

BEFORE THE HON'BLE LOKAYUKTA**Justice Manmohan Sarin****Complaint No. C-1116/Lok/2011**

Re- In the matter of a report titled 'Sting Operation Ke Baad Parshado Me Macha Hadkamp', appearing in 'Nav Bharat Times' dated 7.12.2011

And

In the matter of inquiry u/s 7 read with 2(b) of the Delhi Lokayukta and Upalokayukta Act, 1995 in respect of the conduct of Ms. Anita Koli, Municipal Councillor.

Present:-

1. Shri Sagar Dawar, Advocate, for Ms. Anita Koli, Respondent Councillor.
2. Shri Sanjeev Mahajan, Amicus Curiae.
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. 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 Sanjeev Mahajan, Advocate, was so appointed vide Order dated 16th January, 2012. The Respondent entered appearance through Shri Sagar Dawar, Advocate, and filed her reply-cum-written statement on 9-2-2012.

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

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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 raw footage, the Respondent, her 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 9-2-2012 is annexed hereto as **Annexure-II**. The Respondent and her 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 and her husband. Initially they had general discussion not touching the core issue. One of the reporters tells the Respondent that he had talked to her earlier, to which the Respondent questions whether she had talk with him. Then the second reporter says that talks were held with him and his name is Sanjeev. Then the respondent introduced her husband to the reporters. The reporters further said that they have worked in Ghaziabad and Noida as well as in Malviya Nagar and further expressed their intention to start work in the constituency of the Respondent. They said that the area where they would work has been handed over to MCD, to which the Respondent replied that it is still under process. The reporters further said that in a way the constructions would be illegal. Then they referred to Sector-23 and 24 in the constituency of the Respondent being handed over to the MCD. They further said that they had worked in Mandawli area and had faced lot of difficulties, meaning thereby, the JE had given lot of trouble who was asking for gratification at each stage of laying of lintel for each floor. They further said that then they met area Councillor who helped them.

Thereafter the reporters, the Respondent and her husband talked about starting of construction. The Respondent's husband asked about the location and the reporters told that they have Plot No. 176 and 177 in Sector-24. The reporters then said that there would be some illegal construction and they would need help from the Respondent to which the Respondent responded smilingly in affirmative. The reporters then talk about their budget and want to ascertain the share of JE, to which the husband of the Respondent responded by saying that they would call the JE. Then the reporters and the husband of the Respondent had talked about the construction and the encroachment of the space by increasing the length of lintel by couple of feet. The reporters then asked

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straight away what will be the tentative system and accordingly they would start the project. The husband of the Respondent said that they will tell later and said he will call the JE to talk. The husband of the Respondent then asks about the budget of the reporters and also said that if government machinery and they do not work together then problem starts, and he assures the reporters that nobody would disturb them. As to the query regarding the budget the reporters said that they have a budget of Rs. 10.0 Lacs and asked them to take all the responsibility and further asked them to take amount in lump sum. The husband of the Respondent assures that he will take care of everything but asked the reporters to take care of the police. The reporters then said that the budget should not exceed Rs. 10.00 Lacs. The husband of the Respondent gave assurance that they will talk to JE and give him his due.

Rest of the conversation between the reporters, the Respondent and her husband is general but is hovering around the main topic of construction for which the reporters need the help of the Respondent being the area Councillor.

Response and Submissions of the Respondent.

9. Respondent had filed reply in response to the notice, under Sec.7 r/w Sec. 2(b) of the Act, which was served upon the Respondent along with the Order dated 7-12-2011, the transcript, the statement and the DVDs.

Ld. Counsel for the Respondent Shri Sagar Dawar at the very outset submitted that the sting operation was motivated with the intent to harass the Respondent. It was submitted further that the sting operation shows the Respondent only for a few minutes and there is no talk between the reporters and the Respondent regarding any illegal gratification. It is further submitted that in the audible conversation there is only general talk between the Respondent and the alleged reporters. The

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transcript is conspicuous by absence of any direct negotiation between Respondent and the reporter/builders.

It is submitted that the whole sting operation has been recorded illegally by the channel. The Ld. Counsel for the Respondent while making submissions had stated that the alleged reporters had a talk with the husband of the Respondent, who himself is a builder and financial adviser, a day before the said visit of the reporters for some building work. In support of this submission, the visiting card and the bills etc. showing supply of building material were filed. The visiting card of Jagdamba Associates bear name of Yogesh Kumar, husband of Respondent. Shri Yogesh Kumar also filed his affidavit stating therein that he is a builder and financial adviser and doing his business in the name and style of Jagdamba Associates. As regards the conversation it was submitted that the transcript was incomplete and incomprehensible due to significant gaps and breaks therein. Thus, an element of doubt has crept in as to the authenticity of the transcript. It was further submitted that in the alleged sting operation, the alleged reporters were talking for construction on a Plot No.22 in Sector-24 which has not been handed over by the DDA to MCD.

