

BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin

Complaint No. C-1150/ 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 Sh.Subhash Jain, Municipal Councillor.

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.

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

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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 as CW-1 and CW-2. 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 Abhijit Bal Advocate, was so appointed vide Order dated 16th January, 2012. The Respondent entered appearance through Shri N .N. Aggarwal Advocate, and filed his reply to the show cause notice on 10-02-2012.

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

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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

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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 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, his 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

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Counsel and the efforts put in by the Amicus Curiae in completion of this exercise. The Registry was directed to supply the corrected version of the transcripts, after carrying out the correction as noted by the Presiding officer.

Completion of Pleadings

7. Pleadings were 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 10-2-2012 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.

The reporters meet the Respondent Sh. Subhash Jain at his residence with a prior appointment. One of the reporters introduces himself as Sanjeev Singh resident of Raj Nagar, Ghaziabad. He tells that he is a builder and the name of his company is "Ashtvinayak". He buys plots, raises construction and then sells them. He tells that he has purchased a plot of 666 sq. yards in his area. The Respondent enquires whether it falls

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in an approved area? The reporters tell yes, it is in Jyoti Nagar as they work only in posh areas. The reporter says that construction is generally illegal which the Respondent acknowledges. The reporter says that they make a budget before starting any work. They have directly approached him and none else. The reporters say that they have also started work in Malviya Nagar and Khirki Extension. Reporters state that they have taken work for the first time in his area and that is why they have come to meet him face to face. The reporters give the number of plot as J-322 and explain its location. Respondent tells the Reporters that they cannot raise commercial construction as area is residential.

9. Respondent offers tea / water etc. and conversation resumes.

The reporters say that they work according to their budget. When they had started work in Khirki Extension persons started filing RTIs and a Junior Engineer started harassing. Reporters say that once they have tuning/understanding with him there would be no need to ask anybody else. The Respondent says that he maintains his standards and does not directly deal besides he is a religious man, devoted to temples and does not want to earn a bad name.

10. Reporters mention Sh. Anna Hazare's campaign against corruption and asked whether it would affect their work expressing that if they were to work legally they would not be able to put a brick. The Reporter assures that Sh. Anna Hazare's campaign does not affect small time leaders. He wants that our money should remain in India. It is not his aim to stop their work. The Reporter says that now a days in Delhi all the buildings are constructed illegally. The Respondent expresses his views and says that even in cases where building plans are sanctioned,

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the actual plan lies as a waste paper and the construction carried is illegal. The Reporter then specifically asked whether they could work without a sanctioned plan to which the Respondent assures that everything can be done. The reporters expressed that they do not want to waste time in getting a plan sanctioned as it would take around one and a half month and in that time they could lay two lintels and that is why they have come to him. The Respondent in whispering response says that Junior Engineer and Assistant Engineer would have to be paid and taken into confidence.

11. The reporters narrated their experience in Khirki Extension, where the Junior Engineer did come but it did not cause a problem since there were fixed rates and they would take about one and a half lakhs per lintel before it is laid. Regarding the Police, the Respondent assures that they do not trouble, when they are given their due and they simply fill a form and send it to MCD. He further states that Police would have to be paid directly while MCD harass you. The Respondent says that he will have to talk to Junior Engineer and Assistant Engineer personally and tells the reporters that they can start their work since they already have a plot.
12. Respondent inquires as to how many lintels would be aid? Reporters/builders tell that they would put 4 lintels and take the height up to 16 meters i.e one meter above the limit for which they would need his help. Respondent then tells that for a plot of 200 sq. yds. and for one lintel the engineers had charged Rs. 80,000/-. He had asked them to reduce it but does not know how much they actually reduced.

