

**BEFORE THE HON'BLE LOKAYUKTA**  
**Justice Manmohan Sarin**  
**Complaint No. C-145/Lok/2009**

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**LOKAYUKTA ON ITS OWN MOTION**

In Re: Complaint against Sh. Vijender Gupta (Presently a Councillor and Ex-Chairman, Standing Committee, MCD) regarding scam in purchase of uniform for employees of MCD & Students of MCD Schools.

Shri Farhad Suri                      .....                      Informant/Complainant

Vs.

Shri Vijender Gupta                      .....                      Respondent

1. Mr. Nalin Tripathi, Counsel for the Informant / Complainant.
2. Mr. Balendu Shekhar, Counsel for Respondent Sh. Vijender Gupta.
3. Ms. Pinky Anand, Sr. Advocate, Counsel for MCD
4. Mr. Tanuj Khurana, Advocate Amicus Curiae.
5. Mr. Rajesh Prakash, A.D. (HQ), MCD.
6. Mr. N.K. Ghai, Dy. Education Officer, MCD.

**ORDER**

1. Sh. Farhad Suri, Councillor, received a complaint dated 20/04/2009 from one Sh. Dheeraj Kumar alleging irregularities in the purchase of uniform for the employees of the MCD for Rs. 5 crores and for students of MCD Schools for 15 crores. The complaint highlighted

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that the prevalent DGS&D rates was Rs. 54/- per meter, while procurement of cloth was done at Rs. 75/- per meter without calling for tenders. Vide his letter dated 05/05/2009, Sh. Farhad Suri forwarded the complaint to the Hon'ble Lt. Governor requesting for an investigation into the matter. The Hon'ble Lt. Governor endorsed on the letter dated 05/05/2009 that "the complaint can be looked into as appropriate by the Lokayukta, Delhi". The Directorate of Vigilance, thereafter, sent the complaint dated 20/04/2009 of Sh. Dheeraj Kumar alongwith letter dated 05/05/2009 of Sh. Farhad Suri to this office, vide letter No. F.44(9)/09/DOV/3867 dated 15/05/2009.

2. The complaint dated 20/04/2009 is against Sh. Vijender Gupta, Councillor, who was the Chairman of the Standing Committee of the Municipal Corporation at the relevant time. It is alleged in the complaint that Sh. Vijender Gupta being the Chairman of the Standing Committee, in connivance with the National Textile Corporation (NTC) and Khadi & Village Industries Corporation (KVIC), placed supply orders of Rs. Five & Fifteen crores for the purchase of uniform for the employees of the MCD and for school going children of MCD Schools, without following the tender procedure, ignoring the guidelines. The procurement of the cloth for school uniform and the uniform for the MCD employees was done through NTC & KVIC @ Rs. 79 per sq. mtr as against DGS&D rates of Rs. 54 per sq. mtr.

3. It was alleged that the NTC and KVIC have no infrastructure of their own and the procurement of the cloth through NTC and KVIC was a camouflage as cloth was purchased from private firms through these agencies causing a loss to the tune of Rs. 9 to 10 crore to the exchequer. It is alleged that placing of orders directly on NTC and KVIC without the tender process was against the Govt. of India office Order dated 10/10/2000, by which the Single Tender Enquiry system of procurement of cloth in respect of NTC Group of Mills was held to be no longer valid.
4. Taking cognizance of the Complaint, notice was issued to respondent Vijender Gupta for enquiry U/s 7 read with Section 2(b) of Act and to MCD to produce the record. In response to the said notice, the Education Department of MCD filed a reply through Director (Edu.) MCD with regard to procurement of school uniform, and the Addl. Dy. Commissioner (HQ) MCD filed reply in relation to the procurement of uniform for the MCD Employees. Vijender Gupta, Respondent also filed a reply in response to the notice.

**Procurement of Uniform for Employees of MCD** : Response of MCD :

5. Reply filed by the MCD gives the background of facts & circumstances in which the procurement of employees' uniform was resolved to be made from agencies i.e. M/s NTC and M/s KVIC. Reply refers to the order dated 05/05/2008, whereby a Six Member Committee was constituted headed by Addl. Commissioner (HQ) to decide the rates and agency for the procurement of uniform for different categories of staff working in MCD. This Committee initially submitted its report on 23/05/2008 and subsequent reports on 06/06/2008 and 20/06/2008. The Committee recommended the procurement of uniform at HOD level of different Departments from Govt. Agencies i.e. M/s NTC and M/s. KVIC at the rate fixed by Department of Personnel and Training, Govt. of India and DGS&D rates.
6. On the basis of the recommendations made by the Committee, and approved by the Commissioner, a draft preamble was placed before the Standing Committee on 16/07/2008 which suggested some amendments. Finally the matter was placed before the House on 28/07/2008, vide item No. 43 and the resolution No. 276 was passed by the Competent Authority (i.e. the House of MCD) approving the proposal of the Commissioner dated 14/7/2008. A circular bearing No. D-784/ADC (HQ)/08 dated 21/07/2008, was issued regarding the formulation of centralized policy guidelines for the procurement of uniform and other livery items for the staff of different categories working in the MCD and the HODs were

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directed to purchase the items of uniform from Govt. Agency i.e. KVIC & NTC at the rates approved by DOPT and DGS&D, ensuring the quality of uniform and other livery items.

