

Substance of Cases under Sub Section 7 of Section 12 of the Delhi Lokayukta & Upalokayukta Act, 1995, in the matter of three inquiries conducted into the conduct of Sh. Subhash Jain, Ex. Councillor, Ms. Anita Koli, Ex. Councillor and Ms. Sateshwari Joshi, Ex. Councillor.

(1) Lokayukta conducted a comprehensive inquiry into the conduct of the above Councillors. He found that they had carried out or were party to negotiations demanding illegal gratification for facilitating unauthorized construction. Councillors were found to be in breach of norms of conduct and integrity also.

(2) The inquiry was conducted giving full opportunity to the Councillor to have their say and lead evidence. During the inquiry proceedings the original recordings of the sting operations were played in the presence of the Respondent, Amicus Curiae and the Counsel for IBN -7 Channel on whose behest the Sting Operation was done. An agreed transcript emerged of the conversations with inputs from all parties. Lokayukta after hearing the parties, recommended 'Censure' to be administered to the three Councillors. Further that the evidence collected and the record be sent for further investigation to the appropriate Investigative Authority, as in his opinion, their acts constituted offences under Section 7, 8 & 9 of the Prevention of Corruption Act. Reasoned Reports were submitted to the Lt. Governor.

(3) The Lt. Governor did not accept the recommendations for censure and action against the three Councillors on grounds ranging from the Councillors ceasing to hold office, having already suffered public disgrace or having spoken very little or not having demanded illegal gratification having already expressed regret etc

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(4) The Lt. Governor after the receipt of the report purporting to act as per principles of natural justice, issued notice to the Councillors, held further proceedings, heard Councillors and recorded their submissions. The Lokayukta verily believes that after a comprehensive inquiry in which the Public Functionaries are heard and given the fullest opportunity, the Statute neither provides for nor contemplates further hearing by the Competent Authority. The Competent Authority has a mandate to take a decision **“on the basis of the report of the Lokayukta together with all the material supplied”**. The grant of further hearing is not in accordance with the provisions of the Delhi Lokayukta and Upalokayukta Act, 1995. This position is fortified by a written opinion from the former Attorney General for India.

(5) Lokayukta not being satisfied with the non acceptance of the recommendations has submitted “Special Report” in these cases seeking reconsideration of the decision of the Competent Authority, pointing out the legal position and excerpts from the recorded conversations which had possibly escaped the attention of the Competent Authority.

(6) For facility of reference, the reasons as revealed in the orders passed by the Competent Authority for non acceptance of the recommendation and relevant excerpts from the recorded conversation based on which the recommendation of censure was made, are given in seriatim :-

(7) (i) **RE ; Inquiry against Sh. Subhash Jain order of Competent Authority dated 18.01.2013 :-**

The Competent Authority observed that *“the sting operation has already brought disgrace to the Respondent Councillor and that he was not given the ticket to contest the Municipal Elections again.”* Besides, the Respondent Councillor had

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also expressed regret for being part of such a conversation before the Lokayukta. Hence, the Competent Authority held that the issue of 'Censure' was uncalled for.

(ii) From the extracts of the admitted conversation of the Councillor with the builder/reporter, quoted hereinafter, it would be seen that it was clear that the proposed construction was unauthorized. The reporters had asked the Councillor whether they can work without a sanctioned plan as they did not want to waste time in getting it sanctioned. In reply, the Councillor said that everything could be managed; however, he suggested, the Junior Engineer and Assistant Engineer must be paid and taken into confidence.

(iii) The transcript shows that the Councillor, of his own volition, expressly and willingly agreed to help the reporters raise unauthorized construction without sanction of plans by assuring personally to talk to the JE and the AE.

Professing innocence before the Competent Authority during the hearing he claimed that being a public person he has to deal with all kinds of persons and it is not possible to evict them even if the conversation is not to his liking. This is wholly irrelevant, as can be seen from the conversation excerpts, Councillor was a willing participant rather encouraging them to start construction without a sanction of plans. The said plea therefore, stands belied.

From the extracts of the admitted transcript of conversation of the Councillor referred to as Respondent with the builder/reporter, it would be seen that it was clear that the proposed construction was unauthorized. The reporters had asked the Respondent whether they can work without a sanctioned plan as they did not want to waste time in getting it sanctioned. In reply, the Respondent said that everything could be managed; however, he suggested, the Junior Engineer and Assistant Engineer must be paid and taken into confidence.

