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

+ CONT.CAS(C) 506/2010

% Judgment dated : 21.01.2011

NEX TENDERS INDIA PVT LTD Petitioner
Through: Ms.Tasneem Ahmedi and Mr.Anuj
Kumar Rajan, Advocates

versus

DIRECTOR GENERAL OF DIRECTORATE GENRAL
OF SUPPLIES & DISPOSALS & ANR Respondent
Through: Mr.A.S. Chandhiok, ASG with Ms.Sonia
Mathur, Mr.Gurpreet, Mr.Rajat Soni,
Advocates along with
Mr.Rajesh Gupta (Director, DGS&D)
Mr.K.K. Ahir (Asstt. Director, DGS&D)
Mr.Munish Malhotra, Advocate for the
respondent no.2

**CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI**

1. Whether the Reporters of local papers may be allowed to see the judgment? **YES**
2. To be referred to Reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

G.S.SISTANI, J. (ORAL)

1. A writ petition filed by the petitioner was allowed by a judgment dated 02.04.2009. The operative portion of the judgment reads as under:

102. In view of our aforesaid discussion, we allow the present writ petition and declare that the original contract dated 16.4.2004 entered into between respondents 1 to 3 and respondent no.4 arising out of tender No.3/(7/2001/E-tendering/17) was arbitrary and illegal. However, since the term of the initial contract expired on 31.03.2008 we are not quashing the same, as a transaction under the initial contract is already concluded. However, we quash the extension of, and amendment to the original contract dated 22.5.2007 as the same materially and illegally alters the terms and conditions and scope of the original contract, which itself was entered into irregularly. We restrain

respondents 1 to 3 from jointly marketing with respondent no.4, the E-procurement solution to other government/semi-government bodies and agencies in terms of the amended contract dated 22.5.2007. We direct the respondent authorities to immediately undertake a fresh tender process for appointing an Application Service Provider for undertaking E-procurement activities by DGS&D on clearly stated terms and conditions and specifications, and by issuing a notice inviting tender which should be duly published. The fresh tender process should be completed within a period of four months from today and the contract should be awarded to the newly appointed ASP within this period. We further direct respondent nos. 1 to 3 to adhere to the General Financial Rules in the matter of award of a fresh contract for E-tendering solutions.

103. Considering the fact that respondent no.4 is presently providing its services as the ASP to the DGS&D, we permit the continuation of the said services by respondent no.4 for a period of four months, or till the new ASP is in a position to render its services, whichever is earlier.”

2. While allowing the writ petition, amongst other directions, a direction was issued that respondent no.4 (respondent no.2 herein), who was at that stage providing its services as ASP to the DGS&D, would continue to provide the said services for a period of four months, or till the new ASP is in a position to render its services whichever is earlier.
3. Counsel for the petitioner submits that respondents had assailed the order of the Division Bench by filing a Special Leave Petition, wherein by an order dated 10.08.2009 the respondent no.1 was permitted to continue with the portals for the purpose of e-tendering with the same ASP. On 05.05.2010 in the SLP No.10732/2009, a statement was made by learned ASG, who was appearing for the petitioner that fresh tenders had been invited and in fact selection process has already been initiated, but no steps were being taken in view of the interim

order dated 11.05.2009, restraining the Government authorities from passing a final order on the basis of the fresh tender; on the basis of which the SLP was dismissed as infructuous.

4. Counsel for the petitioner next submits that even after dismissal of the SLP by which the interim order also stood automatically vacated, the respondent no.1, DGS&D continued to use the services of respondent no.2 herein (respondent no.4 in the writ petition), as ASP to DGS&D. Counsel for the petitioner has drawn attention of the court to an application (CM.NO.7804/2010) which was filed by respondent no.1 herein, seeking permission of the Court to avail the services as ASP of respondent no.4 in the writ petition (respondent no.2 herein). This application was dismissed by an order dated 02.06.2010. It is thus contended that by 02.06.2010 it had become clear that the order of the Division Bench passed in the Writ Petition No.6574/2007 dated 02.04.2009 had attained finality.
5. Counsel for the petitioner has drawn attention of the court to various documents placed on record of dates subsequent to 02.06.2010, to show that services of respondent no.2 herein were utilized by various users including Nuclear Power Corporation of India, Balmer Lawrie & Co. Ltd., Govt. of NCT and others. It is also submitted that respondent no.1 could have well disconnected the services to ensure that the order of the Division Bench was complied with.
6. Learned Additional Solicitor General of India, appearing on behalf of respondent no.1 submits that after passing of order

