

**BEFORE THE HON'BLE LOKAYUKTA  
JUSTICE MANMOHAN SARIN**

IN THE MATTER OF:

---

1. COMPLAINT NO. C-1939/LOK/2013

SH. S. K. SAXENA,  
DIRECTOR NISHPAKSH, 'NGO' ....COMPLAINANT.

COL. SHIV RAJ .....INTERVENOR.

VS.

SH. KULDEEP SINGH SOLANKI .....RESPONDENT.

---

2. COMPLAINT NO. C-2121/LOK/2013

SH. S. K. SAXENA,  
DIRECTOR NISHPAKSH, 'NGO' ....COMPLAINANT.

COL. SHIV RAJ .....INTERVENOR.

VS.

SMT. SEEMA PANDIT .....RESPONDENT NO.1.

SH. VIJAY PANDIT .....RESPONDENT NO.2.

---

3. COMPLAINT NO. C-2122/LOK/2013

SH. S. K. SAXENA,  
DIRECTOR NISHPAKSH, 'NGO' ....COMPLAINANT.

COL. SHIV RAJ .....INTERVENOR.

VS.

SMT. SUDESHWATI .....RESPONDENT.

---

4. COMPLAINT NO. C-2123/LOK/2013

SH. S. K. SAXENA,  
DIRECTOR NISHPAKSH, 'NGO' ....COMPLAINANT.

COL. SHIV RAJ .....INTERVENOR.

VS.

SH. DHARAM PAL .....RESPONDENT NO.1  
SH. PAWAN RATHI .....RESPONDENT NO.2

---

5. COMPLAINT NO. C-2124/LOK/2013

SH. S. K. SAXENA,  
DIRECTOR NISHPAKSH, 'NGO' ....COMPLAINANT.

COL. SHIV RAJ .....INTERVENOR.

VS.

SH. RAJESH GEHLOT .....RESPONDENT NO.1  
SH. J. P. SHARMA .....RESPONDENT NO.2

---

6. COMPLAINT NO. C-2125/LOK/2013

SH. S. K. SAXENA,  
DIRECTOR NISHPAKSH, 'NGO' ....COMPLAINANT.

COL. SHIV RAJ .....INTERVENOR.

VS.

SH. ANIL SABBARWAL .....RESPONDENT.

---

7. COMPLAINT NO. C-2126/LOK/2013

SH. S. K. SAXENA,  
DIRECTOR NISHPAKSH, 'NGO' ....COMPLAINANT.

COL. SHIV RAJ .....INTERVENOR.

VS.

SMT. SARITA JINDAL .....RESPONDENT.

---

8. COMPLAINT NO. C-2127/LOK/2013

SH. S. K. SAXENA,  
DIRECTOR NISHPAKSH, 'NGO' ....COMPLAINANT.  
COL. SHIV RAJ .....INTERVENOR.  
VS.  
SH. ASHISH SOOD .....RESPONDENT.

---

9. COMPLAINT NO. C-2128/LOK/2013

SH. S. K. SAXENA,  
DIRECTOR NISHPAKSH, 'NGO' ....COMPLAINANT.  
COL. SHIV RAJ .....INTERVENOR.  
VS.  
SH. NARESH BALYAN .....RESPONDENT.

---

10. COMPLAINT NO. C-2129/LOK/2013

SH. S. K. SAXENA,  
DIRECTOR NISHPAKSH, 'NGO' ....COMPLAINANT.  
COL. SHIV RAJ .....INTERVENOR.  
VS.  
SH. SUMESH SHOKEEN .....RESPONDENT.

---

11. COMPLAINT NO. C-2130/LOK/2013

SH. S. K. SAXENA,  
DIRECTOR NISHPAKSH, 'NGO' ....COMPLAINANT.  
COL. SHIV RAJ .....INTERVENOR.  
VS.  
SH. MAHENDER YADAV .....RESPONDENT.

---

12. COMPLAINT NO. C-2131/LOK/2013

SH. S. K. SAXENA,  
DIRECTOR NISHPAKSH, 'NGO' .....COMPLAINANT.

COL. SHIV RAJ .....INTERVENOR.

VS.

SH. SH. PRADUMAN RAJPUT .....RESPONDENT.

---

13. COMPLAINT NO. C-2132/LOK/2013

SH. S. K. SAXENA,  
DIRECTOR NISHPAKSH, 'NGO' .....COMPLAINANT.

COL. SHIV RAJ .....INTERVENOR.

VS.

SH. KARAN SINGH TANWAR .....RESPONDENT.

---

14. COMPLAINT NO. C-2133/LOK/2013

SH. S. K. SAXENA,  
DIRECTOR NISHPAKSH, 'NGO' .....COMPLAINANT.

COL. SHIV RAJ .....INTERVENOR.

VS.

SH. MUKESH SHARMA .....RESPONDENT NO.1.  
SH. YASHPAL ARYA .....RESPONDENT NO.2.  
SH. KARAMVIR SHEKHAR .....RESPONDENT NO.3.  
SH. RAJESH YADAV .....RESPONDENT NO.4.

