


Delhi Prevention of Defacement of Property Act, 2007 and also the guidelines laid down by the Hon'ble Supreme Court in this respect.


2. The complainant alleges that these signboards and hoardings obstruct free movement of people on pavements and footpaths and pose threat to road safety, especially, to the handicapped persons, senior citizens and school going children and also spread visual pollution.
 3. The complainant also alleges that in the reply to the RTI applications filed by him, he was informed that putting of signboards and hoardings of the names and addresses of public functionaries at main chowks, footpaths and central verges of roads is illegal and the same are not put by the Municipal Corporation of Delhi, Rohini Zone.
 4. It is the grievance of the complainant that in spite of accepting that such activities are illegal, the MCD, DDA, PWD, CPWD and NDMC, the Delhi Police and other law enforcement agencies have never taken any action against the respondent and other public functionaries, including any action under the Delhi Prevention of Defacement of Property Act, 2007. The respondent having been three times MCD Councillor and also the Chairman of the Standing Committee of MCD, the officials
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of the local administration are hand in glove with him and have allowed him to continue his illegal activities.

5. Thus, according to the complainant, the respondent has fallen foul of the provisions of Section-7 of the Delhi Lokayukta and Uplokayukta Act, 1995, and also the Delhi Prevention of Defacement of Property Act, 2007, having abused his position to obtain gain/favour to himself or to any other person and cause loss and undue harm to the State/Government/other persons.
6. On the above allegations, a notice to the respondent to show cause as to why an enquiry under Section-7 read with Sec. 2(b) (i) of the Delhi Lokayukta and Uplokayukta Act, 1995 (hereinafter referred to as "the Act") be not initiated against him in respect of the allegations in the complaint, was issued by this Forum on 11-04-2012. Notice was also issued to the Commissioner, MCD to have the factum of the signboards and hoardings, etc. verified and to submit report.
7. Reply to the show cause notice dated 11-04-2012 was filed by the respondent on 07-05-2012, wherein the respondent vehemently denied all allegations in the complaint as false, incorrect and distorted. It was submitted that the respondent had not erected nor had caused to have erected any hoardings

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or signboards/direction boards on any footpaths, central verges of road, electrical poles, traffic signal poles, boundary walls or gates of apartments and /or buildings, as alleged by the complainant. In equal measure, it was stated that the respondent was not responsible for erection of direction boards, which are otherwise essential in public interest to the extent that the same are installed in public interest by the municipal authorities all over Delhi, whether in the MCD area or in the NDMC area. Regarding the eight photographs submitted by the complainant, the respondent submitted that the same appeared to relate to temporary hoardings installed by election candidates immediately preceding the MCD elections. Insofar as photographs No. 4, 7 and 8 were concerned, the same appeared to be direction boards, which in all probability must have been erected by the MCD and such direction boards were neither advertisements nor constituted defacement of public property. Further, it was submitted, from the photographs annexed with the complaint it was clear that neither senior citizens nor school children were likely to be affected by the direction boards. The complaint was a motivated complaint and the photographs annexed with the complaint were wrongly stated to be evocative of violation of the Prevention of Damage to Public Property Act.




8. In Para-5 of the reply it was specifically stated that a scrutiny of the photographs filed by the complainant as annexures, revealed as follows:-

- (i) *Photographs identified as A, B, C & D are direction boards/signboards of several government/public authorities prominent being the Department of Forests & Wildlife, Delhi Police, District Passport Centre, Delhi Transco Limited, Punarvas Bhawan, Indian Council for Cultural Relations and Delhi Commission for Women.*
- (ii) *Photographs marked as E indicates directions boards of Delhi Police Museum while that marked as F is the direction board of Income Tax Department.*
- (iii) *Photographs marked as G depicts the signboard of State Bank of India while the photograph marked as H shows direction boards of Satsang Bhawan, Manav Sthali School, Office of the DCP Operations, PCR and Police Station Rajinder Nagar.*
- (iv) *Photographs marked as I, J, K, L & M show various direction boards erected by the Delhi Police.*
- (v) *Photographs marked as O illustrates the signboard of Mr. Kapil Sibal, Union Minister, Mr. Ramesh Dutta, a Congress Municipal Councillor and Shri Etwar Ahmed, yet another Congress Municipal Councillor. Significantly, it is not even a direction board.*
- (vi) *Photographs marked as P, Q, R and S illustrate various signboards of the Law Minister of Delhi Government, Shri Rama Kant Goswami. Three of such photographs are*

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clearly aimed to acquaint the whole city that this particular Minister of Delhi Government headed by Smt. Sheila Dixit resides at 25/30 East Patel Nagar.


