

**BEFORE HON'BLE LOKAYUKTA
JUSTICE MANMOHAN SARIN
COMPLAINT NO. C-1473/LOK/2012**

IN THE MATTER OF:-

INQUIRY UNDER SECTION 7 READ WITH SECTION 2 (b) (1) OF THE DELHI LOKAYUKTA AND UPALOKAYUKTA ACT, 1995, IN THE MATTER OF LARGE SCALE IRREGULARITIES COMMITTED BY THE UNAUTHORISED COLONY CELL OF URBAN DEVELOPMENT DEPARTMENT, GOVT OF NCT OF DELHI, IN POLITICAL SUPPORT OF THE MINISTER FOR URBAN DEVELOPMENT SHRI RAJ KUMAR CHAUHAN, DURING THE PERIOD BEFORE HOLDING OF ELECTIONS TO THE DELHI ASSEMBLY.

AND

IN THE MATTER OF:-

Dr. NAND KISHORE GARG,
10/4, KESHAV KUNJ,
EAST PUNJABI BAGH,
NEW DELHI 110026. INFORMANT/COMPLAINANT

VERSUS

SHRI RAJ KUMAR CHAUHAN,
MINISTER FOR URBAN DEVELOPMENT,
GOVT. OF NCT OF DELHI RESPONDENT

1. Dr. Nand Kishore Garg, Informant /Complainant in person.
2. Sh. Praveen Kumar, Advocate for Dr. Nand Kishore Garg
3. Sh. Anish Dayal, Advocate and Sh. Ranbir Dutta, Advocate
Amicus Curiae
4. Sh. V.K. Tandon, Adocate for Respondent Sh. Raj Kumar
Chauhan
5. Sh. Udai Kumar, Jt. Secretary, Urban Development
Department
6. Sh. Madhukar, Ex- Jt. Secretary, Urban Development
Department

REPORT

1. A communication dated 18-04-2012, was received from the Complainant/Informant Dr. Nand Kishore Garg, Chairman Maharaja Agrasen Technical Education Society alleging that large scale irregularities were committed by Shri Madhukar, the then Jt. Secretary (UC Cell), Department of UD, Govt of NCT of Delhi, in political support of the Minister for Urban Development Shri Raj Kumar Chauhan, prior to the elections of Delhi Assembly.
2. In his communication, he referred to a Cabinet Decision No. 1131 dated 20-11-2007 of the Govt. of NCT of Delhi, under which concrete cementing of roads in unauthorized colonies was to be done where water lines or sewer lines or any other services "have already been laid", thereby obviating the need to frequently cut the roads.
3. It was alleged that the said decision was tampered with by making suitable letters issued so as to include execution of works where such services "are to be laid". It was alleged that this was done to meet the requirements of political bosses. Mr. Madhukar, a DANICS officer, Jt. Secretary in Urban Development Department who was also holding the charge of Executive Director in DSIIDC, was signatory of the letter communicating the tampered decision. Copy of communication letter dated 18.4.2012 is annexed hereto as **ANNEXURE-A** and copy of the Cabinet decision dated 20.11.2007, notified on 26.11.2007 is annexed hereto as **ANNEXURE-B**.
4. It was alleged that works worth Rs. 300 Crores were executed through nexus with Sh. Madhukar and the Respondent Minister, for political advantage. Works were broken into smaller works of Rs. 1.00 Crore each and 300 works were claimed to have been carried out in 40 odd colonies.
5. The Informant/Complainant alleged that CBI had carried out an investigation and had found large scale irregularities, but

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the report was got sidelined from the Office of the Home Minister, Govt. of India, to save embarrassment to the Govt. of Delhi. He prayed to call for records from UD Department and to take cognizance of the matter involving Respondent Shri Raj Kumar Chauhan, Respondent herein.

6. For facility of reference, extracts from tampered Cabinet Decision communicated by letter dated 25.4.2008 is given below.

"As per the decision of the Cabinet dated 20-11-2007, as far as possible, the cement concreting of roads in unauthorized colonies to be done where water lines or sewer lines or any other services "are to be laid" thereby obviating the need to frequently cut the roads".

The words "have already been laid" in the original cabinet decision were substituted by "are to be laid" illegally and unauthorisedly as shown above.

