

BEFORE THE HON'BLE LOKAYUKTA**Justice Manmohan Sarin****Complaint No. C-680/Lok/2011**

Lokayukta on its own motion: In Re:-Complaint regarding scam of Rs. 129 crores – Notice under Sec. 11 of the Act.

ORDER

1. Proceedings in this case bring out the obduracy and resistance of the Government of NCT of Delhi to disclose information and to make available records to a statutory authority, namely, the Lokayukta, for purposes of a preliminary inquiry. It is high time that the Government of NCT of Delhi reconciles to transparency in functioning and in governance, as the desirable, rather, the only method of good governance and administration. Here are the facts:-

A complaint by an anonymous whistleblower to the Lokayukta in April, 2011, alleged that tax of Rs. 129,96,40,948/- was levied by Assessment Order dated 30-03-2006 on the assessee, M/s. Reliance Energy Ltd. The Assessing Authority had rejected the claim for exemption by M/s. Reliance Energy Ltd. In an appeal against the assessment order by M/s. Reliance Energy Ltd., Mr. B.P. Joshi, Additional Commissioner-III, vide his order dated 14-01-2008, set aside the assessment and remanded the case back to the Assessing Authority for fresh adjudication in accordance with the observations made by him. While the proceedings in the remanded case before the Assessing Authority were going on, M/s. Reliance Energy Ltd, filed a Review Application before the same Additional Commissioner, who, vide order dated 25-11-2008, accepted the application and recalled his order of remand, holding that M/s. Reliance Energy Ltd were entitled to exemption from payment of sales tax under the Delhi Sales Tax Act, based on the exemption certificates issued by the Discoms.

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The Discoms had also filed a Writ Petition in the High Court, challenging the assessment order, which denied the exemption. The Administrative Department had taken the stand before the High Court that the said Companies were not entitled to exemption from sales tax under the rules.

2. It was alleged in the complaint before the Lokayukta that the Law Department had advised filing of an appeal against the order passed by the Additional Commissioner-III, by which he had recalled the remand order and granted exemption. This order was opined to be in excess of jurisdiction and beyond the power of review, since there was no patent error. It was also claimed that the order had been passed without hearing the departmental representative. The complainant alleged that the review had been done in collusion with Mr. Sushil Sharma, Advocate, for the assessee and Mr. Jalaj Srivastava, Commissioner, Department of Trade & Tax, for illegal gratification. The complaint went on to state the rates of bribe for postings in the Enforcement Branch of VAT and Audit Department etc. It was also alleged that this was being done together by the sister of the Chief Minister and the then Commissioner of Trade & Tax Department. Allegations were made against latter for having pocketed crores of rupees in DSIDC etc. An insinuation was made that to save her sister and the then Commissioner, Trade & Tax, the Chief Minister had kept the Finance Department with her.
3. Prima facie, the order of the Additional Commissioner-III dated 25-11-2008 recalling his own earlier order to remand the case appeared to be unprecedented and in excess of jurisdiction. Further, there were allegations and insinuations against public functionary. Therefore, the Office of the Lokayukta, prior to issuing any notice to the public functionary, vide letter dated 10-05-2011 addressed to the Pr. Secretary (Finance) sought his

comments and information on whether an appeal against the order dated 25-11-2008 of the Additional Commissioner-III had been filed or not and, if not, the reasons there for.

4. Instead of furnishing the information as sought, the Deputy Secretary-II (Finance), vide his letter of 24-08-2011 claimed in reply that the matter did not fall under the jurisdiction of Lokayukta since it involved government officers. The Deputy Secretary-II (Finance) was apprised that the complaint, inter alia, contained allegations against government officers as well as insinuations /allegations against a public functionary in respect of whom the Forum had jurisdiction to inquire. The Department was once again requested to provide information sought vide letter dated 10-05-2011, failing which the matter would be put up before the Lokayukta for directions under the statutory provisions. Finance (Revenue) Department again refused to provide information, vide its letter dated 23-12-2011 on the ground that the complaint being anonymous should have sufficed to file the matter and in any case it has already been disposed of by the Competent Authority. Here again, the result or manner of disposal was not informed.
5. Per force, vide letter dated 13-01-2012, the Deputy Secretary-II (Finance) was requested to provide the information, explaining that it was the nature of allegations, attendant circumstances and the sufficiency of particulars, and not the source which are the relevant factors to be considered in the decision to proceed further with the inquiry or to file the matter. These were issues which fell strictly within the domain of this Forum and did not require any comments from the Department. The Department of Finance was notified that the matter would be put up before the Lokayukta for directions under Sec.11 of the Act, if the information was not provided. Despite the above reminders and

legal position being explained, the Department of Finance did not furnish the information.

