

**Substance of cases, under Sub-section 7 of Section 12 of the Delhi Lokayukta and Upalokayukta Act, 1995, in the matter of Sh. Ajit Singh Tokas and Sh. Ravi Prakash Sharma, Ex. Councillors.**

1. In two Inquiry reports, submitted in the sting operation cases of Ex-Municipal Councillors Sh. Ajit Singh Tokas and Sh. Ravi Prakash Sharma, Delhi Lokayukta held the allegations to be established and recommended a "Caution" to be administered to the former and a "Reprimand" to the latter.

2. In case of Ajit Singh Tokas, Lokayukta found that though there was no demand for illegal gratification by or promise of payment of consideration to the Councillor, he nevertheless went into a detailed discussion and evaluation of the proposed project and its profitability, knowing that the construction was unauthorized and without a sanctioned plan. He discussed, inter alia, strategy of getting a building declared dangerous, having it demolished and raising new desired construction, bribes being asked by Police etc. It was, therefore, recommended to His Excellency, the Lt. Governor, that an "Advisory" be issued, cautioning him not to entertain any request for unauthorized construction or to hold out any assurance of help, reminding him of his public duty to act against unauthorized construction.

3. In the case of Ravi Prakash Sharma, the Councillor was found to have offered to act as a facilitator to carry out unauthorized construction, promising to handle the J.E. of the MCD. The Councillor had assured a reasonable deal to the builders/reporters for consideration to be agreed and paid later, knowing fully well that constructing a building without sanctioned plan was in contravention of the provisions of Delhi Municipal Corporation Act.

4. Detailed inquiries were held with full opportunity to the parties to lead evidence and have their say. Inquiry reports give reasons for the findings given and recommendations made. The inquiry reports were sent to the Competent Authority for processing and further action. Lokayukta maintains that the Competent Authority, under the statute, is only required to take a decision "on the basis of the report"

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(emphasis supplied) and nothing more, i.e. without any further inquiry or hearing by the Competent Authority, under Sub Sec.2 of Sec. 12 of the Delhi Lokayukta & Upalokayukta Act, 1995.

5. However, the Competent Authority has been issuing notices to the public functionaries, granting them hearing and calling for their comments or the concerned Government Department and then taking a decision on the recommendations made. The above difference in perspectives and interpretation of the provisions of the Act regarding processing of reports and recommendations would ultimately require judicial resolution and determination.

6. Both the recommendations of the Lokayukta were sent to the Competent Authority, in this case, the Hon'ble Lt. Governor, for consideration. The Hon'ble Lt. Governor did not express any disagreement with the findings or conclusions reached in both the above cases.

7. However, as regards the Advisory to be issued in the case of Ajit Singh Tokas, the Competent Authority observed:-

*"Issuing of such Advisory at present would be inconsequential, since the defaulting Public official is no longer a Municipal Councillor."*

Similarly, in the case of Ravi Prakash Sharma, the Competent Authority observed:-

*"Issuing of such reprimand at present would be inconsequential since the respondent is no longer a Municipal Councillor"*

8. In both the above cases, the Competent Authority has not acted on the recommendations only because the Public Functionaries have ceased to hold office. This raises a seminal issue of importance, namely, "Is a public functionary not to be proceeded against despite being found guilty of misconduct because he has ceased to hold Office?". The decision of the Hon'ble Lt. Governor in the above cases appears to be answering the above issue in affirmative.

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9. Administering caution, censure or reprimand by the Ombudsman, to an authority or public functionary who has committed misconduct or whose actions have been found to be improper or erroneous, is internationally recognized. Caution, censure or reprimand and its issuance and consequent publicity serves a useful public purpose of building up core moral values and norms to be followed. It also dissuades others similarly placed in public life from committing misconduct.

10. Besides, non-acceptance of recommendations in such cases, simply on the ground that the public functionary guilty of misconduct has ceased to hold office, may give a misleading impression regarding the will and commitment to bring in good governance and probity to eradicate corruption.

It also helps in ushering in a self-cleansing process and motivates public functionaries to exercise self-restraint before indulging in activities which defile the integrity of their office. The efficacy of censure, reprimand or caution does not recede by the incumbent ceasing to be in office. It serves a twin purpose: Firstly, it sends a message that this conduct would not be tolerated or countenanced in future. Secondly, the constituents are made aware of the conduct and activities of their representatives, thereby fulfilling their legitimate aspiration of the "right to know" about the actions and conduct of those holding positions of public trust. Ceasing to be a Councillor does not imply renunciation of public or political life or that the person is now of no consequence. The political and public life, with its vicissitudes, has often shown such persons to have aspirations for even higher positions.

11. The non-administering of caution/censure on the sole ground of the person ceasing to hold office also militates against statutory provision, namely, section 8(b) of the Act which provides that an inquiry for misconduct can be initiated up to 5 years from the date of the alleged misconduct. As a fortiori, when action for misconduct can

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be inquired up to 5 years from the date of misconduct, the related inquiry and punishment may even come much later. In the instant case, inquiries were completed in 3-4 months and the misconduct is fresh in public memory.

12. The sting operations served a public purpose in exposing the nexus between Building mafia, City fathers, Municipal officials and Police in the menace of unauthorized construction. Acceptance of the recommendations would contribute to the above exposure and containing the menace of unauthorized construction.

13. Moreover, Ravi Prakash Sharma had been earlier proceeded against for misconduct for sealing and locking, denying ingress and egress to the office of the Municipal Deputy Commissioner in case No. C-304/Lok/2010. In that case, Councillor had expressed his regret for his actions and given assurance for future conduct. The present case has shown that the earlier regret had not had the desired effect. Consequently, it would not be in public interest if he is let off without even a "reprimand".

14. The acceptance of recommendations would only contribute to good governance, probity and ushering in corruption free public life.

15. The Lokayukta has submitted the Special Reports under section 12(6) of the Act, praying to the Hon'ble Lt. Governor to reconsider his decision of not acting on the recommendations, failing which the Special Reports with explanatory memorandum have been requested to be laid before the Legislative Assembly, as per the statute.

Dated: 19<sup>th</sup> July, 2012

  
(Justice Manmohan Sarin)  
Lokayukta