7. While proposing procurement of uniform from NTC and KVIC on DOPT and DGS&D rates without tender process, the Committee had relied on the guidelines issued vide different OM Nos. issued by the Department of Personnel and Training, Govt. of India and General Financial Rules, 2005, specially Rule 144 and 147. The deliberations and discussion for selecting agency is evident from the Minutes of Meeting dated 12/05/2008. The decision to procure the uniform from these Govt. Agencies was approved by the Competent Authority i.e. Corporation vide resolution No. 276 dated 28/07/2008.
8. *The MCD has also mentioned in its reply that major purchase have been made by five departments i.e. Education, Health, Engineering, Horticulture and DEMC and the total amount incurred in the procurement of employees uniform and other livery items was about 06 crore as on the date when the reply was filed.*

Reply by Education Department regarding purchase of Uniform for School Children:

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9. The Directorate of Education (MCD) had filed a separate reply. The reply filed by Director (Edu.) states that the Competent Authority had accorded approval for the purchase of uniform cloth for the children of MCD School on urgent basis for the year 2008-09. The Department floated tender for the purchase of 1225691 mtrs of cloth as per BIS specification No. IS:11815-1986 with latest amendment having ISI Mark and 790736 mtrs of shirting cloths as per BIS specification No. IS:11248-1995 with latest amendments having ISI Mark. The tenders were floated on 25/04/2008 and published on 30/04/2008 in the Newspapers at national level.
10. In response, 8 firms purchased tender forms, out of which only 3 submitted the tenders namely M/s. Vineet Cotex Pvt. Ltd., M/s. Padma Chand Milap Chand Jain and M/s Ashish Textile Mills. The Technical Evaluation Committee, however, found that none of the firms had applied on the prescribed tender forms and one of the firm namely M/s Ashish Textile Mills had not even purchased the form from the office of Dy. Education Officer (Purchase). The Technical Evaluation Committee, therefore, recommended the cancellation of the tenders. When the tender process thus failed, the Competent Authority had given the direction to purchase the cloth from Central / State Govt. Mill on nominal basis on priority as there was urgency to purchase the uniform cloth for the students. In this background, department had written letter to M/s National Textile Corporation and DGS&D. The NTC had shown willingness to

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supply the cloth while the terms and conditions of DGS&D were not found suitable as per the requirement of MCD for the reasons, inter-alia, that there would not be ISI mark on cloth, which was necessary in view of guidelines of Bureau of Indian Standard (BIS), to ensure the quality of cloth. The Competent Authority, therefore, took the decision to purchase the uniform cloth for students from the National Textile Corporation Ltd., a Govt. of India Undertaking. A work order was placed on 01/10/2008, after taking approval from the Competent Authority, for purchase of 12,25,691 mtr. of shirting cloth and 7,90,736 mtr. suiting cloth at the rate of Rs. 36/- and Rs. 79/- per meter, respectively. The NTC Ltd. had supplied the uniform cloth as per the required specification with ISI mark and the cloth has been tested for ISI specifications from Shri Ram Institute for Industrial Research, Delhi and it met the specifications & quality.

11. The Director (Education) MCD further submitted that the uniform cloth supplied to MCD by National Textile Corporation was not through private firms as alleged in the complaint. The entire supply of uniform cloth for MCD against the purchase order dated 01/10/2008 has been manufactured in Coimbatore, Murugon Mills, Coimbatore (a unit of National Textile Corporation Ltd.) which has 218 looms and average monthly fabric production of 5 lakh meters. All the challans, good receipts and the transport receipt establish the actual supply from Coimbatore, Murugon Mill. It was further



submitted that office order No. 8(6)93-POL dated 10/10/2000 does not impose any ban on NTC, as claimed by the Complainant.

12. In support of procurement of the uniform from NTC the department also placed on record copy of General Financial Rule No. 154(ii), which stipulates that "in case of emergency, the required goods are necessarily to be purchased from particular sources the reasons for such decision is to be recorded and approval of the Competent Authority obtained". It was further submitted that keeping in view the urgency to provide uniform clothes to the children after the NIT (Notice to Invite Tender) was cancelled as recommended by the Technical Education Committee, the department processed the case for purchase of uniform cloth on single tender inquiry under GFR 2005 Rule 154. In view of urgency, Hon'ble Mayor on 17/09/2008, granted Administrative Approval and Approval for Rate and Agency in anticipation of the formal approval by the 'Corporation' which came through Resolution No. 561 dt. 03/11/2008.

