

**BEFORE THE HON'BLE LOKAYUKTA  
JUSTICE MANMOHAN SARIN  
COMPLAINT NO. C-1146/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 Shrimati Jaishree Panwar, Municipal Councillor, Respondent herein.

1. Shri Akshay Makhija Advocate, Amicus Curiae with Ms. Sanjugeeta and Ms Mahima Behl, Advocates.
2. Shri Anish Dayal, Mr. Bipin Singh, Mr Sanjay Tokas , Mr. Ranbir Datta, Mr Sanat Tokas, Mr. Prashant Tokas and Mr Sidharth Vaid , Advocates, for Shrimati Jaishree Panwar, Municipal Councillor, Respondent.
3. Mr. Mrinal Bharti, Advocate, Counsel for IBN 7.

**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 evidence 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.

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### **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 Anish Dayal, Advocate, and filed her 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 Akshay Makhija, Advocate, was so appointed vide Order dated 16<sup>th</sup> January, 2012.

In view of the ensuing municipal elections, Respondent Councillor among others made a fervent plea for expeditious disposal of these inquiry proceedings so that if allegations are

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not proved, he / she stands exonerated without delay, so as not to affect their election prospects.

**Procedure adopted for Inquiry**

4. The Counsel 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, 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 Counsel made any suggestion or request for alteration or modification in the above procedure, which was accepted by all.

#### **Finalization of Transcripts 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

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Respondent Councillor and the Counsel for Respondent and Amicus Curiae and the Advocate for IBN-7 Channel.

6. During the playing of the recording of the original footage, the Respondent, her son and Counsel as also the Counsel for the Channel and the Amicus Curiae gave their inputs to reach a consensus. The Forum also placed on record the cooperation of the Counsel and the efforts put in by the Amicus Curiae in completion of this exercise. The Registry was directed to supply the corrected version, after carrying out the correction as noted by the Presiding officer.

#### **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 Reply-Cum-Written Statement filed by the Respondent on 16-1-2012 is annexed hereto as **Annexure-II**. 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. The Respondent's Counsel only wished to make oral submissions in support of pleas taken in reply cum written statement. The transcript of conversation as finalized and agreed to between all parties and marked 'CV', i.e. corrected version, subject to the above observations is annexed hereto as **Annexure-III**.

#### **SUMMARY OF TRANSCRIPT**

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

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The reporters posing as builders met the Respondent, telling that they were happy to meet her alone. Reporter/ builders said they work in Ghaziabad and wanted to build and work in her constituency. Respondent told them that it was not the right time since an Ex. Engineer had been demolishing buildings and advised them to wait till construction starts on the demolished sites. Reporter/builders also mentioned meeting one Ajay from Ajay Properties, who offered to arrange a meeting with her but they preferred to meet her themselves. Respondent remarked that such people were interested in fleecing money. While they all belonged to Barot, Ghaziabad, Meerut and were all from U.P, where people were good. The Reporter/builders said that they were told that Rs. 8-10 Lacs would be required. Respondent told them to be in touch with her and there was no need to talk to any third person. Reporter builders wanted her to take up the whole responsibility, so that they did not face any problems during construction. Respondent said only time would tell. She would not like to take the responsibility unless she was certain. She would not like that after her taking responsibility, building should get demolished. Respondent clarified that problem of complaints by lawyer had been sorted out. Reporter/ builders were anxious to know the amount that would be required, whether it was 8.5 Lacs. Respondent said it would depend upon the site. Further she cannot specify as she does not do deals. Reporter/builders said they had come to her and wanted to deal only with her and no one else. Her response was positive. Respondent was not inclined to commit amount in view of the present conditions, where constructions were halted. She gave the example of the site of one Devender who was close to her. His site was in stalemate. On the reporter/builders insistence on knowing the amount, she replied, "let the work start" and she would do the needful. She also allayed the fear that the elections would adversely affect construction. Her refrain was to wait and watch, to observe when work could commence on buildings which had been demolished. She could not tell how

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much would be needed for the JE as there were some who were good and other who loot. Once the job starts she would be able to tell the amount required. She also told the builders/reporters of uncertainties like someone complaining and problems of other agencies in organizing construction. On specific query by the reporter/builders that they had been given an estimate of Rs. 8-10 Lacs, she could after adding up the JE and her amounts tell them, she repeated that it could not be estimated at this stage. It could be even more than 8 Lacs and it could be less depending upon the JE and the nature of work. Work could be done even in 4 Lacs. She did not want building to be demolished and then to be rebuilt. Reporter/builders said that they had been told that 5 Lacs would be her share, to which she responded that she would not say it and she would see about it later. Reporter/builders could consider themselves close to her. Her first concern was that their work should be done first and satisfactorily and only then she would see. If work does not start, what was the point of talking about it.

