

BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin
Complaint No. C-266/Lok/2009

Dr. Harsh Vardhan

Vs.

Smt. Sheila Dikshit, Chief Minister, NCT of Delhi

REPORT

1. Complainant, Dr. Harsh Vardhan, alleges that Smt. Sheila Dikshit, Chief Minister of Delhi has misused her power and position and failed to act in accordance with the norms of integrity and conduct expected from "Public Functionary" by playing a faux pass in the matter of Regularization of Unauthorized Colonies in Delhi by devising a clandestine manner to woo the voters in the impending Election in the Year 2008. It is alleged that the Respondent was the Chief Minister during the earlier tenure of Delhi Assembly from 2003 to 2008. By misusing her position as a Chief Minister of Delhi, she intentionally raised the bogey of regularization of unauthorized colonies and came up with the idea of issuance of Provisional Certificate of Registration to the unauthorized colonies in Delhi knowing fully well that issuance of Provisional Certificate by itself would not give the status of regularization to unauthorized colonies.
2. It is further alleged that 1639 colonies have been listed for regularization by the Govt. of Delhi but not a single colony was

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regularized in the last 10 years, during the tenure of the Respondent as the Chief Minister. The Respondent, in the year 2008, being the election year, raised the issue of regularization of the unauthorized colonies, while matter was sub-judice before the Hon'ble Supreme Court in W.P.(C) 725/1994, wherein the Hon'ble Supreme Court passed an order on 14/2/2006 restraining regularization of unauthorized colonies, where "basic services" are not provided. Despite this direction of the Hon'ble Supreme Court, it is alleged the Respondent proceeded with the announcement of regularization of the unauthorized colonies and to circumvent the order of Hon'ble Supreme Court devised the scheme for issuance of Provisional Regularization Certificate without providing for the basic amenities and services in the colonies.

3. It is further alleged that as per the Gazette Notification U/s 57 of DD Act, 1957 dated 24/3/2008, unauthorized colonies in Notified area or reserve forest areas would not be considered for regularization. The Respondent, however, issued Provisional Regularization Certificate to the unauthorized colonies which had come up even in Notified area, reserved forest and ridge land, against the Regulations for regularization of unauthorized colonies.
4. The Respondent also spent huge amount of money on advertisement with regard to issuance of Provisional Certificates which carry even the photograph of the Chairperson of the UPA

and Political Functionaries of the Congress Party not connected with the Govt. of NCT of Delhi. The advertisement which appeared in the Hindustan Times on 4/10/2008 read as under:-

"5 Million Dreams Fulfilled Colonies Regularized.

Smt. Sonia Gandhi, Hon'ble Chairperson, UPA will distribute the Provisional Regularization Certificate to the representatives of Unauthorized Colonies on Saturday, 4th October, 2008 3:PM at Chhatrasal Stadium (Model Town), Delhi.

Photograph of Smt. Sonia Gandhi.

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

Photograph of Sh. Raj Kumar Chauhan, Minister of Urban Development, Delhi Government.

Photograph of Dr. A.K. Walia, Minister Finance & Power, Delhi Government.

Photograph of Dr. Yoganand Shastri, Minister of Health, Delhi Government.

Photograph of Sh. Haroon Yusuf, Minister of Food Supplies & Consumer Affairs, Delhi Government.

Photograph of Sh. Mangat Ram Singhal, Minister of Labour, Delhi Government.

Photograph of Sh. Arvinder Singh, Minister of Education, Delhi Government."

5. Similar advertisements appeared in the News Paper "Dainik Jagaran" and "The Pioneer" on 27/11/2008 under the caption

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"Great Regularization Faux". These news items reported that Provisional Certificates were issued even to the unauthorized colonies located in Notified areas, reserved forests, ridge land, which were not eligible for regularization.

6. The Complainant alleged that the entire exercise of issuing provisional registration certificate was aimed at misleading the public and to obtain votes as there was no legal sanction for issuance of Provisional Certificate of Regularization of unauthorized colonies. It was further alleged that instead of incurring the expenses for providing basic facilities in the unauthorized colonies, the public funds were spent on indiscriminate advertisement for provisional regularization as an election campaign strategy to woo the voters. It is alleged that this act of the Respondent amply demonstrate that the respondent was actuated in discharge of her functions by improper motive, personal gain, showing lack of faithfulness to the public. Thus, the respondent failed to act in accordance with the norms of integrity and conduct which ought to be followed by a Public functionary.

7. In nutshell the allegations are that the respondent raised the bogey of regularization of unauthorized constructions, despite a judicial fetter on the regularization unless basic services were made available. The strategy of issuing Provisional Registration Certificate was used to by-pass the restraint order of the Hon'ble Supreme Court. It was to mislead the public on the eve of election by promising regularization without providing basic services. Not

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only this, PRC was issued even for the unauthorized colonies falling in Notified area / forest / ridge land, which cannot be regularized.

8. To verify the factual averments this Forum considered it appropriate to direct the Secretary, UD Department, of GNCTD to produce the original record in respect of the decision taken for the grant of PRC and factors considered there for. The Department of Urban Development responded that the Regulations of DDA dated 24/3/2008 for regularization of unauthorized colonies were amended vide Notification dated 16/6/2008 in terms of which sub-clause 4.6.1 was incorporated in the Regulation providing for issuance of PRC to an unauthorized colony after requirement of clause 4 of the Regulations were fulfilled by the residents of a colony. Pursuant to this notification dated 16/6/2008 PRC were issued.
9. To ascertain the genesis of the scheme for issuance of PRC it was inquired from the Govt. Of NCT of Delhi whether the amendment to the regulation under Section 57 of the DD Act by the notification dated 16/6/2008 incorporating clause 6.4.1 had been made by the Central Government pursuant to any proposal by the Govt. of NCT of Delhi or otherwise.
10. The Department of Urban Development despite repeated directions to produce the record in this regard kept on avoiding producing the record. The Standing Counsel for the Govt. of NCT of Delhi

