

**BEFORE HON'BLE LOKAYUKTA
JUSTICE MANMOHAN SARIN
COMPLAINT NO. C-223/LOK/2009**

Shri Vijender Gupta,

S/o. Late Shri L.P. Gupta,

R/o. B-85, Vinobha Kunj,

Sector-9, Rohini,

Delhi

.....Complainant

Versus

Smt. Sheila Dikshit,

Chief Minister of NCT of Delhi

.....Respondent

APPEARANCES:-

1. Shri H.S. Phoolka, Sr. Advocate, with Shri Ashok Kashyap and Shri Kanwar Faisal, Advocates, Counsel for the Complainants.
2. Shri D.N. Goburdhan, Advocate, with Shri Abhishek Aggarwal, Advocate, Counsels for the Respondent.
3. Shri Saurab Kirpal, Advocate, Amicus Curiae

REPORT

INTRODUCTION

1. This inquiry raises a question of great public importance, namely, whether funds of public exchequer can be expended on advertisements purportedly for informing the people of the Government policies, plans, development and the schemes undertaken when the said

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advertisements are part of a well designed strategy to canvass political support and allegedly overcome the incumbency factor. In other words, when the Government and public advertisements become political or part political and are for personal benefit of the incumbent public functionary and her party.

In the instant case, it was the allegation of the Complainant that Government advertisements, expenses of which were in the range of Rs. 4.00 crores every year, remained the same upto 2007, doubled in 2007-08 to Rs. 10.00 crores and in the election year 2008-09 reached the figure of Rs. 22.50 Crores, which was incurred to project the Respondent Chief Minister and her party.

Reliance has been placed on the revelations by the Director of Information & Publicity regarding a well designed campaign strategy, in his article published in Rashtriya Sahara, which has been corroborated by the factual events and advertisements published and on record.

The Complainant has placed reliance on the pattern of advertisements which have put the strategy as disclosed in the article in a systematic execution, whereby the distinction between the Government and political advertisements got eroded and synchronized into one namely political advertisements.

The right of a democratically elected Government to inform the public of its development schemes, programmes and accomplishments is not in question. The question arising for consideration is if the public

advertisements and publicity expenses which are incurred to gain political purposes, then should the exchequer be burdened with it?

2. The entire story unfolds itself with Sh. Vijender Gupta, Complainant filing a Complaint dated 17-08-2009 against Smt. Sheila Dikshit, Chief Minister, NCT of Delhi. On 25-09-2009, during preliminary hearing, Sh. H.S. Phoolka, Ld. Senior Counsel for the Complainant made a request for amending the complaint. As the case was at an initial stage and notice had not been issued, the request was allowed. Amended complaint as filed on 07-10-2009 was taken on record.

ALLEGATIONS IN THE COMPLAINT

3. The Complainant alleges that the Respondent has abused her position as Chief Minister by hatching a plan in 2007, to misuse public funds for an advertisement campaign with a view to gain political mileage in the elections to Delhi Assembly, due in November 2008. The Govt. machinery, particularly Department of Information and Publicity was instructed to make an elaborate plan to project Respondent in positive light to gain advantage during elections. This has been admitted by Sh. Uday Sahay, the then Director of Information & Publicity Department in an article titled, "Sheila ki Campaign Ranniti", authored by him and published in the Hindi newspaper, "Rashtriya Sahara", dated 21-06-2009, wherein he stated that his department started planning in the year 2007 to make an elaborate campaign to overcome the anti-incumbency factor, for the Respondent. Campaign was started to enhance the chances of the Respondent to win the elections.

4. It is alleged that upto 2006, advertisements were published by Delhi government for the purpose of informing the public about its policies. The expenses for the same in the year 2004-05 had been Rs. 4 crores. It remained approximately the same for the years 2005-06 and 2006-07. In the year 2007, as per the plan, advertisements, as a part of publicity campaign, started appearing with photograph of a beaming Respondent prominently featuring on each advertisement. The frequency of advertisements was phenomenally increased in leading newspapers and field advertisements at the cost of public exchequer. These advertisements were carried out with the purpose of giving Respondent personal benefit and the entire credit for the "change" in Delhi metropolis. After 2007, many advertisements also carried pictures of Smt. Sonia Gandhi, Chairperson UPA, along with those of the Respondent, though the former held no position in the government of NCT of Delhi. Besides, a large number of hoardings showing pictures of the Respondent and Smt. Sonia Gandhi were placed all over Delhi on the Metro, bus queue shelters etc.. Radio jingles and TV spots in audio visuals media were also used extensively, as a result of which the publicity expenses for the year 2007-08 increased by more than two fold i.e. Rs. 10 crores. In the year 2008-09, this expenditure increased by 5 times to approximately Rs. 22 crores and 56 lakhs. This additional expenditure of about Rs. 18 crores and 56 lakhs was incurred to project the Respondent and her party. This gave her an advantage in the ensuing elections. Sh. Uday Sahay was suitably rewarded. He resigned as an IPS Officer and was given a plum posting as Addl. Director General

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(Communications) of Commonwealth Games as a reward for successful election campaign carried out on such a large scale at the behest of the Respondent.

5. It is alleged that in his article, Sh. Uday Sahay admits and explains how the preplanned expensive advertising and media campaign was used to project the Respondent and help her win the elections in 2008. He categorically states, "Vigyapan ki duniya ke parmparik vivek ko dhyan me rakhte hue ye tai kiya gaya ki janata ko dimag me Delhi me hue sakaratmak parivartan ki tasveer dali jaye taki chunav ke waqt in yaado ko bhunaya ja sake."

He also explains as to how the government conspired to play on the psyche of the people of Delhi. He states, "Ranniti banake chunao ke purv ek varsh me akhbar, radio, TV aur outdoor media ke madhyam se parivartan ki in tasveeron ko matdaatao ke dimag me purjor bitha diya jaye."

While elaborating on the strategy / plan being a two stage process, he states that the first stage began with the outdoor campaign, "Delhi is changing". The campaign was further advanced as, "Har din badalti tasveer Delhi ki mere liye". All these creative's were representing the different classes in Delhi, i.e. children, youth, housewives, labour class, Muslims and Sikhs. During the second stage, elections were declared. It was said through political campaign, "parivartan ki dor toote na", leading one to believe that it is the Respondent and Congress party that has brought about all the positive changes in Delhi. Sh. Uday Sahay concludes his article by conceding that government

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advertising and political advertising had become one under their strategy. The article by Shri Uday Sahay, published in newspaper Rashtriya Sahara is Ex. C-1 and its English translation is Ex. C-2. These are annexed hereto as RPT-I (Colly.)

6. Respondent was personally holding charge of the Department of Information & Publicity with Mr. Uday Sahay as its Director. This admission of Sh. Uday Sahay, in the article, who was acting on behalf of Respondent, leaves no doubt that the Respondent abused her position as a Chief Minister to draw personal benefits and misused government machinery and public funds for her personal gain and that of her party. It is alleged that in implementing this purely political campaign, a mind-boggling amount of Rs. 22.56 crores of tax payers' money had been spent. A copy of the Complaint is annexed hereto as RPT-II.
7. Complainant has also placed on record photocopies of advertisements that the Delhi government carried out in 2005-06 and those after its political campaign strategy was conceived and implemented, in order to highlight the contrast between the two. Annexures X-1 to X-9 to the Complaint, exhibited as C-64 to C-69, C-72, C-75 & C-76 contain general advertisements published in 2005, are annexed hereto as RPT-XII (Colly.) and Annexures A-1 to A-4 to the Complaint, exhibited as C-70, C-71, C-73 & C-74, are annexed hereto as RPTXIII (Colly.). These are advertisements in 2008 pertaining to environment. These contain picture of the Respondent featuring prominently to project her. On the other hand, Annexures A-5 to A-6 to the Complaint, exhibited as C-75 & C-76, are

advertisements of 2005 for the purpose of informing and educating the public, with no picture or malafide intention of gaining political mileage or promoting her party. These advertisements can be described as the ones by which information regarding government's planned development and activities are given. Similar contrast can be seen in Pulse Polio Advertisement carried out on 28-10-07 and 06-07-08, which are Annexures B-2 and B-3 to the Complaint, exhibited as C-78 & C-79, with the pictures of Respondent and Sh. Yoganand Shastri, the then Health Minister, with the intention of personal projection. The same is annexed herewith as **RPT-XV (Colly)**. Photocopies of advertisements demonstrating the difference in the campaign content of the government are exhibits C-4 to C-11 and the same are annexed hereto as **RPT-III (Colly)**. These advertisements published by Delhi Government carry the caption "Clean Delhi Green Delhi", with the photograph of the Respondent. These are followed by advertisement of the Congress Party, Ex. C-12, annexed hereto as **RPT-IV**, published in Hindustan Times on 23-11-2008, which is clearly in furtherance of earlier Govt. advertisements. This projects that the congress party is responsible for 'Clean Delhi Green Delhi' and urging the voters to vote for the congress in order not to put a stop to the change, 'Clean Delhi, Green Delhi'.

Advertisements on regularization of Unauthorized Colonies, Annexures B-1 to 10 to the Complaint, exhibited as C-13 to C-28, are attached hereto as **RPT-V (Colly)**. These show pictures of the Respondent with minister of her party and Smt. Sonia Gandhi and old veterans of the congress party such as Late Smt. Indira Gandhi and Late Sh. Rajiv Gandhi. Annexure B-17

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dated 25-11-2008 to the Complaint, exhibited as C-29, annexed hereto as RPT-VI, is an advertisement of Congress Party carrying the same message, "Don't Stop Affordable Housing". Similar strategy was used for Delhi's development, flyovers, metro and awareness regarding environment, which are exhibited as C-33 and C-34. These are attached hereto as RPT-VIII (Colly). These advertisements confirm Sh. Uday Sahay's assertions made in his article that extravagant costs were incurred on advertisements with a view to give personal projection and benefit to Respondent *and her party in 2008 elections, while the advertisement published by the Congress Party, devised as its campaign carried forward the publicity strategy in order to overcome anti-incumbency factor.

8. The Complainant has placed on record advertisements illustrating that those published in the year 2005 focused on the purpose and object of the information or advertisement sought to be conveyed, while in the changed pattern, there was a radical change to focus shifting on the personal projection of the Respondent Chief Minister and other prominent leaders of the party. Reference in this connection may be made to advertisements Ex. C-80 & C-82, annexed hereto as RPT-XVI, C-84, C-85, C-85A, annexed hereto as RPT-XVIII (Colly.), C-90, C-91, annexed hereto as RPT-XX (Colly.), C-93, C-94, C-95, annexed hereto as RPT-XXII (Colly.), C-97 to C-99 and C-113, annexed hereto as RPT-XXIV (Colly.) which are informative advertisements without any personal projection or photographs of the leaders. These covered diverse subjects such as Commonwealth Games, Helpline of Delhi Jal Board etc.

In contrast, advertisements Exh.C-81, annexed hereto as RPT-XVIII, C-83, C-86 to C-89, annexed hereto as RPT-XIX (Colly.), C-92, annexed hereto as RPT-XXI, C-96, annexed hereto as RPT-XXIII, C-100 to C-102, annexed hereto as RPT-XXV (Colly.), are advertisements containing photographs and self projection. It is significant that these dealt with the same subjects such as Commonwealth Games, Helpline of DJB, Diwali Greetings, information for admission in schools etc. Similar contrast can be seen in the advertisements issued by Department of Power in year 2005, exhibited as C-103 to C-105, annexed hereto as RPT-XXVI (Colly.). These advertisements do not contain any photograph of Respondent, whereas advertisements issued for the same cause in year 2007-08, Ex. C-106 to C-109, annexed hereto as RPT-XXVII (Colly.), contain photographs of the Respondent. The aforesaid clearly demonstrates the campaign strategy as devised and recorded in RPT-I and its execution in terms thereof.

9. Complainant alleges that after winning the elections, no such advertisement was published by the Respondent or her party which shows that it was a strategy to publish large advertisements carrying photos of Respondent and Smt. Sonia Gandhi at the cost of public exchequer with an eye on elections. This was done under the instruction of the Respondent, who flagrantly misused her position and power as Chief Minister and Minister in charge of Information and publicity to obtain gain and favour for herself and party by causing huge loss of Rs. 22.56 crores to the exchequer.
10. The Complainant also alleged that the Respondent has misled the public by giving false information. An

advertisement appeared just before the elections with the photo of Respondent and Smt. Sonia Gandhi stating that 1639 colonies have been regularized. However a news item which appeared on 25-09-09, referred to the meeting convened by the Respondent and also an affidavit filed in the High Court mentioning that 511 colonies have been regularized but factually even these have not yet been regularized. A reply dated 29-09-09 given by MCD in response to a query raised by the Complainant also shows that the building plans of these colonies have not been sanctioned because the colonies have not been regularized yet. The Complainant claims that this establishes that the advertisements given were wrong and were given to mislead public.

