

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

+ W.P.(CrI.)No.430/2010

Date of Decision: 25.5.2012

K.K.HARIHALOO

..... PETITIONER

Through: Mr.P.K.Handoo, Advocate with
Mr.S.P.Pandey, Advocate.

Versus

**THE DIRECTOR,
CBI**

..... RESPONDENT

Through: Mr.P.K.Sharma, Standing Counsel.

**CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA**

M.L. MEHTA, J.

1. This is a Writ petition under Article 226 read with Section 482 Cr.P.C. for quashing of criminal proceedings pending before Id. Special Judge, CBI. The petitioner has been charged under Section 120-B IPC and Section 13 (2) read with Section 13(1) (d) of Prevention of Corruption Act allegedly for entering into a criminal conspiracy with five other co-accused persons and causing of loss of Rs. 20 lacs approx. to MES, Delhi by abusing his official position as a public servant.

2. The facts of the case in brief are that on 09.11.87 a project for 860 bedded Referral & Research Hospital was sanctioned by Govt. of India for Defence Personnel for a cost of Rs. 52.92 crores including a laundry plant. In furtherance of this, Engineer-in-chief (E-in-C) prepared an action plan and in 1990 a notice inviting tenders for providing a laundry plant at an estimated cost of R.42 lacs was advertised in the newspapers. In April 1993, the petitioner was associated in the project as SO-II in MES, Delhi Zone. The allegations against the petitioner are that he and 4 other officials of MES, Delhi entered into a criminal conspiracy with M/s KB Contractors with an intention to cheat the Govt. of India and in pursuance of said criminal conspiracy, the contract for supply, installation and commissioning of a mechanized laundry plant was dishonestly awarded to M/s KB Contractors at highly exorbitant price and caused a loss of Rs. 20 lacs approx to MES, Delhi. According to the charge sheet, the sanction for installation of new laundry plant was given on 24.11.1993 and the petitioner vide his reference no. 43087/Gen./49/E-4 made enquiries from M/s Stefab India and on 07.09.1994 the petitioner submitted a draft tender schedule – ‘A’ for the proposed laundry plant which was based on the data supplied to him by M/s Stefab India. It is alleged that the petitioner included the specifications of Stefab Equipments in the said tender schedule and also recommended that the equipment to be installed should be either of Stefab or Snow White make.

3. It is alleged that in the aforesaid tender, vital equipments necessary for setting up the laundry plant were deliberately omitted by the accused persons to avoid the attention of interested parties. Further, no specifications of the

boiler and accessories required with the boiler were given in the floated tender in order to rule out the participation of interested parties in the bidding process. The bids which were received were opened on 26.09.94. It has been further alleged that the petitioner gave his comments on the three technical bids that were received and dishonestly made misleading remarks on the bids of the two companies other than M/s KB Contractors and informed them that their cases were being considered separately, whereas it was not the case. It has been alleged that the petitioner also wrongly noted that the other two firms had not submitted the bids as required in the tender and the equipment offered by them was of a different make than the required make and recommended the technical bid of M/s KB Contractors. It has also been alleged in the charge sheet that many amendments were carried out in the tender documents and a number of new equipments and accessories which were originally missing from the tender were included by all the accused persons. Further, the number of equipments required for the plant was increased and specifications of some equipment were changed and several accessories to the boiler were included. These amendments so carried out in the tender were intimated only to M/s KB Contractors and the other two bidders were kept in the dark. Finally, the said tender in which even the specifications and model no.s of Stefab equipment were mentioned, was dishonestly approved by Brig A.K. Soni (co-accused) on 20.05.1995.

4. It has been alleged that the price of Rs. 73, 59, 248/- at which the contract was awarded was on the higher side and MES Delhi was put to a wrongful loss of Rs.23, 54, 881/-. One of the bidders had offered to complete the whole project at a cost of Rs. 47.85 lacs. Further, investigations

have revealed that Stefab Equipment was available in the market at much lower rates than those at which it was installed by M/s KB Contractors. All the components of the laundry plant were found to be supplied and installed at the site by the contractor at exorbitant price, in collusion with the accused persons, thereby causing huge loss to the Govt. exchequer.

