

IN THE HIGH COURT OF DELHI AT NEW DELHI
EXTRAORDINARY WRIT JURISDICTION
WRIT PETITION (C) NO. 2992 OF 2013

IN THE MATTER OF:

Common Cause

...Petitioner

Versus

Shri Subhash Jain, Ex- Councillor & Ors.

...Respondents

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FILED BY

(MAHESH AGARWAL)/ (RISHI AGRAWALA)/
(NEEHA NAGPAL)
ADVOCATES FOR THE PETITIONER
AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET
NEW DELHI-110 001

NEW DELHI
FILED ON:

A

NOTICE OF MOTION

IN THE HIGH COURT OF DELHI AT NEW DELHI

NO. _____

SHRI _____
Advocate

IN THE MATTER OF:

Common Cause

...Petitioner

Versus

Shri Subhash Jain, Ex- Councillor & Ors.

...Respondents

Sir,

The enclosed application in the aforesaid matter as being filed on behalf of the Petitioner and is likely to be listed on _____ or any date, thereafter. Please take notice accordingly.

NEW DELHI

DATE :

FILED BY

(MAHESH AGARWAL)/ (RISHI AGRAWALA)/
(NEEHA NAGPAL)
ADVOCATES FOR THE PETITIONER
AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET
NEW DELHI-110 001

B

IN THE HIGH COURT OF DELHI AT NEW DELHI
EXTRAORDINARY WRIT JURISDICTION
WRIT PETITION (C) NO. OF 2013

IN THE MATTER OF:

Common Cause

...Petitioner

Versus

Shri Subhash Jain, Ex- Councillor & Ors.

...Respondents

URGENT APPLICATION

To,
The Registrar
High Court of Delhi
New Delhi-110001

Sir,

Will be you kindly treat this accompanying Writ Petition as an urgent one in accordance with the High Court rules and Orders:

1. The grounds of urgency are mentioned in the accompanying Writ Petition.

Thanking You

Yours faithfully,

(MAHESH AGARWAL)/ (RISHI AGRAWALA)/
(NEEHA NAGPAL)
ADVOCATES FOR THE PETITIONER
FOR AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET,
NEW DELHI 110 001.

NEW DELHI
FILED ON:

C

IN THE HIGH COURT OF DELHI AT NEW DELHI
EXTRAORDINARY WRIT JURISDICTION
WRIT PETITION (C) NO. OF 2013

IN THE MATTER OF:

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...Petitioner

Versus

Shri Subhash Jain, Ex- Councillor & Ors.

...Respondents

MEMO OF PARTIES

COMMON CAUSE
THROUGH ITS CHIEF EXECUTIVE,
MR. KAMAL KANT JASWAL
5, INSTITUTIONAL AREA, NELSON MANDELA MARG
VASANT KUNJ,
NEW DELHI

...PETITIONER

VERSUS

1. SHRI SUBHASH JAIN, EX- COUNCILLOR
A-71 GALI NO.1 KABIR NAGAR,
SHAHDARA, DELHI- 110094
2. MS. ANITA KOLI, EX- COUNCILLOR
N-38, KRISHAN VIHAR,
NEW DELHI – 110085
3. SMT. SATESHWARI JOSHI, EX- COUNCILLOR
E-347, EAST VINOD NAGAR,
NEW DELHI – 110091
4. SMT. MANJU GUPTA, EX- COUNCILLOR
B-20, JOSHI COLONY, I.P. EXT.,
PATPARGANJ, NEW DELHI – 110092
5. SMT. BEENA THAKURIA, EX- COUNCILLOR
C.P.O-12, MADANGIR,
NEW DELHI-110 062
6. SMT. JAISHREE PANWAR, EX- COUNCILLOR
212, SHAHPUR JAT,
NEW DELHI.
7. SHRI RAVI PRAKASH SHARMA, EX COUNCILLOR
13, SHANKAR VIHAR, VIKAS MARG,
DELHI-110 092
8. SHRI AJIT SINGH TOKAS, EX COUNCILLOR
PRATEEK MARKET, MUNIRKA,
NEW DELHI- 110067

D

9. LIEUTENANT GOVERNOR OF DELHI
RAJ NIWAS,
DELHI-110054
10. GOVERNMENT OF N.C.T OF DELHI
THROUGH ITS STANDING COUNSEL,
DELHI HIGH COURT,
NEW DELHI
11. POLICE COMMISSIONER, DELHI
P.O. 171, GPO,
NEW DELHI

.....RESPONDENTS

FILED BY

(MAHESH AGARWAL)/ (RISHI AGRAWALA)/
(NEEHA NAGPAL)
ADVOCATES FOR THE PETITIONER
FOR AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET,
NEW DELHI 110 001.

NEW DELHI
FILED ON:

SYNOPSIS

The Present Petitioner is a public interest organization of long standing, which has been campaigning for the establishment of a credible institutional framework for combating corruption in public life. The Petitioner has been at the forefront of civil society campaigns for increased transparency in public administration and has often had the occasion to bring matters of public interest to this Hon'ble Court and the Hon'ble Supreme Court leading to issuance of directions by the Hon'ble Court that have had the effect of strengthening institutional responses to corruption and maladministration in furtherance of the constitutional guarantees to citizens under Part III of the Constitution of India.

The Present Petition seeks to draw the attention of this Hon'ble Court to the manner in which the institution of the Lokayukta, established under the Delhi Lokayukta and Upalokayukta Act, 1995 (hereinafter, 'the Act'), has been effectively undermined on account of disregard by the Competent Authority of the considered recommendations made by the Hon'ble Lokayukta in various cases involving egregious acts of corruption by elected public functionaries.

A sting operation conducted by the news media contained clear evidence that certain elected public officials had agreed to accept illegal gratification in order to facilitate existing or contemplated irregularities in buildings being constructed and also to make the necessary arrangements to ensure that other the state officials concerned also turned a blind eye to the illegalities. The raw footage as well as the

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transcripts of the sting operation remain undisputed by the concerned officials. The Hon'ble Lokayukta took *suo motu* cognizance of the said issue and submitted a report containing a prima facie conclusion that offences under the Prevention of Corruption Act were made out in these cases. Despite this, and the fact that a further Special Report and 'Substance of Cases' as contemplated in Section 12 of the Act came to be issued by the Hon'ble Lokayukta expressing dissatisfaction with the official inaction in respect of his recommendations, no consequential action has been taken by the Competent Authority (Lieutenant Governor of Delhi) under the Act to initiate prosecution against the individuals involved.

The continued inaction on the part of the Competent Authority amounts to a grave and continuing violation of Articles 14 and 21, which have been interpreted by the Hon'ble Apex Court as guaranteeing to all citizens the right to transparency, fairness and non-arbitrariness in the actions of all state functionaries as well as the right to a corruption free society.

Hence the present Petition.

LIST OF DATES

07.12.2011	Newspaper 'Nav Bharat Times' published a news report titled " <i>Sting Operation Ke Baad Parshadon mein Masha Hadkamp</i> ". The report contained the findings of a sting operation carried out and subsequently telecast by the news channel IBN-7 bringing to light the involvement of Municipal Councillors in Delhi in negotiations for facilitating illegal and unauthorized constructions for illegal gratification.
07.12.2011	<i>Suo motu</i> cognizance of the above reports taken by the Hon'ble Lokayukta, notice issued to the concerned Municipal Councillors
27.08.2012	Orders passed by the Hon'ble Lokayukta
29.06.2012	recommending various sanctions against the
10.07.2012	Respondent 1-8 Municipal Councillors respectively
03.08.2012	implicated in the sting operation and further
25.05.2012	recommending that evidence recorded in the deemed
22.03.2012	judicial proceedings be forwarded to the appropriate
26.03.2012	Investigating Agency (Commissioner of Police) for consideration as to whether it constitutes an offence under the PCA and/or provisions of the MCD Act attracting penal sanction.
18.01.2013	Various orders passed by the Competent Authority in
09.11.2012	the cases of the Respondent 1-8 Municipal Councillors
26.10.2012	respectively under the Delhi Lokayukta and

24.12.2012	Upalokayukta Act being the Lieutenant Governor
18.07.2012	rejecting the recommendations issued by the Hon'ble
11.07.2012	Lokayukta.
26.06.2012	
01.03.2013	'Substance of cases' of ex-Municipal Councillors Shri.
26.03.2013	Subhash Jain, Ms. Anita Koli, Ms. Shateshwari Joshi,
09.08.2013	Ms. Manju Gupta, Ms. Beena Thakuria, Ms. Jaishree
19.07.2012	Panwar, Mr. Ravi Prakash Sharma and Mr. Ajit Tokas made public by the Hon'ble Lokayukta.
07.05.2013	Hence the present writ petition.

IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY WRIT JURISDICTION

WRIT PETITION (C) NO. OF 2013

IN THE MATTER OF A PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

COMMON CAUSE
THROUGH ITS CHIEF EXECUTIVE,
MR. KAMAL KANT JASWAL
5, INSTITUTIONAL AREA, NELSON MANDELA MARG
VASANT KUNJ,
NEW DELHI ...PETITIONER

VERSUS

1. SHRI SUBHASH JAIN, EX- COUNCILLOR

A-71 GALI NO.1 KABIR NAGAR,
SHAHDARA, □ DELHI- 110094

2. MS. ANITA KOLI, EX- COUNCILLOR

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NEW DELHI □

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DELHI-110 092 □

8. SHRI AJIT SINGH TOKAS, EX COUNCILLOR

PRATEEK MARKET, MUNIRKA, □

NEW DELHI- 110067

9. LIEUTENANT GOVERNOR OF DELHI

RAJ NIWAS,

DELHI-110054

10. GOVERNMENT OF N.C.T OF DELHI

THROUGH ITS STANDING COUNSEL,

DELHI HIGH COURT,

11. POLICE COMMISSIONER, DELHI

P.O. 171 GPO,

NEW DELHI

.....RESPONDENTS

**A WRIT PETITION IN PUBLIC INTEREST UNDER
ARTICLE 226 OF THE CONSTITUTION OF INDIA
REQUESTING THAT THE ORDERS OF THE
LIEUTENANT GOVERNOR IN THE CASE OF ALL THE
EIGHT RESPONDENT COUNCILLORS BE SET ASIDE**

TO,

THE HON'BLE THE CHIEF JUSTICE OF THE HIGH COURT OF
DELHI AND HIS COMPANION JUSTICES OF THE HIGH
COURT

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:-

1. The present Writ Petitioner has no personal interest in the litigation and the present Petition is not guided by self-gain or for gain of any other person/institution/body and there is no motive other than of public interest in filing the Writ Petition.
2. The source of knowledge of the facts alleged in the Writ Petition is documentation available in the public domain as well as documents obtained through the Right to Information Act from the office of the Hon'ble Lokayukta. The Orders of the Lieutenant Governor as well as the Special Reports of the Hon'ble Lokayukta annexed to the present Petition were obtained through an application

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under the RTI Act, while the Orders of the Hon'ble Lokayukta and the 'Substance of Cases' issued by the Hon'ble Lokayukta were obtained from the website of the Lokayukta where they were uploaded and made freely available.

3. The present Petition is for the benefit of all citizens of India since it aims to improve mechanisms for rooting out corruption in public administration through the statutory body of the Lokayukta
4. The persons/institutions/bodies likely to be affected by the orders sought in the Writ Petition are the ex-councillors whose conduct is sought to be impugned, the Lieutenant Governor of Delhi and the Commissioner of Police, New Delhi, all of whom have been impleaded as Respondents to the present petition. To the knowledge of the Petitioner, no other persons/institutions/bodies are likely to be affected by the orders sought in the writ petition.
5. The Present Petitioner is a public interest organization of long standing, which has been campaigning for the establishment of a credible institutional framework for combating corruption in public life. It is represented in the present Petition by its Director, Mr. Kamal Jaswal, S/o Sh. Ambika Prasad Jasvaul, resident of B-34, Ground Floor, Geetanjali Enclave, New Delhi. The Petitioner has been at the forefront of civil society campaigns for increased transparency in public administration and has often had the occasion to bring matters of public

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interest to this Hon'ble Court and the Hon'ble Supreme Court leading to issuance of directions by the Hon'ble Court that have had the effect of strengthening institutional responses to corruption and maladministration in furtherance of the constitutional guarantees to citizens under Part III of the Constitution of India. In 1995, the present Petitioner filed a PIL in the Supreme Court, urging for the establishment of an independent Lokpal at the central level and the reinforcement of the institution of Lokayukta at the state level. Although the PIL has yet to be finally disposed of, it has had significant outcomes, commencing with the unprecedented imposition of a penalty of Rs. 50 lakh on the former Petroleum Minister, Capt. Satish Sharma, for the abuse of his discretionary powers. In August 2008, at the instance of the Bench, the petitioner society filed an additional affidavit, delineating the essential features of the institutions of Lokpal and Lokayukta. Two years later, this blueprint formed the basis of the first draft of the Jan Lokpal Bill, which served as the rallying point for India's biggest popular mobilization for combating corruption. The Petitioner organization has the means to pay the costs, if any, imposed by the Court and undertakes to do so if directed by the Hon'ble Court

6. The Petitioner has not had occasion to file any representations on the said issue, since the necessary action in this regard has already been taken by the Hon'ble Lokayukta by way of issuing

orders, Special Reports and 'Substance of Cases', despite which no action has been taken by the Competent Authority or the legislature.

7. The Petition organization has been active since 1980 in agitating for citizens rights before various forums, including before this Hon'ble Court. Some of the recent Petitions in Public Interest filed by the Petitioner are as follows:

(i) Writ Petition No 866 of 2010- Common Cause v Union of India (on the issue of Post-Retirement Activities of Former Supreme Court Judges). The matter is pending before this Hon'ble Court.

(ii) Writ Petition No 8363 of 2010- Common Cause v Union of India (on the issue of Misuse of BSP reserved symbol). The matter is pending before this Hon'ble Court.

(iii) Writ Petition No 16779 of 2006- Common Cause v Govt of NCT & Anr (on the issue of Working Condition of Private School Teachers). The matter is pending before this Hon'ble Court.

8. Given its continued commitment to the cause of probity in public administration and the need for a sustained effort on all

fronts to eradicate the evil of corruption from Indian society, the Present Petitioner is constrained to file the present Petition in Public Interest. The Present Petition seeks to draw the attention of this Hon'ble Court to the manner in which the institution of the Lokayukta, established under the Delhi Lokayukta and Upalokayukta Act, 1995 (hereinafter, 'the Act'), has been effectively undermined on account of disregard by the Competent Authority of the considered recommendations made by the Hon'ble Lokayukta in various cases involving egregious acts of corruption by elected public functionaries. Despite the fact that the reports submitted by the Hon'ble Lokayukta contained *prima facie* findings of violations of the criminal statutes, including the Prevention of Corruption Act, 1988, no consequential action has been taken by the Competent Authority under the Act to initiate prosecution against the individuals involved. The continued inaction on the part of the Competent Authority amounts to a grave and continuing violation of Articles 14 and 21, which have been interpreted by the Hon'ble Apex Court as guaranteeing to all citizens the right to transparency, fairness and non-arbitrariness in the actions of all state functionaries as well as the right to a corruption free society.

9. The present Petitioner is therefore constrained to approach this Hon'ble Court in exercise of its jurisdiction under Article 226 of the Constitution by way of the present Petition in Public Interest

seeking appropriate relief to remedy the continuing violation of the Part III rights of the citizens.

10. On 7.12.2011, the newspaper 'Nav Bharat Times' published a news report titled "*Sting Operation KeBaad Parshadonme in Macha Hadkamp*". The report contained the findings of a sting operation carried out and subsequently telecast by the news channel IBN-7 bringing to light the involvement of Municipal Councillors in Delhi in negotiations for facilitating illegal and unauthorized constructions for illegal gratification. As part of the sting operation, news reporters and journalists posed as builders who had erected or intended to erect buildings in contravention of applicable rules and regulations. The conversations were captured on video. Transcripts of the conversations were also made.

11. In the garb of builders, the media persons approached the municipal councillors under whose jurisdiction the buildings had or were to be erected fell. During the course of their conversations with the municipal councillors, the journalists offered the elected public officials illegal gratification in the form of monetary consideration to overlook the existing or contemplated irregularities in construction and also to make the necessary arrangements to ensure that the state officials concerned, such as Junior Engineers and Assistant Engineers, were also taken into confidence and bribed so as to not highlight or oppose the proposed irregularity.

12. It is submitted that the Municipal Councillors arrayed as Respondents in the present Public Interest Litigation are public functionaries as defined in Section 2(m) of the Act and as such their conduct in the course of discharge of their public duties admittedly can be made subject to the provisions of the Act and the jurisdiction of the office of the Hon'ble Lokayukta established under the auspices of the said Act.

13. *Suo motu* cognizance was taken by the Hon'ble Lokatyukta on 7.12.2011 of the abovementioned newspaper article as well as the telecast on news channel IBN-7. Notices were issued to the Municipal Councillors concerned, the Editor and City Correspondent of 'Nav Bharat Times' as well as the Managing Director and Correspondent of IBN-7. The reporters of Cobra Post, who had been deputed by the channel to carry out the sting operation were directed to produce the original footage/recording of the sting operation.

14. In the proceeding before the Hon'ble Lokayukta, all the parties to whom notice was issued were represented by Legal counsel. The statements of the reporters who had carried out the sting operation were recorded on oath and their identities were kept confidential in accordance with Section 14 of the Delhi Lokayukta and Upalokayukta Act, 1995. A DVD containing the raw original footage of the sting operation was also obtained from the channel and made available to the Hon'ble Lokayukta.

Transcripts of the recorded conversation of the meetings and negotiations with the Municipal Councillors were also tendered. The Hon'ble Lokayukta also saw fit to appoint an *amicus curiae* to assist him in the matter. The cases of the Municipal Councillors were segregated as separate complaint cases were registered and dealt with by way of separate orders.

15. The procedure to be adopted in hearing the cases was determined by consensus after hearing all concerned parties. It was agreed that an agreed transcript of the raw footage would be drawn from the footage and that parties would not question the authenticity of the footage or the transcript. Accordingly, the footage was viewed in the proceedings by the Hon'ble Lokayukta with parties being given the opportunity during the viewings to give inputs on the same.
16. It is the admitted position that the proceedings before the Hon'ble Lokayukta were held in full compliance with the principles of natural justice and keeping in view the letter and spirit of Section 10 of the Act. At no stage of the proceedings did any of the Respondent Municipal Councillors contend that they were in any sense deprived of their right to a full and fair hearing or that they were in any way constrained from presenting their defence in full. Further, as is apparent from the procedure outlined above, all material necessary and relevant to arriving at a conclusion in respect of whether actionable offences had been committed by the Respondent Municipal

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Councillors was scrutinized in detail by the Hon'ble Lokayukta, with inputs from all parties as well as the learned Amicus Curiae.

17. Upon consideration of the material on record as well as the submissions made by the parties, the Hon'ble Lokayukta addressed the question of whether the impugned conduct fell within the scope of Section 2(b) of the Act. In this context, it may be noted that the term "allegation" in Section 2(b) 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. is or has at any time during the period of his office been in possession of pecuniary resources or property disproportionate to his known resources of income whether such pecuniary resources or property are held by the public functionary personally or by any member of his family or by some other person on his behalf;*

18. It is submitted that in each of these cases, the inquiry fell within a narrow compass. The facts in issue were largely admitted as between the parties. In all cases, the Municipal Councillors

admitted that the conversation portrayed in the raw footage and transcripts had in fact taken place and only disagreed as to the context in which the impugned conduct had taken place as well as the implications, circumstances and motivations behind the same.

19. After conduct of the inquiry in the manner contemplated in the Act, the Hon'ble Lokayukta, having satisfied himself that the allegations were established, issued separate Reports in the cases of each of the Respondent Municipal Councillors under Section 12(1) of the Act, communicating his findings and recommendations to the Competent Authority (being the Lieutenant Governor of the NCT of Delhi). The Report(s) of the Hon'ble Lokayukta under Section 12(1) of the Act pertaining to Sh Subhash Jain (Respondent No 1), Smt Anita Koli (Respondent No 2), Smt Sateshwari Joshi (Respondent No 3), Smt Manju Gupta (Respondent No 4), Smt Bina Thakuriya (Respondent No 5), Smt Jaishree Panwar (Respondent No 6), Sh Ravi Prakash Sharma (Respondent No 7) and Sh Ajit Singh Tokas (Respondent No 8) are annexed to the present petition and marked **ANNEXURE – P1 to P8, respectively.**

20. Aside from finding that the allegations in respect of the impugned conduct of the Municipal Councillors were established upon consideration of the material on record, the Hon'ble Lokayukta also came to the unequivocal conclusion that the said material also disclosed the commission of penal

offences under relevant provisions of the Prevention of Corruption Act as well as the Municipal Corporation of Delhi Act. In the majority of the cases, the finding of the Hon'ble Lokayukta was that the Municipal Councillors had been eager and willing participants in contemplating blatant violation of the law and in accepting illegal gratification for circumventing and violating legal provisions. Additionally, some of the Respondent Municipal Councillors also demonstrated a willingness to accept illegal gratification with a view to disbursing the same to other officials involved in perpetuating the said illegalities, thus effectively acting as a conduit for further illegal activity.

- 21. Since the evidence collected by the Hon'ble Lokayukta in accordance with the Act amounts to legal evidence recorded in deemed judicial proceedings, it was further concluded that the material on record should be forwarded to the appropriate investigating agency for further action in this regard.
- 22. Consideration by the Lieutenant Governor of the Report submitted by the Hon'ble Lokayukta under Section 12(1) is dealt with in Section 12(2) of the Act, which provides that:

"The competent authority shall examine the report forwarded to it under sub-section (1) and intimate, within three months of the date of receipt of the report, the Lokayukta or, as the case may be, the Upalokayukta, the action taken or proposed to be taken on the basis of the report"

23. In considering the various reports submitted by the Hon'ble Lokayukta, the Lieutenant Governor as the Competent Authority under the Act adopted a procedure altogether alien to the statutory scheme and effectively conducted a *de novo* hearing of each of these cases. In each individual case, notice was issued to the Respondent Municipal Councillors, a further personal hearing was granted and submissions were recorded. This procedure of granting a fresh hearing following receipt of a report by the Hon'ble Lokayukta under Section 12(1) is nowhere contemplated in the Act. The language of the relevant statutory provision, Section 12(2) in fact militates against adoption of such a procedure by specifying that the action taken or proposed to be taken by the Lieutenant Governor was to be "on the basis of the report" submitted by the Hon'ble Lokayukta under Section 12(1).

24. The procedure adopted by the Lieutenant Governor effectively supplanted the procedure prescribed in the Act for the functioning of the institution of the Lokatyukta and the sanctity to be given to the institution of the independent ombudsman as envisaged in the Act. This is apparent from the fact that the fresh hearing afforded to each of the Municipal Councillors served as the basis of the Lieutenant Governor's rejection of the course of action proposed by the Hon'ble Lokayukta in each of these cases. Despite finding no legal infirmity in the procedure adopted by the Hon'ble Lokayukta in conducting the

proceedings or disturbing the factual basis on which the conclusion of the Hon'ble Lokayukta were premised, the Lieutenant Governor as the Competent Authority saw fit to disregard the recommendations of the Hon'ble Lokayukta and observe that no action was required to be taken against any of the Respondent Municipal Councillors. The orders passed by the Lieutenant Governor in the cases of Sh. Subhash Jain (Respondent No 1), Smt Anita Koli (Respondent No 2), Smt Sateshwari Joshi (Respondent No 3), Smt Manju Gupta (Respondent No 4), Smt Bina Thakuriya (Respondent No 5), Smt Jaishree Panwar (Respondent No 6), Sh Ravi Prakash Sharma (Respondent No 7) and Sh Ajit Singh Tokas (Respondent No 8) are annexed hereto and marked as 'ANNEXURE P-9 to P-16', respectively.

25. The various reasons assigned by the Lieutenant Governor for rejection of the Reports in the individual cases of the Respondent Municipal Councillors can broadly be summarised as follows:

- i. That the person in question had already been disgraced publicly
- ii. That the persons in question had subsequently been denied a ticket to contest the Municipal Elections again
- iii. That the Municipal Councillor had "spoken very little" during the course of the interaction with the journalists posing as builders

iv. That the person in question was no longer a Municipal Councillor and therefore there was no need/purpose served in sending the transcript and footage of the sting operation to the appropriate investigating agency for further action

26. The Petitioners submit that the orders passed by the Lieutenant Governor rejecting the recommendations of the Hon'ble Lokayukta are liable to be set aside as being wholly unreasonable, vitiated by arbitrariness and bearing no rational nexus with the gravity and seriousness of the criminal offences that the Hon'ble Lokayukta has found to be *prima facie* made out. Particularly with reference to the conclusion arrived at by the Hon'ble Lokayukta that the impugned conduct of the Respondent Municipal Councillors *prima facie* discloses the commission of offences attracting penal sanction, it is not open to the Lieutenant Governor, without disturbing the factual or legal basis of the said conclusion to nevertheless set aside the said recommendation. It is well settled that criminal culpability survives the removal of the person from the post or office held during the commission of the criminal act or omission. Further, the state in such instances is required under law to take necessary action to initiate appropriate proceedings against the perpetrators of criminal activity. Expression of regret and perceived extra-legal sanctions, such as public disgrace/shaming, cannot in a system governed by the rule of law serve

to grant remission from the rigours of the criminal justice system.

27. The Petitioner submits that the reasons specified by the Lieutenant Governor for rejecting the recommendations of the Hon'ble Lokayukta upon scrutiny *prima facie* betray complete lack of application of mind by the Lieutenant Governor. The conclusions of the Hon'ble Lokayukta were the outcome of a quasi-judicial proceeding during which all relevant material was duly considered and the Respondent Municipal Councillors were afforded a full hearing. As such, these findings are to be accorded the deference due to a reasoned finding of a statutory authority tasked with ensuring probity and transparency in public administration.
28. The Hon'ble Apex Court has repeatedly held that the rights guaranteed to citizens under Part III of the Constitution require that any action of the state or its instrumentalities be just, fair, reasonable and exercised for a *bona fide* purpose. Further, it has been reiterated that Article 21 serves as a constitutional guarantee of a corruption free government and all state action must be directed towards achieving this outcome. The action of any state functionary that fails to serve this objective is thus *ultra vires* the Constitution of India.
29. Upon receipt of the various orders passed by the Lieutenant Governor in the cases of the Respondent Municipal Councillors,

the Hon'ble Lokayukta, not being satisfied with the non-acceptance of the recommendations made by him, took recourse to the procedure stipulated in Section 12(3) of the Act. In accordance with the same, separate Special Reports was made to the Lieutenant Governor seeking reconsideration of the decision of the Competent Authority and pointing out the legal position and excerpts from the recorded conversations that had possibly escaped the attention of the Lieutenant Governor.

30. For the convenience of the Hon'ble Court and in the interests of brevity, the Petitioner herein submits a chart summarising the factual position in respect of each of the Respondent Municipal Councillors, indicating the nature of the transgression identified by the Hon'ble Lokayukta, the consequential recommendation by the Hon'ble Lokayukta, the reasons recorded by the Lieutenant Governor in rejecting such recommendations and the further action taken by the Hon'ble Lokayukta:

Sr. No.	Name of the Public Authority	Finding of the Hon'ble Lokayukta as to nature of Transgression	Offence cited by the Hon'ble Lokayukta	Action taken by and Order of the Competent Authority(LG)	Further action by the Hon'ble Lokayukta
1.	Shri Subhash Jain, Ex-	The Councilor of his own volition	As per Lokayukta report offence	Held further proceedings by granting personal	The Lokayukta has vide letter dated February 28, 2013

	Councillor	expressly and willingly agreed to help the reporters raise unauthorized construction without sanction of plans by assuring to personally sort the matter with the Jr. Engineer.	under section 8 & 9 of PCA <i>prima facie</i> committed. Accordingly it was ordered that the evidence recorded in the deemed judicial proceedings be forwarded to the appropriate Investigating Agency (Commissioner of Police) for consideration as to whether it constitutes an offence under the PCA.	hearings. No action taken as censure uncalled for. Vide order dated January 18, 2013, the LG stated, "the sting operation has already brought disgrace to the Respondent Councillor and that he was subsequently not given the ticket to contest the Municipal Elections again.	submitted the Special Report under section 12 (6) of the Act; praying to the LG to reconsider his decision of not acting on the recommendations, failing which he has requested that the Special Report with explanatory memorandum be laid before the Legislative Assembly as per the statute.
2.	Ms. Anita Koli, Ex-Councillor	The Councillor and her husband were interested in taking money and getting unauthorized construction done by paying part of illegal gratification	As per Lokayukta report the facts emerging in the transcript may <i>prima facie</i> amount to an offence under PCA. Accordingly it was ordered that the	Held further proceedings by granting personal hearings. No action taken as censure uncalled for. Vide order dated November 9, 2012, the LG stated "...the	The Lokayukta has vide letter dated February 28, 2013 submitted the Special Report under section 12 (6) of the Act, praying to the LG to reconsider his decision of not acting on the recommendations,

		to Jr. Engineer.	evidence recorded in the deemed judicial proceedings be forwarded to the appropriate Investigating Agency (Commissioner of Police) for consideration as to whether it constitutes an offence under the PCA.	sting operation was carried out with malafide intentions to defame her and ruin her career.....she had spoken very little during the entire episode and on no occasion had sought any illegal gratification for herself or anybody else."	failing which he has requested that the Special Report with explanatory memorandum be laid before the Legislative Assembly as per the statute.
3.	Ms. Shateshwari Joshi, Ex-Councillor	The Councillor was demanding Rs. 7.00 lakhs instead of Rs. 5.00 lakhs being offered and agreed to talk to the Jr. Engineer to get the illegal construction done.	Recommended censure. As per Lokayukta report dated June 29, 2012 offence under section 7, 8, & 9 of PCA committed.	Held further proceedings by granting personal hearings. No action taken as censure uncalled for. Vide order dated October 26, 2012 the LG held: "...at no occasion she had asked for any gratification. The sting operation has already brought public disgrace	The Lokayukta has vide letter dated February 28, 2013 submitted the Special Report under section 12 (6) of the Act, praying to the LG to reconsider his decision of not acting on the recommendations, failing which he has requested that the Special Report with explanatory memorandum be laid before the

				to the Councillor. Therefore, after careful consideration of the report and all aspects of the case, I hold that the issue of "Censure" is not called for in this case."	Legislative Assembly as per the statute.
4.	Ms. Manju Gupta, Ex-Councillor	The Councillor showed her willingness to support the raising of illegal construction and providing protection from MCD officials. The Councillor and her husband assured protection against gratification and discussed the amount as well.	As per Lokayukta report dated July 10, 2012 the facts emerging in the transcript may constitute offence under the PCA and IPC. The evidence be forwarded to the appropriate investigating agency for consideration as to whether it constitutes offences under the PCA&IPC, warranting any further	Held further proceedings by granting personal hearings. No action taken as censure uncalled for. Vide order dated December 24, 2012 the LG held: "...that she had spoken very little during the entire episode and at no occasion had the Respondent Councillor sought any illegal gratification for herself or anybody else. I, therefore, hold	The Lokayukta has vide letter dated March 8, 2013 submitted the Special Report under section 12 (6) of the Act, praying to the LG to reconsider his decision of not acting on the recommendations, failing which he has requested that the Special Report with explanatory memorandum be laid before the Legislative Assembly as per the statute.

			action and this Forum is duty bound to do the same.	that the issue of "Censure" is not called for in this case."	
5.	Ms. BeenaThakuria, Ex-Councillor	The Councillor showed acute interest for raising illegal construction and expected a financial reward for providing her help and assistance. She showed eagerness for the illegal gratification in lieu of her help in doing such act by exercising her influence with the Jr. Engineer whose official duty is to stop unauthorized construction.	As per Lokayukta report dated August 3, 2012 "...the facts emerging in the transcript prima facie disclose an offence under section 8, 9 & 13 (d) (ii) of PCA. The above evidence being legal evidence recorded in deemed judicial proceedings should be forwarded to the appropriate investigating agency for consideration as to whether it constitutes offences under the PCA and warrants any	Held further proceedings by granting personal hearings, which according to Lokayukta not provided for in the statute. No action taken as censure uncalled for. In this case also the Competent Authority held that "Censure" was not called for. The Competent Authority observed that the sting operation had already served its intended purpose and had brought disgrace to the Councillor. Further, she had not been given a ticket for contesting Municipal Elections.	The Lokayukta has vide letter dated March 13, 2013 submitted the Special Report under section 12 (6) of the Act, praying to the LG to reconsider his decision of not acting on the recommendations, failing which he has requested that the Special Report with explanatory memorandum be laid before the Legislative Assembly as per the statute.

			further action and this Forum is legally bound to do the same. It is ordered accordingly."	Therefore, issue of "Censure" was not called for.	
6.	Ms. Jaishree P anwar, Ex-Councillor	The Councillor was more than eager and willing to facilitate the unauthorized construction through a willing Jr. Engineer. Her willingness to speak and contact the concerned Jr. Engineer at the opportune time, coupled with her self-professed closeness to the builders, shows misconduct and breach of norms of integrity on her part.	As per Lokayukta report dated May 25, 2012 the ingredients of Section 7, 8, & 9 of the PC Act are substantially made out in the case.	Held further proceedings by granting personal hearings. No action taken as censure uncalled for. Vide order dated July 18, 2012 the LG held: "...No action called for as she is no longer Municipal Councillor. ...no offence is made out under PCA, and therefore no need of forwarding the transcript/footage of the Sting Operation to the appropriate criminal investigating agency."	The Lokayukta submitted the Special Report dated August 8, 2012, under section 12 (6) of the Act, praying to the LG to reconsider his decision of not acting on the recommendations, failing which he has requested that the Special Report with explanatory memorandum be laid before the Legislative Assembly as per the statute.
7.	Shri Ravi Prakash	Knowingly offered to act	Construction of a building	The LG observed:	The Lokayukta has vide letter

Sharma, Ex Councillor	as a facilitator to carry out unauthorized construction and give his help by assuring that he would 'handle' the Jr. Engineer of MCD. Being in the know that construction of a building without a sanction plan was in contravention of the MCD Act, he agreed to a 'reasonable' deal with the builders against a consideration to be agreed upon later.	without sanctioned plan is in contravention of Section 332 and is punishable under Section 461 read with Schedule XII of the Delhi Municipal Corporation Act 1957. The action of a public representative in offering to act as a facilitator for construction without sanctioned plan would be in contravention of the above provision and in violation of conduct required to be observed by Municipal Councillors under Section 2 (b) (i) of the Act.	"Issuing of such reprimand at present would be inconsequential since the respondent is no longer a Municipal Councillor."	dated July 19, 2012 submitted the Special Report under section 12 (6) of the Act, praying to the LG to reconsider his decision of not acting on the recommendations, failing which he has requested that the Special Report with explanatory memorandum be laid before the Legislative Assembly as per the statute.
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8.	ShriAjit Singh Tokas, Ex-Councillor	The Councillor, being aware that the proposed construction was unauthorized and without a sanction plan, discussed in detail the evaluation of the proposed project and its profitability. However, there was no demand for illegal gratification.	The Lokayukta therefore recommended to the LG (CA) to issue an advisory to the Councillor, cautioning him not to entertain or offer help regarding unauthorized construction as it was against his public duty to encourage unauthorized construction.	The LG observed: "Issuing of such Advisory at present would be inconsequential since the defaulting Public Official is no longer a Municipal Councillor."	The Lokayukta has vide letter dated July 19, 2012 submitted the Special Report under section 12 (6) of the Act, praying to the LG to reconsider his decision of not acting on the recommendations, failing which he has requested that the Special Report with explanatory memorandum be laid before the Legislative Assembly as per the statute.
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31. Despite the fact that the Special Reports in the cases of some of the Respondent Municipal Councillors were made as far back as July 2012, action on the same on the part of the Lieutenant Governor is still not forthcoming. While the various Special Reports have been laid on the table of the State Assembly, neither the executive nor the legislature has deemed it necessary to take any action on the same.

32. The procedure adopted by the Lieutenant Governor in considering the recommendations of the Hon'ble Lokayukta and the reasons based on which the said recommendations have

been disregarded have effectively rendered the statutory provisions establishing the Lokayukta otiose. The object and purpose for which the said legislation was enacted, i.e., establishment of an independent ombudsman whose recommendations were to be given due credence and serve as the basis for further appropriate action – stands defeated by the abovementioned approach adopted by the Lieutenant Governor.

33. Faced with the continued failure of the Competent Authority to take the necessary action to give effect to his recommendations, the Hon'ble Lokayukta has been constrained, in accordance with Section 12(7) of the Act, to issue 'Substance of cases' detailing the recommendations made by him in the cases of the Respondent Municipal Councillors as well as critiquing the legal basis of the rejection of the said recommendations by the Competent Authority. The 'Substance of Case' issued by the Hon'ble Lokayukta pertaining to Sh Subhash Jain (Respondent No 1), Smt Anita Koli (Respondent No 2) and Smt Sateshwari Joshi (Respondent No 3) is annexed hereto and marked as 'ANNEXURE P-17', the 'Substance of Case' issued by the Hon'ble Lokayukta pertaining to Smt Manju Gupta (Respondent No 4), Smt Bina Thakuria (Respondent No 5) is annexed hereto and marked as 'ANNEXURE P-18', the 'Substance of Case' issued by the Hon'ble Lokayukta pertaining to Smt Jaishree Panwar

(Respondent No 6) is annexed hereto and marked as 'ANNEXURE P-19', the 'Substance of Case' issued by the Hon'ble Lokayukta pertaining to Sh Ravi Prakash Sharma (Respondent No 7) and Sh Ajit Singh Tokas (Respondent No 8) is annexed hereto and marked as 'ANNEXURE P-20'

34. As part of the said 'Substance of cases', the Hon'ble Lokayukta has also had occasion to opine on the procedure adopted by the Competent Authority as well as the reasons cited in favour of rejection of the recommendations made by the ombudsman. For the convenience of the Hon'ble Court, the position taken by the Hon'ble Lokayukta in the 'Substances of cases' relating to the Respondent Municipal Councillors may be summarised as follows:

- i. The inquiry was conducted giving full opportunity to the Respondent Municipal Councillors to have their say and lead evidence. There is no contention on the part of any of these individuals that there was a failure to comply with natural justice by the Hon'ble Lokayukta
- ii. The raw footage and transcript of conversations drawn from such footage that formed the factual basis for the conclusions arrived at by the Hon'ble Lokayukta was admitted as between the parties and is such is unimpeachable. Nor have the Respondent Municipal Councillors sought to deny the contents of the same or question the veracity of the raw footage.

- iii. The Act nowhere provides for nor contemplates further hearing by the Competent Authority and in fact requires that the latter take a decision "on the basis of" the report of the Hon'ble Lokayukta. The grant of such further hearing is not in accordance with the Act, which position is fortified by a written opinion of a former Attorney General for India
- iv. In any event, the legally flawed approach adopted by the Competent Authority was further vitiated by the failure to issue notice to the Amicus Curiae appointed by the Hon'ble Lokayukta, who should have been given notice to bring to the attention of the Lieutenant Governor the relevant facts, the incriminating parts of the conversations and salient aspects justifying the recommendations of the Hon'ble Lokayukta.
- v. The difference in interpretation of the Acts by the Hon'ble Lokayukta and the Competent Authority was a matter that ultimately required judicial resolution and determination
- vi. No disagreement was expressed by the Competent Authority with the findings or conclusions reached by the Hon'ble Lokayukta in any of these cases
- vii. Simply because someone has ceased to hold public office is no ground to absolve him or her of any punishment or penalty, particularly in view of the fact that such persons may be aspirants for other higher public office.

- viii. Similarly, expression of regret does not serve to efface the offence committed, particularly when the same is in the context of a criminal law statute
- ix. In each of the cases in which criminal offences under the PC Act and MCD Act have been found to be *prima facie* established, the individual in question was shown in the footage to be a willing participant in the illegal activities contemplated and, either actively, or passively, or through a conduit, sought and bargained over the illegal gratification payable. In many cases, the individuals in question also offered their services for passing on illegal gratification to other public officials.

35. The Petitioner submits that allowing admitted criminal misconduct on the part of elected representatives to escape unpunished despite the clear findings of the Lokayukta in this regard not only erodes the public faith in the institution of the independent ombudsman but is also *ultra vires* Articles 14 and 21 of the Constitution of India.

36. The Petitioner as a concerned and responsible civil society organisation committed to the cause of probity and transparency in public administration is therefore constrained to file the present Petition seeking appropriate action by the Hon'ble Court to give effect to the letter and spirit of the Act and direct that the recommendations of the Hon'ble Lokayukta be given effect to in full, including by quashing the orders passed

by the Competent Authority being the Lieutenant Governor of Delhi in the cases of Shri Subhash Jain (dated January 18, 2013), Ms. Anita Koli (dated November 9, 2012), Ms. Shateshwari Joshi(dated October 26, 2012), Ms. Manju Gupta(dated December 24, 2012), Ms. Beena Thakuria (March 4, 2013) Ms. Jaishree Panwar (dated July 18, 2012) Shri Ajit Singh Tokas (dated June 26, 2012) & Shri Ravi Sharma (dated July 11, 2012) on the following:

GROUNDS:

A. The Hon'ble Supreme Court in the case of *St. of Gujarat v. R. A Mehta*(2013) 3 SCC 1 has unequivocally held that maladministration and corruption are destructive of the rule of law and the constitutional guarantees under Articles 14 and 21. The Hon'ble Apex Court observed:

"Corruption in a civilised society is a disease like cancer which if not detected in time is sure to spread its malignance among the polity of the country leading to disastrous consequences... Corruption is opposed to democracy and social order, as being not only anti-people but also due to the fact that it affects the economy of the country and destroys its cultural heritage. It poses a threat to the concept of constitutional governance and shakes the very foundations of democracy and the rule of law. It threatens the security of the societies undermining the ethical values and justice jeopardising sustainable development. Corruption devalues human rights, chokes development and corrodes the moral fabric of society. It causes

considerable damage to the national economy, national interest and the image of the country...

