

BEFORE THE HON'BLE LOKAYUKTA

JUSTICE MANMOHAN SARIN

COMPLAINT NO.C-1768/LOK/2012

IN THE MATTER OF:

Dr. Harsh Vardhan, MLA,
S/o. Late Shri O.P. Goel,
R/o. E-8A/14, Krishna Nagar,
Delhi.

... Complainant

V/s

1. Smt. Sheila Dikshit, Chief Minister,
Government of NCT of Delhi,
Delhi Secretariat,
I.P. Estate,
New Delhi 110002. ... Respondent No.1

2. Shri Raj Kumar Chauhan
Minister for PWD / Development / L&B
Welfare of SCs/STs/OBCs
Government of NCT of Delhi,
Delhi Secretariat,
I.P. Estate,
New Delhi 110002. ... Respondent No.2

1. Mr. Mehmood Pracha, Advocate, Counsel for Respondent
No.1

2. Shri Vivek Tandon, Advocate, Counsel for Respondent
No.2 & for SC/ST/OB/Minority Finance & Development
Corporation.

REPORT

1. Complainant, Dr. Harshvardhan, instituted a complaint on 21-09-2012, questioning the printing of application forms for sanction of loan under the "Dilli Swarojgar Yojna", carrying photographs of Smt. Sheila Dikshit, Respondent

MS

No.1 and Shri Raj Kumar Chauhan, Respondent No.2, on the top left and right hand corners.

2. GIST OF COMPLAINT

- (i) The Complainant, a BJP MLA, alleged abuse of position and power and failure to act as per norms of integrity and conduct by Respondents in getting their photographs printed on the application forms. Misuse of public funds and of government machinery for their personal gains to get an edge in the forthcoming Vidhan Sabha elections, is alleged. Indiscriminate advertisements were issued by Respondents showing their photographs on various application forms, to have political mileage at the cost of public exchequer.
- (ii) Complainant alleges that the Delhi SC/ST/OBC/Minority Finance & Development Corporation (hereinafter referred to as the "Corporation") is a Corporation owned and established by the Government of Delhi. It is controlled and managed by a Board of Directors appointed by the Lt. Governor. It advances loans to needy members of SC/ST/OBC and other minority classes. The Corporation functions autonomously, having its own rules and regulations, without any day to day supervision or interference by Respondents.
- (iii) Loan Application form with photographs is priced at Rs. 100/-. It was free of cost earlier. Complainant alleges that by printing of their photographs on Loan Application Forms, the Respondents failed to maintain norms of integrity and conduct, misusing public exchequer, their offices, to make personal and political gains, to get an

MS

edge in the forthcoming Vidhan Sabha elections of Delhi. This is alleged to be in contravention of Sec. 2(b) (i), (ii) & (iii) of the Delhi Lokayukta & Uplokayukta Act, 1995, (hereinafter referred to as the 'Act').

3. PROCEEDINGS

Before proceeding with the complaint and inquiry, this Forum wanted to satisfy itself that it was the decision of Respondents to print photographs on the loan application forms. On 28-09-2012, notice was issued to the Corporation, returnable on 12-10-2012, to produce the records regarding the proposal, its processing and the decision making process for printing of photographs on the Loan Application Forms. Further, to disclose the extent to which cost of form was enhanced by printing of photographs.

4. It was noticed that printing of photographs of leaders of different political parties on posters, pamphlets etc. of inauguration of camps etc. occurred frequently, but printing of photographs of leaders on Loan Application Forms was unusual. General Manager of the Corporation tendered a file bearing No. F.3/526/GAD/DSFDC/2012-13 titled "Dilli Swarojgar Yojna - Loan Application Form" and a part file in compliance with notice.

5. Earlier, under the "Composite Loan Scheme", loans up to Rs. 1.00 Lac were sanctioned to those having a family income up to Rs. 55,000/- per annum by Corporation. Application forms were given free of cost and did not carry any photographs.

Delhi Swarojgar Yojna Scheme gave loans up to Rs. 5.00 Lacs to promote self-employment among

members whose family income did not exceed Rs. 2.00 Lac per annum. Loan amount of Rs. 1.00 Lac under the "Composite Loan Scheme" was found meagre and it was raised to Rs. 5.00 Lacs under the new scheme.

