

Substance of Case under Sub-section (7) of Section-12 of The Delhi Lokayukta and Upalokayukta Act, 1995 -

In the matters of Ms. Manju Gupta and Ms. Beena Thakuria, ex-municipal Councillors

1. In inquiry reports submitted in the Sting Operation cases of Ex-Municipal Councillors Ms. Manju Gupta and Ms. Beena Thakuria, Lokayukta held the allegations of supporting proposals of unauthorized constructions for illegal gratification, being established against them. Further, breach and violation of the norms of integrity and conduct was also found to be established against them. Accordingly, it was recommended to His Excellency, the Lt. Governor to administer a 'censure' to both the Councillors.

2. The Lt. Governor afforded opportunity of personal hearing to the Councillors before taking a final view in the matter. Councillors professed their innocence before the Lt. Governor and claimed to have been falsely trapped. The Competent Authority in its order dated 24-12-2012, in the case of Ms. Manju Gupta held that no demand for money had been made by her or her husband in the entire conversation. Further the Councillor had spoken very little. On no occasion, she had sought illegal gratification for herself or anybody else. It was therefore, held that "Censure" was not called for. Not being satisfied with the above decision of the Competent Authority, Lokayukta submitted Special Report dated 8/3/2013 in this case and dated 14th March, 2013, in the case of Ms. Beena Thakuria, where also the Competent Authority held that "Censure" was not called for. The Competent Authority observed that the sting operation had already served its intended purpose and had brought disgrace to the Councillor. Further, she had not been given a ticket for contesting

Municipal Elections. Therefore, issue of "Censure" was not called for.

3. The Councillor Ms. Manju Gupta claims she was only hearing the grievance of a person, who wished to construct some houses. This stands fully belied by the transcripts which shows continued involvement and participation directly as well as through her husband in the conversation or negotiations.

It is common knowledge that often concerned "Public Functionary" does not himself or herself directly talk or participate in such negotiations. This is done by spouse or representatives. The only requirement is that a person representing the "Public Functionary" should be doing so with the knowledge and consent of the Public Functionary.

4. It is considered necessary to quote some of the extracts from the agreed transcript which either not been noticed or brought to the attention of the Competent Authority.

"Reporter: Sir se baat karni hai

Manju Gupta: Aap inhi se kar lejiye He is my husband."

The above shows specific consent and authorization.

5. Conversation was commenced with the Councillors /husband and continued with another person Inspector Sharma, who had brought the reporter/builder and introduced them to the Councillor. Councillor's participation is evident by her interjection, such as location of a particular house, i.e. **"Pahariwala** or no". After location is identified, she tells reporter **'bataiyea (tell)'**. During conversation Inspector Sharma points out that reporter/builder wanted to meet and talk to the Councillor directly to which Ms. Manju Gupta responds: **"Nahi, main thora aise karungi jo yeh Arvind he na aap kuch bhi kaho, Arvind se kaho"**. This shows she further wanted to delegate

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the bargaining or settlement to another person named "Arvind". Here it may be noted that when questioned by the Lokayukta as to who was "Arvind", she evasively replied that she did not recall knowing any "Arvind". Similar denial mode was adopted by her for Insp. Sharma which raises grave doubts and suspicion. It negates her professed innocence and reflects on her integrity and conduct. Not only this, Councillor held out a categorical assurance to the reporter/builders, **"Yahaan par koi dikkat nahi ayegi (there will be no problem here)**. She further reiterates **"Nahi-Nahi, koi dikkat nahi ayegi. Aap chinta mat keejiye, mein hun, koi dikkat nhi aayegi"**.

6. When the reporter/builder says that they have suffered in the past, she says that **"Aap....mein... koi dikkat nahi hogi... chinta mat karo... mein aapko bata doongi bolna kya hein... theek hai mei unse baatkar loongi"**, i.e. holding out assurance of talking to the J.E.

7. Councillor makes it clear that unauthorized constructions were under discussion when she says "There will be no problem from MCD. However, DDA and police will have to be tackled by you". This is reiterated by Councillor's husband and Insp. Sharma that police will have to be tackled separately by the reporter/builders. Thereafter the reporter/builders say that they will settle with the police, and enquire how much would be the money involved otherwise. Councillor's husband says, "whatever it is, will be told by him (reference being to Insp. Sharma) **"Jo bhi ho wo yeh bata denge"**. The reporter/builder then says that Inspector Sharma has quoted a very high amount, i.e. Rs. 3.00 Lac which is rather high. The following aspect of conversation is relevant:

Reporter- 3 lakh.