---

15. COMPLAINT NO. C-2135/LOK/2013

SH. S. K. SAXENA,  
DIRECTOR NISHPAKSH, 'NGO' .....COMPLAINANT.

COL. SHIV RAJ .....INTERVENOR.

VS.

SMT. BHOOMI CHATTAR SINGH  
RACHAUYA

....RESPONDENT.

---

16. COMPLAINT NO. C-2136/LOK/2013

SH. S. K. SAXENA,  
DIRECTOR NISHPAKSH, 'NGO'

....COMPLAINANT.

COL. SHIV RAJ

....INTERVENOR.

VS.

SMT. SHIVALI SHARMA

....RESPONDENT.

---

17. COMPLAINT NO. C-2137/LOK/2013

SH. S. K. SAXENA,  
DIRECTOR NISHPAKSH, 'NGO'

....COMPLAINANT.

COL. SHIV RAJ

....INTERVENOR.

VS.

SH. VINOD KUMAR

....RESPONDENT.

---

## O R D E R

1. These 17 complaints are being decided by this order since common questions of law and facts arise. Moreover, in all the above cases the Respondents who had initially filed their replies on merits raising legal pleas and objections have finally recorded their statement on oath or through their advocates. In their statements they stated that their supporters/followers would be advised not to put up any posters, banners, hoardings etc. in contravention of the provisions of Delhi Prevention of Defacement of Property Act, 2007 (hereinafter referred to as



"DPDP Act"). It is further stated that they are not in support of posters, banners and hoardings being put up at other than the designated sites. Even at the site of a function, these would be put up with due permission. Further they will give their wholehearted support to "Poster Free" movement in Delhi.

2. For facility of reference the filing of affidavits and/or recording of the statements of Respondent in each of the cases is individually being noticed. The common facts and questions of law raised during these proceedings are also noticed hereinafter.

#### F A C T S

3. A communication No. F.PGC/ 2012/Annex-I / Lok / Misc / 45034, dated 17.01.2013 was received from the Deputy Secretary, Public Grievance Commission, forwarding therewith the grievance / complaint made by Shri S.K. Saxena, Informant, Director NISHPAKSH"NGO". He was aggrieved by the posters/banners/hoardings etc. put up by the workers of political parties and public functionaries allegedly in contravention of the provisions of Delhi Prevention of Defacement of Property Act, 2007. The input from the Informant was sent by email. The Informant expressed his inability to make complaints in the prescribed manner in English language in all these cases or to pay the requisite fee. Being a citizen centric institution, arrangements were made for the translation of the communications from Hindi to

English. The communications were directed to be treated as "Other Information" for the purposes of inquiry under Section 7 of the Delhi Lokayukta and Upalokayukta Act, 1995

4. From time to time directions were given to consolidate and assimilate the inputs, "Information" and "Documents" received from the Informant in cogent form in an orderly manner. Informant provided a CD containing the photographs of various posters/banners/hoardings etc, prepared from photographs taken by him from his mobile phone. The print out of the CD was taken, which forms part of case record. The Informant also indicated, to the extent possible, names of the "Public Functionaries" who appear in the posters /banners /hoardings. The ones which were left out were also discerned and identified. The banners / posters / hoardings appeared on walls of structures, pavements, road berms, crossing, electrical polls, bus shelter etc. which would come within the definition of property under the Delhi Prevention of Defacement of Property Act, 2007.
5. Col. Shivraj seeks intervention for being permitted to assist the Forum. He claims to be part of a citizen centric initiative called "Poster Hatao". This Forum vide order dated 15<sup>th</sup> May, 2013 allowed him to intervene in the matter. The crusade and campaign of the intervenor is to make citizens aware of the menace of posters/banners/hoardings

with which Delhi is infested and which cause obstruction on pavements, distracts attention and make the traffic movement prone to accident.

6. It was urged by the Informant and the Intervenor that concerned civic agencies and appropriate authorities do not take any action to penalize or prosecute the offenders. Municipal Corporation only periodically removes the posters/banners/hoardings when the event is over or they have become stale.
7. The posters/banners/hoardings it is alleged are put up by or at the behest of the Public Functionaries by their followers and supporters, with their consent and knowledge. Mostly, putting of such poster/hoardings/banners etc. is claimed to be in contravention of the provisions of Delhi Prevention of Defacement of Property Act, 2007. The Informant and Intervenor urged that the term "Defacement" and "Property" are widely defined to bring within their ambit all the places where these posters/banners hoardings are put.
8. Even though the existing laws provide for regulation of posters/banners/hoardings etc. the same are put up on the smallest pretext i.e. be it a birthday, a festival or winning of some internal election or inauguration of a road or project. These are not put at the scheduled sites of Corporation which would earn revenue, but at other convenient places in contravention of the statute. There is hardly any prosecution for contravention of provisions of DPDP



Act. Constraint of resources such as manpower, the availability of place to store case property in case of seizure etc. are often cited as impediments to prosecution. The ground reality however is that the enforcement agencies are reluctant to take Action against the powerful and mighty and to whom they otherwise report. Statistics show that in the year 2011-12 in Rohini Zone alone, MCD claims to have removed 45366 posters, 23829 banners and 10397 hoardings, without any prosecution having been launched against any person.