.....

Corruption in a society is required to be detected and eradicated at the earliest as it shakes "the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating (sic) society". Liberty cannot last long unless the State is able to eradicate corruption from public life. Corruption is a bigger threat than external threat to the civil society as it corrodes the vitals of our polity and society. Corruption is instrumental in not proper implementation and enforcement of policies adopted by the Government. Thus, it is not merely a fringe issue but a matter of grave concern and requires to be decisively dealt with"

It is thus submitted that the well established position of law is that the constitutional guarantee requires that a policy of zero-tolerance be adopted towards any corruption in public administration and that necessary action be taken to prosecution and punish the same. Failure to do so would have the deleterious effects highlighted by the Hon'ble Supreme Court and would, *ex hypothesi*, be *ultra vires* the Constitution of India.

- B. That the Hon'ble Apex Court in the abovementioned case sought to emphasise the central role of the office of the Lokayukta in providing a mechanism through which maladministration can be checked. It was been held that

"In a state where society suffers from moral denigration and simultaneously from rampant corruption, there must be an effective forum to check the same. Thus the Lokayukta Act may be termed a pro-people Act". It was further emphasised that keeping in mind the scope and object of the Act, the provisions of the same were to be interpreted in a purposive manner so as to best serve the objective of empowering the Lokayukta to eradicate the evil of corruption and ensure realisation of the constitutional guarantee of a corruption free society. It is humbly submitted that the said purposive approach must also be adopted by this Hon'ble Court in interpreting the provisions of the Delhi Lokayukta and Upalokayukta Act, 1995.

- C. That on a purposive interpretation of the Act, it is apparent that the recommendations of the Hon'ble Lokayukta are to be acted upon by the Competent Authority absent a finding that the same are vitiated by *mala fides* or are arbitrary, wholly unreasonable or were arrived at without adherence to principles of natural justice.
- D. That the procedure adopted by the Competent Authority effectively amounted to a *de novo* hearing of each of the cases of the Respondent Municipal Councillors. This procedure of granting a fresh hearing following receipt of

a report by the Hon'ble Lokayukta under Section 12(1) is nowhere contemplated in the Act. The language of the relevant statutory provision, viz. Section 12(2), in fact militates against the adoption of such a procedure by specifying that the action taken or proposed to be taken by the Lieutenant Governor was to be "on the basis of the report" submitted by the Hon'ble Lokayukta under Section 12(1). The Competent Authority has thus acted in contravention of the provisions of the act and effectively supplanted the procedure clearly indicated in the statute itself

- E. That in the cases of each of the Respondent Municipal Councillors, it is the admitted position that the principles of natural justice have been fully complied with. The concerned individuals were at all times represented by legal counsel and were given the opportunity to lead submissions on fact and law before the Hon'ble Lokayukta. Admittedly, the procedure followed by the Hon'ble Lokayukta does not suffer from any procedural infirmity. In such circumstances, in considering the recommendations of the Hon'ble Lokayukta, it is not open to the Competent Authority to put in place a procedure not contemplated in the Act merely with a view to affording a basis for rejection of the said recommendations.

- F. That the procedure adopted by the Competent Authority not only renders the provisions for hearing before the Hon'ble Lokayukta otiose, but also has the effect of rendering the very institution of the Lokayukta redundant. If in every case the Competent Authority were to rehear the matter in its entirety and arrive at contrary findings based on such hearing, the role of the Hon'ble Lokayukta would become untenable and the statutory function clearly ascribed to the ombudsman in the Act would be devalued.
- G. That the Competent Authority cannot arrogate itself to the position of a Court of first instance on matters of fact as well as law as has been done in the instant case. Rather, Section 12(2) of the Act and the central role of the Lokayukta under the Act in identifying and initiating proceedings against corrupt public functionaries suggests that the recommendations of the Hon'ble Lokayukta are ordinarily to be implemented in full unless vitiated by a legal infirmity in the process of decision-making, or the decision itself is so unreasonable that it could not have been arrived at by any reasonable person, or the Lokayukta has considered some irrelevant material or has failed to consider the relevant material. Admittedly, none of these infirmities are present in the Reports issued by the Hon'ble Lokayukta in the present case.

- H. That there was no legal basis for the rejection by the Competent Authority of the recommendations of the Hon'ble Lokayukta since the primary evidence in the present case, i.e., the raw footage of the sting operation as well as the transcripts of the conversations so recorded was admitted as between the parties. The Respondent Municipal Councillors also at no point sought to challenge the veracity of the raw footage. Hence, no factual dispute existed in the present case. Further, in no case has the Competent Authority expressed any disagreement with the findings or conclusions reached by the Hon'ble Lokayukta. As such, the recommendations have been set aside on the basis of orders that are for all intent and purposes non-speaking in so far as the substantive legal questions in issue are concerned.
- I. That when the recommendations contained in the report of the Hon'ble Lokayukta *prima facie* indicate the commission of an offence under a penal statute, it is not open to the Competent Authority to reject the recommendation of the Hon'ble Lokayukta to place all relevant material before the appropriate investigative authority to determine the further course of action to be taken

- J. That the reasons advanced by of the Competent Authority for rejecting the recommendations of the Hon'ble Lokayukta, i.e., expression of regret by the Respondent Municipal Councillors; public disgrace, and or a passive/muted participation in a criminal activity, cannot have the effect of effacing an admitted criminal activity and earning a remission from the full rigour of the criminal justice system. In fact, the said reasons do not even amount to a substantive defence in criminal proceedings.
- K. That the reasoning based on which the Competent Authority has rejected the recommendations of the Hon'ble Lokayukta *prima facie* demonstrates a lack of application of mind and a failure to consider the relevant material.
- L. That the fact that a person has demitted public office does not efface his/her criminal culpability arising out of acts or omissions carried out while holding such office.
- M. That it is not open to the Competent Authority to condone criminal conduct on the specious ground that taking of action would be 'inconsequential' in a given case. Such a decision can only be taken at the instance of the competent Investigating Officer and such decision is subject to challenge in accordance with the provisions of

the Criminal Procedure Code and other applicable penal statutes. By declining even to send the relevant evidence to the appropriate authority under law, the Competent Authority has altogether bypassed the applicable legal provisions and deprived concerned members of the public their right to take part in and assist in the prosecution of criminal conduct.

- N. That when criminal conduct or omissions on the part of a public functionary are brought to the attention of a responsible state organ, the latter is obligated as a matter of law to refer the same to the appropriate investigative agency for further appropriate action, including prosecution in accordance with law. No discretion vests in the Competent Authority to substitute its opinion for that of the investigating agency or to pre-emptively close such investigation at its own sweet will. Such a procedure is alien to the Criminal Procedure Code and other applicable penal statutes
- O. In view of the constitutional guarantee under Articles 14 and 21, there is a positive obligation on all state functionaries to act in a manner consistent with the achievement of this constitutional guarantee. The conduct of the Competent Authority has the effect of shielding brazen acts of corruption by elected representatives as established by a statutory authority instituted for this

purpose, i.e., the Lokayukta and is, therefore, *ultra vires* Part III of the Constitution of India.

P. That the conduct of the Competent Authority is destructive of the rule of law, which is part of the basic structure of the Constitution and does violence to the constitutional guarantees of transparency and probity in governance and public administration.

37. That the Petitioner submits no similar petition has been filed by the Petitioner challenging the said orders, either before any other Court, including this Hon'ble Court or the Hon'ble Supreme Court.

PRAYER

In the circumstances, it is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

a) issue an appropriate Writ, direction or declaration, to the effect that the orders passed by His Excellency, the Lieutenant Governor of Delhi in the cases of Shri Subhash Jain (dated January 18, 2013), Ms. Anita Koli (dated November 9, 2012), Ms. Shateshwari Joshi (dated October 26, 2012), Ms. Manju Gupta (dated December 24, 2012), Ms. Beena Thakuria (March 4, 2013) Ms. Jaishree Panwar (dated July 18, 2012) Shri Ajit Singh Tokas (dated June 26, 2012) & Shri Ravi Prakash Sharma (dated July 11, 2012) rejecting the recommendations contained in the reports of the Hon'ble Lokayukta dated of Shri Subhash Jain (dated August 27, 2012), Ms. Anita Koli (dated

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June 29, 2012), Ms. Shateshwari Joshi (dated June 29, 2012),
Ms. Manju Gupta (dated July 10, 2012), Ms. Beena Thakuria
(August 3, 2013) Ms. Jaishree Panwar (dated May 25, 2012),
Shri Ajit Singh Tokas (dated March 26, 2012) & Shri Ravi
Prakash Sharma (dated March 22, 2012) are illegal, null, void
and *ultra vires* the Constitution of India

- b) direct that the entire record pertaining to the cases of the Respondent Municipal Councillors be forwarded to the Commissioner of Police for consideration, evaluation and further action in accordance with law
- c) grant any further relief that this Hon'ble Court may deem appropriate in the facts and circumstances of the case
- d) pass such other and further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

FILED BY

Neeha Nagpal

(MAHESH AGARWAL)/
(RISHI AGRAWALA)/
(NEEHA NAGPAL)

ADVOCATES FOR THE PETITIONER
FOR AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET,
NEW DELHI 110 001.

NEW DELHI
FILED ON:

IN THE HIGH COURT OF DELHI AT NEW DELHI
IN THE MATTER OF A PUBLIC INTEREST LITIGATION
EXTRAORDINARY WRIT JURISDICTION
WRIT PETITION (C) NO. _____ OF 2013

IN THE MATTER OF:

COMMON CAUSE...PETITIONER

VERSUS

SHRI SUBHASH JAIN AND ORS.

...RESPONDENT(S)

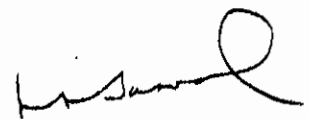
AFFIDAVIT

I, Kamal Kant Jaswal, aged about 68 years, S/o Sh.Ambica Prasad Jasvaal, resident of B-34, Ground Floor, Geetanjali Enclave, New Delhi, do hereby solemnly affirm and declare as under:

1. That I am the Authorized Representative of the Petitioner above named. The Petitioner is a Registered Society having its office at Common Cause House, 5 Institutional Area, Nelson Mandela Road, VasantKunj, New Delhi - 110070 and I am authorised to institute and sign this petition by the Rules of the Petitioner Society's Rules & Regulations duly by its Governing Council
2. That I have filed the present petition as a Public Interest Litigation.
3. That I have gone through the Delhi High Court *(Public Interest Litigation) Rules, 2010 and do hereby affirm that the present Public Interest Litigation is in conformity thereof.
4. That the Petitioner has no personal interest in the litigation and neither myself nor anybody in whom the petitioner is interested would in any manner benefit from the relief sought in the present litigation save as a

member of the General Public. This petition is not guided by self-gain or gain of any person, institution, body and there is no motive other than of public interest in filing this petition.

- 5. That I have done whatsoever inquiry/ investigation which was in my power to do, to collect all data/ material which was available and which was relevant for this court to entertain the present petition. I further confirm that I have not concealed in the present petition any data/ material/ information which may have enabled this court to form an opinion whether to entertain this petition or not and/or whether to grant any relief or not.



DEPONENT

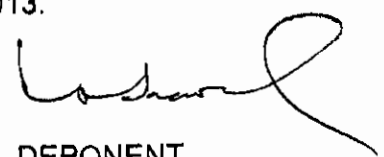
Di:

Nelson Mandela Road, Vasaur Kooj
New Delhi-110 070

VERIFICATION:

I, the above named Deponent, do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on this _____ day of _____, 2013.



DEPONENT

Kamal Kant Jaiswal
Director, C.C. & P. CAUSE
Nelson Mandela Road, Vasaur Kooj.
New Delhi-110 070

BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin

Complaint No. C-1150/Lok/2011

Re- In the matter of a report titled 'Sting Operation Ke Baad Parshado Me Macha Hadkamp', appearing in 'Nav Bharat Times' dated 7.12.2011

And

In the matter of inquiry u/s 7 read with 2(b) of the Delhi Lokayukta and Upalokayukta Act, 1995 in respect of the conduct of Sh.Subhash Jain, Municipal Councillor.

REPORT

Cognizance and Issuance of Notices

1. Suo moto cognizance was taken of a report titled "Sting Operation: Ke Baad Parshadon mein Macha Hadkamp", appearing in "Nav Bharat Times" dated 7-12-2011. Vide Order dated 7-12-2011, notices were issued to the Editor and City Correspondent of "Nav Bharat Times" to produce complete records of interview and other evidence in relation to the press report. Notices were also directed to be issued to the Managing Director and Correspondent of Channel IBN-7, who had carried out the telecast of the sting operation showing involvement of Municipal Councillors participating in negotiations regarding carrying out of illegal and unauthorized constructions for illegal gratification. The reporters of Cobra Post, who had been deputed by the Channel IBN-7 to carry out the sting operation, were directed to produce the original footage/records of the sting operation.

Commencement of Proceedings

2. Pursuant to the notices issued, the advocate of M/s. TV18 Broadcast Ltd, which owns Channel IBN-7, appeared with two reporters of Cobra Post owned by M/s. Shri Bhardwaj Media

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Pvt. Ltd, who had carried out the sting operation under an arrangement with Channel IBN-7. The statements of the reporters who had carried out the sting operation were duly recorded on oath as CW-1 and CW-2. The Deputy General Manager of IBN-7, Mr. Sachin Dev, CW-3, also tendered the original footage contained in the DVDs, as Ex.CW-3/1, Ex. CW3/2, Ex. CW3/3 and Ex. CW3/4. The DVD of the telecast programme was also tendered as Ex. CW3/5. The transcripts of the recorded conversation of the meetings and negotiations with Respondent Councillor and 7 other Councillors were also tendered. After viewing the DVD recording of the conversation of reporters with the Councillors and perusal of the transcripts of the same, vide Orders dated 21-12-2011, it was held that case for inquiry under Sec. 7 n/w 2(b), (i), (ii), (iii) & (iv) of the Act was made out and notice to the respondent and other Councillors returnable on 16-01-2012, were directed to be issued. The file of each Councillor was directed to be segregated and registered as a separate complaint.

3. Considering the nature of the controversy and issues arising for consideration, it was found expedient and in the interest of justice to appoint an Amicus Curiae and Shri Abhijit Bal Advocate, was so appointed vide Order dated 16th January, 2012. The Respondent entered appearance through Shri N.N. Aggarwal Advocate, and filed his reply to the show cause notice on 10-02-2012.

In view of the ensuing municipal elections, most of Respondent Councillors made a fervent plea for expeditious disposal of these inquiry proceedings so that if allegations are not proved, they stands exonerated without delay, so as not to affect their election prospects.

Procedure adopted for Inquiry

4. The Counsel and parties were heard and their suggestions considered regarding adoption of the procedure in the inquiry

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so as to conform to the principles of natural justice, while expediting the inquiry, yet giving the fullest opportunity to the parties to present their respective case. A consensus emerged on the procedure to be adopted which is re-produced below for facility of reference:-

- (i) All the Counsel and parties shall endeavour to abide by the time given for completion of pleadings. In fact the Respondents and the broadcaster have all stated that they would take not more than one to three weeks so that the entire pleadings can be completed within a month at the maximum.
- (ii) Regarding the authenticity and correctness of the recordings which have been produced, it has been agreed that individual footage in each of these cases would be played in court before the Presiding Officer with best equipment as available with the Broadcaster to make the sound clear and discernable so that some of the gaps noticed in the transcripts at present are filled up and an attempt is made for an agreed transcript to emerge. It is prayed by the Counsels that viewing should be spread over one week and individual recordings be viewed and parties heard.

Wherever it is not possible to have an agreed transcript, the Broadcaster and the Respondent, each may give their version with regard to the particular words uttered. This forum would then decide the controversy. Accordingly, in case the broadcaster and the Respondent are at variance, each would have the option to present its version of the transcript. Beyond the discrepancies in the transcript, Counsel and parties submit that they

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are not questioning the authenticity or demanding any other requirement with regard to the proof of the recordings. Considering the nature of the inquiry before the Lokayukta formal proof of these recordings is dispensed with.

- (iii) Parties are agreed that based on the pleadings and transcripts as finalized, the Lokayukta would fix the date of hearing in the individual cases.
- (iv) Parties are agreed that any common issue of law or facts which arises for consideration in their inquiries would be dealt with together by the Lokayukta and while the evidence and arguments in relation to each of the cases or transcripts will be separately taken up.
- (v) It is also agreed that while the authenticity of the conversation and their transcripts would be established in the above manner, parties would be at liberty to point out any personal animosity or motive on the part of the reporters for having carried out the sting operation."

None of the Counsel made any suggestion or request for alteration or modification in the above procedure, which was accepted by all.

Finalization of Transcripts of Recording :-

5. The Office of the Lokayukta made arrangements for viewing of the DVDs containing copies of the original footage referred to as the "raw footage". The raw footage as recorded in the DVDs were played and re-played several times in the presence of the Respondent Councillor and the Counsel for Respondent and Amicus Curiae and the Advocate for IBN-7 Channel.
6. During the playing of the recording of the raw footage, the Respondent, his Counsel as also the Counsel for the Channel and the Amicus Curiae gave their inputs to reach a consensus. The Forum also placed on record the cooperation of the

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Counsel and the efforts put in by the Amicus Curiae in completion of this exercise. The Registry was directed to supply the corrected version of the transcripts, after carrying out the correction as noted by the Presiding officer.

Completion of Pleadings

7. Pleadings were completed. Copy of the Press Report appearing in "Nav Bharat Times" dated 7-12-2011 is annexed hereto as Annexure-I. Copy of Reply-Cum-Written Statement filed by the Respondent on 10-2-2012 is annexed hereto as Annexure-II. The Respondent and his Counsel as well as the Amicus Curiae and Counsel for IBN-7, all submitted that the matter be proceeded with on the basis of the transcript of the original footage as finalized after viewing and no further evidence needs to be led by them or the Respondent. The said statement was made by the Respondent's Counsel on the basis of instructions by the Respondent. The Respondent's Counsel only wished to make oral submissions in support of pleas taken in reply cum written statement. The transcript of conversation as finalized and agreed to between all parties and marked 'CV', i.e. corrected version, subject to the above observations is annexed hereto as Annexure-III.

SUMMARY OF TRANSCRIPT

8. It would be appropriate at this stage, to summarize the transcript as finalized which recorded the conversation between the Respondent and the reporter/builder.

The reporters meet the Respondent Sh. Subhash Jain at his residence with a prior appointment. One of the reporters introduces himself as Sanjeev Singh resident of Raj Nagar, Ghaziabad. He tells that he is a builder and the name of his company is "Ashtvinayak". He buys plots, raises construction and then sells them. He tells that he has purchased a plot of 666 sq. yards in his area. The Respondent enquires whether it falls

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in an approved area? The reporters tell yes, it is in Jyoti Nagar as they work only in posh areas. The reporter says that construction is generally illegal which the Respondent acknowledges. The reporter says that they make a budget before starting any work. They have directly approached him and none else. The reporters say that they have also started work in Malviya Nagar and Khirki Extension. Reporters state that they have taken work for the first time in his area and that is why they have come to meet him face to face. The reporters give the number of plot as J-322 and explain its location. Respondent tells the Reporters that they cannot raise commercial construction as area is residential.

9. Respondent offers tea / water etc. and conversation resumes.

The reporters say that they work according to their budget. When they had started work in Khirki Extension persons started filing RTIs and a Junior Engineer started harassing. Reporters say that once they have tuning/understanding with him there would be no need to ask anybody else. The Respondent says that he maintains his standards and does not directly deal besides he is a religious man, devoted to temples and does not want to earn a bad name.

10. Reporters mention Sh. Anna Hazare's campaign against corruption and asked whether it would affect their work expressing that if they were to work legally they would not be able to put a brick. The Reporter assures that Sh. Anna Hazare's campaign does not affect small time leaders. He wants that our money should remain in India. It is not his aim to stop their work. The Reporter says that now a days in Delhi all the buildings are constructed illegally. The Respondent expresses his views and says that even in cases where building plans are sanctioned,

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the actual plan lies as a waste paper and the construction carried is illegal. The Reporter then specifically asked whether they could work without a sanctioned plan to which the Respondent assures that everything can be done. The reporters expressed that they do not want to waste time in getting a plan sanctioned as it would take around one and a half month and in that time they could lay two lintels and that is why they have come to him. The Respondent in whispering response says that Junior Engineer and Assistant Engineer would have to be paid and taken into confidence.

11. The reporters narrated their experience in Khirki Extension, where the Junior Engineer did come but it did not cause a problem since there were fixed rates and they would take about one and a half lakhs per lintel before it is laid. Regarding the Police, the Respondent assures that they do not trouble, when they are given their due and they simply fill a form and send it to MCD. He further states that Police would have to be paid directly while MCD harass you. The Respondent says that he will have to talk to Junior Engineer and Assistant Engineer personally and tells the reporters that they can start their work since they already have a plot.
12. Respondent inquires as to how many lintels would be laid? Reporters/builders tell that they would put 4 lintels and take the height up to 16 meters i.e one meter above the limit for which they would need his help. Respondent then tells that for a plot of 200 sq. yds. and for one lintel the engineers had charged Rs. 80,000/-. He had asked them to reduce it but does not know how much they actually reduced.

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13. During the conversation the Respondent also tell about his family's involvement in real estate business. Respondent explains that the Junior Engineer is an important person who takes money and protects and save the builder. The Junior Engineer/Assistant Engineer know how to do it and what they put in writing is more powerful than the work of a leader, who should have strength to control them.
14. Reporters/builders say that for a plot of 200 sq. yards matter gets settled with Councillor and Junior Engineer between Rs. 8 to Rs. 10 lakhs, and they enquired from the Respondent the estimate how much would be needed for their plot which is bigger. This they want to know to make a budget. The space to be left etc. is discussed. The Respondent tells them he has told the estimate of 200 sq. yds. and he would talk to the JE after calling him. The Respondent assures to settle with the JE, who would coordinate with the Ex. Engineer and DC and further assures that he would see that they (reporters/builders) have to pay minimum money.
15. Reporter/Builder wants to pay through the Respondent who says that he will take money only when rate is settled. He would call the DC and AE and pay commission up to the higher level and would ask the DC not to visit the gali's (lanes). The Respondent assures the Reporter/Builders that he will be coordinating everything even TV people and reporters would be tackled.
16. The reading of the entire transcript between the Reporter/Builders and the Respondent with regard to the amount to be paid for the unauthorized construction to be carried out show that a sum of Rs. 5 lakhs was offered to and agreed to for the Respondent while the tentative figures being discussed for the Junior Engineer and

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others was in the range of Rs. 16 lakks. Further understanding that had been arrived on between the Reporter/Builders and the Respondent was that if the latter could get the amount to be paid to the Junior Engineer and others reduced then the said benefit would come to him. This becomes evident from the following excerpts :-

सुभाष जैन - मैं इससे से काम करा खूना ना अतने.....विधि है

रिपोर्टर - हाँ इससे से जो बचिब मिचाना कम करा हंगे, जो लाभ को दे देंगे

रिपोर्टर 2 - जो नाम जो बल रहे हैं, गाईं साइब्य ।

सुभाष जैन - है.....ये 5 लाख तो हो गये ।

रिपोर्टर - ये हम बजट मानकर चल रहे है

सुभाष जैन - सुनिगे तो आप.....5 लाख कैसे हो गए

रिपोर्टर - हाँ 5 लाख आपके हो गये

सुभाष जैन - इससे अलग

रिपोर्टर - जी

सुभाष जैन - और इसमें जो मैं कम करा हूँ

रिपोर्टर - वो आपका

सुभाष जैन - मैं यही कह रहा हूँ ना। फिलाना भी मैं कम करा हूँ

रिपोर्टर - आप 5 लाख में करा दीजिए याकि आपका फिलाना बचा

सुभाष जैन - 5 लाख तो नहीं.....वो भी कुछ.....

रिपोर्टर - 10 करवा दीजिए 8.5 11 हो गया आपका

रिपोर्टर - हाँ.....विल्कृत

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Response and Submissions of the Respondent.

17. The Respondent had filed reply in response to the notice, under Sec.7 r/w Sec. 2 (b) of the Act.

The Respondent had filed a reply to the Show Cause Notice. He submitted that he has been discharging his duties as a Councillor in honest and transparent manner to the best of his abilities, doing social service and was instrumental in constructing a Jain Temple in Jyoti Colony, Shahdara and was heading the society known as "Shree Kalyan Shanti Parishad". He has never misused his official position for any personal gains.

As regard the sting operation the respondent has stated that the reporters have laid an elaborate entrapment pursuant to a well thought out conspiracy by certain vested interest and it was actuated by malice and illegal motive to defame the Respondent. He has further stated that the entire operation was stage managed and was done at the behest of his political adversary namely Mr. Gulam Suwani who had lost to the respondent in the previous election. It was further submitted that the reporters had themselves approached, the respondent without any inducement what so ever from the respondent. It is submitted that the transcript would reflect that respondent was very conscious about his reputation as a public figure. As a public figure he has to deal with various kinds of people and it is not always possible for him to throw out any person even if the subject of discussion is not approved by him. It is further submitted that the whole sting operation revolved, around the alleged construction of building and the answering respondent has no power or authority to sanction any such building activity. No money was taken or received by the respondent from the reporters to misuse his official position. It was further submitted that the allegations which are made against the

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respondent do not constitute any abuse or misuse of official position to obtain any gains or favour in discharge of his function as a 'Public Functionary' as envisaged under section 2 (b) (ii), (iii) and (iv) of Delhi Lokayukta and Upalokayukta Act, 1995

Evaluation of the Conduct of Respondent as Unravelling by the Transcript and Consideration of the Reply and Pleas in Response.

18. The submissions of the L.d. Counsel for the Respondent, the L.d. Counsel for the Broadcaster and the L.d. Amicus Curiae were heard.

The submissions of the L.d. Counsel for Respondent Sh. N.N. Aggarwal were confined to the plea taken in the reply by the Respondent while arguing on merits. But at the same time the L.d. Counsel for Respondent submitted that Respondent had no intension of involvement in any illegal activity. The reporters have doctored the conversation in such a manner as to take words out of the mouth of the respondent. It was submitted that unauthorized construction is a part of life in Delhi which has vitiated the atmosphere. The L.d. Counsel submitted that despite the entire sting operation being manipulated, doctored and words having been extracted from the Respondent in the conversation, the respondent regrets from core of his heart his getting involved in such a conversation and also tenders an unconditional apology.

The Respondent has taken the plea that the entire sting operation was illegal, motivated and it is an incident of entrapment. This plea however, has no substance. In view of the authoritative pronouncement by the Hon'ble Supreme Court on the issue of "sting operations" in the case of R.K. Anand Vs. Registrar, Delhi High Court 2009 (8) SCC 106. The Supreme Court while dealing with stings and telecast of sting programmes observed in para 179 as under :-

"Looking at the matter from a slightly different angle we ask the simple question, what would have been in greater public interest; to allow the attempt to suborn a witness; with object to undermine a criminal trial, lie quietly behind veil of secrecy or to bring out the mischief in full public gaze? To our mind, the answer is obvious. The sting telecast by NDTV was indeed in larger public interest and it served an important public cause."

19. The sting operation in the present case was also for public good to expose the menace of unauthorized construction and the complicity of the City Fathers therein, who instead of taking steps to curb this menace, mix up with builders and assure their support for raising unauthorized construction. Any act which exposes this unholy nexus of the representative of people and unscrupulous builders, is in the larger public interest. So the sting operation serves an "important public cause."

20. Therefore the argument that the sting operation was unethical, illegal and was with malafide intention cannot be accepted. The conversation which took place between the reporters and the Respondent makes it amply clear that the Respondent not only gave assurance to the reporters posing as builder to help them in raising the construction but also sought a gratification for such a help. The tone and tenor and contents of the conversation clearly brings out that the reporters were suggesting raising of illegal construction for which they received tacit consent and approval by the Respondent for financial gains.

21. The conversation between the reporters and the Respondent clearly shows the interest of the Respondent in raising illegal and unauthorized constructions expecting a financial reward for providing his help and assistance to them in doing such an act by exercising his influence with the JE, whose official duty it is to stop unauthorized construction.

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22. The entire conversation between the reporters and the respondent primarily concerns raising the unauthorized construction. The respondent was fully conscious about the fact that the reporters intending to raise unauthorized construction. A reference to the certain portion of the conversation between the respondent and the reporters would confirm that respondent was fully aware about the purpose of the visit of the reporters. The Respondent nowhere has shown any sign of reluctance while discussing the issue of raising of unauthorized construction. The Respondent, rather explain to the reporters that the Junior Engineer in the area takes care of everything and he also take care of the senior officers that is the AE, AC and DC of the zone.

23. The reporters had asked the respondent whether they can work without the sanctioned plan as they do not want to waste time in getting the plan sanctioned as that would take around one and a half month and in this duration they can lay two lintels. The respondent says that everything can be managed, the Junior Engineer and Assistant Engineer are to be paid and taken into confidence. The following excerpts from the transcript are being reproduced on this point.

Reporter : kya naksha agar na banwaye kya kaam chal jayega?

Respondent : sab kaam ho jata hai.

Reporter : hum illegal kama chahte hai.

Reporter : nakshhe wakshe ka chakkar me time badli jayega, aapka election nikal jayega to dikkat ho jayegi.

Reporter : ek dedh mahina aap maan lijiye naksha paas karaane me.

Reporter 2 : or jab tak hum do lintel daal denge. Flaalaki aisa nahi hai hum.....utna nahi lekin aap thoda sa wo rakhenge to koi dikkat nahi aayegi.

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Respondent : JE AE ko dena padega.

Reporter: JE ko kuchh.

Respondent : jyada dena padega.....kyoki JE aur AE.....mai woto wo ghumte rahte hai.....to unko vishwas me lana padega”.

This conversation indicates that the Respondent was well aware about the unauthorized construction which the Reporter/Builder wanted to raise. The respondent rather went along with the suggestion building being raised without sanctioned plan for which and AE would have to be paid and taken into confidence.

The entire conversation with the reporters shows that the Respondent of his own volition offered his services to help the reporters to raise unauthorized construction. Some relevant excerpts in the transcript are being produced.

“Respondent : mai thoda sa asal me kya hai ki JE AE ko mujhe bolna padeg, mai unse khud kahunga. (inaudible sound) aap chahu karo, jagah to apne le li.

Reporter : lee

Respondent : bas, banana hai

Reporter 2 : bas shuru karna hai

Respondent : lentil kiene daalne hai?

This conversation shows the willingness of the Respondent to use his official position to influence the JE and the AE and thus help the reporters/builders in raising unauthorized construction.

The understanding of the Respondent about the modus operandi adopted for raising the construction unauthorisedly with the assistance and connivance of Municipal Staff is reflected by the following conversation.:

Respondent : wo sub kanoon hame JE bata dega.

Reporter 2 : jee haa, JE ko snara pata hoga.

Respondent : kabhi bhi na. JE ko bachana hai. Paisa lega aur hame bachayega.

Reporter : jee.

Respondent : wo kya kya kahega ye aise laga lo ya aise laga lo, aap isme aisa karwa lo jab ki dekho jo paisa khnyega wo to dekho puri hamdardi me rahega".

In the later part of conversation he further says:-

Respondent :-----unki dekh rekh me hame banwana padega, hai ki nahi, wo to raksha karenge-----".

This indicates the knowledge of the Respondent how the unauthorized construction is raised. The Respondent has been willing and eager to offer his services to the reporters to handle the JE in the matter. This service he was offering for illegal gratification is further evident from the later part of the conversation where the Respondent agreed for the sum of Rs. 5 lakh in lieu of his services. The respondent had further said that he would settle with the JE. The tentative amount discussed for the JE was Rs. 16 lakhs. A further understanding was arrived at that if the Respondent could get the amount to be paid to the JE and others reduced then the reduced amount would come to him. This is clear from the excerpts of the conversation reproduced under Para No. 16. The above conversation between the respondent and the reporters not only reflects greed of the Respondent for illegal gratification but also his concern that the builders should also earn profit. The relevant excerpts in the transcript are :-

"Respondent : mai ye nahi chah raha mai chah raha hu ki aapke paas paisa, apni building banaye aur do paisa kama ke le jaaye.

Reporter : bikul sahi kah rahe hai sir.

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Respondent : mai isi chakkar me nahi hu ki khali paisa paisa khana hai."

The Respondent has shown his positive response and his eagerness to help the reporters in raising of unauthorized construction for illegal gratification. This act of the Respondent as a Councillor militates against his public duty which is to act against any proposed ongoing or completed unauthorized construction in the area, falling under his jurisdiction.

24. It is not the part of a public duty of the Respondent who represents thousands of persons in his jurisdiction to give encouragement to unauthorized construction by promising help in such activities. Rather on the contrary it was his duty to bring to the notice of the authorities concerned any instance of construction without sanctioned plan. The desire to appease to constituents or furthering of so called electoral prospects by extending help in such activities, cannot over ride the norms of conduct and integrity which a public functionary is expected to follow.

The above act and conduct display failure to act in accordance with the norms of integrity and conduct which ought to be followed by public functionaries. Assurance to help in unauthorized construction, tantamount to discharge to functions being actuated by improper motive for personal interests. It also constitutes lack of faithfulness to his functioning as a Councillor. Thus there is contravention of Section 2(b)(i) to (iv).

The Respondent had submitted that the operation was stage managed at the behest of his political adversary Sh. Gulam Suwani, who had lost to the Respondent in the last Municipal election. The Respondent however has neither led any evidence nor took this plea at the time of argument. It was also submitted by the Respondent that he was very conscious of his reputation and this would be apparent from the excerpts of

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the transcript and that being a public figure the Respondent has to deal with various kinds of persons and he cannot throw them out even if the subject of discussion is not approved by him. This submission however lack substance. A public figure being the representative of the people owes a duty to its constituents. He has to serve the interest of his constituents with all honesty, commitment, integrity and sincerity. The representative of people is not expected to support any illegal activity in the area of his constituency simply on the ground that being a public figure he has to deal with many persons and discuss things even though he himself does not approve the same. Such an act shows lack of faithfulness in the 'Public Functionary' towards those constituents, who abide by the law.

It was submitted by the Respondent that he had no authority or power to sanction any building activity therefore the allegation against him does not constitute any abuse or misuse of official position under section 2 (b) (ii), (iii) and (iv). This submission is also devoid of any substance. The respondent may not be the concerned authority to sanction any building activity but being the Councillor of the area he undoubtedly exercise a great amount of clout upon the municipal officials. The manner in which the Respondent discussed the issue of raising unauthorized construction and the manner in which he assured the reporters to exercise his influence on the Junior Engineer for a consideration clearly bring his act within the four corners of Section 2 (b) (i) to (iv) of the Delhi Lokayukta and Upalokayukta Act, 1995. Moreover, the Ld. Counsel for the Respondent at the time of argument, though disputing the legality of the sting operation, tendered an unconditional apology on behalf of the Respondent and he also expressed the regret for being a part of such a conversation. The same can not however absolve him of the grave misconduct.

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In view of the foregoing discussion and the analysis, there is no doubt that the Respondent has failed to observe the norms of good conduct and integrity expected of a person of his class by entertaining, discussing and indicating his willingness to support the reporter/builders who were to carry out unauthorized construction for illegal gratification.

26. The Ld. Amicus Curiae, Mr. Abhijat Bal, has submitted that the misconduct of the Respondent is grave and calls for a "censure" in the least. He further submits that the facts emerging in the transcript prima facie amount to offences under the Prevention of Corruption Act. This Forum has considered the submissions of the Ld. Amicus Curiae and has gone through the relevant provisions of the Prevention of Corruption Act. Section 8 of the Prevention of Corruption Act provides that whoever accepts or obtains or agrees to accept any gratification from another person as a motive for inducing by corrupt or illegal means any public servant to do or forbear to do any official act, would be an offence.

Section 9 provides that whoever accepts or obtains or agrees to accept any gratification from any other person as a motive for inducing by the exercise of personal influence any public servant to do or forbear to do any official act, would be an offence.

In the present case, the Respondent had agreed to exercise his influence on the Junior Engineer, as also had agreed to accept gratification from the reporters/builders for inducing by corrupt and illegal means a public servant to forbear to do his official act. The Respondent agreed to influence the Junior Engineer for permitting unauthorized construction to come up. It need to be emphasized that any actual demand or actual passing of consideration or illegal gratification is not the sine qua non for the offences under section 8 and 9 of the Prevention of Corruption Act. A mere

promise of agreement to accept and even a promise to pay in future for an act to be done, would come within the ingredients of the offence under section 8 and 9 of the Prevention of Corruption Act.

27. It is submitted by the Ld. Amicus Curiae that the evidence recorded in the deemed judicial proceeding should be forwarded to the appropriate Investigating Agency for consideration as to whether it constitutes an offence under the Prevention of Corruption Act and warrants any further action. The Ld. Amicus Curiae submitted that this Forum is legally bound to do the same. It is ordered accordingly. The transcripts and other evidence as recorded before this forum be forwarded to Commissioner of Police for consideration, evaluation and further action, as per Law.

28. This forum has also considered the aspect that the Councillor, whose conduct was being inquired into by the Lokayukta following the sting operation was not provided ticket by their respective parties in the then forthcoming elections. This resulted in the Councillor not contesting election and thus ceasing to be a Councillor. It is also considered whether the above should make any difference on the recommendation of 'Censure' for them.

It is a well settled legal principle that misconduct does not cease with the office term coming to an end. Moreover, as far as political life, with all its vicissitudes, is concerned, a Public Functionary who does not fight a particular election does not cease to be in active politics or in public life. Our experience has shown that he may aspire for and come for even higher positions. Moreover, for maintaining probity in public life, it is essential that the constituents are also made aware of the misconduct of their respective representatives which is in consonance with their right to receive information about the deeds of public representative.

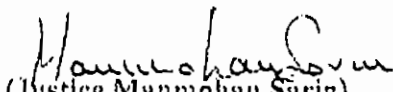
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From the foregoing discussion, it is the view of this forum that the factum of a Public Functionary ceasing to hold office should not come in the way of a recommendation for his 'Censure' being made and the above is submitted for the kind consideration of His Excellency, the Hon'ble Lt. Governor.

29. The conduct of the Respondent Councillor as evidenced from the transcript of conversation marked "H" clearly amounts to violation of norms of integrity and good conduct, abuse of position to obtain gain for himself, being actuated in discharge of his functions by improper motives and personal interest and lack of faithfulness, in terms of Sec. 2(b) (i), (ii), (iii) & (iv) read with Sec. 7 of the Delhi Lokayukta & Upalokayukta Act, 1995.

It is, therefore, recommended to His Excellency, the Lieutenant Governor of Delhi, that a "censure" be issued to the Respondent Councillor for his misconduct as found above.


(Justice Manmohan Sarin)
Lokayukta

Date: 27th August, 2012

Relha/Anju



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Annexure-P-2

BEFORE THE HON'BLE LOKAYUKTA

Justice Manmohan Sarin

Complaint No. C-1116/Lok/2011

Re- In the matter of a report titled 'Sting Operation Ke Baad Parshado Me Macha Hackamp', appearing in 'Nav Bharat Times' dated 7.12.2011

And

In the matter of inquiry u/s 7 read with 2(b) of the Delhi Lokayukta and Upalokayukta Act, 1995 in respect of the conduct of Ms. Anita Koli, Municipal Councillor.

Present:-

1. Shri Sagar Dawar, Advocate, for Ms. Anita Koli, Respondent Councillor.
2. Shri Sanjeev Mahajan, Amicus Curiae.
3. Mr. Mrinal Bharti, Advocate, Counsel for IBN 7

REPORT

Cognizance and Issuance of Notices

1. Suo moto cognizance was taken of a report titled "Sting Operation Ke Baad Parshadon mein Macha Hackamp", appearing in "Nav Bharat Times" dated 7-12-2011. Vide Order dated 7-12-2011, notices were issued to the Editor and City Correspondent of "Nav Bharat Times" to produce complete records of interview and other evidence in relation to the press report. Notices were also directed to be issued to the Managing Director and Correspondent of Channel IBN-7, who had carried out the telecast of the sting operation showing involvement of Municipal Councillors participating in negotiations regarding carrying out of illegal and unauthorized constructions for illegal gratification. The reporters of Cobra Post, who had been deputed by the Channel IBN-7 to carry out the sting operation, were directed to produce the original footage/records of the sting operation.

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Commencement of Proceedings

2. Pursuant to the notices issued, the advocate of M/s. TV18 Broadcast Ltd, which owns Channel IBN-7, appeared with two reporters of Cobra Post owned by M/s. Shri Bhardwaj Media Pvt. Ltd, who had carried out the sting operation under an arrangement with Channel IBN-7. The statements of the reporters who had carried out the sting operation were duly recorded on oath. The Deputy General Manager of IBN-7, Mr. Sachin Dev, CW-3, also tendered the original footage contained in the DVDs, as Ex.CW-3/1, Ex. CW3/2, Ex. CW3/3 and Ex. CW3/4. The DVD of the telecast programme was also tendered as Ex. CW3/5. The transcripts of the recorded conversation of the meetings and negotiations with Respondent Councillor and 7 other Councillors were also tendered. After viewing the DVD recording of the conversation of reporters with the Councillors and perusal of the transcripts of the same, vide Orders dated 21-12-2011, it was held that case for inquiry under Sec. 7 r/v 2(b),(i), (ii), (iii) & (iv) of the Act was made out and notice to the respondent and other Councillors returnable on 16-01-2012, were directed to be issued. The file of each Councillor was directed to be segregated and registered as a separate complaint.
3. Considering the nature of the controversy and issues arising for consideration, it was found expedient and in the interest of justice to appoint an Amicus Curiae and Shri Sanjeev Mahajan, Advocate, was so appointed vide Order dated 16th January, 2012. The Respondent entered appearance through Shri Sagar Dawar, Advocate, and filed her reply-cum-written statement on 9-2-2012.

In view of the ensuing municipal elections, Respondent Councillor among others made a fervent plea for expeditious disposal of these inquiry proceedings so that if allegations are

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not proved, he / she stands exonerated without delay, so as not to affect their election prospects.