In nutshell, it was submitted that the sting operation was illegal, motivated and fake and it has not been proved as per law. Secondly, the transcript was incomplete and incomprehensible. Thirdly, the Respondent was not involved in any conversation with the alleged reporters with regard to raising of any illegal construction and of taking illegal gratification. Fourthly, the area where the construction was proposed by the alleged reporters was not falling in the constituency of the Respondent, and lastly, the husband of the Respondent himself is a builder and financial adviser, who had a talk with the alleged reporters a day before for some building work which explains their presence with the husband of the

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Respondent and the Respondent on the date of the sting operation.

To the reply-cum-written statement of the respondent, objections were filed by the broadcaster IBN-7 emphasizing that transmission of news by the channel is totally on objective basis and no personal bias is either involved or reflected. It is also stated that considering the nature of act, the undercover coverage was the necessity. That the telecasts in question have been made in good faith and for bonafide public good. It was denied that report was selectively edited or doctored.

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

10. Ld. Counsel for the Respondent has submitted that the sting operation was illegal, fake and motivated. In support of his argument, where the Ld Counsel for the Respondent questions the legality of the sting operation, reliance was placed on the judgment in "The Court on its Own Motion V/s State", 2008 (1) JCC 193. However, this judgment pertains to guidelines for the TV channels who propose to telecast a sting operation. As to the legality of the sting operation, reference may 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 deposing 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

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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, who instead of taking steps to curb this menace, mix up with builders and assure their support for raising unauthorized construction. Any act which expose this unholy nexus of the representative of people and unscrupulous builders, is in the larger public interest. So the sting operation serves “an important public cause”.

The submission of the Counsel for the Respondent that the Respondent is a builder and financial adviser and the alleged reporters had contacted him a day prior to the day of sting operation, which explains the presence of the reporters

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with the Respondent and her husband. The said plea does not inspire confidence and lacks conviction. The entire conversation between the reporter/builders, Respondent and her husband does not support the theory of construction being carried out by the Respondent's husband. The husband of the Respondent may be a builder or a financial advisor. He may pursue his independent business or profession of a builder and financier, irrespective of the fact that his wife is a Municipal Councillor. However, the matter of concern in the present case is that the reporters and the Respondent and her husband are discussing raising of construction, which is admittedly illegal and also involves encroachment. The Respondent being a Municipal Councillor has no business to discuss modalities of unauthorized and illegal construction work with the builders. The law has not conferred any power on the Municipal Councillor to sanction any construction in his /her constituency nor it confers any power to sponsor such a construction. The Councillor despite not having any power to grant or sponsor any sanction plan for construction but being the Councillor of the area, he or she has to oversee the implementation of number of civic programmes and apart from that being representative of the residents also enjoys considerable clout and influence, which transcends all areas. The summary of transcript (Mark "E-1") would show that although the husband of the Respondent was doing most of the talking but the Respondent nowhere showed any indifference to the said conversation. The Respondent being the representative of the people of her constituency has the responsibility to see that the civic programmes are implemented as per needs and demands of the people of the constituency. The Respondent on the other hand is becoming a party to the conversation, where the issue of illegal gratification for raising illegal construction is being discussed. The tone and tenor of the conversation clearly brings out that the reporters were suggesting raising of illegal construction for



which they received tacit consent and approval by the Respondent for financial gains. The husband of the Respondent assured the reporters that they will not be troubled by anybody and he would talk to the JE about latter's dues but he washes his hands off from the responsibility to take care of the police. When the respondent's husband asked about the budget of the reporters, the response to query clearly indicates as to what "budget" he was talking about.

The reproduction of the conversation on this aspect leaves nothing to imagination. The conversation between reporters and the husband of Respondent goes as under:-

"Anita Koli's husband	-	Aap ka kya budget hai, mujhe bata do zara.
Reporter	-	Hum 10 Lakh mein hai, Saare logo ko aap sara jimmedari le lijiye. Usme JE ka bhi hai, aapka apna hai aur bhi jo aapka ho, usme hamein haan".

Later on Respondent's husband also says:-

"Police walon ko aap dekh lijiye – ho jayega aapka kaam - --JE se hum baat kar lenge---- JE ko denge jo denge usme se. Jo JE ka banta hai vo JE ko milega".

The Ld. Counsel for the Respondent had submitted that there is no direct negotiation between the Respondent and the reporters and there is no negotiation or demand by Respondent. This submission, however, will not stand in view of the conversation reflecting in the transcript (Mark E-1). The entire conversation concerns the raising of construction apart from general issues. The husband of the Respondent is asking about the budget and assures the reporters that he will take care of the JE. The Respondent herself has nowhere rebuked the reporters.

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She being a Councillor cannot be oblivious of the menace of the illegal construction and the Respondent's response to a request by the reporters to use her position to help in raising the construction which is illegal, leaves no room for doubt that she offered her good offices to help raising construction which was to be illegal. Thus, this is a misconduct, misuse and abuse of her power being a Councillor. This act of the Respondent is, thus, not in accordance with the norms of integrity and conduct which ought to be followed by the 'public functionary'. 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.

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

12. 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.
13. The Ld. Amicus Curiae, Mr. Sanjeev Mahajan, 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 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 legally 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.
14. The conduct of the Respondent Councillor as evidenced from the transcript of conversation marked "E-1" 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)

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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: 29th June, 2012

Hemant