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13. During the conversation the Respondent also tell about his family's involvement in real estate business. Respondent explains that the Junior Engineer is an important person who takes money and protects and save the builder. The Junior Engineer/Assistant Engineer know how to do it and what they put in writing is more powerful than the work of a leader, who should have strength to control them.
14. Reporters/builders say that for a plot of 200 sq. yards matter gets settled with Councillor and Junior Engineer between Rs. 8 to Rs. 10 lakhs, and they enquired from the Respondent the estimate how much would be needed for their plot which is bigger. This they want to know to make a budget. The space to be left etc. is discussed. The Respondent tells them he has told the estimate of 200 sq. yds. and he would talk to the JE after calling him. The Respondent assures to settle with the JE, who would coordinate with the Ex. Engineer and DC and further assures that he would see that they (reporters/builders) have to pay minimum money.
15. Reporter/Builder wants to pay through the Respondent who says that he will take money only when rate is settled. He would call the DC and AE and pay commission up to the higher level and would ask the DC not to visit the gali's (lanes). The Respondent assures the Reporter/Builders that he will be coordinating everything even TV people and reporters would be tackled.
16. The reading of the entire transcript between the Reporter/Builders and the Respondent with regard to the amount to be paid for the unauthorized construction to be carried out show that a sum of Rs. 5 lakhs was offered to and agreed to for the Respondent while the tentative figures being discussed for the Junior Engineer and

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others was in the range of Rs. 16 lakks. Further understanding that had been arrived on between the Reporter/Builders and the Respondent was that if the latter could get the amount to be paid to the Junior Engineer and others reduced then the said benefit would come to him. This becomes evident from the following excerpts :-

सुभाष जैन - मैं इनमें से कम करा लूंगा ना आपने.....लिखे हैं

रिपोर्टर - हों इसमें से तो चलिए जितना कम करा देंगे, वो आप को दे देंगे

रिपोर्टर 2 - वो मान के चल रहे हैं, भाई साहब।

सुभाष जैन - हैं.....ये 5 लाख तो हो गये।

रिपोर्टर- ये हम बजट गानकर चल रहे हैं

सुभाष जैन - सुनिये तो आप.....5 लाख जैसे हो गए

रिपोर्टर - हों 5 लाख आपके हो गये

सुभाष जैन - इससे अलग

रिपोर्टर - जी

सुभाष जैन - और इरामें जो मैं कम करा दूँ

रिपोर्टर - वो आपका

सुभाष जैन - मैं वही कह रहा हूँ ना। जितना भी मैं कम करा दूँ

रिपोर्टर - आप 5 लाख में करा दीजिए बाकि आपका कितना बचा

सुभाष जैन - 5 लाख तो नहीं.....वो भी कुछ.....

रिपोर्टर - 10 करवा दीजिए 6.5 11 हो गया आपका

रिपोर्टर - हों.....बिल्कुल

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Response and Submissions of the Respondent.

17. The Respondent had filed reply in response to the notice, under Sec.7 r/w Sec. 2 (b) of the Act.

The Respondent had filed a reply to the Show Cause Notice. He submitted that he has been discharging his duties as a Councillor in honest and transparent manner to the best of his abilities, doing social service and was instrumental in constructing a Jain Temple in Jyoti Colony, Shahdara and was heading the society known as "Shree Kalyan Shanti Parishad". He has never misused his official position for any personal gains.

As regard the sting operation the respondent has stated that the reporters have laid an elaborate entrapment pursuant to a well thought out conspiracy by certain vested interest and it was actuated by malice and illegal motive to defame the Respondent. He has further stated that the entire operation was stage managed and was done at the behest of his political adversary namely Mr. Gulam Suwani who had lost to the respondent in the previous election. It was further submitted that the reporters had themselves approached, the respondent without any inducement what so ever from the respondent. It is submitted that the transcript would reflect that respondent was very conscious about his reputation as a public figure. As a public figure he has to deal with various kinds of people and it is not always possible for him to throw out any person even if the subject of discussion is not approved by him. It is further submitted that the whole sting operation revolved, around the alleged construction of building and the answering respondent has no power or authority to sanction any such building activity. No money was taken or received by the respondent from the reporters to misuse his official position. It was further submitted that the allegations which are made against the

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respondent do not constitute any abuse or misuse of official position to obtain any gains or favour in discharge of his function as a 'Public Functionary' as envisaged under section 2 (b) (ii), (iii) and (iv) of Delhi Lokayukta and Upalokayukta Act, 1995

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

18. The submissions of the Ld. Counsel for the Respondent, the Ld. Counsel for the Broadcaster and the Ld. Amicus Curiae were heard.