**Reply by Respondent Sh. Vijender Gupta :**

13. The Respondent Mr. Vijender Gupta also filed the reply. It was stated that the complaint, forwarded by Sh. Farhad Suri, Councillor, is an anonymous complaint which is false and incorrect. It is politically motivated to harass the respondent. As to the allegations of procurement of cloth, it was stated that Municipal Corporation of

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Delhi is a statutory body, which took decision for the purchase of employees uniform, after it was approved by the House after following the due process of law. The Respondent was the Chairman of the Standing Committee on 16/07/2008, when the decision to purchase the Uniform for the employees was resolved by Standing Committee vide item No. 92. The matter was placed by the Commissioner before the House of the Corporation on 28/07/2008 vide item No. 43 for approval. The Resolution relating to the contract for purchase of uniform placed before the house vide item No. 43, was passed by the House and it was executed by the concerned authorities, thereafter. The respondent Vijender Gupta as such cannot be held liable personally for a decision taken by the Standing Committee, of which he was the Chairman. It was not a decision in his individual capacity. It was submitted that complaint cannot be made against any individual where collective decision has been taken by an authority. It is also the case of the respondent that as per Section 202 of the DMC Act 1957, the Commissioner, MCD is the Competent Authority, but in case of contract exceeding Rs. 25.00 lakhs prior approval by the Standing Committee is required. The respondent rubbished the complaint as being without any basis and defamatory, containing false allegations.

- 14 The MCD alongwith the reply has submitted documents which throw light on the process by which the two Govt. Agencies i.e. NTC and KVIC were selected for procuring the uniform for the

employees of the MCD and the uniform for the school children studying in MCD schools. After the replies were filed and documents placed on record, it was submitted on 27/08/2009 that the matter can be decided on the basis of the pleadings and the record.

15. Arguments were heard from the respective Ld-Counsel for parties and written submissions tendered have been perused.
16. The issue which need to be considered in the present inquiry is whether the conduct of Sh. Vijender Gupta, who was Councillor and Chairman of Standing Committee, MCD, as manifested in the purchase of uniform for employees and school going children of MCD falls within the ambit of allegation as defined in Section 2(b) of the Act.

"Allegation" in relation to a public functionary means by affirmation that such public functionary in capacity as such –

- (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.
- (ii) has abused or misused his position to obtain any gain or favour to himself or to any gain of favour to himself or to any other person or to cause loss or undue harass or hardship to any other person;

- (iii) was actuated in the discharge of his functions as such public functionary by improper or corrupt motives or personal interest;
- (iv) allegation of corruption, favour nepotism or lack of faithfulness.
- (v) is or has at any time during the period of his office been in possession pecuniary resources or property disproportionate to his known sources of income whether such pecuniary resources or property are held by the public functionary personally or by any member of his family or by some other person on his behalf.

17. Keeping in view, the definition of the term "allegation" as above, it is to be ascertained (i) what was the role of Sh. Vijender Gupta, Chairman of the Standing Committee, in procurement of uniform and in the award of the work to NTC & KVIC for procuring the uniform for the employees of the MCD and the children of MCD Schools? Whether the respondent can be held liable for a collective decision of the Standing Committee by being its Chairman? (ii) Whether the conduct of Respondent as mentioned in these purchases is in breach of Section 2(1)(b) of the Act.

18. Before proceeding further it needs, to be noted that even when administrative decisions are taken with due diligence, still there can be chances of an erroneous decision. If a person is held liable for

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an erroneous decision taken in administrative discretion, it would adversely affect the effective administrative functioning where an officer in the administration would not venture to take a decision or avoid the same. The person responsible for such a decision need not be held liable unless the erroneous decision is vitiated by extraneous factors or ulterior considerations and lack of bona-fides. A bona-fide decision, even if erroneous taken in due exercise of administrative discretion needs to be protected.

**Submissions of Complaint an Amicus Curiae, Counsel for MCD  
& Counsel for Respondent**

19. With the above approach, let us examine the conduct of Respondent on the allegations made.
20. The Complainant Farhad Suri assails the entire process of the selection of agencies i.e. M/s NTC and KVIC for the purchase of uniform for the employees of the MCD and uniform for the school children. The contention of the Complainant is that there is deviation from prescribed and established procedure for selecting agency as no tender process was followed. The Role and Agency Evaluation Committee constituted by the Commissioner, vide order No. PA/DP/CED/2008/107 dated 05/05/2008 in the very first meeting on 12/05/2008, selected the agencies i.e. NTC & KVIC on the basis of various office memorandum issued by the Department

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of Personnel and Training. This Committee also had traversed and gone beyond the terms of reference given by the CED letter dated 05/05/2008 which, inter-alia, provided that the Committee has to determine the rate and agency for procurement of uniform, assess the approximate quantity of the various types of uniform, workout the viability and feasibility of the selected agencies with regard to their capacity and verify their physical existence. Further to work out and evaluate the modalities of the technical and financial bids of the companies which would be eligible to tender rates as per standards norms and procedure. It was also to ensure quality check through Govt. approved Laboratories. The above terms of reference had been ignored and the Committee constituted by the Commissioner, vide its order dated 05/05/2008, decided about the agencies on 12/05/2008, itself.

21. Sh. Nalin Tripathi, Counsel for the Complainant submitted that the agencies for procurement of uniform for the MCD employees, were selected before ascertaining the requirement of different departments, without verifying their physical existence, judging the viability and the capacity of the agencies, to meet the demand, which was to be worked out before finalizing the rate. He submitted that the Commissioner vide his order dated 10/06/2008, had directed the Committee to re-examine the whole issue in the light of the comments / observations made in the meeting of the senior officers and re-submit the proposal. This order of the

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Commissioner dated 10/06/2008, conveys that he was not satisfied with the Committee for not having adopted tender process. It was further contended that the single tender enquiry adopted for procurement of uniform for the school children was hardly satisfactory. The reliance on Rule 154(1) of General Financial Rules-2005 was misplaced as there is nothing on the record to show that there was any emergency for procurement of the uniform. Thus, it was argued that the deliberations of the Committee demonstrate that it did not follow the 'terms of reference' in the order of the Commissioner dated 05/05/2008 and instead straight away proceeded with selecting and calling KVIC and NTC as agencies for procurement of the uniform.