5. The criminal proceedings against the petitioner have been assailed by way of the present petition by submitting that the petitioner had been transferred from Delhi to Chennai on 06.10.94 i.e. much before the opening of the technical or financial bid of the tenders and the award of the contract to M/s KB Contractors and hence had no role in the alleged manipulation of the bids of the tender. It has been further submitted by the learned counsel for the petitioner that there is no averment or any evidence on record that the petitioner has obtained for himself or any other person any pecuniary gain by abusing his official position and hence the charges against him under Section 13 (2) read with Section 13(1) (d) of Prevention of Corruption Act are an abuse of process of law. It has been further submitted by the learned counsel for the petitioner that in the reply filed by the CBI in Criminal revision petition no. 313/2008 filed by the petitioner for setting aside the order on charge dated 16.02.2008, which was dismissed as withdrawn on 25.09.2009, it has been admitted by the CBI that the petitioner had no role in the developments subsequent to his transfer and hence the proceedings against the petitioner ought to be quashed. It has been submitted that the order on charge framed by Special Judge, CBI suffers from illegality as the Court has erroneously ignored the fact that the first payment to the contractor was made on 01.08.1995, whereas the petitioner had already been

transferred out of the office before that and hence had no role in the award of the contract to M/s KB Contractors or in the payment made to the contractor thereafter. It has been urged that why did CBI not objected to the payment made to the contractor if it had any inkling of any conspiracy between the accused persons. It has been further submitted that the Id. Court has failed to take note of the fact that no departmental proceedings had been initiated against the petitioner or the other co-accused persons and their actions have been upheld by the department vide communication dated 05.07.1996. The proceedings against the petitioner are further challenged on the ground that there is no evidence on record or statement of witnesses to show any conspiracy or involvement of the petitioner in a conspiracy with the co-accused persons in order to cheat the Govt. and hence there is no ground for continuation of proceedings against the petitioner.

6. Per contra, the learned counsel for the CBI has opposed the present petition and submitted that the order on charge has been framed by the learned Special after careful consideration of material on record and there is no reason to interfere with it as a prima facie case is made out against all the accused persons including the petitioner. It has been further submitted that investigations have revealed the impact of the recommendation of the petitioner and formulation of the technical bid by him in such a manner which led to the award of contract at highly exorbitant prices to M/s KB Contractors and hence it cannot be accepted that he had no role in the alleged conspiracy to dupe MES Delhi. It has been submitted that although the petitioner was transferred from Delhi on 06.10.94, but in furtherance of conspiracy with other co-accused persons and M/s KB Contractors , he had

designed the technical bids in such a fashion that all other contenders would be rooted out and only Stefab equipments that were to be supplied by M/s KB Contractors could be approved by the higher authorities and he also gave favorable recommendations to the technical as well as highly costly financial bid of the M/s KB Contractors. All this was done in furtherance of the conspiracy to award the contract to M/s KB Contractors and hence it cannot be said that there is nothing to show that the petitioner is guilty of the offences that he is charged with.

7. I have heard the rival submissions and perused the record.

8. The learned counsel for the petitioner has stressed on the point of transfer of the petitioner from the office to bring home the innocence of the petitioner. But it has to be kept in mind that the actions done by the public servants in the course of their duties have far reaching ramifications and it is not necessary that the impact of their actions would be limited only for the period during which they served at a particular position or place. In the instant case, it can be noted that the action plan for the project was prepared in 1990 and the project was completed in the year 1996. During this time, multiple decisions must have been taken by the officials of MES Delhi which had long lasting impact on the project and its implementation. The petitioner has been accused of preparing schedule 'A' (the technical bid) of the tenders on 07.09.1994 which was not according to the requirement of the user, but according to the specifications of Stefab equipment being supplied by M/s KB Contractors. Even if the petitioner was transferred out of the office before actual award of the contract to the accused contractor, he allegedly made sure that the contract would go to the M/s KB Contractors.

Whether it was done in the furtherance of conspiracy or not, is a matter of trial, but the submission of the counsel for the petitioner that he is innocent as he was transferred before award of contract or opening of the financial bid of the tender, is untenable solely on the ground that alleged recommendations and manipulations made by the petitioner ensured that the contract would be awarded to the accused contractor. It is immaterial whether the decision of awarding the contract was taken after the transfer of petitioner or not as allegedly the ground work had already been done by the petitioner during his tenure at MES, Delhi. Hence, this plea of the counsel for the petitioner stands rejected.