The submissions of the Ld. Counsel for Respondent Sh. N.N. Aggarwal were confined to the plea taken in the reply by the Respondent while arguing on merits. But at the same time the Ld. Counsel for Respondent submitted that Respondent had no intension of involvement in any illegal activity. The reporters have doctored the conversation in such a manner as to take words out of the mouth of the respondent. It was submitted that unauthorized construction is a part of life in Delhi which has vitiated the atmosphere. The Ld. Counsel submitted that despite the entire sting operation being manipulated, doctored and words having been extracted from the Respondent in the conversation, the respondent regrets from core of his heart his getting involved in such a conversation and also tenders an unconditional apology.

The Respondent has taken the plea that the entire sting operation was illegal, motivated and it is an incident of entrapment. This plea however, has no substance. In view of the authoritative pronouncement by the Hon'ble Supreme Court on the issue of "sting operations" in the case of R.K. Anand Vs. Registrar, Delhi High Court 2009 (8) SCC 106. The Supreme Court while dealing with stings and telecast of sting programmes observed in para 179 as under :-

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"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 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."

19. 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 exposes 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."
20. Therefore the argument that the sting operation was unethical, illegal and was with malafide intention cannot be accepted. The conversation which took place between the reporters and the Respondent makes it amply clear that the Respondent not only gave assurance to the reporters posing as builder to help them in raising the construction but also sought a gratification for such a help. The tone and tenor and contents 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.
21. The conversation between the reporters and the Respondent clearly shows the interest of the Respondent in raising illegal and unauthorized constructions expecting a financial reward for providing his help and assistance to them in doing such an act by exercising his influence with the JE, whose official duty it is to stop unauthorized construction.

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22. The entire conversation between the reporters and the respondent primarily concerns raising the unauthorized construction. The respondent was fully conscious about the fact that the reporters intending to raise unauthorized construction. A reference to the certain portion of the conversation between the respondent and the reporters would confirm that respondent was fully aware about the purpose of the visit of the reporters. The Respondent nowhere has shown any sign of reluctance while discussing the issue of raising of unauthorized construction. The Respondent, rather explain to the reporters that the Junior Engineer in the area takes care of everything and he also take care of the senior officers that is the AE, AC and DC of the zone.

23. The reporters had asked the respondent whether they can work without the sanctioned plan as they do not want to waste time in getting the plan sanctioned as that would take around one and a half month and in this duration they can lay two lintels. The respondent says that everything can be managed, the Junior Engineer and Assistant Engineer are to be paid and taken into confidence. The following excerpts from the transcript are being reproduced on this point.

Reporter : kya naksha agar na banwaye kya kaam chal jayega?

Respondent : sab kaam ho jata hai.

Reporter : hum illegal karna chahte hai.

Reporter : nakshe wakshe ka chakkar me time badh jayega, aapka election nikal jayega to dikkat ho jayegi.

Reporter : ek dedh mahina aap maan lijiye naksha paas karaane me.

Reporter 2 : or jab tak hum do lintel daal denge. Haalaki aisa nahi hai hum.....utna nahi lekin aap thoda sa wo rakhenge to koi dikkat nahi aayegi.

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Respondent : JE AE ko dena padega.

Reporter: JE ko kuchh.

Respondent : jyada dena padega.....kyoki JE aur AE.....mai woto wo ghumte rahte hai.....to unko vishwas me lana padega”.

This conversation indicates that the Respondent was well aware about the unauthorized construction which the Reporter/Builder wanted to raise. The respondent rather went along with the suggestion building being raised without sanctioned plan for which and AE would have to be paid and taken into confidence.

The entire conversation with the reporters shows that the Respondent of his own volition offered his services to help the reporters to raise unauthorized construction. Some relevant excerpts in the transcript are being produced.

