

**BEFORE THE HON'BLE LOKAYUKTA
JUSTICE REVA KHETRAPAL
COMPLAINT NO. C-1219/LOK/2012**

IN THE MATTER OF:

SHRI ASHOK KUMAR

.....COMPLAINANT

VERSUS

SMT. SHEILA DIXIT, CHIEF MINISTER

..... RESPONDENT

PRESENT:

1. None for the complainant.
2. Mr. Anish Dayal, Advocate, Learned Amicus Curiae.
3. Mr. R.H.A. Sikander, Advocate, for Shri Mehmood Pracha, Counsel for the respondent.

ORDER

1. This complaint is filed by the complainant Shri Ashok Kumar against the ex-Chief Minister of NCT of Delhi alleging that she has abused her position to obtain gain or favour to herself or to any other person and/or was actuated in the discharge of her functions by improper or corrupt motives and/or is guilty of corruption.
2. The complainant alleges that the Respondent Chief Minister who holds the portfolios of Directorate of Information & Publicity (in short "DIP"), General Administrative Department (in short "GAD), Department of Art & Culture (in short "ACL")

and Finance Department has utilized her position in this capacity to by-pass the regular established instructions for publication and release of print and outdoor publicity for government departments, which is done by DIP for the Government of NCT based upon the process employed by the Directorate of Advertising and Visual Publicity (in short "DAVP") for the Government of India. In particular, undue and exceptional favours have been granted to Messrs. Ved Pahuja & Associates (hereinafter referred to as "VPA") by appointing them as Consultants and by ensuring that they are engaged for all outdoor publicity, despite "VPA" not being empanelled by DIP or DAVP. The complainant further alleges that the Chief Minister was issuing instructions for engaging of "VPA" through the Bhagidari Scheme, which was set up directly under the Chief Minister. Using the support from the Chief Minister, "VPA" was procuring huge advertising contracts from other institutions like Sahitya Kala Parishad, where it was bidding through multiple parties, all of which were actually his own entities working through different fronts.

3. The thrust of the complaint is in respect of 15% commission pertaining to release of display as well as classified advertisements through advertising agencies in print media by ignoring the Accountant General of Central Revenue's audit

paras violating the DAVP rates and norms. According to the complainant, whereas DAVP retains 15% commission, DIP is shelling out this heavy amount to the advertising agencies without any bargaining. In the normal course and in accordance with the Notification (No.F.2/106/77-PRO dated 13-09-1978) issued by the Lt. Governor in this regard, the advertisements should be released on DAVP rates after deduction of 15% commission, but DIP is violating this mandatory clause, and this is the platform for corruption. The complainant alleges that the Chief Minister cannot be unaware of this as all the designs before releasing are passed by her only. The AGCR report clearly mentions that not retaining 15% commission means that the rates are not DAVP approved, hence, all the financial concurrences given by all the Heads of Departments by utilizing their financial powers given by the Finance Department, are illegal.

4. On the basis of aforesaid allegations the complainant has prayed for a detailed enquiry through an independent investigating agency to ascertain the actual loss to the exchequer caused by the said public functionary.
5. In the course of proceedings before my learned predecessor (Hon'ble Justice Manmohan Sarin), this Forum decided to hear



the complainant to enable him to pinpoint the role of the respondent and/or to enable him to furnish further or better particulars regarding the role of the respondent. It was put to the complainant that apart from the allegations regarding undue favour having been shown to "VPA", it would also be necessary for him (the complainant) to disclose specifically the role of the respondent therein.

6. The complainant on being asked to pinpoint the role of the respondent obtained adjournment by stating that he was receiving further inputs and would like to file amended complaint incorporating additional facts and evidence as may be made available to him, and also to present the same in a more cogent and orderly manner. Subsequently, however, the complainant wrote to this Forum expressing his inability to financially bear the burden of pursuing the complaint. In response to the said letter, my learned predecessor directed the Registry to send a reply to the complainant that an amicus curiae can be appointed to overcome his inability to hire a counsel, if he wishes to pursue the matter. In these circumstances, Mr. Anish Dayal, Advocate, was appointed as amicus curiae vide order dated 02-08-2012, to give the required inputs to the complainant if he wanted to prosecute the complaint.



7. Mr. Anish Dayal, Advocate, after considerable research and analysis of the voluminous documents filed by the complainant submitted brief notes before this Forum on 08-08-2012, 17-09-2012, 19-10-2012, 08-11-2012 and 21-12-2012.
8. On 12-02-2013 notice was issued to the respondent to show cause as to why an enquiry in respect of the allegations under Section 2 (b)(i), (ii), (iii) & (iv) read with Section 7 of the Delhi Lokayukta & Upalokayukta Act, 1995 be not held and response was sought from the respondent.
9. The respondent through her counsel filed a detailed response with the heading "Short Reply", and subsequently filed a supplementary reply to which a rejoinder was filed by the complainant, albeit without an affidavit.
10. In the aforesaid backdrop, the complainant was directed to file an affidavit by way of evidence vide order dated 15-10-2013 within two weeks from the said date with an advance copy to the respondent. Thereafter, the matter was adjourned from time to time, but the complainant failed to comply with the said order by submitting his affidavit of evidence. Not only this, the complainant altogether absented himself from the proceedings despite intimations sent to him from time to time through Speed Post.

11. Consequently, this Forum, with the assistance of Mr. Anish Dayal, Advocate appointed as amicus curiae by my learned predecessor and the learned counsel for the respondent, has gone through the records and on going through the same is of the opinion that the reasons for the reluctance of the complainant to file affidavit by way of evidence and to pursue his complaint further are not far to seek.