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stated that the department has not been able to trace any such record and sought time to trace the record time and again on 26.3.2010, the Standing Counsel on instructions and in a candid manner stated that there was no such record with the Department of Urban Development. This forum conveyed to the Standing Counsel for the Department that production of the record in this regard does not brook any further delay as the department was not coming out with the record since 9th March, 2010. After a great reluctance and hesitation on 16/4/2010 the Standing Counsel for Govt. of NCT of Delhi submitted a letter written by the Respondent to the Union Ministry of Urban Development sending an Advisory Note, proposing the issuance of Provisional Certificate. In the said Advisory Note, the rationale for Provisional Regularization is given in the following words:-

“The object of regularization is to regularize unauthorized colonies at the earliest so that people living in these colonies are assured that their habitats would not be demolished and they would be able to enjoy peaceful living. Keeping this objective in view, it would be appropriate to add a proviso to regulation 5.7, which may be worded as follows: -

“Provided the GNCTD may issue a Provisional Certificate to an unauthorized colony, where the requirement of regulation have been fulfilled by the residents of a colony.”

This Advisory note by respondent to Union Minister contains a proposal for issuance of PRC. The amendment and addition of clause 6.4.1 in Regulation dated 24/3/2008 is thus pursuant to the proposal mooted by the Respondent.

11. The Complainant stated that the issue of regularization of unauthorized colonies had been pending for last so many years. It was in 2001 that guidelines were issued for the regularization of the unauthorised colonies. However urgency and the need were felt by the respondent only on the eve of election which demonstrates that the exercise was to woo the voters and not a genuine concern for the residents of unauthorized colonies. In the absence of the compliance of formalities under clause 4 & 5 of the notification dated 24/3/2008, grant of PRC was a useless exercise purely to woo the gullible voters.
12. In the affidavit filed by Dr. R.P.S. Yadav, Jt. Director (Urban Development) it was stated that issuance of PRC for unauthorized colonies were a legitimate exercise of power under the statutory regulation. It has been duly brought to the notice of the Hon'ble Supreme Court which permitted the same vide order dated 21/10/2008. Hence, the issuance of PRC was in accordance with law.
13. The Forum considered the factual matrix, submission of the Counsel for the Complainant and the response given by the Department of Urban Development. The case raised issue of

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significance pertaining to ethics in the Govt., adherence to norms of integrity and conduct by "Public functionaries" and motive involved in discharge of their functions. Therefore, vide order dated 31-08-2010, the following issues were considered necessary for examination: -

- i) Whether the move for issuance of Provisional Regularization Certificates for unauthorized colonies prior to the elections and extensive advertisement thereof was actuated by improper motive or personal interest and / or there was violation of the norms of integrity and conduct which ought to be followed by a "Public Functionary"?
- ii) Whether there was any urgency to warrant issuance of Provisional Regularization Certificates to all the unauthorized colonies, out of which admittedly 143 could not be regularized at all?
- iii) Whether there was any real urgency to warrant issuance of Provisional Regularization Certificate especially when the same did not create any legal status or ownership and the regularization had been pending for years?
- iv) Whether the Provisional Regularization Certificates could be issued without making available the basic services or their availability in the near future in terms of orders dated 14/2/2006 of the Hon'ble Supreme Court in writ petition No. 725 of 1994?
- v) Whether the Respondent could direct issuance of Provisional Regularization Certificates to unauthorized colonies, on the mere filing of affidavits by the residents and without complying with the conditions of clauses 4 and 5 of the Regulations by an administrative direction and whether in doing so the Respondent

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has failed to comply with the directions of the Supreme Court and the provisions of the Regularizations?

14. In view of the allegations made in the Complaint, documents submitted therewith and the record shown by the Urban Development Department, GNCTD a prima-facie case for an enquiry against the Respondent in-terms of Section 7 read with Section 2 (b) of the Delhi Lokayukta and Upalokayukta Act 1995 was made out. Accordingly, a Notice was issued to the Respondent.

Reply of the Respondent

15. The Respondent filed the reply taking preliminary objections as to the jurisdiction of this Forum on the grounds, inter-alia, that the Act calls for an enquiry into the allegations against Public functionary and the present matter being a decision of the Govt. of NCT of Delhi and thus a collective decision and not of any Public Functionary individually. Therefore, such decision with regard to issuance of PRC cannot be examined and adjudicated by this Forum. It was submitted that the PRC were issued in compliance and pursuance of Regulations amended from time to time without challenging the existing and prevalent law. The act being inconsonance with the applicable law cannot be adjudicated by this Forum as it does not fall under Section 2(b) of the Act. It is submitted that the present complaint is a part of a well thought out strategy of the principal Political Party i.e. BJP against the Respondent, Chief Minister of NCTD belonging to Indian National

Congress. The Complainant is an MLA, a Senior Leader of the BJP and well known opponent of the Respondent and her Party.

16. The Respondent in the reply referred to her letter dated 11/5/2008, addressed to Sh. Jai Pal Reddy, the Minister of Urban Development, Govt. Of India and stated that the Advisory Note sent vide this letter was necessitated in view of the circumstances. The Central Govt. examined it from various angle and then agreed with proposal. This letter therefore, cannot attract the provision of the Act.