22. Sh. Tanuj Khurana, Amicus Curiae, also submitted that the procedure opted by the Committee in selecting the agency was against the "terms of reference" in the order dated 05/05/2008, as tenders were not invited which was mandatory as per General Financial Rule 2005 and the agencies were selected without following the rules. He refer to the OM No. 1/12/11(a)/94 dated 29/07/2005 as per which all the purchases are to be made through duly Constituted Purchase Committee and if the value of the goods exceed 25 lakhs then the only procedure is to invite tender by advertisement, subject to exception in Rule 151 and 154 of GFR-2005.

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23. Ms. Pinki Anand, Ld. Sr. Counsel appearing for the MCD countered this argument relying on provisions of the GFR 2005 and various office memorandums issued by the Department of Personnel & Training. It was contended that the Committee had gone through numbers of office memorandums which, inter-alia, provide for procurement of uniform from Government agencies without even following GFR. They also provide that summer uniform should be procured only from the authorized agency of NTC and KVIC at the approved rates. It was also submitted that GFR 144 had reserved the items of hand spun and hand woven textiles for exclusive purchase from KVIC.
24. It has further submitted that the Committee constituted by the Commissioner has noted in the report dated 06/06/2008 and clarified that KVIC and National textile Corporation Ltd. are the units of Govt. of India Undertakings, therefore, the uniform items may be procured from these agencies at the rates approved by the govt. of India / DGS&ID rates without opting for the competitive bid / tender process.
25. The Ld. Counsel had also referred to the problem faced in the earlier procurement of uniform.
26. Ms. Pinki Anand, Ld. Sr. Counsel further submits that the justification and rationale, behind procurement through NTC and

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KVIC was, that these agencies had offered to supply the uniform according to the approved rates. It was also submitted that there was no justification for the purchase of uniform for different departments of MCD at the central level by uniform cell, due to shortage of staff and arrangement. As the uniform could not be distributed to the employees of the MCD for last many years when the uniform was purchased in bulk quantity in central store by the uniform cell, it was therefore, considered more appropriate by the Committee that the Head of Department (HOD) of various departments of the MCD purchase articles of uniform directly from the specified agencies as per their departmental requirement. The Committee had considered the relevant Office Memorandum issued by the Department of Personnel and Training for selecting the rates and agency and only thereafter recommended that uniform items may be procured from KVIC and NTC at approved rates of Govt. of India / DGS & D without opting for competitive bidding through tender process and further that all the HODs depending on the availability of finance, sources / budget, upto date official orders / circulars and the office Order No. 147/2003/JCA dated 21/11/2005, may purchase the uniform, according to the rules made by the Departmental Purchasing Committee. Thus, it was emphasized by the Ld. Senior Counsel that there was no irregularity in selecting agencies for procurement of the uniform of the MCD Employees.

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27. The Ld. Counsel for the Respondent Sh. Balendu Shekhar submitted that the complaint was politically motivated and the allegations are not supported by any evidence. The respondent had no legal authority to take any independent decision in the matter as Chairman of the Standing Committee. Accordingly, he cannot be held responsible, personally for the decision of the Standing Committee, which was approved by the Municipal Corporation also. He referred to Section 44 and 46 of the Delhi Municipal Corporation Act, 1957 and submitted that Section 44 in particular deals with Constitution of the Standing Committee and submits that it is broad based Committee which includes members of opposition also. He submitted that vide Section 202 of the DMC Act, 1957, the Commissioner, MCD is the authority to execute the contract on behalf of the Corporation. This power to execute the contract is however with a rider that in case of a contract exceeding 10 lakhs, prior approval of the Standing Committee is required. The Ld. Counsel submitted that the recommendations of the Standing Committee cannot be attributed to the Respondent Sh. Vijender Gupta, personally, just because he was the Chairman of the Standing Committee. The decision or recommendations of the Committee are collective in nature with the Chairman enjoying no special power or vote. The Ld. Counsel has placed specific reliance on the judgement of the Hon'ble Supreme Court reported at (2007) 5 SCC 206, "Bongaigaon Refinery and Petrochemicals Ltd and Others Vs. Girish Chandra Sharma" which deals with the principle



of "collective responsibility". It was held that for a collective decision by the Committee single person cannot be made responsible. The Hon'ble Supreme Court observed "If all fish stink to pick one and say only it stinks is unfair in the matter of unanimous decision of the Committee".

28. The arguments / submissions of respective Counsels, have been considered. In the present enquiry, the role of the respondent, Sh. Vijender Gupta a "Public functionary" is to be seen, whether he has done some act "of Commission or Omission which could fall within the definition of the term allegation" as described in Sec 2(b) of the Act. For this purpose it is considered appropriate to go through, in brief, the procedure followed by the committee for selection of the agency for procurement of uniform for the MCD employees and uniform for the Children of MCD Schools.