11. The Complainant thus alleges that the Respondent has abused her position to obtain gain or favour to herself and to her party and to cause undue harm to state and she was actuated in the discharge of her function as such Public Functionary by improper and corrupt motive and she is guilty of corruption.
12. Vide order dated 09-10-09 notice was directed to be issued to the Respondent. Sh. Saurabh Kirpal, Advocate was appointed as Amicus Curiae during the proceedings to assist this Forum.

REPLY AND PLEAS OF RESPONDENT

13. The Respondent appeared through her Counsel and filed reply on 23-11-2009. She averred that the complaint is totally misconceived and does not fall within the ambit of Lokayukta. It is frivolous, malicious, will fully made and is politically motivated. Perusal of the complaint showed that the mandatory ingredients for invoking the jurisdiction

under the Delhi Lokayukta and Upalokayukta Act, 1995 (hereinafter called the 'Act') have not been fulfilled. Requirements of prescribed Forms-I & III have not been complied with. Any procedure provided by a special Act must be read strictly. It was mandatory to follow the procedure under the statute and complaint has to be filed in the prescribed manner. The affidavit filed is not in accordance with the form and the source of information is not disclosed.

14. It is further averred that under the scheme of the Act, the Complainant has to satisfy that the allegations made fall within one of the five sub clauses of Section 2(b) of the Act. The term "allegation", as stipulated in Section 2(b) of the Act, has to be given a strict meaning to look into whether the Public Functionary has failed to act in accordance with norms of integrity and conduct or abused or misused her position to gain favour or corrupt motives etc. A perusal of the Complaint clearly shows that there are no allegations as per the requirements of law and is a misconceived complaint. A bald and vague allegation cannot be subject matter of inquiry under the Act. The impugned order/notice also shows that essential ingredients of Section 2 (b) have not been mentioned at all. The issuance of notice is claimed as contrary to law.

15. It is further alleged that only the original complaint could be considered as there was no provision for incorporating amendments in the complaint. Filing of amended complaint was not in accordance with law as the Act is not governed by the Code of Civil Procedure.

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16. It is further stated that in a democratic country opportunity is given to the opposition to counter and rebut the highlighted achievements of the incumbent government. In Delhi where the population has crossed over 1.5 crores, it is not possible for the Respondent Chief Minister to highlight the development works, schemes for young and old persons etc., by visiting individual houses but the Respondent still tried to reach as many as she could through print and electronic media etc., so that the people of Delhi know that the incumbent government is determined and committed to overall development of Delhi. The Respondent has no financial stakes or any shareholdings in paper or TVs etc and has no personal financial benefit of any kind whatsoever. Every government has a duty to inform the people about the development work and people have an inherent right to know about the government and its projects. Public advertisements by the government of its projects and schemes do not amount to corruption. The head of the government shoulders the responsibility and duty to educate, inform and communicate to the people of NCT of Delhi. Thus the print information and electronic media coverage was done only for the benefit and information of people of Delhi. The advertisements were issued by Delhi Government to show how Delhi has changed and how much progress has been made. None of the advertisement had a slogan to vote for Congress party. Highlights of the government developmental programmes and schemes have been done consistently all the year round as the public advertisements of Polio Drops, electricity, water, metro etc. would show.

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17. It is further submitted that as the matter essentially pertains to and is concerned with elections, there is a statutory bar and the complaint is not maintainable in view of the provisions of Representation of The People Act, 1951. The case of the Complainant is that elections of Delhi Assembly were won by the present Govt. by misleading the public through public advertisement, which is a subject to be dealt with and challenged exclusively in an election petition under Representation of Peoples Act, 1951 and it cannot be done by filing a complaint under this Act. Thus, this Forum has no jurisdiction to hear election matter or any matter arising out of or relating to an election. If the people of Delhi have been misled then they would have filed cases of misrepresentation under the Representation of Peoples Act, 1951. However no such case has been filed. The complaint is purely a political gimmickry by a disgruntled person and is an abuse of the process of law.
18. It is also stated that no cognizance can be taken on a newspaper article. The newspaper article was not a news report. The article by the person is a perception / misconception of that person which could be his own imaginary view and has no basis for initiation of an inquiry under the Act.
19. Photograph of the Chairperson of UPA, who is also the head of the Congress party, was published out of reverence, respect and regard for the president of the party and nowhere in the advertisement there was a slogan, "Vote for Congress Party". There is no bar or prohibition in any law which stipulates that photo of the president of the party which is in power and had been

voted by the people cannot be highlighted. In a democracy, people vote for a particular party. The allegation that the person had no concern with Delhi is devoid of any merit and is totally irrelevant, malicious and patently wrong.

In 2004, the then Central Government had issued blitz in the newspapers and the electronic media about India's achievements in the general parliamentary elections by the slogan "India Shining". It reflected the achievements of their government. Similarly BJP ruled states also issued advertisements with photographs of top national leaders of their party as well as chief minister showing the developments in their states. Issuance of such information cannot by any stretch of imagination be covered under the allegation of corruption. In the State assembly elections, the opposition BJP party carried out huge public hoardings and advertisements of their senior leaders who had nothing to do with the state assembly poles. To say that BJP indulged in corruption/malpractice would be absurd. Every political party in power uses the profile of leaders of national stature to project the achievements of the government.

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20. The present government of which the Respondent is the head was voted to power by electorate recognizing successful implementation of development programmes. This cannot be the subject of inquiry under the Act. The allegations that budgetary allocation has increased for the public information cannot be the basis for taking action under the Act. The Govt. of NCT of Delhi, under Allocation of Business Rules, 1993, has a separate Department for Information and Publicity. The adequacy of the budgetary allocation and the amount spent cannot

be the subject matter of inquiry under the Act. The Respondent has also denied the allegations made in the complaint on merit in seriatim.

REJOINDER - REFUTING THE PLEAS OF RESPONDENT

21. The Complainant has filed rejoinder dated 10-12-2009, wherein it is averred that the Respondent has not denied any of the factual averments made in the complaint with regard to the article written by Sh. Uday Sahay, the advertisements published in various newspapers, the amount normally incurred on advertisements being about Rs. 4 crores per annum and its shooting upto Rs. 22 crores 56 lakhs in the election year. It is further stated that a democratic government ought to welcome any inquiry into its affairs as it shows a degree of accountability towards the public. The Act provides for inquiry into the present complaint. The Complainant being a member of the public in a parliamentary democracy is entitled to question any illegal or incorrect act on the part of an elected government, including an act of wasteful and profligate spending of public money, which was for personal advantage at the cost of public exchequer. The complaint falls within the ambit of Section 2 of the Act. The Respondent has failed to show as to how the advertisements were meant to only inform the public. People electing a government do not give it power to misuse public resources and squander away money meant for the betterment of the country for their own personal gains. The Complainant reiterated that the government has spent a grossly huge sum of Rs. 22.56 crores, for advertising and publicity, in order to overcome the anti incumbency factor, in the year 2008-09, at the behest of the Respondent right

before the elections in 2008 and was entirely meant to project the Respondent, in order to give her an advantage in the ensuing elections. Informative administrative advertisements were made in 2004-05, 2005-06 and 2006-07. The expense for the said purpose in each year is approximately Rs. 4 crores. On the other hand, a humongous amount of nearly Rs. 22.56 crores i.e. nearly about 6 times the amount in other years was spent in 2007-08 and 2008-09. The difference was owing to the fact that in 2007-08, advertisements were part of an elaborate election strategy to overcome the anti incumbency factor and not for the purpose of informing the public.

22. It is further stated that there is stark contrast in the nature and contents of the advertisements from 2004-2006 which had in fact been used for the purpose of primarily informing the public and advertisements used by the Respondent's Govt. in 2007-08 and 2008-09 for personal benefits. All the latter advertisements contain a picture of Respondent featuring prominently and in addition some advertisements contain pictures of other Ministers from her Ministry and some contain pictures of Smt. Sonla Gandhi, Late Smt. Indira Gandhi and Late Sh. Rajiv Gandhi, veterans of Respondent's party. The wording and content of the advertisements post 2007 show that the Government as per their strategy, projected that Respondent and her party as responsible for and deserving the credit for all the positive change in Delhi and if the public of Delhi wanted the positive change and development to continue, they ought to elect the Congress party. The tenor of these advertisements makes it abundantly clear that their

purpose was not to inform or educate but to advance their interests and give personal benefit to the Respondent and her party. The foremost duty of any Govt. in a democracy is to ensure the interest of the public which includes the duty to spend public funds for the avowed purpose of public betterment and not for personal benefit of 'public functionaries'. The spending of Rs. 22 crores 56 lakhs by the Respondent's government for purely personal purposes is not only contrary to norms of integrity and conduct but is also an abuse of process of law and amounts to cheating the people of the country. The Complainant is not challenging the results of election and hence does not need to file an election petition. The complaint has been filed in accordance with Form-I and Form-III of the Act. The Forum has inherent power to allow amendment of the complaint especially since it was sought before notice had been issued and the same has not prejudiced the Respondent in any manner.

23. It is further alleged that Sh. Uday Sahay has been instrumental in devising and hatching the publicity campaign and the advertising strategy as per instructions and directions of the Respondent. Due to the winning of elections, he had been suitably rewarded by being given a plum posting of Additional Director General (Communication) of the Commonwealth Games. The conceiving and devising of election campaign strategy through the advertisements stands corroborated and substantiated by implementation and publication of the advertisements in the pattern as per strategy. Respondent is making futile attempt to distance herself from the article written by Shri Uday Sahay. Respondent is fully

aware that Shri Uday Sahay, Director, Information & Publicity, was acting under her instructions and directions. This is a futile attempt to retract from significant and conclusive admissions made in the article. The photographs of Sonia Gandhi were printed in the advertisements in order to give all credit for the change in Delhi to her and her party. Advertisements for the purpose of educating the public would have no use of a political party's leader's photographs. The Respondent has not denied the factual averments made in the complaint. Remaining averments made in the reply have also been generally denied and those made in the complaint have been reiterated.

PRELIMINARY OBJECTIONS

24. On 11.12.2009 Sh. D.N. Goburdhan, Counsel for the Respondent pressed for a decision on two of the preliminary issues raised by him i.e. Representation of Peoples Act, 1951 bars the present complaint and the complaint, having not been filed in accordance with prescribed forms under the Act and Rules is liable to be dismissed at threshold. The objections were dismissed by a comprehensive and reasoned Order dated 14-01-2010. The same is not being repeated herein and may be read as part of this Report for the purpose of dealing with the said preliminary objections. The said order was not challenged in the Writ proceedings and had thus attained finality for the purposes of these proceedings. The Order dated 14-01-2010 is annexed hereto as RPT-XXIX.

RECORDING OF EVIDENCE

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25. It is pertinent to mention that vide order dated 11.12.2009, a direction was issued to the Editor of 'Rashtriya Sahara' to ensure that original article as received from Sh. Uday Sahay published in the issue dated 21.06.09 together with any correspondence in relation thereto be preserved. On 14.1.10 counsel for the Complainant prayed for a direction to the Editor, 'Rashtriya Sahara' for production of the above article. A direction was accordingly issued. On 29.01.10 Sh. Vinod Raturi, Resident Editor of 'Rashtriya Sahara' appeared and his statement was recorded as CW-1 and is annexed hereto as **RPT-XXX**.
26. Complainant himself deposed as CW-2. He was cross-examined at length. His statement is annexed hereto as **RPT-XXXI**. Mrs. Alka Diwan, Director, Information and Publicity, Govt. of NCT of Delhi, was examined as CW-3. Her statement is annexed hereto as **RPT-XXXII**
27. CW-1, Mr. Vinod Raturi, Resident Editor of daily "Rashtriya Sahara" tendered the issue of 'Rashtriya Sahara' dated 21-06-2009, Ex CW1/1, containing the article, "Sheila ki Campaign Ranniti" authored by Sh. Uday Sahay. He stated that the article was received by the newspaper by e-mail sent by Sh. Uday Sahay, a copy of which was Ex. CW 1/2. They do not have the e-mail in their computer as they delete the e-mail received, in view of their large numbers and quantum, after a week. They have made payment for the articles received and published. Upon publication of the article, they had no correspondence with Sh. Uday Sahay regarding publication of this article. No letter had been received from Sh. Uday Sahay expressing any reservation

or otherwise in respect of article published. He further stated that when they publish an authored article or story, grammatical changes or corrections are only made. The same could have been done in this case also. But no changes of substance or contents are made. He stated that Ex. CW 1/2 is the article, exactly in the form in which it was received from Sh. Uday Sahay.