17. Responding to the averment in the complaint regarding the order of the Hon'ble Supreme Court dated 14/2/2006 in WP (C) 725/1994, it was stated that the Supreme Court did not say that basic facilities have to be provided first and then unauthorized colonies can be regularized. It is submitted that the GNCTD has followed the process of regularization as laid down in the regulations for regularization of unauthorized colonies issued by DDA. Due process of law has been followed. It is submitted that the act of issuance of advertisement was an act of GNCT of Delhi and not an individual act of the Respondent. Issuance of advertisement was a necessity as RWAs had to complete some formalities which were to be brought to knowledge of general public, therefore, required wide publicity. No improper motive can be attributed to such act. As to allegation of erosion of Public Fund by way of indiscriminate advertisement with regard to issuance of PRC carrying the Photographs of the Respondent along

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with UPA Chairperson and other Political Functionaries, it was contended that it was gesture of acknowledgement on the part of the State Govt. to give due credit to the UPA Govt. for the pro-poor act of issuance of PRC.

18. The Respondent stated that there was no lack of faithfulness and there was no misuse of official power as alleged. The allegations of erosion of public fund by spending on advertisement instead of doing development work were denied by the Respondent. The work of development has been continuing very fast which is within the knowledge of complainant. The amount spent on advertisements was a necessity as the scheme of issuance of PRC to unauthorized colonies required publicity for which advertisement were issued after observing the due process.

19. The Respondent further submitted that the GNCT of Delhi was committed to regularization of unauthorized colonies as per the norms set up by the Union Ministry for Urban Development. These act of GNCT of Delhi towards regularization of unauthorized colonies pursuant to the decision of Urban Development Minister, Govt. Of India, was an act of collective wisdom of the entire Cabinet of GNCT of Delhi and not individual act of the respondent as mischievously sought to be projected by the Complainant. The advertisement dated 4/10/2008 relied upon by the Complainant itself demonstrate that the subject matter of the present complaint i.e. issuance of PRC was not individual act of the Respondent, Public Functionary. This advertisement shows

the presence of all the Seven Ministers of the GNCT of Delhi including the Respondent, i.e. Chief Minister.

20. It was further submitted that the Respondent had not violated any law and the allegation of improper motive cannot be sustained on mere conjecture and surmises. The Govt. has provided basic services in as much as steps were taken for construction of roads and drains, laying of water lines, street lighting and sanitation. This development work was carried out by DSHDC, MCD, I&FC & DJB. It is not the case that the Govt. of GNCTD instead of spending money on development work has spent huge amount on issuance of advertisements propagating issuance of PRC for regularization of unauthorized colonies.
21. The Respondent further submitted that the complaint is baseless, liable for dismissal, and calls for exemplary costs as well as action Section U/9(2) of Delhi Lokayukta and Upalokayukta Act 1956 against Complainant.

Re-joinder of the Complainant

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22. The Complainant's response to the reply of the Respondent is re-iteration of the averments in the complaint. It was submitted that Lokayukta has Jurisdiction over the matter, the Complainant specifically denied that the mater pertains to the decision of the GNCTD and not the Public Functionary i.e. the Respondent. The Complaint refuted the submission that issuance of PRC to the registered unauthorized colonies was a collective decision, an act

of Cabinet of the GNCT of Delhi. The Complainant also refuted the submission that under the garb of the present proceedings an attempt is being made to challenge the legal status of the PRC. The Complainant also denied that the act of issuing PRC was in consonance with the applicable laws. It was re-iterated that the Respondent had full knowledge that the required basic facilities were not provided in the unauthorized colonies and without providing the basic facilities, the colonies could not be regularized, still the respondent proceeded with the idea of issuance of Provisional Certificates. The Respondent had full knowledge that issuance of PRC did not confer any legal status of regularization. The exercise was with a view to woo the voters and to circumvent the direction of the Hon'ble Supreme Court that colonies cannot be regularized without basic services being provided therein.

Procedure for Enquiry

23. After the pleadings were completed, the procedure for enquiry was decided with the consent of both the parties. It was agreed between the parties that evidence would be led by affidavit being filed by the Complainant and on behalf of the Respondent with the right to respective parties of cross examination. Both the parties were also given liberty to take the assistance of the Forum, if required, for examination of any other witness considered necessary for disposal of the case.

Evidence

24. The Complainant had filed an affidavit by way of evidence. The

documents filed by the complainant were referred in the affidavit as exhibit CW-1/1 to 1/39. Later on with the permission of the Forum Complainant filed a comprehensive affidavit in lieu of the earlier affidavit. The Respondent cross examined the complaint at length. Due opportunity was given to the Respondent to file her affidavit or of any other witness. However the Ld. Counsel for Respondent stated on 24/5/2011 that he does not wish to examine the respondent or any other witness and would go by the record.

25. Thereafter, both the parties were asked to file the submission with reference to the evidence and parties were given the opportunities to adduce oral argument as well. The official record for the Urban Development Department was considered prior to issuing notice to the Respondent and the said record was also referred to by the Ld. Counsels in their argument. Therefore, the original files namely file No. 1-33/UC/Policy/04/III & file No. F-1/33/UC/Policy/07 Vol-V and the certified copies of the file No. F.1-33/UC/UD/Policy /2004/Pt-III titled Regularization of 1432/1639 Unauthorized Colonies tendered by Mr. C. Uday Kumar, Additional Secretary, UD on 1/5/2011, were kept.