Husband of Manju Gupta-Haen

Insp. Sharma- Bata diya aapko"

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Insp. Sharma-Toh ab bata diya aapko kitna bata diya ab kya baat...pehle baat huyi toh..maine aapko bola bhi tha ki who baat karenge nahin. Apni baat karenge hi nahin..Paise ki toh karte nahin hein..woh mere pe dal dete hein. Toh jo karenge main hi karta hoon.. Woh kuch karte hi nahi hein final.”

8. In nutshell Inspector Sharma says that Councillor does not directly demand it is he who settles. From the foregoing, it is clear that Councillor was a willing party, her husband was carrying on the talk and negotiations, on her behalf. There was another representative, Insp. Sharma, who was the person, who had brought the reporter/builders. Secondly, on a complete perusal of the transcript, which is fairly long, it is clear that Ms. Manju Gupta, Councillor, was a willing participant. She assured reporter/builders that there will be no difficulty in the unauthorized construction and she would take care of the MCD. Her husband and Insp. Sharma on her behalf had negotiated a sum of Rs. 3.00 Lac which they were not willing to reduce.

9. The transcript of conversation leaves no doubt that this was a gross act of misuse and abuse of power and position and depicts her clout over the municipal staff. There is not even a whisper or any claim by the reporter/builders of the construction being pursuant to a sanctioned plan.

10. Similarly, the plea that the area falls under DDA, where MCD may not anything to do, further aggravates the position as it brings in an element of 'deception' by projecting that the matter would fall under MCD's jurisdiction and of tackling MCD, if it actually was under DDA.

11. Finding by the Competent Authority, that Councillor did not speak much or herself demand illegal gratification ignore the quoted extracts from the transcript that the Councillor had

herself asked the reporter to talk to her husband who was negotiating on her behalf. Further the final settlements at one stage was sought to be left by Councillor on her representative 'Arvind'. Even though, she specifically desired that everything should be told to Arvind. She later retracted and even denied knowing 'Arvind', as in the case of Insp. Sharma who had brought and introduced her to the reporters. Her husband and Inspt. Sharma settle the amount of illegal gratification on her behalf. The assurances of there being no problem and handling JE and MCD are given by personally by the Councillor for unauthorized construction.

Re: Smt. Beena Thakuria, Municipal Councillor

12. Ms. Beena Thakuria, pleaded before the Competent Authority is that she was a first time elected Councillor. Many people used to come to her with their grievances. She used to help them to the extent possible within the given legal and administrative framework. She claimed that she had been falsely trapped because of her simplicity and innocence. The Competent Authority observed that sting operation had already served its intended purpose and had brought disgrace to the Councillor. She had not been given a ticket for contesting Municipal Elections. He therefore held that issue of "Censure" was not called for in this case.

13. It is pertinent to notice that findings of allegation of demanding illegal gratification for unauthorized construction are not disputed.

14. Some extracts from the transcript reflecting negotiations for illegal gratification, brazen manner/demand etc. are being produced.

"Beena : Agar aapko kaam mil raha hai toh woh batao mujhay, kahan kahan aapko kaam mil rahe

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hain. Uskay liye jaise help hogi main karungee. Theek hai na."

"Beena : JE toh kher hamari sehmati key bina kuch nahin kar sakta hain. Lekin ye hain ki matlab JE bhi hamarey kehney se chalega. Adhiktar toh JE ko itna time nahi hota hein jitna (Beldar) ko time hota hain... woh kutay ki tarah ghumta hai jaisay kutay ko haddi nahi milti."

Beena : Meri sehmati se aayaga JE to Mai uskay saath discuss kar lungee mai bethkarke. Dekho uska bhi moonh band karna padayga aur uska bhi moonh band karna padayga. Lay bhaiya yeh hai aur chutti karo."

"Reporter: Fir bhi...JE se kam rakhe aapka ya jyada?"

