

**BEFORE THE HON'BLE LOKAYUKTA
JUSTICE REVA KHETRAPAL
COMPLAINT NO. C-3179/LOK/2016**

IN THE MATTER OF:

SHRI VIVEK GARG, ADVOCATE

..... COMPLAINANT

VS.

SHRI MANISH SISODIA, MLA/DEPUTY CM &
ORS.

.... RESPONDENTS

PRESENT:

Shri Vivek Garg, Advocate, Complainant in person.

ORDER

1. By way of this complaint, the complainant seeks to challenge the alleged illegal Office Order No. F.16(50)/2014-15/LAS/CT/5437-6443 dated 23-09-2015 issued by Shri Ram Niwas Goel, Speaker of the Delhi Legislative Assembly for allotting twenty-one office rooms for twenty-one Parliamentary Secretaries of Delhi along with other facilities as wrongful gains obtained by these twenty-one Parliamentary Secretaries by abusing their official positions in contravention of the rules.
2. It is alleged by the complainant that the aforesaid order passed by the Speaker has been passed under the influence of

respondent No.1, the Deputy Chief Minister of Delhi, though these twenty-one Parliamentary Secretaries were not entitled for any separate/new office rooms except to use the already allotted/existing offices of Cabinet Ministers, and thus the aforesaid order was passed by the respondent No.1 in collusion with Shri Ram Niwas Goel, MLA/Speaker of the Assembly.

3. At the outset, it may be noted that this Forum has no jurisdiction to go into any allegation of the nature specified in Section-2(b) of the Delhi Lokayukta & Uplokayukta Act, 1995 (hereinafter referred to as the "Act"), or any other allegation whatsoever in respect of the conduct and/or any orders passed by the Speaker and Deputy Speaker of the Legislative Assembly. For the sake of convenience, the provisions of Section-2(b) which define "allegation" and those of Section-2(m) which define the term "Public functionary" to the extent relevant, are reproduced hereunder:-

"2. Definitions: In this Act, unless the context otherwise require-

(a).....

(b) "allegation" in relation to a public functionary means by affirmation that such public functionary in capacity as such:-

- (i) *has failed to act in accordance with the norms of integrity and conduct which ought to be followed by the public functionaries or the class to which he belongs;*
- (ii) *has abused or misused his position to obtain any gain or favour to himself or to any 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) *.....”*
- (m) **“Public functionary”** means a person who is or has been at any time-
 - (i) *the Chief Minister or a Minister;*
 - (ii) *a Member of Legislative Assembly;*
 - (iii) *a person having the rank of Minister but shall not include Speaker and Deputy Speaker of the Legislative Assembly”*
 - (iv) *.....”*

4. From the aforesaid provisions of law, it clearly emerges that this Forum has no jurisdiction to entertain any complaint

against any order passed by the Speaker of the Legislative Assembly, even assuming that the complaint contains cogent material to infer collusion between the Speaker and the respondent No.1, which is completely lacking in the present case. On a query put in this regard, the complainant, who is an Advocate by profession, was not able to point out any precedent or case law to the contrary. It thus stands established that the present complaint against the order of the Speaker is wholly misconceived and liable to be rejected as such.

5. Faced with the above situation, the complainant sought to urge that the order having been passed by the Speaker in collusion with the respondent No.1- Deputy Chief Minister, this Forum has the jurisdiction to entertain the present complaint qua the Respondent No.1.
6. After carefully applying my mind to the aforesaid submission made by the complainant, it appears to me to be wholly specious, for such arguments, if accepted, can lead to disastrous results. The Legislature has specifically spelt out that the Lokayukta and/or Uplokayukta will have no jurisdiction over the Speaker or the Deputy Speaker of the Delhi Legislative Assembly. This being so, if the argument that the order was



passed by the Speaker under the influence of or in collusion with the respondent No.1 is accepted, such argument will be raised in each and every case. The intent of the Legislature would then be wholly defeated. It is not for this Forum to go behind the order and to examine what influence was exerted upon the Speaker or the lack of it or what impelled him to pass the order. Such exercise with a view to negate the order of the Speaker would defeat the provisions of the Act and is, therefore, wholly uncalled for. It is axiomatic that what cannot be done directly cannot be done circuitously.

7. Before parting with the case, it also deserves to be highlighted that it is not the appointments *per-se* of the twenty-one Parliamentary Secretaries which is sought to be challenged before this Forum, but the allotment of office accommodation to them, which is an off-shoot of the real matter in controversy, viz., the appointment of these Parliamentary Secretaries. The appointments indeed cannot be challenged before this Forum in view of the constitutional provisions which provide that it is only the President of India who is entitled to go into the question of legality and validity of such appointments after seeking the opinion of the Election Commission. In the instant case, it is reliably learnt that the President of India has sought the opinion of the Election

Commission on the legality and validity of the appointment of the twenty-one Parliamentary Secretaries, arrayed as respondents Nos. 2 to 22 in the Memo of Parties. The Election Commission has sought the response of all concerned, heard the matter and reserved its orders which are yet to be announced. In case the Election Commission expresses the opinion that the appointment of these twenty-one Parliamentary Secretaries is illegal and invalid and the President of India passes an order accordingly, needless to state the allotment of accommodation to the twenty-one Parliamentary Secretaries would be unsustainable. Assuming, however, that the opinion of the President of India is to the contrary, the order of the Speaker as noticed above, cannot be assailed before this Forum and it will be for the complainant to have recourse to the remedy available to him in law.

8. Yet another aspect of the matter is that the prayer made against the Parliamentary Secretaries for issuance of necessary recommendations against respondents Nos. 2 to 22 for abusing their official positions cannot be entertained at this juncture. As on date, it is not open to this Forum to adjudge whether there has been any abuse of their official positions by the respondents Nos. 2 to 22, their appointments being the subject matter of pending proceedings before the Election

Commission and the orders of the President of India not having been passed.

9. In view of the aforesaid, there is no merit in the present complaint which is accordingly dismissed.

Reva Khetrapal
(JUSTICE REVA KHETRAPAL)
LOKAYUKTA, DELHI

Date: 27-07-2016

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