

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.3967/2008**

% **Date of Decision: 11.11.2009**

Delhi Development Authority Petitioner
Through Mr.Rajender Khattar, Advocate

Versus

Shri Subhash Chand Garg Respondent
Through Ms.Sriparna Chatterjee, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner has impugned the order dated 14th February, 2008 in T.A. No.98/2007, Subhash Chand Garg v. Delhi Development Authority whereby the penalty imposed on the respondent was set aside, holding that there had not been proper enquiry and report and the findings of the Enquiry Officer were perverse and without any evidence.

The petitioner has impugned the order of the Tribunal primarily on the ground that the Tribunal could not go into the correctness of the finding of facts and has thus exceeded its jurisdiction. It is asserted

that while setting aside the penalty imposed on the respondent, the Tribunal has exceeded the scope of judicial review of administrative action. The petitioner has contended that the Tribunal could interfere only in case of any infirmity in the decision making process and could not have gone into the correctness of the allegations.

Learned counsel for the petitioner has contended that the Central Administrative Tribunal is subject to the same constraints and norms which the High Court observes and applies in service matters particularly disciplinary proceedings and cannot examine the inquiry proceedings as if the Tribunal had been hearing an appeal in a case.

Referring to the inquiry proceedings, it is asserted that verification of tender documents showed that the tenders were issued on 7th march, 1990 to the Contractor against the closing of sale of tender on 5th March, 1990 and, therefore, the tenders were sold on 7th March, 1990 beyond the last date for sale of the tenders.

The respondent was served with a memo dated 7th January, 1992 in respect of alleged procedural irregularity in the development of land at Zafrabad which was carried out in 1989-90. A reply was filed by the respondent. Thereafter another memo was issued to the respondent in February 1993 alleging that the tenders contained only two pages of tender form PWD-7 reflecting that the documents did not contain

contract conditions. It was also alleged that the sale of the tenders was to be stopped on 5th March, 1990 and the tenders were sold to M/s. Sri Ram Traders on 7th March, 1990 and similarly tenders were sold to M/s. Kumar Construction Company also on 7th March, 1990. The allegation was also made that the tenders which were sold to M/s. Roshan Lal Vohra and Sons on 7th March, 1990 were lying unfilled in the files of the petitioners. The respondent had denied the charges against him and filed a detailed reply, however, the inquiry was initiated and Inquiry Officer recorded the statements of only two persons, Shri B.S. Jayant, PW1, and Shri Surender Kumar and gave a three-page report holding that the charges had been proved against the respondent.

The Disciplinary Authority imposed a penalty of reduction of the pay of respondent by three stages in the existing time scale for three years with cumulative effect by order dated 31st January, 2001 and an appeal filed by the respondent was also dismissed by the Appellate Authority by order dated 31st December, 2001.

The Tribunal held that though the bias of the Inquiry Officer was not substantiated, however, from the evidence adduced before the Inquiry Officer, it is apparent that the inferences drawn are illegal and perverse. The Tribunal also observed that an Inquiry Officer is expected to refer to the material that is placed before him and he has to accept or

reject the versions agitated before him on the basis of documents or the material produced before him.

In “High Court of Judicature at Bombay vs. Shashikant S.Patil”, (2000) 1 SCC 416 the Apex Court restated the ground of Judicial Review which are enumerated as follows:

- (a). where there has been a violation of the principles of natural justice; or
- (b). the proceedings have been held in violation of statutory regulations prescribing the mode of such enquiry; or
- (c). the decision is vitiated by consideration extraneous to the evidence and merit of the case; or
- (d). if the conclusion made by the authority is *ex-facie* arbitrary or capricious that no reasonable person could have arrived at such conclusions; or
- (e). other very similar to the above grounds.

The Tribunal noted that even the evidence recorded before the Inquiry Officer was not considered and consequently the findings of the Inquiry Officer are *ex facie* perverse.

The tender sale register which was before the Inquiry Officer duly exhibited as P5 reflected that no tender forms were sold after the last date, still it has been held that the tenders were sold after the last date. There was no evidence of sale of tender documents after 5th March, 1990 and in the circumstances the inferences of the enquiry officer are

perverse and without any evidence on record. The relevant extract from the enquiry report reads as follows:-

“I have carefully gone through the prosecution and defence, oral and documentary evidence, the written brief of PO/CO.