**Response and Submissions of the Respondent.**

9. Respondent Jai Shree Panwar filed a written response through her Counsel on 16-01-2012. The response apart from her version also included the legal submissions. She also filed what was labelled as an additional reply giving the transcript of the unedited video footage of the sting operation, pointing out what were considered 'gaps' and 'discrepancies'. The latter is not of any significance in view of the consensus reached after playing and re-playing of the transcript of the corrected version as prepared by this Forum, rectifying to the extent possible the alleged discrepancies, and the decision of the presiding officer, on which the broadcaster and the Respondent were at variance.

Mr. Anish Dayal, Ld Counsel, has been heard in support of his submissions on 16-01-2012, 08-02-2012 and 28-02-2012, thus giving full opportunity to put forward the Respondent's case. Ld. Counsel criticized the manner in which the broadcast has been

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carried out labeling it as defamatory and disparaging. He submitted it was wholly unfair and incorrect to depict that the Respondent had demanded Rs. 8.00 Lacs. He submits that the skewed nature of the broadcast was further aggravated by the incorrect reporting by the newspapers to sensitize the matter. He submits that clubbing of the cases had caused the Respondent great prejudice as the role and conduct of each Respondent in the recorded conversation was different and distinct and the broadcaster had clubbed together the recording in a manner by which false impression that all the Councillors were corrupt and were party to encouraging unauthorized construction for corrupt motives was telecast. Ld. Counsel submits that perusal of the transcript would show that there was no misconduct or abuse of power or omission or finding of holding assets disproportionate to known sources or any evidence of having pecuniary advantage had surfaced. Thus, he submitted that there was no cause of action for proceeding with the inquiry under Sec. 2(1) (b) of the Act. He urged that admittedly the Respondent neither had the power under the Delhi Municipal Corporation Act to sanction any building plan or permit any construction or repairs. Her functions as a Councillor were legislative. The entire approval of building plans or construction activities depended upon the Building Engineering Department and she had no role to play in it.

While assessing the entire conversation that she had with the reporters, the above factors have to be kept in mind. As for the transcript, he submitted that the conversation begins with the Respondent warning and cautioning the reporter/builders that it was not the opportune time to start any building activity in view of the Executive Engineer carrying out demolitions. The reporters kept on pestering her despite her reluctance, non-committal, ambivalent and indifferent attitude. The Counsel submitted that it has to be remembered that the Councillor is a public representative and has to be polite and diplomatic with her constituents and entertain their queries. The constituents cannot be simply snubbed

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or asked to leave even if they are saying something which may be in violation of law. The unwillingness of the Respondent was evident from her body language and gestures which were visible in the video. He submitted that throughout the conversation, the discussion was speculative, where the Respondent was deferring the matter. No cash or money passed or was accepted for any illegal activity. She kept on repeatedly emphasizing the ongoing demolitions and the role of the Jr. Engineer. Despite repeated exhortations the Respondent did not say or commit any amount. The hard reality is that the Councillor in her or his ward has to entertain queries of constituents who may be interested in unauthorized construction and handle them diplomatically. He said that the mere enquiry of size, discussion of nitty-gritty, constructions in their native village or lamenting of the misdeed of Jr. Engineer who collected money and then allowed premises to be dismantled were intended to defer the reporter/builders. The Forum has to take into account her positive assertions, where in response to question whether Rs. 8.5 Lacs would be sufficient, she says "I have no idea, मैं तो कभी डील करती नहीं ।" She also narrates to them about the site of Devender, which stands close, by telling them that she would not like to do something where there is possibility of demolition of the building and she can only let them know after talking to the Jr. Engineer.

Ld. Counsel concluded that the Respondent had an unblemished record as Mayor of Delhi in 2002-03 and is the daughter of a celebrated freedom fighter and daughter in law of Dalip Singh, M.P. With this glorious family background, any assumption or presumption of dishonesty or corruption on the part of the Respondent would be misplaced.

Ld. Counsel further submitted that the entire conversation had the ingredients of entrapment where the reporter/ builders by the sting operation were leading the Respondent and persisting with their questions on how much amount was to be kept for her, which she parried till the end. He submitted that while applying the norms

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of integrity and conduct and the standards by which the Respondent ought to be judged, the contemporary and prevalent societal norms have to be applied. It should not be forgotten that there was rampant unauthorized construction and Respondent could not be faulted with for talking about or responding to the queries of its constituents regarding execution of unauthorized constructions. He submitted that all the required ingredients of inducement and entrapment were satisfied in this case by the conduct of the reporters. The Respondent has to be judged in accordance with the contemporary criteria of good conduct as prevailing and not on the basis of idealistic norms which may be divorced from reality and practicality.