#### **Procedure for Procurement**

29. The MCD was to procure uniform for staff and the students of MCD Schools. In response to the complaint, the Addl. Dy. Commissioner (HQ) filed its reply on 22/07/2009 and 09/09/2009. The Director (Education) MCD filed a separate reply on 23/07/2009 and 27/08/2009. First, let us examine the response of the Addl. Dy. Commissioner (HQ) MCD to the allegations.

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30. A Committee was constituted under the Chairmanship of Addl. Commissioner (HQ) to decide the Rates and Agency for the procurement of uniform for different categories of staff working in MCD vide order of the Commissioner dated 05/05/2008. The 'terms of reference' inter-alia, include ascertaining the requirement / approximate quantity of uniform, to assess the viability and feasibility of agency with regards to its physical existence and its capacity before finalizing the rates and agencies and working out the modalities of the technical and financial bid of the companies / firms who would be eligible to tender as per standard norms and procedure and ensuring quality check through Govt. approved laboratories etc.
31. The Committee held its meeting and submitted reports on 23/05/2008, 06/06/2008 & 20/06/2008 and recommended the procurement of uniform through agencies i.e. KVIC and NTC at HODs level of different departments on the rate fixed by department of Personnel and Training and DGS&D from time to time. On the basis of the recommendations and after approval by Commissioner, MCD, a preamble was placed before the Standing Committee on 16/07/2008 vide item No. 92 and the same was resolved with a few amendments. The amendments, inter-alia, provided that the concerned department will negotiate for the uniform rates with the supplying agency before placing the order and would also get it certified from the supplying agency that it is

supplying the material to the MCD on the minimum rates and it is not supplying any other organization on rates less than the rate it has given to MCD. The matter was put up before the House of the Municipal Corporation on 28/07/2008 vide item No. 430 and the same was resolved by resolution No. 276 dated 28/07/2008 incorporating the amendment suggested by the Standing Committee vide its resolution No. 267 dated 16/07/2008. The Informant / Complainant was himself a party to the resolution, when passed by the house of Municipal Corporation.

32. It may be pertinent to mention here that in the anticipation of the approval of the House, i.e. Competent Authority, circular No. B-784/ADC(HQ)/08 dated 21/07/2008 was issued regarding the formulation of centralized policy guidelines for the procurement of the uniform for the staff of different categories working in MCD. As per this circular the rates were also specified providing for procurement of terricot cloth of pants @ Rs. 86/- per mtr. from NTC out let only and Polyvastra cloth for summer shirt @ Rs. 82.5 per mtr. from KVIC. It was clarified that rate of Polyvastra was fixed at @ Rs. 27.0 per mtr by DOPT. But the rates fixed was very low in which good quality of cloth may not be procured. So this item i.e. Polyvastra cloth was proposed to be procured from KVIC on revised rates by D.G.S. & D. which was Rs. 82.5 per ptr. from Khadi Polyvastra. It was also stated that concerned HOD will purchase the uniform for the entire staff in their department through



duly Constituted Purchase Committee as per the OM No. 14/7/2003-JCA dated 21/11/2005 issued by the DOPT.

33. The Director (Education) MCD had filed reply on 23/07/2009 and 27/08/2009 wherein the entire procedure adopted for the Selection of agency for the purchase of Uniform for School Children has been explained. Initially during the year 2008-2009, the department had floated tenders for purchase of 12,25,691 mtrs of shirting cloth and 7,90,736 mtrs of suiting cloth. The notice inviting tender (NIT) dated 25/04/2008 was published in the National Newspaper on 30/4/2008. In response to this NIT eight firms purchased tender forms. The Technical Evaluation Committee (TEC), however, recommended that no tenderer had participated on a prescribed tender form as per terms and condition of NIT. Hence, this tender was null & void and therefore it was treated as cancelled. The recommendation of TEC was forwarded to the Competent Authority for further orders. The Additional Commissioner (Education) on 23/5/2008 proposed to explore whether any mill of the Central Government or the State Govt. may be approached to supply on nomination basis. This proposal was approved by the Commissioner MCD on 26/5/2008 with direction to the department to do needful on priority basis in view of the urgency. Thereafter, the department sent an enquiry letter dated 2/6/2008 to the National Textile Corporation, Govt of India Undertaking alongwith the terms and conditions for the purchase of uniform cloth and a letter was

also sent to DGS&D on 4/6/2008 to explore the possibility as per the order of the commission. The NTC responded vide letter dated 6/6/2008 showing its willingness to supply the children uniform cloth, while DGS&D advised the department to visit its website. The terms and conditions of DGS&D were not found suitable for the reason, inter alia, that there would be no mention of ISI mark on the cloth and the firms registered under DGS&D rates were private firms. Since the DGS&D terms and conditions were not in consonance with the requirement of MCD, the Department processed the proposal of the NTC, in view of the Rule 154 General Financial Rule 2005, which permits purchase under single tender enquiry. A meeting was held accordingly on 18/6/2008 under the Chairmanship of Additional Commissioner (Education) with the officers of NTC to deliberate at length on the terms and conditions. The NCT submitted the written offer that it can supply the uniform cloth with the ISI mark as per required BIS specification at the rate of Rs. 79.00 per mtr suiting cloth and Rs. 36.00 per mtr shirting cloth. The Department put up the proposal on 30/6/2008 for purchase of School Uniform from the NTC. On 22/7/2008 a meeting was held with the officers of the NCT to negotiate the rates. The NTC Ltd. showed its inability to reduce the rate due to high inflation and manufacturing cost etc. Finally the terms and condition and rate offered by M/s NTC Ltd. were approved by the Commission on 18/8/2008.