dated 02.06.2010 all necessary steps were taken by respondent no.1 to ensure that the order of the Division Bench passed in the Writ Petition No.6574/2007 was complied with. Learned ASG points out that subsequent process of fresh tendering could not be concluded on account of the fact that the petitioner herein filed a second writ petition in which interim orders were passed by a Division Bench of this court and thus, respondent no.1 was prevented from finalizing the tender process. It is however, submitted that a flash message was displayed on the website on 3.6.2010. Further communications were issued on 07.06.2010 giving reference of the flash message already put in the DGS&D website on 03.06.2010. Respondent no.1 informed all offices of DGS&D at headquarters, regional offices at Mumbai, Calcutta and Chennai to defer e-tendering dates by one month w.e.f. 04.06.2010. Other communications were addressed to different departments, including to the General Manager, BHEL, Department of Information and Technology, Balmer Lawrie & Co. Ltd. Directorate of Print, Chandigarh administration, Ministry of Defence and others, copies of which have been placed on record. On 12.07.2010 a communication was addressed to the Chief Secretary, Govt. of NCT of Delhi, giving reference to the order dated 02.04.2009 passed by the Delhi High Court wherein DGS&D has been restrained from marketing e-procuring solution to either government or semi government bodies / agencies and that the SLP stood dismissed. The communication

dated 12.07.2010 reads as under:

“Kindly refer to your D.O. letter No.F-10(9)/2008/IT/Part-II/SC/3672-3674 dated 30.60.2010 regarding e-tendering service rendered by M/s.C-1 India Pvt. Ltd.

The Delhi High Court vide order dated 02.04.2009, in the matter of writ petition (civil) No.6574 of 2007, has restrained DGS&D from marketing e-procurement solution to other Govt. /Semi Govt bodies and agencies. The Special Leave Petition filed by DGS&D in the Supreme Court of India against the aforesaid order has also been dismissed.

In view of the foregoing, DGS&D is not in a position to offer the e-tendering solution to C-1 India to any Government user including Delhi Government. This has been intimated to the Govt. of Delhi vide DGS&D letter dated 18.06.2010.

I would also like to bring to your kind notice that the MOU signed by the DGS&D with the Government of NCT of Delhi had expired on 6th February, 2010 and is no longer in force. The Government of NCT Delhi can, therefore, make their own arrangement for e-tendering services with any vendor including M/s.C-1 India Pvt. Ltd.”

7. These communications were addressed despite the fact that the tender process of the respondent no.1 had been stayed in a subsequent writ petition filed by the petitioner herein, by an order dated 27.05.2009.
8. Learned ASG further submits that this subsequent writ petition of the petitioner was, however, disposed of on 08.09.2010, clarifying that the communication sought to be relied upon by counsel for the petitioner. Learned ASG submits that none of these communications would show that they used the platform of DGS&D, however, the respondent no.2 and the NCT was not restrained from using the services of respondent no.2. It is submitted that in case in spite of the communication the

services of respondent have been used, it cannot be said that respondent no.1 has willfully disobeyed or flouted the order of the Division Bench.

9. Learned ASG also pointed out that the petitioner has suppressed the fact that petitioner had also filed an earlier contempt case No.567/2009 before the Division Bench which was dismissed on 14.07.2009 and the grounds taken in the present petition were also urged before the Division Bench.
10. Counsel for respondent no.2 submits that they have not violated order of the Division Bench, however, they provided services to other users as they were not restrained from providing services to any other user, except respondent no.1 and any service provided was not at the request of respondent no.1
11. I have heard counsel for the parties and also carefully perused the documents which have been placed on record and the orders passed by the Delhi High Court as also by the Supreme Court in the writ petitions and the SLP.
12. It has been repeatedly held that the purpose of the Contempt of Courts Act is securing a feeling of confidence amongst people and for due and proper administration of justice, the power should be exercised with utmost care and caution and sparingly only in the larger interest of the society. In fact mere disobedience of an order by itself may not be a sufficient ground to hold a person guilty of civil contempt within the meaning of section 2 (b) of the Contempt of Courts Act, 1971.