9. Coming to the contention of the learned counsel for the petitioner regarding absence of any averment or evidence to link the petitioner with any pecuniary advantage, it would suffice to say that there are clear and unequivocal averments regarding wrongful loss to MES, Delhi to the tune of Rs.20 lacs and corresponding gain to the accused persons including the petitioner and hence it is difficult to agree with this contention. Moreover the investigations are still pending in the case and it would be premature to assume that there is nothing to prove that the petitioner made any pecuniary gain or not by his alleged involvement in the conspiracy. These issues can be best dealt with during the trial Court proceedings.

10. The learned counsel for the petitioner has further submitted that it has been admitted by the CBI in Criminal Revision Petition no. 313/2008 that the petitioner had no role in the developments subsequent to his transfer. On perusal of Para 18 of the reply filed by CBI, it is evident that only the fact of the petitioner's transfer has been admitted by CBI. In addition, it has also

been averred that “the inclusion of his preferred make in the tender and the deliberate misleading comments on the technical bids of rival tenderers had lasting effect on the award of contract ultimately to M/s KB Contractors and therefore, he is as much responsible to the losses borne by MES in the instant case as any other accused.” Hence the contention of the counsel for petitioner that CBI itself had admitted that the petitioner had no role in the alleged offences, is unacceptable. This plea is nothing more than a ploy of misleading the Court. Moreover, the question of the petitioner being guilty or not would be adjudicated by the Court and not the CBI.

11. Further, the counsel for the petitioner has argued that if CBI had any misgivings about the award of contract to M/s KB Contractors, then it ought to have stopped the payment made to it. It is a matter of fact that the role of CBI is limited to investigation into any alleged irregularity or illegality or crime that has been committed. It is not the domain or function of CBI to interfere in the internal matter of a Govt. department and there is nothing on record to prove that any approval was sought from CBI by the department before making any payment to the accused contractor or that CBI had consented to such payment being made by the department. Hence, nothing can be read into this plea.

12. The order on charge framed by the Id. Special Judge, CBI has further been assailed on the ground that there was no departmental enquiry into the role of accused persons during the project and their actions have been upheld by the department vide communication dated 05.07.1996. The initiation of departmental proceedings is not a pre-requisite of initiation of criminal proceedings and its absence does not affect the validity of the criminal

proceedings based on evidence sufficient to show a prima facie case being made out. The initiation of departmental proceedings or lack of it has no bearing on a criminal case and there was no requirement of departmental proceedings by MES, Delhi when the case was registered by CBI itself and was being actively pursued by it. Hence, this plea of the counsel for the petitioner is untenable.

13. The last contention of the learned counsel for the petitioner is that the charges have been erroneously formed by the Special Judge as there is no evidence on record or statement of witnesses to show any conspiracy or involvement of the petitioner in a conspiracy with the co-accused persons in order to cheat the Govt. It must be borne in mind that the case is at an early stage and it is not to be seen that it would ultimately result in conviction or not. The perusal of the charge sheet shows that a prima facie case is being made out against the petitioner. It is only at the time of trial that this issue can be decided.

14. In *State (Govt. of NCT of Delhi) Vs. DAM Probhu & Anr.* 2009(1) Crimes 351 (SC), the Hon'ble Supreme Court has reaffirmed the law that when the stand as taken by the respondent was essentially their defence, which is to be considered at the time of trial, threshold interference would not be appropriate. In *Ashabai Machindra Adhagale Vs. State of Maharashtra*, 2009(1) Crimes 304(SC) the Hon'ble Supreme Court has held that the inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and more so when the evidence has not been collected and produced before the Court and

the issue involved, whether factual or legal are of magnitude and cannot be seen in their true perspective without sufficient materials.

15. In the present case, the Id. Special Judge has found a prima facie case being made out against the petitioner and has passed a well reasoned order of framing charges. It is trite that at the stage of framing of charges, the meticulous consideration of evidence and the material on record which on the face of it makes out the offence committed by the accused persons is not required. In *State of Bihar Vs. Ramesh Singh* AIR 1977 SC2018, it has been observed by the Apex Court that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at the stage of the framing of charges to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. At the stage of framing of charges, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. At the initial stage if there is strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.

16. Bearing in mind the afore-said legal position and the factual matrix of the case, I am of the view that the criminal proceedings are based on cogent grounds and it would lead to a miscarriage of justice if they are quashed arbitrarily and unceremoniously. The entire evidence has not yet been placed

on record and from the material that has been produced a prima facie case is made out against the petitioner. In view of the above discussion, the writ petition being devoid of merits is hereby dismissed.

M.L. MEHTA, J.

MAY 25, 2012

ss