7. This, as per the Informant, was done to benefit various unauthorised colonies particularly falling in Mahipalpur. Informant claimed that the Respondent Minister Sh. Raj Kumar Chauhan and his associates expended Rs. 50 crore and other amounts through DSIIDC and other agencies like Irrigation and Flood Control Department to benefit their close associates and others who made investments in these unauthorised colonies. Moreover this was done to obtain unfair political advantage.
8. The Informant prayed for calling of the records of various works done in these colonies for laying of concreting roads, release of funds from UD Department and sanction thereof. Informant's name was also kept confidential in terms of section 14 of the Act for the time being. Note recording the above was signed by informant in token of his confirmation. The same is annexed hereto as **ANNEXURE-C**.
9. A notice dated 13-07-2012, was issued to the Pr. Secretary, Department of UD to produce the following records in original:-

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- i) Cabinet Decision No. 1311 dated 20-11-2007 notified vide F.No.3/3/2004-GAD/CN-4563-4574 dated 26-11-2007.
 - ii) Letter in original bearing No. F. No. 103(31) UC/UD/MLA/2004/Pt. I/7631-7635 dated 25-04-2008, issued by the then Joint Secretary, Unauthorized Colonies Cell, Department of UD, Govt. of NCT of Delhi, quoting the tampered Cabinet Decision.
 - iii) Details of quantum and value of works carried out in the aforesaid 11 Colonies of cement concreting of roads and the amounts spent thereon.
 - iv) Any other relevant record or file concerning the implementation of the aforesaid Cabinet Decision.
10. It is not necessary to record every proceeding which went on from July 2012 till 8th January 2013, in the attempt to trace the original letter dated 25.4.2008, which was reported as "untraceable". It would suffice to observe that time was repeatedly granted to officers from the UC Cell of UD Department, who stated they were writing to GAD, DSIIDC and I&F Department for requisition of records in terms of order of this Forum. This Forum noticed a certain unwillingness to provide information involving serious allegations of tampering of cabinet decision. Ultimately, notice had to be issued for personal appearance of the Pr. Secretary (UD), Pr. Secretary (GAD), Chief Engineer (I&F).
11. Cabinet Decision dated 20-11-2007, was made available, however, the file of UD Department which contained the letter dated 25-04-2008 was not made available. The Pr. Secretary (UD) stated that since file bearing No. 103/(30)/UC/UD/MLA/2004/Pt/I/7631-7635 dated 25-04-2008 was not traceable, an FIR had been lodged with police station I.P. Estate. This Forum required the Secretary to file an affidavit narrating the steps taken to trace the file. This was because copies of the letter dated 25-04-2008 addressed to the Chief Engineer DSIIDC, had been endorsed to several persons including Shri Vijay Singh Lochav, Ex-MLA, PS to Minister Urban Development, PS to Pr. Secy. UD, and PA to Special Secretary, UD. Department of UD claimed that copies

of the letter addressed to different authorities are not retained by the addressees but are returned to the original department with their comments/report and form part of the originating file. Hence it was all the more necessary that file bearing No. 103(30)/UC/UD/MLA/2004/Pt/1/7631-7635 was traced. The above procedure appears unusual and shortcomings therein would be taken up while making suggestions for improvement under section 16 of the Act.

12. As the file was reported as untraced, the Investigating Officer with whom the FIR had been lodged by the UD Department treated it as a non-cognizable case in which he was precluded under Sec. 155 Cr.P.C. from investigating the matter, without leave of the Magistrate. The I.O and SHO were duly apprised that the case involved tampering of a cabinet decision, inter alia, commission of penal offences. Thereafter the case was transferred to the Crime Branch and the file was traced reportedly from Planning Department.
13. Considering the nature of the matter, it was considered necessary and appropriate to appoint an Amicus Curiae in the matter to assist this Forum. Mr. Anish Dayal, Advocate, was appointed as Amicus Curiae on 23-11-2012. The Department of UD also placed on record the names and addresses of owners/occupants of plots in 11 unauthorized colonies in question.
14. I wish to place on record my appreciation for the able assistance rendered by the Amicus Curiae Mr. Anish Dayal, who spent considerable time in going over the correspondence and records and submitted his analysis. He prepared a simplified chart containing names and addresses of owners of the plots in the unauthorized colonies in question to facilitate the informant to relate to the names and addresses of the beneficiaries of the plots in these 11 unauthorized colonies so as to be able to identify any connection between the owners/beneficiaries of the plots with the public functionaries.

