

**BEFORE THE HON'BLE LOKAYUKTA
JUSTICE MANMOHAN SARIN
COMPLAINT NO. C-1149/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 Sateshwari Joshi, Municipal Councillor, Respondent herein.

1. Shri Sanjiv Sharma Advocate, Amicus Curiae.
2. Shri S.N Sharma and Mr D.D Joshi, Advocates, for Shrimati Sateshwari Joshi, 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 directed to be 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 S.N. Sharma and Shri D.D. Joshi, Advocates. Counsel for the Respondent sought two weeks to file 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 Sanjiv Sharma, Advocate, was so appointed, vide Order dated 16th January, 2012.

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

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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 fact 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

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- 5. The Ld Counsel for IBN 7 Channel handed over copies of transcript of recording which were given to the Amicus Curiae as well as the Counsel for the Respondent.

6. This Forum 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 was played in the presence of the Respondent Councillor and the Counsel for Respondent and Amicus Curiae and the Advocate for IBN-7 Channel.
7. During the playing of the recording of the raw footage it was noticed that the transcript had gaps at about 5 places. Mr. Bharti stated that the original footage was not transcribed in the transcript as it was irrelevant to the subject matter. This Forum directed him to place on record the complete footage with advance copies of transcripts to the Respondent’s Counsel as well the Amicus Curiae. The Forum advised the Respondent to play the footage and compare with the transcript and point out any discrepancy, failing which, copy supplied by Channel to be taken as correct version.
8. The Ld. Counsel for the Respondent pointed out an error in the eighth line of the transcript at Page-27. The DVD was played and the correction was made to read “Kabhi Do Rupaiya be liya hoga”. The transcript was corrected and for purpose of identification Marked “D-2”.

Completion of Pleadings

9. 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 is annexed hereto as **Annexure-II**. Respondent’s Counsel was given opportunity to file outline of submissions together with list of authorities and photocopies thereof. Ld. Counsel for Respondent submitted numerous testimonials and appreciation letters for her good and religious work in the constituency. He was asked to demonstrate the relevance of the same during arguments. Mark “D-2” is annexed hereto as **Annexure-III**.

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SUMMARY OF TRANSCRIPT

10. It would be appropriate at this stage to summarize the transcript as finalized which recorded the conversation between the Respondent and the reporter/builders. While summarizing, the exchange of courtesies, pleasantries and general small talks, which is not relevant to the inquiry has not been included. The reporter/builders met the Councillor through 'Chotu' (anya), who introduced them to her. He introduced one reporter as Sanjiv Yadav, who was a friend of one Raja known to him and was now their friend also. She enquired the name of the other reporter/builder who introduced himself as Karan Rastogi. This was followed by exchange of courtesies and preliminary talks. She enquired if they stayed in Mandawli and wanted to construct in A-Block. The reporters/builders stated that they had a small project and had come for her blessings as they understand there is a lot of harassment and difficulty and wanted to start in Block-D. Chotu tells the Councillor that the reporter/builders want her to handle the MCD. This is followed by a discussion on what the reporter/builders proposed to build. Reporters say that they would be constructing for re-sale. Further that they have been working in Ghaziabad and Loni and do not have any idea about the conditions here. Councillor tells them to associate Chotu and buy construction material from him. Councillor also praises Chotu and his children and says that though he is from Congress, while she is from BJP, he is like her brother. Councillor also describes her approach as being nice and polite to people. She describes the virtues of getting work done with affection and love. Chotu tells her to handle and control the JE and ensure that he does not pose any threat. There is a discussion on the difficulties faced by different builders, when JE and other officers are not handled. Buildings get sealed and sale deeds and registries get stuck. Good relations should be properly built. Councillor enquires whether work has started on which the reporter informs that