Procedure adopted for Inquiry

4. The Counsel and parties were heard and their suggestions considered regarding adoption of the procedure in the inquiry so as to conform to the principles of natural justice, while expediting the inquiry, yet giving the fullest opportunity to the parties to present their respective case. A consensus emerged on the procedure to be adopted which is re-produced below for facility of reference:-

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- (i) All the Counsel and parties shall endeavour to abide by the time given for completion of pleadings. In fact the Respondents and the broadcaster have all stated that they would take not more than one to three weeks so that the entire pleadings can be completed within a month at the maximum.
- (ii) Regarding the authenticity and correctness of the recordings which have been produced, it has been agreed that individual footage in each of these cases would be played in court before the Presiding Officer with best equipment as available with the Broadcaster to make the sound clear and discernable so that some of the gaps noticed in the transcripts at present are filled up and an attempt is made for an agreed transcript to emerge. It is prayed by the Counsels that viewing should be spread over one week and individual recordings be viewed and parties heard.

Wherever it is not possible to have an agreed transcript, the Broadcaster and the Respondent, each may give their version with regard to the

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particular words uttered. This forum would then decide the controversy. Accordingly, in case the broadcaster and the Respondent are at variance, each would have the option to present its version of the transcript. Beyond the discrepancies in the transcript, Counsel and parties submit that they are not questioning the authenticity or demanding any other requirement with regard to the proof of the recordings. Considering the nature of the inquiry before the Lokayukta formal proof of these recordings is dispensed with.

- (iii) Parties are agreed that based on the pleadings and transcripts as finalized, the Lokayukta would fix the date of hearing in the individual cases.
- (iv) Parties are agreed that any common issue of law or facts which arises for consideration in their inquiries would be dealt with together by the Lokayukta and while the evidence and arguments in relation to each of the cases or transcripts will be separately taken up.
- (v) It is also agreed that while the authenticity of the conversation and their transcripts would be established in the above manner, parties would be at liberty to point out any personal animosity or motive on the part of the reporters for having carried out the sting operation."

None of the Counsel made any suggestion or request for alteration or modification in the above procedure, which was accepted by all.

Finalization of Transcripts of Recording

5. The Office of the Lokayukta made arrangements for viewing of the DVDs containing copies of the original footage referred to as the "raw footage". The raw footage as recorded in the DVDs were played and re-played several times in the presence of the

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Respondent Councillor and the Counsel for Respondent and Amicus Curiae and the Advocate for IBN-7 Channel.

6. During the playing of the recording of the raw footage, the Respondent, her Counsel as also the Counsel for the Channel and the Amicus Curiae gave their inputs to reach a consensus. The Forum also placed on record the cooperation of the Counsel and the efforts put in by the Amicus Curiae in completion of this exercise. The Registry was directed to supply the corrected version, after carrying out the correction as noted by the Presiding officer.

Completion of Pleadings

7. Pleadings were also completed. Copy of the Press Report appearing in "Nav Bharat Times" dated 7-12-2011 is annexed hereto as Annexure-I. Copy of Reply-Cum-Written Statement filed by the Respondent on 9-2-2012 is annexed hereto as Annexure-II. The Respondent and her Counsel as well as the Amicus Curiae and Counsel for IBN-7, all submitted that the matter be proceeded with on the basis of the transcript of the original footage as finalized after viewing and no further evidence needs to be led by them or the Respondent. The said statement was made by the respondent's Counsel on the basis of instructions by the respondent. The Respondent's Counsel only wished to make oral submissions in support of pleas taken in reply cum written statement. The transcript of conversation as finalized and agreed to between all parties and marked 'CV', i.e. corrected version, subject to the above observations is annexed hereto as Annexure-III.

SUMMARY OF TRANSCRIPT

8. It would be appropriate at this stage, to summarize the transcript as finalized which recorded the conversation between the Respondent and the reporter/builder.

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The reporters posing as builders met the Respondent and her husband. Initially they had general discussion not touching the core issue. One of the reporters tells the Respondent that he had talked to her earlier, to which the Respondent questions whether she had talk with him. Then the second reporter says that talks were held with him and his name is Sanjeev. Then the respondent introduced her husband to the reporters. The reporters further said that they have worked in Ghaziabad and Noida as well as in Malviya Nagar and further expressed their intention to start work in the constituency of the Respondent. They said that the area where they would work has been handed over to MCD, to which the Respondent replied that it is still under process. The reporters further said that in a way the constructions would be illegal. Then they referred to Sector-23 and 24 in the constituency of the Respondent being handed over to the MCD. They further said that they had worked in Mandawli area and had faced lot of difficulties, meaning thereby, the JE had given lot of trouble who was asking for gratification at each stage of laying of lintel for each floor. They further said that then they met area Councillor who helped them.

Thereafter the reporters, the Respondent and her husband talked about starting of construction. The Respondent's husband asked about the location and the reporters told that they have Plot No. 176 and 177 in Sector-24. The reporters then said that there would be some illegal construction and they would need help from the Respondent to which the Respondent responded smilingly in affirmative. The reporters then talk about their budget and want to ascertain the share of JE, to which the husband of the Respondent responded by saying that they would call the JE. Then the reporters and the husband of the Respondent had talked about the construction and the encroachment of the space by increasing the length of lintel by couple of feet. The reporters then asked

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straight away what will be the tentative system and accordingly they would start the project. The husband of the Respondent said that they will tell later and said he will call the JE to talk. The husband of the Respondent then asks about the budget of the reporters and also said that if government machinery and they do not work together then problem starts, and he assures the reporters that nobody would disturb them. As to the query regarding the budget the reporters said that they have a budget of Rs. 10.0 Lacs and asked them to take all the responsibility and further asked them to take amount in lump sum. The husband of the Respondent assures that he will take care of everything but asked the reporters to take care of the police. The reporters then said that the budget should not exceed Rs. 10.00 Lacs. The husband of the Respondent gave assurance that they will talk to JE and give him his due.

Rest of the conversation between the reporters, the Respondent and her husband is general but is hovering around the main topic of construction for which the reporters need the help of the Respondent being the area Councillor.

Response and Submissions of the Respondent.

9. Respondent had filed reply in response to the notice, under Sec.7 r/w Sec. 2(b) of the Act, which was served upon the Respondent along with the Order dated 7-12-2011, the transcript, the statement and the DVDs.

Ld. Counsel for the Respondent Shri Sagar Dawar at the very outset submitted that the sting operation was motivated with the intent to harass the Respondent. It was submitted further that the sting operation shows the Respondent only for a few minutes and there is no talk between the reporters and the Respondent regarding any illegal gratification. It is further submitted that in the audible conversation there is only general talk between the Respondent and the alleged reporters. The

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transcript is conspicuous by absence of any direct negotiation between Respondent and the reporter/builders.

It is submitted that the whole sting operation has been recorded illegally by the channel. The Ld. Counsel for the Respondent while making submissions had stated that the alleged reporters had a talk with the husband of the Respondent, who himself is a builder and financial adviser, a day before the said visit of the reporters for some building work. In support of this submission, the visiting card and the bills etc. showing supply of building material were filed. The visiting card of Jagdamba Associates bear name of Yogesh Kumar, husband of Respondent. Shri Yogesh Kumar also filed his affidavit stating therein that he is a builder and financial adviser and doing his business in the name and style of Jagdamba Associates. As regards the conversation it was submitted that the transcript was incomplete and incomprehensible due to significant gaps and breaks therein. Thus, an element of doubt has crept in as to the authenticity of the transcript. It was further submitted that in the alleged sting operation, the alleged reporters were talking for construction on a Plot No.22 in Sector-24 which has not been handed over by the DDA to MCD.

In nutshell, it was submitted that the sting operation was illegal, motivated and fake and it has not been proved as per law. Secondly, the transcript was incomplete and incomprehensible. Thirdly, the Respondent was not involved in any conversation with the alleged reporters with regard to raising of any illegal construction and of taking illegal gratification. Fourthly, the area where the construction was proposed by the alleged reporters was not falling in the constituency of the Respondent, and lastly, the husband of the Respondent himself is a builder and financial adviser, who had a talk with the alleged reporters a day before for some building work which explains their presence with the husband of the

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Respondent and the Respondent on the date of the sting operation.

To the reply-cum-written statement of the respondent, objections were filed by the broadcaster IBN-7 emphasizing that transmission of news by the channel is totally on objective basis and no personal bias is either involved or reflected. It is also stated that considering the nature of act, the undercover coverage was the necessity. That the telecasts in question have been made in good faith and for bonafide public good. It was denied that report was selectively edited or doctored.

Evaluation of the Conduct of Respondent as Unravalled by the Transcript and Consideration of the Reply and Pleas in Response.

10. Ld. Counsel for the Respondent has submitted that the sting operation was illegal, fake and motivated. In support of his argument, where the Ld Counsel for the Respondent questions the legality of the sting operation, reliance was placed on the judgment in "The Court on its Own Motion V/s State", 2008 (1) JCC 193. However, this judgment pertains to guidelines for the TV channels who propose to telecast a sting operation. As to the legality of the sting operation, reference may be made to the decision of High Court of Delhi in Anirudha Bahal V/s State reported as 172 (2010) DLT 268, wherein an F.I.R. registered against the sting operators under Sec. 12 and 13 of the Prevention of Corruption Act was quashed. The Court held that F.I.R. was registered after one year with sting operators being arraigned as prime accused. Court found the act of the sting operators as bonafide who had acted as whistleblowers by airing the tapes on TV channels and by deposing truthfully before two Committees of Parliament. Charging such people with offences under the Prevention of Corruption Act would amount to travesty of justice and shall discourage people from performing their duties enjoined upon them by law of the

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country. The court held that the duties prescribed by the Constitution of India for citizens of this country do permit citizens to act as agent provocateurs to bring out and expose and uproot corruption. Special Leave Petition against the High Court Order was also dismissed.

Reference is also invited to the judgment of the Supreme Court in R.K. ANAND V/S REGISTRAR, DELHI HIGH COURT, 2009 (8) SCC 106, i.e. the appeal against the judgment of Delhi High Court in Court on its own motion Vs. State and others. The Supreme Court while dealing with stings and telecast of sting programmes observed in Para-179 as under:-

"Looking at the matter from a slightly different angle we ask the simple question, what would have been in greater public interest; to allow the attempt to suborn a witness, with the object to undermine a criminal trial, lie quietly behind veil of secrecy or to bring out the mischief in full public gaze? To our mind, the answer is obvious. The sting telecast by NDTV was indeed in larger public interest and it served an important public cause."

The sting operation in the present case was also for public good to expose the menace of unauthorized construction and the complicity of the City Fathers therein, who instead of taking steps to curb this menace, mix up with builders and assure their support for raising unauthorized construction. Any act which expose this unholy nexus of the representative of people and unscrupulous builders, is in the larger public interest. So the sting operation serves "an important public cause".

The submission of the Counsel for the Respondent that the Respondent is a builder and financial adviser and the alleged reporters had contacted him a day prior to the day of sting operation, which explains the presence of the reporters

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with the Respondent and her husband. The said plea does not inspire confidence and lacks conviction. The entire conversation between the reporter/builders, Respondent and her husband does not support the theory of construction being carried out by the Respondent's husband. The husband of the Respondent may be a builder or a financial advisor. He may pursue his independent business or profession of a builder and financier, irrespective of the fact that his wife is a Municipal Councillor. However, the matter of concern in the present case is that the reporters and the Respondent and her husband are discussing raising of construction, which is admittedly illegal and also involves encroachment. The Respondent being a Municipal Councillor has no business to discuss modalities of unauthorized and illegal construction work with the builders. The law has not conferred any power on the Municipal Councillor to sanction any construction in his /her constituency nor it confers any power to sponsor such a construction. The Councillor despite not having any power to grant or sponsor any sanction plan for construction but being the Councillor of the area, he or she has to oversee the implementation of number of civic programmes and apart from that being representative of the residents also enjoys considerable clout and influence, which transcends all areas. The summary of transcript (Mark "E-1") would show that although the husband of the Respondent was doing most of the talking but the Respondent nowhere showed any indifference to the said conversation. The Respondent being the representative of the people of her constituency has the responsibility to see that the civic programmes are implemented as per needs and demands of the people of the constituency. The Respondent on the other hand is becoming a party to the conversation, where the issue of illegal gratification for raising illegal construction is being discussed. The tone and tenor of the conversation clearly brings out that the reporters were suggesting raising of illegal construction for

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which they received tacit consent and approval by the Respondent for financial gains. The husband of the Respondent assured the reporters that they will not be troubled by anybody and he would talk to the JE about latter's dues but he washes his hands off from the responsibility to take care of the police. When the respondent's husband asked about the budget of the reporters, the response to query clearly indicates as to what "budget" he was talking about.

The reproduction of the conversation on this aspect leaves nothing to imagination. The conversation between reporters and the husband of Respondent goes as under:-

"Anita Koli's husband - Aap ka kya budget hai, mujhe bata do zara.

Reporter - Hum 10 Lakh mein hai,
Saare logo ko aap sara jimmedari le lijiye. Usme JE ka bhi hai, aapka apna hai aur bhi jo aapka ho, usme hamein haan".

Later on Respondent's husband also says:-

"Police walon ko aap dekh lijiye - ho jayega aapka kaam - --JE se hum baat kar lenge--- JE ko denge jo denge usme se. Jo JE ka banta hai vo JE ko milega".

The Ld. Counsel for the Respondent had submitted that there is no direct negotiation between the Respondent and the reporters and there is no negotiation or demand by Respondent. This submission, however, will not stand in view of the conversation reflecting in the transcript (Mark E-1). The entire conversation concerns the raising of construction apart from general issues. The husband of the Respondent is asking about the budget and assures the reporters that he will take care of the JE. The Respondent herself has nowhere rebuked the reporters.

She being a Councillor cannot be oblivious of the menace of the illegal construction and the Respondent's response to a request by ~~the~~ reporters to use her position to help in raising the construction which is illegal, leaves no room for doubt that she offered her good offices to help raising construction which was to be illegal. Thus, this is a misconduct, misuse and abuse of her power being a Councillor. This act of the Respondent is, thus, not in accordance with the norms of integrity and conduct which ought to be followed by the 'public functionary'. The willingness to encourage and facilitate unauthorized and illegal construction is writ large on record.

The above act and conduct display failure to act in accordance with the norms of integrity and conduct which ought to be followed by public functionaries. Besides, it is also abuse and misuse of position as it manifests conduct to gain favour for herself in as much as the amount to be Respondent's share was to be decided later. Assurance to help in unauthorized construction tantamounts to discharge of functions being actuated by improper motive for personal interests. It also constitutes lack of faithfulness to her functioning as a Councillor. Thus, there is contravention of Sec. 2(b) (i) to (iv) of the Act.

11. The menace of unauthorized construction has pervaded the metropolis of Delhi. It is not confined to a superficial level or the surface. It has entered the very blood stream of Delhi. There are various reasons for the same, galloping population, rising demand for accommodation, non-availability of the same, which tempts the residents to expand vertically and horizontally in contravention of the permissible limits. Complex laws and unresponsive system have also aggravated the problem. Unabated growth of unauthorized construction also emanates from lack of enforcement and implementation of the municipal laws. The situation gets further aggravated on account of complicity of the municipal staff, city fathers, local politicians

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and the police. In an attempt to contain the role of public functionaries and Councillors in this menace, this Forum had on complaint from one Councillor initiated action in 61 cases against the legislators and Councillors for unauthorized construction and irregularities in their properties. It was a matter of satisfaction that in majority of these cases, the public representatives have either voluntarily demolished or got regularized the violations.

12. In view of the foregoing discussion and the analysis, there is no doubt that the Respondent has failed to observe the norms of good conduct and integrity expected of a person of her class by entertaining, discussing and indicating her willingness to support the reporter/builders who were to carry out unauthorized construction.
13. The Ld. Amicus Curiae, Mr. Sanjeev Mahajan, has submitted that the misconduct of the Respondent is grave and calls for a "censure" in the least. He further submits that the facts emerging in the transcript may even amount to an offence under the Prevention of Corruption Act. He submits that the above evidence being legal evidence recorded in deemed judicial proceedings should be forwarded to the appropriate investigating agency for consideration as to whether it constitutes an offence under the Prevention of Corruption Act and warrants any further action and this Forum is legally bound to do the same. It is ordered accordingly. The transcripts and other evidence as recorded before the Forum be forwarded to Commissioner of Police for consideration and evaluation.
14. The conduct of the Respondent Councillor as evidenced from the transcript of conversation marked "E-1" clearly amounts to violation of norms of integrity and good conduct, abuse of position to obtain gain for herself, being actuated in discharge of her functions by improper motives and personal interest and lack of faithfulness, in terms of Sec. 2(b) (i), (ii), (iii) & (iv)

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read with Sec. 7 of the Delhi Lokayukta & Upalokayukta Act, 1995.

It is, therefore, recommended to His Excellency, the Lieutenant Governor of Delhi, that a "censure" be issued to the Respondent Councillor for her misconduct as found above.

Manmohan Sarin
(Justice Manmohan Sarin)
Lokayukta

Date: 29th June, 2012

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Annexure - P-3

BEFORE THE HON'BLE LOKAYUKTA
JUSTICE MANMOHAN SARIN
COMPLAINT NO. C-1149/Lok/2011

In the matter of Suo Moto Cognizance of a Press Report Titled "Sting Operation Ke Baad Parshadon Mein Macha Hadkamp" appearing in "Nav Bharat Times" Dated 07-12-2011

AND

In the matter of Inquiry Under Sec. 7 read with Sec. 2(b) of The Delhi Lokayukta & Upalokayukta Act, 1995, in respect of Conduct of Shrimati Sateshwari Joshi, Municipal Councillor, Respondent herein.

1. Shri Sanjiv Sharma Advocate, Amicus Curiae.
2. Shri S.N Sharma and Mr D.D Joshi, Advocates, for Shrimati Sateshwari Joshi, Municipal Councillor, Respondent.
3. Mr. Mrinal Bharti, Advocate, Counsel for IBN 7.

REPORT

Cognizance and Issuance of Notices

1. Suo moto cognizance was taken of a report titled "Sting Operation Ke Baad Parshadon mein Macha Hadkamp", appearing in "Nav Bharat Times" dated 7-12-2011. Vide Order dated 7-12-2011, notices were directed to be issued to the Editor and City Correspondent of "Nav Bharat Times" to produce complete records of interview and other evidence in relation to the press report. Notices were also directed to be issued to the Managing Director and Correspondent of Channel IBN-7, who had carried out the telccast of the sting operation showing involvement of Municipal Councillors participating in negotiations regarding carrying out of illegal and unauthorized constructions for illegal gratification. The reporters of Cobra Post, who had been deputed by the Channel IBN-7 to carry out the sting operation, were directed to produce the original footage/records of the sting operation.

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Commencement of Proceedings

2. Pursuant to the notices issued, the advocate of M/s. TV18 Broadcast Pvt. Ltd, which owns Channel IBN-7, appeared with two reporters of Cobra Post owned by M/s. Shri Bhardwaj Media Pvt. Ltd, who had carried out the sting operation under an arrangement with Channel IBN-7. The statements of the reporters who had carried out the sting operation were duly recorded on oath. The Deputy General Manager of IBN-7, Mr. Sachin Dev, CW-3, also tendered the original footage contained in the DVDs, as Ex.CW-3/1, Ex. CW3/2, Ex. CW3/3 and Ex. CW3/4. The DVD of the telecast programme was also tendered as Ex. CW3/5. The transcripts of the recorded conversation of the meetings and negotiations with Respondent Councillor and 7 other Councillors were also tendered. After viewing the DVD recording of the conversation of reporters with the Councillors and perusal of the transcripts of the same, vide Orders dated 21-12-2011, it was held that case for inquiry under Sec. 7 r/w 2(b),(i), (ii), (iii) & (iv) of the Act was made out and notice to the respondent and other Councillors returnable on 16-01-2012, were directed to be issued. The file of each Councillor was directed to be segregated and registered as a separate complaint.
3. The Respondent entered appearance through Shri S.N. Sharma and Shri D.D. Joshi, Advocates. Counsel for the Respondent sought two weeks to file reply-cum-written statement. Considering the nature of the controversy and issues arising for consideration, it was found expedient and in the interest of justice to appoint an Amicus Curiae and Shri Sanjiv Sharma, Advocate, was so appointed, vide Order dated 16th January, 2012.

In view of the ensuing municipal elections, Respondent Councillors made a fervent plea for expeditious disposal of these inquiry proceedings so that if allegations are not proved,

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he / she stands exonerated without delay, so as not to affect their election prospects.

Procedure adopted for Inquiry

4. The Counsel and parties were heard and their suggestions considered regarding adoption of the procedure in the inquiry so as to conform to the principles of natural justice, while expediting the inquiry, yet giving the fullest opportunity to the parties to present their respective case. A consensus emerged on the procedure to be adopted which is re-produced below for facility of reference:-

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- (i) All the Counsel and parties shall endeavour to abide by the time given for completion of pleadings. In fact the Respondents and the broadcaster have all stated that they would take not more than one to three weeks so that the entire pleadings can be completed within a month at the maximum.
- (ii) Regarding the authenticity and correctness of the recordings which have been produced, it has been agreed that individual footage in each of these cases would be played in court before the Presiding Officer with best equipment as available with the Broadcaster to make the sound clear and discernable so that some of the gaps noticed in the transcripts at present are filled up and an attempt is made for an agreed transcript to emerge. It is prayed by the Counsels that viewing should be spread over one week and individual recordings be viewed and parties heard.

Wherever it is not possible to have an agreed transcript, the Broadcaster and the Respondent, each may give their version with regard to the

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particular words uttered. This forum would then decide the controversy. Accordingly, in case the broadcaster and the Respondent are at variance, each would have the option to present its version of the transcript. Beyond the discrepancies in the transcript, Counsel and parties submit that they are not questioning the authenticity or demanding any other requirement with regard to the proof of the recordings. Considering the nature of the inquiry before the Lokayukta formal proof of these recordings is dispensed with.

- (iii) Parties are agreed that based on the pleadings and transcripts as finalized, the Lokayukta would fix the date of hearing in the individual cases.
- (iv) Parties are agreed that any common issue of law or fact which arises for consideration in their inquiries would be dealt with together by the Lokayukta and while the evidence and arguments in relation to each of the cases or transcripts will be separately taken up.
- (v) It is also agreed that while the authenticity of the conversation and their transcripts would be established in the above manner, parties would be at liberty to point out any personal animosity or motive on the part of the reporters for having carried out the sting operation."

None of the Counsel made any suggestion or request for alteration or modification in the above procedure, which was accepted by all.

Finalization of Transcripts of Recording

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- 5. The Ld Counsel for IBN 7 Channel handed over copies of transcript of recording which were given to the Amicus Curiae as well as the Counsel for the Respondent.

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6. This Forum made arrangements for viewing of the DVDs containing copies of the original footage referred to as the "raw footage". The raw footage as recorded in the DVDs was played in the presence of the Respondent Councillor and the Counsel for Respondent and Amicus Curiae and the Advocate for IBN-7 Channel.
7. During the playing of the recording of the raw footage it was noticed that the transcript had gaps at about 5 places. Mr. Bharti stated that the original footage was not transcribed in the transcript as it was irrelevant to the subject matter. This Forum directed him to place on record the complete footage with advance copies of transcripts to the Respondent's Counsel as well the Amicus Curiae. The Forum advised the Respondent to play the footage and compare with the transcript and point out any discrepancy, failing which, copy supplied by Channel to be taken as correct version.
8. The Ld. Counsel for the Respondent pointed out an error in the eighth line of the transcript at Page-27. The DVD was played and the correction was made to read "Kabhi Do Rupaiya be liya hoga". The transcript was corrected and for purpose of identification Marked "D-2".

Completion of Pleadings

9. Pleadings were also completed. Copy of the Press Report appearing in "Nav Bharat Times" dated 7-12-2011 is annexed hereto as **Annexure-I**. Copy of Reply-Cum-Written Statement filed by the Respondent is annexed hereto as **Annexure-II**. Respondent's Counsel was given opportunity to file outline of submissions together with list of authorities and photocopies thereof. Ld. Counsel for Respondent submitted numerous testimonials and appreciation letters for her good and religious work in the constituency. He was asked to demonstrate the relevance of the same during arguments. Mark "D-2" is annexed hereto as **Annexure-III**.

SUMMARY OF TRANSCRIPT

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10. It would be appropriate at this stage to summarize the transcript as finalized which recorded the conversation between the Respondent and the reporter/builders. While summarizing, the exchange of courtesies, pleasantries and general small talks, which is not relevant to the inquiry has not been included. The reporter/builders met the Councillor through 'Chotu' (anya), who introduced them to her. He introduced one reporter as Sanjiv Yadav, who was a friend of one Raja known to him and was now their friend also. She enquired the name of the other reporter/builder who introduced himself as Karan Rastogi. This was followed by exchange of courtesies and preliminary talks. She enquired if they stayed in Mandawli and wanted to construct in A-Block. The reporters/builders stated that they had a small project and had come for her blessings as they understand there is a lot of harassment and difficulty and wanted to start in Block-D. Chotu tells the Councillor that the reporter/builders want her to handle the MCD. This is followed by a discussion on what the reporter/builders proposed to build. Reporters say that they would be constructing for re-sale. Further that they have been working in Ghaziabad and Loni and do not have any idea about the conditions here. Councillor tells them to associate Chotu and buy construction material from him. Councillor also praises Chotu and his children and says that though he is from Congress, while she is from BJP, he is like her brother. Councillor also describes her approach as being nice and polite to people. She describes the virtues of getting work done with affection and love. Chotu tells her to handle and control the JE and ensure that he does not pose any threat. There is a discussion on the difficulties faced by different builders, when JE and other officers are not handled. Buildings get sealed and sale deeds and registries get stuck. Good relations should be properly built. Councillor enquires whether work has started on which the reporter informs that

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work is yet to commence. The reporter/builders mention that they were scared as they were told by their close one, who had made construction that he faced lot of difficulties and harassment, after JE someone else would come. Reference is made to one Rajesh. There is then a prolonged discussion regarding the location of the plot and its whereabouts. The reporters say they certainly do not wish to face any obstacles. Councillor tells them not to worry and Chotu was there to take care. Chotu tells them to go ahead and construct and there would be no difficulties. Reporters say they cannot start without her blessings. The Councillor then assures that she would call the JE and talk to him. The reporters desire that she should frankly ask the JE, and in practical terms, tell them the amount to be given or either tell Chotu to do the needful. Reporters say that even though a contractor had told them that he had links, but they preferred to talk directly. Councillor was curious to know which contractor had mentioned to them. A discussion then ensued as to the name of the contractor. Reporters then say that they have met Chotu and her and they should give an idea. The Councillor then suggests that they should build on 100-100 Sq Yd plots. Reporters then mention that they do not mind if instead of 'fifty', 'one' is spent but they do not want to face harassment and there should be nobody to stop the construction work and it should be ensured that nobody would come to the site. Councillor then says that if an RTI is moved then she cannot help it, otherwise it will be possible to handle and they should not worry for the JE or for that matter of Ex. Engineer or anyone from MCD. Reporters wanted to know how much they will have to give and it was better to talk frankly. Reporters insist on being given an idea in broad terms. The Councillor says that she would tell them tomorrow and she herself does not want that they come ten times. The reporters indicate that they would start construction within a week. Councillor states that she would also speak to JE as soon as they start. Chotu then

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Reporters further say that they would not bother about Rs. Ten-Twenty Thousand, but do not want to be harassed. The reporters say that the police is also to be handled as PCR's can come. The Councillor comments that police also does not take 100-200, but has started demanding Rs. 20,000/- or so. Chotu informs that in Shakarpur School Block, police and MCD personnel take Rs. 1.00 Lac. Ultimately, the reporter/builders mention Rs. 50,000/-, when the Councillor enquires Rs. 50,000/- for how much and Chotu clarifies "one floor, fifty thousand". Councillor shakes her head in disapproval. Councillor then says that she would call the JE and she would link up JE and introduce Chotu to him. Reporters insist on knowing the estimated amount. Councillor does not indicate the estimated amount. The reporter then proposes that they could consider Rs.75,000/- and then raise it to "one". The Councillor then says 1.5 Lacs. Chotu then expresses that 1.5 was rather high. Chotu tells them to make four floors and for which 4.00 Lacs would be needed. At one stage Chotu says for five storeys it would be 5.00 Lacs. The reporter offers a car. Councillor says she does not want a car. Reporters finally say that they would keep five for her. The Councillor by her gesture indicates 'seven'. Reporters plead for the amount to be reduced, invoking Chotu's interference. Chotu says that they are new builders and pleads for them saying that they do not know anyone else in the area. Councillor then emphasizes on good construction being done and good material being used. The reporters say that they would keep her fully updated on how it was being built. The Councillor then says so much construction was going on but she does not take money and mentions that she is having the same house, which she earlier had. Reporters also later on tell that they would have the money sent. Finally, the reporters tell the Councillor that they would settle for 'five' and plead with her to say 'Yes'. The second reporter then tells her to settle at 'seven'. Later on Chotu tells that she gives him a lot of regards.

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Reporter says that they could sense it since she says she does not want anything for herself and it was also because of him and what can be better than this.

REPLY AND SUBMISSION OF RESPONDENT

11. Respondent Councillor averred that there is no violation of any of the provision of Delhi Lokayukta and Upalokayukta Act, 1995 and there is no act committed by her, which warranted an inquiry or issuance of notice. It should therefore be withdrawn. She pleads that the allegations would be shown to be false and malafide in the inquiry. The transcript does not reveal any misconduct on her part. The Respondent Councillor claims that she has been discharging her duties with dedication and her career is an open book. Her work has been appreciated by the members of her constituency. She herself has raised the issue of unauthorized constructions in the assembly and her conduct in the last five years as a Councillor has been blemish less and her integrity above board.
12. Respondent contends that the sting operation carried out was violative of guidelines passed by the High Court of Delhi in the case titled as "Court on its own motion Vs. State, WP (Crl.) No. 1175/2007. She as a local Councillor had a duty to ensure that the residents and businessmen in the constituency do not suffer from official red-tapism. The residents in the above context were facing problems by official red-tapism in spite of their having necessary sanctions.
13. Respondent claims that without being any demand from her side the reporter/builders started speaking of giving money. There is no demand directly or indirectly. She had not received any gain or assured any clearance without sanctions. She claims to have stated that if they want to build a project, the local officials, for any reason, will not disturb them if they have sanction. It is also significant that after recording these tapes in

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different context, they were not telecast immediately. The condition of their preservation or security is not known so as to avoid any tampering. The broadcaster who claims to be pursuing investigative journalism ought to know the legal requirement of safety of the said data. It is contended that this was a case of blackmailing intended to somehow increase the Television Rating Points (TRPs). They did not record the statement of any of the victim of her alleged behaviour. It was compartmentalized to tarnish her image. The respondent contends that on account of elections that were due in the near future, this act has been done by the reporters in association with persons inimical to her or those wanting to represent the constituency, all conspired together and manipulated the sting operation violating ethical norms. She denied the allegations of failing to observe the norms of integrity or conduct. She has never been complained against. Her work has been appreciated resulting in appreciation letters. She reiterates her commitment to serve people. Nothing against her has been found in the last five years, wherein she has maintained high standards of integrity. She denies misuse or abuse of power in terms of Section 2 (b) (ii) claiming to have discharged her duty with sincerity. Similarly, it is urged that sub clause (iii) of Section-2 (b) was not applicable to her actions. She was committed to provide the best of service to the people. She denies any improper or corrupt motive. Her conversation was manipulated by interested parties. Certainly it is not the case she has been in possession of pecuniary resources or property disproportionate to the known sources of income. Respondent claims to be belonging to a party having high standards and offered herself to the enquiry by the party President. She prayed that her reply be treated as interim reply. This has also been supported by her affidavit.

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EVALUATION OF THE CONDUCT OF THE
RESPONDENT AS REVEALED BY THE TRANSCRIPT

AND CONSIDERATION OF THE REPLY AND PLEAS
BY COUNSEL ON HER BEHALF.

14. The pleas of the tapes having been tampered and not reporting the conversation as actually took place is really not available to the Respondent. This is in view of the recording having been played before the respondent as also the broadcaster and the correctness of the transcript being ascertained with opportunity being given to both the parties to point out error or explaining any gaps. The transcripts of the tapes were finalized by the Office after noting down the comments of the broadcaster as well as the Respondent and her Counsel and in fact the corrections as pointed out by the Respondent were duly incorporated which were found to be correct and recorded in the Order dated 5th March, 2012. The respondent's counsel has also given his interpretation to certain sentences spoken by the respondent and meaning thereof, which shall be duly considered.

Let us notice few of the preliminary submissions of the Respondent's Counsel Sh. S. N. Sharma. He refers to the credentials and testimonials filed by him which show the conduct and good work of the Respondent. He submitted that this was not the case where the Respondent was found to be having assets disproportionate to the known sources of income. She lives in a small house of 50 Sq Yds within her means and lives a simple life and was not even keeping a domestic help. It may be noted that this is not a case where it is alleged that illegal gratification was actually paid and resultantly the Respondent was possessed of income and assets disproportionate to known sources. This is a case where the Respondent has been found to be discussing illegal gratification and assuring that she would handle the JE and other municipal staff and no one would come at the site. The agreement is to do the various acts against monies to be paid. Hence, in view of

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these specific allegations the plea of her living in 50 Sq. Yds or having simple life without domestic help is of no consequence.

15. Ld. Counsel for the Respondent had initially addressed arguments and pressed the plea of entrapment. His attention was drawn to the judgment of the Supreme Court in R. K. Anand Vs. Registrar, Delhi High Court and the observation in Paras 204 and 305, where-after the same was not pressed.
16. Ld. Counsel submits that repeated attempts were made by the reporter to put words into the mouth of the respondent, while the Respondent kept on showing her disinclination to accept anything. He refers to the words appearing on 20.22.39 of recording, wherein earlier while Chotu had mentioned fifty thousand for one floor, she was seen as giving a negative response by movement of her head. Reporters there upon said that they were not going to bargain and she should tell. Response from the councillor was that "she would speak to the JE. I have said I do not want, I will call JE on the phone and introduce him to Chotu". The reporter then insisted on estimate. Councillor stated "please do not asked me for an estimate" as she did not like to argue again and again. Reporters again tell her that they will do as she wants. Councillor again states that her respect would be kept when Chotu was making the house.
17. Mr. Sharma also laid emphasis on the transcript at 20.25.40, to show that she requested that good quality material be used and that the material would be supplied by Chottu. She further made statement on oath that in her area she had not taken even Rs. 2/- from anybody. She continues to be in the same economic condition. Mr. Sharma reiterates with vehemence that in the concluding portion of the transcript also the final words of the Respondent are a categorical statement that "She does not want anything", and that this should be given due

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weight. There was an admission on the part of the reporter who carried out the sting operation when in the context of the Councillor who had said "she does not want anything" when Chottu was involved.

18. Reading of the complete transcript clearly reveals that Respondent was all through at ease, especially with the conversation digressing on her conduct and polite behavior and trying to find out the location of the site. Her inquisitiveness and interest is writ large. In this background, the plea of the Respondent that she had not given any clearance to the reporter/builder for construction without sanction, but had only stated if they had acquired sanction, the local authority would not disturb them, inspires no confidence. Nowhere in the entire conversation, the Councillor mentions the reporter/builder getting sanction, rather throughout the conversation the reporter/builders are frankly and straightway offering illegal gratification. Far from rebuking them the Councillor is at ease, she herself throughout the conversation gives assurances to them that she would speak to the JE and also to the Ex. Engineer.
19. The Councillor repeatedly in the conversations stated that once the construction begins she would call JE and handle him and also tell the reporter/builders the amount required. Further she has also stated that she would ensure that JE will not visit their site. Regarding the plea that the Sting Operation violated all the guidelines issued by the High Court in the Case titled as "Court on its own motion Vs. State", WP (Crl.) No. 1175/2007, in the present case, as noted, the Councillor is at ease and is herself offering assurances. Reference is also invited to the judgment of the Supreme Court in R. K. Anand Vs. Registrar, Delhi High Court, 2009, 8 SCC 106. i.e. the appeal against the judgment of Delhi High Court in " Court on its own motion Vs.

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State and Ors". The Supreme Court dealing with stings and telecast of sting programmes observed in para 179 as under.

"Looking at the matter from a slightly different angle we ask the simple question, what would have been in greater public interest; to allow the attempt to suborn a witness, with the object to undermine a criminal trial, lie quietly behind veil of secrecy or to bring out the mischief in full public gaze? To our mind, the answer is obvious. The sting telecast by NDTV was larger public interest and it served an important public cause."

The sting operation in the present case was also for public good to expose the menace of unauthorized construction and the complicity of the City Fathers therein.

20. Councillor in her reply has repeatedly stated that she was not desirous of any amount for herself on which the Ld. Counsel Sh. S. N. Sharma laid considerable emphasis. Further the statement of the Reporter that she does not want anything to herself and they could not have a better deal. In this context as rightly pointed out by Amicus Curiae that corruption and illegal gratification can take many forms. Person may not himself or herself accept money but ask for another person. Section 7 of the Prevention of Corruption Act provides that seeking gratification for someone else also amounts to "corruption". In this case, there is yet another significant aspect. While the respondent professing that she did not demand anything for herself, she does not refuse to offer of money. The Respondent claims not to have demanded money for herself, yet, at the same time, as pointed out by the Amicus Curiae, when the reporter/builder wanted to finalize at Rs.5 Lacs, she moved her head in negative gesture to indicate it was insufficient and indicated by hand that Rs. 7 Lacs were required. The above are very significant and telling gestures. There is also considerable merit in the Amicus Curiae's submissions that last Para of the transcript need not affect the case against Respondent. It

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appears to be a situation where the reporters seem to be boosting Chhotu that because of him, she is not desirous of anything. This reemphasizes that she does not want anything because of him. In the above case at least it clearly shows that the Councillor was pitching for favour for Chhotu, whom she treats as her brother. Further, Amicus Curiae submits that expression of reporter's opinion is of no consequence when viewed against the statement of Chhotu expressing in favour of Rs.5 Lacs as acceptable sum against Rs. 7 Lacs indicated by Respondent.

From the evaluation of transcript and foregoing discussions which the respondent had with the reporter/builder and also on the consideration of the attendant circumstances, the following position emerges:-

- (i) The Councillor during the entire conversation has stated that the Reporter/builders should start their construction and they would not face any trouble from the MCD and that she would personally speak to the JE.
- (ii) The Councillor has clearly stated that she would not want anything because Chhotu is involved. But this is contradictory as she rejects the amount of Rs.5 Lakhs and gestures it to be increased to Rs. 7 lakhs.
- (iii) The Councillor completely seems at ease in the conversation and discusses with the reporter/builder details of the plot, she herself gives the reporter/builder an assurance that she would speak to the JE.
- (iv) Considering the entire conduct of the Councillor as evidenced from the admitted transcript marked D-2 amounts to violation of norms of integrity and conduct, abuse of her position as Councillor to obtain gain for herself or Chhotu and being actuated by improper personal interest and faithlessness in terms of Section 2 (b) (i) r/w Sec. 7 Delhi Lokayukta and Upalokayukta Act, 1995.

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21. The Ld. Amicus Curiae, Mr. Sanjiv Sharma, has submitted that the misconduct of the Respondent is grave and calls for a censure at the least. There is merit in the said submission. He further submits that the facts emerging in the transcript may even amount to an offence under the Prevention of Corruption Act. He submits that the above evidence having being legal evidence recorded in deemed judicial proceedings, should be forwarded to the appropriate investigating agency for consideration as to whether it constitutes an offence under the Prevention of Corruption Act and warrants any further action and this Forum is duty bound to do the same. It is ordered accordingly. The transcripts and other evidence as recorded before the Forum be forwarded to Commissioner of Police for consideration and evaluation.

It is, therefore, recommended to His Excellency, the Lieutenant Governor of Delhi, that a "censure" be issued to the Respondent Councillor for her misconduct as found above.

Manmohan Sarin
(Justice Manmohan Sarin)
Lokayukta

Date: 29th June, 2012

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Annexure - R-4

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BEFORE THE HON'BLE LOKAYUKTA

JUSTICE MANMOHAN SARIN

COMPLAINT NO. C-1147/Lok/2011

In the matter of Suo Moto Cognizance of a Press Report Titled "Sting Operation Ke Baad Parshadon Mein Macha Hadkamp" appearing in "Nav Bharat Times" Dated 07-12-2011.

AND

In the matter of Inquiry Under Sec. 7 read with Sec. 2(b) of The Delhi Lokayukta & Upalokayukta Act, 1995, in respect of Conduct of Smt. Manju Gupta, Municipal Councillor, Respondent herein.

1. Shri Sanjeev Mahajan, Advocate, Amicus Curiae.
2. Shri Rajesh Pathak, Advocate, Counsel for Smt. Manju Gupta, Municipal Councillor, Respondent.
3. Mr. Mrinal Bharti, Advocate, Counsel for IBN 7.

REPORT

Cognizance and Issuance of Notices

1. Suo moto cognizance was taken of a report titled "Sting Operation Ke Baad Parshadon mein Macha Hadkamp", appearing in "Nav Bharat Times" dated 7-12-2011. Vide Order dated 7-12-2011, notices were issued to the Editor and City Correspondent of "Nav Bharat Times" to produce complete records of interview and other evidence in relation to the press report. Notices were also directed to be issued to the Managing Director and Correspondent of Channel IBN-7, who had carried out the telecast of the sting operation showing involvement of Municipal Councillors participating in negotiations regarding carrying out of illegal and unauthorized constructions for illegal gratification. The reporters of Cobra Post, who had been deputed by the Channel IBN-7 to carry out the sting operation, were directed to produce the original footage/records of the sting operation.

