

SUBSTANCE OF THE CASE UNDER SECTION 12(7) OF THE  
DELHI LOKAYUKTA & UPALOKAYUKTA ACT, 1995

IN

COMPLAINT NO. C-245/LOK/2009, TITLED LOKAYUKTA ON  
ITS OWN MOTION IN THE MATTER OF PUBLICATION OF  
NEWS REPORT, "PENSION KE BADLE PARSHAD VASUL  
RAHEN HAI CHANDA" IN - "JAGRAN CITY" SECTION  
"DAINIK JAGRAN", DATED 22.10.2009.

AND

SHRI NARENDER BINDAL, COUNCILLOR, WARD-41 –  
RESPONDENT, R/O. Y-307, PHASE-I, J.J. COLONY, NANGLOI,  
DELHI-110 041, UNDER SUB SECTION 3 OF SECTION 12 OF  
THE DELHI LOKAYUKTA AND UPLOKAYUKTA ACT, 1995.

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1. This case raises a very important issue concerning the right of the citizens to be informed about the indictment of their elected representatives by statutory Forums and right of the media to inform the public about the same.
2. Suo moto cognizance was taken on a press report alleging that Respondent was collecting contribution for magazine "Dharam Pravaha" for release of pension from widows and old age pensioners in penury. An inquiry observing the principles of natural justice was conducted under Section 7 read with 2 (b) of the Delhi Lokayukta and Uplokayukta Act 1995.
3. A number of witnesses were examined, including beneficiaries of the pension scheme, journalists and officers from MCD.

Respondent examined himself and two other recipients of old age pension.

4. Respondent claimed that the news report was false and fabricated and had been published to tarnish his image. He denied collecting any contribution or issuing any receipt for it or withholding the pensions. Respondent claimed that he only recommended applications of eligible candidates, for grant of pension. Similarly, he denied any role in distribution of pension.
5. The Respondent's stand has been found to be false. Direct evidence established his active role in propagating the magazine and collecting contribution for life-long membership/subscription fee for payment or release of pension of pensioners. Documentary evidence, in terms of receipts issued for having received contribution bearing Respondent's own signatures have been admitted by him. The receipts carried on its reverse the particulars of pensioners to enable realization of pension.
6. Affidavits obtained by Respondent from illiterate persons that contribution for magazine was voluntary have been found to be without any credibility, with the deponents of the affidavits not knowing or understanding the contents of their affidavits.
7. The deposition of CW-6, Sh. Atul Krishan, proved that pension of his parents was withheld for nonpayment of contribution of Rs. 1100/ demanded by Respondent. He then gave two cheques to the Respondent of Rs. 1100/ each and the respondent issued

receipts in his hand, enabling him to collect pensions. Mr. Atul Krishan stopped the payment of the cheques. Mentioning of pension card numbers on the receipt of subscription fee taken to release pension is direct evidence of the extortion method adopted. A clear case is made out against the Respondent for not conducting himself in accordance with the norms of integrity and conduct expected of his class under Section 2b (i), (ii) and (iv) of the Act, being a Public Functionary.

8. This Forum made a Report dated 17-06-2011 to the Competent Authority, i.e. Hon'ble Lt. Governor. By overwhelming oral and documentary evidence, it had been found that the Respondent had violated Section 2(b) (i) (ii) and (iv) of the Act and failed to observe the integrity and conduct expected of a public functionary. The act of the Respondent, by which the pension of old widows and destitutes was only released, when contribution to the magazine was made, is a despicable act, deserving condemnation in the strongest term. It was held to be a fit case for application of doctrine of 'name and shame' so that the factum of indictment of the Respondent be made public to the electorate by publication and display of notices in his constituency. Further, that the Competent authority direct a thorough investigation and enquiry into the complaints filed by Mr. Atul Krishan and Sh. Rajesh Garg. Moreover, it was recommended that the evidence recorded in these proceedings be made available to the investigating agencies for their aid in the inquiry and investigation in respect of commission of

offences under the IPC and Prevention of Corruption Act as may be disclosed. Numerous reforms in the process of applications for grant of old age pension were given such as: Introduction of the system of public notices/ advertisement; Stringent scrutiny for eligibility; Disbursement of pension electronically by ECS instead through Councillors; Periodic physical verification of pensioners as is done for regular service pensioners; Continuity of pensioners to be maintained and new list to be made only on account of vacancies, arising from death, migrations or other disqualifications.