6. The record reveals that the officers of the Corporation had revised the application form containing the various clauses without including photographs of the Chief Minister or the Minister. However, when the proposal for printing of revised application form under the new scheme, was put up before Respondent No.2 on 09-08-2010, he desired that forms should carry Chief Minister's and his photograph, on the same pattern as of the Food & Supplies Department. Reference was made to the form for Application for Replacement of Kerosene Oil with LPG Gas Connection, under the "Kerosene Free Delhi" campaign. It carried the photographs of Respondent No.1 Sheila Dikshit on the left hand corner and Shri Haroon Yusuf, Minister for F&S, on the right hand corner. Accordingly, revised form carrying photographs of Respondent No.1 & Respondent No.2 were prepared which were approved by both of them.

7. Upon consideration of the complaint, documents and record as produced and hearing the Counsel for the Complainant and Counsel for the Corporation, vide orders dated 26-10-2012, a notice to show cause, as to why an inquiry be not initiated under Sec. 7 r/w Sec. 2(b) of the Act, was issued to the Respondent No.1 and 2 returnable on 10-12-2012.

8. ISSUES INVOLVED

MS

The need and desirability of printing of photographs of the Chief Minister and the Minister, on application forms for sanction of loans, is being considered in these proceedings. It needs to be examined as to whether the photographs are required for any purpose or information for processing of the loan applications or otherwise. Besides, it is also time that appropriate norms and guidelines are formulated for dealing with such matters, so that our cherished values of ethics and probity are maintained.

9. Complainant, at the outset, had sought a restraint on Respondent No.1 and 2 and the Corporation from printing or publishing the photographs in any such form. It was observed by the Forum on 26.10.2012 that it is hoped and expected that the Respondents would not print the forms with their photographs pending hearing.
10. Mr. Mehmood Pracha entered appearance on behalf of Respondent No.1, Mrs. Sheila Dikshit. Shri Vivek Tandon, appeared for the Corporation and Respondent No.2, Shri Raj Kumar Chauhan, Minister for PWD / Development /L&B /Welfare of SC/ST/OBC, Government of Delhi, Respondent No.1 & 2 though served on 12-11-2012, did not file reply. Further time of three weeks was granted to file reply on 10-12-2012. Mr. Vivek Tandon informed that Corporation did not print any forms with photographs, pursuant to observations made by the Forum.
11. On 16-01-2013, reply was still not filed by Respondents No.1 & 2 despite service on 12.11.2012. Mr. Vivek

Tandon, informed that a proposal had been moved by the Corporation for framing of guidelines and for emergence of a policy in these matters. Reply along with proposed guidelines / recommendations was directed to be filed within 10 days, failing which it would be assumed that the Respondent No.1 & 2 have nothing further to say in the matter. Interim observations made were formalized. Respondents were restrained from printing such forms with photographs till further orders.

12. On 19-02-2013, Shri Shyam Sunder, an advocate on behalf of Mr. Tandon, informed the Forum that instructions were received from the Department, i.e. Welfare of SC/ST/OBC GNCTD, to the effect that "at this stage, there is perhaps no need either to formulate guidelines in this matter nor there is requirement of stopping the printing/publishing of such photographs on the application form of various schemes of any of the Government Department". A copy of the said decision was furnished to the Forum. Counsel for Respondent No.1 filed an application seeking recall of the order dated 16-01-2013, questioning jurisdiction of passing interim directions for non-printing of photographs.

13. Directions were given to place on record the Corporations and Ministry proposal and processing thereof and final decision taken thereon. On 11-03-2013 original records were produced.

It was enquired from Mr. Vivek Tandon whether there was any benefit or advantage to the loanee or applicant on account of the photographs of Chief Minister and the Minister for Welfare of SC/ST/OBC on the Loan Applicant Forms and whether any role was performed by

MS

the Chief Minister or the Minister in grant or processing of the loan applications? Corporation gave its response by filing an affidavit on 11-03-2013.

14. None appeared for Respondent No.1 and Order was reserved in the matter. However, Counsel for Respondent No.1 moved an application for recalling the Order dated 11-03-2013 reserving the order in the matter and for being permitted to argue on merits. His prayer was allowed. Counsel for Respondent No.1 was heard on his objections on the subject matter not falling within the jurisdiction of Lokayukta as also there being no power to pass interim orders and on merits as well. Counsel for Respondent No.2 and Complainant were also heard.

