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4.

BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin
Complaint No. C-223/Lok/2009/

Sh. Vijender Gupta, Councillor, MCD

Complainant

Vs.

Smt. Sheila Dikshit, Chief Minister, NCT of Delhi

Respondent

Present:-

1. Mr. H.S. Phoolka, Senior Advocate with Mr. Anwar Faisal, Advocates for Complainant
2. Mr. Vijender Gupta, Councillor, MCD - Complainant in person.
3. Mr. Mr. Abhishek Aggarwal, Advocate, for D.N. Goburdhan, Advocate for Respondent.

By a separate order passed today, preliminary objections on the maintainability of the complaint, raised by the Respondent have been dismissed.

Vide order dated 11.12.2009, a direction was issued to Editor of "Rastriya Sahara" to ensure that the original article as received from Sh. Uday Sahai, published in the issue date 21st June, 09 together with any correspondence in relation thereto is preserved subject to further directions regarding production. Mr. Phoolka prays that a direction may now be issued for its production. Let a direction issue to Editor, Rastriya Sahara for production of original article received from Mr. Uday Sahai together with correspondence, if any, on the same, on or before the next date.

As per the mandate of Section 10 of the Delhi Lokayukta and Upalokayukta Act, 1995, the Lokayukta is to decide the procedure to be followed in the inquiry. The primary requirement is to ensure adherence to principles of natural justice.

In the instant case, after issuance of the notice of inquiry, copy of the complaint together with the documents filed, have been supplied to the Respondent. The Respondent in turn has filed detailed reply. Pleadings are complete with Complainant filing rejoinder to the reply. Preliminary objections sought to be raised by the Respondent on the maintainability of the complaint have been disposed of today. Accordingly, the procedure is now to be laid for the inquiry.

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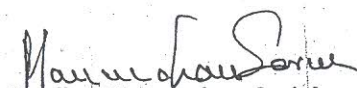
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Having regard to the nature of the controversy involved and the evidence with regard to the respective contentions being based on the article written and various advertisements published in the newspapers, it would be appropriate to permit the parties to file affidavits in evidence with right to the other of cross-examination. Complainant and the respondent would in addition have the liberty to produce oral or documentary evidence and file list of witnesses. None of the parties have any objection to the above procedure for the inquiry or have any other suggestions in this regard.

Let the complainant file an affidavit in evidence within 10 days together with an advance copy to the Respondent or his counsel.

The matter be listed on **29th January, 2010 at 2.00 PM** for recording of statement of the Complainant and any other witness on behalf of the Complainant. Complainant to file list of witnesses, if any within a week.


(Justice Manmohan Sarin)
Lokayukta

Dated : 14.01.2010
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**BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin**

Complaint No. C-223/Lok/2009/

Sh. Vijender Gupta, Councillor, MCD

Complainant

Vs.

Smt. Sheila Dikshit, Chief Minister, NCT of Delhi.

Respondent

ORDER

1. By this order preliminary objections raised and pressed by the Respondent on the maintainability of the complaint are being decided.
2. Complainant alleges that the Respondent Smt. Sheila Dikshit, Chief Minister of Delhi, had misused government and public funds for advertisement campaign to gain political mileage in the then ensuing elections in November, 2008. The Complainant claimed that the Respondent had made an elaborate campaign plan strategy, implemented through the Directorate of Information and Publicity to over come the incumbency factor and for winning the elections. Reliance has been placed by the Complainant on the Article titled, "Sheila ki campaign Ran niti" authored by Sh. Uday Sahay, the then Director, Directorate of Information and Publicity, which appeared in the daily, "Rashtriya Sahara" on 21.6.09 as also on the admissions contained therein.
3. Vide a reasoned order passed on 9th October 2009, this forum directed an inquiry under Section 7 of the Act into the allegations made in the Complaint. The Respondent had been duly served on 13th October, 2009. She entered appearance on 27th October, 2009. Reply by the Respondent and rejoinder thereto have since been filed.

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4. On 11.12.2009, Respondent's Counsel pressed for a decision on two of the preliminary objections/pleas raised by him at the outset. These being:-

- (a) Complaint not having been filed and verified in accordance with the prescribed form and Rules under the Delhi Lokayukta & Upalokayukta Act 1995, was liable to be dismissed at the threshold, and
- (b) Complaint was barred by virtue of the Representation of People's Act, 1951.

5. Sh. D.N. Goburdhan, advocate for the Respondent was heard on 18.12.2009 and on 22.12.2009 and Mr. H.S. Phoolka, Sr. Advocate for the Complainant was heard in reply. Order was reserved on 22.12.2009.

6. Laying foundation for his submissions on the objections noted above, Sh. D.N. Goburdhan submitted that under the Delhi Lokayukta & Upalokayukta Act, 1995, the allegations to be inquired into are against Public Functionaries, occupying high and responsible offices. Accordingly, it was essential that the allegations were made with a sense of responsibility strictly in accordance with the procedure & prescribed forms. He submitted that the Competent Authority were President of India & the Lt. Governor respectively. This itself was indicative of the significance and importance being given to the proceedings and report of the Lokayukta under the statute. Sh. D.N. Goburdhan submitted that the proceedings were quasi criminal in nature. The allegations, therefore, were required to be serious and substantial and not trivial or frivolous in nature. He submitted that the allegations in the instant case were the out-burst of a frustrated and disgruntled political rival, who was humbled in the hustings. Coming to the defects in the Complaint, he submitted that verification of the complaint had been done as under :-

"the facts stated by me in para 1 to 12 in the complaint are true to my knowledge based on the information received from Article published in the "Rashtriya Sahara" as well as advertisements carried out in various newspapers and documents and believed to be true".

