

**Substance of case under Sub Section 7 of Section 12 of the Delhi Lokayukta & Upalokayukta Act, 1995 (herein after referred to as the Act) in the matter of inquiry conducted u/s 7 read with Section 2 (b) of the Act, in respect of the conduct of Smt. Jaishree Panwar, Ex-Municipal Councillor and former Mayor of Delhi wherein a Special Report has been submitted u/s Sub Section 3 of Section 12 of the Act to His Excellency, the Lt Governor, Delhi .**

(1) An inquiry was conducted u/s 7 read with Section 2 (b) of the Act into the conduct of Smt. Jaishree Panwar, Ex-Municipal Councillor and former Mayor of Delhi. She was caught in a Sting Operation, with two Reporters who approached her posing as Builders for help in carrying out unauthorized construction.

(2) Full opportunity was given to the parties to have their say. Recordings done during the Sting Operations were played and objections thereto from the Respondent, were heard and decided till an agreed Transcript of the entire conversation emerged.

(3) Lokayukta found Respondent willingly agreed with Reporter/Builders to act as a facilitator with the Junior Engineer, MCD for carrying out unauthorized construction upon promised illegal gratification. Lokayukta taking note of the menace of the unauthorized construction in the Metropolis of Delhi, with the complicity of municipal staff and involvement of city fathers in it held, the conduct of the Councillor to be in breach of her public duty to discourage and stop unauthorized construction, rather than to encourage it.

(4) Considering the extracts of the admitted conversation of the Respondent Councillor with the Reporter/Builders, the following position clearly emerged :-

- (i) The proposed construction project of the Reporter/Builders was for unauthorized construction without a sanctioned plan.
- (ii) Respondent Councillor expressed the difficulties in carrying out unauthorized construction on account of the posting of a strict Executive Engineer, who was not allowing any

unauthorized constructions in the area and many demolitions had taken place.

- (iii) Rebuilding on demolished unauthorized construction had not commenced.
- (iv) Respondent Councillor advises Reporter/Builders to wait till work would start on the demolished sites before taking up their new project for unauthorized construction.
- (v) Reporter/Builders want the Councillor to handle everything JE, all municipal staff, police etc. and want to know the amount required therefor. Ajay Properties had quoted an amount of Rs. 8.00 to 10.00 lacs and Reporter/Builders wanted to know if that much would be required. The reporters then say that they have been told that Rs. 5.00 Lacs would be her share i.e of Respondent, to which she answers in a manner so as to suggest that she does not seek much for herself and she would see about it.

Further, that the builders were from her own native place Baraut, UP a bonding and therefore, a kind of reassurance flows regarding reasonableness of amount. Here, she emphasizes that let the work start and her main objective is that unless the work starts and goes on, what was the point of talking?

- (vi) Respondent Councillor only wants them to construct when she is sure there would be no demolition later. Clear confirmation of construction being unauthorized.
  - (vii) Respondent Councillor is more than eager and willing to facilitate the unauthorized construction, through a willing JE, due to the self professed closeness on account of both belonging to Baraut i.e from U.P.
- (5) In the entire transcript, Respondent does not decline the offer of money, but does not want to commit to any amount and leaves it to be settled. This is because of not knowing amount required for JE. It indicates her confidence that once the construction begins the

Reporter/Builders cannot defy her. Hence there was no need for a prior commitment. Being in control over the construction in the area through the J.E. Her clout is indicated by her saying that there was no need to talk to anyone else and they should talk only to her and their interests would be well protected.

The above position is clearly borne out from the extracts of conversation being produced for reference.

(6) The transcript of the conversation needs to be read as a whole. The Competent Authority appears to have proceeded on the promise that query of amount required was in the context of cost of starting construction on demolished sites rather than the amount of illegal gratification required to be paid to the JE, municipal staff, police and the share of the Respondent Councillor, for unauthorized construction.

7. The Competent Authority has observed "In response to a query as to what would be the total amount required for starting construction on the demolished sites, the Respondent Councillor said that it would depend upon the site and whether the area Junior Engineer would permit such work being started. To another searching query as to what would be her share in the total demand, she said that 'let the work start first. If the work starts well and good. What is the point in talking if the work does not start.'"

8. The Hon'ble Lt. Governor further observed that the "Respondent Councillor did not ask for any personal gratification for any such work. She had politely, courteously and diplomatically assured the reporters posing as builders to facilitate their work with the area Junior Engineer." However, what appears to be over looked is that the assurance being given by the Respondent was in respect of unauthorized construction being facilitated through JE.

(9) It is clear from the transcript that the Respondent Councillor repeatedly says that she would not like a situation where after building the construction gets demolished. Once she takes a responsibility, she would feel very bad if it is later demolished. She also explains that she has got rid of the lawyer problem i.e the difficulties being caused where lawyer was lodging complaints against unauthorized

construction and making it difficult to construct. She also recognizes that at times some of JEs do 'loot'. Hence, reference is clearly to unauthorized construction.