28. Complainant, CW-2 proved his affidavit Ex. CW 2/1 as well as advertisements on record and referred to the report. He filed List of Advertisements together with *descriptions*. There has been no challenge by either party to advertisements on record.
29. CW-3, Ms. Alka Diwan, Director Information and Publicity, Govt. of NCT of Delhi, produced record pertaining to display of creatives /advertisements and sites, texts of creatives /advertisements, years wise details of amounts spent pertaining to the period 2005-06 to 2008-09, Ex. CW 3/1 (Colly), annexed hereto as **RPT-XXXIII (Colly.)** as well as Compilation of Year-wise Photographs of the Creatives, Ex. CW 3/2 (Colly), annexed hereto as **RPT-XXXIV (Colly.)**. She has also tendered Circular no. 2179-2184, dated 15-5-07 and circular no. 293/PNR/CM/2008 dated 11-4-08, annexed hereto as **RPT-XXXV**.
30. The procedure for the inquiry under Sec. 10 of the Act was settled vide Order dated 14-01-2010 and parties were permitted to file evidence by way of evidence with right to the other of cross examination. This was in addition to the opportunity to produce oral or documentary evidence, by filing List of Witnesses and utilization of Court process for the same.

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Complainant duly filed his affidavit by way of evidence and had tendered the same by his statement and was cross examined at length.

As the Respondent had not filed her affidavit in evidence or the list of witnesses, time was granted upto 18-02-2010. On 19-02-2010, the Counsel for the Respondent submitted that he would file the affidavit by 22nd, if so required. On 22-02-2010, the Counsel for the Respondent stated that he does not propose to file affidavit of the Respondent in evidence.

In view of the above statement of the Counsel, the right to file the same was closed. The respondent also chose not to lead any oral evidence despite opportunities granted.

POINT FOR CONSIDERATION

31. From the pleadings the point for consideration in terms of Sec. 2 (b) (1) of the Act, which emerges is :-

Whether the Respondent, being the Chief Minister of Delhi, during the year 2007-08, abused / misused her authority, by misusing the government machinery and burdened the State exchequer in carrying out an advertisement campaign synchronizing, culminating and merging with the advertisement campaign of Congress party, with an improper or corrupt motive to gain advantage for herself or her party, in the ensuing assembly elections and thereby violated the norms of integrity and conduct which she ought to have followed?

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32. I have heard Sh. H.S. Phoolka, Ld. Senior Counsel for the Complainant and Sh. D.N. Goburdhan, Ld. Counsel for the Respondent at length on various dates. In view of the extended oral submissions, parties were asked to file written submissions so that their arguments are adequately considered. Written submissions are on record.
33. It is pertinent to mention that the factum of publication of Article, "Sheila Ki Campaign Ranniti" authored by Sh. Uday Sahay which appeared in the daily, "Rashtriya Sahara" dated 21-06-2009, various advertisements issued by the Government of NCT of Delhi and Congress Party, the expenditure incurred on the same and the Respondent being Minister in charge of Information and Publicity during the relevant period are admitted facts and not in dispute.

ARGUMENTS BY THE COMPLAINANT

34. Sh. H.S. Phoolka, Ld. Sr. counsel for the Complainant argued that the verification of the affidavit as well as the complaint filed by the Complainant was as per the prescribed form. Even if the verification did not segregate the paras, which were to be verified from personal knowledge and those on information received, there was substantial compliance of purpose of verification. Moreover, the complainant took full responsibility of the facts averred by him. Mr. Phoolka submitted that the facts on which the case is based are documentary and not disputed i.e. article of Sh. Uday Sahay and the advertisements which have been placed on record. He relied upon M/s. Associated General Ltd. Vs. Mysore Paper Mills Ltd., AIR 2006 SC 2695. He argued that the article authored by Sh. Uday Sahay has

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not been denied by the Respondent in her reply. It is only the content thereof which has been termed as the imagination of Sh. Uday Sahay. Further the article cannot be equated with a news report. The article contains the personal acts / experience of Sh. Uday Sahay while he was posted as Director, Information and Publicity of which the Respondent was Minister in charge. He was thus closely interacting with the Respondent and working under her direction. He was privy to the strategy devised and formulated by him and the Respondent. Therefore, the judgments cited by Ld. Counsel for the Respondent i.e Sh. Laxmi Raj Sethi Vs State of Tamil Nadu, 1989 SCC 1274 and Quamarrul Islam were not applicable to the present case. Ld. Senior Counsel also relied upon judgment of Delhi High Court in Office of Lokayukta Vs. Govt. of NCT of Delhi and Another, 160(2009) DLT1 (DB) to contend that the provisions of an enactment like Delhi Lokayukta and Upalokayukta Act, 1995 which is enacted for the eradication of evil of corruption and maladministration must be construed liberally so as to advance the remedy.

35. He urged that the misuse of public fund by the Respondent for party and political advancement shows that she was ^{actuated} in discharge of her public functions by improper and corrupt motive and accordingly she has failed to act in accordance with the norms of integrity and conduct. The above is evident from the Article, "Sheila Ki Campaign Ranniti" published in "Rashtriya Sahara" dated 21/6/2009, which was corroborated by the actual advertisement published by the Govt. of NCT of Delhi at the behest of the Respondent and the Congress Party. In the article, Sh. Uday Sahay, who was the

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then Director of Information and Publicity has admitted that his departments started planning in the year 2007 to make an elaborate campaign to overcome the anti incumbency factor of the Respondent in the elections to be held in November, 2008. Up to 2006, advertisements carried out by Delhi Government were administrative and informative advertisements with a view to inform the general public. However, the advertisements published in the year 2007-2008 were with the motive to synchronize with the Congress Party's advertisements to gain undue advantage at the cost of public exchequer. Some of the advertisements in the year 2007-08 were carried out in the Times of India and Hindustan Times. Besides these advertisements, huge expenditure was incurred by the Govt. on field publicity and in putting up big hoardings, publicity materials etc. on metro rails, bus shelters and at prominent places as well as radio jingles. The fact that these advertisements were meant to gain political advantage is clear from the fact that the total amount incurred on the advertisements in the year 2004-05 was Rs. 3,17,79,039/-, in the year 2005-06 was Rs. 4,33,95,018, in the year 2006-07 was Rs. 5,42,02,510, in the year 2007-08 was Rs. 7,57,00,442/- and in the year 2008-09 was Rs. 23,31,87,307/-. This exorbitant expenditure in the election year was due to systematic planning to expend from the public exchequer to overcome the anti-incumbency factor, as has been disclosed by Sh. Uday Sahay in his article. It is amply clear that during the election year i.e. Oct. 2007 to Oct. 2008, an amount of over Rs. 25.00 crores were spent burdening the public exchequer. The campaign started with "Delhi Badal Rahi Hai" and thereafter realizing that the word change may be construed as negative, the

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Respondent was advised to change the campaign to "Delhi Sanvar Rahi Hai". This campaign started showing favourable result. However, when one of the Hindi Newspaper questioned as to whether Delhi was a city of prostitutes, which was grooming, the campaign was again changed to "Har Din Badalti Tasvir Delhi Ki Mere Liye". As per circulars issued by Delhi govt. all the advertisements were to be mandatorily approved by the Respondent, failing which disciplinary action would follow. The frequency of advertisements was phenomenally increased in the election year at the cost of public exchequer. These advertisements were carried out with a view to give the Respondent personal benefit for the change in Delhi. The misuse of public fund is also clear from the fact that after 2007, many advertisements carried pictures of Smt. Sonia Gandhi, Chairperson of UPA, along with those of the Respondent although Smt. Sonia Gandhi does not hold any position in the Govt. of NCT of Delhi. The publications of pictures throw light on the intention of the Respondent to gain political mileage and to woo voters at the cost of public exchequer.

36. Ld. Counsel, while referring to advertisements in respect of regularization of unauthorized colonies, argued that the Govt. has started a systematic false campaign giving assurances of regularization of the unauthorized colonies asking for submissions of applications till 31-12-2007. Subsequently dates were extended. In an advertisement which appeared in the Hindustan Times dt. 3-10-08, Ex. C-28, it is stated, "Five millions dream fulfilled-colonies regularized" and that Smt. Soina Gandhi, Chairperson UPA will distribute the certificates on 4-10-08. Huge amounts were spent from the public exchequer on advertisement and holding a big function at Chhattarsal

Stadium. However, as per Chief Town Planner MCD, none of the 1639 unauthorized colonies had then been regularized. About one fourth of the said colonies cannot be regularized at all.

37. Similarly, the Respondent issued several misleading and false advertisements just before the election with regard to 'Rajiv Ratan Awas'. Some of the advertisements, exhibited as Ex. C-19 appeared in the "Hindustan Times" dated 10-8-08, applications forms were invited from the slum dwellers and urban poor for registration of multistoried flats. The Respondent continued issuing false and misleading advertisements extending the scheme near the elections vide Exs. C-20 and C-22, giving false promises with ulterior motives. As per information received from UD department, vide letter dated 16-10-08, Ex. C-112, annexed hereto as RPT-XXVIII, no notification has been issued under JNNURM in Delhi including Rajiv Ratan Awas, low costs housing scheme and no flat had been allotted under the scheme till then.
38. He further argued that besides publication of advertisement in the newspapers, a large no. of hoardings showing pictures of Respondent and Smt. Sonia Gandhi were placed all over Delhi on the Metro, Bus Que shelters etc and radio jingles and TV spots were extensively used. This resulted in additional expenditure of Rs.17 crores meant exclusively for projecting the Respondent as per the election strategy devised by Respondent with Directorate of Information and Publicity, who as noted above has been awarded with a plum posting.

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39. Ld. Sr. Counsel while relying on the article, contended that Sh. Uday Sahay, who was privy to the campaign strategy explained how the pre-planned extensive advertising and media campaign was misused to project the Respondent and help her in winning the election in 2008. Sh. Uday Sahay categorically stated, "vigyan ki duniya ke paramparik vivek ko dhyan me rakhte hue ye tay kya gaya ki janta ke dimag me Delhi me huye sakaratmak parivartan ki tasveer dali jaye taki chunav ke waqt in yadon ko bhunaya ja sake." Sh. Sahay also explained as to how the Respondent conspired to play on the psyche of people by stating, "Ranniti banake chunav ke purv ek varsh me akhbar, radio, TV aur outdoor media ke madhyam se parivartan ki in tasveero ko matdatao ke dimag me purjor bitha diya jaye." Sh. Sahay explained the two stage plan. The first stage begun with out-door campaign i.e. "Delhi Is Changing". The campaign was further advanced as, "Har din badalti tasveer Delhi ki mere liye". These advertisements represented different sections of society like children, youth, house wives, labour class, muslims and Sikhs. During the second step, when elections were declared, political campaign advertised, "Parivartan ki dor tute na", misleading the people to believe that it was Congress party that has brought about all the positive changes in Delhi. Sh. Sahay stated that for the first time in India, government advertisements and political advertisements became one under their strategy. This admission by Shri Uday Sahay, who was privy to and party to the devising of the campaign strategy, clearly reveals that the Respondent abused her position and misused public machinery / funds for her personal gain and that of her party, which was in violation of the norms of the

integrity and conduct which ought to have been followed by the Respondent.

40. It is further argued that the Respondent being Minister in charge of Information and Publicity was fully responsible for all the advertisements published by her government. There was a stark contrast between the advertisements carried out upto 2007 and those carried out after 2007 under the political strategy. The latter contained photographs of the Respondent and other leaders of her government / party. It is further argued that after winning the election no such advertisement was carried out by the Respondent / government, which show that the advertisements carried out under the strategy before elections was only to gain political mileage. Ld. Senior Counsel thus argued that the strategy disclosed in the article of Sh. Uday Sahay that government advertisement and political advertisement of congress party were synchronized is duly corroborated by the copies of advertisements of Delhi government as well as congress party placed by the Complainant on record. The conduct of Respondent violates the norms of integrity and good conduct on account of the fact that she misused her authority of being a Chief Minister and carried out government advertisements with an improper and corrupt motive to gain an advantage / favour for herself and for her party, at the cost of state exchequer and thus violated the norms of integrity and conduct expected of her.