The Ld. Counsel also prayed for recommendation to be made by this Forum to the Press Council of India and News Broadcasters Association that the telecast would amount to violation of Cable Television Networks Act, 1995 and the rules framed there under. The submission can be conveniently disposed here and now. The proceedings under the Lokayukta & Upalokayukta Act, 1995 are for an inquiry into the conduct of a public functionary and not for evaluating the role of the broadcaster or making recommendations to the Press Council of India or the Broadcasters Association. It is for the Respondent in case he is aggrieved by any act of the broadcaster to take such independent remedial action.

**Evaluation of the Conduct of Respondent as Unravelling by the Transcript and Consideration of the Reply and Pleas in Response.**

10. Let us first of all consider the Respondent's grievance regarding the telecast as prejudicing and defaming her by putting together a programme for various respondents Councillors in respect of whom sting operations were carried out. The grievance of the Respondent that the telecast was defamatory of her or disparaging her is to be considered in the light of the



programme as telecast and the allegations and insinuations in respect of the Respondent. This Forum is concerned not with the above question for which the Respondent has separate remedies, if aggrieved, but with the question of conduct of the Respondent as unravelled by the entire unedited version of her conversation, from which only parts or excerpts would have been taken for the broadcast. For the purposes of this inquiry, it is the entire unedited footage and the transcript thereof which has been considered.

Regarding the plea of entrapment, the entire tenor of the conversation and viewing of the video shows that Respondent was fully in control of the conversation. It was hardly a situation where she was being induced into saying anything. Rather, it is the Respondent's own case that despite persistent goading by the builder/reporters, she parried and deferred all entreaties to name a figure, thereby rejecting, as per the Respondent all offers of gratification. It is thus clear that the Respondent did not appear to be entrapped or induced; rather she was saying what she chose of her freewill. The Respondent merrily went on telling about the difficulties which were being faced on account of demolitions, her having tackled the difficulty created by a lawyer and advising the builder reporters to wait and watch and that as soon as the right JE was available and work could be started, she would let them know. This is definitely not the case of a gullible and entrapped person. It is the case of an astute Councillor planning for the opportune time for unauthorized constructions.

Reference may also be made to the decision of High Court of Delhi in Anirudha Bahal V/s State reported as 172 (2010) DLT 268, wherein an F.I.R. registered against the sting operators under Sec. 12 and 13 of the Prevention of Corruption Act was quashed. The Court held that F.I.R. was registered after one year with sting operators being arraigned as prime accused. Court found the act of the sting operators as bonafide who had



acted as whistleblowers by airing the tapes on TV channels and by depositing truthfully before two Committees of Parliament. Charging such people with offences under the 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. Special Leave Petition against the High Court Order was also dismissed.

Reference is also 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 judgment of Delhi High Court in Court on its own motion Vs. State and others. 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.”

The sting operation in the present case was also for public good to expose the menace of unauthorized construction and the complicity of the City Fathers therein.

11. There is 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

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to come within Section 2(b) (i). It is misuse or abuse of power which comes under the allegation and is actionable. While the Councillor may not be having any executive power to grant or sanction plans for construction, yet, on account of its legislative functions and being the person who oversees the implementation of civic programmes, he/she enjoys considerable clout and influence which transcends all areas. This is a matter of public knowledge of which judicial notice may also be taken. The willing participation of the Respondent also becomes evident from the fact that she was advising caution so that construction is raised at an opportune time and with the involvement of a willing Jr. Engineer so that it is not demolished later on. She was also allaying fears when enquired, that the impending elections would not pose a problem and they could easily construct during the elections as MCD officials would be busy in other works at that time. She also narrated the hindrances that could be expected from various quarters including police and engineering department, when the request for her to take total responsibility was being made by the reporter/builders.

12. Upon Evaluation of the transcript of the conversation which the Respondent has with the Reporter/builders and also on consideration of the the attendant circumstances, the following position emerges:-

- i. The Councillor during the entire conversation has stated that once the already demolished illegal constructions begin, she would give the Reporter/Builders a go ahead to begin their construction also.
- ii. She stated to the Reporter/Builder that during the construction, she would handle any problem which may arise due to lawyer complaint.
- iii. On the quantum of her share in illegal gratification, the Councillor never even once categorically stated

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that she was not going to accept any gratification, but said that she would discuss it when the construction starts, thereby displaying self-confidence that a Councillor could not be duped and she would have control of the situation.