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15. During the proceedings, apart from documentary evidence in terms of record which had been directed to be produced, statements of Shri Kumar Swamy, Secretary (GAD), Shri Amitabh Kundu, Deputy Secretary (GAD), Sh. Ish Kumar, Chief Engineer (I&FC), Sh. K. Sambha Murthy, Supertending Surveyor of Works, (I&FC), Sh. Rajiv Makkar, Chief Engineer (DSIIDC), Sh. Shalabh Kumar SE (SW), DJB, Shri Vijay Singh Lochav, Ex-MLA and Sh. Madhukar former Joint Secretary, (UD) were recorded, inter-alia, on orders placed, works and documents executed and production of record.
16. Officers of (GAD) produced the Cabinet Decision No. 1131 dated 20-11-2007 and the minutes of the cabinet meeting. They stated that subsequent letters or corrigendum thereof was not with them since the role of GAD ended on releasing the cabinet decision. It was evident from the cabinet decision that cement concreting of roads in unauthorized colonies was allowed where water lines or sewer lines or other services have already been laid, thereby obviating the need to frequently cut the roads. The cabinet decision also clarified that bitumen surfacing could be subsequently replaced by cement concreting once necessary infrastructure had been provided. This was the rationale and legitimate way for development works in unauthorised colonies. However this is not the way things happened as would be seen. A cement concreting road costs 8 to 10 times more than the cost of a bituminous surface road.
17. Officials of Irrigation and Flood Control Department stated that no amount had been spent by them either on carrying out cement concreting of roads or under any other head in these 11 unauthorised colonies which were taken up for scrutiny .
18. Sh. Rajiv Makkar, Chief Engineer, DSIIDC gave details of 8 colonies with their registration numbers, where works had been carried out and the 3 colonies bearing registration No. 320, 1327 and 137, where work had not been carried out. He stated that in total an amount of Rs. 10.54 crores approximately was spent in these unauthorised colonies by his

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department. He was not certain whether water and sewer lines existed in these colonies. The works in these colonies were taken up pursuant to the order dated 6.9.2007, issued by the UD Department. He further stated that in fact work of cement concreting of roads was taken up in all the unauthorised colonies in Delhi. Subsequently his detailed statement showing the date of commencement and completion of works was also filed with split up between the earth work and cement concreting work and the drain work being given. Mr. Makkar conceded that but for the receipt of letter dated 25-04-2008, from the Joint Secretary (UC), UD Department, containing the purported cabinet decision in the form in which it was done, the work of cement concreting of roads in these colonies could not have been taken up and executed.

19. He stated that a letter dated 14-08-2012, was sent to the Additional Secretary (UD) by the Project Director, whose signatures he recognized. Complete details of construction of roads and storm water drains were filed by him vide Exb. RM-1, when his statement was recorded on 12-09-2012. As per this statement works worth Rs. 52.74 crores of cement concreting in these 11 unauthorized colonies and the colonies slated for regularization were carried out. Exb. RM-1 is annexed hereto as **ANNEXURE D**.
20. Shri Shalabh Kumar, SE (SW), DJB, gave position of the stage and works of water and sewer lines in the 11 colonies in question together with their date of commencement and completion. Though sewer lines were not laid in any of the colonies but work of laying water lines was started between June to December, 2008 and was completed in the last colony in January 2009. The total worth of works was Rs. 1.58 crores.

EVIDENCE OF SHRI VIJAY SINGH LOCHAV, Ex.MLA,
PUBLIC FUNCTIONARY.

21. Statement of Shri Vijay Singh Lochav, Ex.MLA was also recorded on oath. He tendered as Exb. VSL-1, photocopy of letter dated 25-04-2008 received by him which carried the

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interpolation "are to be laid". He deposed that Provisional Regularization Certificates (PRCs) were issued for regularization of unauthorized colonies which included 11 colonies of Mahipalpur. According to him there were about 20 colonies in his constituency which were issued PRCs. Roads and drains did not exist in the 11 colonies in question. There were no sewers or water lines. He clarified that water lines had been laid in Avantika Colony, Chhawla Extension Part-I, Najafgarh Road and Kanganheri Road, Chhawla Extension near BSF Camp. Significantly, he deposed that letter dated 25-04-2008 was issued as a result of efforts made by him and others. This effort was put in by MLAs across party lines. Representations were sent from RWAs to the concerned authorities including the Minister for UD. He stated that he had thanked the Minister for UD Sh. Raj Kumar Chauhan whenever the work was done for his constituency. He stated that after receipt of letter dated 25-04-2008, containing the words "are to be laid", he followed up with DSIIDC for getting these works done in the 11 colonies. The letter had been issued by Joint Secretary Shri Madhukar. He deposed that neither he nor his family members or relatives made any purchase or sale of land in these 11 colonies. He said that he never asked Raj Kumar Chauhan nor he has any knowledge whether the latter's family members had any interest or stake in the land in these 11 colonies.