ARGUMENTS BY THE RESPONDENT

41. Ld. Counsel for the Respondent has argued that the complaint is misconceived, untenable and vexatious and

action u/s 9 (2) of the Act should be taken against the Complainant. He emphasized that the allegations levelled by the Complainant are outside the scope and ambit of the Act. He submitted that an inquiry before the Lokayukta was a serious matter and not meant for trivial or frivolous issues. The petition is an abuse of the process of law as the Complainant, who was trounced by the people of Delhi in the Parliamentary Election in the year 2009 and has sought an ingenious method to invoke the Act for a different purpose. The Act is a special statute under which the Lokayukta is to only enquire into allegations as defined in Section 2 (b) of the Act, within the four corners of the statute. In the present case, notice dated 9/10/09 has not specified the sub section of section 2 under which the Complaint is sought to be brought. The Complaint does not correspond to any of the clauses of allegations laid down in section 2. The Complaint is a mere parrot like reproduction of the sections of the Act but does not state as to how the ingredients required to invoke the special Statute have been fulfilled. In the absence of an express stipulation as to what is the misconduct and how impropriety has been committed, the present Complaint ought to be dismissed. In the Complaint, 'abuse of power' has been vaguely alluded to without specifying how the charge is made out. While referring to House of Lords Code of Conduct, he stated that there are six General Principles mentioned therein viz. Selflessness, Integrity, Objectivity, Accountability, Honesty and Leadership. Integrity pertains to financial matters. Lokayukta cannot create norms. The Complaint relates neither to the range of allegations laid down in Section 2(b) of the Act nor to the Common Law notions of

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norms of integrity and conduct as listed above. Section 2(b) cannot be stretched to such absurd heights as has been attempted in the Complaint.

42. The jurisdiction of Lokayukta can be invoked only when the prescribed procedure is followed. 'Prescribed', as defined in section 2(l) means prescribed by the rules made under the Act. In the instant case, there has been a blatant violation of statutory rules. The Complaint was required to be filed in Form - I, supported by affidavit in Form -III. The amended Complaint and affidavit shows that the same are not in accordance with the prescribed rules. The special statutory rules have to override the general rules. As held by Supreme Court in KARNATAKA STATE FINANCIAL CORPORATION VS. N. NARSIMAHAIH & OTHERS, 2008 (5) SCC 176, and MANAGEMENT, ASSISTANT SALT COMMISSIONER, VS. SECRETARY, CENTRAL SALT MAZDOOR UNION, 2008 (11) SCC 278, special laws shall prevail over general laws. Learned Counsel argued that the Complaint and affidavit are not in accordance with the statutory mandate. While referring to JEEWAN KUMAR RAUT & ANR V/S CENTRAL BUREAU OF INVESTIGATION, 2009 (7) SCC 526 and RAMCHANDRA KESHAV ADKE & ORS V/S GOVIND JOTI CHAVARE & ORS, 1975 (3) SCR 839, he argued that when a statutory action is performed, it must be done in the manner laid down under the statute or not at all.

He argued that at page 9, in the penultimate paragraph of the amended complaint, it is stated, "___ Clause (i) and (iii) and establishes the improper and corrupt motive....." There is not a whisper in the Complaint about the corrupt motive. The allegations have

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not been made, much less substantiated. There is an eerie silence excepting that sub section (i) and (ii) have been repeated, but there is no substance. In PRADIP BURAGOHAIN V/S PRANATI PHUKAN, 2010 (6) Scale-384, the Hon'ble Supreme Court held that the charge has to be proved beyond doubt, the standard of proof is very high based on credible evidence. The inquiry has to strictly follow the procedure of a criminal trial. The allegations have to be established beyond a reasonable doubt, whereas in this case it has not been established at all. Special statute's requirement cannot be waived and dispensed with. They are not courts of equity and Common Law Principles do not apply. (CH. SUBBARAO V/S MEMBER ELECTION TRIBUNAL, HYDERABAD & ORS, AIR 1964 SC 1027). When the law enjoins the observance of a particular formality, it cannot be disregarded. (RATTAN ANMOL SINGH & ANR V/S ATMA RAM (AIR 1954 SC 510 and A.K.K. NAMBIAR VS. UOI AND ANR, AIR 1969 SC 872).

43. Learned Counsel for the Respondent further argued that no amendment of Complaint is permissible as there is no such provision under the Act. The Order dated 23.08.09 is not sustainable as the original Complaint i.e. Form-I and III were not in accordance with the statutory requirements. Order dated 07.10.09 permitting amendment is also contrary to law. A cavalier approach cannot be used and such frivolous Complaint ought not to have been entertained. (SUDARSHA AWASTHY VS. SHIV PAL, 2008 (7) SCC 604). The Hon'ble Supreme Court in A.K.K. NAMBIAR VS. UOI AND ANR, AIR 1969 SC 864 AND JYOTI BASU VS. DEBI GHOSAL, 1982 (1) SCC 691 held that special statute is a complete Code by

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itself. Code of Criminal Procedure does not apply and cannot be invoked.

44. While referring to ASHOK LANKA VS. RIGHI DIXIT, 2005 (5) SCC 598, UCO BANK & ANR V/S RAJINDER LAL CAPOOR, 2008 (5), SCC 257, J. SRINIVASA RAO V/S GOVT. OF ANDHRA PRADESH, 2006 (12) SCC 607 and SOUTHERN PETROCHEMICAL INDUSTRIES CO. LTD. V/S ELECTRICITY INSPECTORS & E.T.I.O & ORS, 2007 (5) SCC 447, Learned Counsel argued that norms of integrity cannot be created by the Lokayukta. Lokayukta being a creature of a Statue cannot supply missing words. Supporting the argument, he referred to UNION OF INDIA VS. DEOKINANDAN AGGARWAL, 1992 Supp. (1) SCC 323, wherein the Supreme Court held that it is not the duty of the court to enlarge the scope of Legislation or the intention of Legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the Legislation for the very good reason that it has no power to legislate. He also relied on DIVISIONAL MANAGER, ARAVALI VS. CHANDER HANS AND ANR, (2008) ISCC 683 and UCO BANK AND ANR VS. RAJENDER LAL CAPOOR, (2008) 5 SCC 257 in this regard.

45. Learned Counsel further argued that the order passed on 25.08.09 holding that the complaint has been made on the prescribed Form, which is supported by an affidavit, is incorrect and must be corrected in the interest of justice. Emphasizing the mandatory nature of statutory formats, he referred to Govt. of Andhra Pradesh and Other Vs. Smt. P. Laxmi Devi, AIR 2008 SC 1640, wherein the Supreme Court held that where the Statute

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requires that a matter shall be done, that exemplifies its mandatory nature and it cannot be construed to be a discretionary requirement. In Ram Chandra Keshav Adke Vs. Govind, 1975 (3) SCR 839, it was clearly held that when a statute requires that a particular thing has to be done in a particular manner, the same has to be done in that particular manner only.

In the present case, Rule 6(1) of the Delhi Lokayukta and Upalokayukta (Investigation) Rules, 1998 requires that a complaint against the Chief Minister shall be in the prescribed Form -I and III. The word 'shall' shows that the requirement is mandatory. Complaint against the Chief Minister is a serious and grave matter which should not be treated in a light or fanciful manner.

46. Learned Counsel further argued that equitable principles of Common Law shall not apply to Act which is a special statute. He stated that in Charan Lal Sahu Vs. Nand Kishore Bhatt and Ors., AIR 1973 SC 2464, it was held that a special statute has to be dealt with in a special manner wherein the statutory obligations and requirements must be strictly observed. In Ch. Subba Rao Vs. Member Election Tribunal, Hyderabad and Ors. AIR 1964, SC 1027, Hon'ble Supreme Court held that courts are purely creature of statute, if the statute rendered any particular requirements mandatory, the Court did not possess and could not exercise any dispensing power to waive non compliance. In K.V. Rao Vs. B. N. Reddi, AIR, 1969 SC 872, it was held that the power of Court in respect of an election matter is circumscribed by the special statute. No right is given to the High Court to entertain an action at law or a suit in equity. In Ratan Anmol Singh Vs. Ch. Atma Ram,

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AIR 1954, SC 510, it was held that the defect in attestation is not of technical nature but was of substantial character which could not be rectified.

47. He further argued that the entire complaint is based on a purported article written by one Uday Sahay in a Hindi Newspaper, "Rashtriya Sahara". It is his view that he was solely responsible for the public information blitz and made the Govt. win elections only on the basis of public advertisements. The said article was the result of his imagination, perception and was even otherwise incorrect. Sh. Uday Sahay was never called upon by the Complainant as a witness before this Forum. Supreme Court in Laxmi Raj Shetty Vs. State of Tamil Nadu, AIR 1988, SC 1274 held that a Newspaper article is in contradistinction to a news report. Even a newspaper report which is a factual reporting of an incident is hearsay evidence. It is only when a newspaper reporter is examined as a witness that it can be considered as legal evidence. This was reiterated in Quammarul Islam Vs. S. K. Kanta, AIR 1994 SC 1733. He has also referred to Dilip Chakraborty and Another Vs. Public Prosecutor and Others, 1996 Criminal Law Journal, 1300 in this regard. It was argued that in the absence of Sh. Uday Sahay, there is no evidence at all in the eyes of law to support the complaint.
48. In the case of affidavit, Order XIX Rule 3 of the CPC requires the deponent to disclose the nature and scope of his knowledge with sufficient specificity. The verification requires the deponent to declare his source of knowledge that is whether his personal knowledge or knowledge on information based on record or knowledge

on information received from persons. To merely state that the deposition is true to the best of one's knowledge is no affidavit in accordance with Order XIX Rule 3 of CPC. The Complainant has filed his affidavit asserting that the allegations made in the petition were correct to the best of his knowledge. However the nature of allegations made in the petition show that these could not have been based on personal knowledge. The affidavit in the absence of a valid verification has no evidentiary value. He referred to State of Bombay Vs. Purshottam Jog Naik, 1952 SCR 675 wherein the SC observed that verification in an affidavit should invariably be modelled on the lines of Order XIX Rule 3 and the matter deposed to is not based on personal knowledge, the sources of information should be clearly disclosed. In A. K. K. Nambiar Vs. UOI, (1969) 3SCC 864, it was laid down that in the absence of proper verification, affidavits could not be admitted in evidence. He also referred to M/s. Sukhwinder Pal-Vipin Kumar and Ors. Vs. State of Punjab and Others, AIR (1982) 1, SCC 31 regarding heavy burden of proving malafides by the person alleging the same. The importance of verification is to test the genuineness and the authenticity of allegations and also to make the deponent responsible for allegations.

49. On the aspect of advertisement, the Ld. Counsel argued that u/s 44 of the Govt. of NCT of Delhi ACT 1991, the Hon'ble President of India has made statutory rules called the Govt. of NCT of Delhi (Allocation of Business) Rules, 1993, under which Department of Information and Publicity has been set up to disseminate information to the public at large about the policies and activities of

the Govt. for welfare of the citizen. Thus, through the Directorate of Information and Publicity, the Govt. provided information to the public about its policies, achievements, services, programmes etc. to ensure that the Govt. is visible and accessible to its people, before the Election Code came into operation. The dissemination of information was undertaken as a statutory duty and expenditure incurred in discharge of statutory duty and function is in public interest. He further argued that the determination of public interest is the prerogative of the executive according to the doctrine of separation of powers. Public interest cannot be questioned by any person in any court of law as sufficiency and adequacy of the public expenditure is beyond the realm of any court of law. In *Bhim Singh Vs. UOI*, 2010 (5) SCC 538(para 77-79 and 87), and *Indira Nehru Gandhi Vs. Raj Narain*, 1976 (3) SCC 321, the Hon'ble Supreme Court has held that separation of power is the basic structure of our Constitution. In *Divisional Manager, Aravali Golf Club and Ors. Vs. Chanderhas and Another*, (2008) 1, SCC 683, the Supreme Court held that the court cannot arrogate to itself prerogative of legislative or executive authorities. Reiterating the principles of separation of power, the court observed that under the Constitution, the Legislature, the Executive and the Judiciary have their broad spheres. It is not proper for any of these organs to encroach upon the domain of another. The Hon'ble Court emphasized that Judges unjustifiably trying to perform executive or legislative functions is clearly unconstitutional and in the name of judicial activism, Judges cannot cross their limits and take over the functions which belongs to the other organs of the State. He argued that if the Govt.

purports to spend money for a purpose which is not a public purpose, the proper place to criticize the action of the Govt. would be the legislature and the appropriation committee. The Court/Forum are not the Forum in which Govt. action could be sought to be criticized or restrained. He referred to Articles 202 to 205 of the Constitution of India with regard to supplementary and additional grants and Article 266 with regard to the consolidated grants of the State. He also cited Bhim Singh Vs. UOI, (2010) 5 SCC 538, wherein the Supreme Court held that Judicial interference is permissible when the action of the Govt. is unconstitutional and not when such action is not wise or that the extent of expenditure is not good for the State. He also referred to State of UP and Others Vs. Jeet S. Bisht and Anr., (2007) 6 SCC 586, wherein it was held that the Constitution does not permit the Court to direct and advise the Executive in matters of policy or to sermonize qua any matter, which under the Constitution, lies within the sphere of Legislature or the Executive provided these authorities do not transgress their Constitutional limits or Statutory powers. He also referred to Common Cause Vs. UOI, (2008) 5 SCC 511, wherein the Supreme Court observed that even if the Executive and the Legislature has failed in performing their functions, it does not justify the judiciary in taking over their functions firstly, because that would be in violation of the high Constitutional principle of separation of powers between the three organs of the State and secondly because the judiciary has neither the expertise nor the resources for this. In Ram Jawaya Kapoor and Ors. Vs. State of Punjab, (1955) 2 SCR 225, and MA Ismail Vs. Alwaye Municipality, 1974 Tax LR 1659,

functions of different parts or branches of the State have been sufficiently differentiated by the Supreme Court. It has been held that the function of a modern state like the police states of old are not confined to mere collections of taxes or maintenance of laws and protection of the realm from external or internal enemies. A modern state is certainly expected to engage in all activities necessary for the promotion of the social and economic welfare of the community. He argued that expenditure by Govt. is outside the scope of the acts which the Courts can look into. In *K. N. Subba Reddi Vs. State of Karnataka and Ors.*, AIR 1993 Kart. 66, it was held that the Court is not competent to go into the question as to whether the expenditure incurred by the Govt. is for a public purpose or not or whether it is wise or not. He thus propounds that the expenditure incurred by elected members for public purpose does not come within the purview of jurisdiction of Lokayukta. In the present case he argues, the Respondent is the duly elected Chief Minister of Delhi and the public information disseminated by the Directorate of Information and Publicity was intended to highlight the development achieved by the elected Govt. of NCT of Delhi.