12. As noticed above, the basis of the complaint is that the Chief Minister by virtue of the fact that she holds the portfolios of DIP, GAD, ACL and the Department of Finance of the Government of NCT of Delhi, is directly responsible for the decisions taken in these departments. The complainant alleges that the respondent has used her position to by-pass the regular established instructions for publication and release of outdoor publicity to various organizations and departments under the control of NCT of Delhi and in particular has shown exceptional favours to the firm "VPA", which is not even empanelled with the DIP or DVAP, and yet was able to procure contracts year after year through a sham tendering process to ensure that the said firm remains the sole successful bidder. The alleged loss on this account in 2006-07 and 2007-08 was Rs. 73.28 Lacs and "VPA" was the beneficiary to this extent.

The respondent, according to the complainant, could not have been unaware of all this and was hence culpable.

13. Perusal of the records however shows that the complainant has filed no evidence to substantiate his aforesaid allegations. In fact, a scrutiny of the documents placed by the respondent on record tells a different story. A cursory look at the Circular dated 15-05-2007, heavily relied upon by the complainant, shows that it was a communication sent to all the concerned departments that *all advertisements, designs in print media, hoardings, TV spots, radio jingles or departmental brochures need to be "compulsorily approved by the Hon'ble Chief Minister" with a view to ensure standardization in the quality, aesthetic appeal and message in the designs which are communicated through various media.* The respondent asserts, and rightly so, that it is borne out from the aforesaid Circular that the Circular was only designed to obtain prior approval of the Chief Minister to ensure quality and aesthetic appeal in advertisements and was issued for no other reason.

14. As regards the loss caused to the exchequer the respondent in her reply has stated as under:-

"It is submitted that the Notification of Lt. Governor provides that advertisements shall be released on the

rates as approved by the Delhi Administration taking into consideration the rates fixed by DAVP and the advertisements are being released accordingly as per DAVP rates only. It is submitted that 15% discount/commission on the advertisements is given by the newspapers to DAVP/advertising agency in lieu of the several functions performed by DAVP such as designing the creative, providing ready to publish material, translation work and ensuring timely release of ads etc. It is submitted that this is done on the basis of rules and regulations of accreditation with the Indian Newspaper Society (INS). It is relevant to mention here that in case the advertisements are directly released by DIP, the 15% discount is not given by the newspapers. In any case the payments are made at DAVP rates only. It is relevant to mention here that no extra payment is made by DIP to the advertising agencies for doing creative works and other allied service in connection with the release of advertisement. As far as the AGCR audit report for causing alleged financial loss in not retaining 15% commission on advertisement is concerned, the matter has already been settled by AGCR as such there was no financial loss and the same was duly communicated by



the Senior Audit Officer (Inspection) AGCR vide its letter dated 19-03-2012. Copy of letter dated 19-03-2012 is annexed herewith as Annexure-R/1".

15. A look at the aforementioned 'Annexure-R1' which is annexed with the reply shows that the matter with regard to the audit paragraph under the heading "*Loss of Rs. 47.03 Lacs due to non-availing of 15% commission on advertisements*" was dropped vide communication dated 19-03-2012 by the AGCR.
16. Learned counsel for the respondent submits that the allegations of the complainant that the respondent was trying to obtain undue favour to herself are false on the face of it, in as much as the payments are made by the concerned HODs with the concurrence of the Finance Department (except for the payments for which power has been accorded to the HODs under the delegation of financial powers). He further submits that the respondent has no role to play with regard to the financial issues and it is the concerned department which incurs the expenditure for advertisements from its own allocated budget and releases payments to agencies. The only limited role of the respondent is to approve the designs/display of advertisements which are short listed by the concerned department.

17. As regards the firm "VPA", it is submitted that the empanelment has been done by the GAD through an open and transparent process, and in any event it is not for this Forum to go into the empanelment process. Only two bids were received in this particular case. These were from "VPA" and one ASHDA (NGO). The bids were evaluated by a Committee under the Chairmanship of the Secretary (AR). The Committee after detailed discussion recommended the name of "VPA" while ASHDA (NGO) was not recommended by the Evaluation Committee. It is submitted that even assuming that there was any irregularity qua the constitution of the Committee, the same cannot be agitated before this Forum as this Forum does not have jurisdiction to adjudicate the same. Finally, it was submitted that there is not an iota of evidence on record to connect the respondent with any kind of corruption, abuse of power, misdoing, etc.

18. Mr. Anish Dayal, Advocate, learned amicus curiae, candidly conceded before this Forum that there was nothing on record to bring home the allegation of culpability against the respondent and, as a matter of fact, the AGCR itself had given a clean chit with regard to the allegation of loss to the exchequer caused by non-availing of 15% commission in this particular case.

19. In view of the aforesaid, this Forum is of the view that no useful purpose will be served by protracting the present proceedings, in which the complainant himself is not willing to come forward to press the allegations made by him in his complaint and has chosen not to file an affidavit by way of evidence despite grant of about three years time to him for the aforesaid purpose and, in which, in any event, the documents on record do not substantiate the case of the complainant.
20. Accordingly, the show cause notice issued to the respondent vide order dated 12-02-2013 under Section-2(b) (i), (ii), (iii) & (iv) read with Section-7 of the Delhi Lokayukta & Upalokayukta Act, 1995, is discharged.
21. A copy of the order be sent to the learned amicus curiae and to the learned counsel for the respondent, as prayed.
22. File be consigned to the record room.

Dated: 25-07-2016

hk

Reva Khetrapal
(JUSTICE REVA KHETRAPAL)
LOKAYUKTA, DELHI