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Commencement of Proceedings

2. Pursuant to the notices issued, the advocate of M/s. TV18 Broadcast Ltd, which owns Channel IBN-7, appeared with two reporters of Cobra Post owned by M/s. Shri Bhardwaj Media Pvt. Ltd, who had carried out the sting operation under an arrangement with Channel IBN-7. The statements of the reporters who had carried out the sting operation were duly recorded on oath. The Deputy General Manager of IBN-7, Mr. Sachin Dev, CW-3, also tendered the original footage contained in the DVDs, as Ex. CW-3/1, Ex. CW3/2, Ex. CW3/3 and Ex. CW3/4. The DVD of the telecast programme was also tendered as Ex. CW3/5. The transcripts of the recorded conversation of the meetings and negotiations with Respondent Councillor and 7 other Councillors were also tendered. After viewing the DVD recording of the conversation of reporters with the Councillors and perusal of the transcripts of the same, vide Orders dated 21-12-2011, it was held that case for inquiry under Sec. 7 r/w 2(b),(i), (ii), (iii) & (iv) of the Act was made out and notice to the respondent and other Councillors returnable on 16-01-2012, were directed to be issued. The file of each Councillor was directed to be segregated and registered as a separate complaint.
3. The Respondent entered appearance through Shri Rajesh Pathak, Advocate, and filed her reply-cum-written statement. Considering the nature of the controversy and issues arising for consideration, it was found expedient and in the interest of justice to appoint an Amicus Curiae and Shri Sanjeev Mahajan, Advocate, was so appointed vide Order dated 16th January, 2012.

In view of the ensuing municipal elections, Respondent Councillor among others made a fervent plea for expeditious disposal of the inquiry proceedings so that if allegations are not proved, he / she stands exonerated without delay, so as not to affect their election prospects.

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Procedure adopted for Inquiry

4. The Counsel and parties were heard and their suggestions considered regarding adoption of the procedure in the inquiry so as to conform to the principles of natural justice, while expediting the inquiry, yet giving the fullest opportunity to the parties to present their respective case. A consensus emerged on the procedure to be adopted which is re-produced below for facility of reference:-

- (i) All the Counsels and parties shall endeavour to abide by the time given for completion of pleadings. In fact the Respondents and the broadcaster have all stated that they would take not more than one to three weeks so that the entire pleadings can be completed within a month at the maximum.
- (ii) Regarding the authenticity and correctness of the recordings which have been produced, it has been agreed that individual footage in each of these cases would be played in court before the Presiding Officer with best equipment as available with the Broadcaster to make the sound clear and discernable so that some of the gaps noticed in the transcripts at present are filled up and an attempt is made for an agreed transcript to emerge. It is prayed by the Counsels that viewing should be spread over one week and individual recordings be viewed and parties heard.

Wherever it is not possible to have an agreed transcript, the Broadcaster and the Respondent, each may give their version with regard to the particular words uttered. This forum would then decide the controversy. Accordingly, in case the broadcaster and the Respondent are at variance,

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each would have the option to present its version of the transcript. Beyond the discrepancies in the transcript, Counsel and parties submit that they are not questioning the authenticity or demanding any other requirement with regard to the proof of the recordings. Considering the nature of the inquiry before the Lokayukta formal proof of these recordings is dispensed with.

- (iii) Parties agreed that based on the pleadings and transcripts as finalized, the Lokayukta would fix the date of hearing in the individual cases.
- (iv) Parties agreed that any common issue of law or facts which arises for consideration in their inquiries would be dealt with together by the Lokayukta and while the evidence and arguments in relation to each of the cases or transcripts will be separately taken up.
- (v) It is also agreed that while the authenticity of the conversation and their transcripts would be established in the above manner, parties would be at liberty to point out any personal animosity or motive on the part of the reporters for having carried out the sting operation."

None of the Counsel made any suggestion or request for alteration or modification in the above procedure, which was accepted by all.

Finalization of Transcript of Recording

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5. The Office of the Lokayukta made arrangements for viewing of the DVDs containing copies of the original footage referred to as the "raw footage". The raw footage as recorded in the DVDs were played and re-played several times in the presence of the Respondent Councillor, the Ld. Counsel for Respondent, the Ld. Amicus Curiae and the Advocate for IBN-7 Channel.

6. During the playing of the recording of the original footage, the Respondent, her Counsel as also the Counsel for the Channel and the Amicus Curiae gave their inputs to reach a consensus. Certain corrections in the transcript of the recording were made as noticed and pointed out by Shri Rajesh Pathak, the Ld. Counsel for Respondent. Apart from that he could not point out any error in the transcript except that at places sound was not clear and it was difficult to recognize the voice. The Forum also places on record its appreciation for the cooperation of all the Counsels and the efforts put in by the Amicus Curiae, in completion of this exercise. The Registry was directed to supply the corrected version, after carrying out the correction as noted by the Presiding officer.

Completion of Pleadings

7. Pleadings were also completed. Copy of the Press Report appearing in "Nav Bharat Times" dated 7-12-2011 is annexed hereto as Annexure-I. Copy of Reply-Cum-Written Statement filed by the Respondent on 16-1-2012 is annexed hereto as Annexure-II. The Respondent and his Counsel as well as the Amicus Curiae and Counsel for IBN-7, all submitted that the matter be proceeded with on the basis of the transcript of the original footage as finalized after viewing and no further evidence needs to be led by them or the Respondent. The said statement was made by the respondent's Counsel on the basis of instructions by the respondent. The Respondent's Counsel only wished to make oral submissions in support of pleas taken in reply cum written statement. The transcript of conversation as finalized and agreed to between all parties and marked 'CV', i.e. corrected version, subject to the above observations is annexed hereto as Annexure-III.

SUMMARY OF TRANSCRIPT

8. It would be appropriate at this stage, to summarize the transcript as finalized which recorded the conversation between the Respondent and the reporter/builders.

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The reporter posing as builder approaches the Respondent and states he is doing construction work in the area of the Respondent. He further states that earlier he was working in Ghaziabad area. The husband of the Respondent asks the reporter as to in which block he would be doing the work. The reporter informs that he would be working in A-Block and precisely states 'A-95'. Then they discuss about its location and Respondent participates in this discussion. The reporter then states that his brother had undertaken the work of construction at Mother Dairy where they had faced a lot of problem and reference is to the JE of the area. The reporter addressing Respondent says that he does not want any such problem. It is pertinent to mention here that during the entire conversation the reporter is dealing with the Respondent, her husband and one person called Inspector Sharma.

Keeping in mind the context in which the talk took place, it is inferred that reporter/builder first met Insp. Sharma to approach the Respondent, that is why, Insp. Sharma says, "Kah rahe the Pehle baat Kara do ----- Han Kara do Madam se----- Phir Kuch Nahin rahegi ----- problem". The Respondent, however, states that she will not do any such thing and refers the reporter to one Arvind and tells that whatever he has to say he may say to Arvind. She further tells to the Respondent that he will not face any difficulty here. She further assures the reporter that he should not worry and she will not make him face any difficulty and also assures to talk to them. (In the present context, the expression "them" refers to persons who have concern with activity of rising construction in the area). Thereafter, the husband of the Respondent assures the reporter that he will not face any difficulty from MCD but as regard the DDA and the police, he tells the reporter that he will have to see to them himself and further lends assurance that no MCD person would come there. The reporter then says that police takes money. He had talked with his brother about money and addressing the husband of the Respondent, asks

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about the amount. The husband of the Respondent gives response to this query regarding money smilingly and states that whatever it would be (the amount) he will be informed (here the husband of the Respondent is referring to some other person who will inform about this). The reporter then specifically asks the husband of the Respondent about the exact amount and states that they asked for about Rs. 3 Lacs. On persistent asking of the reporter, the husband of the Respondent states whatever has been told it must be right. Later on, in the conversation, the reporter asks again about the amount. Insp. Sharma says addressing the reporter, "you have to give the budget". Reporter then says Rs. 3 Lacs, to which the husband of the Respondent answers in affirmative. The reporter then insists that the amount is high and he wants to discuss in front of madam (Respondent). Later on, in the conversation the reporter and Insp. Sharma are discussing the issue in which Insp. Sharma says that they (refers to the Respondent and her husband) do not talk about money and it is he who decides and finalizes. He further states later on that madam (Respondent) does not discuss this issue. The conversation between the reporter and Insp. Sharma shows that the reporter had met the Respondent through Insp. Sharma. Reporter says that it was only a formal meeting. Insp. Sharma then states that the amount of Rs. 3 Lacs has been told. Reporter says that the amount is excessive to which Insp. Sharma responds that why he asked for the same. Rest of the conversation is not very specific although it hovers around the main issue of raising of construction by the reporter and the assistance sought from the Respondent to avoid any hindrance in the construction from MCD.

Response and Submissions of the Respondent.

9. Respondent had filed the reply to the Show Cause Notice through Counsel on 16-01-2012. This reply, in fact, contains the response to the notice on legal issues as well as on factual

matrix. It was submitted by the Respondent that the sting operation telecasted on the TV channel IBN 7 showing clippings of the conversation of the respondent with the reporter gives the colour of corruption to the entire conversation without any evidence to substantiate the said plea. The telecast of the sting operation was just to increase its TRP and the popularity of the channel. It is further submitted that the Respondent was working in the area for about 20 years. She is a honest and devoted worker and discharges her functions as Councillor in public interest. She has never abused or misused her position to obtain any gain or favour to herself or to any other person. It is further submitted that the sting operation telecasted on 6-12-2011 on the TV channel IBN 7 shows the conversation of the Respondent with some person, which has been so picturized and edited as to reflect that the Respondent agreed for illegal gratification for shielding demolition and sealing, by the MCD. It is further submitted that there was no whisper of any demand of money in the entire conversation between the Respondent or her husband for carrying out illegal construction in her area/ward. It is further submitted that the constituency of the Respondent consists of some Group Housing Societies and unauthorized colonies, Madhu Vihar and Joshi Colony, which come under the jurisdiction of DDA, and as such there is no interference of the building department of MCD. It is further submitted that the Respondent is the representative of the ward and hears the grievances of the public in the area. Even the DVD clippings substantiate the fact that the Respondent was talking to several people regarding their grievances along with the person in question (referring to the reporter) who had also come with his grievance. It is further submitted that it is highly improbable that the Respondent would be discussing the matter of illegal gratification in open sitting in front of public of the same area. It is further submitted that the reporter had met the Respondent in connection with the harassment by some MCD officials for raising construction in Joshi Colony, which comes

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under the DDA. The Respondent being a Councillor of the area concerned had simply assured that nobody from the MCD would harass as the area comes under DDA and there is no role of MCD. Even the husband of the Respondent had reiterated this fact.

The L.d. Counsel for the Respondent Shri Rajesh Pathak, had made submission that the Respondent has done considerable good work in her area and thus earned a lot of respect and goodwill. The L.d. Counsel further submitted that there has been a deliberate attempt to entrap and induce the Respondent into saying few things. He further submitted that no money had been offered to the Respondent and the transaction regarding offering of money with the husband of the Respondent took place outside the office and not in front of the Respondent. However, it is of no significance. By telling the reporters that they could talk to her husband, the Respondent has authorized her husband to represent her.

L.d. Amicus Curiae Shri Sanjeev Mahajan, in reply, submitted that the talk of taking or giving money has been carried out openly without any hesitation. As regard the submission that the area falls under the DDA and was not in the jurisdiction of the MCD, he urged that if it is correct, then element of deception is also involved in as much as money is being sought to be collected on the assumption that MCD can cause problems. The L.d. Amicus Curiae referred to a case in BALDEV SINGH GANDHI V/S STATE OF PUNJAB & ORS (2002) 1 SCR 1022, in which case the Hon'ble Supreme Court has dealt with the expression "misconduct", taking its colour from the context.

Evaluation of the Conduct of Respondent as Unravelled by the Transcript and Consideration of the Reply and Pleas in Response.

10. The Respondent is a public functionary as defined in Sec. 2(m) of the Delhi Lokayukta & Upalokayukta Act, 1995, being a

member of the Municipal Corporation of Delhi. A public functionary has to act within norms of integrity and conduct which is expected from a person holding the position of power and control in the society. The law does not specify any code of conduct for the representatives of the people for their day to day life while dealing with people they represent. However, the norms of integrity and conduct need not be specified because any act out of purview of the norms of integrity and conduct itself stands out and even a layman can point out that a specific act does not behove a public functionary. In nutshell, a public functionary has to set an example for the public by maintaining high level of sincerity, integrity, honesty, by rising above personal and vested interests, favouritism and nepotism and by avoiding any pecuniary or other benefits which are not due. A public functionary has to set an example of good governance, being the holder of public trust.

This Forum is to ascertain whether the act and conduct imputed to a public functionary is within the norms of integrity and conduct expected from a public functionary or is an abuse or misuse of power by an act actuated by improper motive or personal interest showing favour, lack of faithfulness or is an act leading to undue pecuniary benefit to public functionary, availed by virtue of his/her status and position.

Here is a Respondent, who is a Councillor in the Municipal Corporation of Delhi. The sting operation conducted by two reporters of Cobra Post in arrangement with Channel IBN-7 shows the Councillor indulging in conversation which at the very outset reflects that the Respondent has the tendency of hobnobbing with unscrupulous builders, who raise unauthorized constructions posing hazard to the life and health of the citizens. At the very outset, it may also be stated that the channel IBN-7 claims that sting operation was carried with the object of exposing the menace of unauthorized construction and the complicity of the Municipal Councillors and staff of the

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Corporation. Thus, the sting operators have acted as whistleblowers and no fault can be found with their act. The above finds support in the observations of the Hon'ble Supreme Court in the case of R.K. ANAND V/S REGISTRAR, DELHI HIGH COURT, (2009) 8 SCC 106 and the judgment in ANIRUDHA BAHAL V/S STATE 172 (2010) DLT 268, endorsed this view.

Ld. Counsel for the Respondent had taken a plea that the sting operation telecasted on the TV by Channel IBN-7 has been so picturised and edited as to reflect that the Respondent had agreed for illegal gratification and the purpose of this telecast was simply to increase the TRP and the popularity of the channel. So far as this submission of the Ld. Counsel is concerned, it may be stated that whatever was recorded during the sting operation, it was played and viewed at the time of hearing before this Forum and the agreed transcript was prepared with due involvement of the Respondent and her Counsel. The Respondent has not taken any exception to the transcript which has been finalized. So, the authenticity and genuineness of the transcript cannot be now questioned. This Forum is concerned with the actual transcript of conversation. In case Respondent finds any imputation defamatory in the telecast, it is for the Respondent to seek legal remedies there for.

The Ld. Counsel for the Respondent has submitted that the Respondent is an honest and devoted worker who is serving the area for the last 20 years in public interest. He further submitted that it is highly improbable that the Respondent who is a respected citizen would be discussing the matter of illegal gratification in open sitting in front of the public of the same area. This Forum is concerned with the conduct of the Respondent which is reflected in the sting operation. Even otherwise her good work as claimed, cannot wash away the conduct in negotiating illegal gratification for unauthorized

construction. To say that the Respondent would shy away from indulging in such acts of discussing matters of illegal gratification in the open sitting in front of the public would be to underestimate the conduct which is shown in the sting operation. It is unfortunate that a Councillor through her husband or herself had no qualms about such talks even in front of members of public of the same area. This brings to fore the need for building up strong public opinion and respect for moral values, resulting in zero tolerance for corruption and misconduct, especially among persons holding positions of public trust.

Reference to certain portions of the transcript of the conversation between the reporter (posing as builders), on the one hand, and the Respondent and her husband and their accomplice is necessary in this context.

- (a) The transcript of the conversation shows that the reporter approaches the Respondent posing himself to be a builder stating that he had done construction work in Ghaziabad area and now he intends to do construction work in the area of the Respondent. The Respondent and her husband specifically ask the reporter about the location, where the construction is to be raised. The reporter then tells the Respondent about the purpose of his visit. He states that his brother had faced lot of difficulty, while raising construction at Mother Dairy and he refers to the JE of the area from whom they faced problems. He expresses his desire to seek the blessings of the Respondent for raising construction in her area to avoid any problems from the JE. The Respondent gives assurance to the reporter. Her husband also lent assurance that no MCD person would come and the reporter will not face any difficulty from the MCD, although he cautions the reporter that he will have to tackle the DDA and the police, on his own.

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This conversation leaves nothing to imagination. The Respondent and her husband had given assurance to the reporter for raising construction in the area, they assured that MCD officials will not cause any difficulty in raising the construction. The reference is obviously to unauthorized construction without sanctioned plan or in excess of what is permissible as otherwise there is no question of tackling them. The Respondent, in entire conversation, has not stated the reporter (posing as builder) has any sanctioned plan for construction nor reporter says that he intends to raise construction as per law. Therefore, necessary and logical inference which can be drawn is that the construction work, for which Respondent is offering her help and support, is not legal/authorized.

- (h) The second limb of the conversation is with regard to money which is to be given. When the husband of the Respondent told the reporter that he himself will have to take care of the police, the reporter states that the police people take money. The reporter then addressing the husband of the Respondent asks him about the amount. The husband of the Respondent does not specifically answer the query but smilingly states that whatever it would be, he (reporter) will be informed. This gesture of the husband of the Respondent is nothing but an acceptance of the proposal to help out the reporter in raising construction for monetary consideration.
- (c) The reporter specifically asks the husband of the Respondent about the exact amount. He refers to a sum of Rs. 3.00 Lacs, which has been demanded. The husband of the Respondent stated that whatever has been told, it must be right. Later on in the conversation, the person who is being addressed as Insp. Sharma in the conversation asks the reporter that he has to tell the

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budget. When the reporter says "3 Lacs", the husband of the Respondent nods in affirmative. Later on, in the conversation when the reporter asks that he wants to discuss the amounts in front of Madam (Respondent), the person called Trisp. Sharmia states that they do not talk about money and it is he who decides and finalizes.

- (d) A pertinent part of the conversation which has acquired a great importance in the present matter is where the Respondent states, "Nahi.. Mai Thoda Aise Karungi. Jo Ye Arvind Hai Na... Aap Jo Kuch Bhi Kaho Arvind Se Kaho.." These words uttered by the Respondent have not been disputed by the Respondent. There was no objection with regard to the transcript which contained this sentence. However, when the Presiding Officer asked the Respondent as to who was this 'Arvind', who has been named by her, the Respondent had stated that she does not know any Arvind. This conduct of the Respondent shows that she deliberately did not acknowledge her acquaintance with the said Arvind while her sentence reflects confidence in him. The Ld. Counsel for the Respondent had further argued that there was no question of seeking any gratification on account of protecting the reporter (posing as builder) from the officials of the MCD because none of the area of her constituency comes under the MCD. He submitted that the constituency of the Respondent consists of Group Housing Societies, Unauthorized Colonies - Madhu Vihar and Joshi Colony, which are in the jurisdiction of DDA. He submitted that the Respondent being Councillor of the area of Joshi Colony had simply assured the reporter that nobody from MCD would harass as the area comes under DDA and there was no role of MCD.

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11. Ld. Amicus Curiae, Sanjeev Mahajan, on the contrary, considered it to be a rather very serious act and submitted that if it is assumed that the area falls under the IDDA and not in the jurisdiction of MCD, then deception and cheating would be involved because money was being sought on the assumption that MCD can cause problem and the Respondent would protect the builder from the MCD.

He refers to the judgment in BALDEV SINGH GANDHI V/S STATE OF PUNJAB & ORS (supra) in which the Hon'ble Supreme Court had dealt with the allegation of "misconduct" against a Municipal Councillor. The Hon'ble Supreme Court had observed that the word "misconduct" is anti-thesis of the word "conduct", and ordinarily the expression of misconduct would mean, "wrong and improper conduct, unlawful behavior, misfeasance, wrong conduct, misdemeanour etc."

It is pertinent to mention here that in the judgment, it is stated that the expression "misconduct" is to be considered with reference to the subject and the context in which this expression occurs.

12. Now coming to the conduct of the Respondent, it is obvious that the Respondent has shown her willingness to support the raising of construction and providing protection from the MCD officials. The husband of the Respondent and the Respondent assured the reporter that he will not face any difficulty from MCD. The gratification for providing this support was also discussed by them. Thus, the willingness of the Respondent to encourage and facilitate unauthorized and illegal construction is writ large in the conversation recorded in the transcript. The tone and tenor of conversation suggests that the Respondent has "misconducted" herself and has transgressed the norms of conduct and integrity by "misuse" of her power. It is common knowledge that being the Councillor and representative of the people, she must be having a clout on the officials of the

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Municipal Corporation which she promised to utilize for improper and illegal purposes.

13. The above act and conduct display failure to act in accordance with the norms of integrity and conduct which ought to be followed by public functionaries. Besides, it is also abuse and misuse of position as it manifests conduct to gain favour for herself in as much as the amount to be Respondent's share was to be decided later. Assurance to help in unauthorized construction tantamounts to discharge of functions being actuated by improper motive for personal interests. It also constitutes lack of faithfulness to her functioning as a Councillor. Thus, there is contravention of Sec. 2(b) (i) to (iv) of the Act.
14. The menace of unauthorized construction has pervaded the metropolis of Delhi. It is not confined to a superficial level or the surface. It has entered the very blood stream of Delhi. There are various reasons for the same, galloping population, rising demand for accommodation, non-availability of the same, which tempts the residents to expand vertically and horizontally in contravention of the permissible limits. Complex laws and unresponsive system have also aggravated the problem. Unabated growth of unauthorized construction also emanates from lack of enforcement and implementation of the municipal laws. The situation gets further aggravated on account of complicity of the municipal staff, city fathers, local politicians and the police. In an attempt to contain the role of public functionaries and Councillors in this menace, this Forum had on complaint from one Councillor initiated action in 61 cases against the legislators and Councillors for unauthorized construction and irregularities in their properties. It was a matter of satisfaction that in majority of these cases, the public representatives have either voluntarily demolished or got regularized the violations.

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It is well settled that the higher the office the greater the responsibility and higher the expectation from the said person for observance of the norms of integrity and good conduct.

15. In view of the foregoing discussion and the analysis, there is no doubt that the Respondent has failed to observe the norms of good conduct and integrity expected of a person of her class by entertaining, discussing and indicating her willingness to support the reporter/builders, who were to carry out unauthorized construction, for illegal gratification.
16. The Ld. Amicus Curiae, Mr. Sanjeev Mahajan, has submitted that the misconduct of the Respondent is grave and calls for a censure in the least. He further submits that the facts emerging in the transcript may constitute offence under the Prevention of Corruption Act and IPC. He submits that the above evidence being legal evidence recorded in deemed judicial proceedings should be forwarded to the appropriate investigating agency for consideration as to whether it constitutes offences under the Prevention of Corruption Act and IPC, warranting any further action and this Forum is duty bound to do the same. It is ordered accordingly. The transcripts and other evidence as recorded before the Forum be forwarded to Commissioner of Police for consideration and evaluation.
17. While recommending that the Respondent be administered a "Censure" by the Competent Authority, this Forum is conscious of the fact that the Respondent is no longer holding the post of Councillor. Upon initiation of the inquiry by the Lokayukta, the Councillors involved in the sting operation were not given tickets by their respective parties for contesting the elections. Resultantly, at present the Respondent is not an elected Councillor. However, it would be appreciated that while there may be some reduction in the clout of the Councillor when holding Office and otherwise. He continues to be in public and political life. He does not cease to be a part of the public life or the polity. Besides, the stream of public life has to be kept

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unsullied and unpolluted from the influx of corruption and other wrong doings. This requires inculcating high moral and core values in conduct of those holding positions of public trust and in public life, with no tolerance for the corrupt or those indulging in misconduct.

The above would not be feasible if public functionaries who are found to be guilty of misconduct escape punishment for the reason that they are not in power or not having the same clout.

Administration of penalties such as caution, censure etc. is expected to usher in the cleansing process to keep the stream of public life clean and unsullied. Moreover, the statute itself provides for cognizance being taken for 5 years from the date of the cause of action for the act complained of, indicating that there can be no escape of penalty for past acts also.

In view of the foregoing discussion, the Respondent Councillor, who has been found to be in violation of norms of integrity and good conduct, abuse of position to obtain gain for herself, being actuated in discharge of her functions by improper motives and personal interest and lack of faithfulness, in terms of Sec. 2(b) (i), (ii), (iii) & (iv) read with Sec. 7 of the Delhi Lokayukta & Upalokayukta Act, 1995, deserves to be administered a "censure" by His Excellency, the Lieutenant Governor of Delhi, and is so recommended.

Mannohan Sarin
(Justice Mannohan Sarin)
Lokayukta

Date: 12/11 - July, 2012

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Annexure - P-5

BEFORE THE HON'BLE LOKAYUKTA

JUSTICE MANMOHAN SARIN

Complaint No. C-1145/Lok/2011

Re- In the matter of a report titled 'Sting Operation Ke Baad Parshado Me Macha Hadkamp', appearing in 'Nav Bharat Times' dated 07.12.2011.

And

In the matter of inquiry u/s 7 read with 2(b) of the Delhi Lokayukta and Upalokayukta Act, 1995 in respect of the conduct of Ms. Beena Thakuria, Municipal Councillor.

Present:-

1. Shri K.K. Jha and Shri A.K. Mishra, Advocates, for Ms. Beena Thakuria, Respondent Councillor.
2. Shri Sanjeev Sharma, Amicus Curiae.
3. Mr. Mrinal Bharti, Advocate, Counsel for IBN 7

REPORT

Cognizance and Issuance of Notices :-

1. Suo moto cognizance was taken of a report titled "Sting Operation Ke Baad Parshadon mein Macha Hadkamp", appearing in "Nav Bharat Times" dated 7-12-2011. Vide Order dated 7-12-2011, notices were issued to the Editor and City Correspondent of "Nav Bharat Times" to produce complete records of interview and other evidence in relation to the press report. Notices were also directed to be issued to the Managing Director and Correspondent of Channel IBN-7, who had carried out the telecast of the sting operation showing involvement of Municipal Councillors participating in negotiations regarding carrying out of illegal and unauthorized constructions for illegal gratification. The reporters of Cobra Post, who had been deputed by the Channel IBN-7 to carry out the sting operation, were directed to produce the original footage/recording of the sting operation.

Commencement of Proceedings

2. Pursuant to the notices issued, the advocate of M/s. TV18 Broadcast Ltd, which owns Channel IBN-7, appeared with two reporters of Cobra Post owned by M/s. Shri Bhardwaj Media Pvt. Ltd, who had carried out the sting operation under an arrangement with Channel IBN-7. The statements of the reporters who had carried out the sting operation were duly recorded on oath as CW-1 and CW-2 with direction to keep their identity Confidential under Section 14 of Delhi Lokayukta and Upalokayukta Act, 1995. The Deputy General Manager of IBN-7, Mr. Sachin Dev, CW-3, also tendered the original footage contained in the DVDs, as Ex.CW-3/1, Ex. CW3/2, Ex. CW3/3 and Ex. CW3/4. The DVD of the telecast programme was also tendered as Ex. CW3/5. The transcripts of the recorded conversation of the meetings and negotiations with Respondent Councillor and 7 other Councillors were also tendered. After viewing the DVD recording of the conversation of reporters with the Councillors and perusal of the transcripts of the same, vide Orders dated 21-12-2011, it was held that case for inquiry under Sec. 7 r/w 2(b),(i), (ii), (iii) & (iv) of the Act was made out and notice to the respondent and other Councillors returnable on 16-01-2012, were directed to be issued. The file of each Councillor was directed to be segregated and registered as a separate complaint.
3. Considering the nature of the controversy and issues arising for consideration, it was found expedient and in the interest of justice to appoint an Amicus Curiae and Shri Sanjeev Sharma, Advocate, was so appointed vide Order dated 16th January, 2012. The Respondent entered appearance through Shri K.K. Jha and Shri A.K. Mishra, Advocates, and filed her reply-cum-written statement on 13-02-2012.

In view of the ensuing municipal elections, Respondent Councillor among others made a fervent plea for expeditious disposal of these inquiry proceedings so that if allegations are

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not proved, she stands exonerated without delay, so as not to affect her election prospects.

Procedure adopted for Inquiry :-

4. The Counsel and parties were heard and their suggestions considered regarding adoption of the procedure in the inquiry so as to conform to the principles of natural justice, while expediting the inquiry; yet giving the fullest opportunity to the parties to present their respective case. A consensus emerged on the procedure to be adopted which is re-produced below for facility of reference:-

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- (i) All the Counsel and parties shall endeavour to abide by the time given for completion of pleadings. In fact the Respondents and the broadcaster have all stated that they would take not more than one to three weeks so that the entire pleadings can be completed within a month at the maximum.
- (ii) Regarding the authenticity and correctness of the recordings which have been produced, it has been agreed that individual footage in each of these cases would be played in court before the Presiding Officer with best equipment as available with the Broadcaster to make the sound clear and discernable so that some of the gaps noticed in the transcripts at present are filled up and an attempt is made for an agreed transcript to emerge. It is prayed by the Counsels that viewing should be spread over one week and individual recordings be viewed and parties heard.

Wherever it is not possible to have an agreed transcript, the Broadcaster and the Respondent, each may give their version with regard to the particular words uttered. This forum would then

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decide the controversy. Accordingly, in case the broadcaster and the Respondent are at variance, each would have the option to present its version of the transcript. Beyond the discrepancies in the transcript, Counsel and parties submit that they are not questioning the authenticity or demanding any other requirement with regard to the proof of the recordings. Considering the nature of the inquiry before the Lokayukta formal proof of these recordings is dispensed with.

- (iii) Parties are agreed that based on the pleadings and transcripts as finalized, the Lokayukta would fix the date of hearing in the individual cases.
- (iv) Parties are agreed that any common issue of law or facts which arises for consideration in their inquiries would be dealt with together by the Lokayukta and while the evidence and arguments in relation to each of the cases or transcripts will be separately taken up.
- (v) It is also agreed that while the authenticity of the conversation and their transcripts would be established in the above manner, parties would be at liberty to point out any personal animosity or motive on the part of the reporters for having carried out the sting operation."

None of the Counsel made any suggestion or request for alteration or modification in the above procedure, which was accepted by all.

Finalization of Transcripts of Recording :-

- 5. The Office of the Lokayukta made arrangements for viewing of the DVDs containing copies of the original footage referred to as the "raw footage". The raw footage as recorded in the DVDs

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 were played and re-played several times in the presence of the Respondent Councillor and the Counsel for Respondent and Amicus Curiae and the Advocate for IBN-7 Channel.

6. During the playing of the recording of the raw footage, the Respondent, her Counsel as also the Counsel for the Channel and the Amicus Curiae gave their inputs to reach a consensus. The Forum also placed on record the cooperation of the Counsel and the efforts put in by the Amicus Curiae in completion of this exercise. The Registry was directed to supply the corrected version, after carrying out the correction as noted by the Presiding officer.

Completion of Pleadings :-

7. Pleadings were also completed. Copy of the Press Report appearing in "Nav Bharat Times" dated 7-12-2011 is annexed hereto as Annexure-I. Copy of Reply-Cum-Written Statement filed by the Respondent on 9-2-2012 is annexed hereto as Annexure-II. The Respondent and her Counsel as well as the Amicus Curiae and Counsel for IBN-7, all submitted that the matter be proceeded with on the basis of the transcript of the original footage as finalized after viewing and no further evidence needs to be led by them or the Respondent. The said statement was made by the respondent's Counsel on the basis of instructions by the respondent. The Respondent's Counsel only wished to make oral submissions in support of pleas taken in reply cum written statement. The transcript of conversation as finalized and agreed to between all parties and marked 'CV', i.e. corrected version, subject to the above observations is annexed hereto as Annexure-III.

SUMMARY OF TRANSCRIPT

8. It would be appropriate at this stage, to summarize the transcript as finalized which recorded the conversation between the Respondent and the reporter/builder.

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The reporters posing as builders had met the Respondent with a prior appointment. The reporters/builders introduced themselves to the Respondent. The Respondent asked the reporters/builders as to where and what is being constructed by them. The reporters/builders say that they build in collaboration and also tell about the location where they intend to raise the construction. Further they seek the blessings of the Respondent for starting work in her area. The reporters/builders then say that they have purchased two plots of 25 sq. yd making it a single plot of 50 sq. yds. and intend to construct up to 4th floor and possibly up to 5th floor. Respondent offers her help to the builders. The reporters then express their apprehension regarding the problem which can be caused by the Junior Engineer. The respondent assures them that in her area there is no headache or difficulty with the JE as she is there to take care of it. She then asks the reporters/builders, where else they are getting work and offered the desired help telling them to be in touch with her. The reporter/builders further say that they would start construction immediately and would probably finish in three months and what they require from the respondent is that there should be no obstruction in construction, the JE should not come and pose a problem and request the respondent to take the whole responsibility, as they are new in the area. The respondent again assured the reporters that without her consent JE cannot do anything and JE will act as per her wishes. She further adds that more than JE it is the beldar who roams around like a dog to verify where and what is being constructed. She further asked the reporter/builders to start their work. The reporters/builders then ask about the expenses for the JE.

The reporter/builders explained that they plan a budget for the project say Rs. 50 lacs or a crore. However, if demands are made for Rs. 25000/- for one person and 25000/- for another then it upsets the whole system. They have a profit of Rs. 2.00 lacs and therefore, they want to know expenses in advance.

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The Respondent says that she will enquire about the expenses of the JE and adds that JE will come only with her consent. She will discuss the matter with him as his mouth is also to be shut. She cautions the reporters that JE should not be told that they are builders as that would raise his demand and tells the reporter that they should tell JE that they are persons known to her. When the reporter ask about the budget on account of JE the respondent says that he would not take less than one lakh. When the reporter asked about the share of the respondent, she parries and defers asking them to specify the amount but when reporter/builders ask whether it will be less or more than JE's share the respondent responds curtly by saying that she takes responsibility of everything yet the (reporters/builders) want to dupe and sideline her. The respondent when asked about her share she says that she wants to hear it first from them (reporters). The reporter says that they have no idea of that area and asked how much Panna Lal, Councillor, Ward-183 takes. Respondent says that nobody would tell as to how much he would take and nobody will tell her as how much he is taking. The reporters then ask what the prevalent rate is. The respondent says it will not be less than 4 or 5 lakhs. The reporters then asked the respondent how much they should expect for her. The respondent says that he (reference is to another Concillor) is taking Rs. 5 lakhs and that she is not of inferior standing than him to take less. She further says that she is going to contest election which cannot be contested without money. When the reporters say that it would take one month time to start work the respondent shakes her head in disappointment.

In between somebody knocks at the door and there is a digression in the discussion between the reporters and the respondent which is not relevant to the present inquiry.

Further conversation relevant to the present inquiry comes later and the reporter again asks the respondent about her

share. The respondent says that what she said about Khairwal, they should take the said amount. The reporter mention 5 lakh rupees to which the respondent says that it is not sufficient as she will take all the headache and responsibility. The reporter/builders then pose a query whether share of the JE will be separate, the respondent said that share of JE would be separate. The reporter/builders then ask the respondent to settle for rupees 6 lakh. The respondent says that the JE's share would be separate and insist that her share and the share of the JE would be separate.

Thereafter the respondent and the reporters fix a time for the visit of the respondent to the site. Further conversation is general in nature, where the respondent speaks about her conduct, her behavior and her future plan for election and she tells the reporters how she has always been helpful to people.

Response and Submissions of the Respondent :-

9. The Respondent filed reply in response to the notice, under Sec.7 r/v Sec. 2(b) of the Act.

Respondent states in her reply that the sting operation and the news item in Nav Bharat Times on 07-12-2011 are totally false, frivolous and baseless and are the outcome of the malafide intention on the part of the reporters, who had approached her seeking some illegal help for getting a building constructed unauthorisedly in the Ward No. 182, Ambedkar Nagar, New Delhi. The respondent had politely declined to render illegal and unreasonable help to them. It is further submitted that the reporters in collusion and connivance with some other persons have illegally tampered with the originally recorded conversation and they telecasted the sting operation with a malafide intention to tarnish the unblemished career of the respondent. It is further submitted that the reporters tried to in trap her by giving offer of illegal gratification and she never spoke the words qua the illegal gratification or the demand of

distinction between legitimate and illegitimate trap. The High Court of Delhi had the occasion to consider the legality of a sting operation in the case of Aniruddh Bahl Vs. State, 172 (2010) DLT 268, wherein an FIR registered against the sting operators under Section 12 and 13 of the Prevention of Corruption Act was quashed. The Court held that FIR was registered after one year with sting operators being arraigned as prime accused. Court found the act of the sting operators as bonafide who had acted as whistleblowers by airing the tapes on TV channels and by deposing truthfully before two Committees of Parliament. Charging such people with offences under the Prevention of Corruption Act would amount to travesty of justice and shall discourage people from performing their duties enjoined upon them by law of the country. The court held that the duties prescribed by the Constitution of India for citizens of the country do permit citizens to act as 'agent provocateurs' to bring out and expose and uproot corruption. This observation of Delhi High Court obviates the distinction drawn by Madras High Court between legitimate and illegitimate trap. Besides in the instant case ingredients of offence under Prevention of Corruption Act, prima facie, appear to be satisfied. Hence, question of offence not being born does not arise. In R.K. Anand Vs. Registrar, Delhi High Court, 2009 (8) SCC (supra) i.e. the appeal against the judgment of Delhi High Court in Court on its Own Motion Vs. State and Ors 151(2008) DLT 695, the Supreme Court while dealing with stings and telecast of sting programmes observed in Para-179 as under :-

"Looking at the matter from a slightly different angle we ask the simple question, what would have been in greater public interest; to allow the attempt to suborn a witness, with object to undermine a criminal trial, lie quietly behind veil of secrecy or to bring out the mischief in full public gaze? To our mind, the answer is obvious. The

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sting telecast by NDTV was indeed in larger public interest and it served an important public cause."

13. The sting operation, in the present case, was also for public good to expose the menace of unauthorized constructions and the complicity of the City Fathers therein, who instead of taking steps to curb this menace, mix up with builders and assure their support for raising unauthorized constructions. Any act which exposes this unholy nexus of the representatives of people and unscrupulous builders, is in the larger public interest. So the sting operation serves an "important public cause."
14. Therefore the argument that the sting operation was unethical, illegal and was with malafide intention cannot be accepted. The conversation which took place between the reporters and the Respondent makes it amply clear that the Respondent not only gave assurance to the reporters posing as builder to help them in raising the construction but also sought a gratification for such a help. The tone and tenor of the conversation clearly brings out that the reporters were suggesting raising of illegal construction for which they received tacit consent and approval by the Respondent for financial gains.
15. The conversation between the reporters and the Respondent clearly shows the interest of the Respondent for raising/construction by the reporters expecting a financial reward for providing her help and assistance to them in doing such an act by exercising her influence with JE whose official duty is to stop unauthorized construction.
16. The Respondent has assured her help to the reporters, she discussed the size of the plots, the number of the plots and also the nature of construction to be carried out. When the reporters/builder tell her that they wanted her help to make sure that there is no difficulty and obstruction in their work as they are new to the area, and they expressed their apprehension about the problems which can be caused by the JE, the Respondent

assured that they (reporters/builders) would not face any problem from Junior Engineer (JE) in her ward and she would take care of all. She further states that JE would not go against her wishes, which in other words imply that JE would follow her dictates. Thus, the Respondent shows her capacity to exert personal influence upon the JE. It is considered useful for the purposes of illustration to quote from the excerpts of conversation as they appear in the transcript sequentially in the narration. The answer to the queries by the Councillor give an insight into her mind and open and disclose the same as also her intentions, apart from the agreed consideration which eventually emerges.

"Beena : Agar aapko kaam mil raha hai toh woh batao mujhay, kahan kahan aapko kaam mil raha hain. Uskay liye jaise help hogi main karungee. Theek hai na."

The reporters/builders inquire about the expenses required for the JE. The Respondent assures the reporters that she would discuss with JE. This also shows her proximity with the JE.

"Beena : JE toh kher han hamari sehmati key bina kuch nahin kar sakta hain. Lekin ye hain ki matlab JE bhi hamarey kehna se chahlega. Adhiktar toh JE ko itna time nahi hota hein jitna (Beldar) ko time hota hain.... woh kutay ki tarah ghumta hai jaisay kutay ko haddi nahi milti."

17. During the conversation the reporters wanted to know as to how much the Respondent will take and whether they would have to pay her an amount more than that which is paid to the JE or less. The Councillor's reply to such a query opens her mind. It is considered useful to quote that part of conversation.

Beena : Meri sehmati se aayaga JE to Mai uskay saath discuss kar lungee mai bethkarke. Dekho uska bhi moonh band karna padayga aur uska bhi moonh band karna padayga. Lay bhaiya yeh hai aur chutti karo."

"Reporter: Fir bhi...JE se kam rakhe aapka ya jyada?"

Beena : Ha ha sambhalun mai, bhugtu mai...saari cheezo ko cooperate karke chalun mai...aur mujhe hi tum fatte laga rahe ho." manage, I suffer and coordinate everything and you want to take me for a ride).

18. The expectation and demand of the Respondent for illegal gratification is further evident in the later part of the conversation. The reporter asked the Respondent as to how much Panna Lal Councillor Ward No. 183 takes? Respondent replies that nobody tells as to what one is taking. When the reporter against asked the Respondent said that he may not be taking less than 4/5 lakh. The reporter then specifically asked her how much they should expect for her and asked whether 2 will be sufficient.

Beena : "woh 5 le raha hai toh mai kya bilkul itni ghatia kwaliti ki hun (if he is taking 5 am I of so inferior quality).

Beena : " Mai ek baat bataun chunav ladnay ja rahi hu toh chunav se pahlay bhi to chahiye chunav bina paison kay to lada nahi jata hai."

19. Later on in the conversation the reporter and the Respondent come to the main point. The reporter asked that how much they should take as her share, to which the Respondent said as much as she told about Kherwal. The reporter questioned, "5 lakh rupees?" The Respondent found it less and said that the share of the JE would be separate. Then the reporter gave the figure of Rs. 6 lakh. The Respondent says that the share of the JE should be separate and after giving consent for this amount the Respondent asked the reporters that she would like to visit the site first.

20. Another portion of the conversation which shows the eagerness and the urgency of the Respondent for the illegal gratification in lieu of her help to the Respondent may also be noted. When the reporters said that during election they will finish the building the Respondent said that she is going to contest in election and

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she also need something before the election as election cannot be fought without money. Then she questions the reporters eagerly when will they start the work. The reporter said that it will take a month and the Respondent expresses her disappointment by the gesture of her head.