(vii) Photographs marked as T.U.V.W & X depict other signboards/direction boards of Congress leaders, namely, Shri Shoaib Iqbal, Shri Rajesh Liloithia, Shri Ajay Maken, another Union Minister, Dr. Yoganand Shastri, Smt. Krishna Tirath, Shri Devendra Yadav and Shri Ajit Yadav"

9. Finally, it was stated that the complaint was filed with ulterior motives and was a politically motivated one with a view to harass the respondent who belonged to the opposition party.
 10. A brief rejoinder to the reply filed by the respondent was filed by the complainant on 21-08-2012 denying the contents of the reply and reiterating the allegations made in the complaint.
 11. It may be mentioned at this juncture that the present complaint is part and parcel of a batch of complaints, being eighteen in number, filed against various public functionaries containing the same allegations. While the present complaint is filed by Shri Rajesh Garg, the remaining seventeen were filed by one Shri S.K. Saxena, as Director, Nishpaksh, a Non-Governmental Organization. The said complaints were disposed of by my learned predecessor (Hon'ble Justice
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Manmohan Sarin) by a common order dated 04-11-2013. The relevant portion of the said order reads as under:-

- "14. All these 17 complaints are being decided by this common order. Barring minor variation in language, Respondents have either themselves on oath or by statement made on their behalf by their advocates duly authorized by them, agreed to undertake the following.*
- (i) That they would advise their supporters/followers to ensure that poster/banners/hoardings carrying their photographs are not put up in public places in contravention of the "DPDP Act".*
 - (ii) Posters/banners/hoardings are put up only at designated places.*
 - (iii) In case of any function etc. at public places, the posters/banners/hoardings shall be put up at function site after obtaining prior permission.*
 - (iv) In case it is brought to the attention that any posters/banners/hoardings have been put up in contravention of the "DPDP Act" carrying their photographs, they would initiate Action for its/their removal.*
 - (v) They would support the movement of "Poster Free" Delhi.*
- 15. Most of the respondents had claimed that the posters/banners/hoardings had been put without their knowledge or consent so as to rebut presumption under Sub Section 2 of Section 3 of "DPDP ACT". Reliance has also been placed on "T.*
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S. Marwah and others Vs. State” of Ms. Justice Rekha Sharma, 2008 (4) JCC 2561, to urge that there was no defacement within the meaning of the Act. Further that defacement could be done either by writing and marking with ink, chalk, paint or any other material. Others had pleaded that posters/banners/hoardings etc. had not been put up on any property within the definition of public property. It is not necessary to delve into these issues in the above cases. In view of the statement made, it would be sufficient to observe that the judgment of “T. S. Marwah and others Vs. State” of Ms. Justice Rekha Sharma, 2008 (4) JCC 2561, was under the West Bengal Defacement of Property Act and not the DPDP Act. The definition of ‘writing’ has been amended in the present act to include printing, so as to bring the printing of poster within the ambit of ‘writing’ and defacement. It may also be observed that in an inquiry under the Delhi Lokayukta and Upalokayukta Act, 1995, under section 2 (b) read with Section 7, the ambit of jurisdiction is much wider than the DPDP Act, the latter providing for the offence, penalties and prosecution by enforcement agency. The definition of “allegation” under the Delhi Lokayukta & Upalokayukta Act, 1995, would include numerous acts and omissions thereof in relation to defacement of property by Public Functionaries or at their behest or for their benefit, which can be said to be inter alia against the norms of integrity



and conduct expected of public functionaries. Such conduct need not be confined only to statutory violations. It can also flow from the need and requirement by Public Functionaries to recognize that posters/banners/hoardings should be put up only at designated places as permitted as per Municipal Rules and Regulations. The putting of these posters/ banners / hoardings at designated places is an illustration, where it would result in realization of revenue through pasting and affixation. The hoardings/ posters/ banners at non-designated placed (sic) would cause revenue loss to Municipal Authorities. The latter can be regarded as causing undue gain for one self and causing undue loss to Municipal Corporation. This is an area of evolving jurisdiction. However, in view of the statements made by Respondents indicating their resolve, it need not detain us for the present.