9. The Informant urges that the "Public Functionaries" whose photographs appear on the posters /banners /hoardings are the beneficiaries in terms of sub section (2) of Section (3) of DPDP Act. These posters/banners/hoardings also do not qualify for exception under sub Section (1) of Section (3) of the DPDP Act.
10. Informant had supplied the list of Public Functionaries which is at Annexure 1 (A-1 to A-25), the name of the Public Functionaries and the places i.e. location where the said posters/banners/hoardings were placed. The printout of the posters /banners /hoardings was taken from CD and placed on record.

Vide order dated 13<sup>th</sup> May, 2013, notice to show cause as to why an inquiry be not conducted against the said public functionaries for alleged violation of the provisions of sub section 2 of

Section 3 of Delhi Prevention of Defacement of Property Act, 2007 and contravention of section 2 (b) (i) of the Delhi Lokayukta and Upalokayukta Act, 1995 read with Section 7 of the Delhi Lokayukta and Upalokayukta Act, 1995 were directed to be issued.

11. Statement on oath of the Informant/Complainant regarding his complaint with Delhi Police, MCD and the Public Grievance Commission, was recorded. He tendered the complaint as Ex. CW 1/1 together with Ex. CW 1 /2 and Ex. CW 1/3. He also tendered copies of e-mails sent to this Office as Ex. CW 1/4 (Colly) and Ex. CW 1/5. He also confirmed the statement made in the complaint.
12. Notices were duly served. Grievance was raised by some of the Respondent of not having received the original complaint and other communication filed by the Informant/Complainant Sh. S. K. Saxena. These grievances were redressed by directions issued by this Forum on 22<sup>nd</sup> July, 2013. It was noted that the Registry had supplied (i) copies of the detailed order passed on 13<sup>th</sup> May, 2013, issuing notice (ii) Annexures containing compilation of the particulars of the photographs, names of the Public Functionary, location etc. (iii) copy of the CD containing photographs i.e. print out of posters, hoardings, videos clips with pages of the extracts from page A-1 to A-25 giving particulars of the allegedly offending posters/banners/hoardings that appeared with the names of the Public Functionary, location and

the period of its display etc. It is also noted that Registry had gone through a laborious exercise to identify the pages of annexures and the posters/hoardings/advertisements applicable to individual Public Functionaries. Only the relevant pages of the annexures were sent to individual noticees. The complete compilation being available with the Registry. Registry would make available to the Respondents or their Counsel who are desirous of collecting the original communication of the Informant. All the Counsels were satisfied with the above except Ms. Zubeda Begum and Sh. R. N. Vats, representing Ms. Sheila Dikshit and Ramakant Goswami, who stated that they required the whole 25 pages of the annexures and not the pages only relating to them. Both the counsels were given liberty to inspect the court files, go over the annexures including the extracts which do not concern them and if they still desire to have them, the Registry would give copies to both of them of annexures which do not concern their clients.

13. Considering the nature of controversy and issues involved, it was considered expedient and necessary to appoint Amicus Curiae in these cases to assist the Forum in the conduct of the inquiries. Replies to the show cause notice as well as affidavit by way of evidence and statement on oath has been given in all cases. These are being individually dealt with now:



#### In Complaint Case No. C-1939/Lok/2013

Reply raised legal pleas and denial that the posters/banners/hoarding were put up at the behest of the Respondent. It was claimed that Respondent only attended as a guest and did not consent to the posters/hoardings/banners. Evidence by way of affidavit was also filed by Respondent. Reliance was placed on the judgment in "*T. S. Marwah and others Vs. State*" of Ms. Justice Rekha Sharma, reported at 2008 (4) JCC 2561, to urge that there was no defacement within the meaning of "DPDP ACT". On 17/10/2013, Mr. Kuldeep Singh Solanki, Councillor, adopted the statement made by Sh. J. P. Singh and Sh. Rajesh Gehlot of his party. He further made a statement / undertaking that "if any such posters/banners/hoardings in contravention of "DPDP Act", containing his photographs come to his notice, he would initiate Action for their removal". He stated that he would support "Poster/Banner Free Delhi" campaign.

#### In Complaint Case No. C-2121/Lok/2013

Replies to the show cause notices were filed by Respondents namely Ms. Seema Pandit, Councillor and Sh. Vijay Pandit, Ex. Councillor, denying the allegations. It was urged that the said complaint has been deliberately and intentionally filed to damage their reputation and false allegations have been levelled against them. They denied having put



up the posters/banners/hoardings etc. at various public places or the same being in contravention of the provisions of "DPDP Act". It was claimed, relying on the judgment of the High Court of Delhi in *"T. S. Marwah & Ors. Vs. State"* reported at (Delhi) 2008 (4) JCC 2561, that defacement can be done of property in public view only by writing or marking with ink, chalk, paint or any other material. Accordingly the posters/banners/hoardings were not covered by sub section 2 of section 3 of the Delhi Prevention of Defacement of Property Act, 2007. Subsequently, Mr. Rajesh Kaushik, Advocate for the Respondent made a statement on their behalf on their instructions. Respondents accepted the statement of Sh. J. P. Sharma and Mr. Rajesh Gahlot. They accepted that the photographs marked A and A-1 showed the photographs of Ms. Seema Pandit and Mr. Vijay Pandit. Respondents agreed to abide by the statement of Sh. J. P. Sharma and Sh. Rajesh Gehlot.

