

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

% *Date of Decision: April 22, 2013*

+ **W.P.(C) 1054/2012**

GOVT. OF NCT OF DELHI Petitioner
Represented by: Mr.Aditya Madan, Advocate

versus

S.C.GUPTA Respondent
Represented by: Mr.S.K.Gupta, Advocate

W.P.(C) 1228/2012

GOVT. OF NCT OF DELHI Petitioner
Represented by: Mr.Aditya Madan, Advocate

versus

UPENDRA AGNIDEV Respondent
Represented by: Mr.S.K.Gupta, Advocate

W.P.(C) 5792/2012

GOVT. OF NCT OF DELHI Petitioner
Represented by: Mr.Aditya Madan, Advocate

versus

J.M.SHARMA Respondent
Represented by: Mr.G.D.Bhandari, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE V. KAMESWAR RAO

PRADEEP NANDRAJOG, J. (Oral)

1. On September 29, 2010, W.P.(C) No.18387/2004 and W.P.(C) No.18395/2004 were disposed of setting aside a common order dated April

06, 2004 disposing of OA No.452/2002 and OA No.453/2002 filed by S.C.Gupta and others as also Upender Agnidev and others, respectively. The matter was remanded to the Tribunal for fresh adjudication.

2. At a common enquiry against many officers in the Engineering Department in the Irrigation and Flood Department under the Government of NCT Delhi in which one set of witnesses were examined, but separate reports submitted by the enquiry officer; the reports being pari material in substance, all officers were indicted and after obtaining the advice from the Central Vigilance Commission (CVC) but not communicating the advice to them various penalties ranging from reduction of pay to compulsory retirement and cut in pension were inflicted.

3. The indictment was for the reason a bridge constructed in village Ronahla by the Irrigation and Flood Department of the Government of NCT Delhi collapsed within a week of it being opened for traffic. The charged officers were associated in the construction of the bridge as Superintending Engineer, Executive Engineer, Assistant Engineer and Junior Engineer respectively.

4. The charged officers had taken a defence that the bridge had collapsed, not on account of any lapse committed by them, but for the reason there was an inherent design defect in the bridge.

5. Before the enquiry officer the charged officers filed an application to bring on record relevant documents which according to them would have proved the defence. They had an issue of all documents not being supplied as also the ones which were supplied were very late and in piecemeal during the ongoing inquiry.

6. The inquiry officer indicted the charged officers, and as noted above,

different penalties were imposed on them.

7. The indicted officers had urged various points in response to the report of the inquiry officer and having a grievance that the points were not considered by the Disciplinary Authority which levied the penalty, they urged said points before the Appellate Authority but met with no success.

8. Challenging the penalty levied, before the Central Administrative Tribunal various pleas were urged and the same can be broadly put under four heads.

9. Of the four pleas, two were technical and two pertained to the substance of the inquiry held against them.

10. The two technical pleas urged were, firstly that the advice received from CVC pertaining to the penalty to be levied was not disclosed to them. Thus, it was urged that the order levying penalty required to be set aside and the Disciplinary Authority be directed to supply the advice of the CVC to enable them to respond. Second technical plea urged was that the mandate of Sub-Rule 18 of Rule 14 of CCS (CCA) Rules 1965 was violated. It was urged that from the evidence the circumstances appearing against them were not put to them by the inquiry officer and hence the inquiry was vitiated.