EVIDENCE OF SH. MADHUKAR, JT.SECRETARY (UC CELL), UD DEPARTMENT.

22. (i) Mr. Madhukar, former Joint Secretary (UD) was examined on 30-07-2013 and 24-10-2013. The salient parts of his deposition are being noticed. He stated that he was the Project Director (Unauthorized Colonies) and used to meet representatives of RWAs including Councillors and MLAs. He also was the Joint Secretary in Municipal Bodies which brought him in touch with public functionaries. He stated that he had met Vijay Singh Lochav, MLA, who used to pursue development works in unauthorized colonies like other MLAs.

Madhukar deposed that he had not visited the colonies but had signed the PRCs as physical verification was not a pre-condition. He deposed that letter dated 25-04-2008 is signed by him but the words on the first page "are to be laid" were written after he had already signed the letter and it was a subsequent interpolation done by someone else. He could not say whether the interpolation was done in the letter copied to Vijay Singh Lochav, PS to Pr. Secretary (UD), PA to Special Secretary (UD) and PS to Minister, UD. According to him interpolation could have been done by someone in the executing agencies to cover the works executed by them which were not possible to be done as per the original Cabinet Decision. He stated that he and his staff faced inquiry. But the inquiry proceeding conducted by shri Hans Raj, Addl. Secretary, did not find him or his staff at fault and absolved them. Mr. Madhukar admitted that letter dated 16-09-2008 at Page 245/C and letter dated 16-09-08 appearing at Page M/1 both had been issued by him. The letter at Page 245/C is addressed to Engineer-in-Chief MCD, Chief Engineer (O&M), DSIIDC and Chief Engineer (I&FC), carrying subject "clarification regarding construction of cement concreting roads" with no copy endorsed to anyone having the words "already been laid" while letter No. F.103(31)UC/UD/MLA/2004/Pt-2/16861-16864 at Page M-1 of the same date containing the words "are to be laid" is addressed to Chief Engineer DSIIDC with copies endorsed to Sh. Vijay Singh Lochav, MLA, PS to Minister UD, and PS to Pr. Secy. UD. It was put to him as to how two conflicting letters came to be signed by him on the same date, he replied saying that it was not as if both the letters were typed in his office and files are put up and signed at different levels. There was no satisfactory explanation for it. He said that there could not be any ulterior motive in issuing clarification in one and persisting with the error in the other.

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- (ii) He admitted that considerable works by way of cement concreting of roads were carried out even in colonies where water and sewer lines had not been laid. He also agreed that there would be rise in land prices as a result of cement concreting of roads and the members of RWA and land owners would definitely benefit. He was not aware of any particular politician who gained on this account. He stated that he cannot say the quantum or value of work required in relaying or relocating the roads which would have to be broken down because of subsequent laying of sewer or water lines.
23. He sought to explain the interpolation in the letter dated 25.4.2008 by outsiders by stating that representatives of RWAs, MLAs and Councillors used to come and take the files and carry it with them for signatures and approval of other authorities. He admitted that interpolation in the Cabinet decision was a serious matter. On being shown the Corrigendum dated 10-05-2008 issued under his signatures he admitted that he came to know about the interpolation in May 2008 itself and not after Bararia's complaint. He stated that it was quite possible that because of pressure from public representative/elected representative, RWAs regarding immediate provision of cement concreting of roads in unauthorized colonies where even basic amenities were not existing, this interpolation came about in the Cabinet note. He mentioned that signing of letter at Page-M/1 was a mistake. He denied that he was working in collusion with public representatives in having the works done contrary to the cabinet decision. He stated that he would not have issued a clarification of "already been laid" if he was in collusion. He admitted that both the letters dated 16-09-2008 at Page 245/C and M-1 were issued after Minister's Order dated 09-09-08.
24. Mr. Madhukar was recalled for examination on 24-10-13, when he clarified that he did not receive any notice of inquiry from Hans Raj, Additional Secretary. He was never called and no questions were asked. He had learnt about the complaint in office but he had not asked for a copy as he had not done

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anything wrong. He also had additional charge as Executive Director DSIIDC. He knew about the interpolation while working in DSIIDC. As Executive Director, he was not responsible for execution. He said neither he nor the CEO objected to the practice of MLAs, Councillors with RWA representatives coming and carrying files with them for signatures to different sections in offices. He admitted that when roads are laid in colonies and plots are cut the market prices of the plots would increase.