- (iv) It is also noteworthy that in the transcript of conversation the Respondent discusses and laments about the misdeeds of certain JEs who simply collect money and not care for the people. She referred also to site of one Devender close to her where lot of money had been exchanged, but was lying in a state of stalemate after demolition. On the offer of gratification and on her share, she was non-committal because she felt that it would depend on the Jr. Engineer, his attitude and the prevailing situation at that time. She went on to assure that she considered the reporter/builders close to her. The only linkage as it appears being that both had claimed that they hail from Barot, Ghaziabad and U.P. Barring the above, it is evident that hailing from the State of U.P, one of the largest State of the country, cannot bring about the affinity between them, which appears to be present only because they were in *pari-delicto*. Being non-committal about the sum which she desired for herself, proceeds from the desire to be firm about the same which she herself recounts by saying that total required could be more than Rs. 8 Lacs or even Rs.4 Lacs or so. The above utterances by no means be treated as refusal or indifference. Her willingness to support and arrange unauthorized construction, agreeing to speak and contact the concerned JE to have the needful done at the opportune time for amounts to be agreed with an assurance of her reasonableness emanating from so-

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called professed closeness. Further, the willingness to encourage and facilitate unauthorized and illegal construction is writ large on record.

The above act and conduct display failure to act in accordance with the norms of integrity and conduct which ought to be followed by public functionaries. Besides, it is also abuse and misuse of position as it manifests conduct to gain favour for herself in as much as the amount to be Respondent's share was to be decided later. Assurance to help in unauthorized construction tantamounts to discharge of functions being actuated by improper motive for personal interests. It also constitutes lack of faithfulness to her functioning as a Councillor. Thus, there is contravention of Sec. 2(b) (i) to (iv) of the Act.

13. The menace of unauthorized construction has pervaded the metropolis of Delhi. It is not confined to a superficial level or the surface. It has entered the very blood stream of Delhi. There are various reasons for the same, galloping population, rising demand for accommodation, non-availability of the same, which tempts the residents to expand vertically and horizontally in contravention of the permissible limits. Complex laws and unresponsive system have also aggravated the problem. Unabated growth of unauthorized construction also emanates from lack of enforcement and implementation of the municipal laws. The situation gets further aggravated on account of complicity of the municipal staff, city fathers, local politicians and the police. In an attempt to contain the role of public functionaries and Councillors in this menace, this Forum had on complaint from one Councillor initiated action in 61 cases against the legislators and Councillors for unauthorized construction and irregularities in their properties. It was a matter of satisfaction that in majority of these cases,

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the public representatives have either voluntarily demolished or got regularized the violations.

It is well settled that the higher the office the greater the responsibility and higher the expectation from the said person for observance of the norms of integrity and good conduct. In the instant case, the Respondent's Counsel has devoted considerable time in urging the celebrated status of the Respondent, namely, her having been the Mayor of the City during 2002-03, and being the daughter of a freedom fighter and daughter in law of an M.P as also her own standing in the major political party. Undoubtedly, with these credentials the expectation from the Respondent of abiding by the norms of good conduct and integrity has to be much higher. She does not deserve any leniency or allowance in the same on the ground that contemporary standards have fallen and it is commonplace for Councillors to support unauthorized construction. She has to be a role model and her example should be a beacon light for others.

14. In view of the foregoing discussion and the analysis, there is no doubt that the Respondent has failed to observe the norms of good conduct and integrity expected of a person of her class by entertaining, discussing and indicating her willingness to support the reporter/builders who were to carry out unauthorized construction. She agreed to do her best to help them and had only deferred the amount to be paid to her to be decided upon the commencement of the construction and the attitude of the JE at that time.
15. The Ld. Amicus Curiae, Mr. Akshay Makhija, has submitted that the misconduct of the Respondent is grave and calls for a censure in the least. He further submits that the facts emerging in the transcript may even amount to an offence under the Prevention of Corruption Act. He submits that the above evidence having been legal evidence recorded in deemed

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judicial proceedings should be forwarded to the appropriate investigating agency for consideration as to whether it constitutes an offence under the Prevention of Corruption Act and warrants any further action and this Forum is duty bound to do the same. It is ordered accordingly.

16. The conduct of the Respondent Councillor as evidenced from the transcript of conversation marked "CV" clearly amounts to violation of norms of integrity and good conduct, abuse of position to obtain gain for herself, being actuated in discharge of her functions by improper motives and personal interest and lack of faithfulness, in terms of Sec. 2(b) (i), (ii), (iii) & (iv) read with Sec. 7 of the Delhi Lokayukta & Upalokayukta Act, 1995.

It is, therefore, recommended to His Excellency, the Lieutenant Governor of Delhi, that a censure be issued to the Respondent Councillor for her misconduct as found above.

  
(Justice Manmohan Sarin)  
Lokayukta

**Date: 25<sup>th</sup> May, 2012**

Hemant/Seham