#### In Complaint Case No. C-2122/Lok/2013

Respondent in her reply dated 22.7.2013, apart from claiming that the complaint was made with malafide intention to malign her image and reputation, stated that posters/hoardings had not been put up with her consent or knowledge. She claimed she has given clear instructions to staff not to put any posters /banners/hoardings on her behalf. She submitted that she wants to extend her full support and

cooperation to develop Delhi into a world class city and has contributed in this mission to her level best. Amended reply was also filed, in which she claimed that Act of putting hoarding itself is not an offence as punishable under Section 3 (2) of DPDP Act and proceedings are liable to be withdrawn. Evidence by way of affidavit was also filed on the lines of her reply stating that she had given clear advise to her followers and party workers not to put up such posters/hoardings except at the designated places.

She made a statement on oath on 17<sup>th</sup> October, 2013, where she acknowledged her photographs appearing in the poster/hoarding. She accepted that she attended these functions and photographs were put up by her workers but not with her consent. She would join any endeavour initiated thereby where posters/hoardings can be put up only at the designated places apart from site of the function for which permission should be taken. She stated that poster giving congratulatory message on 7.01.2013 was the birthday of her husband. Most of the posters did not pertain to any function except the Holi Milan Function which was held at Kali Bari where she had gone as a Chief Guest. She would give instructions to her workers to ensure that no posters/hoardings are put up except at designated and allocated places.

In Complaint Case No. C-2123/Lok/2013

Reply was filed on behalf of Sh. Dharam Dev Solanki. He denied that any offence under Section 3 of "DPDP ACT", was committed. It was urged that the enquiry under Section 2 (1)(b) read with Section 7 of the Delhi Lokayukta and Upalokaykta Act, 1995, prejudiced the public functionary in as much as the burden is shifted on the public functionary and the rigmarole of the criminal justice system is diluted and therefore resort to proceedings under the Act of 1995 is an abuse of the legal process. There was no failure in observance of the norms of integrity and conduct. It was denied that putting up of banners / posters /hoardings etc amounts to defacement. Putting up banners /posters /hoardings by followers /admirers /party enthusiasts without the knowledge and consent of public functionary is not punishable under the Act of 2007. Respondents have asked the followers/admirers/party workers to remove the posters. It was claimed that collective photograph put up by a party functionary or a party enthusiast showing the faces of the leaders of the said party namely, MLA, Local area Councillor is not for the benefit of the leaders of the party as the same are put up by them for wishing the people of the constituency on various occasions or festivals.

Evidence by way of affidavit on the same line was filed. Affidavit dated 24<sup>th</sup> October, 2013 was



filed on behalf of Sh. Dharam Dev Solanki. He accepted the statement made by Sh. J. P. Sharma and Sh. Rajesh Gehlot. It was further prayed that their enquiry be closed.

On 28<sup>th</sup> October, 2013, statement of Sh. Amarjeet Singh Girsu, Adv. for Sh. Dharam Dev Solanki, was recorded without oath. He stated that he had discussed the matter with Dharam Dev Solanki and apprised them of the statement made by Sh. Rajesh Ghelot, J. P. Sharma and Pawan Rathi. He stated that he has been authorized by Sh. Dharam Dev Solanki to state the same before the Forum. Respondent would advise his followers and supporters not to put posters/banners/hoarding in contravention of the provision of "DPDP Act". In case any poster, banner or hoarding was required to be put at a function site, the same would be put up after due permission. In case any poster / banner / hoarding carrying his photographs, at a public place is brought to his notice, then he would initiate Action for its removal. He would support "Poser/banner free Delhi" campaign.

Statement of Sh. Pawan Rathi had been recorded earlier, where he accepted his photographs in the hoardings. He also accepted that he had participated in some of the functions. He stated that he had no knowledge how these posters/hoardings were put up and by whom. He never gave any instruction for putting up these. He



stated that he is willing to join any effort and his consent may be taken for posters/hoardings to be put up only at places designated by the authorities or at the site of the function itself with permission. He believes in "Poster Free" Delhi. He would endeavour to make his Ward "Poster Free".