16. *The statements made have been duly accepted by this Forum. In view of aforesaid statements made, it is not necessary to give findings on preliminary objections and other pleas raised in such matters.*
17. *It is far more important to bring about self realization either by persuasion or otherwise and a change in outlook, where the public functionaries themselves recognize and realize the need for preventing defacement by putting up of posters / hoardings / banners. This is especially so when*

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enforcement and prosecution is severely hampered by lack of infrastructure and inherent systemic deficiencies. Experience has shown that there has hardly been any prosecution under the DPDP Act and only the Corporation has been periodically removing the offending posters/banners/hoardings. As noticed earlier even in Rohini Zone more than Forty Five Thousand posters, nearly Twenty Thousand banners and Ten Thousand hoardings were removed and not a single prosecution was launched.

18. In view of the statements made by the Public Functionaries themselves on oath and/or on their behalf, it is hoped and expected that they would take all steps for removal of posters /banners /hoardings in contravention of DPDP Act, within a period of 10 days voluntarily, failing which the authorities would be free to proceed for their removal in accordance with law.
19. A copy of this order passed along with copy of CD of the infringing posters/banners/hoardings be sent to the Corporations i.e. SDMC, EDMC and NDMC, for them to initiate necessary action for their removal, if not so done, voluntarily.
20. In view of the statements made by respondents on their behalf, the notices issued under Sec. 7 for inquiry under the Delhi Lokayukta and

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Upalokayukta Act, 1995, are discharged. Nothing stated herein will come in the way of or affect any proceedings by appropriate authorities under the Delhi Prevention of Defacement of Property Act, 2007.

File be consigned to record."

12. A look at the records of the aforesaid cases reveals that the respondent in the present case is on a better footing than the respondents in the other cases. It also deserves to be mentioned that the respondent in the present case at the outset played a lead role in assisting this Forum in curbing the menace of illegal hoardings and posters etc. This fact clearly emerges from the order dated 10-01-2013 passed by my learned predecessor, the relevant portion whereof reads as follows:-

1. *Shri Vijender Gupta, President of Delhi State BJP and respondent in the case is present. The concerns have been brought to his knowledge with regard to the defacement of public streets, footpaths, lamp posts, central verges of roads by hoardings, posters which are put up for and on behalf and by leaders of various political parties.*
2. *The idea mooted was whether in the interest of making our metropolis a world class city which cause leaders of political parties espouse with great fervor, they would be willing to take corrective steps by self regulation and arriving at a*

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consensus, by which selected sites are earmarked and made available to the parties or candidates for such purposes. This could be on payment at the rates to be fixed by the Corporation, which could also be a source of augmenting revenue. Barring these, the parties should themselves refrain from putting hoardings, posters, greetings at other public places or sites.

3. *Mr. Vijender Gupta submits that he would join in this endeavour and states that the Bhartiya Janta Party would take a lead in the matter, subject to consensus being arrived at between parties or a decision being taken by the Government on recommendation of this Forum, to abide by the same.*

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12. *It is hoped and expected that in the next 15 days respective Heads of the Delhi Units of all the concerned political parties would obtain clearances for the views expressed today in the Forum and formally apprise this Forum of their stand.*

13. *The action taken report has been filed by Assistant Commissioner, Karol Bagh Zone, Dealing Assistant, Rohini Zone and Assistant Commissioner, Narela Zone, which is taken on record"*

13. Subsequently, on 31-01-2013, my learned predecessor in his order of the same date noted that the inputs received in the matter from North MCD/Zone showed that this menace was

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not confined only to the posters of the respondent or BJP, but was all pervasive in respect of Councillors, MLAs and leaders of various political parties functioning in the metropolis. It was further recorded by him in the order that Mr. Anil Soni, counsel for the respondent in the instant case, based on the statement made by the President of the BJP on the last date, states that he would be happy to assist the Hon'ble Lokayukta in evolving a regulation regime for self imposed restrictions by parties irrespective of the stand of other parties, and that counsel for the respondent had sought and was given ten days time to give his suggestions in the matter.