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26. CW-1 Dr. Harsh Vardhan in his affidavit exhibit CW-1/A has reiterated the averments made in the complaint and in support of the allegations filed documents exhibit CW-1/1 to 1/39. He has been subjected to a very lengthy cross-examination. CW-1 has deposed that out of 1639 colonies listed for regularization by Govt. of Delhi not a single one had been regularized during the last 10 years

regime of the Respondent. In support of this he relied upon the response to the RTI Application by the Department of Urban Development exhibit CW-1/1. He deposed that in the year 2008 being an Election year, this bogey of regularization of unauthorized colonies was raised. The Respondent came out with the idea of issuance of Provisional Certificate to the Unauthorized Colonies knowing fully well that these PRC would not confer the status of the regularized colonies. He also deposed that the Provisional Certificates were issued even to the colonies which had come up on the Notified area, Forest and Ridge land. He further deposed that the Respondent spent huge amount of money for the advertisement of the said scheme for issuance of the Provisional Certificates to the said colonies. He has further deposed that Hon'ble Supreme Court in the Order dated 14/2/2006 in WP(C) 725/94 (Exhibit CW-1/8) had stated that in case the State / Authorities are not in a position to make available the basic services there shall be no regularization of unauthorized colonies. The Complainant deposed that without providing the basic amenities and facilities the Respondent announced the issuance of Provisional Regularization Certification with an eye on the election and this issuance of PRC was indiscriminately advertised to mislead the Public at the time of Election. He deposed that the Respondent thus, failed to act in accordance with the norms of integrity and conduct and used her status and position as the Chief Minister to obtain favour from the public by devising this idea of issuance of Provisional Certificate knowingly that no legal status would be conferred thereby. The respondent,

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therefore, was actuated by improper motive in discharge of her function as a Public Functionary. In the cross-examination, which continued for many days, the Complainant stated that he approved regularization but oppose PRC without development work. The Ld. Counsel for respondent many times put questions which were not connected with subject matter and he had to advised by Forum to confine examination relevant to subject matter. Despite exhaustive cross-examination nothing could be elicited to discredit respondent.

27. The respondent has not preferred to lead any evidence by filing affidavit of self or any other witness in support of her case. Respondent relied upon records.
28. The Counsel for both the parties filed written submission and adduced oral arguments. When the matter was reserved for orders the Complainant moved an application for bringing subsequent relevant facts in relation thereto on record. It was stated in the said application that the issuance of Provisional Certificates was an eye wash and meant to woo the voters in the election year in 2008. With same motive, Respondent came out with the notification dated 4/9/2012 vide which 895 colonies were classified into two broad heads i.e. colonies on private land numbering about 312 and colonies partly or fully on public land numbering 583. The first category of colonies on private land was entitled for regularization pursuant to notification dated 4/9/2012. The second category of colonies, partly or fully on public land were to be regularized from the date of recovery of cost of public land by the land owning

agency. The Respondent has thus, made a prospective announcement, without conferring regularization on these 583 colonies, regarding their regularization. This is also in view of the coming Assembly Election, 2013.

29. In all fairness, a notice of the application was given to the Respondent, who opposed this application on the grounds inter-alia that the Complainant applicant wants to change the entire character and nature of the complaint by introducing a completely new cause of action. It was a post facto issue which cannot be agitated. As regard the Notification / Order dated 4/9/2012, it was submitted that it shows the bona-fide intention of the GNCTD to regularize unauthorized colonies. This Notification / Order dated 4/9/2012 has been issued inconsonance with the amended clause 5.3 & 5.4 of Regulation dated 24/3/2008 which have been incorporated vide Notification dated 6/6/2012.
30. Mr. Mehmood Pracha Ld. Counsel for the respondent thus opposed this application while Ms. Sunita Bhardwaj Counsel for the applicant / Complainant submitted that this application brings on record the facts which are matter of record in public domain and does not amount to taking a new plea and a fresh cause of action. Ld. Counsel for the Respondent was adopting dilatory and obstructive tactics. Earlier he had objected to the application of Complainant which was moved in December 2012. Initially he took the plea regarding maintainability of the application refusing to file reply on merits. Later on when the application was kept for

orders, the Respondent moved application for filing the reply on merits. The same was allowed and the reply was taken on record. In between on 13.5.2013, 21.5.2013, 4.7.2013, 26.8.2013 and 19.9.2013 adjournment was sought on behalf of the Respondent. Ultimately the application was kept for disposal with the main complaint.

The Ld. Counsel for Respondent also moved an application under Section 11 of the Act for dismissal of the complaint on 30/9/2013. On the ground of non appearance of the complainant on 26/8/2013 & 19/9/2013, this application is on the premises that the proceedings before the Forum are governed by the Criminal Procedure Court. Therefore, on the absence on the complainant, the complaint should be dismissed for non-prosecution. This application was kept for decision at the time of final order.

Another application was moved by the Counsel for the Respondent for submissions of oral arguments and videography of the Court proceedings. The contention of the Counsel for the Respondent for recording of proceedings and the request for videography was made just to embarrass the Court at the fag end of the enquiry. So far as the submission permitting oral arguments was concerned this request was already declined on 30/9/2013, for reasons recorded.

31. The matter was again reserved for orders on 11.10.2013. At the fag end the Respondent again came out with an application seeking permission to cross examine the Complainant on the basis

of additional documents filed with the application. These documents are the Guidelines for Regularization of unauthorized colonies 2001, revised guidelines 2004 and revised guidelines 2007. It is stated in the application that these guidelines demonstrate that issuance of PRC in 2008 was not to woo the voters and was a matter of routine development work. He sought the permission to cross-examine the Complainant with regard to these guidelines. It is pertinent to note that the request for further examination of the Complainant was declined by a detailed order on 29/7/2013. Therefore, there was no justification for allowing this application for the cross examination of the Complainant. However, the documents attached with the application were taken on the record. Since, these are official documents and undisputed, therefore, it was not even felt necessary to issue a notice of the application to the Complainant.

So far as the application for dismissal of complaint under Section 11 of the Act is concerned Suffice would be to say that an enquiry before the Forum is neither a civil lis nor a criminal trial. The presence of the complainant therefore, is not a sine quo non for proceeding with the enquiry. There are enquiries before this Forum where complaints are filed, but the complainant request for keeping his identity confidential and in some cases after filing the complaint he stops pursuing the same. In such situation, enquiries are continued if they are based on credible information. The Forum take the services of Amicus Curiae to proceed with enquiry. Therefore, this application under Section 11 of the Act is

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misconceived and in ignorance of the provision of the Act. This application is therefore, dismissed.