The above is apparent from the following extracts of conversation:-



“Reporter- *Kya naksha agar na banwaye kya kaam chal jayega?*”

Respondent- *Sab kaam ho jata hai.*

Reporter- *Hum illegal karna chahte haii.*

Reporter 1- *Hum log matlab.*

Reporter – *Nakshe waskhe ke chakkar mein time badh jayega, aapka election nikal jayega toh dikkat ho jayegi. Without naksha banwa ke.*

Reporter 2 – *Fees denge waise hum log.*

Reporter – *Ek derh mahina aap maan lijiye naksha pass karane mein.*

Reporter 2- *Aur tab tak hum do lintel daal denge. Haalaki aisa nahi hai hum utna hi, lekin aap thoda sa who rakhenge toh koi dikkat nahi hogi.*

Respondent- *AE-JE ko dena padega.*

Reporter- *JE ko kucch*

Respondent- *jyada dena padega, kyoki JE aur AE.. mai wo... toh woh ghumte rehte hain... to unko vishwas me lana padega.”*

Respondent: *Main thoda sa asal mein kya hai ki JE AE ko mujhe bolna padega, main unse khud kahunga, (inaudible sound) aap chatu karo, jagah aapne le li.”*

- (iv) Excerpts quoted below clearly shows that illegal gratification of Rs. 5 lacs was agreed for Councillor and the tentative amount for the JE was Rs. 16 lacs. It was also agreed that whatever amount the Councillor gets reduced from Rs. 16 lacs of JE, he could keep the same. Reporter/Builder illustrate it by saying that if the sum is reduced to Rs. 10 lacs from Rs. 16 lacs then the Councillor will get Rs. 5 + Rs. 6 lacs, which is accepted by the Councillor who says that Rs. 5 lacs is fixed in any case for him. The above is clear from the following extracts of conversation:-

“Reporter: *Haan, ismein se toh chaliye jitna kum kara denge, woh aapko de denge.*

Reporter 2: *Woh maan ke chal rahe hain bhai sahib.*

Respondent: *Hain, yeh toh aap.. paanch lakh jaise ho gaye.*

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Reporter: *Haan paanch lakh aapke ho gaye.*

Respondent: *Iss se alag.*

Reporter: *Ji.*

Respondent: *Aur issmein jo main kum kara du.*

Reporter : *Woh aapka.*

Respondent: *Main wohi kah raha hu na. Jitna bhi main kum kara du.*

Reporter: *Aap paanch lakh mein kara dijiye baaki aapka kitna bacha.*

Respondent: *Paanch Lakh toh nahi... Woh bhi kucch..*

Reporter: *10 karwa dijiye, 6,5, 11 ho gaya aapka.*

Reporter: *Haan.. bilkul.*

Respondent: *Woh toh main kehna chahta hu, matlab paanch toh hain hi.*

Reporter: *Haan*

Respondent: *Nahi hoga toh paanch milenge.*

Reporter: *Paanch maankar chaliye."*

This cannot by any token be regarded as an innocent conversation. The transcript shows that the Respondent, of his own volition, expressly and willingly agreed to help the reporters raise unauthorized construction by personally talking to the JE and the AE.

- (v) It is respectfully submitted that simply because the Respondent has ceased to be a Councillor, it does not imply that he has ceased to be part of public or political life or has become a person of no consequence. Public life, with its vicissitudes, makes it probable that Public Functionaries may be an aspirant for even higher positions. A person who is denied a ticket today may be an aspirant for higher positions. Simply because someone has ceased to hold office is no ground to absolve him of any punishment or penalty.
- (7) (ii) **RE : Inquiry against Ms. Anita Koli order of Competent Authority dated 09.11.2012 :-**

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(i) The Competent Authority in this case also gave a personal hearing and recorded her plea of being an innocent person who had done nothing wrong. Councillor claimed she had never abused or misused her position to obtain any gratification for herself or for any other person. She had neither sought any gratification nor entertained request for unauthorized construction. She submitted that her husband being a business-cum-financer had talked to the Reporter/Builder who conducted the Sting Operation. The Competent Authority observed that the Councillor had spoken very little during the entire episode and no occasion had she sought any illegal gratification for herself or anybody else. Therefore, held administering 'Censure' uncalled for.

(ii) The above pleas clearly ignore that the entire meeting was held between the Reporters posing as Builders, with the Councillor and her husband being present. She was present throughout and was willing party to the negotiations. Her husband was speaking for her. The entire conversation had nothing to do with the construction business of Councillor's husband. This position is apparent from the following excerpts :-

*"Reporter: To be frank, thorda sa illegal construction kiya hai. Ye mai aapko pehle hi batadu. Jo baat clear karke chale, use accha rehta hai. Toh aap hamari madad kaise kar sakti hai?
Anita: Jaise aap kahe. "*

At the reporters/ builders request for help in illegal construction, the Councillor had responded smilingly in affirmative.

(iii) The following excerpts from the transcript are also relevant :-

1) *"Reporter: Dekhiye actually hamlog ka budget hota hai, hum budget ke upar nahi ja sakte, harr cheez ka budget hai.. tabhi profit niklega. Pata chale ham over budget ho gaye toh haemin banana se kaam*

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karne ka koi faida nahi hoga toh pata chal jaaye na ye certain amount inka hai, JE ka hai, ya inka hai.