“Respondent : mai thoda sa asal me kya hai ki JE AE ko mujhe bolna padeg, mai unse khud kahunga, (inaudible sound) aap chaalu karo, jagah to aapne le li.

Reporter : jee

Respondent : bas, banana hai

Reporter 2 : bas shuru karna hai

Respondent : lentil kitne daalne hai?

This conversation shows the willingness of the Respondent to use his official position to influence the JE and the AE and thus help the reporters/builders in raising unauthorized construction.

The understanding of the Respondent about the modus operandi adopted for raising the construction unauthorisedly with the assistance and connivance of Municipal Staff is reflected by the following conversation :

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Respondent : wo sub kanoon hame JE bata dega.

Reporter 2 : jee haa, JE ko saara pata hoga.

Respondent : kabhi bhi na, JE ko bachana hai. Paisa lega aur hame bachayega.

Reporter : jee.

Respondent : wo kya kya kahega ye aise laga lo ya aise laga lo, aap isme aisa karwa lo jab ki dekho jo paisa khayega wo to dekho puri hamdardi me rahega”.

In the later part of conversation he further says:-

Respondent :-----unki dekh reh me hame banwana padega, hai ki nahi, wo to raksha karenge-----“.

This indicates the knowledge of the Respondent how the unauthorized construction is raised. The Respondent has been willing and eager to offer his services to the reporters to handle the JE in the matter. This service he was offering for illegal gratification is further evident from the later part of the conversation where the Respondent agreed for the sum of Rs. 5 lakh in lieu of his services. The respondent had further said that he would settle with the JE. The tentative amount discussed for the JE was Rs. 16 lakhs. A further understanding was arrived at that if the Respondent could get the amount to be paid to the JE and others reduced then the reduced amount would come to him. This is clear from the excerpts of the conversation reproduced under Para No. 16. The above conversation between the respondent and the reporters not only reflects greed of the Respondent for illegal gratification but also his concern that the builders should also earn profit. The relevant excerpts in the transcript are :-

“Respondent : mai ye nahi chah raha mai chah raha hu ki aapke paas paisa, apni building banaye aur do paisa kama ke le jaaye.

Reporter : bikul sahi kah rahe hai sir.

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Respondent : mai isi chakkar me nahi hu ki khali paisa paisa khana hai.”

The Respondent has shown his positive response and his eagerness to help the reporters in raising of unauthorized construction for illegal gratification. This act of the Respondent as a Councillor militates against his public duty which is to act against any proposed ongoing or completed unauthorized construction in the area, falling under his jurisdiction.

24. It is not the part of a public duty of the Respondent who represents thousands of persons in his jurisdiction to give encouragement to unauthorized construction by promising help in such activities. Rather on the contrary it was his duty to bring to the notice of the authorities concerned any instance of construction without sanctioned plan. The desire to appease to constituents or furthering of so called electoral prospects by extending help in such activities, cannot over ride the norms of conduct and integrity which a public functionary is expected to follow.

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. Assurance to help in unauthorized construction, tantamount to discharge to functions being actuated by improper motive for personal interests. It also constitutes lack of faithfulness to his functioning as a Councillor. Thus there is contravention of Section 2(b)(i) to (iv).

The Respondent had submitted that the operation was stage managed at the behest of his political adversary Sh. Gulam Suwani, who had lost to the Respondent in the last Municipal election. The Respondent however has neither led any evidence nor took this plea at the time of argument. It was also submitted by the Respondent that he was very conscious of his reputation and this would be apparent from the excerpts of

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the transcript and that being a public figure the Respondent has to deal with various kinds of persons and he cannot throw them out even if the subject of discussion is not approved by him. This submission however lack substance. A public figure being the representative of the people owes a duty to its constituents. He has to serve the interest of his constituents with all honesty, commitment, integrity and sincerity. The representative of people is not expected to support any illegal activity in the area of his constituency simply on the ground that being a public figure he has to deal with many persons and discuss things even though he himself does not approve the same. Such an act shows lack of faithfulness in the 'Public Functionary' towards those constituents, who abide by the law.