In Complaint Case No. C-2124/Lok/2013

Reply was initially filed by Sh. Rajesh Gehlot and Sh. J. P. Sharma, Municipal Councillors denying any kind of violation of any provision of "DPDP Act". It was denied any posters/banners/hoardings are put up by or at the behest of the Respondents or that Respondents are the beneficiaries. Sh. J. P. Sharma had also similarly denied the allegations of contravention of "DPDP Act". He stated that he is not responsible for posters/banners/hoarding put up. Respondent has also moved an application of disposal of preliminary objection raised in these matters prior to filing of evidence by way of affidavit. The said application was dismissed vide order dated 18<sup>th</sup> September, 2013. Evidence by way of affidavit was also filed on the similar lines. Rejoinder was also filed on behalf of the Informant in this case referring to the Informants statement on oath. Respondent also referred to certain hoardings carrying photographs of the Respondent appearing at Uttam Nagar Bindapur Main Road, even after the filing of the complaint. It was claimed that by providing the photographs, CD and the annexure

giving the names of the Public Functionaries in the posters/banners along with the location where they were found, the Complainant / Informant has discharged the initial burden. It was now for the Respondent to prove that the offending banners carrying his photo were neither put by them or without their consent or knowledge. During the course of proceedings and after hearing and going through the rejoinder by the Complainant and submissions of the Amicus Curiae, the Respondent made the statement that they do not encourage advertisements through banners and poster themselves or through their supporters. They fully support the idea of posters/banners and hoarding being put only at designated places and shall give whole hearted support to the Poster Free Delhi Campaign.

#### In Complaint Case No. C-2125/Lok/2013

Reply denying contravention of the provision of the DPDP Act was filed. It was submitted that banner had not been put by the respondent or with his knowledge or consent. Objection as genuineness of the CD and photographs was also raised. No enquiry under sub-section (2) of Sec. 3 of the DPDP Act was warranted. Plea regarding sub section (1) of Sec. 3 of the DPDP Act being applicable when defacement of any property in public view is by writing or marking with ink, chalk, paint or any other material for the purpose of

indicating the name and address of the owner or occupier of such property. Reliance was placed on "*T. S. Marwah & Ors. Vs. State*", 2008 (4) JCC 2561. Evidence by way of affidavit was filed stating that banner as shown in the said photograph has not been put by Respondent. Rejoinder by the Complainant was also filed giving the location of the hoardings/banners/posters. It was stated that the respondent being the resident of Uttam Nagar and Corporator of Milap Nagar ward, raises a strong presumption that they had knowledge of the offending hoardings and name boards carrying their picture and name. However no efforts were made to remove those posters/banners. However, during the course of proceedings Mr. Anil Grover under instruction from Respondent Anil Sabharwal made a statement that he had heard the statement of Sh. J.P. Sharma and Sh. Rajesh Gehlot and adopts the same.

#### In Complaint No. C-2126/Lok/2013

Respondent in the case was duly served with notice on 29/5/2013. There was no appearance on behalf of the Respondent on the said date. A copy of the order was directed to be sent to the Respondent with the direction clearly indicating that if he does not appear on the next date, he would be proceeded ex-parte.

Another opportunity was given to file a reply. Attention of the respondent was also drawn to sub



Section 2 of Section 3 of the Delhi Prevention of Defacement of Property Act 2007 (DPDPA), which raises a statutory presumption against the Respondent and respondent was directed to file her affidavit by way of evidence within 10 days with advance copy to the Amicus Curiae and to be present in the Court on the next date for recording of her formal statement and cross examination. Sh. S. Rajappa, Advocate was appointed as the Amicus Curiae.

On 17/10/2013, statement of Sh. Rahul Khanna, Advocate, was recorded. He stated that he had heard the statement of Sh. J.P. Sharma and Sh. Rajesh Gehlot of BJP Party on oath made in his presence and that he had instructions to state that the respondent also accepted the statement of Sh. J.P. Sharma and Sh. Rajesh Gehlot of BJP Party.

#### In Complaint Case No. C-2127/Lok/2013

Respondent, Ashish Sood had been served and he duly filed his reply to the notice issued. Counsel for the Respondent made a plea to be permitted to cross-examine the Complainant, before proceeding in the matter. Vide order dated 23<sup>rd</sup> August, 2013, the said prayer was declined having regard to the nature of the enquiry proceedings before the Lokayukta, being an informal fact finding enquiry to be carried out, in keeping in with the principles of natural justice. Statement of the Informant had been recorded regarding his taking the photographs



personally of the posters/banners/hoardings in terms of sub section 2 of Section 3 of the DPDP Act. Statutory presumption arose against the Respondent and therefore Respondent should file the affidavit. The affidavit by way of evidence was filed by the Respondent, who contended that the posters/banners/hoardings at a pole were not on a public property. However, on 17/10/2013, the Statement of Respondent was recorded on oath. In statement on oath, he identified his photographs which were with the faint impression at S. No. 9 on page 26 and at S. o. 68 on page 25. He stated that the posters/banners/hoardings had been put up few months back by a boy Anmol who was his party worker. He denied prior posters/banners/hoarding can be fixed apart from the designated sites. Posters/banners/hoarding can be put up at a function site but with prior permission.

#### In Complaint No. C-2128/Lok/2013

Respondent was duly served with notice on 29/5/2013, but there was no appearance on his behalf. Another opportunity was given to file reply. Attention of the respondent was also drawn to sub section 2 of Section 3 of the DPDP Act which raises a statutory presumption against the Respondent and was directed to file his affidavit by way of evidence within two weeks with advance copy to the Amicus Curiae and be present in the

Court on the next date. Mr. Pramod Kumar Sharma, Advocate, was appointed as the Amicus Curiae. On 18/9/201, respondent was absent. A bailable warrant to the respondent was issued to secure his presence.