21. The entire conversation primarily concerns the raising of illegal construction. The Respondent is the Councillor who cannot be oblivious of the menace of the illegal construction. The respondent's positive, eager and willing response to a request by the reporters to use her position as a Councillor to help them in raising unauthorized construction militates against the public duty of a Councillor, who is to act against any proposed, ongoing or completed unauthorized construction in the area falling under her jurisdiction. It is not the part of a public duty of the Respondent who represents thousands of persons in her jurisdiction to give encouragement to unauthorized construction by promising help in such activities by exercise of her personal influence with a public servant. Rather, it was her duty to bring to the notice of the authorities concerned any instance of construction without sanctioned plan. The desire to appease the constituents or furthering of so called electoral prospects by extending help in such activities, cannot over ride the norms of conduct and integrity which a public functionary is expected to follow.

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22. The above act and conduct display failure to act in accordance with the norms of integrity and conduct which ought to be followed by public functionaries. Besides, it is also abuse and misuse of position as it manifests conduct to gain favour for herself in as much as the amount to be Respondent's share was also decided. Assurance to help in unauthorized construction, tantamount to discharge to functions being actuated by improper motive for personal interests. It also constitutes lack of faithfulness to her functioning as a Councillor. Thus there is contravention of Section 2(b)(i) to (iv).

23. In view of the foregoing discussion and the analysis, there is no doubt that the Respondent has failed to observe the norms of good conduct and integrity expected of a person of her class by entertaining, discussing and indicating her willingness to support the reporter/builders who were to carry out unauthorized construction.
24. The Ld. Amicus Curiae, Mr. Sanjeev Sharma, has submitted that the misconduct of the Respondent is grave and calls for a "censure" in the least. He further submits that the facts emerging in the transcript prima facie disclose an offence under Section 8 and 9 of the Prevention of Corruption Act. He submits that the above evidence being legal evidence recorded in deemed judicial proceedings should be forwarded to the appropriate investigating agency for consideration as to whether it constitutes an offence under the Prevention of Corruption Act and warrants any further action and this Forum is legally bound to do the same. It is ordered accordingly. The transcripts and other evidence as recorded before the Forum be forwarded to Commissioner of Police for consideration, evaluation and further action in accordance with law.
25. We have also considered the aspect that the Councillor whose conduct was being inquired into by the Lokayukta following the sting operation was not provided ticket by their respective parties in the then forthcoming elections. This resulted in the Councillor not contesting election and thus ceased to be a Councillor. We have also considered whether the above should make any difference on the recommendation of 'Censure' for them. It is a well settled legal principle that misconduct does not cease with the office term coming to an end. Moreover, as far as political life, with all its vicissitudes, is concerned, a Public Functionary who does not fight a particular election does not cease to be in active politics or in public life. Our experiences have shown that he/she may aspire for and come for even higher positions. Moreover, for maintaining probity in

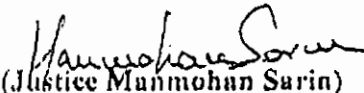
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public life, it is essential that the constituents are also made aware of the misconduct of their respective representatives which is in consonance with their right to receive information about the deeds of public representatives.

From the foregoing discussion, it is our view that the factum of a Public Functionary ceasing to hold office should not come in the way of a recommendation for his/her 'Censure' being made and the above is submitted for the kind consideration of His Excellency, the Lt. Governor.

26. The conduct of the Respondent Councillor as evidenced from the transcript of conversation marked "CV" clearly amounts to violation of norms of integrity and good conduct, abuse of position to obtain gain for herself, being actuated in discharge of her functions by improper motives and personal interest and lack of faithfulness, in terms of Sec. 2(b) (i), (ii), (iii) & (iv) read with Sec. 7 of the Delhi Lokayukta & Upalokayukta Act, 1995.

It is, therefore, recommended to His Excellency, the Lieutenant Governor of Delhi, that a "censure" be issued to the Respondent Councillor for her misconduct as found above.


(Justice Manmohan Sarin)
Lokayukta

Date: 3rd August, 2012

Annexure-6

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BEFORE THE HON'BLE LOKAYUKTA
JUSTICE MANMOHAN SARIN
COMPLAINT NO. C-1146/Lok/2011

In the matter of Suo Moto Cognizance of a Press Report Titled "Sting Operation Ke Baad Parshadon Mein Macha Hadkamp" appearing in "Nav Bharat Times" Dated 07-12-2011

AND

In the matter of Inquiry Under Sec. 7 read with Sec. 2(b) of The Delhi Lokayukta & Upalokayukta Act, 1995. in respect of Conduct of Shrimati Jaishree Panwar, Municipal Councillor, Respondent herein.

1. Shri Akshay Makhija Advocate, Amicus Curiae with Ms. Sanjugeeta and Ms Mahima Behl, Advocates.
2. Shri Anish Dayal, Mr. Bipin Singh, Mr Sanjay Tokas , Mr. Ranbir Datta, Mr Sanat Tokas, Mr. Prashant Tokas and Mr Sidharth Vaid , Advocates, for Shrimati Jaishree Panwar, Municipal Councillor, Respondent.
3. Mr. Mrinal Bharti, Advocate, Counsel for IBN 7.

REPORT

Cognizance and Issuance of Notices

1. Suo moto cognizance was taken of a report titled "Sting Operation Ke Baad Parshadon mein Macha Hadkamp", appearing in "Nav Bharat Times" dated 7-12-2011. Vide Order dated 7-12-2011, notices were issued to the Editor and City Correspondent of "Nav Bharat Times" to produce complete records of interview and other evidence in relation to the press report. Notices were also directed to be issued to the Managing Director and Correspondent of Channel IBN-7, who had carried out the telecast of the sting operation showing involvement of Municipal Councillors participating in negotiations regarding carrying out of illegal and unauthorized constructions for illegal gratification. The reporters of Cobra Post, who had been deputed by the Channel IBN-7 to carry out the sting operation, were directed to produce the original footage/records of the sting operation.

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Commencement of Proceedings

2. Pursuant to the notices issued, the advocate of M/s. TV18 Broadcast Ltd, which owns Channel IBN-7, appeared with two reporters of Cobra Post owned by M/s. Shri Bhardwaj Media Pvt. Ltd, who had carried out the sting operation under an arrangement with Channel IBN-7. The statements of the reporters who had carried out the sting operation were duly recorded on oath. The Deputy General Manager of IBN-7, Mr. Sachin Dev, CW-3, also tendered the original footage contained in the DVDs, as Ex. CW-3/1, Ex. CW3/2, Ex. CW3/3 and Ex. CW3/4. The DVD of the telecast programme was also tendered as Ex. CW3/5. The transcripts of the recorded conversation of the meetings and negotiations with Respondent Councillor and 7 other Councillors were also tendered. After viewing the DVD recording of the conversation of reporters with the Councillors and perusal of the transcripts of the same, vide Orders dated 21-12-2011, it was held that case for inquiry under Sec. 7 r/w 2(b),(i), (ii), (iii) & (iv) of the Act was made out and notice to the respondent and other Councillors returnable on 16-01-2012, were directed to be issued. The file of each Councillor was directed to be segregated and registered as a separate complaint.
3. The Respondent entered appearance through Shri Anish Dayal, Advocate, and filed her reply-cum-written statement. Considering the nature of the controversy and issues arising for consideration, it was found expedient and in the interest of justice to appoint an Amicus Curiae and Shri Akshay Makhija, Advocate, was so appointed vide Order dated 16th January, 2012.

In view of the ensuing municipal elections, Respondent Councillor among others made a fervent plea for expeditious disposal of these inquiry proceedings so that if allegations are

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not proved, he / she stands exonerated without delay, so as not to affect their election prospects.

Procedure adopted for Inquiry

4. The Counsel and parties were heard and their suggestions considered regarding adoption of the procedure in the inquiry so as to conform to the principles of natural justice, while expediting the inquiry, yet giving the fullest opportunity to the parties to present their respective case. A consensus emerged on the procedure to be adopted which is re-produced below for facility of reference:-

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- (i) All the Counsel and parties shall endeavour to abide by the time given for completion of pleadings. In fact the Respondents and the broadcaster have all stated that they would take not more than one to three weeks so that the entire pleadings can be completed within a month at the maximum.
- (ii) Regarding the authenticity and correctness of the recordings which have been produced, it has been agreed that individual footage in each of these cases would be played in court before the Presiding Officer with best equipment as available with the Broadcaster to make the sound clear and discernable so that some of the gaps noticed in the transcripts at present are filled up and an attempt is made for an agreed transcript to emerge. It is prayed by the Counsels that viewing should be spread over one week and individual recordings be viewed and parties heard.

Wherever it is not possible to have an agreed transcript, the Broadcaster and the Respondent, each may give their version with regard to the

particular words uttered. This forum would then decide the controversy. Accordingly, in case the broadcaster and the Respondent are at variance, each would have the option to present its version of the transcript. Beyond the discrepancies in the transcript, Counsel and parties submit that they are not questioning the authenticity or demanding any other requirement with regard to the proof of the recordings. Considering the nature of the inquiry before the Lokayukta formal proof of these recordings is dispensed with.

- (iii) Parties are agreed that based on the pleadings and transcripts as finalized, the Lokayukta would fix the date of hearing in the individual cases.
- (iv) Parties are agreed that any common issue of law or facts which arises for consideration in their inquiries would be dealt with together by the Lokayukta and while the evidence and arguments in relation to each of the cases or transcripts will be separately taken up.
- (v) It is also agreed that while the authenticity of the conversation and their transcripts would be established in the above manner, parties would be at liberty to point out any personal animosity or motive on the part of the reporters for having carried out the sting operation."

None of the Counsel made any suggestion or request for alteration or modification in the above procedure, which was accepted by all.

Finalization of Transcripts of Recording

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5. The Office of the Lokayukta made arrangements for viewing of the DVDs containing copies of the original footage referred to as the "raw footage". The raw footage as recorded in the DVDs were played and re-played several times in the presence of the

Respondent Councillor and the Counsel for Respondent and Amicus Curiae and the Advocate for IBN-7 Channel.

6. During the playing of the recording of the original footage, the Respondent, her son and Counsel as also the Counsel for the Channel and the Amicus Curiae gave their inputs to reach a consensus. The Forum also placed on record the cooperation of the Counsel and the efforts put in by the Amicus Curiae in completion of this exercise. The Registry was directed to supply the corrected version, after carrying out the correction as noted by the Presiding officer.

Completion of Pleadings

7. Pleadings were also completed. Copy of the Press Report appearing in "Nav Bharat Times" dated 7-12-2011 is annexed hereto as **Annexure-I**. Copy of Reply-Cum-Written Statement filed by the Respondent on 16-1-2012 is annexed hereto as **Annexure-II**. The Respondent and his Counsel as well as the Amicus Curiae and Counsel for IBN-7, all submitted that the matter be proceeded with on the basis of the transcript of the original footage as finalized after viewing and no further evidence needs to be led by them or the Respondent. The said statement was made by the respondent's Counsel on the basis of instructions by the respondent. The Respondent's Counsel only wished to make oral submissions in support of pleas taken in reply cum written statement. The transcript of conversation as finalized and agreed to between all parties and marked 'CV', i.e. corrected version, subject to the above observations is annexed hereto as **Annexure-III**.

SUMMARY OF TRANSCRIPT

8. It would be appropriate at this stage, to summarize the transcript as finalized which recorded the conversation between the Respondent and the reporter/builder.

The reporters posing as builders met the Respondent, telling that they were happy to meet her alone. Reporter/ builders said they work in Ghaziabad and wanted to build and work in her constituency. Respondent told them that it was not the right time since an Ex. Engineer had been demolishing buildings and advised them to wait till construction starts on the demolished sites. Reporter/builders also mentioned meeting one Ajay from Ajay Properties, who offered to arrange a meeting with her but they preferred to meet her themselves. Respondent remarked that such people were interested in fleecing money. While they all belonged to Barot, Ghaziabad, Meerut and were all from U.P, where people were good. The Reporter/builders said that they were told that Rs. 8-10 Laacs would be required. Respondent told them to be in touch with her and there was no need to talk to any third person. Reporter builders wanted her to take up the whole responsibility, so that they did not face any problems during construction. Respondent said only time would tell. She would not like to take the responsibility unless she was certain. She would not like that after her taking responsibility, building should get demolished. Respondent clarified that problem of complaints by lawyer had been sorted out. Reporter/ builders were anxious to know the amount that would be required, whether it was 8.5 Laacs. Respondent said it would depend upon the site. Further she cannot specify as she does not do deals. Reporter/builders said they had come to her and wanted to deal only with her and no one else. Her response was positive. Respondent was not inclined to commit amount in view of the present conditions, where constructions were halted. She gave the example of the site of one Devender who was close to her. His site was in stalemate. On the reporter/ builders insistence on knowing the amount, she replied, "let the work start" and she would do the needful. She also allayed the fear that the elections would adversely affect construction. Her refrain was to wait and watch, to observe when work could commence on buildings which had been demolished. She could not tell how

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much would be needed for the JE as there were some who were good and other who loot. Once the job starts she would be able to tell the amount required. She also told the builders/reporters of uncertainties like someone complaining and problems of other agencies in organizing construction. On specific query by the reporter/builders that they had been given an estimate of Rs. 8-10 Lacs, she could after adding up the JE and her amounts tell them, she repeated that it could not be estimated at this stage. It could be even more than 8 Lacs and it could be less depending upon the JE and the nature of work. Work could be done even in 4 Lacs. She did not want building to be demolished and then to be rebuilt. Reporter/builders said that they had been told that 5 Lacs would be her share, to which she responded that she would not say it and she would see about it later. Reporter/builders could consider themselves close to her. Her first concern was that their work should be done first and satisfactorily and only then she would see. If work does not start, what was the point of talking about it.

Response and Submissions of the Respondent.

9. Respondent Jai Shree Panwar filed a written response through her Counsel on 16-01-2012. The response apart from her version also included the legal submissions. She also filed what was labelled as an additional reply giving the transcript of the unedited video footage of the sting operation, pointing out what were considered 'gaps' and 'discrepancies'. The latter is not of any significance in view of the consensus reached after playing and re-playing of the transcript of the corrected version as prepared by this Forum, rectifying to the extent possible the alleged discrepancies, and the decision of the presiding officer, on which the broadcaster and the Respondent were at variance.

Mr. Anish Dayal, Ld Counsel, has been heard in support of his submissions on 16-01-2012, 08-02-2012 and 28-02-2012, thus giving full opportunity to put forward the Respondent's case. Ld. Counsel criticized the manner in which the broadcast has been

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carried out labeling it as defamatory and disparaging. He submitted it was wholly unfair and incorrect to depict that the Respondent had demanded Rs. 18.00 Lacs. He submits that the skewed nature of the broadcast was further aggravated by the incorrect reporting by the newspapers to sensitize the matter. He submits that clubbing of the cases had caused the Respondent great prejudice as the role and conduct of each Respondent in the recorded conversation was different and distinct and the broadcaster had clubbed together the recording in a manner by which false impression that all the Councillors were corrupt and were party to encouraging unauthorized construction for corrupt motives was telecast. Ld. Counsel submits that perusal of the transcript would show that there was no misconduct or abuse of power or omission or finding of holding assets disproportionate to known sources or any evidence of having pecuniary advantage had surfaced. Thus, he submitted that there was no cause of action for proceeding with the inquiry under Sec. 2(1) (b) of the Act. He urged that admittedly the Respondent neither had the power under the Delhi Municipal Corporation Act to sanction any building plan or permit any construction or repairs. Her functions as a Councillor were legislative. The entire approval of building plans or construction activities depended upon the Building Engineering Department and she had no role to play in it.

While assessing the entire conversation that she had with the reporters, the above factors have to be kept in mind. As for the transcript, he submitted that the conversation begins with the Respondent warning and cautioning the reporter/builders that it was not the opportune time to start any building activity in view of the Executive Engineer carrying out demolitions. The reporters kept on pestering her despite her reluctance, non-committal, ambivalent and indifferent attitude. The Counsel submitted that it has to be remembered that the Councillor is a public representative and has to be polite and diplomatic with her constituents and entertain their queries. The constituents cannot be simply snubbed

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or asked to leave even if they are saying something which may be in violation of law. The unwillingness of the Respondent was evident from her body language and gestures which were visible in the video. He submitted that throughout the conversation, the discussion was speculative, where the Respondent was deferring the matter. No cash or money passed or was accepted for any illegal activity. She kept on repeatedly emphasizing the ongoing demolitions and the role of the Jr. Engineer. Despite repeated exhortations the Respondent did not say or commit any amount. The hard reality is that the Councillor in her or his ward has to entertain queries of constituents who may be interested in unauthorized construction and handle them diplomatically. He said that the mere enquiry of size, discussion of nitty-gritty, constructions in their native village or lamenting of the misdeed of Jr. Engineer who collected money and then allowed premises to be dismantled were intended to defer the reporter/builders. The Forum has to take into account her positive assertions, where in response to question whether Rs. 8.5 Lacs would be sufficient, she says "I have no idea, मैं तो कभी डील करती नहीं ।" She also narrates to them about the site of Devender, which stands close, by telling them that she would not like to do something where there is possibility of demolition of the building and she can only let them know after talking to the Jr. Engineer.

Ld. Counsel concluded that the Respondent had an unblemished record as Mayor of Delhi in 2002-03 and is the daughter of a celebrated freedom fighter and daughter in law of Dalip Singh, M.P. With this glorious family background, any assumption or presumption of dishonesty or corruption on the part of the Respondent would be misplaced.

Ld. Counsel further submitted that the entire conversation had the ingredients of entrapment where the reporter/builders by the sting operation were leading the Respondent and persisting with their questions on how much amount was to be kept for her, which she parried till the end. He submitted that while applying the norms

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programme as telecast and the allegations and insinuations in respect of the Respondent. This Forum is concerned not with the above question for which the Respondent has separate remedies, if aggrieved, but with the question of conduct of the Respondent as unravelled by the entire unedited version of her conversation, from which only parts or excerpts would have been taken for the broadcast. For the purposes of this inquiry, it is the entire unedited footage and the transcript thereof which has been considered.

Regarding the plea of entrapment, the entire tenor of the conversation and viewing of the video shows that Respondent was fully in control of the conversation. It was hardly a situation where she was being induced into saying anything. Rather, it is the Respondent's own case that despite persistent goading by the builder/reporters, she parried and deferred all entreaties to name a figure, thereby rejecting, as per the Respondent all offers of gratification. It is thus clear that the Respondent did not appear to be entrapped or induced; rather she was saying what she chose of her freewill. The Respondent merrily went on telling about the difficulties which were being faced on account of demolitions, her having tackled the difficulty created by a lawyer and advising the builder reporters to wait and watch and that as soon as the right JE was available and work could be started, she would let them know. This is definitely not the case of a gullible and entrapped person. It is the case of an astute Councillor planning for the opportune time for unauthorized constructions.

Reference may also be made to the decision of High Court of Delhi in Anirudha Bahal V/s State reported as 172 (2010) DLT 268, wherein an F.I.R. registered against the sting operators under Sec. 12 and 13 of the Prevention of Corruption Act was quashed. The Court held that F.I.R. was registered after one year with sting operators being arraigned as prime accused. Court found the act of the sting operators as bonafide who had

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of integrity and conduct and the standards by which the Respondent ought to be judged, the contemporary and prevalent societal norms have to be applied. It should not be forgotten that there was rampant unauthorized construction and Respondent could not be faulted with for talking about or responding to the queries of its constituents regarding execution of unauthorized constructions. He submitted that all the required ingredients of inducement and entrapment were satisfied in this case by the conduct of the reporters. The Respondent has to be judged in accordance with the contemporary criteria of good conduct as prevailing and not on the basis of idealistic norms which may be divorced from reality and practicality.

The Ld. Counsel also prayed for recommendation to be made by this Forum to the Press Council of India and News Broadcasters Association that the telecast would amount to violation of Cable Television Networks Act, 1995 and the rules framed there under. The submission can be conveniently disposed here and now. The proceedings under the Lokayukta & Upalokayukta Act, 1995 are for an inquiry into the conduct of a public functionary and not for evaluating the role of the broadcaster or making recommendations to the Press Council of India or the Broadcasters Association. It is for the Respondent in case he is aggrieved by any act of the broadcaster to take such independent remedial action.

Evaluation of the Conduct of Respondent as Unravalled by the Transcript and Consideration of the Reply and Pleas in Response.

10. Let us first of all consider the Respondent's grievance regarding the telecast as prejudicing and defaming her by putting together a programme for various respondents Councillors in respect of whom sting operations were carried out. The grievance of the Respondent that the telecast was defamatory of her or disparaging her is to be considered in the light of the

acted as whistleblowers by airing the tapes on TV channels and by depositing truthfully before two Committees of Parliament. Charging such people with offences under the Prevention of Corruption Act would amount to travesty of justice and shall discourage people from performing their duties enjoined upon them by law of the country. The court held that the duties prescribed by the Constitution of India for citizens of this country do permit citizens to act as agent provocateurs to bring out and expose and uproot corruption. Special Leave Petition against the High Court Order was also dismissed.

Reference is also invited to the judgment of the Supreme Court in R.K. ANAND V/S REGISTRAR, DELHI HIGH COURT, 2009 8 SCC 106, i.e. the appeal against the judgment of Delhi High Court in Court on its own motion Vs. State and others. The Supreme Court while dealing with stings and telecast of sting programmes observed in Para-179 as under:-

"Looking at the matter from a slightly different angle we ask the simple question, what would have been in greater public interest; to allow the attempt to suborn a witness, with the object to undermine a criminal trial, lie quietly behind veil of secrecy or to bring out the mischief in full public gaze? To our mind, the answer is obvious. The sting telecast by NDTV was indeed in larger public interest and it served an important public cause."

The sting operation in the present case was also for public good to expose the menace of unauthorized construction and the complicity of the City Fathers therein.

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11. There is no merit in the plea that a Councillor does not have power to grant, approve or clear approval for constructions and has only legislative powers, therefore, has nothing to do with construction. This cannot be an answer to a charge of misconduct, as the legitimate exercise of power is not intended
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to come within Section 2(b) (i). It is misuse or abuse of power which comes under the allegation and is actionable. While the Councillor may not be having any executive power to grant or sanction plans for construction, yet, on account of its legislative functions and being the person who oversees the implementation of civic programmes, he/she enjoys considerable clout and influence which transcends all areas. This is a matter of public knowledge of which judicial notice may also be taken. The willing participation of the Respondent also becomes evident from the fact that she was advising caution so that construction is raised at an opportune time and with the involvement of a willing Jr. Engineer so that it is not demolished later on. She was also allaying fears when enquired, that the impending elections would not pose a problem and they could easily construct during the elections as MCD officials would be busy in other works at that time. She also narrated the hindrances that could be expected from various quarters including police and engineering department, when the request for her to take total responsibility was being made by the reporter/builders.

12. Upon Evaluation of the transcript of the conversation which the Respondent has with the Reporter/builders and also on consideration of the the attendant circumstances, the following position emerges:-

- i. The Councillor during the entire conversation has stated that once the already demolished illegal constructions begin, she would give the Reporter/Builders a go ahead to begin their construction also.
- ii. She stated to the Reporter/Builder that during the construction, she would handle any problem which may arise due to lawyer complaint.
- iii. On the quantum of her share in illegal gratification, the Councillor never even once categorically stated

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that she was not going to accept any gratification, but said that she would discuss it when the construction starts, thereby displaying self-confidence that a Councillor could not be duped and she would have control of the situation.

- (iv) It is also noteworthy that in the transcript of conversation the Respondent discusses and laments about the misdeeds of certain JEs who simply collect money and not care for the people. She referred also to site of one Devender close to her where lot of money had been exchanged, but was lying in a state of stalemate after demolition. On the offer of gratification and on her share, she was non-committal because she felt that it would depend on the Jr. Engineer, his attitude and the prevailing situation at that time. She went on to assure that she considered the reporter/builders close to her. The only linkage as it appears being that both had claimed that they hail from Barot, Ghaziabad and U.P. Barring the above, it is evident that hailing from the State of U.P, one of the largest State of the country, cannot bring about the affinity between them, which appears to be present only because they were in *pari-delicto*. Being non-committal about the sum which she desired for herself, proceeds from the desire to be firm about the same which she herself recounts by saying that total required could be more than Rs. 8 Lacs or even Rs.4 Lacs or so. The above utterances by no means be treated as refusal or indifference. Her willingness to support and arrange unauthorized construction, agreeing to speak and contact the concerned JE to have the needful done at the opportune time for amounts to be agreed with an assurance of her reasonableness emanating from so-

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called professed closeness. Further, the willingness to encourage and facilitate unauthorized and illegal construction is writ large on record.

The above act and conduct display failure to act in accordance with the norms of integrity and conduct which ought to be followed by public functionaries. Besides, it is also abuse and misuse of position as it manifests conduct to gain favour for herself in as much as the amount to be Respondent's share was to be decided later. Assurance to help in unauthorized construction tantamounts to discharge of functions being actuated by improper motive for personal interests. It also constitutes lack of faithfulness to her functioning as a Councillor. Thus, there is contravention of Sec. 2(b) (i) to (iv) of the Act.

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13. The menace of unauthorized construction has pervaded the metropolis of Delhi. It is not confined to a superficial level or the surface. It has entered the very blood stream of Delhi. There are various reasons for the same, galloping population, rising demand for accommodation, non-availability of the same, which tempts the residents to expand vertically and horizontally in contravention of the permissible limits. Complex laws and unresponsive system have also aggravated the problem. Unabated growth of unauthorized construction also emanates from lack of enforcement and implementation of the municipal laws. The situation gets further aggravated on account of complicity of the municipal staff, city fathers, local politicians and the police. In an attempt to contain the role of public functionaries and Councillors in this menace, this Forum had on complaint from one Councillor initiated action in 61 cases against the legislators and Councillors for unauthorized construction and irregularities in their properties. It was a matter of satisfaction that in majority of these cases,

the public representatives have either voluntarily demolished or got regularized the violations.

It is well settled that the higher the office the greater the responsibility and higher the expectation from the said person for observance of the norms of integrity and good conduct. In the instant case, the Respondent's Counsel has devoted considerable time in urging the celebrated status of the Respondent, namely, her having been the Mayor of the City during 2002-03, and being the daughter of a freedom fighter and daughter in law of an M.P as also her own standing in the major political party. Undoubtedly, with these credentials the expectation from the Respondent of abiding by the norms of good conduct and integrity has to be much higher. She does not deserve any leniency or allowance in the same on the ground that contemporary standards have fallen and it is commonplace for Councillors to support unauthorized construction. She has to be a role model and her example should be a beacon light for others.

14. In view of the foregoing discussion and the analysis, there is no doubt that the Respondent has failed to observe the norms of good conduct and integrity expected of a person of her class by entertaining, discussing and indicating her willingness to support the reporter/builders who were to carry out unauthorized construction. She agreed to do her best to help them and had only deferred the amount to be paid to her to be decided upon the commencement of the construction and the attitude of the JE at that time.
15. The Ld. Amicus Curiae, Mr. Akshay Makhija, has submitted that the misconduct of the Respondent is grave and calls for a censure in the least. He further submits that the facts emerging in the transcript may even amount to an offence under the Prevention of Corruption Act. He submits that the above evidence having been legal evidence recorded in deemed

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judicial proceedings should be forwarded to the appropriate investigating agency for consideration as to whether it constitutes an offence under the Prevention of Corruption Act and warrants any further action and this Forum is duty bound to do the same. It is ordered accordingly.

16. The conduct of the Respondent Councillor as evidenced from the transcript of conversation marked "CV" clearly amounts to violation of norms of integrity and good conduct, abuse of position to obtain gain for herself, being actuated in discharge of her functions by improper motives and personal interest and lack of faithfulness, in terms of Sec. 2(b) (i), (ii), (iii) & (iv) read with Sec. 7 of the Delhi Lokayukta & Upalokayukta Act, 1995.

It is, therefore, recommended to His Excellency, the Lieutenant Governor of Delhi, that a censure be issued to the Respondent Councillor for her misconduct as found above.


(Justice Manmohan Sarin)
Lokayukta

Date: 25th May, 2012

Hemant Kohain

Annexure - P-7

BEFORE THE HON'BLE LOKAYUKTA
JUSTICE MANMOHAN SARIN

COMPLAINT NO. C-1148/Lok/2011

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In the matter of Suo Moto Cognizance of a Press Report Titled "Sting Operation Ke Baad Parshadon Mein Macha Hadkamp" appearing in "Nav Bharat Times" Dated 07-12-2011

AND

In the matter of Inquiry Under Sec. 7 read with Sec. 2(b) of The Delhi Lokayukta & Upalokayukta Act, 1995, in respect of Conduct of Shri Ravi Prakash Sharma, Municipal Councillor, Respondent herein.

1. Shri Abhijat Bal, Advocate, Amicus Curiae with Ms. Mansi Sharma, Advocate.
2. Shri Alok Kumar, Shri J.C. Gupta, Shri Vinay Gupta, and Shri Vikas Khurana, Advocates, for Shri Ravi Prakash Sharma, Municipal Councillor, Respondent.

REPORT

Cognizance and Issuance of Notices

1. Suo moto cognizance was taken of a report titled "Sting Operation Ke Baad Parshadon mein Macha Hadkamp", appearing in "Nav Bharat Times" dated 7-12-2011. Vide Order dated 7-12-2011, notices were issued to the Editor and City Correspondent of "Nav Bharat Times" to produce complete records of interview and other evidences in relation to the press report. Notices were also directed to be issued to the Managing Director and Correspondent of Channel IBN-7, who had carried out the telecast of the sting operation showing involvement of Municipal Councillors participating in negotiations regarding carrying out of illegal and unauthorized constructions for illegal gratification. The reporters of Cobra Post, who had been deputed by the Channel IBN-7 to carry out the sting operation,

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were directed to produce the original footage/records of the sting operation.

Commencement of Proceedings

2. Pursuant to the notices issued, the advocate of M/s. TV18 Broadcast Ltd, which owns Channel IBN-7, appeared with two reporters of Cobra Post owned by M/s. Shri Bhardwaj Media Pvt. Ltd, who had carried out the sting operation under an arrangement with Channel IBN-7. The statements of the reporters who had carried out the sting operation were duly recorded on oath. The Deputy General Manager of IBN-7, Mr. Sachin Dev, CW-3, also tendered the original footage contained in the DVDs, as Ex.CW-3/1, Ex. CW3/2, Ex. CW3/3 and Ex. CW3/4. The DVD of the telecast programme was also tendered as Ex. CW3/5. The transcripts of the recorded conversation of the meetings and negotiations with Respondent Councillor and 7 other Councillors were also tendered. After viewing the DVD recording of the conversation of reporters with the Councillors and perusal of the transcripts of the same, vide Orders dated 21-12-2011, it was held that case for inquiry under Sec. 7 r/w 2(b),(i), (ii), (iii) & (iv) of the Act was made out and notice to the respondent and other Councillors returnable on 16-01-2012, were directed to be issued. The file of each Councillor was directed to be segregated and registered as a separate complaint.
3. The Respondent entered appearance through Shri J.C. Gupta, Advocate, and filed his reply-cum-written statement. Considering the nature of the controversy and issues arising for consideration, it was found expedient and in the interest of justice to appoint an Amicus Curiae and Shri Abhijat Bal, Advocate, was so appointed.

In view of the ensuing municipal elections, Respondent Councillor made a fervent plea for expeditious disposal of these

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inquiry proceedings so that if allegations are not proved, he stands exonerated without delay, so as not to affect their election prospects.

Procedure adopted for Inquiry

4. The Counsels and parties were heard and their suggestions considered regarding adoption of the procedure in the inquiry so as to conform to the principles of natural justice, while expediting the inquiry, yet giving the fullest opportunity to the parties to present their respective case. A consensus emerged on the procedure to be adopted which is re-produced below for facility of reference:-

"

- (i) All the Counsel and parties shall endeavour to abide by the time given for completion of pleadings. In fact the Respondents and the broadcaster have all stated that they would take not more than one to three weeks so that the entire pleadings can be completed within a month at the maximum.
- (ii) Regarding the authenticity and correctness of the recordings which have been produced, it has been agreed that individual footage in each of these cases would be played in court before the Presiding Officer with best equipment as available with the Broadcaster to make the sound clear and discernable so that some of the gaps noticed in the transcripts at present are filled up and an attempt is made for an agreed transcript to emerge. It is prayed by the Counsels that viewing should be spread over one week and individual recordings be viewed and parties heard.

Wherever it is not possible to have an agreed transcript, the Broadcaster and the Respondent,

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each may give their version with regard to the particular words uttered. This forum would then decide the controversy. Accordingly, in case the broadcaster and the Respondent are at variance, each would have the option to present its version of the transcript. Beyond the discrepancies in the transcript, Counsel and parties submit that they are not questioning the authenticity or demanding any other requirement with regard to the proof of the recordings. Considering the nature of the inquiry before the Lokayukta formal proof of these recordings is dispensed with.

- (iii) Parties are agreed that based on the pleadings and transcripts as finalized, the Lokayukta would fix the date of hearing in the individual cases.
- (iv) Parties are agreed that any common issue of law or facts which arises for consideration in their inquiries would be dealt with together by the Lokayukta and while the evidence and arguments in relation to each of the cases or transcripts will be separately taken up.
- (v) It is also agreed that while the authenticity of the conversation and their transcripts would be established in the above manner, parties would be at liberty to point out any personal animosity or motive on the part of the reporters for having carried out the sting operation."

None of the Counsels made any suggestion or request for alteration or modification in the above procedure, which was accepted by all.

Finalization of Transcripts of Recording

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- 5. The Office of the Lokayukta made arrangements for viewing of the DVDs containing copies of the original footage referred to

as the "raw footage". The raw footage as recorded in the DVDs were played and re-played several times in the presence of the Respondent Councillor and the Counsels for Respondent and Amicus Curiae and the Advocate for IBN-7 Channel. In the instant case, the only difference of opinion between IBN7 Channel and the respondent's version is with respect to the last line of transcript. This Forum found few words of the last line inaudible and even though IBN7 Channel's Counsel Mr. Mrinal Bharti had claimed that the same were discernible and audible, this Forum found the same as inaudible. However, that does not appear to affect the meaning of the sentence which remains discernible. The above difference of opinion is being reproduced for sake of record and reference:-

" शर्मा - वो रीजनेयल हो जाएगा। ज्यादा बात करने का कोई फायदा नहीं है। मुला के उससे कह दूंगा ये काम है ये तेरे को दे रहे हैं। और जो भी (not audible) सारी आपकी डील करा दूंगा।)

रिपोर्टर - पक्ष।

Mr. Bharti urges that the words are actually "और जो भी काम है वो करके सारी आपकी डील करा दूंगा।

The Counsels for the Respondent are not agreeable to the inclusion of the words " और जो भी काम है वो करके " in between.

6. A consensus emerged on what was the actual version as audible from the footage. After making corrections in the transcript, the same was also read over to the parties by the undersigned. Registry was directed to prepare transcript of final version and make available copies to the parties, which is Mark "GF".

It would be appropriate at this stage, to summarize the transcript as finalized which recorded the conversation between the Respondent and the reporter/builders.

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Respondent who was near the Shankar Vihar Prachin Hanuman Mandir was accosted by the reporters posing as builders (hereinafter referred to as "reporter/builder"), seeking help for the construction to be started by them in his constituency. The Respondent immediately asked them to inform after starting the work. Thereupon the reporter/builders told the Respondent of the difficulties faced by them in their earlier work at Mandawali from the JE of MCD. The Respondent Councillor again assured that there would be no problem and he would tell the JE etc. The reporter/builders requested the Respondent Councillor to tell them the estimate of amount so that they could budget the same. Respondent/Councillor assured them that it would be done on reasonable basis and upon the reporter/builders telling that they had faced a demand of Rs. 8.00 Lacs from the previous JE, the Respondent assured that it would be reasonable and there was no "loot" in his constituency. Upon the reporter/builders insisting on knowing the amount, the Respondent Councillor told them not to talk superfluous things and he would fix the entire deal on a reasonable basis. The reporter/builders had informed the Respondent Councillor that they were going to construct without any sanctioned plan since the same was time consuming. Despite knowing this, the Respondent Councillor continued with his assurances and also asked them to meet him in a day or two. The Respondent Councillor assured all help in settling and arranging the matter with the JE on a reasonable basis.

Completion of Pleadings

7. Pleadings were also completed. Copy of the Press Report appearing in "Nav Bharat Times" dated 7-12-2011 is annexed hereto as Annexure-I. Copy of the Order dated 7-12-2011 is annexed hereto as Annexure-II. Copy of Reply-Cum-Written Statement filed by the Respondent is annexed hereto as

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Annexure-III. The Respondent and his Counsel as well as the Amicus Curiae and Counsel for IBN-7, all submitted that the matter be proceeded with on the basis of the transcript of the original footage as finalized after viewing and no further evidence needs to be led by them or the Respondent. The said statement was made by the respondent's Counsel on the basis of instructions by the respondent. However, the Respondent wanted to make a statement and apart from that he did not wish to lead any evidence. The transcript of conversation as finalized and agreed to between all parties and marked 'GF' subject to the above observations is annexed hereto as **Annexure-IV**. The statement of the respondent on oath was also recorded on 17-02-2012. Copy is annexed hereto as **Annexure-V**.

Submissions of the Respondent

8. The main plank of the submission of Mr. Gupta, who was heard on 2-3-2012, 9-3-2012 and 16-03-2012, has been that the entire recorded conversation should be considered in the background that it was a citizen approaching a public functionary for help. The Councillor, an elected representative was duty bound to redress the concerns and difficulties of citizens and, while doing so, he was bound to be polite and courteous. In the entire conversation, the respondent was assuring the reporter/builder that he would speak to the concerned Jr Engineer to ensure that no difficulties are encountered by the reporter/builder who wanted to commence construction in his constituency. Mr. Gupta submitted that every public functionary was interested in development in his constituency and if a builder wants to take up a venture there, it would provide employment and work to the labour force and the Councillor would encourage it. A striking feature in the entire conversation is that there is no demand made by the Councillor for himself and he has only promised to remove the difficulties faced in the construction

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work. Not only did the Councillor not demand any amount, but he did not express his expectation of any amount.

9. With a view to crystallize his submissions, an outline of submissions, was submitted on behalf of the respondent, which is annexed hereto as Annexure-VI. In view of the fact, that it is not the telecast which is being considered, but the entire recorded transcript as demanded by the respondent for a proper evaluation of the context, the plea regarding answering respondent being wrongfully clubbed in the telecast with others has no relevance. Accordingly, Respondent's Counsel did not press Point-7 of outline of submissions.
10. As noted earlier, at the request of the respondent, for a better understanding and appreciation of the context in which the conversation took place, the entire original footage and transcript thereof be considered and not the telecast, the submissions in the reply-cum-written statement concerning the telecast are not being dealt with. Moreover, if the respondent has any grievance with regard to being defamed by the telecast, he can avail of appropriate remedy at law.

For the purposes of assessing whether the conduct of Public Functionary as manifested and revealed in the conversation makes out an allegation, within the meaning of Sec. 2 (b), the transcript as finalized is being considered only. Hence, the averments and pleas raised in the written statement, in relation to the telecast, are not being considered.

11. Another plea on which some stress was laid by the Ld. Counsel is that the Councillors under the Delhi Municipal Corporation Act, 1957, do not have any authority to either sanction, supervise or interfere with the construction or building activities, which is a function of the officials of the Municipal Corporation, under the Act. In the absence of any authority in sanctioning, supervising or controlling the construction, it was

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claimed that the Councillor has no role in it and the Councillor's role is confined to sanitation, maintenance of roads and provision of necessary infrastructure in their wards. Councillor is neither equipped nor vested with discretion or authority to provide any favour to any builder in the matter of approvals and sanctions for buildings or construction.

12. It was also urged that the menace of unauthorized construction had thrived on account of lacunae in the legislation and inaction and complicity of municipal staff and police.
13. Coming to the transcript of conversation as recorded, it was urged that the respondent was having the conversation while standing on a public road and with others present. There was thus nothing clandestine or improper which could be inferred in such an open conversation, which was not in conspiratorial or clandestine manner. It was urged that despite the reluctance of the respondent who was all through endeavouring to get over with the matter and to put them off, the reporter/builder pursued the matter relentlessly, with the pre-determined object of somehow extracting and putting words into the mouth of the Respondent. It was urged that the conversation carried the features of entrapment as the reporter/builders were only working towards pre-determined questions in an attempt to get answers, which they wanted. The conversation had all the features of entrapment being practiced with the sole object of sensationalizing and improving their TRP ratings for purposes of earning profit. It was also urged that the recorded conversation and the words spoken by the respondent do not constitute an "allegation within the meaning of Section 2(b)" of the Act. There was no passing of any consideration or illegal gratification. There was no actual project or building, all were mere belief. Hence, Counsel argued, it cannot be said that the respondent has acted or abused or misused his position and power to obtain any gain or favour for himself or that he was

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actuated by improper or corrupt motives or personal interest in the discharge of his functions. Counsel argued that since building activity did not come within the discharge of functions of the Councillor, assuring a party that he would not suffer unnecessary harassment, cannot be regarded as abuse or misuse of power, or being actuated by improper or corrupt motives. There is no settlement on terms involving monetary consideration. It is a case where a motivated deception has been practiced on the respondent with a view to somehow trap him.