15. CONTENTION OF RESPONDENTS AND RECORD RELATING THERETO.

As per affidavit dated 11-03-2013 of Respondent No.2, when proposal for printing of new application forms for Dilli Swarojgar Yojna was approved by the Cabinet with limit of Rs. 5.00 Lacs, the printing of new application forms were discussed with the officers of the Corporation. It was desired that printing of the new application forms should be done on the same pattern as the application form for ration card of the F&S Department which had the photographs of the Hon'ble Chief Minister and the Minister for Food & Supplies with Cabinet approval. Printing of photographs on the forms of Food & Supplies Department having been approved by the Cabinet, the present Loan Application Forms were sought to be printed with photographs.

ASS

16. Following the observations made by this Forum in its order dated 26-10-2012, no further forms were being printed. Law Department advised that it would be appropriate not to print forms with photographs till final disposal of the matter.

A proposal had been prepared by the Secretary, SC/ST for being placed before the Cabinet with approval of Respondent No.2, Minister and submitted to the General Administration Department (GAD). In the event, disregarding the recommendations of the Respondent no. 2, Minister for consideration by Cabinet, a Committee of Secretaries headed by Chief Secretary and others i.e Secretary to Chief Minister, Secretary Finance, Secretary Law and Justice and GAD officials etc considered and decided the matter.

The Committee called for the records including proceedings before this Forum. It took notice of the order passed by this Forum that appropriate norms and guidelines as formulated be laid down for dealing with such issues so that our cherished values of ethics and probity are maintained.

17. The Committee recorded its conclusion in Para-30 of its note as under:-

"After discussing at length on the various aspects contained in the interim order dated 26-10-2012 it was decided that at this stage there is perhaps no need either to formulate guidelines in the matter nor there requirement of stopping /publishing of such photographs on the application form of various schemes of any of the Government Department".

18. The Forum noticed the decision regarding continuing with the publication of forms with photographs and the finding that guidelines were not considered necessary at present. Both Counsels for Respondent No.1 & 2 were permitted to argue the matter on merits. Complainant was also heard.

19. The Govt. of NCT disregarded the suggestion for formulation of guidelines by taking a decision that "there is, perhaps, no need to formulate guidelines in the matter nor is there a requirement of stopping of printing, publishing of such photographs on application forms of various schemes of Government departments". The Government even without considering the report or recommendations, which were yet to be made, adopted and displayed a rigid and closed mindset in the matter, non-receptive to any suggestions or recommendations for improvement in procedure and practice, having potential of maladministration and corruption.

20. The impugned loan application form carrying the photographs of Respondents is annexed hereto as **Annexure-I**. The persons eligible can get loan up to a maximum of Rs. 5.00 Lacs at concessional rate of interest @6% after moratorium of six months on reducing balances. The factum of the photographs of Respondents are neither required nor relevant for the purpose of any information required for processing and sanction of loan. Dilli Swarojgar Yojna scheme with higher loan amount was launched as the loan amount of Rs. 1.00 Lac

under the Composite Loan Scheme was found to be meagre due to inflation.

21. PRINTING AND PUBLICATION OF PHOTOGRAPHS ON LOAN APPLICATION FORM - COMPLAINT AND JUSTIFICATION OF RESPONDENTS.

As noted, it is the allegation of Complainant that photographs of Respondents on the Loan Application Form have been printed to gain an unfair advantage with an eye on the forthcoming elections. Forms are purchased and circulated among all the persons who are desirous of obtaining loans. Further, the Respondents gain at the cost of loan seekers who now pay Rs. 100/- for the form carrying photographs. The above conduct and action of printing these photographs is alleged to be an act violating the norms of conduct and activity under Sec. 2(b) (i), (ii) & (iii) of the Act. Copy of Complaint is annexed hereto as **Annexure-II**.

