

BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin
Complaint No. C-1939 /Lok/2012

In Re:-

S.K Saxena, Director Nishpaksh, NGO
New Delhi ... Informant

AND

Col. Shiv Raj
R/o 210 Munirka Vihar,
New Delhi 110067 ... Intervenor

Present

1.Sh. S.K. Saxena, informant in person.

1. Col. Shiv Raj.

ORDER

1. A communication No. F.PGC/2012/annex-I/Lok/Misc./45034 dated 17.01.2013 was received from the Deputy Secretary, Public Grievance Commission, forwarding therewith the grievance/complaint made by Sh. S.K.Saxena, Informant. He was aggrieved by the posters/banners/hoardings etc. put up by the workers of political parties and public functionaries in contravention of the provisions of Delhi Prevention of Defacement of Public Property Act, 2007.
2. The input from the Informant was not in the prescribed form for a complaint. Besides most of the photographs of the posters/banners/hoardings etc. were sent through e-mail.
3. During the hearing before this forum, Informant Sh. S.K. Saxena, expressed his inability to make a complaint in the prescribed manner in English language. Being a

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citizen centric institution, arrangements were made for the translation of his communications from Hindi to English

4. Accordingly the communication was directed to be treated as "other information" for the purposes of inquiry under section 7 of the Delhi Lokayukta and Upa Lokayukta Act 1995 and was registered as above complaint.
5. From time to time directions were given to consolidate and assimilate the inputs, 'information' and 'documents' received from the Informant in cogent form. The Informant provided a CD containing the photographs of various posters/banners/hoardings etc. The print out of the CD has been taken, which forms part of case record. The Informant has also indicated, to the extent possible, names of the 'public functionaries,' who appear in these poster/banners/hoardings as well as those who authored them. From the photographs identity of the 'public functionaries' appearing in the said poster/banners/hoardings has been discerned and identified. These banners/posters/hoardings appeared on walls of structures, pavements, road berms and crossings etc.
6. Col. Shivraj seeks intervention for being permitted to assist the forum in the matter. He claims to be part of a citizen centric initiative called "Poster Hatao". He is permitted to intervene and assist the forum in this matter.

The crusade and campaign of Informant and Intervenor is to make citizens aware of the menace

of posters/banners/ hoardings with which Delhi is infested and which cause obstruction on pavements, distract attention and are accident prone.

7. It is urged by the Informant and the Intervenor that concerned civic agencies and 'appropriate authorities' do not take any action to penalize or prosecute the offenders. Municipal Corporation only periodically removes them when the event is over or they have become stale. These posters/banners/hoardings are put up by or at the behest of the 'public functionaries' by their followers and supporters, with their consent and knowledge or otherwise. It is only during the period when Model Code of Conduct for Elections is in force, that these posters/banners/ hoardings are not put up due to fear of the expenses of these posters/hoardings/banners being included in their election expenses or they being hauled up for violation of the Model Code of Conduct.

8. Putting of such boards/hoardings/posters etc. is claimed to be in contravention of the provisions of Delhi Prevention of Defacement of Property Act 2007. Sub Section 2 of Section 3 of the said Act provides punishment of imprisonment for a term upto to one year, or with fine upto fifty thousand rupees or with both. 'Defacement' and 'Property' are also widely defined to bring within their ambit all the places where these posters/banners/hoardings are put. 'Property' includes any

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building, hut, structure, wall, tree, fence post, pole or any other erection. Numerous posters/banners/hoardings even appear on the lamps posts etc. on the streets.

9. In a complaint filed by one Rajesh Garg, against Sh. Vijender Gupta, Ex-Municipal Councilor (Complaint No. C-1356/Lok/2012), which is pending adjudication, this forum attempted to bring a consensus amongst the various political parties so as to contain and end this menace. Notices were issued to Presidents of Delhi State of the all major political parties including the Congress, Bhartiya Janta Party and Bahujan Samaj Party and others. It was proposed that parties could agree to allocated designated sites and places in different areas, where posters/banners/hoardings could be put up. Unfortunately, the response of the major party i.e. Congress party was a disappointing one. It was stated on their behalf that existing Statute and Outdoor Advertisement Policy of MCD were sufficient enough to deal with this issue. While the other political parties indicated their willingness to go along with the consensus as may be reached to end this menace.