50. Ld. Counsel for the Respondent further argued that in a democracy people have a fundamental right to know under Part-III of the Constitution and the Govt. also have an obligation to inform the people of the progress made by the Govt. of its programme and its policies and achievements. He referred to *Ushodaya Publications (Pvt.) Ltd. Vs. Govt. of AP and Ors.*, AIR 1981 AP(FB) 109 and *Union of India Vs. Association for Democratic Reforms* (2002) 5 SCC 294. Such dissemination of information cannot be brought under the canvas of

Lokayukta. The public information drive carried out by Delhi Govt. was regarding education, govt. school, remarkable results, girl-child education, polio eradication, old/senior citizens/medical/health facilities, improved roads, new flyovers, extended greenery in Delhi, improved electricity, transport-AC buses and metro. Admittedly, none of the public information disseminated stated that the people of Delhi should vote for Congress Party and there was no Congress Party slogan or election symbol used. Such information campaign was carried out before the election code of conduct was enforced. The advertisements published by the Congress Party were independent and had no relation with Govt. advertisements. There is no prohibition on publishing photographs of the leaders of the Govt. in power or its national leaders. Admittedly, none of the advertisements or public information was issued after the election was announced by the Election Commission. No complaint was even filed before the Election Commission or any corrupt practice petition under the Representation of People Act, 1951. Thus, the present complaint is baseless and vexatious. Ld. Counsel also argued that international practice favours expenditure for dissemination of public information for the welfare of the public. He referred to the report of Hoover Commission Task Force in United States, Cabinet Manual 2008, in New Zealand and the provisions by the Queensland Govt. in Australia.

51. Lastly, Ld. Counsel for the Respondent has tried to impeach the credibility of the Complainant on the ground that the Complainant has suppressed material facts viz. that he was a politician of rival political party i.e. BJP and a Councillor of MCD who lost Parliamentary Election in the year 2009 by a huge margin and that a case of

financial impropriety against him was pending before the Lokayukta. He also argued that there is no mention of voting for Congress Party in the public information disseminated. He thus requested that not only the complaint be dismissed but action be taken against the Complainant u/s 9(2) of the Act.

TECHNICAL OBJECTIONS

52. The arguments advanced by Ld. Counsel for the Respondent with regard to compliance with Forms I & III prescribed by Delhi Lokayukta and Upalokayukta (Investigation Rules), 1998, the Complaint being barred by the Representation of Peoples Act, 1951, and the amendment not being permitted under the Delhi Lokayukta and Upalokayukta Act, 1995 have already been decided vide detailed order dated 14-01-2010, wherein it was held,

"11. The instant complaint is based on an article written by the Director, Directorate of Information and Publicity working under the Respondent, who was Minister Incharge of the said department and the text of the advertisements that have been carried by various departments of Govt. of NCT as well as by the Congress Party.

In this background only the factum of publication of the article in the newspaper "Rashtriya Sahara" could be a fact in the personal knowledge of the Complainant. The contents of the article regarding devising of campaign strategy and implementation of the same, as reflected through the advertisements, could only be the facts which are based on the information received and believed to be true. Therefore, the verification done by the Complainant

without individually segregating the paras meets the tests of 'substantial compliance'. Moreover, the Complainant during the hearing has submitted that he takes full responsibility for the allegations made in the complaint and would also be deposing on oath in his evidence. There is also provision of section 9 (2) of the Delhi Lokayukta and Upalokayukta Act, 1995 under which the Complainant can be prosecuted for any false and frivolous complaint. It may also be noted that the provision of the CPC do not apply to the inquiry proceedings before the Lokayukta. Here the touchstone is compliance with the principle of natural justice. Hence, Order 6 Rule 15 CPC would not be applicable. It may be noticed in the passing that even verification by the Respondent of her reply is in the same manner that is without distinguishing the paras, facts of which are in her personal knowledge and other paras which are based on information received and believed by her to be true.

12. As regards the objection about the identity of the person identifying the Complainant in the affidavit not being disclosed, it has been demonstrated by Mr. Phoolka that the Complainant had been identified by advocate Mr. Kanwar Faizal, who is also one of the advocates of the Complainant and has been appearing before this forum. Mr. Faizal confirmed the same. Accordingly omission to mention that Mr. Faizal is an advocate and his address, which is otherwise available, being a technical omission is of no consequence.

13. Coming to the nature of proceedings before the Lokayukta, it would be relevant to reproduce the observation made by the Hon'ble Chief Justice heading a Division Bench in Office of the Lokayukta vs. Govt. of NCT of Delhi and Another, 160(2009)DLT1(DB). In this case, the Govt. of NCT had, inter-alia, raised procedural objections regarding the maintainability of the complaint, deficiency in prescribed fee and complaint not being as per the prescribed format etc. The Hon'ble Division Bench while dealing with the same observed in paras 25 & 26 as under :-

*25. The objections raised by the State regarding the maintainability of the complaint are purely technical. Even otherwise, it may not be open to the Government to raise any such objection as it was issued notice, only to produce records in its possession. Under the provisions of the Act, Lt. Governor, NCT of Delhi is required to take decision on the recommendations made by the Lokayukta following and inquiry with respect to all public functionaries. Therefore, entertaining a plea by the State Government questioning the inquiry proceedings or exercise of jurisdiction by the Lokayukta might seriously impede the statutory and independent functioning of the Lokayukta under the Act. The nature of proceedings conducted by the Lokayukta are altogether different from a civil or criminal lis. Unlike civil or criminal proceedings, a citizen making allegations against a public functionary may not be in possession of complete facts or documents, unless the allegation arises out of his personal transaction with any public

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functionary. The powers conferred on the Lokayukta are advisedly very wide. These powers are wider than of any Court of law. Notwithstanding remedies to be found in Courts of law and in statutory appeals against administrative decisions, there still remains a gap in the machinery for the redressal of grievances of the individuals against administrative acts or omissions. The need to create an authority to deal with such cases was felt by Conference of Jurists representing Asia and Pacific Regions in following words:

"This gap should be filled by an authority which is able to act more speedily, informally and with a greater regard to the individual justice of a case than is possible by ordinary legal process of the Courts, it should not be regarded as a substitute for, or rival to, the Legislature or to the Courts but as a necessary supplement to their work, using weapons of persuasion, recommendation and publicity rather than compulsion."

The fight between an individual citizen and the State is unequal in nature. Therefore, the very existence of such an institution will act as a check and will be helpful in checking the canker of corruption and maladministration. More so when it has been repeatedly asserted that the canker of corruption, in the proportions it is said to have attained, may well dig into the vitals of our democratic State, and eventually destroy it (see Corruption - Control of Maladministration by John B. Moneriro)."

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26. *The provisions of such an enactment, which is enacted for the eradication of the evil of corruption and maladministration must be construed liberally so as to advance the remedy. In our opinion, there is absolutely no merit in any of the objections raised by the State Government. The records in question under the Right to Information Act, 2005, would be available even to a private person and we see no reason why the State should deny the production of these documents before the Lokayukta. In the result appeal is allowed. The order of the Learned Single Judge is set aside. The pending application stand disposed of as well.**

14. *Given the nature of proceedings before the Lokayukta as brought out in Judgement of Division Bench and the need to liberally construe the provisions of the Act and procedural requirements, so as to ensure unhindered inquiry as long as the principle of natural justice is adhered to, the technical objections sought to be raised, deserve to be rejected.*

As regards reliance of applicant on the authorities namely State of Uttar Pradesh Vs. Singhara Singh & Others) (1963) 4SCR 485 and other authorities, the proposition therein relate to statutory infractions, the breach of which is fatal. These statutory infractions and their non compliance have to be distinguished from breaches of procedural requirement and non adherence to the form prescribed which are not fatal. There can be substantial compliance notwithstanding minor

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deviations, technical defects and irregularity, which do not go to the root of the matter.

In view of the foregoing discussion, the objection sought to be raised regarding maintainability of the complaint on the grounds of improper verification and improper identification of the Complainant in the affidavit are found to be without merit and rejected.

15. Regarding the plea/objection of the present complaint being barred under the provisions of Representation of People's Act, 1951, in addition to the submissions made by way of background, Mr. Goburdhan submitted that the main plank of the complaint is that by misuse of public funds for the impugned advertisement campaign, the Respondent had won the election by misleading public. He submitted that even though the complaint does not carry any specific challenge to the electoral process or the election, looking at the pith and substance of the complaint and averments relating to the incumbency factor, strategy to counter the same, alleged excess amount spent, all are integral to the election and electoral process. He submitted that these aspects would fall within what could be described as matters incidental to the stature, namely Representation of People's Act, 1951. Even if these were not included in the bar under the statute, to make the legislation effective and sub-serve its objective, it would get included by implication in the Representation of People's Act, 1951. Their breach he contended would thus be actionable under the Representation of People's Act, 1951. Accordingly, he urged a complaint

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made in respect of these matters under any other statute would be barred under the Representation of People's Act, 1951.

In support of above contention, Mr. Goburdhan, referred to:-

- (i) Sudarsha Avasthi Vs. Shiv Pal Singh, (2008) 75SCR-604.*
- (ii) Mohinder Singh Gill & Another Vs. The Chief Election Commissioner, New Delhi & Ors., (1978) 1SCR 405.*
- (iii) Sumant & Balakrishna & Another Vs. George Fernandez & Others, (1969) 3SCR 338.*

The above authorities are relied on the premise that the complaint in the instant case was in pith and substance on election petition.

17. Responding to the above submission of Mr. Goburdhan, Mr. Phoolka, Ld. Sr. Advocate for the Complainant submitted that the Complainant was not seeking any of the reliefs under the Representation of People's Act, 1951 as the election of the Respondent as Chief Minister had not been challenged by the Complainant.

The Complainant has made averments regarding alleged breach of the norms of integrity and conduct expected of the class to which the Respondent belongs and the facts which according to the Complainant would also constitute an allegation within the meaning of Section 2(b)(i) to (iv) in as much as the conduct of the Respondent amounted to abuse of position to obtain gain to herself and her party and was actuated by personal interest to gain favour and lacked faithfulness.

Mr. Phoolka further submitted that it would need a flight of fanciful imagination to stretch and interpret the complaint of the Complainant as an election petition. Mr. Phoolka also relied on section 18 of the Delhi Lokayukta and Upalokayukta Act, 1995 to point out that the provisions of the said Act were in addition to and not in derogation of any other law, for the time being in force.

18. Having heard Ld. Counsel for the Respondent and the Complainant and perused the complaint, the submissions made by the Ld. Counsel for the Respondent regarding the bar under the Representation of People's Act, 1951 if the complaint contains matter, the pith and substance of which is election petition is rather farfetched. There is no relief sought as admissible under the Representation of People's Act, 1951. There is no challenge to the election. Hence, the submission that remedy under any other statute except the Representation of People's Act, 1951 was barred is wholly misconceived. It is held that the complaint is not in the nature of election petition. The authorities which have been cited by the Ld. Counsel for the Respondent are not attracted and hence would not advance his case.