9. The Competent Authority has accepted the numerous suggestions made for improvement in inviting, processing and disposal of the application for pension and also the reforms suggested for the effective disbursement of pension.
10. The Order dated 10-10-2011 of the Competent Authority does not express any disagreement with the findings of the Lokayukta except in respect of two recommendations referred to. The recommendation that the Competent Authority direct a thorough investigation and inquiry into the complaint and that the evidence recorded in these proceedings be made available to the investigating agency, has been disposed of with the observation: **“ Law will take its own course in the matter”**. The recommendation that the conduct of the Respondent must be exposed by resorting to the doctrine the ‘name and shame’, has been disposed of with the observation: **“Penalty of name and shame is not agreed to”**



11. Since this Forum considered that the case so deserved, a Special Report dated 27-04-2012 was made upon the case to the Hon'ble Lt. Governor.
12. The processing of Lokayukta's report has not been in accordance with the provisions of the statute. Upon receipt of the report, the Competent Authority is required to examine the report and to intimate within three months the action taken or proposed to be taken on the basis of the report. The Lokayukta, if satisfied by the action taken or proposed to be taken is required to close the case. In any other case, the Lokayukta, if he thinks the case so deserves, makes a special report to the Lt. Governor. The Lt. Governor is required to cause a copy of the report together with an explanatory memorandum to be laid before the Legislative Assembly.
13. The Competent Authority entertained a representation from the Respondent and also granted a personal hearing to the Respondent. The statute does not mandate seeking of fresh response from the Respondent or for that matter the Government on the report of the Lokayukta.
14. The order passed by the Competent Authority in respect of non acceptance of two recommendations does not disclose the reasons or the thought process of the Competent Authority which has in turn has disabled this Forum from having the benefit of the same.
15. The 'name and shame' approach has been followed by many countries and international institutions as a tool to enhance and

make the anti corruption process transparent. It has to be viewed as achieving two objectives. First, the factum of public knowledge and the embarrassment attached to it act as a deterrent for others from committing similar misdemeanor and misconduct. Secondly, it caters to the legitimate expectation and "right to know" of citizens about the life and conduct of those who hold positions of public trust or significant positions in public life. It helps in ushering in transparency and gives a boost to the anti corruption process. It is an erroneous presumption that the above approach is prohibited in Indian jurisprudence.

A manifestation of 'name and shame' is seen in the procedure followed by the Central Vigilance Commission (C.V.C.), which regularly publishes the list of "Public Officers of departments/organizations under the government against whom sanction for prosecution has been granted or is pending for over four months "on its website for public view. If the approach is applied in cases where public officers are awaiting sanction for prosecution on charges of corruption, then surely those 'indicted' by the Lokayukta, a statutory body especially created for the purpose, after a thorough inquiry should be subjected to the 'name and shame' approach. The Election Commission has directed that candidates have to file affidavits about their criminal background at the time of filing nomination papers. The copies of the affidavit are to be made public through various means. The Ministry of Home also provides a

procedure regarding publicizing the names of those public officers against whom action has been taken on charges of corruption.

16. As regards the implied non-acceptance of the other recommendation, it is to be noted that the proceedings before the Lokayukta are deemed to be judicial proceedings under Section 11 of the Act. Lokayukta is deemed to be a civil court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure.

The evidence in such judicial proceedings is recorded on oath and thus there is no reason why benefit of the evidence so collected, should not be given to the investigating agency. It is not recommended that the investigating agency is to be bound by the evidence so recorded. But it is expedient in the interest of speedy justice that the evidence so recorded be forwarded to appropriate investigation agency in aid of inquiry and investigation.

17. In the Special Report, this forum recommended that His Excellency, the Hon'ble Lieutenant Governor may be pleased to reconsider his order dated 10-10-2011 and accept the recommendations made in Sub-paras (IV) & (V) of Para 38 of the report dated 17-06-2011. In case the Competent Authority is of the view that order dated 10-10-2011 does not warrant any reconsideration, then this Special Report with an explanatory note be caused to be laid before the Legislative Assembly in

terms of Sub-section (6) of Section 12 of the Delhi Lokayukta  
and Upalokayukta Act, 1995.

  
(Justice Manmohan Sarin)  
Lokayukta

Date: 1<sup>st</sup> May, 2012

Bemant