It was submitted by the Respondent that he had no authority or power to sanction any building activity therefore the allegation against him does not constitute any abuse or misuse of official position under section 2 (b) (ii), (iii) and (iv). This submission is also devoid of any substance. The respondent may not be the concerned authority to sanction any building activity but being the Councillor of the area he undoubtedly exercise a great amount of clout upon the municipal officials. The manner in which the Respondent discussed the issue of raising unauthorized construction and the manner in which he assured the reporters to exercise his influence on the Junior Engineer for a consideration clearly bring his act within the four corners of Section 2 (b) (i) to (iv) of the Delhi Lokayukta and Upalokayukta Act, 1995. Moreover, the Ld. Counsel for the Respondent at the time of argument, though disputing the legality of the sting operation, tendered an unconditional apology on behalf of the Respondent and he also expressed the regret for being a part of such a conversation. The same can not however absolve him of the grave misconduct.

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25. 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 his class by entertaining, discussing and indicating his willingness to support the reporter/builders who were to carry out unauthorized construction for illegal gratification.
26. The Ld. Amicus Curiae, Mr. Abhijat Bal, 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 prima facie amount to offences under the Prevention of Corruption Act. This Forum has considered the submissions of the Ld. Amicus Curiae and has gone through the relevant provisions of the Prevention of Corruption Act. Section 8 of the Prevention of Corruption Act provides that whoever accepts or obtains or agrees to accept any gratification from another person as a motive for inducing by corrupt or illegal means any public servant to do or forbear to do any official act, would be an offence.

Section 9 provides that whoever accepts or obtains or agrees to accept any gratification from any other person as a motive for inducing by the exercise of personal influence any public servant to do or forbear to do any official act, would be an offence.

In the present case, the Respondent had agreed to exercise his influence on the Junior Engineer, as also had agreed to accept gratification from the reporters/builders for inducing by corrupt and illegal means a public servant to forbear to do his official act. The Respondent agreed to influence the Junior Engineer for permitting unauthorized construction to come up. It need to be emphasized that any actual demand or actual passing of consideration or illegal gratification is not the sine qua non for the offences under section 8 and 9 of the Prevention of Corruption Act. A mere

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promise of agreement to accept and even a promise to pay in future for an act to be done, would come within the ingredients of the offence under section 8 and 9 of the Prevention of corruption Act.

27. It is submitted by the Ld. Amicus Curiae that the evidence recorded in the deemed judicial proceeding 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. The Ld. Amicus Curiae submitted that this Forum is legally bound to do the same. It is ordered accordingly. The transcripts and other evidence as recorded before this forum be forwarded to Commissioner of Police for consideration, evaluation and further action, as per Law.

28. This forum has also considered the aspect that the Councillor, whose conduct was being inquired into by the Lokayukta following the sting operation was not provided ticket by their respective parties in the then forthcoming elections. This resulted in the Councillor not contesting election and thus ceasing to be a Councillor. It is also considered whether the above should make any difference on the recommendation of 'Censure' for them.

It is a well settled legal principle that misconduct does not cease with the office term coming to an end. Moreover, as far as political life, with all its vicissitudes, is concerned, a Public Functionary who does not fight a particular election does not cease to be in active politics or in public life. Our experience has shown that he may aspire for and come for even higher positions. Moreover, for maintaining probity in public life, it is essential that the constituents are also made aware of the misconduct of their respective representatives which is in consonance with their right to receive information about the deeds of public representative.

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From the foregoing discussion, it is the view of this forum that the factum of a Public Functionary ceasing to hold office should not come in the way of a recommendation for his 'Censure' being made and the above is submitted for the kind consideration of His Excellency, the Hon'ble Lt. Governor.

29. The conduct of the Respondent Councillor as evidenced from the transcript of conversation marked "H" clearly amounts to violation of norms of integrity and good conduct, abuse of position to obtain gain for himself, being actuated in discharge of his 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 his misconduct as found above.


(Justice Manmohan Sarin)
Lokayukta

Date: 27th August, 2012

Rekha/Anju