Statement of Respondent made on Oath

14. Respondent wanted to explain the circumstances in which the conversation took place. He submitted that in the month of September, 2011, he was standing outside Shankar Vihar Prachin Hanuman Mandir, in connection with the drive for collection of funds for Ramlila-Dusherra celebrations. Other members of the Ramlila Committee were also present. He said that when he was talking on his mobile to someone, who was desirous of booking the Community Hall, he was accosted by two persons seeking his help saying that they were small time builders in Ghaziabad. They were not known to him and wanted his help in raising construction, without facing problems and difficulties with MCD. Respondent informed that Preet Vihar was an approved colony and sanctioned plan was required, for any new construction.
15. It is in this background, that the transcript of conversation, as per the respondent ought to be considered. The Amicus Curiae sought certain clarifications from the Respondent. It was put to the Respondent whether he did not consider it improper for the persons representing themselves as builders approaching him, since Councillors as per his own version did not have authority to approve or permit any building activity? Respondent replied in the affirmative that he did consider it improper but being a public functionary and elected representative, he can be

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approached by anyone even on the road and he was not expected to slap such persons. On a query as to in what manner he as a Councillor could help a builder desirous of commencing construction in the constituency, the Respondent replied that he can help in contacting the Architect or Structural Engineers if such problems were faced but it had to be within the ambit of law. He stated that when anyone approaches him with a problem regarding non-clearance of plans or structural drawings, he tries to sort it out depending upon the difficulties being faced. He clarified that for commencement of construction, it is only the sanction of building plans, the issue of compoundable or non-compoundable or unauthorized construction arises only on completion of construction. He stated that he had no interest or relationship with the persons who had approached him. The reference to 'budget' was the budget of the said builders.

Evaluation of the Transcript & Conduct of the Respondent

16. Having noted the background, version and perspective of the Respondent in which the conversation took place, and the submissions made as well as the contents of the Respondent's statement and having heard the Amicus Curiae on the interpretation and meaning to be given to the transcript as also on the conduct expected of a Municipal Councillor, let us analyze and evaluate the transcript and his conduct.
17. The first thing to be noted is that when the reporter/builders approached the respondent Councillor, they told him that they were commencing construction in his area and wanted some help from him. The response of the Councillor was not one of hesitation but reassuring. He said it does not matter and wherever they wanted to start they could start construction and then tell him, to which the reporter/builders responded that they were planning to start after a week. Here again, the respondent responds and says that "he will speak to the JE" and "Usko"

(not identified). This portion of the conversation negates any impression of a hesitant or unwilling Councillor. This is immediately followed by the reporter/builders telling about the problems they faced in Mandawli from the JE upon starting work. Here again, the response of the Councillor is reassuring when he tells that "he would tell the JE everything and there will be no problem". The reporter/builders now suggest that they would do the rest as per the Councillor's wishes. The suggestion of the reporter/builders is quite apparent. The Councillor responds by saying that they will settle it and make the JE sit across and finalize with him.

Now comes the talk regarding the money, where the reporter/builders request for money required to be told as they have to plan or budget it. Here the response of the Councillor, if it was a bonafide conversation, where only help was to be extended by a Public Functionary, would have been a reprimand or rebuke stating that no consideration was involved. On the other hand, the response of the Councillor is that estimated budget would not be a 'loot', at which the reporter/builders inform that in their last work, a demand of Rs. 8.00 Lacs was made. The Councillor assures them that "here there is no loot", to which the reporter/builders state that they do not have that kind of a budget here and want to know when they should meet him at home. The Councillor then talks about his religious and temple work and his honesty therein and tells them that it would be reasonable for them. Further, they could talk to the JE. The reporter/ builder persist in wanting to know about it so as to budget it, to which the Councillor responds that estimate would be done and there is no loot in the work. The Councillor later on tells them not to talk so much and that they would have a reasonable amount and the whole work would be done. At this stage, the reporter/ builder also inform him that they were not getting plans sanctioned since the same takes a long time. Hence, was again an opportunity for the Councillor

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to say that if construction was to be done illegally, without sanctioned plan, he had nothing to do with them or cannot help them. But the Councillor does not do that. On the other hand, says, "they had come to him and whatever he has heard he would tell the concerned person and he would take care". The reporter/builders then ask when they should talk to him. The Councillor tells them to come day after or after some time. He tells them to come in the morning or in the evening. The reporter/builder now enquire that four floors are to be constructed and for each lintel what would be the charge, would it be done in 1.5 Lacs. The Councillor then replies reassuringly

शर्मा : आप आ तो जाओ आपको जो मदद जब आप काम कर रहे हो जो मैंने आपको एक बात कही है उसके लिए क्यों मेरे से फालतू बात कर रहा रहे हो । मैं कोई मतलब फालतू बात करने का कोई फायदा है क्या । काम करते हो मैंने कहा रीजनेबल हो जायेगा । रीजनेबल का मतलब लूट-लूट तो तुमने बता दी । मैं लूट तो नहीं बता रहा हूँ ना ।

रिपोर्टर : हाँ ठीक है ।

शर्मा : वो रीजनेबल हो जाएगा । ज्यादा बात करने का कोई फायदा नहीं मैं बुला के उससे कह दूंगा ये क्या है ये तेरे को दे रहे हैं और जो भी
..... (inaudible) सारी आपकी झील करा दूंगा ।

रिपोर्टर : पक्का । "

The above words are clear, categorical and admit of no ambiguity. These contain an assurance that the entire deal would be settled on reasonable terms, in contra-distinction to the figure mentioned by the reporter/builders which they paid in their last contract and referred to repeatedly by the Respondent Councillor as "loot". The rôle and conduct of the Councillor as a facilitator in settling the terms on reasonable basis for illegal construction, needs no further amplification.

18. The aspect of inaudible words has been noted earlier. The respondent herein did not agree to the words, which as per IBN-7 were spoken, on the plea that they were not audible. At the same time, the respondent did not offer, while the onus was on

him, to tell what he had said. Even if the inaudible portion is not considered, the part which is significant is "Sari aapke deal karadonga". A reading of the entire conversation in its context and background, leaves no doubt that the Councillor has offered to contact the JE in helping them in constructing the building. This assurance of help has continued even after learning that the construction was to be without sanctioned building plan. Not once, but repeatedly, he has assured the reporter/builder that a reasonable settlement would be reached, in contra-distinction to 'loot' as described by the Councillor, when he was told about the demand of Rs. 8.00 Lacs by the reporter/builder in their previous work at Mandawli. Having learnt that the construction is without sanctioned plan, the Councillor re-assured that he would speak to the concerned person and the whole thing will be handled within a reasonable amount and manner and he would have the whole deal fixed. There is not even an iota of doubt left that the Councillor had offered to act as a facilitator for unauthorized construction and offering to have the same done on what has been termed by him "reasonably and not loot". This is clearly a violation of the norms of integrity and conduct expected of a Councillor under Sec. 2(b)(i) read with Sec.7 of the Act.

Pleas in Defence

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- (i) As regards the contention that there is no statutory function assigned under the Delhi Municipal Corporation Act, 1957, to the Councillor for approving and supervising construction, while the same may be so, it is a matter of public knowledge and of which even judicial notice can be taken that the menace of unauthorized construction in Delhi, would not have advanced and reached alarming proportions, without the complicity and at time indifference and inaction of the municipal staff,

police and the Councillors and nexus with builders. It is idle to contend that the Municipal Councillors are not concerned with the building activities in their areas. Numerous instances of patronage of unauthorized construction and even assault on municipal staff, where their instructions are not carried out, have been found by us.

In any case, in view of the clearly admitted and recorded version of transcript, it is idle to contend that the Councillor was not having any role or could not have had any role in facilitating unauthorized construction.

- (ii) As noted, pleas which are concerned with IBN7 providing blank DVD or the replacement being manipulated or morphed or questioning the veracity of the recorded conversations as also averments concerning Respondent being clubbed with others to his disadvantage and resultant prejudice and bias are not being dealt in view of the decision of this Forum arrived at with consensus, to consider the individual conversations, which each of the Councillor had, and not the telecast. The transcripts of original footage containing conversation were played and re-played till consensus was reached on the correctness and authenticity of the transcript. It is only this finalized transcript which has been considered for the purpose of this report. Hence with the consent of the learned Counsel for Complainant, the pleas as noticed above in the written statement concerning the telecast or in relation to the recording of the interview and the submissions of DVDs and errors therein are not being considered.

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(iii) Apart from the above pleas, which were taken, Ed. Counsel submitted that the Respondent neither claimed

nor was a beneficiary of any gratification, which is said to have been agreed in the conversation with the reporter/builder. It was submitted that it was an attempt to create a sensation to lash out in concert on an innocent person, who was sought to be trapped into this conversation. It was an attempt on the part of the IBN7 to sensationalize the issue and increase their TRP ratings. It is claimed that the Respondent dealt with the matter in a very routine and casual manner.

- (iv) Mr. Gupta further argued that the reference in the transcript to the sentence containing the word 'Kaam' in the following lines in the transcript refers to execution of construction work.

"शर्मा : देखिये पहली बात मतलब दो ज्यादा बात करने का मतलब नहीं है । बहुत आपका रीजनेबल काम आपकी मतलब हो जायेगा और आप जत करोगे वो रीजनेबल हो जायेगा सारा ।"

The above argument has only to be stated to be rejected. In the preceding para, the reporter/builder is asking for an estimation and budget of what it is going to cost them for ensuring that there are no hurdles from the MCD. Besides, even in this sentence, the word "reasonable kaam", refers to the total reasonable settlement, which in the subsequent passage and in the concluding para are described as "deal".

It is highly improbable that 'Kaam' would refer to construction work because construction was not what the Councillor was undertaking to get done. The entire tenor of the conversation regarding construction i.e. Rs. 1.5 Lac per floor and 4 floors, would dispel this notion. "Kaam" refers to the proposed settlement with the J.E so that there are no hurdles in raising construction. While it is true that nowhere in the entire conversation the Respondent asked for any money for himself or make

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any direct demand for himself, the posture adopted was that he would get the deal done with the JE.

Mr. Abhijat Bal, Ld. Amicus Curiae had submitted that usually the stratagem adopted is to have the entire amount of gratification collected either through the JE or Beldar etc. which is later on distributed. This avoids any direct involvement of the Senior Officers / Councillor etc. What Mr. Bal has submitted is highly plausible. However, what clearly emerges in this case is that the Councillor admittedly offered to act as a facilitator for unauthorized construction to be carried out. This by itself, without anything else, in my view, is sufficient to hold violation of norms of conduct and integrity by the Respondent.

- (v) It has been alleged that in the current political scenario, a Public Functionary is expected to cater and to look after the difficulties of their constituents or others who may be interested in doing development or construction work in their constituency. The Respondent was only performing his public duty. May be, in doing so, in his enthusiasm, he overstepped the norms. But he was only helping a member of his constituency. This he considered as part of his public duty.

This brings to the fore again the need for orientation courses and for framing and finalization of a Code of Conduct for Municipal Councillors in public life, so that they clearly understand the conduct and norms expected of them. It may be noted that this Forum has in a number of cases made this recommendation which has also been accepted by His Excellency, the Hon'ble Lt. Governor, and is awaiting implementation.

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However, the present case is one not admitting of any doubt or ambiguity regarding misconduct. In fact, for such clear cases, reference to any Code of Conduct or norms may not be necessary as one's conscience is sufficient guide to tell whether it is the right and honest thing to do or it is a dereliction of duty. The oath taken at the time of assuming Office of Councillor, which enjoins him to bear true faith and allegiance to the Constitution of India as by law established and to faithfully discharge the duty, which he is about to enter, is also a valuable guide. The above conduct, by no means can be called a faithful discharge of duties.

Plea of Entrapment

- (vi) Ld. Counsel for the Respondent has submitted that a sting operation by a private agency is by and large unpalatable and unacceptable in a civilized society. He submitted that a sting operation cannot be initiated to induce or tempt an otherwise innocent person to commit a crime or to entrap him to commit a crime. He relied on the observations made by the Hon'ble Supreme Court of India in RAMANUJAM SINGH V/s STATE OF BIHAR, AIR 1956 SC 643, which are as under:-

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"Whatever the criminal tendencies of a man may be, he has a right to expect that he will not be deliberately tempted beyond the powers of his frail endurance and provoked into breaking the law; it is one thing to tempt a suspected offender to overt action when he is doing all he can to commit a crime and has every intention of carrying through his nefarious purpose from start to finish and quite another to egg him on to do that which it has been finally and firmly decided shall not be done. The very best of men have moments of weaknesses and

temptation, and even the worst times when they repent of an evil thought and are given an inner strength to set Satan behind them."

Referring to the present case, the Counsel submitted that the Respondent who was on another mission was accosted by the reporter/builders. There was absolutely nothing wrong in the Respondent entertaining a person who wanted to raise construction or do development work in his constituency. The Counsel submitted that the Respondent only tried to help them while acknowledging the hard realities of prevalent corruption and telling the reporter/builders how the work could be done. The reporter/builders proceeded with asking questions on a set line, drawing out the responses which they wanted.

Mr. Bal, while refuting the above submissions, rightly submitted that the plea or defence of inducement or entrapment was really not available to the Respondent. This was not a case where the Respondent was lured or induced into doing something. The Respondent on his own was ready and willing to participate and carry forward the conversation. In fact, as it would be seen from the perusal of the transcript and viewing of the video, the Respondent himself was extremely reassuring of his help and commitment in ensuring that there would be no hurdles from MCD on construction without sanction. In these circumstances, Mr. Bal submitted that one of the fundamental requirements of entrapment, that it was an act which the Respondent was probably otherwise not willing to commit, would not be available in this case. It was also not a case where the predisposition on the part of the Respondent could be ruled out. In fact, the offer to help and facilitate the.

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construction was almost voluntary. This offer continued without any inducement even after the reporter/builders had stated that they were not going to have the building plan sanctioned. The observations made by the Hon'ble Supreme Court of India in Ramanujam's case (supra) cannot be applied in the instant facts.

Mr. Bal rightly submits that if the respondent's version, that he had neither demanded nor there was any contemplation of any illegal gratification in the matter, was to be believed, then the conduct of the Respondent would not be what it had been. Mr. Bal also pointed out that the construction of a building without sanctioned plan was an offence under Sec. 461 of the DMC Act, 1957. Section-332 prohibits erection or commencement of erection of any building without sanctioned plan, while Section-334 provides for application for repairs, additions or alterations to a building. Violation of Sections 332 & 334 of the DMC Act, 1957, under Sec. 461, read with Schedule-XII, is punishable with imprisonment for six months with fine. Thus, the Respondent was willfully going ahead with an illegal act of facilitating illegal construction through the engineering staff of MCD on terms to be settled by him, wherein he could be reasonably expected to derive benefit.

20. The Supreme Court of India in its latest judgment in R.K. ANAND V/s REGISTRAR, DELHI HIGH COURT, (2009) 8 SCC 106, while dealing with stings and telecast of sting programmes, observed in Para-179 as under:-

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"Looking at the matter from a slightly different angle we ask the simple question, what would have been in greater public interest; to allow the attempt to suborn a witness, with the object to undermine a criminal trial, lie quietly

behind veil of secrecy or to bring out the mischief in full public gaze? To our mind, the answer is obvious. The sting telecast by NDTV was indeed in larger public interest and it served an important public cause."

Applying the above criteria, it would be seen that to expose the menace of corruption, nexus of builder mafia and the local politicians, i.e. Councillors and the municipal staff, in the rampant unauthorized constructions sweeping across our metro, a great public cause is served by the said exposure. Here was a public functionary who was more than willing to offer his help, hence, the operation carried out by the IBN-7 in exposing the menace of unauthorized construction due to the nexus of the builder mafia, politicians and municipal staff was a laudable cause and justified the sting operation.

21. In view of the foregoing discussion, it is clear that the Respondent Councillor has knowingly offered to act as a facilitator to carry out unauthorized construction and give his help by assuring that he would handle the Jr. Engineer of MCD. Further, he has gone about clearly holding out that the above would be done on a reasonable basis, in contra-distinction to "loot". The latter expression was used by the Respondent Councillor on hearing of the amount which the Reporter/builders claimed to have been demanded by the JE in their previous work at Mandawali. Construction of a building without sanctioned plan is in contravention of Sec. 332 and is punishable under Sec. 461, read with Schedule-XII of the Delhi Municipal Corporation Act, 1957. The action of a public representative in offering to act as a facilitator for construction without sanctioned plan would be in contravention of the above provision. Hence, undoubtedly, a violation of the norms of conduct and integrity required to be observed by Municipal Councillors or public representatives under Sec. 2(b) (i) of the Act.
- KSS

It would also be appropriate to deal with the plea which is often urged in support of public representatives in such matters, namely, that it is a part of their duty owed to their constituents to help them. Thus, Councillors per force end up giving guidance and help in such matters. It is also urged that having regard to the current political scenario and prevalent societal norms and moral standards, such help is rendered in routine to persons known to or close to the public representatives or those who are party workers.

It is time to clearly state that it is not part of a public duty owed by a Councillor to give encouragement to unauthorized construction by promising help in such ventures. On the other hand, it is his public duty to bring to the notice of the authorities any instance of construction without sanctioned plan or attempt for the same which comes to his knowledge. It is no defence to urge that unauthorized construction is rampant and commonly resorted to. Even if it is commonly done, it is high time that the right thinking members of the society, raise their voice and send a clear signal to the Public Representatives and those in power, that such dereliction of duty would not be countenanced. The desire to appease the constituents or furthering of so-called electoral prospects by extending such help cannot override the norms of conduct and integrity, which are expected to be followed and which their oath of office enjoins them to observe.

22. It may also be noticed that this Respondent along with others had earlier also been proceeded with for misconduct i.e. for allegedly sealing and locking the office of the Deputy Commissioner of MCD and blocking the ingress and egress of the Deputy Commissioner, in Case No. C-304/Lok/2010. In the said case, the Respondent along with others had expressed his regret for his action and gave assurance for his future conduct. It then appeared that there was a realization of his

responsibilities by the Councillor and the regret was accepted and a quietus was applied to the said matter. The present case has shown that the earlier regret has not had the desired effect.

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Recommendation

23. In view of the finding recorded hereinbefore, the conduct of the Respondent Councillor as evidenced from the transcript of conversation, Mark "GF", clearly amounts to violation of norms of integrity and conduct in terms of Sec. 2(b)(i) read with Sec. 7 of the Delhi Lokayukta & Upalokayukta Act, 1995. It is, therefore, recommended to His Excellency, the Hon'ble Lt. Governor, that a reprimand be issued to the Respondent Councillor for his misconduct as found above.


(Justice Manmohan Sarin)
Lokayukta

Date: 22nd March, 2012

BEFORE THE HON'BLE LOKAYUKTA
JUSTICE MANMOHAN SARIN

COMPLAINT NO. C-1116/Lok2011

In the matter of Suo Moto Cognizance of a Press Report Titled "Sting Operation Ke Bhaad Parshaden Mein Macha Hadkamp" appearing in "Nav Bharat Times" Dated 07-12-2011

AND

In the matter of Inquiry Under Sec. 7 read with Sec. 2(b) of The Delhi Lokayukta & Upalokayukta Act, 1995, in respect of conduct of Shri Ajit Singh Tokas, Councillor, Respondent herein.

1. Shri Akshay Mokhiya, Advocate. Amicus Curiae with Ms. Sanjugeeta & Ms. Mahima Behl, Advocates.
2. Shri Anish Dayal, Shri Bipin Singh, Shri Ranbir Dutta & Shri Sanjay Tokas, Advocates, for the Respondent.
3. Shri Mrinal Bharti, Advocate, for TV18 Broadcast Ltd. With Shri Sachin Dev, Deputy General Manager (Corporate Affairs), TV 18 Broadcast Ltd.

REPORT

Cognizance and Issuance of Notices

1. Suo moto cognizance was taken of a report titled "Sting Operation Ke Bhaad Parshaden mein Macha Hadkamp", appearing in "Nav Bharat Times" dated 7-12-2011. Vide Order dated 7-12-2011, notices were issued to the Editor and City Correspondent of "Nav Bharat Times" to produce complete records of interview and other evidences in relation to the press report. Notices were also directed to be issued to the Managing Director and Correspondent of Channel HBN-7, who had carried out the telecast of the sting operation showing involvement of Municipal Councillors participating in negotiations regarding carrying out of illegal and unauthorized constructions for illegal gratification. The reporters of Cobra Post, who had been

deputed by the Channel HBN-7 to carry out the sting operation, were directed to produce the original footage/records of the sting operation.

Continuance of Proceedings

2. Pursuant to the notices issued, the advocate of M/s. TVS Broadcast Ltd, which owns Channel HBN-7, appeared with two reporters of Coimbatore owned by M/s. Shri Bhadrwal Media Pvt. Ltd, who had carried out the sting operation under an arrangement with Channel HBN-7. The statements of the reporters who had carried out the sting operation were duly recorded on oath as CW-1 and CW-2. The Deputy General Manager of HBN-7, Mr. Sachin Desai, CW-3, also rendered the original footage contained in the DVDs as CW-4, CW-5, CW-6, CW-7, CW-8, CW-9 and CW-10. The DVD of the telecast programme was also rendered as CW-11. The transcripts of the recorded conversation of the meetings and negotiations with the Respondent Counselor and 7 other Counselors were also rendered. After viewing the DVD recording of the conversation of reporters with the Counselors and perusal of the transcripts of the same as produced, vide Orders dated 21-12-2011, it was found that case for inquiry under Sec. 2 (a) (ii) (b) (iii) (iv) & (v) of the Act was made out and notice to the respondent and other Counselors, returnable on 10-01-2012, were directed to be served. The file of each Counselor was directed to be segregated and registered as a separate complaint.

The Respondent entered appearance through Shri Anish Rajal, Shri Himin Singh, Shri Ranbir Datta and Shri Sanjay Tokas, Advocates and filed his reply to the Notice for suo moto inquiry. Considering the nature of the controversy and issues arising for consideration, it was found expedient and in the interest of justice to appoint an Amicus Curiae and Shri Akshay Mishra, Advocate, was so appointed.

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In view of the ensuing municipal elections, all Respondent Councillors made a fervent plea for expeditious disposal of these inquiry proceedings so that if allegations are not proved, they stand exonerated without delay, so as not to affect their election prospects.

Procedure adopted for Inquiry

4. The Counsels and parties were heard and their suggestions considered regarding adoption of the procedure in the inquiry so as to conform to the principles of natural justice, while expediting the inquiry, yet giving the fullest opportunity to the parties to present their respective case. A consensus emerged on the procedure to be adopted which is re-produced below for facility of reference:-

- (i) All the Counsel and parties shall endeavour to abide by the time given for completion of pleadings. In fact the Respondents and the broadcaster have all stated that they would take not more than one to three weeks so that the entire pleadings can be completed within a month at the maximum.
- (ii) Regarding the authenticity and correctness of the recordings which have been produced, it has been agreed that individual footage in each of these cases would be played in court before the Presiding Officer with best equipment as available with the Broadcaster to make the sound clear and discernable so that some of the gaps noticed in the transcripts at present are filled up and an attempt is made for an agreed transcript to emerge. It is prayed by the Counsels that viewing should be spread over one week and individual recordings be viewed and parties heard.

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Wherever it is not possible to have an agreed transcript, the Broadcaster and the Respondent, each may give their version with regard to the particular words uttered. This forum would then decide the controversy. Accordingly, in case the broadcaster and the Respondent are at variance, each would have the option to present its version of the transcript. Beyond the discrepancies in the transcript, Counsel and parties submit that they are not questioning the authenticity or demanding any other requirement with regard to the proof of the recordings. Considering the nature of the inquiry before the Lokayukta formal proof of these recordings is dispensed with.

- (ii) Parties are agreed that based on the pleadings and transcripts as finalized, the Lokayukta would fix the date of hearing in the individual cases.
- (iv) Parties are agreed that any common issue of law or facts which arises for consideration in their inquiries would be dealt with together by the Lokayukta and while the evidence and arguments in relation to each of the cases or transcripts will be separately taken up.
- (v) It is also agreed that while the authenticity of the conversation and their transcripts would be established in the above manner, parties would be at liberty to point out any personal animosity or motive on the part of the reporters for having carried out the sting operation."

None of the Counsels made any suggestion or request for alteration or modification in the above procedure, which was accepted by all.

Counsel for TV 18 Broadcast Ltd had tendered in Court the DVDs stated to be containing the footage in respect of Shri Ajit Singh Tokas and Ms. Jai Shree Panwar, another Councillor. After providing due opportunity to the Broadcaster to cross check the DVD with footage as tendered along with the transcripts, the case was listed for viewing of the footage on 7-2-2012 and for completion of pleadings.

Finalization of Transcript of Recording

5. The Office of the Lokayukta made arrangements for viewing of the DVDs containing copies of the original footage referred to as the "raw footage". The raw footage as recorded in the DVDs were played and re-played several times in the presence of the Respondent Councillor and the Counsels for Respondent and Amicus Curiae and the Advocate for Channel IBN-7. The script of the conversation of the Respondent and the reporter was a fairly long one. It required hearing and re-hearing to discern the exact words spoken. The task of arriving at a consensus on transcript after hearing and viewing of the raw footage, had become cumbersome and consumed a lot of time. The viewing of the DVD had commenced at 11.30 AM and continued till 4.30 PM with lunch break on 7-2-1012. It was directed to be continued on 8-2-2012 at 11.00 AM. Certain minor differences had emerged which were duly noticed and recorded. First one was whether the respondent had said, "Aap logon ne bhi rahne ke liye banana hein" or "Aap logon ne bhi rahne ke liye nahin banana hein". The voice at this particular point gets drowned by the sound of a hammer in back ground and it is not possible to decipher clearly whether the word "Nahin" was spoken or not. However, looking at the context and the visual expression of the Respondent, the possibility of the word "Nahin" is there.

Secondly, the recorded portion as it appears at 18.20.25 to 18.21.51 does not appear in the transcript provided by the Channel. However, the parties are in agreement that this part of the recording is not relevant to the present inquiry and can be

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ignored. The lines appearing around 17.57.41, the words spoken by Mr. Ajit Singh Tekas, are, "Meri taraf se koi dikkat nahi hai. Ammirka mein aaye ho to apko pata bhi hoga ke yehan...". The Channel's version does not contain the word, "yehan". Mr. Dayal, Counsel for the Respondent, submits that the lip movement indicates the words, "Yehan na koi lena hai, na koi dena hai", and can be discerned from the lip movement.

In view of the contention on behalf of the Respondent and to remove any doubts, the recording was replayed on 27-02-2012. The word "yehan" was audible but rest were inaudible. Even though the lip movement indicates muttering of some words, it was not possible to conclude or infer that the word spoken were "Yehan na koi lena hai, na koi dena hai". It may be noticed at this stage, even if the above words as claimed by the Respondent are not found to be audible here, these have been said by the Respondent elsewhere after 17.59.10 and before 18.00.37 twice. Therefore, whether the words were said here also or not is not of much consequence.

6. Subject to the above observations, a consensus emerged on what was the actual version as audible from the footage. After making corrections in the transcript, the same was also read over to the parties by the undersigned. Registry was directed to prepare transcript of final version and make available copies to the parties, which is Mark "G".

Summary of Transcript

For facility of reference, the conversation between the Respondent and the Reporters (hereinafter called the reporter / builder), as per the finalized transcript, is being summarized. The reporter / builders approached the Respondent at his home. After introducing themselves as builders from Ghaziabad they informed the Respondent of their proposal to carry out construction in his area and the difficulties faced by them in

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Mandavali. Respondent assured that there would be no difficulty from his side but they have to look after the others and police. There was discussion regarding difficulties from the JEs and the Special Task Force for unauthorized construction. On being informed that the Councillor at Mandavali had guaranteed no trouble from MCD, the Respondent stated that the said Councillor must have taken money otherwise why should he give assurance? He further stated that since he was not going to take anything, he would not be giving any guarantee. However, he assured to give whatever help was possible, without any guarantee since there was no "lena-dena" there. The discussion continued regarding the amount paid to Mandavali councillor, the respective location and comparison between them and the commercial rates, details of the plots, the owners and the price. When Respondent informs that councillors and MCD people take money as in Mandavali, the reporter / builders state that at least there was no head ache as nobody would come to site to create trouble. Respondent again states that he would help and they may first do the work. Reporter / Builders went on to say that they would enter the transaction only when he approved. Respondent then states that he was not discouraging them and there was no difficulty from his side and that if somebody gains it does not affect his health. At this stage reporter / builder asked Respondent to tell the amount so that they could budget it. Respondent replies that only when the Councillor has to take money that he can tell the budget but when he does not have to take (money) how can he tell the budget but his blessing would remain with them. Respondent also assures that if they run into difficulty, he would help by telling the concerned persons. The reporter / builder then express their apprehension that since the project was on the main road police would come. Respondent tells them that the police does not listen to the Councillor and they will have to independently handle but when the MCD

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people come, he would see. The Respondent goes on to an in depth discussion on the number of flats, type of construction, details of investment, roads, locations, sizes, permissible heights, parking requirements, number of floors, cost of construction and condition of the house. He suggests that if the condition of the house is not good, it can be handled with MCD at the initial stage by obtaining a "dangerous" certificate and permission for maintenance. He then asked the reporter / builders that if they were making 100% profit then what was the problem in tackling the MCD and at this rate in any case within five six months they would earn 15-17-18 lakh rupees per month. Again there is a discussion about the position in Munirka Village, his estimation of the project not being worth more than Rs. 2 crores, malpractices of the dealers, the methodology of construction etc. The Respondent advises the reporter / builders to keep on finishing the construction floor wise and that if they get the "dangerous" building certificate from the MCD, there would be no problem. He also tells them that first they should try to raise two lintels and the third one can be followed thereafter.

From the foregoing, what would be seen is that the Councillor while maintaining the position of not taking any money and being unwilling to give any guarantee, takes keen interest in the project of illegal construction and goes about suggesting ways and means such as having the building declared as dangerous and to obtain certificate to that effect to raise construction. He further suggests that they should raise a floor, give it finishing and proceed to the other one and once they raise two floors, the third one can be easily raised within the overall heights.

A question which arouses the curiosity is if the Councillor was not to take any gratification or consideration for himself then where was the occasion for him to take this

unusual interest and discuss at length and advise persons hitherto unknown to him on cost benefit ratio, reasonableness or otherwise of their acquisition, manner of construction and the stratagem for previously carry out unauthorized construction through the mechanism of procuring dangerous building certificate.

Completion of Pleadings

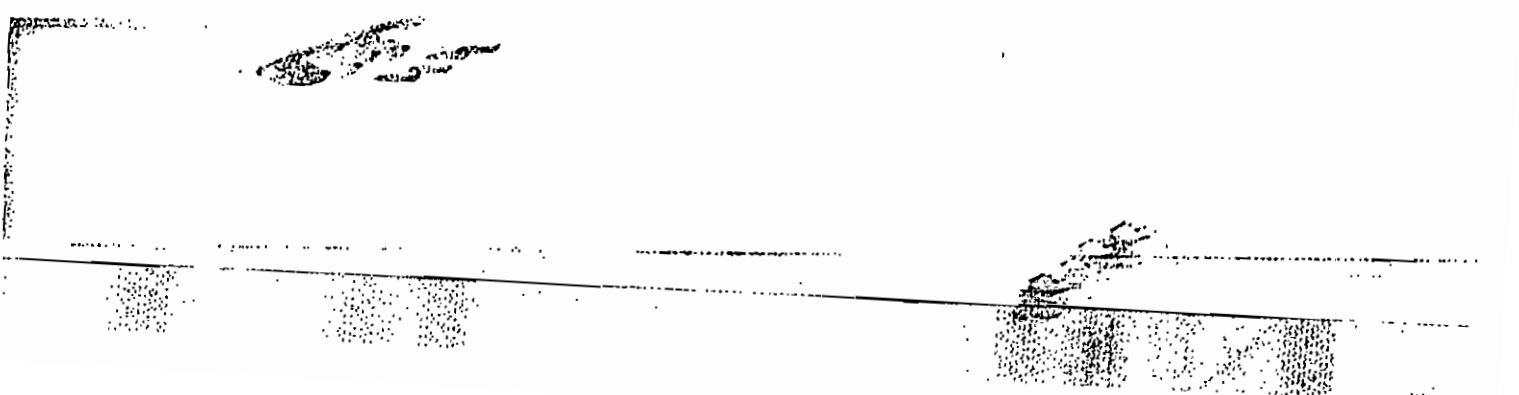
7. Pleadings were also completed. Copy of the Press Report appearing in "Nav Bharat Times" dated 7-12-2011 is annexed hereto as Annexure-I. Copy of the Order dated 7-12-2011 is annexed hereto as Annexure-II. Copy of Reply dated 16-02-2012 together with the Notice issued to the TV 18 Broadcast Ltd. by the Counsel of Shri Ajit Singh Lokas, as also the response thereof are annexed hereto Annexure-III (Copy). The Respondent and his Counsel as well as the Amicus Curiae and Counsel for TV 18 Broadcast Ltd., all submitted that the matter be proceeded with on the basis of the transcript of the original footage as finalized after viewing and no further evidence needs to be led by them or the Respondent. The said statement was made by the respondent's Counsel on the basis of instructions by the respondent. The transcript of conversation as finalized and agreed to between all parties i.e Mark GP is annexed hereto as Annexure-IV.

Submissions of the Respondent

8. Counsel for the Respondent made submissions on 27-02-2012, 28-02-2012 and 12-03-2012. Mr. Makhija, Amicus Curiae, also made his submissions on 09-02-2012 and 16-03-2012, when the matter was fixed for 19th March, 2012 and there upon after hearing both the Counsels, the matter was reserved for Orders.

9. At this stage, it may be noticed that the objection taken in the reply regarding complete unedited version in relation to the notice not being received and there being gaps in the transcript

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as also the copy of the Nav Bharat Times report not being supplied no longer subsists and stands withdrawn, in view of the consensus having been arrived on the correctness of the transcript of conversation as finalized and formal proof regarding the same, being dispensed with. Respondent had also been given the opportunity to give his version of the conversation, wherever they felt that the recorded version was missing, not clear or discernible. It is only after taking into account these that a consensus was arrived at. The Nav Bharat Times issue was made available during the course of proceedings. Hence none of the preliminary objections in this regard remain. The objection of the Respondent regarding there being no deal or that the order to issue notice, clubbing all of them together, also does not sustain in view of the fact that now what is being considered are the individual transcript of conversation for the purpose of determination of whether an allegation was made out within the meaning of Sec. 2 (b)(i) of the Act or not.

10. It is in the above background that the submissions of the Ld. Counsel for the Respondent need to be considered.

Ld. Counsel for the Respondent, Mr. Anish Dayal, submits that the reporter/builders had approached the noticee twice before but were out rightly denied any audience by the Respondent. In the additional reply filed by the Respondent, it was claimed that having not being successful in getting an audience earlier, they used the reference of another senior resident, who had once held the post of the President of the District Unit of the BJP party. The proposed site being considered by the alleged reporter/builder belonged to former District President, who was one of the co-owners. The Respondent therefore entertained them now. The other reason given for entertaining the reporter/builder was that because the Respondent had to attend a funeral of a deceased villager and

did not have any other work at that time, he leisurely continued with the conversation. The aspect of reference may be clarified. During the proceedings it was enquired from the Respondent as to whether the reporter/builder had claimed that they had been referred to by the former BJP President, the Respondent answered it in the negative. It was only during their discussion that he learnt that one of the co-owners of the plot was a former District Unit President and did not have any direct reference.

11. Mr. Anish Dayal, submitted that there was no violation of the norms of conduct and integrity by the Respondent. Despite the reporter/ builder repeatedly requesting the Councillor to indicate what would be required so that they could budget it, his categorical response has been "Mujhe nu kuch lena hein, na dena hein". This has been reiterated at another place when he tells them, "What budget he could give them when he was not to take or give anything". Thus, the Councillor in clear, categorical terms had spurned and refused the offer of money or consideration. Mr. Dayal submitted that the Councillor being a public figure has to be diplomatic and courteous while dealing with members of the public. He was, therefore, being polite, diplomatic and ambivalent. It was usual for politicians to hold out the assurance of being helpful in future or of helping as much as they can without any commitment.

12. Regarding the long conversation in which he has been inquisitive and collecting information, he submitted that for someone in public life it was necessary to be aware and knowledgeable about the happenings in the society and surrounding and he was only gaining information with regard to various practices adopted. There was no betrayal or violation of any norm or integrity by him. When a public person like the Respondent is accosted by a person who proposes to build in his constituency and wants to seek his help, the Respondent without seeking any gratification for himself or firm

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commitment of any help carried on with the conversation which, inter alia, involved acknowledgement and accepting corruption in the MCD system. Besides the Respondent himself was in property business and he went on with the conversation on account of his interest since he wanted to gather information. Mr. Dayal submitted that endeavour ought not be substituted for complicity. Mr. Dayal also submitted regarding discussion of illegal construction that it was a hard reality that a Councillor on account of political reasons and to keep the constituents on his right side hardly ever questions any unauthorized construction going on and it is only when a complaint is received that it taken up for forwarding to the Commissioner.

13. Mr. Dayal next submitted that assuming that this Forum finds that the Councillor had endlessly carried on with the conversation regarding unauthorized construction and gone into details of evaluating the cost and profit of the contractor and the same at worst would be an act of indiscretion. It cannot be assigned ulterior motives and treated as a breach of integrity and good conduct, especially, in the light of the Respondent clearly declaring that there was no bargaining here in his constituency and he had nothing to take or give and he would not take any guarantee.

14. Mr. Dayal submitted that though the definition of integrity and conduct under Sec. 2 (b) (1) of the Act was fairly wide, but in this case, there was no demand of illegal gratification or consideration. He submitted that this was really a case where a Councillor is entertaining reporters masquerading as builders, who have come with the reference of a former District Unit President and explaining the various modes of construction in the area. Even with regard to the discussion on dangerous building or repair or maintenance he was only telling the builder/reporter of one of the modes adopted for carrying out

the construction, while enquiring what was the condition of the building. Mr. Dayal also submitted that as a Councillor he had only legislative functions and all executive powers with regard to sanction of building or supervision or demolition of building etc. vested with the Commissioner and his officers.

15. Mr. Dayal submitted that a Municipal Councillor has several compulsions emanating from his duty towards the constituents whereby he ends up entertaining such requests. However, unless they are accompanied by any demand or direct involvement there is no violation of norms of integrity and conduct. These were really in the nature of hearing out a party or giving them various options available. Given the current standards, he said this ought not be regarded as falling within the meaning of "allegation" under Sec. 2 (b) (1) of the Act. This was specially so since there was not yet any Code of Conduct framed to guide the Councillors in performance of their private/public duties and activities involving inter play with the society. Mr. Dayal submitted that at best this could be an act of indiscretion for which an advisory could be issued.

16. Mr. Dayal next submitted that without prejudice, the alleged misconduct attributed to the Respondent was a direct result of inducement given and persistent inducement which drew its colour and flavour from entrapment. Mr. Dayal submitted that four elements under which a defence of entrapment can be made out: firstly, violation of a statute as a result of entrapment, then it is not to be regarded as a violation. The second is entrapment as a result of creative activity designed for a particular result to invite an offence. Thirdly, the entrapment would be only legitimate in the hands of law enforcing agency and those not interested in commercial gains unlike the present broadcaster. He said the most important factor is absence of predisposition to commit an offence being found. The same may be urged in rebuttal to charge for entrapment.

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A conjoint reading of the above in fact, shows that despite persistent efforts on behalf of the reporter/builder to induce the Respondent, he kept on saying "there was no dena or lena".

17. Lal. Counsel also placed reliance on the judgment of Division Bench of the Delhi High Court, 2608 V AD CrI, DHC 93, in "Court on its Own Motion V/s State & Ors". He referred to Paras 384, 385 & 386. He submitted that the position which emerges from the guidelines laid down in the said judgment is that a sting operation even by State authorities would be wrong if it involves committing of an offence so that they can prove that a person committed an offence. For a legitimate trap police or the investigating agencies are to be involved and a trap has to be organized. A legitimate trap should be organized with due permission. If on the other hand, the investigating agencies or media approaches a person, who is only expected or suspected of taking bribe and tempt him or induce him then such a trap would be an illegitimate trap not authorised by law.

18. Mr. Dayal also laid considerable emphasis on the observation of the Supreme Court of India in RAMANUJAM SINGH V/S STATE OF BIHAR, AIR 1956 SC 643, where a distinction between a person who is intentionally going to commit a crime or offence and a person who has no intention to do so but was tempted or induced has been recognized. He placed reliance on the following observations:-

"The very best of men have moments of weaknesses and temptation, and even the worst times when they repent of an evil thought and are given an inner strength to set Satan behind them."

He submits that the above observations should be kept in mind while dealing with what according to him was at best an indiscretion.

Reference was also made by the Counsel in support of his plea for entrapment on (i) Keith Jacobson Vs. United States, 503 US 540 (1992) Supreme Court of the United States of America (ii) Sherman v. United States, 356 U.S. 369 (1958) Supreme Court of the United States of America (iii) Sorrells v United States, 287 US 435 (1932) Supreme Court of the United States of America.

He urged that when there were no guidelines laid down for the conduct of the Councillors, this forum ought to take a lenient view on such indiscretion, especially, when they are accompanied with categorical declarations of not wanting any gratification.

Evaluation and appreciation of pleas and submissions :-

- 19. Regarding the plea of entrapment, as noticed earlier, the entire tenor of the conversation and viewing of the video shows that the Respondent was fully in control of the conversation. It was hardly a situation where he was being induced into saying anything. He himself claims that he rejected all offers of gratification. Hence, he was not being entrapped or induced. Suggestions made by him regarding various methods of unauthorized constructions etc. emanate from him and not from the reporter/builders. Hence, the ingredients for the plea of entrapment are really not satisfied.

Reference was also be made to the decision of the High Court of Delhi in Aniruddha Bahal Vs. State reported on 172 (2010) Delhi Law Times 268 whereby the FIR registered against the sting operators under section 12 and 13 of the Prevention of Corruption Act was quashed. The court held that in the said case FIR was registered after one year with the sting operators being arraigned as prime accused. The court observed that the intention of the sting operator was bona fide and who had acted as whistle blowers by airing of the tapes on

1/5

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TV channels and then by deposing truthfully before two Committees of Parliament. Charging of such people with offence under Prevention of Corruption Act would amount to travesty of justice and shall discourage people from performing their duties enjoined upon them by law of the country. The court held that the duties prescribed by the Constitution of India for citizens of this country do permit citizens to act as agent provocateurs to bring out and expose and uproot corruption. It is stated that the Special Leave Petition against the High Court was also dismissed.