10. Political parties are normally vying with each other in their claims of developing Delhi into a "First Class Metropolis" or a "World Class City". However they are reluctant when it comes to join in consensual effort to impose self regulation in the matter of putting up boards/hoardings/banners etc.

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10. One of the most popular slogans of the Govt. of NCT of Delhi is "Kerosene Mukht Delhi" but it appears that they are not willing to join hands in "Poster Aur Banner Mukht Delhi", the campaign of the intervener.
11. There is no gain-saying that the existing laws provide for regulation of poster/banners/hoarding etc. The ground realities are however totally different. The banners/posters/hoardings are put up on the smallest pretext. Be it a birthday, a festival or winning some internal election or inauguration of a road or project. These poster/banners/hoardings are put up not at the scheduled sites of MCD which would earn revenue for MCD, but at other convenient places in contravention of the statute. These posters/banners/hoardings are either put up by public functionaries or their followers, who wield considerable clout. This results in a situation of almost "nil" prosecution. Constraint of resources such as manpower, the availability of place to store case property in case of seizure etc. are often cited as impediments to prosecution. Reality is that enforcement agencies are reluctant to take action against the powerful and mighty and to whom they otherwise report. An idea of the extent of menace can be had from the following statistics.

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In the year 2011-12 in Rohini zone alone, MCD claims to have removed 45366 Posters, 23829 Banners and 10397 hoardings without any

prosecution having been launched against any person.

12. Sub Sections (1) and (2) of Section 3 of the Delhi Prevention of Defacement of Property Act 2007 provide as under:-

1. Whoever defaces any property in public view by writing or making with ink, chalk, paint or any other material except for the purpose of indicating the name and address of the owner or occupier of such property shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both.

2. *"When any offence is committed under sub section (1) is for the benefit of some other person or a company or other body corporate or an association of persons (whether incorporated or not) then, such other person and every president, chairman, director, partner, manager secretary, agent or any other person or officer or persons connected with the management thereof, as the case may be, shall unless he proves the offence was committed without his knowledge or consent, be deemed to be guilty of such offence."*

13. The informant urges that the 'public functionaries' whose photographs appear on the posters/banners hoardings are the beneficiaries of the act allegedly contravening sub section (2) of Section 3 of the Delhi Prevention of Defacement of Property Act, 2007. He further urges that posters/banners/hoardings do not come within the

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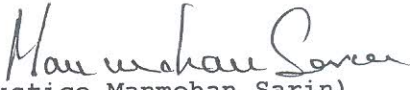
exception of sub section (1) of section 3 of the Delhi Prevention of Defacement of Property Act 2007 in as much as the same are not for the purpose of giving name and address of the owner or the occupier of the property.

14. The informant has given the list of 'public functionaries' which is at Annexure 1 (A-1 to A-25) to this order. The names of the public functionaries and the places where the said posters/banners/hoardings were placed have been given in column No. 3 and 5 respectively of the above list. The printout of posters/banners/hoardings are as annexure 2A to this order. The CD of the posters/banners/hoardings is as annexure 3.

15. From the perusal of the documents and material placed on record it is seen that the concerned 'public functionaries' i.e. Councilors and MLAs have prima facie contravened the provisions of Sub Section 2 of Section 3 of Delhi Prevention of Defacement of Property Act, 2007. It would thus also prima facie be case of contravention of section 2 (b) (i) of the Delhi Lokayukta and Uplokayukta Act 1995 for failure to observe norms of conduct and integrity expected of a 'public functionary' of their class.

Accordingly, let notices issue to show cause as to why an inquiry be not conducted against the said public functionaries for alleged violation of the provisions of sub section 2 of section 3 of the Delhi Prevention of Defacement of Property Act 2007 and contravention of section 2 (b) (i) of

Delhi Lokayukta and Uplokayukta Act 1995 read with section 7 of the Delhi Lokayukta and Uplokayukta Act 1995, returnable on 22nd July, 2013 at 2.30 PM. Copies of annexure 1 and 2A and 3 as also the original communications received from the Informant be also sent to the noticees 'public functionaries' alongwith this order. The list includes 14 Municipal Councilors (including ex Municipal Councilors) and 08 MLAs including the Minister Shri Rama Kant Goswami and the Hon'ble Chief Minister Mrs. Shiela Dikshit.


(Justice Manmohan Sarin)
Lokayukta, Delhi

Dated 13th May, 2013

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