32. The earlier application of the Complainant for additional facts on the record does not add any fresh cause of action and refers to only a subsequent development regarding the issues involved in the complaint. The Complainant only wishes to place on record Govt. publications which are in public domain and integrally connected with the subject. It is re-iterated that the enquiry conducted by this Forum are not governed by any stringent procedure of Civil Procedure Code or Evidence Act. The Forum conducts an informal enquiry in which there is an earnest search for the truth without being saddled with the technicalities of the Evidence Act or civil procedure code.

Issue of Jurisdiction

33. At the very outset, Mr. Mehmood Pracha, Ld. Counsel for the Respondent had challenged the jurisdiction of the Forum to entertain this complaint, claiming that the complaint is outside the purview of this Forum, it was submitted by the Ld. Counsel that Delhi Lokayukta and Uplokayukta Act, 1995 (herein after referred to the Act) has clearly defined the jurisdiction of the Lokayukta. He refers to the aim and object of the Act stating that the scope, ambit and object of the Act is to eradicate the vice of corruption, favouritism, abuse of power & position, to main probity, transparency and to improve efficiency in public service. He

submitted that the powers contemplated under the Act are not meant to regulate the "administrative decision" of the authority of Govt. This Act does not contemplate vesting power under Article 226 or Article 32 of the Constitution of India to the Lokayukta.

34. Ms. Sunita Bhardwaj, Counsel for the Complainant vehemently refutes this argument referring to provision in Section 2(b) of the Act. It was argued that the acts of "Public Functionary" which fall within the ambit of Section 2(b) of the Act can be enquired into even though they are administrative decision.

35. It is required that a cursory look is given to section 7 & section 2(b) of the Act to understand and deal with objection of the Ld. Counsel for the Respondent :-

"Section 7: Matter which may be inquired into by Lokayukta or Upalokayukta – Subject to the provision of this Act, on receiving complaint or other information or suo-moto –

- (a) The Lokayukta may proceed to inquire into an allegation made against a public functionary in relation to whom either the President or Lt. Governor is the competent authority;
- (b) The Upalokayukta may proceed to inquire into an allegation made against any public functionary other than that referred to in clause (a).
- (c) Provided that the Lokayukta may inquire into an allegation made against any public functionary referred to in clause (b)'.
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Section-2(b) defines "Allegation" and reads as under :

(b) "Allegation" in relation to a 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 harm 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;

Explanation : - For the purpose of this sub clause 'family' means husband, wife, sons and unmarried daughters living jointly with him.

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36. The co-joint reading of Section 7 and Section 2(b) of the Act would indicate the matters where Lokayukta can exercise jurisdiction to initiate enquiry into the allegations against a "Public functionary". If a Public functionary while discharging his / her function as such is guided by improper or corrupt motive or personal interest showing lack of faithfulness to people whom he or she represent and by such discharge of function tend to gain favour for self or any other person then of-course this Forum can enquire into such discharge of function by a Public Functionary. Even though, it may involve examination of the process, the background and the circumstances in which a particular administrative decision is taken by Public functionary. The Ld. Counsel for the Respondent relied on case of "**Ashok Kumar Tyagi Vs. Lokayukta**" (2003-IV AD Delhi 669), in support of his submission that the Lokayukta had no jurisdiction. The cited case is clearly distinguishable and inapplicable to present case and cannot advance submissions as sought. The Lokayukta had sought to question the order passed by Commissioner of Excise in discharge of his statutory function granting a licence to a liquor near the institute of Chartered Accountant and Police Headquarter. The Commissioner Excise was not a Public Functionary and Lokayukta had no jurisdiction over him or his order passed, which could be assailed only in writ jurisdiction. The Court held that the Lokayukta in order to bring the matter within his jurisdiction had issued notice to Finance Minister who was a Public Functionary.

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He argued that the administrative decision by the administrative authorities / Govt. could not be reviewed by the Lokayukta.

In the present case, he submitted that the decision for issuance of PRC was taken by the Delhi Govt. headed by Respondent with the approval of the Central Govt. It is an administrative decision beyond the jurisdiction of Lokayukta.

37. The Ld. Counsel for Respondent however ignores a significant aspect of the aims and object of the Lokayukta Act, inter-alia, is to promote transparency and bring probity in governance. In the present case, the background in which the decision of issuing PRC was taken is significant. Issues of significance pertaining to ethics in the governance, adherence to integrity of norms and conduct and motive involved in discharge of functions of Public Functionaries are raised. One cannot therefore, dispute that this Forum has a jurisdiction to look into the background, circumstances and what actuated the decision. The act or omission of a Public Functionary would be actionable even if the act is purported to have been done under any regulations, if the same involved improper motive. Good administration requires much more than acting legally. Thus, the argument for the Ld. Counsel for the Respondent that this Forum has no jurisdiction to conduct an enquiry into the issues raised in the complaint cannot be sustained and is rejected.