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work is yet to commence. The reporter/builders mention that they were scared as they were told by their close one, who had made construction that he faced lot of difficulties and harassment, after JE someone else would come. Reference is made to one Rajesh. There is then a prolonged discussion regarding the location of the plot and its whereabouts. The reporters say they certainly do not wish to face any obstacles. Councillor tells them not to worry and Chotu was there to take care. Chotu tells them to go ahead and construct and there would be no difficulties. Reporters say they cannot start without her blessings. The Councillor then assures that she would call the JE and talk to him. The reporters desire that she should frankly ask the JE, and in practical terms, tell them the amount to be given or either tell Chotu to do the needful. Reporters say that even though a contractor had told them that he had links, but they preferred to talk directly. Councillor was curious to know which contractor had mentioned to them. A discussion then ensued as to the name of the contractor. Reporters then say that they have met Chotu and her and they should give an idea. The Councillor then suggests that they should build on 100-100 Sq Yd plots. Reporters then mention that they do not mind if instead of 'fifty', 'one' is spent but they do not want to face harassment and there should be nobody to stop the construction work and it should be ensured that nobody would come to the site. Councillor then says that if an RTI is moved then she cannot help it, otherwise it will be possible to handle and they should not worry for the JE or for that matter of Ex. Engineer or anyone from MCD. Reporters wanted to know how much they will have to give and it was better to talk frankly. Reporters insist on being given an idea in broad terms. The Councillor says that she would tell them tomorrow and she herself does not want that they come ten times. The reporters indicate that they would start construction within a week. Councillor states that she would also speak to JE as soon as they start. Chotu then

Reporters further say that they would not bother about Rs. Ten-Twenty Thousand, but do not want to be harassed. The reporters say that the police is also to be handled as PCRs can come. The Councillor comments that police also does not take 100-200, but has started demanding Rs. 20,000/- or so. Chotu informs that in Shakarpur School Block, police and MCD personnel take Rs. 1.00 Lac. Ultimately, the reporter/builders mention Rs. 50,000/-, when the Councillor enquires Rs. 50,000/- for how much and Chotu clarifies "one floor, fifty thousand". Councillor shakes her head in disapproval. Councillor then says that she would call the JE and she would link up JE and introduce Chotu to him. Reporters insist on knowing the estimated amount. Councillor does not indicate the estimated amount. The reporter then proposes that they could consider Rs.75,000/- and then raise it to "one". The Councillor then says 1.5 Lacs. Chotu then expresses that 1.5 was rather high. Chotu tells them to make four floors and for which 4.00 Lacs would be needed. At one stage Chotu says for five storeys it would be 5.00 Lacs. The reporter offers a car. Councillor says she does not want a car. Reporters finally say that they would keep five for her. The Councillor by her gesture indicates 'seven'. Reporters plead for the amount to be reduced, invoking Chotu's interference. Chotu says that they are new builders and pleads for them saying that they do not know anyone else in the area. Councillor then emphasizes on good construction being done and good material being used. The reporters say that they would keep her fully updated on how it was being built. The Councillor then says so much construction was going on but she does not take money and mentions that she is having the same house, which she earlier had. Reporters also later on tell that they would have the money sent. Finally, the reporters tell the Councillor that they would settle for 'five' and plead with her to say 'Yes'. The second reporter then tells her to settle at 'seven'. Later on Chotu tells that she gives him a lot of regards.



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Reporter says that they could sense it since she says she does not want anything for herself and it was also because of him and what can be better than this.

REPLY AND SUBMISSION OF RESPONDENT

11. Respondent Councillor averred that there is no violation of any of the provision of Delhi Lokayukta and Upalokayukta Act, 1995 and there is no act committed by her, which warranted an inquiry or issuance of notice. It should therefore be withdrawn. She pleads that the allegations would be shown to be false and malafide in the inquiry. The transcript does not reveal any misconduct on her part. The Respondent Councillor claims that she has been discharging her duties with dedication and her career is an open book. Her work has been appreciated by the members of her constituency. She herself has raised the issue of unauthorized constructions in the assembly and her conduct in the last five years as a Councillor has been blemish less and her integrity above board.
12. Respondent contends that the sting operation carried out was violative of guidelines passed by the High Court of Delhi in the case titled as "Court on its own motion Vs. State, WP (CrI.) No. 1175/2007. She as a local Councillor had a duty to ensure that the residents and businessmen in the constituency do not suffer from official red-tapism. The residents in the above context were facing problems by official red-tapism in spite of their having necessary sanctions.
13. Respondent claims that without being any demand from her side the reporter/builders started speaking of giving money. There is no demand directly or indirectly. She had not received any gain or assured any clearance without sanctions. She claims to have stated that if they want to build a project, the local officials, for any reason, will not disturb them if they have sanction. It is also significant that after recording these tapes in