22. Respondent No.1 did not file reply to Show Cause despite opportunities. Nevertheless, Respondent No.1's Counsel was given opportunity to make submissions to justify their conduct to print photographs on Loan Application Forms and their sale at Rs.100/- per form and its availability at Corporation's official website in downloadable form. Respondent No.2, Shri Raj Kumar Chauhan, in his affidavit dated 11th March, 2013, deposed that when the proposal for printing of new application forms for Dilli Swarojgar Yojna was approved by the Cabinet for loan up to Rs. 5.00 Lacs was brought, the same was discussed with officers on 9-8-2012, it was desired that new application form should be

printed on the same pattern bearing photographs of Hon'ble Chief Minister and Minister as per sample form of Food & Supplies Department, already approved by the Cabinet.

23. Affidavit on behalf of Corporation dated 22-03-2013 was also filed referring to the Cabinet decision No. 1918 approving Dilli Swarojgar Yojna for loan upto Rs. 5.00 Lacs. Responding to the query as to any benefit or advantage to the loanee / applicants by printing photographs of Respondents, it was stated that since the Food & Supplies Department had already printed photographs of Hon'ble Chief Minister and Minister for F&S, in the Kerosene Mukht Dilli application forms, it was decided to follow the same pattern. It was disclosed that Respondent No.2 being Chairman, approved policy matters and loans of Rs. 1.00 Lac and above. Further, that there was no role of Respondent No.1 in processing or sanction of loans. Copy of the blank form carrying photographs is annexed hereto as **Annexure-III**.

24. LEGAL OBJECTIONS AS TO JURISDICTION OF LOKAYUKTA OVER AN ISSUR OR MATTER TERMS AS 'ADMINISTRATIVE' AND POWER TO PASS INTERIM ORDERS.

Respondent No.1, Hon'ble Chief Minister did not file reply to Show Cause notice. However, Mr. Mehmood Pracha, her Counsel was permitted to raise objections on jurisdiction and on merits. Mr. Pracha claimed that the complaint was not maintainable as it sought to assail only an administrative decision regarding printing of photographs on a Loan Application Form. Such an

administrative decision could only be challenged in writ jurisdiction or in civil suit or proceedings but not under the Delhi Lokayukta & Uplokayukta Act, 1995. The said plea is misconceived as the Lokayukta has jurisdiction under the Act to inquire into and examine whether any decision or act or part of conduct was in violation of the norms of conduct and integrity and whether it infringes the provisions of Sec. 2 (b), (i), (ii) & (iii) of the Act. There is, in fact, the statutory mandate to the Lokayukta to inquire into such cases.

25. The next plea sought to be raised is that even for a suggestion under Section 16 for improvement to be made, there has to be a potential for corruption or maladministration. Mr. Mehmood Pracha urges that whether such potential exists or not could be determined only after detailed inquiry and evidence with cross-examination of witnesses. This is a case where the answering Respondent, despite opportunities did not file her reply. Record has been produced which discloses the decision making process and the reason for printing photographs on application forms. The records reveal that the said decision was taken as per the desire of Respondent No. 2 to have the forms printed with photographs of Chief Minister and Minister as was done by the Food and Supply Department. Once the reasons and the basis are disclosed, it is settled law that a different post-facto justification cannot be advanced.

The controversy in the present case is a simple one, whether the conduct in printing the photographs of Public Functionaries on the Loan Application Forms comes within the ambit of conduct not expected of a Public Functionary or not? The reason and motive for

118

such printing having been disclosed, the submission that the matter requires detailed inquiry in terms of evidence and cross-examination etc. militates against the very object and nature of the inquiry under the Act.

26. The next legal submission of the learned Counsel for Respondent No. 1 is that the Lokayukta has no jurisdiction or power to pass an interim order restraining the Respondents from printing the photographs on the Loan Application Forms. In this regard vide order dated 26-10-2012, this forum had initially expressed the hope and expectation that since the forum was seized of the matter and notice of hearing had been issued, pending such hearing the Respondents would not print such other forms carrying their photographs. It was also observed that it is time, appropriate norms and guidelines are formulated for dealing with such matters so that our cherished values of ethics and probity are maintained. The record shows that the Law Department of Govt. of NCT, in view of the above observations, recommended that pending such hearing further forms carrying the photographs be not printed. Based on the above Counsel for the Corporation also submitted that forms were not being printed with photographs.
27. As noted earlier, replies were not filed till 16-01-2013 and this forum by order dated 16-01-2013 passed directions for formalizing interim observations and restraining the respondents from printing further forms carrying photographs. Even in the absence of a specific provision empowering passing of interim directions, it is submitted that with a view to prevent the inquiry from being frustrated or in appropriate cases for preserving evidence, interim directions can be given in the overall

HB

exercise of power of conducting inquiry and laying down procedures.