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Plea of Complaint being Motivated

38. The Ld. Counsel for the Respondent argued that the sole objective of the complaint is to extract political vendetta for the three consecutive defeats faced by Complainant's party in the Delhi Legislative Assembly Election. The Complainant in his cross examination had admitted that this complaint was filed after a collective decision taken by his party. It was urged that the Complainant has a vested interest in therefore in maligning the Respondent.
39. Ld. Counsel for the Respondent while submitting his argument ignored the nature of enquiry under the Act and the purpose thereof. It is not a lis between two parties or a criminal trial where intention or motive of the parties in litigation may have a bearing. Under Section 7 the Act Lokayukta is empowered to take cognizance and proceed to inquire into an allegation made against a public functionary either on a complaint, any "other information" or suo-moto. So it is immaterial how the allegation in terms of section 2(b) of the Act against public functionary is brought to the notice of Lokayukta.
40. The credential of the Complainant are not material if the information furnished is credible and make out a case for initiating an enquiry u/s 7 read with section 2(b) of the Act. The Forum is uninfluenced by the motive of the Complainant in filing of the complaint. The Forum exercise its statutory power in

taking cognizance of the allegations in terms of section 2(b) of the Act, even if the complaint is motivated. Therefore, the submissions of the Ld. Counsel for the respondent that this complaint is politically motivated will not dislodge the Complainant. This Forum is concerned with merits of the allegations rather than the source thereof. The above is not to be understood that false and vexatious complaints cannot be proceeded against under section 9 (2) of the Act.

41. The Ld. Counsel for the Respondent had argued that the exercise of issuing Provisional Certificate could not have been carried out by the Respondent individually in her independent capacity. It was an act of the Govt. of NCT of Delhi on the directives of the Govt. of India that authorize the Govt. to issue PRC. The Ld. Counsel for the Complainant vehemently argued that it was the respondent who had taken all the substantive decisions on the issue. For example –

- (a) Respondent sent the advisory note dated 10/5/2008 recommending issuance of Provisional Certificate.
- (b) It was the respondent who had approved the advertisements and had specifically directed the Department to issue advertisement containing attractive slogan mentioning that unauthorized colonies are being regularized (see exhibit CW-1/26).
- (c) The respondent approved inviting application for Extending Village Abadi Regularization primarily with a view to attract

rural voters even in the absence to any notification to that effect
(see exhibit CW-1/28).

(d) The Respondent ignored the advice of the Law Department and also waved the condition of compliance of clause - 4 of the regulation notified on 24/3/2008 and allowed submission of an affidavit assuring furnishing of requisite documents within a stipulated period for issuing of the PRC (refer exhibit CW-1/33 & 1/39).

(e) The Respondent has not complied with the order of Hon'ble Supreme Court dated 21/10/2008 in IA No. 2331 filed by Delhi Pradesh Citizen Council challenging amended notification dated 16/6/2008 whereby it was directed that persons to whom PRC have been or are being issued it must be indicated that PRC issued shall be of no consequence if the condition in the order dated 14/2/2006 in WP (C) No. 725/1994 is not fulfilled. However, the PRC, approved by the Respondent in the meeting held on 1/7/2008 (refer to exhibit CW- 1/37), did not mention this fact. Moreover, even the Revised guidelines 2007 in para 7.2 mentioned that regularization of unauthorized colonies shall be subject to order of Hon'ble Supreme Court dated 14/2/2006 in WP (C) 725/1994.

(f) The respondent approved the PRC for unauthorized colonies falling in notified area, reserved forest area in total defiance of clause 3.3 of the Gazette Notification dated 24/3/2008.

42. The Ld. Counsel for the Complainant had submitted that all the decisions pertaining to issuance of PRC were taken by the

Respondent. The urgency shown in the issuance of PRC just before the impending elections in 2008, clearly shows that the respondent was guided by a motive to woo the electorate by giving a false assurance of the regularization of their unauthorized colonies knowing fully well that some of the colonies could not be regularized in view of clause 3.3 of the notification dated 24/3/2008 which categorically says that unauthorised colonies falling in notified and reserved forest area will not be considered for regularization. The PRC's and advertisements issued also conceal the fact from the electorate that the colonies could not be regularized unless the basic services are provided by the Govt.

43. The Ld. Counsel for the Respondent had submitted that there is no irregularity committed in the issuance of the PRC rather it was a step towards the regularization of the unauthorized colonies. It was submitted that the regularization process was subject to revised guidelines of 2007 and regulations notified vide Notification dated 24/3/2008. This process of regularization was divided in two parts. Clause 4 of the Regulations provided the steps required to be taken by the residents of these colonies. Clause 5 provided the steps which required to be taken by the local authorities. The formal order for regularization could be issued by GNCTD only after completing all the formalities. The Respondent had written the letter dated 10/5/2008 with an Advisory Note to the Minister of Urban Development, Govt of India proposing issue of PRC.

This proposal was approved and clause 4.6.1, 4.6.2 & 4.6.3 were added in the Notification dated 24/3/2008 vide the further Notification dated 16/3/2008. Clause 4.6.1 authorize the GNCT of Delhi to issue a PRC soon after the requirement of clause 4 of the Regulations are fulfilled by the residents of these colonies. Pursuant to this PRC have been issued, it was administrative decision based on the notification approved by the Ministry of Urban Development, Govt. of India. This decision cannot be solely attributed to the Respondent.

44. The main issue in the present enquiry is concerning the need, requirement and urgency of issuing the Provisional Regularization Certificate by the Respondent. The issues which arose for consideration in the matter have been referred in paragraph 13 above. For the sake of brevity they are not being repeated here. The case of the Complainant is that this bogey of regularization was raised in the year 2008 when the Assembly Elections were scheduled. The aim was to woo the voters by giving them hope of regularization of their habitats. The Counsel for Respondent, on the contrary submitted that PRC were being issued to give an assurance to the persons that their habitat will be protected.
45. The guidelines for regularizations of unauthorized colonies were initially framed in 2001, which were revised in 2004 and again in 2007. On the basis of these guidelines the notification dated 24/3/2008 was issued giving in detail criteria of unauthorized

colonies and habitation in clause 3, the procedure for regularization in clause 4 & 5, the parameters / basis of regularization in clause 6. This notification did not speak of issuance of Provisional Regularization Certificate. The conditions in this notification for regularization were stringent and would have required some time for completion of the formalities for regularization.