Reference is invited to the judgment of the Supreme Court in R.K. ANAND V/S REGISTRAR, DELHI HIGH COURT, 2009 8 SCC 106 i.e. the appeal against the judgement of Delhi High Court in Court on its own motion Vs. State and others (supra). The Supreme Court while dealing with stings and telecast of sting programmes observed in Para-179 as under:-

"Looking at the matter from a slightly different angle we ask the simple question, what would have been in greater public interest; to allow the attempt to suborn a witness, with the object to undermine a criminal trial, lie quietly behind veil of secrecy or to bring out the mischief in full public gaze? To our mind, the answer is obvious. The sting telecast by NDTV was indeed in larger public interest and it served an important public cause."

In the instant case, the above sting operation also served a public cause exposing the nexus between building mafia and the City Fathers, who far from containing and discouraging the menace of unauthorized construction in the metropolis, are breeding and supporting it for corrupt and improper motives.

20. The submissions made by Respondent were also refuted by the Amicus Curiae, who firstly brought out that there was no specific arrangement or reference under which the reporter/builder were meeting. It was merely a coincidence that the house to which reference was made during the detailed discussion, a former BJP District President happened to be one of the co-owners.

Mr. Makhija submits that in this case the public functionary did not confine himself to what may be referred to as the drawing room conversation in recognizing corruption in the case of unauthorized constructions on the part of the police, engineering department of MCD as also Councillors of adjoining areas. While it is correct that the Councillor has repeated twice or thrice that there was "no give and take and he did not want anything for himself", reading of the whole transcript, he submits leaves a nagging feeling that the Respondent was simply trying to size them up. He submitted that while not asking money for himself, it may not be a correct representation of what actually transpired. It is not unusual for Councillor or officers of the Corporation to maintain the posture of not demanding or taking gratification, the same be collected by their minions or junior staff. However, this remains in the realm of a possibility only in the absence of any evidence.

21. According to Mr. Makhija there was a breach of norms of conduct and integrity evidenced by various utterances of the Respondent. It was not a case where the Councillor was being ambivalent or the conversation was proceeding on account of inquisitiveness. There is merit in the submission of Mr. Makhija. Viewing of the video footage and perusal of the transcript while on one hand brings out the assertions of the Respondent of not wanting or giving or taking any money, yet, there are number of his utterances which militate against his

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public duty as a Corporator, I would start by noticing that in this entire conversation and the transcript, it is the Respondent Councillor who is in control. While though not asking for money for himself, there is an assurance of help to subvert the system. It is not in dispute that the construction was to be carried out without sanction of plans, yet, Councillor says "Meri taraf se koi dikkat nahin hein". Respondent has gone out of his way in suggesting that when they are constructing one floor they should do the finishing and when they construct two floors the third floor can be done. While he cannot help in guaranteeing or assuring, he would try to see what can be done. The advice being rendered "Pahle sauda karo fir taika nikalega", followed by enquiry, "makan ki halat kaisi hein". At this stage, he suggests a possible mechanism by first getting the building declared as dangerous, while the reporter/builder tells him that this would be a ease of re-construction as people were staying there already. Handling of MCD is in the context of getting the building declared as dangerous and carrying out the building activity. Further the enquiry whether the house at present was double storey and whether it was proposed to make it four storey etc., discussion and suggestion of building four floors within 15 mtrs and then clearly telling them that for getting permission for maintenance they will have to pay for that in the context of 100% profits being made by them, are all suggestions of subverting the system. The public duty of the Councillor is to act against unauthorized construction and not to morally support it or give and suggest various means to carry out illegal constructions.

22. There is also no merit in the plea that a Councillor does not have power to grant, approve or clear approval for constructions and has only legislative powers, therefore, has nothing to do with construction. This cannot be an answer to a charge of misconduct, as the legitimate exercise of power is not intended to come within Sec. 2 (b) (i). It is misuse or abuse of power

which comes under allegations and is actionable, in such cases a Councilor may not have any executive power to grant approval for construction. Undoubtedly, the Councilor may be having only legislative functions but being the person who oversees the implementation of civic programmes, enjoys considerable clout. It is a matter of public knowledge of which even judicial notice can be taken.

23. Some of the queries made by the Respondent cannot be brushed away as a result of simply curiosity as to how much money the other Councilor took? This is especially so since he immediately points out that the present locality is far superior to Mandawadi. This can only be understood in the context of unauthorized construction requiring more money in this area.

24. In view of the foregoing discussion, a case against the Respondent in view of his utterances as noted above, with regard to the detailed discussion of ways and means of illegal construction, suggesting declaration as a dangerous building, maintenance certificate and the cost evaluation etc. even though apparently not demanding any gratification for himself are indications of a mind set and tendency to subvert the system and in breach of his public duty to contain unauthorized construction. Such conduct falls within the ambit of section 2 (b) (i) of the Act. This is a fit case, where the Respondent deserves to be cautioned and advised so that he is careful in future and can correct himself.

25. Upon evaluation of the transcript of conversation which the Respondent had with the Reporter/Builder as also on consideration of the attendant circumstances, the following position emerges:-

(i) There has been no demand for gratification or promise of payment of consideration since the Respondent Councilor consistently maintained that there was no

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consideration for himself by saying " mujhay na kuch lena hai na dena hai". In fact on repeated entreaties to tell the Budget required for this purpose, he responded by saying that what he could tell when he has no demand.

- (ii) While maintaining the posture, the Respondent Councillor went into a detailed discussion and inquiry into the details of the project of the Reporter Builder including the investment required, returns, profitability and out goings, knowing all the while that the construction was going to be without a sanctioned plan, Respondent Councillor also told them that with the ensuing elections there was bound to be strictness and there would be demands from the Police and MCD. Councillor also discussed the extent of money currently being paid to the engineering staff of MCD, Councillor etc. in adjoining areas, while telling them that Police would have to be settled independently. He also held out the assurance of help. Not only this, the Councillor went to the extent of suggesting obtaining certification as a dangerous building for raising unauthorized construction, as one of the methods.
- (iii) The above conduct though apparently not having any direct financial involvement of the Councillor militates against the public duty of a Councillor, which is to act against any proposed, ongoing or completed unauthorized construction.
- (iv) The Respondent himself on 15.03.2012, stated that after deep introspection he realized that he should not have entered into detailed discussion with reporters, posing as builders who wanted to raise unauthorized construction. While Mr. Tokas maintained that he had rejected all offers of gratification, he says that he regrets his discussion with the reporter/builder and would be careful in future.

True copy

Date: 26th March, 2012

(Justice Mammadov Sarim)
Lokayukta

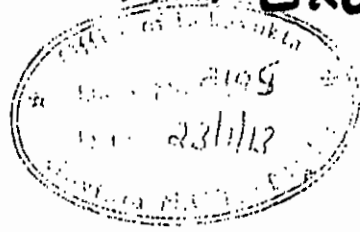
26. In view of the foregoing circumstances, it appears appropriate to the undersigned that notwithstanding the Councilor's regret and the fact that it was a sting operation, there being no real project or exchange or promise of consideration for the Councilor himself, his conduct indicates a disturbing tendency towards breach of public duty, against which the Councilor needs to be cautioned and advised.

It is therefore, recommended to His Excellency, the Lt. Governor to issue an advisory to the Respondent Councilor cautioning him not to entertain any requests for unauthorized constructions or hold out assurance of any help, reminding him of his public duty to stop and act against unauthorized construction.

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सत्यमेव जयते



राज्य सेवा
दिल्ली-११०००१
RAJ NWA
DELHI-110001

187

Please find enclosed copy of order of the Competent Authority, Hon'ble Lt. Governor, in terms of 12(2) of Delhi Lokayukta and Upalokayukta Act, 1995, w.r.t report dated 27/08/2012 of the Hon'ble Lokayukta in Complaint No. C-1150/Lok/2011 in the matter of Suo moto cognizance of the Report Titled "Sting Operation Ke Baad Parshadon Mein Macha Hadkump" which appeared in the issue of Nav Bharat Times dated 7/12/2011 in respect of Conduct of Sh. Subhash Jain, Ex-Municipal Councillor, Respondent, for information.

Encls: As above

(Padmini Singla)
(Padmini Singla)

Addl. Secretary to Lt. Governor

- 1. Ppl. Secretary (AR)
- ✓ 2. Dy. Secretary (Admn.) O/o the Lokayukta

U.O.No. 25(6)/12-RN/301/ 983-87

Dated: 27/11/12

Part 4 of main file + water

(Signature)
23/11/12

(Signature)
23/11/12

राज्यपाल
दिल्ली
GOVERNOR
DELHI
F.No.25(6)/12-RGJ/3011



राज निवास
दिल्ली-110054
RAJ NIWAS
DELHI-110054

188

Dated: 18.1.2015

O R D E R


Whereas the Lokayukta had submitted a report dated 27/08/2012 under Section 12(2) of the Delhi Lokayukta and Upalokayukta Act, 1995 in the matter of *Suo moto* cognizance of a Press Report Titled "Sting Operation Ke Baad Parshadon Mein Macha Hadkamp" which had appeared in the issue of Nav Bharat Times dated 7/12/2011, in respect of the conduct of, *inter-alia*, Sh. Subhash Jain, Councillor.

The Lokayukta recommended administering a 'censure' to the Respondent Councillor for his misconduct. In the interest of natural justice, I had afforded Sh. Subhash Jain, ex-Councillor an opportunity of personal hearing to make submissions, if any before taking a final view in the matter.

Sh. Subhash Jain, ex-Councillor in the personal hearing has submitted that he had never misused his official position for any personal gains and had never been involved in any act of omission or commission involving moral turpitude. The sting operation was a trap to implicate him in a false case. As a public figure, he has to deal with various kinds of people and it is not always possible to evict a person even if the subject of discussion is not approved by him. At the time of arguments before the Hon'ble Lokayukta, he expressed regret for being part of such a conversation.

After careful perusal of the transcript, the records of the case and submissions made by Sh. Subhash Jain, I find that sting operation has already brought disgrace to the Respondent Councillor and he was not given the ticket for contesting the municipal elections. Regret has also been expressed for being part of such conversation during the arguments before Lokayukta. I, therefore, hold that issue of 'Censure' is not called for in this case.

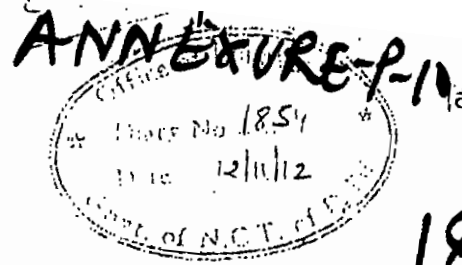
A copy of the order be served to all concerned.


(Tejendra Khanna)
Lt. Governor

True Copy



सत्यमेव जयते



दिल्ली-११००५४
RAJ NIWAS
DELHI-110054

189

Please find enclosed copy of order of the Competent Authority/ Hon'ble Lt. Governor, in terms of 12(2) of Delhi Lokayukta and Upalokayukta Act, 1995, w.r.t report dated 29/06/2012 of the Hon'ble Lokayukta in Complaint No. C-1116/Lok/2011 in the matter of Suo moto cognizance of Press Report Titled "Sting Operation Ke Baad Parshadon Mein Macha Hadkamp" which appeared in the issue of Nav Bharat Times dated 7/12/2011 in respect of Conduct of Smt. Anita Koli, Ex-Municipal Councillor, Respondent, for information.

Encls: As above


(Padmini Singla)

Addl. Secretary to Lt. Governor

1. Ppl. Secretary (AR)
2. Dy. Secretary (Admn.) O/o the Lokayukta

U.O.No. 25(6)/12-RN/287/ 16551

Dated: 9



सत्यमेव जयते

राज निवास
दिल्ली-११००५४
RAJ NIWAS.
DELHI-110054

F.No.25(6)/12-RN/287/

Dated: 9 11 2012

ORDER

Whereas, the Lokayukta had submitted a report dated 29/06/2012 for consideration of the Competent Authority in terms of Section 12(2) of the Delhi Lokayukta and Upalokayukta Act, 1995 in the matter of Suo moto cognizance of a Press Report Titled "Sting Operation Ke Baad Parshadon Mein Macha Hadkanip" which had appeared in the issue of Nav Bharat Times dated 7/12/2011, in respect of conduct of, inter-alla, Smt. Anita Koli, (Ex-)Councillor.

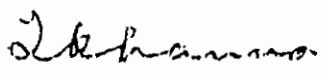
Whereas, the Lokayukta in para 14 of the above mentioned Report had observed that "The conduct of the Respondent Councillor as evidenced from the transcript of conversation marked 'E-I' clearly amounts to violation of norms of Integrity and good conduct, abuse of her position as Councillor to obtain gain for herself being actuated by improper motives and lack of faithfulness in terms of Section 2(b)(i)/w Sec 7 of the Delhi Lokayukta and Upalokayukta Act, 1995". And therefore, a 'Censure' be issued to the Respondent Councillor for her misconduct as found above.

Whereas, in the interest of natural justice I had afforded Mrs. Anita Koli, ex-Councillor an opportunity of personal hearing on 22/10/2012 to make submissions if any, in the matter, before taking a final view in the matter.

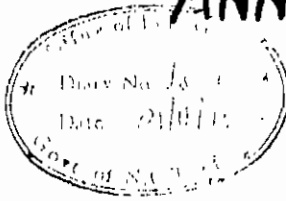
Whereas, Smt. Anita Koli in the personal hearing has orally submitted that she is an Innocent person and has done nothing wrong and that she had never abused or misused her position to obtain any kind of gratification for herself or for any other person. She further submitted the transcript itself holds out the fact that she had never sought any gratification/money she had never violated norms of conduct expected of her and further that she never entertained any requests from anybody for facilitating unauthorized constructions and the sting operation was carried out with malafide intention to defame her and ruin her career. She has submitted that her husband is a bullder-cum-financier and in fact it was he who had talked to the reporters who conducted the sting operation.

After careful perusal of the transcript, the records of the case and submission made by Smt. Anita Koli I find that she had spoken very little during the entire episode and on no occasion had the Respondent Councillor sought any illegal gratification for herself or anybody else. In view of this it is held that issue of 'Censure' is not called for in this case.

A copy of the order be served to all concerned.


(Tejendra Khanna)
Lt. Governor
9.11.2012

True Copy



ANNEXURE-P-11

GOVERNMENT OF DELHI
SECRETARY TO GOVERNMENT
DEPARTMENT OF PUBLIC RELATIONS
CHANDNI CHAUNQ
NEW DELHI-110004

191

Please find enclosed copy of order of the Competent Authority/
Hon'ble Lt. Governor, in terms of 12(2) of Delhi Lokayukta and Upalokayukta Act,
1995, w.r.t report dated 29/06/2012 of the Hon'ble Lokayukta in Complaint No. C-
1149/Lok/2011 in the matter of Suo moto cognizance of Press Report Titled "Sting
Operation Ke Baad Parshadon Mein Macha Hadkamp" which appeared in the issue
of Nav Bharat Times dated 7/12/2011 in respect of Conduct of Smt. Sateshwari
Joshi, Ex-Municipal Councillor, Respondent, for information.

Encls: As above

Padmini Singla
(Padmini Singla)
Addl. Secretary to Lt. Governor

- 1. Ppl. Secretary (AR)
- 2. Dy. Secretary (Admn.) O/o the Lokayukta

U.O.No. 25(6)/12-RN/286/16001

Dated: 11/12/12

Be pr-49 mth.
He
11/12

AD (A)



F.No.25 (6)/12-BN/286/

Dated: 26.10.2012.

ORDER

Whereas, the Lokayukta has submitted a report dated 29/06/2012 under Section 12(2) of the Delhi Lokayukta and Upalokayukta Act, 1995 in the matter of suo moto cognizance of Press Report titled "Sting Operation Ke Baad Parhadon Mein Macha Hadkamp" which appeared in the Nav Bharat Times dated 7/12/2011, in respect of conduct of Smt. Sateshwar Joshi, (Ex-) Councillor, for consideration of the Competent Authority.

Whereas the Lokayukta recommended that a 'Censure' be issued to the Respondent Councillor as the conduct of the Councillor, as evidenced from the admitted transcript, amounts to violation of norms of integrity and abuse of her position as Councillor to obtain gain for herself.

Whereas, in the interest of natural justice, I afforded the Respondent Councillor a personal hearing to make submissions if any in the matter, before taking a final view. The Respondent, in the personal hearing, submitted that she is a simple person and she never abused or misused her position to obtain any kind of favour for herself or for any other person. Had she been indulging in wrongful activities stated/ inferred in the sting operation, she would have possessed assets disproportionate to her legitimate income, which is not the case. Allegations have been made against her so as to defame her and ruin her career.

After perusal of the transcript, I find that at no occasion, she had asked for any gratification. The sting operation has already brought public disgrace to the Councillor. Therefore, after careful consideration of the report and all aspects of the case, I hold that the issue of 'Censure' is not called for in this case.

Copy of the order be served to all concerned.

J. Khanna
(Tejendra Khanna)
Lieutenant Governor

True Copy

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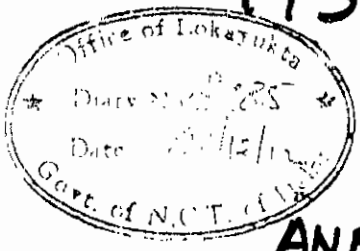
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C-1147



सत्यमेव जयते



राज निवास
दिल्ली-११००५४
RAJ NIWAS
DELHI-110054

ANNEXURE-1-12

Please find enclosed copy of order of the Competent Authority/
Hon'ble Lt. Governor, in terms of 12(2) of Delhi Lokayukta and Upalokayukta
Act, 1995, w.r.t report dated 10/07/2012 of the Hon'ble Lokayukta in Complaint
No. C-1147/Lok/2011 in the matter of Suo moto cognizance of Press Report
Titled "Sting Operation Ke Baad Parshadon Mein Macha Hadkamp" which
appeared in the issue of Nav Bharat Times dated 7/12/2011 in respect of
Conduct of Smt. Manju Gupta, Ex-Municipal Councillor, Respondent, for
information.

Encls: As above

Padmini
23/12/12
(Padmini Singla)

Addl. Secretary to Lt. Governor

- 1. Ppl. Secretary (AR)
- 2. Dy. Secretary (Admn.) O/o the Lokayukta

U.O.No. 25(6)/12-RN/301/ 18678

Dated: 27.12.

Be put up with file
[Signature]
23/12/12

AD (A)
[Signature]
23/12/12

उपराज्यपाल
दिल्ली
LIEUTENANT GOVERNOR
DELHI



राज निवास
दिल्ली-110054
RAJ NIWAS
DELHI-110054

194

F. No.25(6)/RN/3017

Dated: 24.12.2012

ORDER

Whereas, the Lokayukta had submitted a report dated 10/07/2012 under Section 12(2) of the Delhi Lokayukta and Upalokayukta Act, 1995 in the matter of suo moto cognizance of a Press Report Titled "Sting Operation Ke Baad Parliadon Mein Macha Hadkamp" which had appeared in the issue of Nav Bharat Times dated 7/12/2011, in respect of the conduct of, *inter-alia*, Smt. Manju Gupta, Councillor.

The Lokayukta recommended administering a 'Censure' to Smt. Manju Gupta, Councillor. In the interest of natural justice, I had afforded Smt. Manju Gupta, ex-Councillor an opportunity of personal hearing to make submissions if any, in the matter, before taking a final view in the matter.

Smt. Manju Gupta, ex-Councillor in the personal hearing has submitted that she is an innocent person and has been falsely trapped in the case. She being the area councillor, just heard the grievances of a person who claimed to wish to construct some houses. She further submitted that she had been in conversation with the reporter in question only twice. There had been no demand for money by her or by her husband in the entire conversation and the transcript itself was proof of this fact.

After careful perusal of the transcript, the records of the case and submissions made by Smt. Manju Gupta, I find that she had spoken very little during the entire episode and at no occasion had the Respondent Councillor sought any illegal gratification for herself or anybody else. From the transcript it appears that she was not even present during most of the recording. I, therefore, hold that issue of 'Censure' is not called for in this case.

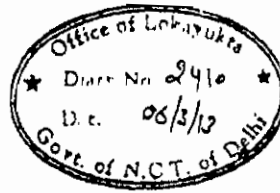
A copy of the order be served to all concerned.

J. Khanna
(Tejendra Khanna)
Lt. Governor

True Copy



सत्यमेव जयते



राज निवास
दिल्ली-११००५४
RAJ NIWAS
DELHI-110054

Please find enclosed copy of order of the Competent Authority/
Hon'ble Lt. Governor, in terms of 12(2) of Delhi Lokayukta and Upalokayukta
Act, 1995, w.r.t report dated 03/08/2012 of the Hon'ble Lokayukta in Complaint
No. C-1145/Lok/2011 in the matter of Suo moto cognizance of Press Report
Titled "Sting Operation Ke Baad Parshadon Mein Macha Hadkamp" which
appeared in the issue of Nav Bharat Times dated 7/12/2011 in respect of
Conduct of Smt. Beena Thakuria, Ex-Municipal Councilor, Respondent, for
information.

Encls: As above

Padmini
5/3/13

(Padmini Singla)

Addl. Secretary to Lt. Governor

1. Ppl. Secretary (AR)
- ✓ 2. Dy. Secretary (Admn.) O/o the Lokayukta

U.O.No. 25(6)/12-RN/336/3579

Dated: 5-3-2013

*Put up with file
for drafting of
Spl Report
H.S. Sarma
6/3*

ADKAD
La
6/3/13

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राज निवास
दिल्ली-११००५४.
RAJ NIWAS
DELHI-110054

F. No.25 (6)/12-RN/301/ संस्कृत

Dated: 4.3.2013

ORDER

The Lokayukta had submitted a report dated 3/8/2012 under Section 12(2) of the Delhi Lokayukta and Upalokayukta Act, 1995 in the matter of *suo moto* cognizance of a Press Report Titled "Sting Operation Ke Baad Parshadon Mein Macha Hadkamp" which had appeared in the issue of Nav Bharat Times dated 7/12/2011, in respect of the conduct of, *Inter-alia*, Smt. Beena Thakuria, Councillor.

The Lokayukta recommended administering a 'Censure' to Smt. Beena Thakuria, Councillor. In the interest of natural justice, I had afforded Smt. Beena Thakuria, ex-Councillor an opportunity of personal hearing to make submissions if any, in the matter, before taking a final view in the matter.

Smt. Beena Thakuria, ex-Councillor in the personal hearing has submitted that she had been elected as Councillor for the first time because of her social work in the area. Therefore, many people used to come to her with their grievances and she used to help them to the extent possible within given legal and administrative framework. The reporters in the sting operation have falsely trapped her because of her simplicity & innocence.

After careful perusal of the transcript, the records of the case and submissions made by Smt. Beena Thakuria, I find that sting operation has already served its intended purpose and has brought disgrace to the respondent Councillor. She was not been given a ticket for contesting Municipal Elections. I, therefore, hold that issue of 'Censure' is not called for in this case.

A copy of the order be served to all concerned.


(Tejendra Khanna)
Lt. Governor

True copy

C-1146



ANNEXURE-P-14

राज्य प्रशासक
दिल्ली - 110018
Rajya Prashasak
DELHI - 110018

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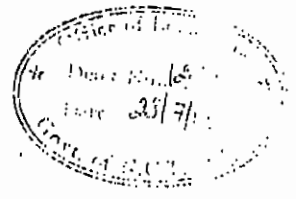
Please find enclosed copy of order of the Competent Authority Hon'ble Lt. Governor, in terms of 12(2) of Delhi Lokayukta and Upalokayukta Act, 1995, w.r.t report dated 25/05/2012 of the Hon'ble Lokayukta in Complaint No. C-1146/Lok/2011 in the matter of *Suo moto cognizance of* Press Release titled "Sting Operation Ke Baad Parshadon Mein Macha Hadkamp" which appeared in the issue of Nav Bharat Times dated 7/12/2011 in respect of Conduct of Smt. Jaishree Panwar, Ex-Municipal Councillor, Respondent, for information.

Encls: As above

Padmini S...
(Padmini S...)
Addl. Secretary to Lt. Governor

- 1. Ppl. Secretary (AR)
 - 2. Dy. Secretary (Admn.) O/o the Lokayukta
- U.O.No. 25(6)/12-RN/231/ 10 673

Dated: 23/7/12





198

F.No. 25(6)/12-RN/231/

Dated: 17.07.2012

ORDER

Whereas, the Lokayukta, National Capital Territory of Delhi has submitted a report dated 25th May, 2012 after conducting an enquiry u/s 7 of the Delhi Lokayukta & Uplokayukta Act, 1995, hereinafter referred to as the 'Act', in respect of conduct of Smt. Ishree Panwar, Ex. Municipal Councillor in the matter of suo-moto cognizance of The Press Report titled "Sting Operation Ke Baad Parishadon Mein Hadkamip" appearing in Nav Bharat Times of 7th December, 2011, and

2. Whereas, the Lokayukta in Para 15 & 16 of his report has held the conduct of the Respondent Councillor as clearly amounting to violating the norms of integrity and good conduct, abuse of position to obtain gain for herself, being actuated in discharge of her functions by improper motives and personal interest and lack of faithfulness in terms of clauses (i), (ii), (iii), and (iv) of sub-section (b) of Section 2 of the Act and recommended issue of a 'censure' to the Councillor for her misconduct as found in the enquiry and also ordered that the evidence emerging in the transcript of the recorded conversation of the meeting of the Councillor and the Reporters, who had carried out the Sting Operation, should be forwarded to the appropriate investigating agency for consideration as to whether it constitutes an offence under the Prevention of Corruption Act and warrants any further action, now

3. I, after carefully perusing the Lokayukta's Report and transcript of the Sting Operation and hearing the Respondent Councillor in the matter on 1st July, 2012, and that there is no record of any demand for illegal gratification by the Respondent Councillor despite repeated efforts of the reporters to put words in her mouth during the Sting Operation.

4. In response to a query as to what would be the total amount for starting construction on the demolished sites, the Respondent Councillor had said that it would depend upon the site and whether the area Junior Engineer would permit such work being started. To another searching query of the reporters as to what would be her share in the total demand, she said that - "let the work start first. If the work starts

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सत्यमेव जयते

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12/7/2012

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राज निवास
दिल्ली-११००५४
RAJ NIWAS
DELHI-110054

ANNEXURE-P-15

Please find enclosed copy of order of the Competent Authority/ Hon'ble Lt. Governor, in terms of 12(2) of Delhi Lokayukta and Upalokayukta Act, 1995, w.r.t report dated 22/03/2012 of the Hon'ble Lokayukta in Complaint No. C-1148/Lok/2011 in the matter of Suo moto cognizance of Press Report Titled "Sting Operation Ke Baad Parshadon Mein Macha Hadkamp" which appeared in the issue of Nav Bharat Times dated 7/12/2011 in respect of Conduct of Sh. Ravi Prakash Sharma, Ex-Municipal Councillor, Respondent, for information.

Encls: As above

Padmini
11/07/12

(Padmini Singla)

Addl. Secretary to Lt. Governor

1. Ppl. Secretary (AR)
2. Dy. Secretary (Admn.) O/o the Lokayukta, G. Okhla, Delhi

U.O.No. 25(6)/12-RN/148/ 11/58

Dated: 2-7-12



F.No.25(6)/12-RN/148/

201
राज निवास
दिल्ली-११००५४
RAJ NIWAS
DELHI-110054
Dated: 11.7.2012

ORDER

Whereas, the Lokayukta has submitted a report dated 22/03/2012 in terms of Section 12(2) of the Delhi Lokayukta and Upalokayukta Act, 1995 vis-a-vis Complaint No C-1148/Lok/ 2011/1783 in the matter of Suo moto cognizance of a Press Report Titled "Sting Operation Ke Baad Parshadon Mein Macha Harkamp" which appeared in the issue of Nav Bharat Times dated 7/12/2011.

Whereas, the Lokayukta in para 23 of the above Report has recommended issue of a Reprimand to the Respondent Councillor i.e. Sh. Ravi Prakash Sharma, for his misconduct as per the finding in the Report.

I have considered the report of the Lokayukta and have also heard the Respondent Councillor on 22/06/2012. I have concluded that the issue of such a Reprimand at present would be inconsequential, since the Respondent is no longer a Municipal Councillor.

Copy of the order be served to all concerned.

Tejendra Khanna
(Tejendra Khanna)
Lt. Governor

True copy

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28.6.2012राज निवास
दिल्ली-११००५४
RAJ NIWAS
DELHI-110054**ANNEXURE - P-16**

Please find enclosed copy of order of the Competent Authority/ Hon'ble Lt. Governor, w.r.t report dated 26/03/2012 of the Hon'ble Lokayukta in Complaint No. C-1144/Lok/2011/1764 in the matter of Suo moto cognizance of a Press Report Titled "Sting Operation Ke Baad Parshadon Mein Macha Hadkamp" which appeared in the issue of Nav Bharat Times dated 7/12/2011 for information.

Encls: As above

Vishwendra
(Vishwendra)

Private Secretary to Lt. Governor

1. Ppl. Secretary (AR)
2. Dy. Secretary (Admn.) O/o the Lokayukta

U.O.No. 25(6)/12-RN/141/ 9465

Dated: 28.6.2012



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राज निवारः
दिल्ली-११००५४
P.A. NIWA:
DELHI-110054

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F.No.25(6)/12-RN/141/ 9464

Dated: 26/12/11

ORDER

Whereas, the Lokayukta has submitted a report dated 26/03/2012 in terms of Section 12(2) of the Delhi Lokayukta and Upalokayukta Act, 1995 in the matter of Complaint No.C-1144/Lok/ 2011/1764 in the matter of Suo moto cognizance of a Press Report Titled "Sting Operation Ke Baad Parshadon Mein Macha Hadkamp" which appeared in the issue of Nav Bharat Times dated 7/12/2011.

Whereas, the Lokayukta in para 26 of the above Report has recommended to issue an advisory to the Respondent Councillor i.e. Sh.Ajit Singh Tokas, cautioning him not to entertain any requests for unauthorized constructions or hold out assurances of any help, reminding him of his public duty to stop and act against unauthorized construction.

I have considered the report of the Lokayukta and have concluded that the issue of such an advisory at present would be inconsequential, since the defaulting Public Official is no longer a Municipal Councillor.

Copy of the order be served to all concerned.

Tejendra Khanna
(Tejendra Khanna)
Lt. Governor

True copy

Substance of Cases under Sub Section 7 of Section 12 of the Delhi Lokayukta & Upalokayukta Act, 1995, in the matter of three inquiries conducted into the conduct of Sh. Subhash Jain, Ex. Councillor, Ms. Anita Kuli, Ex. Councillor and Ms. Sateshwari Joshi, Ex. Councillor.

- (1) Lokayukta conducted a comprehensive inquiry into the conduct of the above Councillors. He found that they had carried out or were party to negotiations demanding illegal gratification for facilitating unauthorized construction. Councillors were found to be in breach of norms of conduct and integrity also.
- (2) The inquiry was conducted giving full opportunity to the Councillor to have their say and lead evidence. During the inquiry proceedings the original recordings of the sting operations were played in the presence of the Respondent, Amicus Curiae and the Counsel for IBN -7 Channel on whose behest the Sting Operation was done. An agreed transcript emerged of the conversations with inputs from all parties. Lokayukta after hearing the parties, recommended 'Censure' to be administered to the three Councillors. Further that the evidence collected and the record be sent for further investigation to the appropriate Investigative Authority, as in his opinion, their acts constituted offences under Section 7, 8 & 9 of the Prevention of Corruption Act. Reasoned Reports were submitted to the Lt. Governor.
- (3) The Lt. Governor did not accept the recommendations for censure and action against the three Councillors on grounds ranging from the Councillors ceasing to hold office, having already suffered public disgrace or having spoken very little or not having demanded illegal gratification having already expressed regret etc

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(4) The Lt. Governor after the receipt of the report purporting to act as per principles of natural justice, issued notice to the Councillors, held further proceedings, heard Councillors and recorded their submissions. The Lokayukta verily believes that after a comprehensive inquiry in which the Public Functionaries are heard and given the fullest opportunity, the Statute neither provides for nor contemplates further hearing by the Competent Authority. The Competent Authority has a mandate to take a decision "on the basis of the report of the Lokayukta together with all the material supplied". The grant of further hearing is not in accordance with the provisions of the Delhi Lokayukta and Upalokayukta Act, 1995. This position is fortified by a written opinion from the former Attorney General for India.

(5) Lokayukta not being satisfied with the non acceptance of the recommendations has submitted "Special Report" in these cases seeking reconsideration of the decision of the Competent Authority, pointing out the legal position and excerpts from the recorded conversations which had possibly escaped the attention of the Competent Authority.

(6) For facility of reference, the reasons as revealed in the orders passed by the Competent Authority for non acceptance of the recommendation and relevant excerpts from the recorded conversation based on which the recommendation of censure was made, are given in seriatim :-

(7) (i) RE : Inquiry against Sh. Subhash Jain order of Competent Authority dated 18.01.2013 :-

The Competent Authority observed that *"the sting operation has already brought disgrace to the Respondent Councillor and that he was not given the ticket to contest the Municipal Elections again."* Besides, the Respondent Councillor had

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also expressed regret for being part of such a conversation before the Lokayukta. Hence, the Competent Authority held that the issue of 'Censure' was uncalled for.

(ii) From the extracts of the admitted conversation of the Councillor with the builder/reporter, quoted hereinafter, it would be seen that it was clear that the proposed construction was unauthorized. The reporters had asked the Councillor whether they can work without a sanctioned plan as they did not want to waste time in getting it sanctioned. In reply, the Councillor said that everything could be managed; however, he suggested, the Junior Engineer and Assistant Engineer must be paid and taken into confidence.

(iii) The transcript shows that the Councillor, of his own volition, expressly and willingly agreed to help the reporters raise unauthorized construction without sanction of plans by assuring personally to talk to the JE and the AE.

Professing innocence before the Competent Authority during the hearing he claimed that being a public person he has to deal with all kinds of persons and it is not possible to evict them even if the conversation is not to his liking. This is wholly irrelevant, as can be seen from the conversation excerpts. Councillor was a willing participant rather encouraging them to start construction without a sanction of plans. The said plea therefore, stands belied.

From the extracts of the admitted transcript of conversation of the Councillor referred to as Respondent with the builder/reporter, it would be seen that it was clear that the proposed construction was unauthorized. The reporters had asked the Respondent whether they can work without a sanctioned plan as they did not want to waste time in getting it sanctioned. In reply, the Respondent said that everything could be managed; however, he suggested, the Junior Engineer and Assistant Engineer must be paid and taken into confidence.

The above is apparent from the following extracts of conversation:-

AS

"Reporter- Kya naksha agar na banwaye kya kaam chal jayega?"

Respondent- Sab kaam ho jata hai.

Reporter- Hum illegal karna chahie haii.

Reporter 1- Hum log matlab.

Reporter - Nakshie washke ke chakkar mein time badh jayega, aapka election nikal jayega toh dikkat ho jayegi. Without naksha banwa ke.

Reporter 2 - Fees denge waise hum log.

Reporter - Ek derh mahina aap maan lijiye naksha pass karane mein.

Reporter 2- Aur tab tak hum do lintel dual denge. Haalaki aisa nahi hai hum utna hi, lekin aap thoda sa who rakhenge toh koi dikkat nahi hogi.

Respondent- AE-JE ko dena padega.

Reporter- JE ko kuch

Respondent- jyada dena padega, kyoki JE aur AE mai wo... toh woh ghunte rehte hain... to unko vishwas me lana padega."

Respondent: Main thoda sa asal mein kya hai ki JE AE ko mujhe bolna padega, main unse khud kahunga, (inaudible sound) aap chulu kara, jagah aapme le li."

- (iv) Excerpts quoted below clearly shows that illegal gratification of Rs. 5 lacs was agreed for Councillor and the tentative amount for the JE was Rs. 16 lacs. It was also agreed that whatever amount the Councillor gets reduced from Rs. 16 lacs of JE, he could keep the same. Reporter/Builder illustrate it by saying that if the sum is reduced to Rs. 10 lacs from Rs. 16 lacs then the Councillor will get Rs. 5 + Rs. 6 lacs, which is accepted by the Councillor who says that Rs. 5 lacs is fixed in any case for him. The above is clear from the following extracts of conversation:-

"Reporter: Haan, ismein se toh chahiye jina kum kara denge, woh aapko de denge.

Reporter 2: Woh maan ke chal rahe hain bhai sahib.

Respondent: Hain, yeh toh aap., puanch lakh jaise ho gaye.

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Reporter: *Haan paanch lakh aapke ho gaye.*

Respondent: *Iss se alag.*

Reporter: *Ji.*

Respondent: *Aur issmein jo main kum kara du.*

Reporter: *Woh aapka.*

Respondent: *Main wohi kah raha hu na. Jitna bhi main kum kara du.*

Reporter: *Aap paanch lakh mein kara dijiye haaki aapka kitna bacha.*

Respondent: *Paanch Lakh toh nahi... Woh bhi kucch..*

Reporter: *10 karwa dijiye, 6,5, 11 ho gaya aapka.*

Reporter: *Haan.. hllkul.*

Respondent: *Woh toh main kehna chahu hu, matlab paanch toh hain hi.*

Reporter: *Haan*

Respondent: *Nahi hoga toh paanch milenge.*

Reporter: *Paanch maankar chaliye.*

This cannot by any token be regarded as an innocent conversation. The transcript shows that the Respondent, of his own volition, expressly and willingly agreed to help the reporters raise unauthorized construction by personally talking to the JE and the A.E.

- (v) It is respectfully submitted that simply because the Respondent has ceased to be a Councillor, it does not imply that he has ceased to be part of public or political life or has become a person of no consequence. Public life, with its vicissitudes, makes it probable that Public Functionaries may be an aspirant for even higher positions. A person who is denied a ticket today may be an aspirant for higher positions. Simply because someone has ceased to hold office is no ground to absolve him of any punishment or penalty.
- (7) (ii) RE : Inquiry against Ms. Anita Koli order of Competent Authority dated 09.11.2012 :-

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(i) The Competent Authority in this case also gave a personal hearing and recorded her plea of being an innocent person who had done nothing wrong. Councillor claimed she had never abused or misused her position to obtain any gratification for herself or for any other person. She had neither sought any gratification nor entertained request for unauthorized construction. She submitted that her husband being a business-cum-financer had talked to the Reporter/Builder who conducted the Sting Operation. The Competent Authority observed that the Councillor had spoken very little during the entire episode and no occasion had she sought any illegal gratification for herself or anybody else. Therefore, held administering 'Censure' uncalled for.

(ii) The above pleas clearly ignore that the entire meeting was held between the Reporters posing as Builders, with the Councillor and her husband being present. She was present throughout and was willing party to the negotiations. Her husband was speaking for her. The entire conversation had nothing to do with the construction business of Councillor's husband. This position is apparent from the following excerpts :-

Reporter: To be frank, thoda su illegal construction kiya hai. Ye mai aapko pehle hi batadu. Jo baat clear karke chale, use accha rehta hai. Toh aap hamari madad kaise kar sakti hai?
Anita: Jaise aap kahe. "

At the reporters/ builders request for help in illegal construction, the Councillor had responded smilingly in affirmative.

(iii) The following excerpts from the transcript are also relevant :-

1) *Reporter: Dekhiye actually hamlog ka budget hota hai, hum budget ke upar nahi ja sakte, harr cheez ka budget hai, tabhi profit niklega. Pata chale ham over budget ho gaye toh haemin banana se kaam*

MS

Karne ka koi faida nahi hoga toh pata chal jaaye na ye certain amount unka hai, J.E ka hai, ya inka hai.

Anita's Husband: *Vo toh phir hula lenge J.E ko.*

2) "Husband: *Apka kya budget hai, mihe batado.*

Reporter: *Aap 10 Lakh mein saare logo ko aap saari zimmedari le lijiye, usmein hi J.E ka bhi hai, aapka apna hai aur bhi hai.*"

3) " Reporter: *Matlab 10 Lakh se hamara badhna nahi chahiye.*

Anita's Husband: *Ho jaega aapka kaam.*

Reporter: *J.E phir ye toh nahi kahega ki ham lenkil ka alog se lenge.*

Anita's Husband: *J.E se ham baat kar lenge, J.E ko denge, jo denge usnese. Jo J.E ka banta hai wo J.E ko denge.*"

(iv) The above contain an offer of money being made to the Councillor. There was no denial either from the Councillor or her husband. They never refused amount being offered by the Reporter/Builders. The Respondent and her husband were interested in taking money and getting the unauthorized construction done by paying part of illegal gratification to J.E. There is no reference to alleged construction business of husband. The total amount was fixed at Rs. 10 lacs with the Respondent's husband assuring that their work would be done.

"Reporter: *Matlab 10 Lakh se hamara badhna nahi chahiye.*

Anita's Husband: *Ho jaega aapka kaam.*"

(v) It is idle to contend that the subject under discussion was not illegal construction of Reporters/Builders but some project of her husband.

(vi) The breach of integrity on the part of the Councillor is evident from the extract given below :-

"Anita: *Bina encroachment ke toh kuch nahi hota.*

Reporter: *Bilkul nahi, bigair illegal ke toh kaam hi nahi chalna phir.*

Anita's Husband: *Thora bhot toh hojata hai, kitna kurega uadmi.*"

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The fact that the Councillor spoke very little and did not ask for any illegal gratification for herself or anybody does not mean that she did not want any gratification for getting the unauthorized construction done as is apparent from the transcript. She spoke through her husband as far as settling amount of illegal gratification is concerned.

(8) (III) RE : Inquiry against Ms. Sateshwari Joshi, order of Competent Authority dated 26.10.2012 :-

(i) The Competent Authority in this case also held further proceedings by granting personal hearing of the Councillor. The Councillor in the personal hearing professed to be a simple person who has never abused or misused her position. Had she been doing so, she claimed she would have possessed assets disproportionate to her legitimate income, which was not the case. The Sting Operation was to defame her and ruin her career. The Competent Authority holds, on the perusal of the transcript, that at no occasion she had asked for any gratification. The Sting Operation had already brought public disgrace to her, therefore, 'Censure' was not called for.