28. Furthermore the challenge to the said order dated 16-01-2013 or questioning the jurisdiction to pass interim orders is really of no consequence now in view of the decision taken by the government to continue to print Loan Application Forms as before with photographs and holding there is no need at present to frame any guidelines.

The above decision has been taken when recommendations on the conclusion of the inquiry had not even been made. It discloses a rigid and pre-set mindset on the matter non-receptive to any suggestions or recommendations for improvement or otherwise in governance.

29. Having rejected the objections to the jurisdiction over the subject matter of the inquiry and other pleas, let us now consider the justification for printing of photographs on the Loan Application Forms and the rationale there-for.
30. Learned council for Respondent No.1 sought to submit that the photographs of the Chief Minister and the Minister for SC/ST/OBC gave credence to the scheme which had been floated by the government to alleviate poverty and generate self employment by providing loans to the needy sections. Firstly, the submission is not borne out by the record and the decision making process. Secondly, a scheme by which loans are advanced for the benefit of weaker sections and where recipients are the beneficiaries, such a scheme can hardly be said to be requiring any credence or boost in its credibility by printing photographs of the executive head. Especially, when the scheme is of the government

NS

and is being implemented through a government organization.

31. This is not a case where any promise or assurance was held out regarding scheme of construction of houses etc. that might need some sanctity in terms of credibility. It is not open for respondent to seek to introduce so called rationale which is not available in the decision making process or the record. Reliance was placed on a judgment of a single judge of the high court of Delhi in ASHOK KUMAR TYAGI v. LOKAYUKTA, reported as 2003 4 AD DELHI 669, where the order cancelling the license for liquor vend was held as beyond jurisdiction of Lokayukta. The said is a case totally distinguishable on facts and has no application.

32. Photographs of the Chief Minister and the Minister for SC/ST/OBC on the Loan Application Forms for grant of loan have been printed. It is abundantly clear that the said photographs are not required by any reason for the sanction of the loan. The photographs do not provide any information which would enable either the processing of the application for loan or its sanction. The only purpose for putting the photographs is to glorify and develop a personality cult for the said leaders. It is the admitted position that the Hon'ble Chief Minister whose beaming photograph appears on the Loan Application Form has no role or function to perform in the grant or processing of the loan. The processing and its sanction are done by its Officers as per the rules of the Corporation. Respondent No.2 is, no doubt, the Chairman of the Corporation and in that capacity policy matters and loans of over Rs. 2.00 Lacs are approved by him.

33. Nothing has been shown which gives even the slightest justification or reason for printing of these photographs on the Loan Application Forms, except that in this they were following an earlier precedent approved by the Cabinet whereby similar photographs of the Chief Minister and the Minister for F&S were printed on the form for LPG Connection with the caption "Kerosene Mukti Dilli".
34. It would be appreciated that though the forms under the Composite Loan Scheme which applies to loans up to Rs. 2.00 Lacs with a family income ceiling of Rs. 55,000/- per annum, forms were distributed free of cost. The cost of the Loan Application Form inclusive of printing of photographs is stated to be Rs. 18/- while the Government is recovering Rs. 100/-. A hapless citizen who is anxious to get loan would even pay higher amount for getting a loan up to Rs. 5.00 Lacs.
35. The desirability of printing the photographs, images of public functionaries and politicians on hoardings, advertisements has been considered by the Election Commission of India and several instructions in this regard have been issued. Even though the prohibition or restrictions may be applicable which are enforced during the operation of Model Code of Conduct, the said instructions reveal, the basic underlying thought and rationale for the same. It would be appropriate at this stage to quote one of the instructions of the Election Commission of India, which is quoted by the Supreme Court of India in Writ Petition (C) No.266/2009 titled "RAVIKANT & ANR V/S STATE OF U.P & ORS", with approval. The instructions of the Election Commission of India dated 01-04-2009 are being reproduced:-