19. In the passing it may be noticed that Mr. Goburdhan also mentioned that there was no provision of permitting amendment of the complaint or to let the Complainant to add or improve his case since, these proceedings are in the nature of quasi criminal proceedings. The said submission is misconceived, the proceedings are in the nature of a fact finding inquiry and even the Rules of CPC

*do not apply. The case was at its initial stage where notice had not been issued and therefore, the Complainant was permitted to amend his complaint, having regard to the nature of the inquiry and object of the statute. This is by itself does not cause any prejudice to the Respondent, who has the full opportunity of meeting the case.**

53. The inquiries by Ombudsman world over and Lokayuktas in India are governed by different statutes passed by the State Legislatures. The jurisdiction of Lokayukta is essentially a recommendatory one after the fact finding inquiry. The fact finding inquiry is intended to be an informal, expeditious inquiry, which is not to be riddled or scuttled by legal and technical objections. It is for this reason that one of the essential ingredients required in an inquiry by Lokayukta is abiding by the principles of natural justice. As long as this condition is fulfilled, there is considerable freedom given to the Lokayukta under Sec. 10 of the Delhi Act, for instance, in laying down the procedure for inquiry in each case. It can be a procedure appropriate and responsive for each case as long as the parties are given due hearing. There is a rationale behind this. The proceedings before the Lokayukta are not in the nature of civil or criminal lis where after adjudication the punitive ^{action} or liability follows. It is only a recommendation which made by the Lokayukta for promoting good governance and ensuring adherence to the norms of integrity and conduct as are expected from public functionaries. It is for this reason that the inquiry proceedings before the Lokayukta are not even subscribed or restricted by application of the provisions of Code of Civil Procedure or the Indian Evidence Act.

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The Civil Procedure Code is used only in enforcing attendance and production of information etc. Even though the judgments stated by the Ld. Counsel for the Respondent are distinguishable on facts and would not be applicable as regards the various technical objections raised, in the instant case, the subject matter of the complaint falls clearly within the jurisdiction of Lokayukta and as such in the absence of any jurisdictional error, the technical and legal objections raised by the Respondent are without merit.

NORMS OF INTEGRITY AND CONDUCT WHICH OUGHT TO BE FOLLOWED BY THE 'PUBLIC FUNCTIONARIES'

54. Learned Counsel for the Respondent has vehemently argued that unless norms of integrity and conduct expected to be followed by the 'Public Functionaries' are codified, no cognizance can be taken of violation of the so called norms which have not been codified and the Hon'ble Lokayukta cannot create or legislate the norms since it is the function of the legislature. On the other hand, Learned Counsel for the Complainant has argued that the norms of integrity and conduct which ought to be followed by the 'Public Functionaries' are well recognized e.g. avoiding conflict between public interest and self interest / party's interest, integrity, selflessness etc. and there cannot be an exhaustive list of such norms. The Lokayukta can take cognizance of the well recognized norms of integrity and conduct for the purpose of inquiring into the conduct of a 'Public Functionary', otherwise the very provisions of the Delhi Lokayukta and Upalokayukta Act, 1995 would be rendered useless.

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It is relevant to refer to Section 2(b)(i) of the Delhi Lokayukta and Upalokayukta Act, 1995 which provides as under :-

"(b)(i) has failed to act in accordance with the norms of integrity and conduct which ought to be followed by the public functionaries or the class to which he belongs".

It can be thus seen that violation of the norms of integrity and conduct which ought to be followed by the public functionaries has been made actionable under the Act. Functionaries holding high public positions are expected to practice a high standard of conduct and follow norms of integrity, since they are vested with vast powers including that of spending public money. Similar provisions exist in the Constitution of India for various constitutional appointments and in Army Act, 1951 for Army Officers as well as other statutes including those governing Air Force and Navy. There cannot be an exhaustive list of such norms because it would depend upon a wide range of circumstances, in which the Public Functionaries have to follow norms of integrity and conduct. However, certain basic principles are well recognized and followed viz selflessness, integrity, objectivity, accountability, honesty and avoiding conflict between personal interest and public interest etc..

55. Justice H.R. Khanna, former Judge Supreme Court of India had to deal with a similar situation while inquiring into charges against former Ministers of Orissa including three Chief Ministers. In his report, while dealing with the arguments advanced on behalf of the ex-Chief Ministers that there was no code of conduct for the Ministers and as such they should not be held to be

guilty of any impropriety, expressed the view that there are certain basic rules of conduct which have to be followed. They are a part of general norm of ethics and public morality. It is no answer to a charge of a breach of those rules of conduct that they have not been codified. He observed:-

"Another and a very vital principle which must be kept in view is that a person on being a Minister becomes the custodian of public interests. A great trust devolves upon him and he owes it to the exalted office he occupied that he should so formulate his policies and plans, his activities that there is no possibility of a clash between his personal interest and public interest. This is especially true in the set up of a nascent democracy like ours wherein the role of a Minister has got to be that of a pioneer rather than of a pirate, of a public sentinel rather than of a self-seeker, of one dedicated to the public weal and not one obsessed with the desire of personal gain. The moment a Minister gets into a situation wherein there may be conflict in his person and the public interest he is bound to make the tongues wag and his conduct must necessarily become the subject of the criticism and censure. The old adage that the Caesar's wife should be above suspicion is equally true of the Ministers in a democratic set up."

He concluded his report by observing,

"Lastly, I may observe that no codification of rules of conduct or declaration of assets can ensure rectitude among Ministers and other men in public

life. What is needed is a climate of strong public opinion wherein none may dare to deviate from the path of rectitude. The ramparts of a clean and healthy administration are in the hearts of the people; laws can punish only occasional lapses. Judge Learned Hand in a classic passage observed:-

"I often wonder whether we do not rest our hopes too much upon our Constitution, upon Laws and upon Courts....These are false hopes, believe me these are false hopes. Liberty lies in the hearts of men and women; when it dies there, no Law, no Court can do much to help it. While it lies there it needs no Constitution, no law, no court to save it."

What is said about the liberty in the above passage holds equally true of purity in public life and administration.

GUIDING FACTORS REGARDING GOVERNMENT ADVERTISEMENTS.

56. It has not been brought to the knowledge of this forum that there are any guidelines governing the Govt. advertisements in Delhi. However, there are well recognized basic principles followed all over the world regarding Government advertisements which have been formolized in many countries including New Zealand. It is generally recognized and settled that governments may legitimately use public funds for advertising and publicity to explain their policies and to inform the public of the government facilities and services available to them and of their rights and responsibilities. However, government advertisement should not be carried out in a manner

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which results in public funds being used to finance publicity for party political purposes. Government advertisement entails payment from public funds. It should thus deal with matters in which the government has direct responsibility. The objective of the advertisement may be to ;

- (a) Inform the public of proposed / new / revised / existing government policies,
- (b) Inform the public of government services available to them,
- (c) Advise the public of new / revised / existing entitlements or responsibilities,
- (d) Encourage the public to adopt certain kinds of social behavior generally regarded as being in the public interest e.g. road safety advertising.

57. The government advertisement should be presented in a manner which is,

- (a) Accurate, factual and truthful. Factual information should be outlined clearly and accurately.
- (b) Fair, honest and impartial. The material should be presented in unbiased and objective language, and in a manner free from partisan, promotion of government party and political argument.
- (c) Lawful and proper. The material should comply with the law.

Governments and its Ministers are accountable to the public for the use they make of all public funds. Government advertising should be undertaken only when there is identified and justifiable information need by the intended recipients.

Government information programmes should neither be conducted for party political purposes nor these should be liable to misrepresentation as party political. Advertising for party political purposes would include any information involving the production and dissemination of material to the public which promotes activities, programmes or initiatives of the government in a politically partisan or biased manner. Information should avoid party political slogans or images. Material should not be designed to influence public support for a political party or a candidate for election. Dissemination of information may be perceived as being party political because of any one of a number of factors:

- (a) What is communicated;
- (b) Who communicates it;
- (c) Why it is communicated;
- (d) What it is meant to do;
- (e) How, when and where it is communicated;
- (f) The environment in which it is communicated;
- (g) The effect it is designed to have;
- (h) Its relation with any political party's advertising campaign;

Let us now examine the facts of the case.

RESPONSIBILITY OF THE RESPONDENT FOR THE ADVERTISEMENTS

58. Admittedly the Respondent, besides being the Chief Minister, was also the Minister In charge of Information and Publicity during the time these advertisements were issued. As per circular No. 2179-2184 dated 15-05-2007

of Sh. Uday Sahay, the then Director (Information and Publicity), all the advertisement designed in Print Media, Hoarding, TV Spots, Radio Jingles or Departmental Broachers were to be compulsorily approved by the Hon'ble Chief Minister herself. Vide circular No. 293/PRNCM/2008 dated 11-04-2008 of Sh. P.K. Tripathi, the then Pr. Secretary to the Chief Minister, it was observed that in spite of the directions issued by the Hon'ble Chief Minister directing all departments to seek approval from the Chief Minister for display advertisements, circulated vide circular No. 4(332)/DIP/AV/2007/1547-1553 dated 23-03-2007 and No. 2179-2184 dated 15-05-2007, certain departments were flouting the instructions. It was further stated that Hon'ble Chief Minister has taken a very adverse view of the said violation. All Pr. Secretaries, Secretaries and Heads of Department were warned that any such violation of the provisions/directions of various circulars shall attract penalty of adverse entries in the ACR's of the concerned officers. By the said circular Director, Information and Publicity was directed not to issue DIP number until clearance was obtained from the Chief Ministers office and even all Secretaries to the Ministers were directed to bring it to the notice of all the Ministers to ensure compliance. The above circulars were produced by CW-3 Ms. Alka Diwan, Director, Information and Publicity and Special Secretary (Services), Govt. of NCT of Delhi and have not been disputed. Respondent has also not disputed her responsibility for issuance of Govt. advertisements in question. Thus, it is clear that besides being Chief Minister and Minister in Charge of Information and Publicity, the Respondent kept a strict control over all the advertisements issued by

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various departments / ministries of Govt. of NCT of Delhi and was thus directly responsible therefor.

THE NEWSPAPER ARTICLE: "SHEILA KI CAMPAIGN RANNITI", STRATEGY REVEALED

59. Complainant categorically stated about the publication of the article titled, "Sheila ki Campaign Ranniti" authored by Sh. Uday Sahay in the daily "Rashtriya Sahara" on 21-06-2009. In her reply, the Respondent while denying the said averment, stated that the article written in a paper by a person is his own perception. The notion of the author is his own. Neither the government nor the Respondent has anything to do with the same. Thus it can be seen that in effect the Respondent has not disputed the factum of Sh. Uday Sahay writing the said article and the same being published in "Rashtriya Sahara" on 21-06-2009. The Respondent has only contended that the contents of the article project author's own imagination and views and the same cannot be held against the Respondent.
60. CW-1 Sh. Vinod Raturi, Resident Editor of the daily "Rashtriya Sahara" has tendered the issue dated 21-06-2009, Ex CW 1/1 of "Rashtriya Sahara" where the article in question appears at page 10. He further stated that the article has been received by e-mail sent by Sh. Uday Sahay. At present they do not have the e-mail in their computer as they delete the e-mails received, in view of their large number and quantum, after a week. They had taken a printout of the e-mail, Ex CW 1/2. He further stated that upon publication of article there had been no correspondence with Sh. Uday Sahay regarding publication of the article. No letter has been

received from Sh. Uday Sahay expressing any reservation or otherwise in respect of the article published. He admitted that Ex CW 1/2 is the article exactly in the form in which it was received from Sh. Uday Sahay. The above evidence of CW 1 has gone unrebutted and unimpeached. CW 2 i.e. the Complainant has also in his affidavit, Ex CW 1/2 stated about Sh. Uday Sahay getting published the above article in "Rashtriya Sahara" dated 21-06-2009. During his cross examination, he denied the suggestion that Sh. Uday Sahay was not an employee of Delhi Government. He further stated that Sh. Uday Sahay was working as Director of Information and Publicity in the Govt. of NCT of Delhi and continued till the publication of article and thereafter he resigned from IPS and was given assignment with the Commonwealth Games with the consent of the Chief Minister. In his cross examination, no question has been put to him or suggestion given regarding publication of the article and the contents thereof. His testimony in this regard has gone unrebutted.