Respondent appeared in person, and stated that notice to appear on the last date was misplaced because of change of office. Evidence by way of affidavit was filed.

Reliance was placed on the judgment, in Sh. T. S. Marwah reported on 2008(4)/2561 that the case cannot be construed as violation of Sub Section 2 of Section 3 of DPDP Act 2007. During the course of proceedings on 17/10/2013, Sh. Naresh Balyan and Sh. Himanshu Upadhyay's statements on oath and without oath respectively were recorded. Respondent accepted his photographs at page No. 44 & 45, as well as the whole celebrations at Mohan Garden. He admitted that the function had been organized by his workers and stated that he will be careful in future and advise his workers not to put any poster / hoarding and banner at public places or public property. Respondent urged for places to be designated to put up posters / hoardings and banners.

In Complaint No. C-2129/Lok/2013

Notice in this case was served upon the Respondent Sh. Sumesh Shokeen, MLA on 1/6/2013.

Opportunities were given to file reply. However, Respondent did not appear on the first date. Mr. Anish Dayal, Advocate, was appointed as Amicus Curiae. Respondent's attention was initiated to sub section 2 of Section 3 of the DPDP Act. Reply was filed by the Respondent through Himanshu Upadhyay, defending the allegation of violation of the Sub Section 2 of Section 3 of the DPDP Act. It was averred that the Complainant had to establish the allegations that the posters, banners, hoardings were put up by the respondent. The respondent desired to make a statement. Statement of Sh. Sumesh Shokeen, MLA and his Counsel were recorded. Mr. Himanshu Upadhyay, stated that sh. Sumesh Shokeen, Respondent had authorized him to state that he shall himself never put up posters / hoardings / banners in public places and advise all his supporters and party workers to put up hoarding / posters and banners only at designated places and not on Public Property in contravention of Delhi Prevention of Defacement of Property Act 2007. Further, if any such case comes to his notice and there are any hoarding /photographs found, he would initiate Action for their removal.

Sh. Sumesh Shokeen was also present and his statement was also recorded on the same lines.

#### In Complaint No. C-2130/Lok/2013

Respondent was duly served with notice on 29/5/2013. Initially, there was no appearance on his



behalf. Another opportunity was given to file reply. Attention of the respondent was also drawn to sub Section 2 of Section 3 of the Delhi Prevention of Defacement of Property Act 2007 (DPDPA). Mr. Anish Dayal, Advocate, was appointed as the Amicus Curiae on 18/9/2013. Respondent sought exemption from appearance and time for filing reply on medical grounds. Affidavit by way of evidence was filed by the Respondent. Counsel sought time to obtain instructions from Respondent Sh. Mahender Yadav, Ex MLA to make statement on his behalf on 21/10/2013. Affidavit by way of evidence was filed. Respondent denied any knowledge of posters being put, conveying birthday greetings to the Hon'ble Chief Minister, Delhi. He had no objection to it being removed. He denied being aware of the persons responsible for putting the posters. He stated that he was the member of the State Transport Authority and the Board had only indicated to the direction to his office on 21/10/2013.

Sh. Shiv Ram Batra, Advocate on instructions from the respondent stated that he would advise all his supporters and party workers to put up hoardings, posters and banners only at the designated place and not on public premises in violation of DPDP Act 2007. Further if any such cases comes to his knowledge he would initiate Action for its removal. After recording of the statement, orders were reserved on 21/10/2013.



In Complaint No. C-2131/Lok/2013

Respondent in this case has been duly served and reply was filed by Sh. Abhijat Bal, Advocate on behalf of the Respondent. Opportunity was given to file his affidavit by way of evidence. It was granted to the respondent on 23/08/2013 under sub Section 2 of Section 3 of the Delhi Prevention of Defacement of Property Act 2007 (DPDPA). The preliminary objections sought to be raised were also noticed. During the course of proceedings it was clarified that the procedure outlined in case No. 2125/lok/2013 titled "S.K. Saxena, Nishpaksh NGO Vs. Anil Sabharwal, Municipal Councillor" would be followed in this case also. In the reply, it was defended that the hoardings were not put up by the respondent. A supplementary reply raising legal plea was also filed.

Subsequently on 28/10/2013 Sh. Praduman Rajput's statement on oath was recorded. He recognized the posters containing his photographs to have been put up by his party workers. He stated that he would advise them not to put up the posters / hoardings or banners in violation of DPDP Act. In case any posters / hoardings or banners in contravention of the Act are put up by party workers and supporters, he would initiate Action to remove the same. He would support a 'Poster Free' Delhi.

#### In Complaint No. C-2132/Lok/2013

In this case one Sh. Jai Prakash, on behalf of the Respondent tendered a medical certificate on behalf of the Respondent, who was suffering from fever. Opportunity was given to file his affidavit by way of evidence under sub Section 2 of Section 3 of the DPDP Act. Reply was filed by Sh. Mahipal Singh for the Respondent. Procedure as outlined in case No. 2125/lok/2013 titled "S.K. Saxena, Nishpaksh NGO Vs. Anil Sabharwal, Municipal Councillor" was to be followed in this case also. Sh. Nishant Shaiva, Advocate for the Respondent without oath gave statement on the same lines as given by Sh. J.P. Sharma and Sh. Rajesh Gehlot of BJP Party.