6. The complaint with the information as given disclosed a loss of about Rs. 129 crores to the exchequer on account of sales tax. There were allegations, inter alia, against the sister of the Hon'ble Chief Minister enjoying the latter's patronage. Accordingly, vide detailed order passed on 27-01-2012, a statutory notice was directed to be issued to the Deputy Secretary-III (Finance) to furnish comments of the Finance Department and also to inform as to whether an appeal against the order dated 25-11-2008 of Additional Commissioner-III had been filed or not and if not, reasons there for, and the decision making process thereof. Record was also called for to be produced on 13-02-2012.
7. In the proceedings held on 13-02-2012, 16-02-2012 and 22-02-2012, Ms. Madhu Bhatia, VATO and Shri S.K. Kamra, Deputy Secretary-II (Finance) appeared and produced the photocopies of the record, orders and application moved on behalf of the Reliance Infrastructure Ltd. They also disclosed the proceedings following order dated 11-05-2008.
8. The communication dated 11-02-2012 belatedly filed by the Deputy Secretary-II (Finance) revealed that following the opinion of the Law Department, the Department had filed an appeal against the order of the Additional Commissioner before the Appellate Tribunal on 06-05-2009. In view of the legal position flowing from the judgment of the High Court in the case of 'International Metro Civil Contractor', the appeal filed before the Tribunal was withdrawn and the Commissioner, VAT, in exercise of revisionary powers had issued a Notice on 08-04-2010 proposing to revise the orders dated 14-01-2008

and 25-11-2008 of the Additional Commissioner-III and to restore the original order of the Assessing Authority.

9. The Commissioner, VAT, passed the order in revision on 20-04-2011 and set aside the order dated 14-01-2008 and 25-11-2008 and restored the assessment order dated 30-03-2006, passed by the Assessing Authority. Recovery proceedings have been initiated by the Department of Trade & Tax against Reliance Infrastructure Ltd., formerly, Reliance Energy Ltd.
10. In view of the setting aside of the order dated 25-11-2008 and restoration of the Assessment Order dated 30-03-2006, there is no ground left for inquiring into the allegation of causing loss of Rs. 129 crores to the State exchequer. The insinuations made against the Chief Minister and her sister were on the premise that a loss of Rs. 129 crores has been caused to the State exchequer do not hold any water. The other allegation made in the anonymous complaint regarding corruption and transfer and postings in the Enforcement and Audit Branches of VAT Department are vague in nature and on which basis it would not be proper to initiate any inquiry. Thus, there are no grounds to conduct an inquiry against any public functionary. However, as stated earlier, the present case reveals the reluctance and intransigence on the part of the Government to act in a transparent manner.
11. The Department of Finance for more than six months resisted the production of relevant record and information which, if earlier furnished or produced, would have set the matter at rest. As the anonymous complaint gave specific particulars of the case referring to the order dated 25-11-2008 and the opinion of the Law Department recommending filing of an appeal, but did not disclose whether appeal had been filed or not, it was expedient and in public interest and in the interest of justice to

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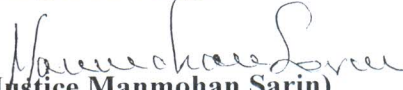
seek the comments and complete information from the Finance Department. Resistance to provide complete information and documents on untenable grounds roused avoidable suspicion about the role of officers and the insinuations against public functionary and others in the entire transaction. Benjamin Jowett has aptly said, "Doubt comes in at the window when inquiry is denied at the door". There has been considerable waste of administrative time, effort and resources on account of the above action of the Finance Department in withholding the information. It would also be appropriate at this juncture to refer to the observations of Judge Milvain of Alberta Supreme Court in Re: Alberta Ombudsman Act (1970) 10 Dec LR (III) 47, that, "It must be remembered that the Ombudsman is also a fallible human being and not necessarily right. However, he can bring the lamp of scrutiny to dark places even over the resistance of those who would draw the blinds. If this scrutiny and observations are well founded, corrective measures can be taken in due democratic process, if not, no harm can be done in looking at that which is good."

12. The statute empowers the Lokayukta under Sec. 11 of the Act to require discovery and production of documents from Government. Non-production of record and information as required under Sec. 11 constitutes an offence punishable under Sec. 175 of the Indian Penal Code. Any person including a Government officer who is required to produce any document/information by this Forum is bound to produce the same and on his intentional omission to do so can be proceeded against under the above provision. However, a lenient view is being taken in the matter and proceedings against the concerned Deputy Secretary (Finance) are not being initiated, more so, in view of no ground being left for continuing with the inquiry. The act of a Government servant in not furnishing information or producing documents without tenable cause amounts to

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providing unwarranted shield to the public functionary / Government servants, which apart from being actionable under the Act, negates transparency and encourages mal-administration and corruption. Therefore, purely as a matter of good governance, it is suggested to the Government under Sec. 16 of the Delhi Lokayukta & Uplokayukta Act, 1995, that whenever a Government record is sought by any public servant or authority empowered to do so, the concerned officers should comply with the said requirement without dithering and entering into unnecessary correspondence, as the same is a statutory obligation. This is more so, at the stage of preliminary inquiry when notice even may not have been issued to a public functionary. Information or record sought is to facilitate a decision on whether to proceed with the inquiry into the allegation or close the same.

13. In view of the foregoing discussion, the preliminary inquiry is closed and the file is directed to be consigned to record.


(Justice Manmohan Sarin)
Lokayukta

Date: 02-03-2012