

SUBSTANCE OF CASE UNDER SUB-SECTION-7 OF SECTION-12 OF THE DELHI LOKAYUKTA & UPALOKAKYUKTA ACT, 1995, IN THE MATTER OF COMPLAINT NO.C.409/LOK/2010 TITLED "RAJ KUMAR CHAUHAN, MINISTER, GOVT. OF NCT OF DELHI - SUO MOTO COGNIZANCE TAKEN OF A NEWS REPORT OF TIMES OF INDIA DATED 19TH JULY 2010, TITLED "DELHI MINISTER SOUGHT RELIEF FOR RESORT".

1. Inquiry conducted under the Delhi Lokayukta and Upalokayukta Act, 1995, giving full opportunity to the Respondent Minister to file reply, lead evidence and explain his conduct.

Issue being conduct of the Minister, in telephoning the Commissioner (Trade & Taxes) and asking him to intervene and help the Resort owner during tax survey / raid. Lokayukta found it to be a case of gross misconduct and in violation of the norms of integrity and conduct expected of a public functionary. It was also a case of interference by the public functionary in the statutory function under Sec. 89 (4) (i) & (k) under the Delhi Value Added Tax Act.

2. Lokayukta, accordingly recommended to the then Competent Authority, the President of India, to withdraw her pleasure for the public functionary to hold office and also direct initiation of proceedings for offences disclosed under Sec. 89(4) (i) & (k) of Delhi Value Added Tax Act 2004.
3. It was conveyed to the Lokayukta that his recommendations and findings had not been accepted by the President of India. No reasons for the order passed by the President of India, were conveyed. Special Report was prepared in the absence of reasons or knowing thought process for the decision by the Competent Authority. It is on the assumption that no such

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reasons or thought process of the Competent Authority are available on record. It is based on the premise that possibly the pleas and grounds stated in the reply of the Respondent and comments of the Pr. Secretary (Finance), Govt. of NCT might have weighed with the Competent Authority.

It is submitted that the statute does not permit any further inquiry or calling for comments of the indicted public functionary or the State Government, after the Inquiry Report of Lokayukta. Competent Authority is to take a decision on the findings and recommendations "on the basis of the report" alone. Legal opinion on this issue has been sought by Lokayukta and the former Attorney General for India had concurred with him in his written opinion. The Hon'ble Lt. Governor and Hon'ble President of India have also been apprised of this.

Without prejudice to the above, it is submitted that the Special Report has been prepared taking into account the response of the Respondent and the comments of the Pr. Secretary (Finance).

<u>Comments & Analysis of the Respondent & Pr. Secretary (Finance), NCT of Delhi</u>	<u>Comments of Lokayukta thereon and findings in Inquiry Report</u>
RE: MAKING OF TELEPHONE CALL	
Respondent Minister admits making of the telephone call and there is no controversy in this regard. It was a routine call	There is no controversy with regard to making of the telephone call. Initially, Respondent Minister sought to justify it as a mistake occurring during the rush hours of

<p>made by the Minister as a part of his duty to a constituent on his asking since the latter feared harassment. It was for a short duration of about a minute or so. It was made to ensure there was no harassment or 'Zyadti' on the Resort owner.</p> <p>There was no impact of the call as the survey continued and assessments were made and fine and penalty imposed. No loss of revenue.</p> <p>There was no follow up of the call or use of coercive steps taken after call made by the Minister. Commissioner had also given a routine reply.</p> <p>Survey began at 5.00 PM and call was made at 8.30 PM. Therefore, it could not be inferred that call was made to seek withdrawal of the survey team. The Commissioner's initial reply was a stock reply. His statement regarding no follow up, no coercion, no revenue loss and no impact on the assessment,</p>	<p>morning Darbar. However, in the light of the statement of the Commissioner (Trade & Taxes), he admitted that it was made at 8.30 PM or so in the night when he was alone with Shri Rahul Gupta, who had come to seek his help.</p> <p>It was not a routine call being made or a call made by the Minister for redressal of a citizen's grievance. It was a call made at the instance of a person known to the Minister, seeking help during a tax search / survey.</p> <p>The bogey of call being made as the Resort owner feared harassment is belied by facts and circumstances on record. It is an after-thought.</p> <p>It has come on record that no complaint of harassment was ever made by the Resort owner with the Commissioner or Trade & Taxes Department either before the search, during the search or thereafter in the assessment proceedings.</p> <p>The Resort owner did not</p>
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<p>support the Respondent's version.</p>	<p>name or complain against any officer of discourtesy or rude behaviour or any excess. The telephone call by Minister was simplicitor a call for seeking favours for the Resort owner.</p> <p>The following extracts from the recorded statement on oath of the Minister and Commissioner are significant:-</p> <p>The exact expression used by the Minister is "Gupta came to me requesting for help as a raid was being carried out at his establishment". Rahul Gupta had asked "Zara madad kar dein". Minister himself admitted that he understood the distinction between grievance redressal and sensitive matters such as a tax search or raid.</p> <p>Reference may be made to a confidential note submitted by the Commissioner to the Pr. Secretary (Finance) and the Finance Minister. This note represents the first documentation uninfluenced by subsequent events, after-thoughts or any embellishments.</p> <p>It records, what the</p>
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Commissioner stated to his superiors, "he received a call on his mobile phone from a Minister and he was asked to intervene. I had respectfully submitted that I would not be recalling my team from active survey." The crucial expressions here being, "seeking intervention".