Beena : Ha ha sambhalun mai, bhugtu mai...saari cheezo ko cooperate karke chalun mai...aur mujhe hi tum fatte laga rahe ho." (I manage, I suffer and coordinate everything and you want to take me for a ride).

The aforesaid extracts completely negate the claim of simplicity and her innocence. In fact, her action was so brazen that she vehemently protested to ensure that she does not get less than JE. She also made it clear that elections were not fought without money and she need money. Here is a worldly-wise Councillor, who is negotiating with impunity illegal gratification for herself.

15. High level of sincerity, integrity and honesty by rising above personal interests, favouritism, nepotism and by avoiding any pecuniary or other benefits which are not due, are expected from Public Functionaries, such as Councillors, who have inter-action with the members of the public. Public functionary has to set an example of good governance, being the holder of public trust. Here are the Councillors who not only support illegal activity but also agree to take gratification in lieu of such support.

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16. Regarding the observations by the Competent Authority that having suffered public disgrace and not having received party ticket, therefore, the administration of 'Censure' was uncalled for, it is respectfully submitted that apart from violation of norms of integrity and conduct expected of 'Public Functionary', the record of transcripts in both the cases disclose offences under Section 8 and 9 of The Prevention of Corruption Act, in as much as, the Councillors assure to exercise personal influence over the JE for getting unauthorized construction done. They agree to accept illegal gratification. It is further submitted that the case would also fall under Section 13(d)(ii) of The Prevention of Corruption Act, whereby a Public Servant or "Public Functionary" by abusing his position "obtains for himself or for any other person any valuable things or pecuniary advantage". It is thus not necessary for the Public Functionary to obtain any illegal gratification or advantage for himself or herself. It would suffice if by abuse of position or illegal means, advantage is obtained for any other person, say a contractor. Such conduct would fall within the offence of "criminal misconduct" under Section 13(d) (ii) of The Prevention of Corruption Act, 1988.

Processing of Report by the Competent Authority:

17. It is also submitted that the processing of the reports by the Competent Authority has not been in accordance with law. The Delhi Lokayukta and Upalokayukta Act, 1995 does not provide for "further inquiry" or hearing as has been done by the Competent Authority in the instant cases. Lokayukta conducts a comprehensive inquiry wherein all the parties are heard and given opportunity to have their say. The statute requires the Competent Authority to examine the report and intimate the action proposed to be taken as per the

recommendations within 90 days "on the basis of the report". The Act does not contemplate either a further enquiry or hearing to be granted to the indicted person.

Without prejudice to the above contention if at all the Competent Authority was to embark upon the course of hearing the indicted persons then the Amicus Curiae, who acted as a friend of the Court, should also have been given notice to bring to the attention of His Excellency the relevant facts; the incriminating parts of the conversation and salient aspects, justifying the recommendation of censure.

18. The issuance of a 'Censure' is recognized internationally as a aspect of the right of the Ombudsman to censure an authority or public official, who has committed acts of misconduct or whose actions have been found to be erroneous or improper. The censure and its issuance and consequent adverse publicity serves a useful public purpose i.e to build up moral norms and values, a Code of Conduct, which helps others to follow suit and dissuades similarly placed people in public life from committing the same misconduct. Besides, it also helps in ushering in a self cleansing process and motivates Public Functionaries to exercise self restraint before engaging in activities, which defile the integrity of the office.

19. 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 representatives. Not fighting an election does not mean retirement from politics or public life. Rather experience has shown, such people coming back with vengeance. Large scale of rampant corruption among public representatives tends to weaken the polity and damage the

supreme importance of law governing the society. There is need for rejuvenation of value based society

20. As noticed earlier, the purpose of 'censure' is to make clear that the society denounces these types of misconduct and to deter other persons from committing similar misconduct.

21. It is therefore submitted that such course of brazen misconduct does not deserve any leniency or sympathy by observing that a denial of ticket in the election and the disgrace faced served the purpose of "Sting Operation", so as to negate the recommendation of 'Censure'. Such misconduct in fact deserved that the constituents and electorate of the concerned 'public functionaries' are fully informed about their misconduct and indictment so that the elected representatives are chosen and elected from those who do not have such degradation or depravation.


(JUSTICE MANMOHAN SARIN)
LOKAYUKTA

Date: 26th March, 2013

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