10. The reference to commencement of construction on demolished sites in the conversation in the context of right timing for starting unauthorized construction project and not the amount required. Moreover, once the Hon'ble Lt. Governor reaches the conclusion that she politely, courteously and diplomatically assured the reporters posing as builders to facilitate their work with the area Junior Engineer, undoubtedly the work in question is carrying out of unauthorized construction. The courteous and diplomat assurances or facilitating unauthorized construction itself amounts to the breach of norms of conduct and integrity expected of a Public Functionary and lack of faithfulness. .

(11) (i) To put the matter beyond any pale of doubt some of the extracts in vernacular, are being reproduced :-

*Reporter- Hum log site shuru karna chah rahe the. Aapko kya lagta hein, ki shuru ki jaayen, ya nahin?*

*Councillor- Dekho abhi to mein bilkul mana karoongi, kyo ki ek toh Ex. Engineer aisa aagaya hein. Aur bhi yeh sari jagah rok rahe hein. Nahi, pahale dekho, mein mana nahi karti kyo ki ab jo building tooti woh bhi nahi hogi start. Agar who start hogi toh mein aapko kah doongi, han bhaiya ab aap bhi karo.*

*Reporter- (Referring to Ajay Properties) Woh 8-10 Lac ka kharcha bata rahe the. Hum toh dar gaye. Hum ne kaha Bhai koi jimmedar aadmi ho toh use mila jayen.*

*Councillor- Ha toh koi aisi chinta ki baat nahin hein. Agar matlab mere se baat karte rahna. Jaise hi kaam shuru hoga toh hum kah denge aapko. Kisi ko kehne ki, baat karne ki jaroorat nahi hein.*

(ii) This shows the readiness and willingness of the Respondent Councillor to facilitate unauthorized construction by saying that they should talk only to her and they should inform them when the work begin.

*“Bhai JE ka mujhe pata nahin. Tab tak mein kaya bataun. Agar mein kal ko maan loongi aur agar woh JE.. depend kargea.. JE hi hamara apna theek aagya, hum kahenge tumara bana sakte hein, toh mein haan kahoongi”.*

This shows her willingness to start and arrange the unauthorized constructions again to speak and contact the concerned JE at the opportune time.

(12) The Competent Authority observed that “there is no recording of any demand for illegal gratification by the Councillor despite reported efforts of the Reporter/Builders to put words in her mouth during the Sting Operation.”

The above overlooks that for offences to be made out under Section 7, 8 & 9 of the Prevention of Corruption Act, 1988, is not required to be made a specific demand for illegal gratification by the accused. It is not the requirement of law that actual demand should be made or actual consideration should pass. A mere promise to pay in future for an act to be done would come within the ambit of the offence.

(13) The reporter/builders are offering to pay amounts for facilitating unauthorized construction. The exact amount to be paid has not been settled because of not knowing the amount required for the JE and the kind of JE who would come. The Respondent accordingly says that let the work first began and she would then decide about her share as they belong to the same province and are close to her.

The above, analysis makes out a clear case for the recommendation of the ‘Censure’ as also reference of the evidence to the Appropriate Authority, for consideration and evaluation since prima facie, ingredients of Section 7, 8 & 9 of the Prevention of Corruption Act, 1988, appear to be substantially satisfied.

14. It may also be noted that the misconduct does not come to an end with ceasing to be in office. The issuance of “censure” for the act of misconduct serves useful public purpose in building up moral

norms and values helping others to follow suit. Even the efficacy of censure does not recede by the Councillor ceasing to be in office. Censure serves a twin purpose; firstly it makes the Councillor aware that this type of conduct would not be countenanced, secondly public may become aware of the conduct of their representatives. It is possible in public life that Respondent may be an aspirant for higher positions. Moreover, in my view the processing of the recommendation has not been in accordance with the provisions of the Act, in as much as the Competent Authority is required to take a decision on the recommendation in terms of sub Section 2 of Section 12 only "on the basis of the report" submitted. There is no further enquiry or hearing contemplated under the Act. The Report of the Lokayukta based on the enquiry report includes pleadings, evidence recorded, legal submissions, analysis and the recommendations.

In the light of the foregoing, a prayer has been made to His Excellency, the Lt. Governor to reconsider and review the order dated 17<sup>th</sup> July, 2012 and accept the recommendations made in para 15 and 16 of the Report dated 25.7.2012 and in case he is of the view that the order dated 17<sup>th</sup> July, 2012 does warrant any reconsideration then the Special Report with an explanatory note be laid before the Legislative Assembly in terms of section 12 of Delhi Lokayukta and Upalokayukta Act, 1995.

  
(Justice Manmohan Sarin)

Lokayukta

Date: 9<sup>th</sup> August, 2012

Rekha.