61. It may be seen that the article authored by Sh. Uday Sahay is a piece of documentary evidence wherein he has referred to the formulation and implementation of campaign strategy in which he participated. Emanating from his work and duties as Director of Information and Publicity, he had deep interest in planning such a strategy. It is thus an admission by Sh. Uday Sahay and is in contradistinction to a news report which could be hearsay evidence. The writing of the article and its publication has not been disputed by the Respondent either in her reply or during the cross examination of CW-1 and CW-2. It is well settled that the facts which

are admitted need not be proved. In this regard a reference can be made to Section 58 of the Indian Evidence Act, 1872 which stipulates as under :-

"58. Facts admitted need not be proved.- No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions".

In the instant case, even though the writing of the article in question by Sh. Uday Sahay and its publication in the daily "Rashtriya Sahara" has not been disputed by the Respondent in her reply, uncontroverted evidence has been led in proof of the said fact. The Respondent has neither disputed the writing nor led any evidence in rebuttal of the above evidence.

62. The news report about any fact or event could be a second hand version by the news reporter of the said fact or event, which the reporter might have obtained from some source or informant and would come in the category of hearsay evidence. However, an article written by an author about some strategy / plan and its implementation, of which he was a part, is the first hand account of his own action as well as that of his accomplices and the same cannot be considered as hearsay evidence and would thus stand on a different

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footing from a news report. It would also be relevant to refer to the principle enshrined in Section 94 of the Indian Evidence Act, 1872, which stipulates as under:-

"94 Exclusion of evidence against application of document to existing facts - when language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts."

Once the article written by Sh. Uday Sahay is admitted and language thereof is plain and simple, even he could not have given oral evidence contrary to what is written in the article. Thus the argument that Sh. Uday Sahay ought to have been examined to prove the article does not hold good. He could not have added to or subtracted from what has already been written by him. The only issue is to see as to whether the content of the article applies accurately to existing facts or not, i.e. whether, what is stated in the article as having planned and executed, has actually manifested or not? The article written by Shri Uday Sahay, Director, Information & Publicity, working under the Respondent, who as Minister of Information & Publicity, has been duly tendered in evidence and proved by the Resident Editor of the newspaper. Facts regarding conceiving and devising the election campaign strategy by publication of advertisements was in the knowledge of Uday Sahay, the author and architect of the strategy and the Respondent in whose special knowledge these facts were. The version of Shri Uday Sahay regarding the devising and hatching of the election campaign strategy has been written by him in the article in question which was duly

tendered. The onus and burden of proving it otherwise lay heavily on the Respondent. She singularly failed to discharge this burden and the consequences of this failure have to visit her. As noted earlier, despite opportunities for filing and leading her evidence, Respondent chose not to lead any evidence and failed to discharge the heavy onus on her. The Ld. Amicus Curiae also urged the above submissions in support of the article has having been duly proved.

**TIMING OF GOVERNMENT AND CONGRESS PARTY
ADVERTISEMENTS AND THEIR RELATIONSHIP.**

63. Complainant has laid great emphasis on the pattern of advertisements carried out by the government at the behest and with the approval of the Respondent as well as advertisements carried out by the Congress party. Learned counsel for the Complainant has categorized various advertisements published by the government as well as the Congress party on the basis of their subject / department and has successfully demonstrated as to how the Congress party advertisements have been synchronized with the Government of NCT of Delhi advertisements. He has contended that the Congress party advertisements, by itself are incomplete. These are complete and meaningful only if read in conjunction with the earlier government advertisements. The Congress party advertisements are a sequel to the government advertisements.

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64. The various categories / sets of advertisements illustrating synergy between the government advertisements and Congress party advertisements are as under:-

- (a) The advertisements Ex. - C-3 to Ex.-C-12 pertain to greenery in Delhi, out of these advertisements Ex.-C-3 to C-11, annexed hereto as RPT-III (Colly.), have been carried out by Directorate of Information and Publicity and Department of Environment and Forests, Govt. of NCT of Delhi. These pertain generally to greenery in Delhi, inaugurations of city forests and tree plantation drives. Ex.-C-4 to C-11 carries the photograph of the Respondent. However, Ex.-C-12, annexed hereto as RPT-IV, which is an advertisement issued by Delhi Pradesh Congress Committee, says, "Don't stop-Clean Delhi, Green Delhi". It further says, "Choose Progress Vote congress". It carries the photographs of, inter-alia, the Respondent and Smt. Sonia Gandhi, Chairperson UPA, besides the symbol that is hand of Congress party. This advertisement clearly appears to be a sequel to the government advertisements Ex.-C-3 to C-11. Respondent has neither contended nor led any evidence to show that advertisement Ex.-C12 was preceded by other advertisements issued by the Congress party. The advertisement, Ex.-C-12 saying, "Don't stop" has to necessarily relate to a series of other advertisement about action which is not to be stopped. It is evident Ex.-C12 by itself is incomplete. Ex.-C12 has to relate to and connect with some other advertisements in order to convey its message. This connection is clearly seen with government advertisements Exs. C-3 to C-11. Exs. C-3 to C-11 and C-12 when read together provide a complete set of advertisements. It is also pertinent to note that government

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advertisements Ex.-C-3 to C-11 were published during the period March, 2008 to August, 2008, before the election Code of Conduct was enforced and thereafter, but before Assembly Elections in 2008, i.e. on 23-11-2008, Congress party advertisement Ex.-C-12 was issued. It reveals a clear strategy of synchronizing government advertisements, carried over a period of about five months during the election year, with that of Congress party advertisements issued just before the Assembly Elections. It corroborates the statement of Sh. Uday Sahay in his article Ex.-C-1.

- (b) Advertisements, Ex.s-C-13 to C-28, annexed hereto as **RPT-V (Colly.)**, published by Delhi Government and Ex. C-29, annexed hereto as **RPT-VI**, issued by congress party pertain to regularization of unauthorized colonies, Co-operative Group Housing Societies, housing for slum dwellers and urban poor under Rajiv Ratan Awas. The advertisements, RPT-V, have been issued by Department of Urban Development and Office of the Registrar Co-operative Societies, Govt. of NCT of Delhi and carry photographs, inter-alia, of the Respondent and Smt. Sonia Gandhi, Chairperson UPA. In the above advertisements, applications have been invited for regularization of unauthorized colonies and documents have been asked from Co-operative Group Housing Society for processing and for making recommendation for draw of lots to DDA. Some of the advertisement also carried photographs of Late Smt. Indira Gandhi, former Prime Minister of India and Late Sh. Rajiv

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Gandhi, former Prime Minister of India. The advertisement Ex.-C-28 says, in bold letters, "5 Million Dreams Fulfilled Colonies Regularized". This fact is wrong since even after issuance of Provisional Regularization Certificates, which is the process currently undertaken, no unauthorized colony had been regularized. This advertisement carries photographs of the Respondent and other Ministers of the Govt. of NCT of Delhi as well as that of Smt. Sonia Gandhi, Chairperson UPA. The advertisement says that Smt. Sonia Gandhi, Hon'ble Chairperson UPA will distribute the Provisional Registration Certificates.

Ex.-C-29 is issued by Delhi Pradesh Congress Committee and says, "Don't stop affordable housing". It carries the photographs of, inter-alia, the Respondent and Smt. Sonia Gandhi, Chairperson UPA, besides the symbol that is hand of Congress party. This advertisement clearly appears to be a sequel to the government advertisements Ex.-C-13 to C-28. It is not the case of the Respondent that advertisement Ex.-C-29 was preceded by other advertisements issued by the Congress party. The advertisement, Ex.-C-29 saying, "Don't stop" has to necessarily relate to a chain of other advertisement containing action which is not to be stopped. By itself Ex.-C-29 is incomplete. Ex.-C-29 has to connect with some other advertisements in order to fully convey the message. This connection is clearly seen with government advertisements Exs.-C-13 to C-28. Exs. C-13 to C-28 and C-29 when read together form a complete set of advertisements. It is also

pertinent to note that government advertisements Ex.s-C-13 to C-28 were published during the period December 2007 to October, 2008, before the election Code of Conduct was enforced, and thereafter but before Assembly Elections in 2008 i.e. on 25-11-2008, Congress party advertisement Ex.-C-29 was issued. It reveals a clear strategy of synchronizing government advertisements, carried over a period of about five months during the election year, with that of Congress party advertisements issued just before the Assembly Elections. It also corroborates the statement of Sh. Uday Sahay in his article Ex.-C-1.

- (c) The advertisements Exs.C-30 to 32, annexed hereto as **RPT-VII(Colly.)**, pertain to Development of Delhi i.e. Metro and Flyovers which have been issued by Directorate of Information and Publicity, Govt. of NCT of Delhi, Advertisement contained in Ex.-C-33, issued by Delhi Pradesh Congress Committee, says, "Don't Stop Delhi's Development - 65 flyovers-75 underpasses-32 subways-metro rail-eco friendly and comfortable public transport system". Ex. C-34 says, "Don't Stop-clean Delhi-green Delhi". The advertisements Ex.-C-33 and C-34, annexed hereto as **RPT-VIII (Colly.)**, carry, inter-alia, the photographs of the Respondent and Smt. Sonia Gandhi, Chairperson, UPA, besides the symbol, "Hand" of Congress party. Ex.-C-33 appears to a sequel to the government advertisements, Ex.-C-30 and 31. Advertisement Ex.-C-34 appears to be a sequel to the government advertisement Ex.-C-32. Again, it is not the Respondent's case that Ex.-C-33 and C-34

were preceded by other advertisements issued by the Congress party. The advertisements Ex. C-33 and C-34 saying, "Don't stop" has to necessarily relate to other advertisements regarding action which is not to be stopped. By itself Ex. C-33 and C-34 are incomplete. These have to be read in conjunction with preceding advertisements in order to convey the complete message. This connection is clearly visible with government advertisements Ex.- C-30 to C-32. These advertisements also support the statement of Sh. Uday Sahay in his article Exh.-C-1.

- (d) The advertisements Ex.s-C-35 to C-45, annexed hereto as **RPT-IX (Colly.)** issued by the Public Works Department, Govt. of NCT of Delhi pertain to laying of foundation stones of various projects like flyover, underpass, foot-over bridge, jail complex, grade separator, swimming pool, hospital, school buildings etc. Ex.-C-46, annexed hereto as **RPT-X**, says, "Don't Stop Delhi's development-metro rail-65 flyovers-78 underpasses-32 subways-eco friendly and comfortable public transport systems". Ex.s-C-35 to C-45 carries photograph of the Respondent. Some of these advertisements also carry photographs of Smt. Sonia Gandhi, Chairperson, UPA. The advertisement Ex.-C-46 carries photographs of, inter-alla, the Respondent and Smt. Sonia Gandhi, Chairperson UPA besides the symbol, "Hand" of the Congress party. This advertisement appears to be in continuation of the government advertisement Ex.-C-35 to C-45. Respondent has neither contended nor led any evidence to show that advertisement Ex. C-46 was

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preceded by other advertisements issued by the Congress party. Ex.-C-46 saying 'Don't stop' has to necessarily relate to other advertisements regarding action which is not to be stopped. By itself advertisement Ex.-C-46 is incomplete. However, when read with Exs.-C-35 to C-45, it fully conveys the message, as a complete set of advertisements. Government advertisements Ex.s-C-35 to C-35 were issued during the period May, 2008 to October, 2008 and in continuation thereof the Congress party's advertisement Ex.-C-46 was issued in November, 2008. The contextual and inextricable connection between the government advertisements and Congress party advertisements as above corroborates the statement of Sh. Uday Sahay in his article, Ex.-C-1, as correct.

- (e) The advertisements Exs.C-47 to C-63, annexed hereto as **RPT-XI (Colly)**, have been issued by the Department of Power regarding amnesty schemes and other benefits given to people of Delhi. All these advertisements carry a photograph of the Respondent and have been issued during the period March to October, 2008 i.e. in the election year.

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65. As argued by the Learned Counsel for the Complainant the difference between the old pattern of advertisement and the new pattern of advertisements, pursuant to campaign strategy as revealed in the report, which were issued in the election year, can be seen by comparing the two kinds of advertisements. This reveals that in the election year, advertisements were issued with an improper and selfish motive to obtain gain or favour for

the Respondent and the Congress party, an act exhibiting lack of faithfulness.