25. It is also quite clear that it was only pursuant to the communication of 25-04-2008 that DSIIDC and other departments commenced work of cement concreting and storm water drains in these colonies. Admittedly, a considerable amount, almost 11.62 crores, was spent in 2008-09 for these works in the eleven colonies. Further, cost of base course (CC) in these colonies was to the tune of Rs. 50.48 crores. This was despite the original cabinet decision of 20-11-2007, the essence of which was clearly violated by concerned agencies.
26. The letter of DSIIDC dated 03-06-2008, is also instructive in this regard. Reference is invited to the note of Chief Engineer (O&M) DSIIDC on the subject titled "Seeking Amendment in the Permission Granted by the Department of UD for Carrying out Developmental Works, i.e. Construction of Roads and Drains in unauthorized Colonies". Reference in this case was made to the permission being given which carried the words "have already been laid". The DSIIDC recorded that the works in unauthorized colonies of cement concreting roads were being carried out in all colonies whether water lines or sewer lines or any other services were laid or not. A candid acknowledgement was that in most of the colonies taken up so far water or sewer lines had not been laid. Further it records that in the discussions in the meetings taken by Minister for UD namely Raj Kumar Chauhan and as per instructions of RWA people at site cement concreting roads are laid either in the complete width or in the middle portion leaving 2 ft. on the sides of the roads where pavement tiles

are used in place of cement concreting. The note goes on to record that in the meeting with the UD and as conveyed by Jt. Secretary UD there was a discrepancy in the permission granted and the works being actually executed at the sites noted above. Further that the Hon'ble Minister had kept a copy of the permission so that he could take necessary action to get the amendment done in the permission letter issued by the Joint Secretary (UC). However, in a recent meeting when the subject matter was brought to the attention by us before the Minister some officials of UD Department indicated that this is a decision of the cabinet and therefore they cannot change language of the permission. Thereupon he requested that in such a case they would put the case before the Cabinet for correcting the anomaly which appears to have crept in due to some drafting or other error. Copies of the Cabinet decision dated 20.11.2007, notification dated 26.11.2007, letter dated 24.4.2008 are annexed hereto as **ANNEXURES-E and F** respectively. Copies of page 245/C and M-1 are annexed hereto as **ANNEXURES- G and H**, respectively.

ROLE OF THE RESPONDENT AND ALLEGATIONS AGAINST HIM.

27. Having regard to the evidence recorded so far, including statements of Dr. Nand Kishore Garg, Shri Vijay Singh Lochav and Mr. Madhukar, and the available record, it was considered necessary to call for the response and comments of Shri Raj Kumar Chauhan, Minister (UD). This was done to provide fullest opportunity to Shri Raj Kumar Chauhan, to seek any clarification from Dr. Nand Kishore Garg, Mr. Madhukar and Shri Vijay Singh Lochav, or to cross examine them. Dr. Nand Kishore Garg and Mr. Madhukar were also directed to be present on 27-08-2013. Copies of the Complaint, statements of Dr. Nand Kishore Garg, Shri Vijay Singh Lochav and Mr. Madhukar were sent to Shri Raj Kumar Chauhan.

Shri V.K. Tandon, Advocate, entered appearance on his behalf. Vide orders dated 27-08-2013, since the Counsel for

the Respondent was not present, the matter was adjourned to 19-09-2013, observing that if this opportunity is not availed of by the Respondent, his right to seek clarification, cross examination shall stand closed.

On 19-09-2013, Shri V.K. Tandon, sought time to inspect and examine the entire record and then discuss it with the Minister and seek his instructions regarding whether to cross examine and give clarifications and his response accordingly.

28. In the event, reply was filed by Shri Raj Kumar Chauhan. It was averred that complainant has alleged some alteration in the sanction letters issued under the signatures of Sh. Madhukar, Jt. Secretary (UD), the said alteration could be possible because Sh. Madhukar a DANICS officer was also working in DSIIDC as Executive Director looking after the work of unauthorized colonies and was also working as Jt. Secy. (UD). Only a passing statement has been made that Mr. Madhukar could have easily done all this to please the political bosses. It has been averred that no allegation regarding the role of the answering respondent in alteration of the letter dated 26.11.2007 has been made. He stated that no directions of any nature and/or any account whatsoever were ever given to any one, much less to Shri Madhukar with regard to any alteration to be made by him. He stated that there was no involvement of the answering respondent in communication of the Cabinet decision. There is nothing to show that the said letter was written at the behest of the answering respondent. Complainant's case is based on presumption and assumptions. The allegations are general even in the statement of 5.8.2013. The reply filed is annexed hereto as **ANNEXURE-I.**

From the reply, it would be seen that the emphasis and focus by the Respondent has been on the Respondent not having given any instructions or directions to Mr. Madhukar, Joint Secretary (UC Cell) to issue the conflicting and contradictory directions following the tampered cabinet

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decision. The reply does not explain the inaction on the part of the Respondent, despite the tampered cabinet decision, conflicting directions and laying of cement concrete roads everywhere, i.e. including where sewer and water lines had not been laid, having been brought to his notice.

