapment, then it is not to be regarded as a violation. The second is entrapment as a result of creative activity designed for a particular result to invite an offence. Thirdly, the entrapment would be only legitimate in the hands of law enforcing agency and those not interested in commercial gains unlike the present broadcaster. He said the most important factor is absence of predisposition to commit an offence being found. The same may be urged in rebuttal to charge for entrapment.

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A conjoint reading of the above in fact, shows that despite persistent efforts on behalf of the reporter/builder to induce the Respondent, he kept on saying "there was no dena or lena".

17.Ld. Counsel also placed reliance on the judgment of Division Bench of the Delhi High Court, 2008 V AD CrI. DHC 93, in "Court on its Own Motion V/s State & Ors". He referred to Paras 384, 385 & 386. He submitted that the position which emerges from the guidelines laid down in the said judgment is that a sting operation even by State authorities would be wrong if it involves committing of an offence so that they can prove that a person committed an offence. For a legitimate trap police or the investigating agencies are to be involved and a trap has to be organized. A legitimate trap should be organized with due permission. If on the other hand, the investigating agencies or media approaches a person, who is only expected or suspected of taking bribe and tempt him or induce him then such a trap would be an illegitimate trap not authorised by law.

18.Mr. Dayal also laid considerable emphasis on the observation of the Supreme Court of India in RAMANUJAM SINGH V/S STAE OF BIHAR, AIR 1956 SC 643, where a distinction between a person who is intentionally going to commit a crime or offence and a person who has no intention to do so but was tempted or induced has been recognized. He placed reliance on the following observations:-

"The very best of men have moments of weaknesses and temptation, and even the worst times when they repent of an evil thought and are given an inner strength to set Satan behind them."

He submits that the above observations should be kept in mind while dealing with what according to him was at best an indiscretion.

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Reference was also made by the Counsel in support of his plea for entrapment on (i) Keith Jacobson Vs. United States, 503US 540 (1992) Supreme Court of the United States of America (ii) Sherman v. United States, 356 U.S. 369 (1958) Supreme Court of the United States of America (iii) Sorrells v United States, 287 US 435 (1932) Supreme Court of the United States of America.

He urged that when there were no guidelines laid down for the conduct of the Councillors, this forum ought to take a lenient view on such indiscretion, especially, when they are accompanied with categorical declarations of not wanting any gratification.

**Evaluation and appreciation of pleas and submissions :-**

19. Regarding the plea of entrapment, as noticed earlier, the entire tenor of the conversation and viewing of the video shows that the Respondent was fully in control of the conversation. It was hardly a situation where he was being induced into saying anything. He himself claims that he rejected all offers of gratification. Hence, he was not being entrapped or induced. Suggestions made by him regarding various methods of unauthorized constructions etc. emanate from him and not from the reporter/builders. Hence, the ingredients for the plea of entrapment are really not satisfied.

Reference was also be made to the decision of the High Court of Delhi in Aniruddha Bahal Vs. State reported on 172 (2010) Delhi Law Times 268 whereby the FIR registered against the sting operators under section 12 and 13 of the Prevention of Corruption Act was quashed. The court held that in the said case FIR was registered after one year with the sting operators being arraigned as prime accused. The court observed that the intention of the sting operator was bona fide and who had acted as whistle blowers by airing of the tapes on

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TV channels and then by deposing truthfully before two Committees of Parliament. Charging of such people with offence under Prevention of Corruption Act would amount to travesty of justice and shall discourage people from performing their duties enjoined upon them by law of the country. The court held that the duties prescribed by the Constitution of India for citizens of this country do permit citizens to act as agent provocateurs to bring out and expose and uproot corruption. It is stated that the Special Leave Petition against the High Court was also dismissed.

Reference is invited to the judgment of the Supreme Court in R.K. ANAND V/S REGISTRAR, DELHI HIGH COURT, 2009 8 SCC 106 i.e the appeal against the judgement of Delhi High Court in Court on its own motion Vs. State and others (supra). The Supreme Court 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 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.”

In the instant case, the above sting operation also served a public cause exposing the nexus between building mafia and the City Fathers, who far from containing and discouraging the menace of unauthorized construction in the metropolis, are breeding and supporting it for corrupt and improper motives.

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20. The submissions made by Respondent were also refuted by the Amicus Curiae, who firstly brought out that there was no specific arrangement or reference under which the reporter/builder were meeting. It was merely a coincidence that the house to which reference was made during the detailed discussion, a former BJP District President happened to be one of the co-owners.

Mr. Makhija submits that in this case the public functionary did not confine himself to what may be referred to as the drawing room conversation in recognizing corruption in the case of unauthorized constructions on the part of the police, engineering department of MCD as also Councillors of adjoining areas. While it is correct that the Councillor has repeated twice or thrice that there was "no give and take and he did not want anything for himself", reading of the whole transcript, he submits leaves a nagging feeling that the Respondent was simply trying to size them up. He submitted that while not asking money for himself, it may not be a correct representation of what actually transpired. It is not unusual for Councillor or officers of the Corporation to maintain the posture of not demanding or taking gratification, the same be collected by their minions or junior staff. However, this remains in the realm of a possibility only in the absence of any evidence.