A mandatory ingredient for holding a person guilty of civil contempt is willful disobedience, which is evident from the definition of Civil Contempt. In the case of **Anil Ratan Sarkar v. Hirak Ghosh**, (2002) 4 SCC 21, it was held :

13. Before proceeding with the matter further, certain basic statutory features ought to be noticed at this juncture. The Contempt of Courts Act, 1971 has been introduced in the statute-book for the purposes of securing a feeling of confidence of the people in general and for due and proper administration of justice in the country — undoubtedly a powerful weapon in the hands of the law courts but that by itself operates as a string of caution and unless thus otherwise satisfied beyond doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the statute. The observation as above finds support from a decision of this Court in *Chhotu Ram v. Urvashi Gulati*¹ wherein one of us (Banerjee, J.) stated as below: (SCC p. 532, para 2)

“2. As regards the burden and standard of proof, the common legal phraseology ‘he who asserts must prove’ has its due application in the matter of proof of the allegations said to be constituting the act of  contempt. As regards the ‘standard of proof’, be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond all reasonable doubt.”

14. Similar is the situation in *Mrityunjay Das v. Sayed Hasibur Rahaman*² and as such we need not dilate thereon further as to the burden and standard of proof vis-à-vis the Contempt of Courts Act — suffice it to record that powers under the Act should be exercised with utmost care and caution and that too rather sparingly and in the larger interest of the society and for proper administration of the justice delivery system in the country. Exercise of power within the meaning of the Act of 1971 shall thus be a rarity and that too in a matter on which there exists no doubt as regards the initiation of the action being bona fide.

15. It may also be noticed at this juncture that mere disobedience of an order may not be sufficient to amount to a “civil contempt” within the meaning of Section 2(b) of the Act of 1971 — the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act and lastly, in the event two interpretations are possible and the action of the alleged contemnor pertains to one

such interpretation — the act or acts cannot be ascribed to be otherwise contumacious in nature. A doubt in the matter as regards the wilful nature of the conduct if raised, question of success in a contempt petition would not arise.”

13. While on the one hand it is the duty of the Courts to maintain the dignity and majesty of law. At the same time, the power should be exercised with utmost care and caution and sparingly.
14. In the case at hand, it is not in dispute that the writ petition filed by the petitioner was allowed by a Division Bench of this Court by its judgment dated 02.04.2009 and respondent no.1 was directed to use the services of respondent no.2 herein as ASP for a period of four months or till the new ASP is in a position to render its services, whichever is earlier. It is also not in dispute that in the SLP filed by respondent no.1 herein, interim orders were granted, however, on the statement made by learned ASG referred to above, the SLP was dismissed, as the selection process had been initiated. The attempt on the part of respondent no.1 to seek extension of time by filing an application in a disposed of matter, was dismissed on 02.06.2010. Copies of various communications placed on record and referred to above, would show that after 02.06.2010 on 03.06.2010 itself a flash message was put up in the DGS&D website; and thereafter various communications including communications dated 07.06.2010, 18.06.2010, 18.08.2010, 12.07.2010 were addressed to various departments, including Delhi Government bringing to their notice the orders of the

Delhi High Court and also bringing to their notice that DGS&D is not in a position to offer e-tendering solution of C-1 India Pvt. Ltd. to any Government user.

15. Applying the principles laid down above to the facts of this case, and having regard to the fact that after passing of the order by the Division Bench on 02.06.2010, respondent no.1 had put up a flash message on its website on 03.06.2010 itself and also issued various communications to Government departments, including BHEL, Department of Information & Technology and other users, copies of which have been placed on record, I find there is no willful disobedience of the order of the Division Bench. Consequently, no grounds to entertain the contempt petition are made out. The petition is dismissed. No order as to costs.

G.S. SISTANI, J.

January 21, 2011
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