29. The following facts and correspondence are relevant to understand the role and inaction of the Respondent in the matter:-

(i) The cabinet decision taken on 20-11-2007 and notified on 26-11-2007 related, inter alia, to provision of roads and drains in unauthorized colonies concerning the Ministry of the Respondent. The Respondent Minister is expected to be fully in the knowledge of the same. The said decision provided that "cement concreting was to be done where water lines and sewer lines or other services have already been laid thereby obviating the need to frequently cut the roads".

It was also duly copied to the Secretary, Department of UD.

(ii) The communication dated 25-04-2008, issued by Mr. Madhukar, Joint Secretary (UC) Department of UD addressed to the Chief Engineer, DSIIDC conveying the administrative approval of the interpolated cabinet decision was duly copied to Vijay Singh Lochav, MLA, Minister of UD, Principal Secretary (UD) and Spl. Secretary (UD). In normal course, the Respondent himself and, in any case, his office should have noticed the interpolation and taken corrective steps. Thereafter Mr. Madhukar, Joint Secretary (UC Cell) issued a corrigendum dated 10-05-2008 addressed to the Chief Engineer, DSIIDC, correctly conveying the cabinet decision dated 20-11-2007.

(iii) Mr. Deepak Jain, Chief Engineer (OM), DSIIDC, had initiated a note bearing No. DSIIDC/ CE(O&M)/ UAC/2008 dated 3-6-2008 pointing out that while the cabinet decision of 20-11-2007 provides for provision of

cement concrete roads in those colonies where sewer lines and or water lines or any other services have already been laid, the factual position was that DSIIDC or I&FC Department were carrying out the works and laying cement concrete roads in all the colonies whether water lines or sewer lines or any other services have been laid or not. It was pointed out that as per discussions in the meetings taken by the Hon'ble Minister of UD, i.e. the Respondent and as per instructions of the concerned MLA or RWA, cement concrete roads are laid either in complete width or in the middle portion leaving two sides of roads where paving tiles are used in place of cement concrete.

The discrepancy in the permission granted and the works being carried out was also pointed out. The Respondent Minister had assured that he would take action to get the amendment done in permission letter issued by the Joint Secretary (UC). Subsequently the subject was broached by officials of DSIIDC in a meeting with the Hon'ble Minister, some officials of UD Department indicated that this was a decision of the cabinet and therefore they cannot change the language of the permission. The Chief Engineer requested the Ministry to take up the matter with the cabinet for getting the decision amended since cement concrete roads were being laid in unauthorized colonies irrespective of the fact whether sewer lines or water lines have or have not been laid. This note was then sent to the Pr. Secretary (UD).

- (iv) On 11-09-2009, the Respondent, i.e. Shri Raj Kumar Chauhan, Minister PWD/UD passed an Order with reference to the execution of certain development works in colonies at the request and representation of Shri Vijay Singh Lochav, MLA, where the Department was having budget deficit. At Page-30/9, Para-158, he observed, "the resolve of the government is quite clear

and to provide complete infrastructure and facilities in all unauthorized colonies for the benefit of large number of people residing there. Therefore approval in principle is granted for the above mentioned works and executing agencies may be asked to start work of floating tenders for awarding the work".

30. From the foregoing, it would be evident that the Respondent was fully in the know of the matter and its intricacies. He could have and should have taken corrective steps as a responsible Minister to have the cabinet decision modified if it was so required in the circumstances, rather than have a situation in which officers of the ilk of Mr. Madhukar issue contradictory statements.

It is in this background that the action of the Jt. Secretary (UC) Mr. Madhukar in issuing two contradictory letters of 16-09-2008 conveying contradictory positions of the same decision, have to be viewed. Contemporaneously, on 20-10-2008, the complaint made by Shri Bararia to the Lt. Governor was also directed to be sent to the Pr. Secretary (UD) for appropriate action.