(ii) While it is true, that the Councillor did not initially ask illegal gratification for herself. However, The transcript clearly brings out that when Rs. 5.00 lacs were offered she demanded higher amount by making sign of Rs. 5+2 by her hand and fingers that is '7' to let the Reporter/Builder know the amount that should be paid so that the illegal construction work can be done.

The following excerpts from the transcript are being produced which belie the findings recorded by the Competent Authority, the Councillor extols the reporter/builder to start their work assuring that she would talk to the JE. Councillor is referred to by her name 'Joshi' in the conversation transcript :-

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"Joshi: *Tum apna shuru kar lo mai JE se baat kar lungi.*

Reporter: *Hum phir 5 rakh le aapke liye.*

(Joshi shows 7 through her hand and two fingers)

Reporter: *7 lakh .. kam kar lijiye, aapki wajah se milwane aaye hai bhai sahib. Aap logo ka ..*

Other: *baat kar lijiye dekh lijiye.*

Reporter: *dihwaaye bhai sahib "*

It was seen from the above that the Councillor was demanding Rs. 7.00 lacs instead of Rs. 5 lacs being offered, while reporter/builder implored her to reduce the amount. She specifically agreed to take to the JE to get the illegal construction done, as is apparent from the following excerpts :-

"Joshi: *Kal subah mai tumhe bata dunggi, mai JE ko bhi bata dunggi phir tumhe bata dunggi... Tum shuru kar do kaam, mai JE se baat kar lungi."*

(iii) She also sought favours for a person called 'Chhotu' by first suggesting that he could be associated with the Reporter/Builder and then saying that atleast construction material be bought from him. The entire conversation as given in the transcript belies the position that she was an innocent person who had never abused or misused her position. It shows a person who is accustomed to getting illegal gratification or unauthorized construction by the ease with which she carried out the conversation.

(9) The issuance of a 'censure' is recognized internationally as an aspect of the right of the Ombudsman to censure an authority or public official, who has committed acts of misconduct or whose actions are found to be erroneous or improper. The censure and its issuance and consequent publicity serves a useful public purpose, i.e. building up moral norms and values, a code of conduct which helps others to follow suit and dissuades similarly placed in public life from committing the same conduct. Besides, it also helps in ushering in a self cleansing process and motivates Public functionaries to

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exercise self restraint before engaging in activities, which defile the integrity of the office.

(10) The Sting Operation in these cases served an important public cause in exposing the nexus between the building mafia and 'public functionaries' who, far from containing and discouraging the menace of unauthorized construction in the metropolis, are breeding and supporting it for corrupt and improper motives. It is the duty of MCD Councillors and all public spirited citizens to curb the increasing menace of illegal construction rather than encouraging the people to breach or circumvent the law. Hence, these cases do not deserve any leniency having regard to their conduct as revealed.

Mannohan Surin
(Justice Mannohan Surin)
Lokayukta

Date: 1st March, 2013

Relhu

True Copy

In the matters of Ms. Manju Gupta and Ms. Beena Thakuria, ex-municipal Councillors

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1. In inquiry reports submitted in the Sting Operation cases of Ex-Municipal Councillors Ms. Manju Gupta and Ms. Beena Thakuria, Lokayukta held the allegations of supporting proposals of unauthorized constructions for illegal gratification, being established against them. Further, breach and violation of the norms of integrity and conduct was also found to be established against them. Accordingly, it was recommended to His Excellency, the Lt. Governor to administer a 'censure' to both the Councillors.
2. The Lt. Governor afforded opportunity of personal hearing to the Councillors before taking a final view in the matter. Councillors professed their innocence before the Lt. Governor and claimed to have been falsely trapped. The Competent Authority in its order dated 24-12-2012, in the case of Ms. Manju Gupta held that no demand for money had been made by her or her husband in the entire conversation. Further the Councillor had spoken very little. On no occasion, she had sought illegal gratification for herself or anybody else. It was therefore, held that "Censure" was not called for. Not being satisfied with the above decision of the Competent Authority, Lokayukta submitted Special Report dated 8/3/2013 in this case and dated 14th March, 2013, in the case of Ms. Beena Thakuria, where also the Competent Authority held that "Censure" was not called for. The Competent Authority observed that the sting operation had already served its intended purpose and had brought disgrace to the Councillor. Further, she had not been given a ticket for contesting Municipal Elections. Therefore, issue of "Censure" was not called for.
3. The Councillor Ms. Manju Gupta claims she was only hearing the grievance of a person, who wished to construct some houses. This stands fully belied by the transcripts which shows continued involvement and participation directly as well as through her husband in the conversation or negotiations.

It is common knowledge that often concerned "Public Functionary" does not himself or herself directly talk or participate in such negotiations. This is done by spouse or representatives. The only requirement is that a person representing the "Public Functionary" should be doing so with the knowledge and consent of the Public Functionary.

4. It is considered necessary to quote some of the extracts from the agreed transcript which either not been noticed or brought to the attention of the Competent Authority.

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"Reporter: Sir se baat karni hai

Manju Gupta: Aap inhi se kar leejiye He is my husband."

The above shows specific consent and authorization.

5. Conversation was commenced with the Councillors /husband and continued with another person Inspector Sharma, who had brought the reporter/builder and introduced them to the Councillor. Councillor's participation is evident by her interjection, such as location of a particular house, i.e. "Pahariwala or no". After location is identified, she tells reporter 'bataiyea (tell)'. During conversation Inspector Sharma points out that reporter/builder wanted to meet and talk to the Councillor directly to which Ms. Manju Gupta responds: "Nahi, main thora aise karungi jo yeh Arvind he na aap kuch bhi kaho, Arvind se kaho". This shows she further wanted to delegate the bargaining or settlement to another person named "Arvind". Here it may be noted that when questioned by the Lokayukta as to who was "Arvind", she evasively replied that she did not recall knowing any "Arvind". Similar denial mode was adopted by her for Insp. Sharma which raises grave doubts and suspicion. It negates her professed innocence and reflects on her integrity and conduct. Not only this, Councillor held out a categorical assurance to the reporter/builders, "Yahaan par koi dikkat nahi ayegi (there will be no problem here). She further reiterates "Nahi-Nahi, koi dikkat nahi ayegi. Aap chinta mat keejiye, mein hun, koi dikkat nhi aayegi".

6. When the reporter/builder says that they have suffered in the past, she says that "Aap.....mein... koi dikkat nahi hogi... chinta mat karo... mein aapko bata doongi bolna kya hein... theek hal mei unse baatkar loongi", i.e. holding out assurance of talking to the J.E.

7. Councillor makes it clear that unauthorized constructions were under discussion when she says "There will be no problem from MCD. However, DDA and police will have to be tackled by you". This is reiterated by Councillor's husband and Insp. Sharma that police will have to be tackled separately by the reporter/builders. Thereafter the reporter/builders say that they will settle with the police, and enquire how much would be the money involved otherwise. Councillor's husband says, "whatever it is, will be told by him (reference being to Insp. Sharma) "Jo bhi ho who yeh bata denge". The reporter/builder then says that Inspector Sharma has quoted a

very high amount, i.e. Rs. 3.00 Lac which is rather high. The following aspect of conversation is relevant:

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Reporter- 3 lakh.

Husband of Manju Gupta-Haen

Insp. Sharma- Bata diya aapko"

Insp. Sharma-Toh ab bata diya aapko kitna bata diya ab kya baat...pehle baat huyi toh...maine aapko bola bhi tha ki wo baat karenge nahin. Apni baat karenge hi nahin..Paise ki toh karte nahin hein..woh mere pe dal dete hein. Toh jo karenge main hi karta hoon.. Woh kuch karte hi nahi hein final."

8. In nutshell Inspector Sharma says that Councillor does not directly demand it is he who settles. From the foregoing, it is clear that Councillor was a willing party, her husband was carrying on the talk and negotiations, on her behalf. There was another representative, Insp. Sharma, who was the person, who had brought the reporter/builders. Secondly, on a complete perusal of the transcript, which is fairly long, it is clear that Ms. Manju Gupta, Councillor, was a willing participant. She assured reporter/builders that there will be no difficulty in the unauthorized construction and she would take care of the MCD. Her husband and Insp. Sharma on her behalf had negotiated a sum of Rs. 3.00 Lac which they were not willing to reduce.

9. The transcript of conversation leaves no doubt that this was a gross act of misuse and abuse of power and position and depicts her clout over the municipal staff. There is not even a whisper or any claim by the reporter/builders of the construction being pursuant to a sanctioned plan.

10. Similarly, the plea that the area falls under DDA, where MCD may not do anything to do, further aggravates the position as it brings in an element of 'deception' by projecting that the matter would fall under MCD's jurisdiction and of tackling MCD, if it actually was under DDA.

11. Finding by the Competent Authority, that Councillor did not speak much or herself demand illegal gratification ignore the quoted extracts from the transcript that the Councillor had herself asked the reporter to talk to her husband who was negotiating on her behalf. Further the final settlements at one stage was sought to be left by Councillor on her representative 'Arvind'. Even though, she specifically desired that everything should be told to Arvind. She later retracted and even denied knowing 'Arvind', as in the case of Insp. Sharma who had brought and introduced her

to the reporters. Her husband and Inspt. Sharma settle the amount of illegal gratification on her behalf. The assurances of there being no problem and handling JE and MCD are given by personally by the Councillor for unauthorized construction.

Re: Smt. Beena Thakuria, Municipal Councillor

12. Ms. Beena Thakuria, pleaded before the Competent Authority is that she was a first time elected Councillor. Many people used to come to her with their grievances. She used to help them to the extent possible within the given legal and administrative framework. She claimed that she had been falsely trapped because of her simplicity and innocence. The Competent Authority observed that sting operation had already served its intended purpose and had brought disgrace to the Councillor. She had not been given a ticket for contesting Municipal Elections. He therefore held that issue of "Censure" was not called for in this case.

13. It is pertinent to notice that findings of allegation of demanding illegal gratification for unauthorized construction are not disputed.

14. Some extracts from the transcript reflecting negotiations for illegal gratification, brazen manner/demand etc. are being produced.

"Beena : Agar aapko kaam mil raha hai toh woh batao mujhay, kahan kahan aapko kaam mil rahe hain. Uskay liye jaise help hogi main karungee. Theek hai na."

"Beena : JE toh kher hamari sehmati key bina kuch nahin kar sakta hain. Lekin ye hain ki matlab JE bhi hamarey kehna se chalega. Adhikar toh JE ko itna time nahi hota hein jitna (Beldar) ko time hota hain.... woh kutay ki tarah ghumta hai jaisay kutay ko haddi nahi milti."

Beena : Meri sehmati se aayaga JE to Mai uskay saath discuss kar lungee mai bethkarke. Dekho uska bhi moonh band karna padayga aur uska bhi moonh band karna padayga. Lay bhaiya yeh hai aur chutti karo."

"Reporter: Fir bhi...JE se kam rakhe aapka ya jyada?"

Beena : Ha ha sambhalun mai, bhugtu mai....saari cheezo ko cooperate karke chalun mai...aur mujhe hi tum fatte laga rahe ho." (I manage, I suffer and coordinate everything and you want to take me for a ride).

The aforesaid extracts completely negate the claim of simplicity and her innocence. In fact, her action was so brazen that she vehemently protested to ensure that she does not get less than JE. She also made it clear

that elections were not fought without money and she need money. Here is a worldly-wise Councillor, who is negotiating with impunity illegal gratification for herself.

15. High level of sincerity, integrity and honesty by rising above personal interests, favouritism, nepotism and by avoiding any pecuniary or other benefits which are not due, are expected from Public Functionaries, such as Councillors, who have Inter-action with the members of the public. Public functionary has to set an example of good governance, being the holder of public trust. Here are the Councillors who not only support illegal activity but also agree to take gratification in lieu of such support.

16. Regarding the observations by the Competent Authority that having suffered public disgrace and not having received party ticket, therefore, the administration of 'Censure' was uncalled for, it is respectfully submitted that apart from violation of norms of integrity and conduct expected of 'Public Functionary', the record of transcripts in both the cases disclose offences under Section 8 and 9 of The Prevention of Corruption Act, in as much as, the Councillors assure to exercise personal influence over the JE for getting unauthorized construction done. They agree to accept illegal gratification. It is further submitted that the case would also fall under Section 13(d)(ii) of The Prevention of Corruption Act, whereby a Public Servant or "Public Functionary" by abusing his position "obtains for himself or for any other person any valuable things or pecuniary advantage". It is thus not necessary for the Public Functionary to obtain any illegal gratification or advantage for himself or herself. It would suffice if by abuse of position or illegal means, advantage is obtained for any other person, say a contractor. Such conduct would fall within the offence of "criminal misconduct" under Section 13(d) (ii) of The Prevention of Corruption Act, 1988.

Processing of Report by the Competent Authority:

17. It is also submitted that the processing of the reports by the Competent Authority has not been in accordance with law. The Delhi Lokayukta and Upalokayukta Act, 1995 does not provide for "further inquiry" or hearing as has been done by the Competent Authority in the instant cases. Lokayukta conducts a comprehensive inquiry wherein all the parties are heard and given opportunity to have their say. The statute requires the Competent Authority to examine the report and intimate the action proposed to be taken as per the recommendations within 90 days "on the basis of the

report". The Act does not contemplate either a further enquiry or hearing to be granted to the indicted person.

Without prejudice to the above contention if at all the Competent Authority was to embark upon the course of hearing the indicted persons then the Amicus Curiae, who acted as a friend of the Court, should also have been given notice to bring to the attention of His Excellency the relevant facts; the incriminating parts of the conversation and salient aspects, justifying the recommendation of censure.

18. The issuance of a 'Censure' is recognized internationally as a aspect of the right of the Ombudsman to censure an authority or public official, who has committed acts of misconduct or whose actions have been found to be erroneous or improper. The censure and its issuance and consequent adverse publicity serves a useful public purpose i.e to build up moral norms and values, a Code of Conduct, which helps others to follow suit and dissuades similarly placed people in public life from committing the same misconduct. Besides, it also helps in ushering in a self cleansing process and motivates Public Functionaries to exercise self restraint before engaging in activities, which defile the integrity of the office.

19. Moreover for maintaining probity in public life, it is essential that the constituents are also made aware of the misconduct of their respective representatives which is in consonance with their right to receive information about the deeds of public representatives. Not fighting an election does not mean retirement from politics or public life. Rather experience has shown, such people coming back with vengeance. Large scale of rampant corruption among public representatives tends to weaken the polity and damage the supreme importance of law governing the society. There is need for rejuvenation of value based society

20. As noticed earlier, the purpose of 'censure' is to make clear that the society denounces these types of misconduct and to deter other persons from committing similar misconduct.

21. It is therefore submitted that such course of brazen misconduct does not deserve any leniency or sympathy by observing that a denial of ticket in the election and the disgrace faced served the purpose of "Sting Operation", so as to negate the recommendation of 'Censure'. Such misconduct in fact deserved that the constituents and electorate of the concerned 'public functionaries' are fully informed about their misconduct and indictment so that the elected representatives are chosen and elected from those who do not have such degradation or depravation.

Date: 26th March, 2013

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HEMANT

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Substance of case under Sub Section 7 of Section 12 of the Delhi Lokayukta & Upalokayukta Act, 1995 (herein after referred to as the Act) in the matter of inquiry conducted u/s 7 read with Section 2 (b) of the Act, in respect of the conduct of Smt. Jaishree Panwar, Ex-Municipal Councillor and former Mayor of Delhi wherein a Special Report has been submitted u/s Sub Section 3 of Section 12 of the Act to His Excellency, the Lt Governor, Delhi.

(1) An inquiry was conducted u/s 7 read with Section 2 (b) of the Act into the conduct of Smt. Jaishree Panwar, Ex-Municipal Councillor and former Mayor of Delhi. She was caught in a Sting Operation, with two Reporters who approached her posing as Builders for help in carrying out unauthorized construction.

(2) Full opportunity was given to the parties to have their say. Recordings done during the Sting Operations were played and objections thereto from the Respondent, were heard and decided till an agreed Transcript of the entire conversation emerged.

(3) Lokayukta found Respondent willingly agreed with Reporter/Builders to act as a facilitator with the Junior Engineer, MCD for carrying out unauthorized construction upon promised illegal gratification. Lokayukta taking note of the menace of the unauthorized construction in the Metropolis of Delhi, with the complicity of municipal staff and involvement of city fathers in it held, the conduct of the Councillor to be in breach of her public duty to discourage and stop unauthorized construction, rather than to encourage it.

(4) Considering the extracts of the admitted conversation of the Respondent Councillor with the Reporter/Builders, the following position clearly emerged :-

- (i) The proposed construction project of the Reporter/Builders was for unauthorized construction without a sanctioned plan.
- (ii) Respondent Councillor expressed the difficulties in carrying out unauthorized construction on account of the posting of a strict Executive Engineer, who was not allowing any

unauthorized constructions in the area and many demolitions had taken place.

- (iii) Rebuilding on demolished unauthorized construction had not commenced.
- (iv) Respondent Councillor advises Reporter/Builders to wait till work would start on the demolished sites before taking up their new project for unauthorized construction.
- (v) Reporter/Builders want the Councillor to handle everything JE, all municipal staff, police etc. and want to know the amount required therefor. Ajay Properties had quoted an amount of Rs. 8.00 to 10.00 lacs and Reporter/Builders wanted to know if that much would be required. The reporters then say that they have been told that Rs. 5.00 Lacs would be her share i.e. of Respondent, to which she answers in a manner so as to suggest that she does not seek much for herself and she would see about it.

Further, that the builders were from her own native place Baraut, UP a bonding and therefore, a kind of reassurance flows regarding reasonableness of amount. Here, she emphasizes that let the work start and her main objective is that unless the work starts and goes on, what was the point of talking?

- (vi) Respondent Councillor only wants them to construct when she is sure there would be no demolition later. Clear confirmation of construction being unauthorized.
- (vii) Respondent Councillor is more than eager and willing to facilitate the unauthorized construction, through a willing JE, due to the self professed closeness on account of both belonging to Baraut i.e. from U.P.

(5) In the entire transcript, Respondent does not decline the offer of money, but does not want to commit to any amount and leaves it to be settled. This is because of not knowing amount required for JE. It indicates her confidence that once the construction begins the

Reporter/Builders cannot defy her. Hence there was no need for a prior commitment. Being in control over the construction in the area through the J.E. Her clout is indicated by her saying that there was no need to talk to anyone else and they should talk only to her and their interests would be well protected.

The above position is clearly borne out from the extracts of conversation being produced for reference.

(6) The transcript of the conversation needs to be read as a whole. The Competent Authority appears to have proceeded on the promise that query of amount required was in the context of cost of starting construction on demolished sites rather than the amount of illegal gratification required to be paid to the JE, municipal staff, police and the share of the Respondent Councillor, for unauthorized construction.

7. The Competent Authority has observed "In response to a query as to what would be the total amount required for starting construction on the demolished sites, the Respondent Councillor said that it would depend upon the site and whether the area Junior Engineer would permit such work being started. To another searching query as to what would be her share in the total demand, she said that 'let the work start first. If the work starts well and good. What is the point in talking if the work does not start.'"

8. The Hon'ble Lt. Governor further observed that the "Respondent Councillor did not ask for any personal gratification for any such work. She had politely, courteously and diplomatically assured the reporters posing as builders to facilitate their work with the area Junior Engineer." However, what appears to be over looked is that the assurance being given by the Respondent was in respect of unauthorized construction being facilitated through JE.

(9) It is clear from the transcript that the Respondent Councillor repeatedly says that she would not like a situation where after building the construction gets demolished. Once she takes a responsibility, she would feel very bad if it is later demolished. She also explains that she has got rid of the lawyer problem i.e the difficulties being caused where lawyer was lodging complaints against unauthorized

construction and making it difficult to construct. She also recognizes that at times some of JEs do 'loot'. Hence, reference is clearly to unauthorized construction.

10. The reference to commencement of construction on demolished sites in the conversation in the context of right timing for starting unauthorized construction project and not the amount required. Moreover, once the Hon'ble Lt. Governor reaches the conclusion that she politely, courteously and diplomatically assured the reporters posing as builders to facilitate their work with the area Junior Engineer, undoubtedly the work in question is carrying out of unauthorized construction. The courteous and diplomat assurances or facilitating unauthorized construction itself amounts to the breach of norms of conduct and integrity expected of a Public Functionary and lack of faithfulness.

(11) (i) To put the matter beyond any pale of doubt some of the extracts in vernacular, are being reproduced :-

Reporter- Hum log site shuru karna chah rahe the. Aapko kya lagta hein, ki shuru ki juayen, ya nahin?

Councillor- Dekho abhi to mein bilkul mana karoongi, kyo ki ek toh Ex. Engineer aisa aagaya hein. Aur bhi yeh sari jagah rok rahe hein. Nahi, pahale dekho, mein mana nahi karti kyo ki ab jo building tooti woh bhi nahi hogi start. Agar who start hogi toh mein aapko kah doongi, han bhaiya ab aap bhi karo.

Reporter- (Referring to Ajay Properties) Woh 8-10 Lac ka kharcha bata rahe the. Hum toh dar gaye. Hum ne kaha Bhai koi jinmedar aadmi ho toh use mila jayen.

Councillor- Ha toh koi aisi chinta ki baat nahin hein. Agar matlab mere se baat karte rahu. Jaise hi kaam shuru hoga toh hum kah denge aapko. Kisi ko kehne ki, baat karne ki jaroorat nahi hein.

(ii) This shows the readiness and willingness of the Respondent Councillor to facilitate unauthorized construction by saying that they should talk only to her and they should inform them when the work begin.

"Bhai JE ka mujhe pata nahin. Tab tak mein kaya bataun. Agar mein kal ko maan loongi aur agar woh JE.. depend kargea.. JE hi humara apna theek aagya, hum kahenge tumara bana sakte hein, toh mein haan kahoongi".

This shows her willingness to start and arrange the unauthorized constructions again to speak and contact the concerned JE at the opportune time.

(12) The Competent Authority observed that "there is no recording of any demand for illegal gratification by the Councillor despite reported efforts of the Reporter/Builders to put words in her mouth during the Sting Operation."

The above overlooks that for offences to be made out under Section 7, 8 & 9 of the Prevention of Corruption Act, 1988, is not required to be made a specific demand for illegal gratification by the accused. It is not the requirement of law that actual demand should be made or actual consideration should pass. A mere promise to pay in future for an act to be done would come within the ambit of the offence.

(13) The reporter/builders are offering to pay amounts for facilitating unauthorized construction. The exact amount to be paid has not been settled because of not knowing the amount required for the JE and the kind of JE who would come. The Respondent accordingly says that let the work first began and she would then decide about her share as they belong to the same province and are close to her.

The above, analysis makes out a clear case for the recommendation of the 'Censure' as also reference of the evidence to the 'Appropriate Authority, for consideration and evaluation since prima facie, ingredients of Section 7, 8 & 9 of the Prevention of Corruption Act, 1988, appear to be substantially satisfied.

14. It may also be noted that the misconduct does not come to an end with ceasing to be in office. The issuance of "censure" for the act of misconduct serves useful public purpose in building up moral

norms and values helping others to follow suit. Even the efficacy of censureship does not recede by the Councillor ceasing to be in office. Censure serves a twin purpose; firstly it makes the Councillor aware that this type of conduct would not be countenanced, secondly public may become aware of the conduct of their representatives. It is possible in public life that Respondent may be an aspirant for higher positions. Moreover, in my view the processing of the recommendation has not been in accordance with the provisions of the Act, in as much as the Competent Authority is required to take "a decision on the recommendation in terms of sub Section 2 of Section 12 only "on the basis of the report" submitted. There is no further enquiry or hearing contemplated under the Act. The Report of the Lokayukta based on the enquiry report includes pleadings, evidence recorded, legal submissions, analysis and the recommendations.

In the light of the foregoing, a prayer has been made to His Excellency, the Lt. Governor to reconsider and review the order dated 17th July, 2012 and accept the recommendations made in para 15 and 16 of the Report dated 25.7.2012 and in case he is of the view that the order dated 17th July, 2012 does warrant any reconsideration then the Special Report with an explanatory note be laid before the Legislative Assembly in terms of section 12 of Delhi Lokayukta and Upalokayukta Act, 1995.

Manmohan Sarin
(Justice Manmohan Sarin)

Lokayukta

Date: 9th August, 2012

Kekha.

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Substance of cases, under Sub-section 7 of Section 12 of the Delhi Lokayukta and Upalokayukta Act, 1995, in the matter of Sh. Ajit Singh Tokas and Sh. Ravi Prakash Sharma, Ex. Councillors.

1. In two Inquiry reports, submitted in the sting operation cases of Ex-Municipal Councillors Sh. Ajit Singh Tokas and Sh. Ravi Prakash Sharma, Delhi Lokayukta held the allegations to be established and recommended a "Caution" to be administered to the former and a "Reprimand" to the latter.
2. In case of Ajit Singh Tokas, Lokayukta found that though there was no demand for illegal gratification by or promise of payment of consideration to the Councillor, he nevertheless went into a detailed discussion and evaluation of the proposed project and its profitability, knowing that the construction was unauthorized and without a sanctioned plan. He discussed, inter alia, strategy of getting a building declared dangerous, having it demolished and raising new desired construction, bribes being asked by Police etc. It was, therefore, recommended to His Excellency, the Lt. Governor, that an "Advisory" be issued, cautioning him not to entertain any request for unauthorized construction or to hold out any assurance of help, reminding him of his public duty to act against unauthorized construction.
3. In the case of Ravi Prakash Sharma, the Councillor was found to have offered to act as a facilitator to carry out unauthorized construction, promising to handle the J.E. of the MCD. The Councillor had assured a reasonable deal to the builders/reporters for consideration to be agreed and paid later, knowing fully well that constructing a building without sanctioned plan was in contravention of the provisions of Delhi Municipal Corporation Act.
4. Detailed inquiries were held with full opportunity to the parties to lead evidence and have their say. Inquiry reports give reasons for the findings given and recommendations made. The inquiry reports were sent to the Competent Authority for processing and further action. Lokayukta maintains that the Competent Authority, under the statute, is only required to take a decision "on the basis of the report"

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~~emphasis supplied~~) and nothing more, i.e. without any further inquiry or hearing by the Competent Authority, under Sub Sec.2 of Sec. 12 of the Delhi Lokayukta & Upalokayukta Act, 1995.

5. However, the Competent Authority has been issuing notices to the public functionaries, granting them hearing and calling for their comments or the concerned Government Department and then taking a decision on the recommendations made. The above difference in perspectives and interpretation of the provisions of the Act regarding processing of reports and recommendations would ultimately require judicial resolution and determination.

6. Both the recommendations of the Lokayukta were sent to the Competent Authority, in this case, the Hon'ble Lt. Governor, for consideration. The Hon'ble Lt. Governor did not express any disagreement with the findings or conclusions reached in both the above cases.

7. However, as regards the Advisory to be issued in the case of Ajit Singh Tokas, the Competent Authority observed:-

"Issuing of such Advisory at present would be inconsequential, since the defaulting Public official is no longer a Municipal Councillor."

Similarly, in the case of Ravi Prakash Sharma, the Competent Authority observed:-

"Issuing of such reprimand at present would be inconsequential since the respondent is no longer a Municipal Councillor"

8. In both the above cases, the Competent Authority has not acted on the recommendations only because the Public Functionaries have ceased to hold office. This raises a seminal issue of importance, namely, "Is a public functionary not to be proceeded against despite being found guilty of misconduct because he has ceased to hold Office?". The decision of the Hon'ble Lt. Governor in the above cases appears to be answering the above issue in affirmative.

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9. Administering caution, censure or reprimand by the Ombudsman, to an authority or public functionary who has committed misconduct or whose actions have been found to be improper or erroneous, is internationally recognized. Caution, censure or reprimand and its issuance and consequent publicity serves a useful public purpose of building up core moral values and norms to be followed. It also dissuades others similarly placed in public life from committing misconduct.

10. Besides, non-acceptance of recommendations in such cases, simply on the ground that the public functionary guilty of misconduct has ceased to hold office, may give a misleading impression regarding the will and commitment to bring in good governance and probity to eradicate corruption.

It also helps in ushering in a self-cleansing process and motivates public functionaries to exercise self-restraint before indulging in activities which defile the integrity of their office. The efficacy of censure, reprimand or caution does not recede by the incumbent ceasing to be in office. It serves a twin purpose: Firstly, it sends a message that this conduct would not be tolerated or countenanced in future. Secondly, the constituents are made aware of the conduct and activities of their representatives, thereby fulfilling their legitimate aspiration of the "right to know" about the actions and conduct of those holding positions of public trust. Ceasing to be a Councillor does not imply renunciation of public or political life or that the person is now of no consequence. The political and public life, with its vicissitudes, has often shown such persons to have aspirations for even higher positions.

11. The non-administering of caution/censure on the sole ground of the person ceasing to hold office also militates against statutory provision, namely, section 8(b) of the Act which provides that an inquiry for misconduct can be initiated up to 5 years from the date of the alleged misconduct. As a fortiori, when action for misconduct can

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be inquired up to 5 years from the date of misconduct, the related inquiry and punishment may even come much later. In the instant case, inquiries were completed in 3-4 months and the misconduct is fresh in public memory.

12. The sting operations served a public purpose in exposing the nexus between Building mafia, City fathers, Municipal officials and Police in the menace of unauthorized construction. Acceptance of the recommendations would contribute to the above exposure and containing the menace of unauthorized construction.

13. Moreover, Ravi Prakash Sharma had been earlier proceeded against for misconduct for sealing and locking, denying ingress and egress to the office of the Municipal Deputy Commissioner in case No. C-304/Lok/2010. In that case, Councillor had expressed his regret for his actions and given assurance for future conduct. The present case has shown that the earlier regret had not had the desired effect. Consequently, it would not be in public interest if he is let off without even a "reprimand".

14. The acceptance of recommendations would only contribute to good governance, probity and ushering in corruption free public life.

15. The Lokayukta has submitted the Special Reports under section 12(6) of the Act, praying to the Hon'ble Lt. Governor to reconsider his decision of not acting on the recommendations, failing which the Special Reports with explanatory memorandum have been requested to be laid before the Legislative Assembly, as per the statute.

Dated: 19th July, 2012

Mannohan Sarin
(Justice Mannohan Sarin)
Lokayukta

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IN THE HIGH COURT OF DELHI AT NEW DELHI
EXTRA ORDINARY CIVIL WRIT JURISDICTION
CIVIL MISC. APPLICATION NO _____ OF 2013
IN
WRIT PETITION (CIVIL) NO. _____ OF 2013

IN THE MATTER OF:

Common Cause

...Petitioner

VERSUS

Shri Subhash Jain, Ex- Councillor & Ors.

...Respondents

APPLICATION UNDER SECTION 151 OF THE CIVIL PROCEDURE FOR STAY/EX-PARTE INTERIM ORDER DIRECTING STAY OF THE ORDERS PASSED BY THE LIEUTENANT GOVERNOR AND A DIRECTION THAT THE RECORD OF THE CASES BE SENT TO THE POLICE COMMISSIONER, DELHI FOR IMMEDIATE FURTHER ACTION

TO

THE HON'BLE CHIEF JUSTICE
AND HIS COMPANION JUSTICES OF THE
HON'BLE HIGH COURT OF DELHI AT NEW DELHI

The humble petition of the Petitioner above named

MOST RESPECTFULLY SHOWETH:

1. The Petitioners have filed the accompanying Writ Petition under Article 226 of the Constitution of India seeking setting aside of the orders passed by the Lieutenant Governor being the Competent Authority under the Delhi Lokayukta and Upalokayukta Act. in the cases of Shri Subhash Jain (dated January 18, 2013), Ms. Anita Koli (dated November 9, 2012), Ms. Shateshwari Joshi (dated October 26, 2012), Ms. Manju Gupta (dated December 24, 2012), Ms. Beena Thakuria (March 4, 2013) Ms. Jaishree Panwar (dated July 18, 2012) Shri Ajit

Singh Tokas (dated June 26, 2012) & Shri Ravi Prakash Sharma (dated July 11, 2012) rejecting the recommendations contained in the reports of the Hon'ble Lokayukta dated of Shri Subhash Jain (dated August 27, 2012), Ms. Anita Koli (dated June 29, 2012), Ms. Shateshwari Joshi (dated June 29, 2012), Ms. Manju Gupta (dated July 10, 2012), Ms. Beena Thakuria (August 3, 2013) Ms. Jaishree Panwar (dated May 25, 2012) Shri Ajit Singh Tokas (dated March 26, 2012) & Shri Ravi Prakash Sharma (dated March 22, 2012) are illegal, null, void and *ultra vires* the Constitution of India

2. The Petitioners submit that on account of the impugned orders passed by the Lieutenant Governor, the direction issued by the Hon'ble Lokayukta directing that the entire record pertaining to the cases of the Respondent Municipal Councillors be forwarded to the Commissioner of Police for consideration, evaluation and further action in accordance with law has been set aside.
3. The Petitioners submit that the finding of the Hon'ble Lokayukta is that *prima facie* offences under *inter alia* the Prevention of Corruption Act are made out in the cases of the Respondent Municipal Councillors. However, on account of the impugned order passed by the Hon'ble Lokayukta, no further action has been taken in this case. It is submitted that on account of the same, prejudice is being occasioned to the public at large as

the process of investigation of the crimes committed is being unconscionably delayed.

4. It is submitted that no prejudice will be occasioned to the Respondent Municipal Councillors by staying of the order of the Lieutenant Governor to the extent it prevents forwarding of the record of the cases to the Commissioner of Police, New Delhi and the same will in fact enable speedy conclusion of investigation by the competent authorities into the criminal misconduct of the Respondent Municipal Councillors.
5. The Petitioners submit that they have a strong prima facie case.
6. The present application is made bonafide and in the interest of justice.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- a) pass an ex-parte ad-interim/interim order staying the direction in the impugned orders to the extent they restrain forwarding of the entire record pertaining to the cases of the Respondent Municipal Councillors to the Commissioner of Police for consideration, evaluation and further action in accordance with law.
- b) direct that pending a final order in the instant case the entire record entire record pertaining to the cases of the Respondent Municipal Councillors to the Commissioner of Police for

consideration, evaluation and further action in accordance with
law

- c) pass any such other further order/orders which this Hon'ble
Court may deem fit and proper in the interest of justice.

FILED BY

(MAHESH AGARWAL)/ (RISHI AGRAWALA)/
(NEEHA NAGPAL)
ADVOCATE FOR THE PETITIONER
AGARWAL LAW ASSOCIATES
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NEW DELHI
FILED ON:

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IN THE HIGH COURT OF DELHI AT NEW DELHI

PUBLIC INTEREST LITIGATION

C.M. APPLN. NO _____ OF 2013

IN

WRIT PETITION (CIVIL) NO. _____ OF 2013

IN THE MATTER OF:

COMMON CAUSE

THROUGH ITS DIRECTOR,

MR. KAMAL KANT JASWAL

5, INSTITUTIONAL AREA, NELSON MANDELA MARG

VASANT KUNJ, NEW DELHI 110070

...THE PETITIONER

VERSUS

1. SHRI SUBHASH JAIN, EX- MUNICIPAL COUNCILLOR

2. MS. ANITA KOLI, EX- MUNICIPAL COUNCILLOR

3. SMT. SHATESHWARI JOSHI, EX- MUNICIPAL
COUNCILLOR

4. SMT. MANJU GUPTA, EX- MUNICIPAL COUNCILLOR

5. SMT. BEENA THAKURIA, EX- MUNICIPAL COUNCILLOR

6. SMT. JAISHREE PANWAR, EX- MUNICIPAL COUNCILLOR

7. SHRI RAVI PRAKASH SHARMA, EX- MUNICIPAL
COUNCILLOR

8. SHRI RAJESH SINGH TOKAS, EX- MUNICIPAL COUNCILLOR

- 9. LIEUTENANT GOVERNOR OF DELHI
- 10. GNCTD THROUGH ITS CHIEF SECRETARY
- 11. NORTH DELHI MUNICIPAL CORPORATION
- 12. SOUTH DELHI MUNICIPAL CORPORATION
- 13. EAST DELHI MUNICIPAL CORPORATION
- 14. POLICE COMMISSIONER, DELHI

THE RESPONDENTS

AFFIDAVIT

I, Kamal Kant Jaswal, aged about 68 years, S/o Sh. Ambica Prasad Jasvaul, resident of B-34, Ground Floor, Geetanjali Enclave, New Delhi, do hereby take oath and state as under:-

- 1) That I am the Authorized Representative of the Petitioner organization in the above case and well conversant with the facts of the case and am duly authorized to depose to this affidavit.
- 2) I have read and understood the contents of the accompanying application for ad-interim / interim relief and the same are true and correct to the best of my knowledge and belief, no part thereof is false and nothing material has been concealed therefrom.

Kamal Kant Jaswal
DEPONENT

Kamal Kant Jaswal
Director, COMMON CAUSE
5, Institutional Area,
Nelson Mandela Road, Vasant KUNJ,
New Delhi-110029

VERIFICATION:

I, the above named Deponent, do hereby verify the contents of the above affidavit are true and correct to the best of my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on this _____ day of _____, 2013.

Kamal Kant Jaswal
DEPONENT

Kamal Kant Jaswal
Director, COMMON CAUSE
5, Institutional Area,
Nelson Mandela Road, Vasant KUNJ,
New Delhi-110029

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IN THE HIGH COURT OF DELHI AT NEW DELHI
EXTRAORDINARY WRIT JURISDICTION
CMA NO. _____ OF 2013

IN
WRIT PETITION (C) NO. _____ OF 2013

IN THE MATTER OF:

Common Cause

...Petitioner

Versus

Shri Subhash Jain, Ex- Councillor & Ors.

...Respondents

AN APPLICATION UNDER SECTION 151 OF CPC FOR EXEMPTION
FROM FILING CERTIFIED/ORIGINAL AND TYPED/ DIM COPY OF
THE ANNEXURES

MOST RESPECTFULLY SHOWETH:

1. The Present Petitioner is a public interest organization of long standing, which has been campaigning for the establishment of a credible institutional framework for combating corruption in public life. The Petitioner has been at the forefront of civil society campaigns for increased transparency in public administration and has often had the occasion to bring matters of public interest to this Hon'ble Court and the Hon'ble Supreme Court leading to issuance of directions by the Hon'ble Court that have had the effect of strengthening institutional responses to corruption and maladministration in furtherance of the constitutional guarantees to citizens under Part III of the Constitution of India.
2. The petitioner submits that the certified/original copies of the annexures annexed to the writ petition are readily not available

with the petitioner. However, the petitioner undertakes to file the same if so required by this Hon'ble Court.

3. The petitioner submits that annexures annexed to the Writ Petition are legible copies and no inconvenience would be caused to their Lordships while going through the same. However, the Petitioner undertakes to file the typed copy of the annexures as and when required by this Hon'ble Court.
4. The petitioner is good prima facie case on merits. It is in the interest of justice equity and good conscience that the present petition may be allowed. The balance of convenience lies in favour of the petitioner.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- (a) exempt the petitioner from filing typed copies of the Annexures annexed with the Writ Petition;
- (b) pass such other and further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

FILED BY

NEW DELHI
FILED ON:

(MAHESH AGARWAL)/ (RISHI AGRAWALA)/
(NEEHA NAGPAL)
ADVOCATES FOR THE PETITIONER
AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET
NEW DELHI-110 001

IN THE HIGH COURT OF DELHI AT NEW DELHI

PUBLIC INTEREST LITIGATION

C.M. APPLN. NO _____ OF 2013

IN

WRIT PETITION (CIVIL) NO. _____ OF 2013

IN THE MATTER OF:

COMMON CAUSE

THROUGH ITS DIRECTOR,

MR. KAMAL KANT JASWAL

5, INSTITUTIONAL AREA, NELSON MANDELA MARG

VASANT KUNJ, NEW DELHI 110070

...THE PETITIONER

VERSUS

1. SHRI SUBHASH JAIN, EX- MUNICIPAL COUNCILLOR

2. MS. ANITA KOLI, EX- MUNICIPAL COUNCILLOR

3. SMT. SHATESHWARI JOSHI, EX- MUNICIPAL
COUNCILLOR

4. SMT. MANJU GUPTA, EX- MUNICIPAL COUNCILLOR

5. SMT. BEENA THAKURIA, EX- MUNICIPAL COUNCILLOR

6. SMT. JAISHREE PANWAR, EX- MUNICIPAL COUNCILLOR

7. SHRI RAVI PRAKASH SHARMA, EX- MUNICIPAL
COUNCILLOR

- 210
8. SHRI AJIT SINGH TOKAS, EX- MUNICIPAL COUNCILLOR
 9. LIEUTENANT GOVERNOR OF DELHI
 10. GNCTD THROUGH ITS CHIEF SECRETARY
 11. NORTH DELHI MUNICIPAL CORPORATION
 12. SOUTH DELHI MUNICIPAL CORPORATION
 13. EAST DELHI MUNICIPAL CORPORATION
 14. POLICE COMMISSIONER, DELHI
- THE RESPONDENTS

AFFIDAVIT

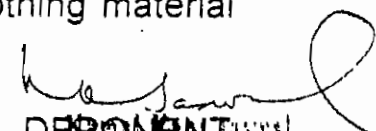
I, Kamal Kant Jaswal, aged about 68 years, S/o Sh. Ambica Prasad Jasvaul, resident of B-34, Ground Floor, Geetanjali Enclave, New Delhi, do hereby take oath and state as under:-

- 1) That I am the Authorized Representative of the Petitioner organization in the above case and well conversant with the facts of the case and am duly authorized to depose to this affidavit.
- 2) I have read and understood the contents of the accompanying application for exemption from filing certified/dim copies of the annexures and the same are true and correct to the best of my knowledge and belief, no part thereof is false and nothing material has been concealed therefrom.

VERIFICATION:

I, the above named Deponent, do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on this _____ day of _____, 2013.


DEPONENT
 Kamal Kant Jaswal
 Director, C.C. & T. Deptt., NCT of Delhi
 5, Panchsheel Park, New Delhi
 Nelson Mandela Park, Vasant Kunj

Karst Kart Jazwal
Director of Social Welfare
Nelson Mandela Road, Kuantan
New Bagan-110 070

DEPONENT

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