From the above, it would be seen that this response would normally come only in response to a request to recall the survey and not otherwise.

On the contrary, the note records that "the Commissioner received, on behalf of the Resort owner, numerous phone calls from a Member of Parliament, an MCD Councillor and from friends and Officers around Delhi." This, the Commissioner reported, was indicative of the pressure sought to be exerted and demonstrated the clout exercised by the Resort owner.

In Para-5 of the note, Commissioner records, "naturally,

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we are apprehensive of repercussions from these vested interests as some of our subordinate staff have expressed to the undersigned". The subordinate staff were the Jt. Commissioner and the VATO.

As regards the findings in the survey, in his report titled "Enforcement Surveys on Banquet Halls", in Para-27, he recorded the nature of irregularities and violations that were alleged against the assessee, namely, the Resort owner.

It noted that Bank Accounts of the assessee revealed deposits of Rs. 22.65 crores in the year 2009-10 as against sales of income tax returns of only Rs. 8.05 crores, indicative of suppression of sales. The gross turnover as per returns from 2006-07 to 2009-10 was at Rs. 63.85 crores as against actual projected turn-over of Rs. 319.20 crores, showing the extent of avoidance of tax and massive concealment.

It would be seen that there was no mention of apprehension of harassment by the Minister to the Commissioner, except when Commissioner deposed in Court that if the Resort owner had any complaints, he could be contacted.

The shifting position and stand of the Commissioner is found to be a saga of flip flop flip and akin to a swinging pendulum. It represented the pursuit to take expedient position by a bureaucrat torn between the professional call of his duty and the endeavour to appease his political masters.

Regarding the timing of the survey, there is nothing on record to suggest that as per the Commissioner it started at 5.00 PM. Commissioner's statement was that it started in the noon. That could be any time after 12.00.

Commissioner in his statement before Lokayukta said that the call was received by about 8.30 PM. Minister told

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me that "the owner of the Tivoli Gardens is known to him". Crucial part of the statement is "Mere Jan pehchan ke log hein".

Hence, in these circumstances, when a call was made at 8.30 PM, sufficient time had already elapsed from the commencement of the survey, and no such inference that the call could not have been for the recall of the Survey team could be drawn as is purported to be done by the Respondent Minister and the Pr. Secretary (Finance).

Minister had approached Commissioner to see that there should be no "Garbar". "I should see whatever I could do to help and intervene in the matter". "Garbar" here refers only to the situation getting out of control from the point of view of the assessee. Further, the words "See whatever I could do to help and intervene" are of significance. Minister even sought to justify the call saying that the Commissioner was not from his Department.

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But that would hardly be the justification for seeking favours in matters which do not even fall within his domain.

The facts and circumstances, as they have unravelled themselves, leave no doubt that it was a case of gross misconduct. Non-follow up by the public functionary or not having any impact on the revenue does not in any manner mitigate the grievous nature of misconduct.


(JUSTICE MANMOHAN SARIN)
LOKAYUKTA

DELHI
DATE: 10th SEPTEMBER 2013