31. Regarding allegations made against the Respondent, Dr. Nand Kishore Garg, Informant/Complainant, who had complained about the interpolation of the cabinet decision and unauthorized work being carried out in colonies where water lines and sewer lines had not been laid, the basic premise was that the Joint Secretary (UC Cell), Mr. Madhukar had done this at the behest of and to oblige the political bosses and in particular the Respondent. As a result of the cement concreting of the roads, the land value had gone up. To support the allegation of the Respondent having a vested interest or connection with the land owners, it was necessary to establish by positive and direct evidence, the interest of the Respondent in plots in the 11 colonies and/or with the owners of the said plots. No such evidence has come forth. A list of the names of all the land owners/plot holders in these colonies was made available to the Complainant, if he could demonstrate the nexus of the Respondent. The Complainant

was unable to do that. Shri Vijay Singh Lochav, Ex. MLA, candidly admitted that the letter dated 25-04-2008, issued by Mr. Madhukar, which conveyed the interpolated cabinet decision was the result of the efforts made by the MLAs across the party lines and RWAs with the Department of UD and its Minister for development and provision of infrastructure in the unauthorized colonies. He stated that he thanked the Minister for UD whenever work was done in his constituency and used to follow up with the DSIIDC for execution of the works. Neither he asked nor did he know if Mr. Raj Kumar Chauhan had any interest in the land/plots in these colonies. However, he personally did not have any interest. Here is a former MLA, who willingly accepts that letter of 25-04-2008 was issued as a result of their efforts.

32. Mr. Madhukar has deposed that Shri Vijay Singh Lochav was the person who used to follow up. He deposed that as a result of cement concreting of roads, there would be rise in price of land. RWAs and land owners would benefit. He, however, stated that he did not know any particular politician who had benefitted.
33. As observed earlier, Mr. Madhukar has miserably failed to explain his conduct qua the interpolation of the cabinet decision and/or issuance of contradictory letters dated 16-09-2008. He has sought to put it as having been done by outside agencies. If the same is to be given any credence, then it poses a grave danger of interference by outsiders, MLAs and Councillors and their supporters and representatives of RWAs, who admittedly have access to official records and carry them to different sections in the office. It is a matter of concern that he deposed that neither he nor the Chief Executive Officer ever objected to it. This situation needs to be rectified.
34. As regards the issuance of two contradictory letters on 16-09-2008 in respect of cabinet decision, a plausible inference that can be drawn is that he chose to be the errand boy of those on whose behalf he was acting. He did this with a view to bring in an apparently false sense of protection to the

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executing agencies with the letter which carried the stipulation, "roads and services to be laid". It appears that this was a short cut for not seeking the cabinet approval, since works had already been carried out contrary to cabinet decision.

INQUIRY CONDUCTED BY THE DEPARTMENT IN THE COMPLAINT AGAINST MR. MADHUKAR, JT. SECRETARY (UC CELL)

35. Initially, in the statement made before the Lokayukta by Mr. Madhukar was that inquiry was conducted by Hans Raj, Addl. Secretary, who had exonerated him. On directions being given that inquiry reports be produced, the Deputy Secretary (UC Cell) has confirmed that File No. 410/ UC/ 09/119/04/ UD/MLA/2004/Pt. carries the inquiry proceedings conducted. Further that inquiry proceedings can be seen at Page 30-33/N and Office Order dated 12-12-08 at Page 250/C of File No.103/31 /UC/ UD/MLA /2004/Pt. On perusal of the file at Page No. 30-33/N referring to the records with regard to the complaint and the decisions taken, it would be worthwhile to reproduce the proceedings as under:-

"165. Copies of complaint made by Shri R.N. Bararia against Shri Madhukar, JS/UC have been received from both Raj Niwas (Flag PUC-Pg 238/C) and Anti Corruption Branch (Pg 224/C). While Raj Niwas in forwarding the complaint, suggested "appropriate action", ACB advised "taking necessary action and direct disposal".

166. The basic complaint is that JS/UC misrepresented the decision of the cabinet regarding construction of cement concrete roads in unauthorized colonies. Complainant also invited attention to corrections/ alterations in the typed communication which are clearly hand written. The comments of the UC Cell have been obtained and may be seen (from previous page). The fact is that such alterations were indeed made. However, as

soon as it was learnt that such alteration had been made, a suitable corrigendum was issued.

167. If indeed, JS/UC was personally interested in distorting the communication of the cabinet decision, the technique of hand written correction is sloppy and leaves a trail of self-indicting evidence. We have to ensure that such stupidities and damning things do not occur. Officers are being advised to do so. However, I do not think JS/UC is guilty of any such serious misdemeanour.