He argued that the Complainant was required to state specifically the paras that were verified as true to personal knowledge and others that were based on information received and believed to be true.

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7. He submitted that the affidavit in support of the complaint was also defective in as much as the identity and address of the person identifying the Complainant in the affidavit was not given. He relies on Baldev Singh Vs. Shinder Pal Singh and Another reported in (2007) 1 Supreme Court Cases 341, wherein the Supreme Court observed "the verification of an election petition must be done strictly in terms of Order 6 Rule 15 of CPC. Further, statements true to Deponent's knowledge and those true to belief had to be spelt out. A factual averment made in the election petition could not be both true to the knowledge and belief of the deponent".

Relying on the above, he urged that the complaint not having been properly verified and affidavit being defective, the complaint was liable to be dismissed as not being in accordance with prescribed procedure.

In support of the proposition that whenever a Statute prescribes a particular procedure to be followed and manner of doing a thing, then the same was required to be done in the prescribed manner and in no other manner, reliance was placed on :-

- (i) State of Uttar Pradesh Vs. Singhara Singh & Others, (1963) 4 S.C.R. 485.
- (ii) Ramchandra Keshav Adke & Others Vs. Govind Joti Chavare & Ors, (1975) 3 S.C.R 839.
- (iii) Sudarsha Avasthi Vs. Shiv Pal Singh, (2008) 7 S.C.R - 604

State of Uttar Pradesh Vs. Singhara Singh & Others followed the principle laid down in Nazir Ahmed's case, L.R. 63 I.A. 372.

It was held that the confession recorded by an authority other than prescribed was not admissible in evidence.

Similarly, in Ramchandra Keshav Adke & Others Vs. Govind Joti Chavare & Ors. where the statutory requirement regarding recording of a surrender of tenancy by the Mamlatdar and satisfaction of voluntary nature were not followed, it was held to be in violation of the statute and not permissible.

In Sudarsha Avasthi Vs. Shiv Pal Singh, it was observed that an election petition was a serious matter, which can not be treated lightly or in a fanciful manner nor can any relief be given to a person who uses this as a handle for vexatious purpose.

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Mr. Goburdhan relying on the above judicial pronouncements contended that the complaint not having been properly verified and the prescribed procedure as per statute not having been adhered to, it was liable to be dismissed.

8. Mr. Phoolka in response refuted these submissions urging that the verification was as per the prescribed Form - I. He submitted that there was substantial compliance with the requirements of verification. He submitted that proceedings before the Lokayukta, are essentially a fact finding inquiry. Complainant may not have personal knowledge and may be relying on documents, not in his/her possession. The Legislature has therefore conferred wide powers on the Lokayukta in its quest for reaching the truth. The Lokayukta can take cognizance suo moto and/or on any other information received, apart from filing of a complaint before it. Hence, the object of the Legislation is best served by not hampering or hindering inquiries on technicalities.

9. Mr. Phoolka placed reliance on M/s. Associated Journals Ltd. Vs. Mysore Paper Mills Ltd., AIR 2006 Supreme Court Cases 2698, wherein the Supreme Court while dealing with a Company petition, approved the principle of substantial compliance in matters of verification and adherence to forms. The Supreme Court observed, inter-alia, in paras 22 & 23 as under:-

"22. This Court has in catena of decisions held that substantial compliance is enough. Rules are undoubtedly statutory and the forms are to be adopted wherever they are applicable. The Rules relating to the affidavit and the verification can be ordinarily brushed aside, but then what is required to be seen is whether the petition substantially complies with the requirements and secondly, even when there is some breach or omission, whether it can be fatal to the petition. In the instant case, both the learned Company Judge and also the Division Bench were of the opinion that there is substantial compliance of Rule 21.

23. We are of the opinion that the Rules of procedure can not be a tool to circumvent the justice. In fact, the Rules are laid to help for speedy disposal of justice."

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10. There is considerable merit in the submissions of Mr. Phoolka that there has been substantial compliance with the procedural requirements regarding verification and technical irregularities are of no consequence in these proceedings. This is especially so when the objections sought to be raised are considered in the backdrop of the subject matter of the present case and the nature of proceedings before the Lokayukta which shall be adverted to later.

✓ 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 & Upalokyukta 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

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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 observations 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 an 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 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

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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. Monteiro)."

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, the appeal is allowed. The order of the learned Single Judge is set aside. The pending application stands disposed of as well."

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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. Singhra 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 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 statute, 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 Peoples Act, 1951. Accordingly, he urged a complaint made in respect of these matters under

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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 Avashti Vs. Shiv Pal Singh, (2008) 7 S.C.R - 604
- (ii) Mohinder Singh Gill & Another Vs. The Chief Election Commissioner, New Delhi & Ors, (1978) 1 SCR 405
- (iii) Sumant & Balakrishna & Another Vs. George Fernandez & Others, (1969) 3 S.C.R 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 submissions 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 if the complaint contains matters, the pith and substance of which is election petition is rather far fetched. There is no relief sought as admissible under

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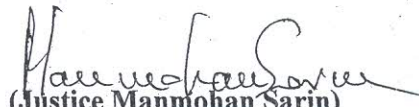
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the Representation of People's Act, 1951. There is no challenge to the election. Hence, the submission that remedy under any other statute except the Representation of People's Act, 1951 was barred is wholly misconceived. It is held that the complaint 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 by itself does not cause any prejudice to the Respondent, who has the full opportunity of meeting the case.

In view of the foregoing discussion, the application has no merit and is dismissed. Nothing stated hereinbefore shall be construed as an opinion on the merit of the case.


(Justice Manmohan Sarin)
Lokayukta

Dated : 14.12.2009

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