14. Pursuant to the aforesaid, Mr. Vijender Gupta, the respondent on 20-02-2013 submitted detailed suggestions, being twelve suggestions in all, which form part of the record.
15. The matter was thereafter adjourned for recording of the statement of the complainant in the instant case. It was, however, on 20-09-2013 that the statement of the complainant came to be recorded. The said statement reads as under:-

"On 27-02-2013 I had prayed before this Forum to be allowed to lead evidence to prove my case. Now I have learnt that several other matters are pending before this Forum regarding the putting up of posters/banners etc


by public functionaries at different public places in various parts of Delhi and this Forum had issued notices in all these matters and the same are being tried. Therefore, I do not specifically wish to lead any further evidence at this stage as the photographs have already been filed by me. The photographs of the posters/banners filed by me along with the complaint as Annexures A,B,C,D & E were taken by me personally with my digital camera and then printouts were taken. I would abide by the decisions of this Forum which this Forum may take in other similar matters".

16. Adverting again to the order dated 04-11-2013 passed by my learned predecessor (disposing of the seventeen other similar complaints against public functionaries belonging to various parties) as noted above, the operative portion of the said order shows that the said complaints were disposed of by my learned predecessor by recording the statements /undertakings of the respondents to the effect that they would advise their supporters/followers to ensure that posters/banners/hoardings carrying their photographs are not put up in public places; that they are put up only at designated places; that in case any posters/banners/hoardings containing their photographs in contravention with the provisions of the Delhi Prevention of Defacement of Property Act, 2007, come to their notice they would initiate action for their removal. A

further undertaking was also given that the respondents concerned would support the movement of "Poster Free Delhi".

17. In the present case, an undertaking in the form of an affidavit dated 28th July, 2016 of the respondent was filed on record on the same date in which the respondent affirmed as follows:-

- "1. That in public and party meetings with my supporters and workers, I have requested them not to put posters/banners/hoardings on public properties, walls, buildings etc.*
- 2. That I have not followed or encouraged advertisements through banners or posters myself or through my supporters.*
- 3. That I am in support of the posters/banners/hoardings being put only at the designated places or at the place of functions with due permission. I shall give my wholehearted support to the "Posters/Banners Free Delhi Campaign"*

18. As noted by me in my order dated 1st March, 2016, I see no reason why this matter, which is identical to the seventeen aforesaid matters, should not be similarly disposed of by taking
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on record the statement/undertaking of the respondent which is in the same terms as in the other connected matters.

19. Accordingly, the said undertaking dated 28-07-2016 filed by the respondent in the form of an affidavit is duly accepted by this Forum. In the opinion of this Forum, in view of the categorical undertaking given by the respondent, as mentioned above, no purpose will be served by protracting the present proceedings, more so, as there is already on record a statement made by the complainant before my learned predecessor on 27-02-2013 that he does not specifically wish to lead any further evidence as photographs have already been filed by him and since several other similar complaints are being heard by the Forum in relation to and regarding the putting up of posters/banners etc. by public functionaries at different public places in various parts of Delhi, he would abide by the decision of this Forum which this Forum may take in other similar matters.
20. To conclude, in view of the aforesaid and in view of the Affidavit by way of undertaking furnished by the respondent Shri Vijender Gupta, Ex-Municipal Councillor, Rohini Central Ward No.50, the show cause notice dated 11-04-2012 issued to him under Section-7 read with Section 2(b)(i) of the Act is

discharged. It is clarified that nothing stated herein shall come in the way or affect any pending proceedings by appropriate authorities under the Delhi Prevention of Defacement of Property Act, 2007.

21. File be consigned to the records.

Dated: 28th JULY, 2016
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Reva Khetrapal
(JUSTICE REVA KHETRAPAL)
LOKAYUKTA, DELHI