different context, they were not telecast immediately. The condition of their preservation or security is not known so as to avoid any tampering. The broadcaster who claims to be pursuing investigative journalism ought to know the legal requirement of safety of the said data. It is contended that this was a case of blackmailing intended to somehow increase the Television Rating Points (TRPs). They did not record the statement of any of the victim of her alleged behaviour. It was compartmentalized to tarnish her image. The respondent contends that on account of elections that were due in the near future, this act has been done by the reporters in association with persons inimical to her or those wanting to represent the constituency, all conspired together and manipulated the sting operation violating ethical norms. She denied the allegations of failing to observe the norms of integrity or conduct. She has never been complained against. Her work has been appreciated resulting in appreciation letters. She reiterates her commitment to serve people. Nothing against her has been found in the last five years, wherein she has maintained high standards of integrity. She denies misuse or abuse of power in terms of Section 2 (b) (ii) claiming to have discharged her duty with sincerity. Similarly, it is urged that sub clause (iii) of Section-2 (b) was not applicable to her actions. She was committed to provide the best of service to the people. She denies any improper or corrupt motive. Her conversation was manipulated by interested parties. Certainly it is not the case she has been in possession of pecuniary resources or property disproportionate to the known sources of income. Respondent claims to be belonging to a party having high standards and offered herself to the enquiry by the party President. She prayed that her reply be treated as interim reply. This has also been supported by her affidavit.

EVALUATION OF THE CONDUCT OF THE RESPONDENT AS REVEALED BY THE TRANSCRIPT

**AND CONSIDERATION OF THE REPLY AND PLEAS
BY COUNSEL ON HER BEHALF.**

14. The pleas of the tapes having been tampered and not reporting the conversation as actually took place is really not available to the Respondent. This is in view of the recording having been played before the respondent as also the broadcaster and the correctness of the transcript being ascertained with opportunity being given to both the parties to point out error or explaining any gaps. The transcripts of the tapes were finalized by the Office after noting down the comments of the broadcaster as well as the Respondent and her Counsel and in fact the corrections as pointed out by the Respondent were duly incorporated which were found to be correct and recorded in the Order dated 5th March, 2012. The respondent's counsel has also given his interpretation to certain sentences spoken by the respondent and meaning thereof, which shall be duly considered.

Let us notice few of the preliminary submissions of the Respondent's Counsel Sh. S. N. Sharma. He refers to the credentials and testimonials filed by him which show the conduct and good work of the Respondent. He submitted that this was not the case where the Respondent was found to be having assets disproportionate to the known sources of income. She lives in a small house of 50 Sq Yds within her means and lives a simple life and was not even keeping a domestic help. It may be noted that this is not a case where it is alleged that illegal gratification was actually paid and resultantly the Respondent was possessed of income and assets disproportionate to known sources. This is a case where the Respondent has been found to be discussing illegal gratification and assuring that she would handle the JE and other municipal staff and no one would come at the site. The agreement is to do the various acts against monies to be paid. Hence, in view of

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these specific allegations the plea of her living in 50 Sq. Yds or having simple life without domestic help is of no consequence.

15. Ld. Counsel for the Respondent had initially addressed arguments and pressed the plea of entrapment. His attention was drawn to the judgment of the Supreme Court in R. K. Anand Vs. Registrar, Delhi High Court and the observation in Paras 204 and 305, where-after the same was not pressed.
16. Ld. Counsel submits that repeated attempts were made by the reporter to put words into the mouth of the respondent, while the Respondent kept on showing her disinclination to accept anything. He refers to the words appearing on 20.22.39 of recording, wherein earlier while Chotu had mentioned fifty thousand for one floor, she was seen as giving a negative response by movement of her head. Reporters there upon said that they were not going to bargain and she should tell. Response from the councillor was that "she would speak to the JE. I have said I do not want, I will call JE on the phone and introduce him to Chotu". The reporter then insisted on estimate. Councillor stated "please do not asked me for an estimate" as she did not like to argue again and again. Reporters again tell her that they will do as she wants. Councillor again states that her respect would be kept when Chotu was making the house.
17. Mr. Sharma also laid emphasis on the transcript at 20.25.40, to show that she requested that good quality material be used and that the material would be supplied by Chottu. She further made statement on oath that in her area she had not taken even Rs. 2/- from anybody. She continues to be in the same economic condition. Mr. Sharma reiterates with vehemence that in the concluding portion of the transcript also the final words of the Respondent are a categorical statement that "She does not want anything", and that this should be given due

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weight. There was an admission on the part of the reporter who carried out the sting operation when in the context of the Councillor who had said “she does not want anything” when Chottu was involved.