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34. Proposal was put up on 3/9/2008, seeking approval of the Corporation through Chairman. Education Committee, Chairman, Standing Committee and Hon'ble Mayor to purchase the uniform cloth from M/s. NTC Ltd. The Chairman Education Committee, the Chairman Standing Committee and Hon'ble Mayor gave the approval on 9/9/2008, 11/9/2008 and 17/9/2008 respectively. The preamble was moved for formal administrative approval and approval for rates of agency for purchase of School Uniform from M/s. NTC Ltd. The Education Committee approved the proposal by resolution No. 12 on 16/9/2008, the Standing Committee approved the proposal by resolution No. 694 on 6/10/2008 and Corporation approved the proposal by resolution No. 561 dated 3/11/2008.
35. Prior to supply, the samples received from M/s NTC Ltd. were got tested from the Shriram Institute for Industrial Research (SIIR), which were found as per the required specification.
36. The supply was made by M/s. NTC Ltd. (Govt. of India Undertaking) from Murugon Mills, Coimbatore (a unit of National Textile Corporation Ltd.)
37. The response of MCD for purchase of employees uniform and the response of the Direction (Education) for the purchase of uniform for the school children shows that the reliance was placed on



different OM issued by DOPT and General Financial Rules for the purchase of uniform for the employees. The Department of Education relied on Rule 154(1) which provides for procurement from a single source in case of an emergency. It however provides that reason for such a decision is to be recorded and approval of Competent Authority is to be obtained. Meaning thereby, if there is an emergency then procurement can be done from a single source by adopting the procedure of single tender enquiry provided, it is approved by the Competent Authority.

38. So far as, the uniform for staff is concerned the Rule 144 GFR provides that all items of Hand Spun and Hand Woven Textiles and Handloom Textiles are to be purchased exclusively from KVIC. Rule 147 (1) provide for purchase of goods directly under rate contract, in case the procurement is on Central Purchase Organization (e.g. DGS&D) rate contract. Thus the process of selection of rate and agency for supply of uniform to the MCD staff and school children is based on GFR and other Memo issued by Deptt. of Personnel and Training from time to time.

39. The Counsel for the Complainant had submitted that there was a violation in the general procedure for procurement. It was submitted that when the Commissioner constituted the Committee on 5/5/2008 for the selection of rate and agency for procurement of uniform it gave specific terms of reference then the Committee so

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constituted should have acted accordingly by following the procedure of two bid system i.e. the technical bid and financial bid. However, the Committee constituted on 5/5/2008 in its very first meeting on 12/5/2008 decided about the agencies without even ascertaining the requirement and the capacity of the agency to supply. The Ld. Counsel for the MCD, however, submitted that the Committee constituted on 5/5/2008 in its meeting on 12/5/2008 had deliberated at length on issue of selecting rate and agency and relied upon number of OMs and GFR Rules.

40. The minutes of the meeting held by the Committee on 12/05/2008 show that the Committee constituted to decide the rate and agency went through different O.M. Nos. issued by the DOPT and other related Circulars. The Report of Committee dated 23/5/2008 makes it evident that the Committee in its meeting dated 12/5/2008, 15/5/2008 and 16/5/2008 examined not only orders and circulars issued by the Department of Personnel and Training, Govt. of India compiled in Muthuswamy's and Birinda's Swamy compilation of uniform for orders received upto May, 2007, the issue of purchase of uniform for the staff at the central level by the Uniform Cell was also discussed. Considering the shortage of staff in Uniform Cell and non distribution of uniform to staff by the MCD for the last many years, the Committee considered it appropriate that the DDOs may purchase the items of uniform directly from the prescribed agencies, keeping in view, the departmental requisition, quantity,

colour and quality accordingly. In the report dated 6/6/2008, the Committee discussed in detail, the capacity of KVIC and NTC, the assurances given by these agencies that they will supply the material on the prescribed / approved rates and after considering the viability, capacity and the physical existence of the agency to meet the demand the name of these agencies were recommended.

41. It was submitted that the KVIC and NTC are the units of Govt. of India. The Committee after considering the offer of the KVIC and the NTC to supply the uniform on approved rates had recommended that uniform may be procured from KVIC / NTC at the rates approved by the Govt. of India and DGS & D without opting the competitive bid and tender process. The deliberations of the committee, in this regard, are reflected in the report dated 6/6/2008 and also in the report dated 20/6/2008. It was also argued by the Ld. Counsel for MCD that the Committee also considered that the process of purchasing uniform in central store by the uniform cell was not fruitful and therefore, the Committee had recommended that the Head of Department and various Departments of MCD, purchase article of uniform directly from the specified agencies as per their departmental requirement. Ld. Counsel for the MCD, thus, submitted that the Committee did not travel beyond the terms of reference and acted within the confine of the provisions providing for procurement of uniform as per the GFR 2005 and various OMs applicable on the issue. This decision of the



Committee was approved by the MCD vide resolution No. 276 dated 28/7/2008 for purchase of employees uniform on DOPT & DGS&D rate from KVIC and NTC by direct purchase based on GFR Rule 144 & 147 and various OMs of the Govt. of India. The Committee has deliberated on the issues extensively and thereafter, submitted report which was approved by the Commissioner, the Standing Committee with some amendments and finally by the House (of-Corporation) vide Resolution No. 276.