21. According to Mr. Makhija there was a breach of norms of conduct and integrity evidenced by various utterances of the Respondent. It was not a case where the Councillor was being ambivalent or the conversation was proceeding on account of inquisitiveness. There is merit in the submission of Mr. Makhija. Viewing of the video footage and perusal of the transcript while on one hand brings out the assertions of the Respondent of not wanting or giving or taking any money, yet, there are number of his utterances which militate against his

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public duty as a Corporator. I would start by noticing that in this entire conversation and the transcript, it is the Respondent Councillor who is in control. While though not asking for money for himself, there is an assurance of help to subvert the system. It is not in dispute that the construction was to be carried out without sanction of plans, yet, Councillor says "Meri taraf se koi dikkat nahin hein". Respondent has gone out of his way in suggesting that when they are constructing one floor they should do the finishing and when they construct two floors the third floor can be done. While he cannot help in guaranteeing or assuring, he would try to see what can be done. The advice being tendered "Pahle sauda karlo fir taika nikalega", followed by enquiry, "makan ki halat kaisi hein". At this stage, he suggests a possible mechanism by first getting the building declared as dangerous, while the reporter/builder tells him that this would be a case of re-construction as people were staying there already. Handling of MCD is in the context of getting the building declared as dangerous and carrying out the building activity. Further the enquiry whether the house at present was double storey and whether it was proposed to make it four storey etc., discussion and suggestion of building four floors within 15 mtrs and then clearly telling them that for getting permission for maintenance they will have to pay for that in the context of 100% profits being made by them, are all suggestions of subverting the system. The public duty of the Councillor is to act against unauthorized construction and not to morally support it or give and suggest various means to carry out illegal constructions.

22. There is also no merit in the plea that a Councillor does not have power to grant, approve or clear approval for constructions and has only legislative powers, therefore, has nothing to do with construction. This cannot be an answer to a charge of misconduct, as the legitimate exercise of power is not intended to come within Sec. 2 (b) (i). It is misuse or abuse of power

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which comes under allegations and is actionable. In such cases, a Councillor may not have any executive power to grant any approval for construction. Undoubtedly, the Councillor may be having only legislative functions but being the person who oversees the implementation of civic programmes, enjoys considerable clout. It is a matter of public knowledge of which even judicial notice can be taken.

23. Some of the queries made by the Respondent cannot be brushed away as a result of simply curiosity as to how much money the other Councillor took? This is especially so since he immediately points out that the present locality is far superior to Mandawali. This can only be understood in the context of unauthorized construction requiring more money in this area.
24. In view of the foregoing discussion, a case against the Respondent in view of his utterances as notice above, with regard to the detailed discussion of ways and means of illegal construction, suggesting declaration as a dangerous building, maintenance certificate and the cost evaluation etc. even though apparently not demanding any gratification for himself are indications of a mind set and tendency to subvert the system and in breach of his public duty to contain unauthorized construction. Such conduct falls within the ambit of section 2 (b) (i) of the Act. This is a fit case, where the Respondent deserves to be cautioned and advised so that he is careful in future and can correct himself.
25. Upon evaluation of the transcript of conversation which the Respondent had with the Reporter/Builder as also on consideration of the attendant circumstances, the following position emerges:-
  - (i) There has been no demand for gratification or promise of payment of consideration since the Respondent Councillor consistently maintained that there was no

consideration for himself by saying “ mujhay na kuch lena hai na dena hai”. In fact on repeated entreaties to tell the Budget required for this purpose, he responded by saying that what he could tell when he has no demand.

- (ii) While maintaining the posture, the Respondent Councillor went into a detailed discussion and inquiry into the details of the project of the Reporter Builder including the investment required, returns, profitability and out goings, knowing all the while that the construction was going to be without a sanctioned plan, Respondent Councillor also told them that with the ensuing elections there was bound to be strictness and there would be demands from the Police and MCD. Councillor also discussed the extent of money currently being paid to the engineering staff of MCD, Councillor etc. in adjoining areas, while telling them that Police would have to be settled independently. He also held out the assurance of help. Not only this, the Councillor went to the extent of suggesting obtaining certification as a dangerous building for raising unauthorized construction, as one of the methods.
- (iii) The above conduct though apparently not having any direct financial involvement of the Councillor militates against the public duty of a Councillor, which is to act against any proposed, ongoing or completed unauthorized construction.
- (iv) The Respondent himself on 15.03.2012, stated that after deep introspection he realized that he should not have entered into detailed discussion with reporters, posing as builders who wanted to raise unauthorized construction. While Mr. Tokas maintained that he had rejected all offers of gratification, he says that he regrets his discussion with the reporter/builder and would be careful in future.

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26. In view of the foregoing circumstances, it appears appropriate to the undersigned that notwithstanding the Councillor's regret and the fact that it was a sting operation, there being no real project or exchange or promise of consideration for the Councillor himself, his conduct indicates a disturbing tendency towards breach of public duty, against which the Councillor needs to be cautioned and advised.

It is therefore, recommended to His Excellency, the Lt. Governor to issue an advisory to the Respondent Councillor cautioning him not to entertain any requests for unauthorized constructions or hold out assurance of any help, reminding him of his public duty to stop and act against unauthorized construction.

  
(Justice Manmohan Sarin)  
Lokayukta

Date: 26<sup>th</sup> March, 2012