#### In Complaint No. C-2133/Lok/2013

There were four Respondents in this case namely Sh. Mukesh Sharma, MLA, Sh. Yashpal Arya, Councillor, Sh. Karamvir Shekhar, Councillor and Sh. Rajesh Yadav, Ex-Councillor to whom notices were issued. Amicus Curiae was appointed Mr. Himanshu Upadhyay, Advocate appeared on behalf of all the respondents on 23/08/2013. Time was granted to file affidavit by way of evidence to the Respondents within 10 days with advance copy to the Amicus Curiae under sub Section 2 of Section 3 of the DPDP Act.

Sh. Mukesh Sharma, MLA Respondent No. 1 was duly served but no one on his behalf was present. Another opportunity was granted. Sh. Vineet Malhotra appeared on behalf of Sh. Mukesh Sharma.

Sh. Himanshu Upahdyay, Advocate filed replies on behalf of Sh. Yashpal Arya and Sh. Karamvir Shekhar, Councillor and took time to file reply on behalf of Sh. Rajesh Yadav, Ex-Councillor.

Respondents took the usual plea in the reply that none of the posters / banners displayed in the evidence have been put up by them. They were merely visiting as the Guest of Honour in the event and did not give any consent to any advertisement or banners and posters that were being put up. The Respondents were not beneficiaries from the said posters / hoardings and banners. However, despite the legal plea being taken during the proceedings, after reflection Sh. Himanshu Upahdyay, Advocate made statement on behalf of Sh. Yashpal Arya, Sh. Karamvir Shekhar, Councillor and Sh. Rajesh Yadav, Ex. Councillor stating that he had taken instructions from them and that all will advise their supporters and party workers to put up hoardings / posters and banners only at the designated places only and not on public places in violation of the Delhi Prevention of Defacement of Property Act 2007. Further, if any such case comes to their notice they shall initiate Action for removal of the same. Similarly, Sh. Vineet Malhotra



made a statement on behalf of Sh. Mukesh Sharma, MLA stating that he shall advise his supporters and party workers to put up hoardings and banners at the designated place only and not on public property in violation of the Act. Further, if any such case comes to his notice he shall initiate Action for its removal.

#### In Complaint No. C-2135/Lok/2013

In this case reply was initially filed by Smt. Bhoomi Chatter Singh Rachauya, Municipal Councillor. Appeal was taken that the hoardings / posters on High Power Voltage Towers and electric Polls have not been put up by them. She stated that a police complaint had also been lodged in this regard. Further, that the location of the posters / hoardings was far away from her Constituency.

Respondent's attention was drawn to Section 2 of Section 3 of the DPDP Act. Time was sought by the Respondent to file affidavit by way of evidence. Procedure outlined in case No. 2125/Lok/2013 titled "S.K. Saxena, Nishpaksh NGO Vs. Anil Sabharwal, Municipal Councillor" was to be followed in this inquiry also. Affidavit by way of evidence was also filed. The posters in question carry the photographs of the Hon'ble Chief Minister alongwith the Councillor and her husband. Statement of respondent was recorded. She stated that she was not in favour of the posters / hoarding and banners being put up on public properties. The



posters were not put up by her or by her husband. She stated that she would advise her party workers to put up hoardings only at designated places and not in violation of the DPDP Act 2007. She shall endeavour to make Delhi 'Poster Free'.

In Complaint No. C-2136/Lok/2013

Respondent Smt. Shivali Sharma, Councillor was duly served with a notice. Sh. Himanshu Upadhyay appeared on behalf of the Respondent. Sh. Chetan Lokur, Advocate was appointed as Amicus Curiae. Affidavit by way of evidence on behalf of Respondent was filed under sub Section 2 of Section 3 of the DPDP Act. The Respondent had only filed a response where she claimed that the complainant had to establish that the posters / banners and hoardings were put by her. Respondent was a public figure and was attending events as a guest and she did not consent to any advertisement on the banners and posters. It was not reflected that Respondent was a beneficiary. Statement of Sh. Himanshu Upadhyay, Advocate, was recorded by which the Respondent agreed to advise supporters and party workers to put up posters / banners at the designated places only and not on public property and in case of any violation of the Delhi Prevention of Defacement of Property Act 2007, he would initiate Action for removal of the said hoardings / posters and banners.

In Complaint No. C-2137/Lok/2013

Sh. Aman Gaur, son of the Respondent, Sh. Vinod Kumar Sharma, appeared and stated that his father was in judicial custody in a criminal case. Power of Attorney executed in favour of Aman Gaur and Subodh Kumar was filed by him. Procedure as outlined in case No. 2125/Lok/2013 titled "S.K. Saxena, Nishpaksh NGO Vs. Anil Sabharwal, Municipal Councillor" was to followed in this case also. Sh. Aman Gaur, Power of Attorney holder of Sh. Vinod Kumar Sharma, stated that he had been hearing the proceedings in the Court and that he too would make a statement on the same lines as made by Sh. J.P. Sharma and Sh. Rajesh Gehlot. He stated that he would advise his party workers and supporters not to put up the posters / hoardings or banners in violation of prevention of the Defacement of Property Act, 2007. In case any posters / hoardings or banners in contravention of the Act were put up by party workers and supporters, he would initiate its removal. The respondent would abide by his statement.