Sd/- Pr. Secretary (UD)

04-12-08

Chief Secretary (in cc)"

Inquiry proceedings as recorded at Page 32 /N together with Office Order dated 12-12-08 are annexed hereto as **ANNEXURE-J (COLLY)**.

36. While accepting the fact that alterations were made, solace is sought to be taken that a suitable corrigendum was issued. Mr. Madhukar Jt. Secretary is bailed out by observing that "if he was personally interested in distorting the communication of cabinet decision then the technique of hand written correction was sloppy and leaves a self-indicting trail of evidence. We have to ensure that such stupidities and damning things do not occur. Officers are being advised to do so. I do not think JS (UC) is guilty of any such serious misdemeanour."

The above comments of the Pr. Secretary (UD) which has been approved by the Chief Secretary leave everything to be desired. Issuing a distorted version of the cabinet decision with knowledge that the same is being done, upon learning of the same a corrigendum being issued on 10-05-08, thereafter again on 16-09-08 on the same day signing two versions and releasing them carrying contradictory positions, point out to only one situation that the pliable officer was bending backward and yielding to the dictates of the public

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representatives as otherwise none would risk his career without having some semblance of reassurance of protection.

37. In the instant case, the issue is not only of distortion of cabinet decision but also of spending of public funds without authorization. This aspect and the extent of loss caused by breaking down the cement concrete roads laid, when the sewer and water lines were to be provided has not been estimated or determined at all. It calls for a thorough inquiry into this matter.
38. The lament of this institution is that it has neither the manpower nor the infrastructure or the statutory powers of search and seizure, for a thorough investigation.
39. There is yet another aspect which makes inquiry into such complaints difficult. It is the belated filing of complaints in such matters. This complaint was filed in the year 2012 in relation to transactions which had taken place in 2007-08. For effective action, complaints ought to be filed immediately on learning of it and when evidence regarding the wrong doings or extent of involvement of public functionaries could be available.

CONCLUSION:

40. In the circumstances, the Complainant has failed to establish that interpolation of the cabinet decision was done at the behest of the Respondent or that the Respondent had any nexus or interest with the owners of land in 11 colonies or others who stood to gain due to cement concreting of roads. No evidence has been brought on record for holding the Respondent to be in breach of norms of integrity and conduct in this regard. For reasons set out above, the Complaint is liable to be dismissed with recommendations and suggestions under Sec. 16 of the Act, being made for improvement in procedures which have the potential for corruption and maladministration.

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41. The Complaint is accordingly dismissed. However, in view of the facts noticed in Para-29 and 30 hereinbefore, it is held that had the Respondent been vigilant and diligent and responsive as he is required to be as a Cabinet Minister, the interpolation of the cabinet decision and its miscommunication and the consequences which flowed there-from could have been averted or corrected immediately thereafter.

In these circumstances, it is recommended to the Hon'ble President of India, the Competent Authority, to advise the Respondent to be more diligent and careful in future while discharging his functions as a Minister and public functionary.

As held in Para-37, the issue in the instant case is not only of tampering and distortion of a cabinet decision, but also of spending public funds without authorization. The aspect and the extent of loss caused by laying cement concrete roads when the sewer and water lines were yet to be provided, and the expense on re-laying after provision of water and sewer lines, has not been estimated or determined at all.

Whenever transactions involve expenditure of public funds without authorization with possibility of loss to exchequer, then those aspects should not be ignored in the garb of carrying out an informal departmental inquiry, where not even a charge sheet is issued and closing the matter without even carrying out a preliminary inquiry or investigation into the amount of loss incurred and fixing accountability of those who were responsible for it as also for expending of funds and causing financial loss worth crores and/or fixing accountability for interpolation of cabinet decision. It is recommended that the Competent Authority be pleased to direct a thorough inquiry into the above aspects.

SUGGESTION UNDER SEC.16

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42. The Urban Development Department and the Govt. of NCT appear to be having a practice, where communication memos addressed to other departments /officials are not retained by

the addressees in their files but the said communications in original with comments are returned to the originating file without, at times, even copies of the communication and the comments made thereon being retained by the department of the addressees. This was the plea taken when the interpolation of cabinet decision vide communication dated 25-04-2008, which had been addressed and copied to several persons, were not traceable saying that all these had gone to the original file.

It is suggested that rather than the original communications being returned with comments to the originating departments, either photocopy of the letter with comments be retained in the addressee's files if the original is to be returned or the addressee retains the original and comments are sent separately.


(JUSTICE MANMOHAN SARIN)
LOKAYUKTA

Date: 5th NOVEMBER, 2013

HEMANT