46. The circumstances in which the Advisory Note and letter dt. 11/5/2008 of Respondent was sent to Union Minister have been set out in para 10 and are not being repeated here. It is seen from the letter and the Advisory Note that amendment sought in the original regulations. In this Advisory Note, it was emphasized that the process of regularization of colonies requires compliance of certain conditions as per clause 4 of the Regulations. Secondly, after this compliance the local bodies have to complete necessary formalities which as per respondent undoubtedly would take a very long time. Therefore, to assure the people living in unauthorized colonies that their habitat would not be demolished the idea and need of issuing of a Provisional Certificate on the compliance of clause 4 of the Regulations was mooted, accepted and acted upon.

47. This Advisory Note dated 11/5/2008 led to further notification dated 16/6/2008 which inter-alia provided a clause 4.6.1 as under :-

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"Soon after the requirements of clause 4 of the regulation are fulfilled by the residents of the colonies, the GNCTD may issue a Provisional Regularization Certificate to that unauthorized colonies. The local body / DDA and GNCTD would complete the prescribed formalities before formal regularization of the unauthorized colony as prescribed under clause 5 of the regulations within a period of 12 months from the date of issue of the Provisional certificate. Lt. Governor, Delhi may relax a time limit in respect of the individual colonies as provided in clause 5.11 of the regulations".

Ld. Counsel for respondent had submitted that decision for issuing PRC was that of the Govt. and not of the Respondent alone. The above said advisory note was placed on record pursuant to a query regarding the proposal if any, by the Govt. of NCT of Delhi which led to the issuance of notification dated 16.6.2008. This advisory note was sent along with a D.O. letter of the Respondent dated 11.5.2008, this letter nowhere suggests that this proposal for PRC was mooted by the Cabinet of Delhi Govt. the onus was on the Respondent to show that this D.O. letter was issued with due consultation with the Cabinet. The respondent however did not choose to bring any evidence in this regard despite opportunities being given.

48. It is pertinent to note that the guidelines, 2007 in clause 7.2 clearly mentioned that regularization of unauthorized colonies shall be subject to the order of the Supreme Court dated

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14/2/2006 in W.P. (C) No. 725 of 1994 and vacation of stay dated 13/10/1993 in CW(P) No. 4771 of 1993 in the High Court of Delhi. The clause 7.2 of Notification dated 24/3/2008 also endorsed this. The order of the Hon'ble Supreme Court dated 14/2/2006 exhibit CW-1/8 reads as under :-

"In case the state / authorities are not in a position to make available the basic services in respect where of it is admitted that there are severe limitations, there shall be no regularization of unauthorized colonies. In other words, it means that the regularization should be made only if it is possible for the respondents to make available in the 'basic services'. This order will continue till further orders".

49. As per this order, the regularization of the unauthorized colonies was restrained if the basic services could not be provided in those colonies. The PRCs issued pursuant to the notification dated 16/6/2008 did not confer any status of regularization on these colonies, in view of the above order of the Hon'ble Supreme Court. This was in the knowledge of the Delhi Govt. still it was propagated by way of advertisements, that unauthorized colonies are being regularized. As per its own admission Govt. of NCT of Delhi spent Rs. 2,97, 52,777/- on advertisement subsequent to the revision of guidelines, in 2007. In their zest of propagating and capitalising this issue, admittedly PRC were issued to around 143 colonies which could not have been regularized in terms of clause

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3.3 of the regulations dated 24/3/2008. Clause 3.3 reads as under:-

“The following types of colonies or part thereof would not be considered for regularization : -

- (a) Unauthorized colonies / part of colonies / habitations falling in notified or reserved forest area.
- (b)

Thus, despite this specific provision PRC were issued to 143 colonies falling in notified / forest area land, this reflect a sense of urgency at the cost of caution in issuing the PRC.

- 50. Further the process of issuing PRC initiated despite the advise of the Law Department and also by waving the condition of compliance of clause 4 of the Notification dated 24/3/2008. The Law Department had specifically advised that PRC can be issued by the GNCT of Delhi only after fulfilment of requirement of clause 4 of the regulations. It also noted that certain requirements of clause 4 were still required to be fulfilled and there is no provision in the clause 4 for issuance of general certificate for PRC (Ref. To exhibit CW-1/33). This advice was ignored.
- 51. In the meeting held on 1/7/2008 presided by the Respondent, Chief Minister, a decision was taken to meet the requirement of clause 4 of the Regulations notified by the Govt. of India on 24/3/2008. It was decided that the resident societies may furnish

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the requisite documents or in the alternative submit affidavit that they shall be furnishing the requisite documents within a stipulated period. Thus anxiety to please electorate by issuing PRC is reflected. The respondent decided to issue PRC even on affidavit promising compliance of clause 4 of Regulations. No mechanism decided to verify such an affidavit as to its correctness. Obviously the PRC itself was not leading to regularization. This entire exercise of PRC was raised to give a semblance of regularisation of the colonies. This in no way justified expenditure on propagating issuance of PRC for unauthorized colonies which could not be regularised unless conditions in clause 4 and clause 5 of the Regulations dated 24/3/2008 are satisfied.

It is pertinent to note here that this Forum had submitted an Interim Report in Complaint Case No.1050/Lok/2011, titled Arun Rai Vs. Kamlesh giving suggestions on the basis of report of the Divisional Commissioner (Revenue) to at-least verify the existence of the colony before issuing PRC. Accepting an affidavit in lieu of compliance of clause 4 of the Regulations without physically verifying the existence of the colony leaves room for corruption and PRC being issued to non- existent colonies.