18. Reading of the complete transcript clearly reveals that Respondent was all through at ease, especially with the conversation digressing on her conduct and polite behavior and trying to find out the location of the site. Her inquisitiveness and interest is writ large. In this background, the plea of the Respondent that she had not given any clearance to the reporter/builder for construction without sanction, but had only stated if they had acquired sanction, the local authority would not disturb them, inspires no confidence. Nowhere in the entire conversation, the Councillor mentions the reporter/builder getting sanction, rather throughout the conversation the reporter/builders are frankly and straightway offering illegal gratification. Far from rebuking them the Councillor is at ease, she herself throughout the conversation gives assurances to them that she would speak to the JE and also to the Ex. Engineer.
19. The Councillor repeatedly in the conversations stated that once the construction begins she would call JE and handle him and also tell the reporter/builders the amount required. Further she has also stated that she would ensure that JE will not visit their site. Regarding the plea that the Sting Operation violated all the guidelines issued by the High Court in the Case titled as “Court on its own motion Vs. State”, WP (CrI.) No. 1175/2007, in the present case, as noted, the Councillor is at ease and is herself offering assurances. Reference is also invited to the judgment of the Supreme Court in R. K. Anand Vs. 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.

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State and Ors". The Supreme Court 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 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.

20. Councillor in her reply has repeatedly stated that she was not desirous of any amount for herself on which the Ld. Counsel Sh. S. N. Sharma laid considerable emphasis. Further the statement of the Reporter that she does not want anything to herself and they could not have a better deal. In this context as rightly pointed out by Amicus Curiae that corruption and illegal gratification can take many forms. Person may not himself or herself accept money but ask for another person. Section 7 of the Prevention of Corruption Act provides that seeking gratification for someone else also amounts to "corruption". In this case, there is yet another significant aspect. While the respondent professing that she did not demand anything for herself, she does not refuse to offer of money. The Respondent claims not to have demanded money for herself, yet, at the same time, as pointed out by the Amicus Curiae, when the reporter/builder wanted to finalize at Rs.5 Lacs, she moved her head in negative gesture to indicate it was insufficient and indicated by hand that Rs. 7 Lacs were required. The above are very significant and telling gestures. There is also considerable merit in the Amicus Curiae's submissions that last Para of the transcript need not affect the case against Respondent. It

108

appears to be a situation where the reporters seem to be boosting Chhotu that because of him, she is not desirous of anything. This reemphasizes that she does not want anything because of him. In the above case at least it clearly shows that the Councillor was pitching for favour for Chhotu, whom she treats as her brother. Further, Amicus Curiae submits that expression of reporter's opinion is of no consequence when viewed against the statement of Chhotu expressing in favour of Rs.5 Lacs as acceptable sum against Rs. 7 Lacs indicated by Respondent.

From the evaluation of transcript and foregoing discussions which the respondent had with the reporter/builder and also on the consideration of the attendant circumstances, the following position emerges:-

- (i) The Councillor during the entire conversation has stated that the Reporter/builders should start their construction and they would not face any trouble from the MCD and that she would personally speak to the JE.
- (ii) The Councillor has clearly stated that she would not want anything because Chhotu is involved. But this is contradictory as she rejects the amount of Rs.5 Lakhs and gestures it to be increased to Rs. 7 lakhs.
- (iii) The Councillor completely seems at ease in the conversation and discusses with the reporter/builder details of the plot, she herself gives the reporter/builder an assurance that she would speak to the JE.
- (iv) Considering the entire conduct of the Councillor as evidenced from the admitted transcript marked D-2 amounts to violation of norms of integrity and conduct, abuse of her position as Councillor to obtain gain for herself or Chhotu and being actuated by improper personal interest and faithlessness in terms of Section 2 (b) (i) r/w Sec. 7 Delhi Lokayukta and Upalokayukta Act, 1995.

21. The Ld. Amicus Curiae, Mr. Sanjiv Sharma, has submitted that the misconduct of the Respondent is grave and calls for a censure in the least. There is merit in the said submission. 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 being legal evidence recorded in deemed 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. The transcripts and other evidence as recorded before the Forum be forwarded to Commissioner of Police for consideration and evaluation.

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: 29th June, 2012