The under mentioned government advertisements would illustrate the difference in content and their purpose, the transition from purely informative advertisements regarding works done, facilities being provided, achievements of government, to focus being shifted to the government and leaders of their party and their contribution. The election strategy devised, as admitted in the article, manifested itself in the advertisement blitz undertaken squandering public funds to gain advantage for the Respondent and her party in the election. The synergy between the advertisements purportedly published on behalf of the government and the advertisements of the Congress party, the latter were complete only as a sequel to the earlier advertisement. The above clearly demonstrates the publication of the advertisements for improper motives for gain to oneself, party and lack of observance of the norms of integrity and conduct expected of the public functionary:-

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- (a) Advertisement, Exs-C-64 to C-69, C-72, C-75 and C-76, annexed hereto as RPT-XII (Colly), issued by the Department of Trade & Taxes, Directorate of Health Services and Department of Food & Supplies and Consumer Affairs, Department of Environment and Forest published in the months of September and October, 2005 are the old pattern advertisements published much prior to the election period. These advertisements do not carry any photograph of Congress leader of the government Minister.
 - (b) However, advertisements, Exs-C-71, C-71, C-73 and C-74, annexed hereto as RPT-XIII (Colly), issued by

Department of Environment and Forest during the period April, 2008 to August, 2008 i.e. during the election year and thus carry the photograph of the Respondent.

- (c) Advertisement, Ex.-C-77, annexed hereto as RPT-XIV, is regarding administration of polio drops which was published in May, 2006 and does not carry any photograph. However, for the same purpose advertisement issued in October, 2007 and July, 2008 Exs. C-78 & C-79, annexed hereto as RPT-XV (Colly.), carry photographs of the Respondent and Sh. Yoganand Shastri, the then Health Minister.
- (d) Advertisement, Ex.-C-80, annexed hereto as RPT-XVI, regarding Common Wealth Games published on 14-09-2005 does not carry any photograph. However, advertisement for the same cause published on 10-10-2007, Ex. C-81, annexed hereto as RPT-XVII, carries photographs of the Respondent and the Chairperson, UPA.
- (e) Advertisements, Ex.-C-84, C-85 and C-85A, annexed hereto as RPT-XVIII (Colly.), issued by Department of Environment, regarding Safe Diwali, in October, 2005 do not carry photograph of any Minister or leader. However, advertisement Ex. C-86 to C-89, annexed hereto as RPT-XIX (Colly.), issued by Department of Environment in October and November, 2007 shows the photograph of the Respondent.
- (f) Advertisements, Ex.s C-90 and C-91, annexed hereto as RPT-XX (Colly.), issued by Directorate of Education in May, 2006 does not carry photograph of any Minister or leader. Whereas, advertisement

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Ex.-C-92, annexed hereto as **RPT-XXI**, published in December, 2007 bears photograph of the Respondent and the Education Minister.

- (g) Advertisements, Ex. C-93 to C-95 annexed hereto as **RPT-XXII (Colly.)**, published by Directorate of Prevention of Food Adulteration and Office of the Controller of Weights and Measures, in October, 2005 does not carry any photograph, whereas advertisement Ex.-C-96, annexed hereto as **RPT-XXIII**, published by Department of Food Supplies and Consumer Affairs, in March, 2008 carry photographs of the Respondent, Smt. Sonia Gandhi, Chairperson, UPA and Sh. Haroon Yusuf, Minister, Food and Supplies.
- (h) Advertisements, Ex.-C-97 to C-99 and C-113, annexed hereto as **RPT-XXIV (Colly.)**, issued by the Office of Divisional Commissioner, Department of Training and Technical Education and by Hindi Academy, Delhi, in September, 2005 do not carry photograph of any Minister or leader. However, advertisements Ex.-C-100 to C-102, annexed hereto as **RPT-XXV (Colly.)**, issued by Delhi Scheduled Cast, Scheduled Tribes, Other Backward Classes, Minorities and Handicapped Financial and Development Corporation Limited, Department of Urban Development and Delhi Khadi and Village Industry Board published in October, 2007 November, 2007 and January, 2008, carry photographs, inter-alia, of the Respondent, Smt. Sonia Gandhi, Chairperson, UPA and Late Sh. Rajeev Gandhi, former Prime Minister of India.
- (i) Advertisements, Ex.-C-103, C-104, C-105, annexed hereto as **RPT-XXVI (Colly.)**, published in

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September, 2005 and Department of Power are old pattern advertisements which do not carry photograph of any Minister or leader. However, advertisements Exs-C-106 to C-109, annexed hereto as RPT-XXVII (Colly.), issued by Department of Power during October, 2007, November, 2007 and March, 2008 carry photographs, inter-alia, of the Respondent and Smt. Sonia Gandhi, Chairperson, UPA.

WHAT DOES THE PATTERN OF ADVERTISEMENTS SHOW

66. The Respondent, who was the Minister In-charge, Information and Publicity was exercising a strict personal control over the advertisements creatives and contents as noted in Para-35 above and the strategy for publication as unravelled. The pattern of advertisements published by the Government of the NCT of Delhi and the Congress Party clearly establishes a proximate and inextricable nexus between the two. The advertisements issued by the Govt. of NCT of Delhi, on a particular subject, over a period of time in the election year culminated in Congress Party advertisements on the same subject. Both were published in the election year. The advertisements issued by the Congress party as noted are not complete by themselves and can be comprehended and understood in the context of the former. It is also important to note that the number of advertisements issued by the Government have increased manifold during the election year. The Respondent has not been able to show any justifiable need for the sudden and nearly fivefold increase in the advertisements over the past 2-3 years. There has been no explanation for such an increase during the election year. These

advertisements generally projected a rosy picture of the development made in Delhi. The fact that these advertisements were published in the election year and were followed by Congress party advertisements show that these were designed to lead the public to believe that the Congress Party and its Govt. were responsible for the development made in Delhi and they should vote for Congress Party. The effect these Government advertisements were designed to have is clearly visible in the Congress Party advertisements which were published in sequence subsequently is to garner support for the Congress Party. These advertisements were designed to lead to Congress Party advertisements and thereby to influence public support for Congress Party. Thus, there is a clear synergy and synchronization between the advertisements issued by the Government and those by the Congress Party. The above manifests and corroborates the strategy revealed in the article of Shri Uday Sahay.

EXPENDITURE

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67. While it is true that expenditure to be incurred by the Government on any subject, including advertisements, is within the domain of the Government and the same is not to be questioned merely on the ground that the amount spent was excessive. It is exclusively within the purview of the executive. However, when the advertisements itself have been issued with an improper or selfish motive for party political purposes, the increased expenditure on the same is a relevant factor and it cannot be said that this forum cannot look into the same. The question in the instant case is not the expenditure, per-se, incurred on the advertisements

published by the Government but the motive, purpose and manner in which these advertisements were created, devised and issued during the election year for which excessive expenditure is incurred. The testimony of CW-2, i.e. the Complainant to the effect that the total amount incurred on the advertisement in the year 2004-05 was Rs. 3,17,79,039/-, in the year 2005-06 it was Rs. 4,33,95,018/-, in the year 2006-07 was Rs. 5,42,02,510/-, in the year 2007-08 was Rs. 75700442/- and in the year 2008-09 was Rs. 23,31,87,307/- has gone un rebutted. He further stated that from the above figure it was clear that in the election year (October, 2007 to October, 2008) an amount of Rs. 27 crores has been spent. The said amount was not spent in the normal course of Government functioning but was spent during the election year on advertisements published for party political purposes. The Respondent has not been able to show any justifiable need for about five fold expenditure over the past few years in the advertisements, during the election year. The campaign blitz for party political purposes resulted in an unwarranted burden on the State exchequer.

68. Ld. Counsel for the Respondent has vehemently argued that the Government had a duty to inform the citizens about its policies, the projects undertaken and development made etc. and thus there was nothing wrong in the advertisements issued by the government. Ld. Sr. Counsel for the Complainant contended that the advertisements in question issued during the election year were for party political purposes and therefore these were tainted with improper and selfish motive.

There is no denial that a democratically elected government has a right to inform the masses of its policies, development works etc. and there is nothing objectionable therein. However, that cannot provide a licence for utilizing and converting Government advertisements into party political advertisements.

There is no dispute about the fact that the Govt. has not only the right/power but also a duty to inform the general public of the Govt. policies, the services available to them, the existing/revised/new entitlement or responsibilities. However, when such power is exercised or duty is done with an improper/corrupt motive and by misuse of authority for obtaining gain / favour for an individual or party, the same is questionable and can be inquired into. No Public Functionary or Govt. enjoys absolute or unbridled power to expend from public exchequer which is immune from scrutiny.

69. Ld. Counsel for Respondent has also argued that the Complaint in the instant case belongs to BJP, which is a rival to the Respondent's party, and was defeated in the Lok Sabha elections and therefore such politically motivated complaints need not be entertained by the Lokayukta. On the other hand Ld. Senior Counsel for the Complainant contended that political affiliations or relations of the parties are not relevant and it is only the subject matter which is the basis of inquiry under the Act. It is considered that so long as allegations against a Public Functionary are covered within the definition of "allegation" under Section 2 (b) of the Delhi Lokayukta and Upalokayukta Act, 1995, the status or political affiliations of the Complainant cannot non-suit the Complainant.

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70. In view of the aforesaid discussion, especially with regard to the position held by the Respondent as Chief Minister and Minister In-charge, Information and Publicity, the article, "Shiela ki Campaign Ranniti", written by Sh. Uday Sahay, the then Director of Information & Publicity, and the pattern of advertisements published by the Govt. of NCT of Delhi as well as the Congress Party, it is established that the advertisements issued by the Govt. of NCT of Delhi during the election year, as produced on record, were got issued by the Respondent with an improper and selfish motive by abusing and misusing her position to obtain gain and favour to herself and her party, in the Assembly elections in 2008. She has thus exhibited lack of faithfulness to her Office and failed to act in accordance with the norms of integrity and conduct which ought to be followed by the Public Functionaries. Thus, the allegations in terms of Section 2(b) (i), (ii), (iii) & (iv) of the Act against the Respondent are established.
71. It has also been argued on behalf of the Respondent that during the general elections in 2004, BJP itself carried out an advertisement campaign projecting, "India Shining" image with photographs of their national leaders but these advertisements were not questioned for misuse of authority or being with improper or corrupt motives. A wrong or improper act going unnoticed or uncensored in the absence of a complaint cannot provide justification or a ground for perpetuating the improper act or practice. However, such acts not being regarded in the past as breach of norms of conduct and integrity are factors which are taken into account as mitigating factors,

while making the recommendations only for a 'caution' to be administered.

A person on becoming a 'public functionary' becomes the custodian of public trust. He is a trustee of the state exchequer and has to ensure that the same is spent in public interest only. He is to so formulate his policies and plan his actions, so as to avoid conflict between his personal interest and public interest. Ministers and other Public Functionaries are accountable to the public for the use they made of public funds. They cannot conduct Information programmes for party political purposes or which are liable to misrepresentation as party political.

As has been earlier discussed any Govt. advertisement for party political purposes by any party by spending State funds would amount to acting with improper motives and misuse/abuse of authority and exhibiting lack of faithfulness. This practice needs to be stopped, since besides loss to the public exchequer it gives an unjust advantage to the party in power in the elections. If any public functionary causes loss to the State exchequer, by misusing his position, he should make good the same. As argued by the Ld. Counsel for the Respondent, governments of various political parties might have been publishing government advertisements, by using public funds for party political purposes, though it has come under scrutiny perhaps for the first in the present case. There is thus a need to frame guidelines for publication of government advertisements so as to keep a check and prevent recurrence of such misuse of authority in future. This

exercise can be taken on the basis of factors spelt out in Paras 56 & 57 of this Report.

72. The Forum acknowledges the valuable assistance rendered pro-bono by Amicus Curiae, Mr. Saurabh Kirpal, Advocate.
73. In view of the above discussion, it is recommended to the President of India as under :-
- (a) To administer a caution to the Respondent for being actuated, in publishing and releasing advertisements purporting to be Government advertisements in the year 2007-2008, in furtherance of the campaign strategy as revealed in the article titled "Sheila Ki Campaign Ranniti", actuated by improper motives and personal interest, thereby misusing her position to obtain gain/favour for herself and her party in violation of the norms of integrity and conduct which ought to be followed by a Chief Minister/Minister.
 - (b) To advise the Respondent to reimburse, either herself or through her party, being beneficiaries, a sum of Rs. 11.00 Crores, being approximately 50% of the cost of advertisements in the election year used in Government advertisements for party political purposes, or such other sum as the Hon'ble President finds adequate as having been incurred for advancing self and political party purposes from public funds.
 - (c) To direct the framing of guidelines for publication of Government advertisements which are informative as regards the progress and development,

availability of facilities, incorporating safeguards to prevent misuse of government funds by adoption of such or similar stratagems; developing norms regarding desisting from publishing party political advertisements using State funds, norms for publication of photographs of national leaders of political parties in Government advertisements in a manner which shuns development of a personality cult or advancing party political interests.

- (d) Such other directions as may be deemed fit by the President of India may also be passed.

The above recommendations are distinct and made without prejudice to one another.


(JUSTICE MANMOHAN SARIN)
LOKAYUKTA

DATE 22nd MAY 2013

HEMANT