52. It may also be noted that respondent had not taken into consideration the order of Hon'ble Supreme Court dated 21/10/2008 in IA No. 2331 filed by Delhi Pradesh Citizen

Council challenging amended notification dated 16/6/2008. In the said order it was observed as under :

“It is brought to our notice by the Ld. Amicus Curiae that Provisional Regularization Certificate of Unauthorized Colonies shall be issued. Needless to say that if it is ultimately found that the stipulation in the order of this Court dated 14/2/2006 in WP(C) No. 725 of 1994 have not been fulfilled then the inevitable conclusion would be that the PRC issued shall be of no consequences. This shall be clearly indicated to the persons to whom PRC have been or are being issued,”

The Respondent had approved the PRC in the meeting held on 1/7/2008 (refer to exhibit CW-1/39). This draft PRC duly approved by the Respondent does not indicate to the person to whom it is issued that this PRC will be of no consequence if the condition in the order dated 14/2/2006 in WP (C) No. 725/1994 have not been fulfilled. This draft only says that PRC would be subject to the scrutiny of the requisite documents.

53. The scenario is now clear that issuance of PRC was rushed through just before the impending election in November 2008. The feverish pitch at which the steps were taken to issue PRC indicates focus on the impending General Election. No earnest effort in the direction of regularization of colonies is reflected from the record of the UD Department prior to the year 2008. Therefore, the issuance of PRC for unauthorized colony prior to

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the election and extensive advertisement thereof was apparently motivated to win over electorates by giving the impression that unauthorized colonies are being regularized. In fact, the issuance of PRC did not amount to steps towards regularization of the colonies as claimed by Ld. Counsel for Respondent. The record suggests that PRC were issued simply on the basis of compliance of clause 4 of the Notification dated 24/3/2008, and in some cases even on basis of affidavit. Without the compliance of condition / stipulation in clause 5 of the Regulations / Notification dated 24/3/2008, this issuance of PRC was of no use and consequence.

54. The PRC has been issued pursuant to the amendments made in the notification dated 24/3/2008 whereby clause 4.6.1 was added which permitted issuance of PRC. This Forum is not going into the question of the legal validity of the PRC. This Forum is neither venturing into the question of legality of the regularization nor the administrative decisions taken by the Respondent. This Forum is not vested with the said jurisdiction and has jurisdiction only to inquire into complaints relating to allegations defined under Section 2 (b) (i) and is vested with only recommendatory powers.

However, ethics in governance, transparency in administration and probity in the discharge of function by a Public Functionary, are seen by the Forum as necessary concomitants of good governance. Public Functionaries and the Government are trustees of the people, therefore they are bound to fulfil their

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responsibilities towards the public exchequer. When an administrative decision is guided by an improper motive of self or political gain, it amounts to lack of faithfulness to the people. This Forum can inquire into the allegations concerning the conduct of Public Functionaries by examining such administrative decisions to see whether the same were motivated by any of the ground under Section 2 (b) of the Act. This would be in furtherance of the aims of the Lokayukta statute to usher in good governance and transparency in the administration.

In view of the facts and reasons as given in paras 40 to 53, it is held that the amendments to the regularization in 2008 and the issuance of PRC on the eve of the elections was a populist measure, intended to woo the voters without fully complying with the conditions required for notification of PRC. Notification dated 4/9/2012 by which regularization of colonies was announced just prior to the impending elections for covering colonies situated on private land and colonies on public land, being prospective in nature, was in violation of norms of conduct. The Respondent had also failed to lead any evidence or place on record any facts regarding any major danger of demolition as a reason for issuing PRC to protect the habitats of residents in unauthorised colonies.

55. It is advisable that the Govt. should avoid resorting to announcing populist measures at the expense of the public exchequer for the political gains. It is the call of the day to raise the ethical

standard in governance. The society is in the mire of corruption, lack of sincerity, favouritism and nepotism. It is the duty of the citizens and particularly of the ruling class to bring the society out of this mire. The Society can hope from their representative i.e. "Public Functionaries" to set high standard of governance instead of indulging in populist measure at the expense of the state.

56. It is known and accepted fact that political parties across the board do indulge in populist measures when elections are round the corner. The issue of regularization of unauthorised colonies was given a thought in the year 2001 when guidelines were framed for the regularization. Since 2001 to 2008 not a single colony was regularized. On the anvil of election this issue got momentum. Political parties offer sops before the election. However such acts are to be dealt politically by the opposition parties in the political arena in a democratic manner. To bring purity in the polity, norms are required to be developed for the governance which would be applicable irrespective of the time whether model code of Conduct is in operation or not. A welfare State is to look after the interest of down trodden and lower strata of the society with compassion but welfare schemes such as giving housing to the poor people or the other benefits should not be reserved to be announced on the eve of elections. Such announcements give a taint to the motive of the welfare scheme. Working for the welfare of the society should be a way of governance and continuous process. Bringing such political sops

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prior to election definitely are with an eye on the election. Though the absence of any bar on such political sops being offered, it would not be strictly speaking an act against the norms and integrity in the sense that it may not involve any fiscal corruption.

57. In view of the foregoing discussions in paragraphs 40 to 53 and conclusion reached a case is made out for issuance of an Advisory by the Competent Authority the President of India to the Respondent Chief Minister, of GNCT of Delhi that introduction of populist measures on the eve or near about the elections such as (i) issuance of PRC without compliance of stipulation required to be indicated by Supreme Court in the order dated 21/10/2008, in the instant case, in the year 2008 on the eve of election which are intended for political gain and (ii) more recently notification dated 4/9/2012 providing inter alia for prospective regulation of colonies on public land, without fixation of cost of land by land owning agency etc., should be shunned.

File be consigned to Record Room.


(JUSTICE MANMOHAN SARIN)
LOKAYUKTA, DELHI

Dated : ~~5.11~~ 5.11. Nov., 2013.
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