Anita's Husband: *Vo toh phir bula lenge J.E ko."*

2) "Husband: *Aapka kya budget hai, muhe batado.*

Reporter: *Aap 10 Lakh mein saare logo ko aap saari zimmedari le lijiye, usmein hi J.E ka bhi hai, aapka appna hai aur bhi hai."*

3) " Reporter: *Matlab 10 Lakh se hamara badhna nahi chahiye.*

Anita's Husband: *Ho jaega aapka kaam.*

Reporter: *J.E phir ye toh nahi kahega ki ham lentil ka alag se lenge.*

Anita's Husband: *J.E se ham baat kar lenge. J.E ko denge, jo denge usmese. Jo J.E ka banta hai wo J.E ko denge."*

(iv) The above contain an offer of money being made to the Councillor. There was no denial either from the Councillor or her husband. They never refused amount being offered by the Reporter/Builders. The Respondent and her husband were interested in taking money and getting the unauthorized construction done by paying part of illegal gratification to JE. There is no reference to alleged construction business of husband. The total amount was fixed at Rs. 10 lacs with the Respondent's husband assuring that their work would be done.

"Reporter: *Matlab 10 Lakh se hamara badhna nahi chahiye.*

Anita's Husband: *Ho jaega aapka kaam."*

(v) It is idle to contend that the subject under discussion was not illegal construction of Reporters/Builders but some project of her husband.

(vi) The breach of integrity on the part of the Councillor is evident from the extract given below :-

"Anita: *Bina encroachment ke toh kuch nahi hota.*

Reporter: *Bilkul nahi, bigair illegal ke toh kaam hi nahi chalna phir.*

Anita's Husband: *Thora bhot toh hojata hai, kitna karega aadmi."*

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The fact that the Councillor spoke very little and did not ask for any illegal gratification for herself or anybody does not mean that she did not want any gratification for getting the unauthorized construction done as is apparent from the transcript. She spoke through her husband as far as settling amount of illegal gratification is concerned.

(8) (iii) RE : Inquiry against Ms. Sateshwari Joshi, order of Competent Authority dated 26.10.2012 :-

(i) The Competent Authority in this case also held further proceedings by granting personal hearing of the Councillor. The Councillor in the personal hearing professed to be a simple person who has never abused or misused her position. Had she been doing so, she claimed she would have possessed assets disproportionate to her legitimate income, which was not the case. The Sting Operation was to defame her and ruin her career. The Competent Authority holds, on the perusal of the transcript, that at no occasion she had asked for any gratification. The Sting Operation had already brought public disgrace to her, therefore, 'Censure' was not called for.

(ii) While it is true, that the Councillor did not initially ask illegal gratification for herself. However,, The transcript clearly brings out that when Rs. 5.00 lacs were offered she demanded higher amount by making sign of Rs. 5+2 by her hand and fingers that is '7' to let the Reporter/Builder know the amount that should be paid so that the illegal construction work can be done.

The following excerpts from the transcript are being produced which belie the findings recorded by the Competent Authority, the Councillor extols the reporter/builder to start their work assuring that she would talk to the JE. Councillor is referred to by her name 'Joshi' in the conversation transcript :-

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“Joshi: *Tum apna shuru kar lo mai JE se baat kar lungi.*

Reporter: *Hum phir 5 rakh le aapke liye.*

(Joshi shows 7 through her hand and two fingers)

Reporter: *7 lakh .. kam kar lijiye, aapki wajah se milvane aaye hai bhai sahib. Aap logo ka ..*

Other: *baat kar lijiye dekh lijiye.*

Reporter: *dilwaaye bhai sahib.”*

It was seen from the above that the Councillor was demanding Rs. 7.00 lacs instead of Rs. 5 lacs being offered, while reporter/builder implored her to reduce the amount. She specifically agreed to take to the JE to get the illegal construction done, as is apparent from the following excerpts :-

“Joshi: *Kal subah mai tumhe bata dung, mai JE ko bhi bata dung phir tumhe bata dung... Tum shuru kar do kaam, mai JE se baat kar lungi.”*

(iii) She also sought favours for a person called ‘Chhotu’ by first suggesting that he could be associated with the Reporter/Builder and then saying that atleast construction material be bought from him. The entire conversation as given in the transcript belies the position that she was an innocent person who had never abused or misused her position . It shows a person who is accustomed to getting illegal gratification or unauthorized construction by the ease with which she carried out the conversation.

(9) The issuance of a ‘censure’ is recognized internationally as an aspect of the right of the Ombudsman to censure an authority or public official, who has committed acts of misconduct or whose actions are found to be erroneous or improper. The censure and its issuance and consequent publicity serves a useful public purpose, i.e. building up moral norms and values, a code of conduct which helps others to follow suit and dissuades similarly placed in public life from committing the same conduct. Besides, it also helps in ushering in a self cleansing process and motivates Public functionaries to

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exercise self restraint before engaging in activities, which defile the integrity of the office.

(10) The Sting Operation in these cases served an important public cause in exposing the nexus between the building mafia and 'public functionaries' who, far from containing and discouraging the menace of unauthorized construction in the metropolis, are breeding and supporting it for corrupt and improper motives. It is the duty of MCD Councillors and all public spirited citizens to curb the increasing menace of illegal construction rather than encouraging the people to breach or circumvent the law. Hence, these cases do not deserve any leniency having regard to their conduct as revealed.


(Justice Manmohan Sarin)
Lokayukta

Date: 1st March, 2013

Rekha