108

"The underlying intention of the Commission's instruction was that the photographs and images of the political functionaries, who have deep influence on the minds of electors and many of whom are still active in public life and may even be contesting the current general elections, should not be displayed in the government buildings and premises as that would have the effect of disturbing the level playing field vis-à-vis the political functionaries of other parties and candidates. In view of the inputs received, the Commission had issued the above instructions. In the meanwhile, certain doubts have been raised and clarification has been sought about the removal of the images of some national leaders, poets and prominent historical personalities of the past. In this regard, the Commission would like to state that the above mentioned underlying purpose of the instruction needs to be fully appreciated while being acted upon. It is clarified that while the photographs of Prime Minister, Chief Ministers, ministers and other political functionaries should not be displayed, this instruction, however, is not applicable with regard to the images of national leaders, poets and prominent historical personalities of the past, and the President of India and the Governors. It is further clarified that in case of any doubt in this regard regarding removal of any photograph or images, the issue may be referred to the Chief Electoral Officer of the State / Union Territory concerned before taking action in the matter".

AS

36. These instructions were quoted in the case relating to public money being spent by the Government of U.P. for personal glorification by erecting statues of leaders who were then in power.
37. Another instruction of the Election Commission of India being Instruction No. 26-437/6/Misc/2004/PLN-III dated 08-10-2004 regarding advertisements for Pulse Polio Campaign is of relevance:-

"I am directed to refer to your D.O. letter No. J-130/10/2004/IEC dated 7-10-2004 addressed to the Deputy Election Commissioner and to state that the Commission has no objection to the release of advertisement as per sample enclosed with the letter referred to above. However, the advertisements with the political leaders may be avoided in the advertisements if it is being issued in the States going for bye-elections".

It would be seen that even an advertisement for purely a welfare measure concerning health for eradication of polio by administering polio vaccine drops, the Election Commission advised avoidance of advertisements if it carried photographs of political leaders. The rationale being that such photographs, apart from encouraging personality cult, have a tendency of giving an unfair advantage or creating an image in the mind of the electorate.

38. The Loan Application Forms which are printed with the photographs are available for use throughout. It cannot be that only during the Model Code period with the elections due in October-November 2013, the Respondent

shall stop processing the loans on these Forms, in view of the Election Commission instructions.

39. It is clear from the foregoing discussion that the printing of Loan Application Forms by Respondent No. 1 & 2 is for personal glorification and part of the personality cult and to get unfair advantage from the beneficiaries under the scheme as being their benefactors.
40. The Loan Application Forms with the photographs are no longer distributed free of cost. It is at the cost of public exchequer or the citizens who are made to pay also for the cost of the printing of these photographs by which the respondents seek to benefit themselves. A 'public functionary' committed and devoted to the norms of integrity and conduct need not strive to get his or her photographs printed on forms or public advertisements for an unfair advantage in the elections or to gain popularity. This is not the conduct expected of a public functionary holding the august office of the Chief Minister.
41. To bring home the point that it is not a conduct expected from the class of public functionaries, one can consider some examples .e.g. the Minister of External Affairs wanting his photographs to be put on all application forms for issuance of Tatkal passports.
42. It is, therefore, held that the action of respondent No.2 in proposing and of respondent No.1 in approving and implementing the printing of their photographs on the application forms for Loans amounts to abuse and misuse of power and authority and this conduct is in violation of the norms of integrity and conduct expected of public functionaries of the said class. It is also

intended to procure unfair advantage and gain for themselves to gain popularity and improve their election prospects.

43. Resultantly, it is recommended to the Hon'ble President of India to:-

- (i) Issue an 'advisory' to the Chief Minister of Delhi and the concerned Minister, Respondent No.1 & 2, to desist from printing their photographs on the Loan Application Forms under the Dilli Swarojgar Yojna.
- (ii) Efface or block the photographs if any printed on the existing forms prior to their use.
- (iii) Direct the Government of NCT of Delhi to frame appropriate guidelines that would govern the issuance of advertisements, hoardings etc. containing photographs and images of public functionaries even during the period when model code is not applicable so as to conform to the norms of conduct and integrity expected of 'public functionaries'.


(JUSTICE MANMOHAN SARIN)

LOKAYUKTA

DATE: 6/5 MAY 2013