#### **Causing Financial Loss to the MCD**

42. The Ld. Counsel for the Complainant argued that the best competitive rates are offered in an open bid and there was no reason or ground to go for single tender enquiry. It was submitted that NTC has only two functional mills and KVIC had no production but procured good from others. Therefore, the real beneficiaries are the suppliers and the actual manufacturer through whom NTC and KVIC made their purchase. Therefore, it was necessary to ascertain who the beneficiaries were in the entire process and to whom the payments made by the MCD were disbursed.
43. The response of the Ld. Counsel of the respondent, MCD was that no financial loss has been caused to the MCD. The NTC and the KVIC have clarified in their communication that they supplied material on the rate fixed by DGS&D and DOPT. The letter dated

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14/7/2009 (Annexure-VIII, page 52), on behalf of KVIC to Additional Commissioner (HQ) MCD shows that it has been getting supply order from different Departments of the Govt. of India without any tender process. It also confirmed that whatever payment was made by the MCD was directly deposited in the bank account of KVIC. The NTC in letter dated 22/7/2009 (Annexure-III, page-54) to Additional Commissioner (HQ) MCD stated that it has two full fledged composite textile Mills viz, Tata Mills located at Mumbai and Coimbatore Murugon Mills, located at Coimbatore which has been awarded ISI Certificate by BIS. It has its own manufacturing facility to produce quality fabric. It also confirmed that whatever payment was received from the MCD against the goods supplied by NTC has been deposited / transferred in NTC Bank account only. The NTC had also vide its letter dated 28/5/2008 (page-111) addressed to the Additional Municipal Commissioner had categorically assured that it will not assign any sub contractor / private agencies for supplying the uniform cloths. The supplying agency KVIC and NTC in their letter dated 27/8/2008 & 12/08/2008 (Page 115 & 118) respectively had issued certificate of minimum price categorically stating that they were not supplying liveries items to any other organization on the rates less than the rate quoted for MCD.

44. Thus, it was not shown how the selection of KVIC and NTC for purchase of uniform for the staff of the MCD and the School

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Children has caused financial loss to the MCD. Mere allegation that NTC and KVIC procured material from private agencies in collusion with Respondent, thereby causing loss to public exchequer to the tune of 9-10 crore, without any substance and material is not sufficient and thus cannot be accepted.

#### **Role of the Respondent**

45. As has already been observed above, the purpose and scope of the enquiry was to ascertain role of the Respondent, Vijender Gupta in selection of the Agency i.e. NTC & KVIC for procurement of uniform. The main allegation was that Sh. Vijender Gupta selected these agencies which were incapable to meet the requirement of uniform for the staff and the school children and thus, these agencies procured the items from different suppliers who were the main beneficiaries. Sh. Vijender Gupta thus cornered to 9 to 10 crore of rupees and utilized about 5 crore out of this, in the election. This allegation in the complaint of Sh. Dheeraj Kumar is without any substance. No such material has come on the record or submitted on behalf of the complainant to suggest that the supplies were made by the KVIC & NTC by procuring the same from different suppliers. The Ld. Counsel for the complainant and the Ld. Amicus Curiae argued that Sh. Vijender Gupta being the Chairman of the Standing Committee failed in his duty to comply with the provisions of law, GFR and thus erred in not inviting



tenders and financial bids and thus he has caused loss to the public exchequer.

46. It was submitted that the process to purchase uniform was started without any approval of the House (Corporation) on the basis of "anticipated approval" with the approval of the respondent i.e. Sh. Vijender Gupta in his capacity as the Chairman of the Standing Committee. It is submitted that the expenditure thus incurred has resulted in huge financial loss and this has happened because of the role played by the Chairman of the Standing Committee without which it was not possible for the MCD official to go in for purchase a single tender enquiry basis.
47. The Ld. Counsel for the respondent has vehemently argued that the complaint was politically motivated. The respondent cannot be attributed motive for the recommendation of the Standing Committee as it was a collective decision. The Chairman of the Standing Committee does not enjoy any special power. Moreover the Standing Committee constituted U/s 44 of the DMC Act is broad basis Committee which also includes Member of the Opposition, any decision taken by the Standing Committee is a collective decision and its Chairman cannot be attributed any special role and the consequent liability for approval of a particular proposal. It was also submitted that Section 202 of the DMC Act provide that Commissioner MCD can execute contract on behalf of

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the Corporation with the rider that a contract above 10 crore approval of the Standing Committee is required. Thus, the contractual power vests in the Commissioner.