14. All these 17 complaints are being decided by this common order. Barring minor variation in language, Respondents have either themselves on oath or by statement made on their behalf by their advocates duly authorized by them, agreed to undertake the following.
  - (i) That they would advise their supporters/followers to ensure that poster/banners/hoardings carrying

their photographs are not put up in public places in contravention of the "DPDP Act".

- (ii) Posters/banners/hoardings are put up only at designated places.
- (iii) In case of any function etc. at public places, the posters/banners/hoardings shall be put up at function site after obtaining prior permission.
- (iv) In case it is brought to the attention that any posters/banners/hoardings have been put up in contravention of the "DPDP Act" carrying their photographs, they would initiate Action for its/their removal.
- (v) They would support the movement of "Poster Free" Delhi.

15. Most of the respondents had claimed that the posters/banners/hoardings had been put without their knowledge or consent so as to rebut presumption under Sub Section 2 of Section 3 of "DPDP ACT". Reliance has also been placed on "*T. S. Marwah and others Vs. State*" of Ms. Justice Rekha Sharma, 2008 (4) JCC 2561, to urge that there was no defacement within the meaning of the Act. Further that defacement could be done either by writing and marking with ink, chalk, paint or any other material. Others had pleaded that posters/banners/hoardings etc. had not been put up on any property within the definition of public property. It is not necessary to delve into these issues in the above cases. In view of the statement made, it would be sufficient to observe that the judgment of "*T. S. Marwah and*



*others Vs. State*" of Ms. Justice Rekha Sharma, 2008 (4) JCC 2561, was under the West Bengal Defacement of Property Act and not the DPDP Act. The definition of 'writing' has been amended in the present act to include printing, so as to bring the printing of poster within the ambit of 'writing' and defacement. It may also be observed that in an inquiry under the Delhi Lokayukta and Upalokayukta Act, 1995, under section 2 (b) read with Section 7, the ambit of jurisdiction is much wider than the DPDP Act, the latter providing for the offence, penalties and prosecution by enforcement agency. The definition of "allegation" under the Delhi Lokayuykta & Upalokayukta Act, 1995, would include numerous acts and omissions thereof in relation to defacement of property by Public Functionaries or at their behest or for their benefit, which can be said to be inter alia against the norms of integrity and conduct expected of public functionaries. Such conduct need not be confined only to statutory violations. It can also flow from the need and requirement by Public Functionaries to recognize that posters/banners/hoardings should be put up only at designated places as permitted as per Municipal Rules and Regulations. The putting of these posters/ banners / hoardings at designated places is an illustration, where it would result in realization of revenue through pasting and affixation. The hoardings/ posters/ banners at non-designated placed would cause revenue loss to Municipal Authorities.



The latter can be regarded as causing undue gain for one self and causing undue loss to Municipal Corporation. This is an area of evolving jurisdiction. However, in view of the statements made by Respondents indicating their resolve, it need not detain us for the present.

16. The statements made have been duly accepted by this Forum. In view of aforesaid statements made, it is not necessary to give findings on preliminary objections and other pleas raised in such matters.
17. It is far more important to bring about self realization either by persuasion or otherwise and a change in outlook, where the public functionaries themselves recognize and realize the need for preventing defacement by putting up of posters / hoardings / banners. This is especially so when enforcement and prosecution is severely hampered by lack of infrastructure and inherent systemic deficiencies. Experience has shown that there has hardly been any prosecution under the DPDP Act and only the Corporation has been periodically removing the offending posters/banners/hoardings. As noticed earlier even in Rohini Zone more than Forty Five Thousand posters, nearly Twenty Thousand banners and Ten Thousand hoardings were removed and not a single prosecution was launched.
18. In view of the statements made by the Public Functionaries themselves on oath and/or on their behalf, it is hoped and expected that they would

take all steps for removal of posters /banners /hoardings in contravention of DPDP Act, within a period of 10 days voluntarily, failing which the authorities would be free to proceed for their removal in accordance with law.

19. A copy of this order passed along with copy of CD of the infringing posters/banners/hoardings be sent to the Corporations i.e. SDMC, EDMC and NDMC, for them to initiate necessary action for their removal, if not so done, voluntarily.
20. In view of the statements made by respondents on their behalf, the notices issued under Sec. 7 for inquiry under the Delhi Lokayukta and Upalokayukta Act, 1995, are discharged. Nothing stated herein will come in the way of or affect any proceedings by appropriate authorities under the Delhi Prevention of Defacement of Property Act, 2007.

File be consigned to record.

  
(JUSTICE MANMOHAN SARIN)  
LOKAYUKTA

DATE: 4 NOVEMBER, 2013