From the scrutiny of the records relating to the above works, it appears that tender papers were issued to various contractors containing two pages of tender form PW..... instead of complete set of PWD-6 & 7. Thus, the tender document did not contain the entire contract conditions.

The sale of tenders for the works stated at S.No. (i) to (iv) was to be stopped on 5-3-90. So the sale of tenders has been shown as stopped on 5-3-90 by the CO as per Ex. P-5 (tender sale register), but from the perusal of tender papers available in the file i.e. Ex. P-1 to P-4, it appears that tenders were issued to M/s. Shree Ram Traders and Contractors on 7-3-90 in r/o the works stated at S.No. (i) & (ii). Similarly, in r/o works stated at S.No. (iii) tenders papers were issued to M/s. Kumar Construction Company on 7-3-90. On perusal of the records of tender in Ex. P-(i) to P-4, it appears that tenders have been shown as issued on 7-3-90 to M/s. Roshan Lal Vohra & Sons in r/o all the works in-question, but the same are lying in the file i.e. Ex. P-(4) un-filled i.e. the tender papers were not handed over to them. As such, they could not submit the tenders.

As a Divisional Accountant, it was the duty of Sh. S.C. Garg, CO to bring to the notice of his EE the deficiencies in the matter of issue of tender documents and Sh. S.C. Garg/C.O. has clearly failed to discharge his duties.

From the above, it appears that in all the four works in-question, irregularities committed by Sh. S.C. Garg, CO have been established.”

From the above it is apparent that the Inquiry Officer did not consider the evidence before him which was contrary to the charges framed against the respondent regarding non issue of complete tender

documents; sale of tenders after last date and not handing over the tenders to the contractors.

This is no more *res integra* that if an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such an action by exercising power of judicial review. Consequently, the court can consider whether the decision was absurd or perverse or ex-facie arbitrary or capricious that no reasonable person could have arrived at such conclusions. If there is no evidence that the tender documents were sold after 5th March, 1990 then how the Inquiry Officer has arrived at a finding that the tender documents were sold on 7th March, 1990 has not been explained. Even the oral statements before the Inquiry Officer confirmed that no tender documents were sold after 5th March, 1990. In the circumstances, such a finding that the tender forms were sold after 5th March, 1990 will be perverse and the Tribunal has not committed any illegality in interfering with the same and setting aside the findings of the Inquiry Officer and the action taken by the Disciplinary Authority on the basis of the findings of the Inquiry Officer.

It has also been considered by the Tribunal that if the tender documents were lying in the file which were not collected by the contractor, there was no obligation of the respondent to have dispatched them or sent them to the contractor. The findings of the

Inquiry Officer in the circumstances were *ex facie* perverse being contrary to direct and distinct evidence on record which has been noticed by the Tribunal while quashing the same. The enquiry officer has completely ignored the evidence recorded before him. The Tribunal has also held that the findings are perverse because there was no complaint by the intending tenderers. The evidence before the Inquiry Officer also reflected unequivocally that works were minor works whose estimated cost was below Rs.2.00 lakh and in respect of such works the tender documents were issued in the same manner in various divisions in the Department of the petitioner in the years, 1987, 1988, 1989, 1990 and 1991 and consequently no case of misconduct against the respondent could be made out. This evidence though being before the Inquiry Officer was completely ignored and in the circumstances interference by the Tribunal that the findings of the Inquiry Officer were perverse and without any evidence and thus quashing the punishment imposed on the respondent, being without any evidence and illegal in the facts and circumstances, cannot be faulted on any of the grounds raised by the petitioners. No doubt that in judicial review, the Tribunal is not to go into the correctness of the facts, however, there should be evidence establishing the inferences arrived at by the Inquiry Officer. In case findings are *ex facie* perverse and the evidence which is relevant is not taken into consideration by the Inquiry Officer, such findings are liable to be quashed and in the circumstances, Tribunal in quashing the findings and the punishment imposed on the respondent has not

committed any such illegality which is liable to be corrected by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

For the foregoing reasons, we do not find any irrationality or illegality in the order of the Tribunal. The writ petition, in the facts and circumstances, is without any merit and it is, therefore, dismissed. In the facts and circumstances, the respondent shall also be entitled for a cost of Rs.10,000/- from the petitioner. Cost be paid by the petitioner to the respondent within four weeks.

ANIL KUMAR, J.

November 11, 2008
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VIPIN SANGHI, J.