48. The Ld. Counsel for the respondent relied upon a judgement of Hon'ble Supreme Court cited as Bongaigaon Refinery and Petrochemical Ltd and other Vs. Girish Chandra Sarma (2007) 7 SCC 206 and based on the ratio of the judgement submitted that respondent cannot be held liable for any "collective decision". The Hon'ble Supreme Court while dealing with principle of collective responsibility in the judgement has observed :

"It is not the respondent alone who can be held responsible when the decision was taken by the Committee. If the decision of the Committee stinks, it cannot be said that the respondent alone stinks; it will be arbitrary. If all fish stink, to pick one and say it only stinks is unfair in the matter of unanimous decision of the Committee". Thus, a collective decision of a Committee cannot be used to hold its Chairman or any other Member of the Committee liable for the bad decision. Further the decision of Selecting Agencies has passed through number of stages and finally approved by the House (Corporation). The process followed for deciding agencies for supply of uniform leaves no scope for any individual imposing his will and influencing the decision.

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49. Decisions taken in administrative discretion can go wrong but to assign a motive for a such wrong decision without any evidence of mala-fide intention will not be justified. The enquiry is not to ascertain whether decision of the Committee is selecting NTC & KVIC as agencies for supply of uniform for MCD Staff in various Departments and uniform to School Children was bad, but to ascertain whether respondent had used his position being Chairman of Standing Committee in selecting these agencies with mala-fide intention, and whether these agencies procured material from private suppliers with whom the respondent had any nexus and consequently loss to public exchequer to the tune of 9 – 10 crore. The Standing Committee vide its resolution No. 276 dated 16/7/2008 had discussed the proposal of the Commissioner for procurement of uniform for the staff of different categories in MCD. The resolution reflects that the Standing Committee deliberated on the proposal and also suggested amendments. It suggested, inter alia, that the department shall negotiate with the uniform supplying agencies for discount before placing the order and it will also get a certificate from the supplying agency that it is not supplying the material to any other organization on rates less than the rate it has given for MCD. Both these amendments made by Standing Committee in the proposal of the Commissioner were apparently to safeguard the financial interest of the MCD with a direction to take steps for negotiating the price. It has already been mentioned that KVIC and NTC supplying agencies had given the



minimum price certificate and the department also negotiated before the supply was made.

50. So far as the question of selection of the agency is concerned the Committee appointed by the Commissioner vide its order dated 5/5/2008 relied upon GFR Rules 2005 and different OMs and after due deliberation and discussion selected the agencies. The minutes of meeting dated 12/05/2008 make it amply clear. The Education Department also relied upon Rule 154(1) GFR to select the agency for supply of the School uniform and adopted the process of Single Tender Enquiry, both these proposals were finally approved by the House (Corporation). Therefore, to attribute the responsibility for the decision of selection of agencies for supply of uniform solely to the Standing Committee and particularly to its Chairman is not justified. The allegation that NTC & KVIC had no production capacity and they procured material from sub-contractors / private agencies who had nexus with respondent, is not supported with any credible evidence, rather it seems to be a far-fetched allegation. NTC has certified that the cloth supplied is manufactured from their mills in Bombay Coimbatore. While KVIC in their letter certification dated 14/7/2009 clarified that no sub-contractor had been engaged by KVIC for execution of the contract. Entire cloth was procured from their own outlets i.e. from Weavers / Producers engaged under Rural Employment Generation Scheme.

51. The enquiry was with regard to the conduct of Sh. Vijender Gupta to ascertain whether his act as Chairman, Standing Committee in approving proposals for purchase of uniform from NTC & KVIC, fell within the confine of the term 'allegation' as defined in section 2 (b) of the Act. It needs to be emphasized that Respondent was not the final authority in the decision-making process in which the Agencies was selected nor he initiated the proposal. The Standing Committee, while approving the proposals, took a collective decision, which was finally approved by House (of-Corporation). The allegation of collusion between Ms NTC and Ms KVIC on one hand and Respondent on the other is without any basis. Further both these agencies have ruled out procurement from sub-contractor / private supplier and they have also issued certificate of minimum price. This certification by the Supplying Agencies belies the allegation that material was procured from sub-contractor or private suppliers through Ms. NTC and Ms. KVIC and Respondent was instrumental in the deal. Moreover, the material for uniform procured through these agencies was on DGS&D rates and rates fixed by DOPT. How, then, a loss of Rs. 9-10 crore has been caused is not comprehensible. Though, it is true that open bids system may offer competitive price, but the Members of the Committee and the officials in Education Deptt. MCD, are responsible officers, they have deliberated on issue of selecting agency for procurement of uniform and then took conscious decision to procure uniforms from Ms. NTC & Ms KVIC at DOPT

and DGS&D approved rates, in view of the urgent requirement. This administrative discretion, unless vitiated by demonstrated ulterior considerations or lack of bona-fides must be respected. The process of selection of Agencies for procurement of Uniform, does not indicate any such lack of bona-fides or ulterior considerations or undue influence of any person in decision making.

52. Thus, nothing has come on the record to show that respondent Sh. Vijender Gupta has used or misused or abused his position to obtain or gain any favour or gain for himself or any other person. It cannot be said that he had failed to act in accordance with the norms of integrity and conduct. The Complaint is dismissed.

The file be consigned to record thereafter.

  
(JUSTICE MANMOHAN SARIN)  
LOKAYUKTA, DELHI

Dated : 31<sup>st</sup> Oct., 2013.  
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