11. Pertaining to the earlier round of litigation fought between the department and the sets of officers above noted, it was noted that two pleas of substance urged were as pleaded in para 4.12 and 4.16 and the corresponding grounds urged in para 5.1 (with the sub para(s)) of the grounds urged as also Ground 5.4 and 5.5 of the Original Application filed by Shri S.C.Gupta, the respondent No.1 in WP(C) No.18387/2004. The same were noted as under:-

“4.12 The inquiry proceedings were thereafter fixed for 16.3.1998. On the said date, the applicant submitted a list of 34 documents, all of which were permitted by the Inquiry Officer. A copy of the order dated 16.3.1998 is annexed hereto as ANNEXURE A-10. The Presenting Officer was further directed that in case of those documents not being available for one reason or the other, a certificate for non-availability should be obtained and filed. The applicant further states that the Presenting Officer took a considerably long time in making available the additional defence documents, which made it impossible for the applicant to prepare his defence vis-à-vis the said documents; whereas some documents were not at all made available for inspection. The applicant annexes hereto as ANNEXURE A-11. A copy of the statement in a tabulated form showing the dates and documents in which the inspection was allowed. The statement annexed also details the documents the inspection of which was not at all given to the applicant, notwithstanding that all these documents were adjudged to be relevant by the Inquiry Officer vide his order dated 16.3.98 and thus, allowed to be permitted. It is respectfully stated that the contents of the annexed statement may be read as the part of the pleadings.

xxx xxx xxx xxx

4.16 The reply of the applicant to the comments to the Inquiry was submitted on 13.5.99. Copy thereof is annexed as ANNEXURE A-17. The disciplinary authority, however, without considering the points of defence of the applicant in his reply to the report of the inquiry officer and during the course of personal hearing, imposed on the applicant the penalty of compulsory retirement vide order dated 11.1.2000 of which a copy is already annexed hereto as ANNEXURE A-1.

xxx xxx xxx xxx

5.1 Because the applicant had submitted a detailed list of additional documents required for and on behalf of defence during the inquiry proceedings to substantiate his defence. Vide order dated 16.3.1998, the Inquiry Officer allowed the list of additional documents demanded by the applicant and directed the prosecution to make available all documents in the list dated 16.3.1998 on or before 27.3.1998 or to obtain and produce on record a “non-availability certificate” in respect of documents not made available to the defence. However, the prosecution supplied only some documents to the applicant and some documents which were crucial for the applicant to prove his defence were not made available to him at all. The list of documents not supplied to the applicant is detailed in the paragraphs to follow. It is also pertinent to mention here that some of the vital documents had been made available to the applicant at night of 1.4.1998, 3.4.1998, 6.4.1998 and 7.4.1998 though the regular hearing had started on 1.4.98, and completed on 8.4.1998. As such the applicant was not given reasonable and sufficient time to prepare his defence in an effective manner which has resulted in causing serious prejudice to the applicant.

The documents demanded by the applicant and allowed by the Inquiry Officer but not made available to him and which has caused material prejudice to the applicant are as under:-

(i) Work files maintained at Circle Level in the office of Superintending Engineer Shri R.M.Puttaswamy and at the Sub Divisional level in respect of the work in question.

The prosecution had made available the applicant only the work files maintained at Divisional Level while those maintained at Circle Level and Sub-Divisional Level were neither supplied nor shown for inspection to the applicant. It is pertinent to mention here that the Sub-Divisional Officer i.e. Assistant Engineer had maintained a correspondence file at his end during the time of construction of the bridge. Had the said file

been produced, it would have been proved through correspondence between the Assistant Engineer and his superior officers that the applicant was performing his part as per instructions of his seniors in a transparent manner and with integrity, sincerity and devotion to duty. In the absence of the said documents, the applicant could not effectively cross examine certain witnesses particularly Shri G.S.Arora and Shri A.N.Gupta in order to show that the applicant had been acting under the dictation and control of Shri G.S.Arora and had performed his duty in an honest and a fair manner.

(ii) Agreement number EE/SDDV/2/90-91 entered into with the contractor for construction of work in question.

The said document was essential for effectively cross-examining Shri A.N.Gupta (PW-4) and Shri G.S.Arora (PW-5) who had held the post of Engineer In Charge.

Had the said record been produced, the applicant would have shown (through clause 6 of the General Conditions of Contract) that it was the Engineer-In-Charge i.e. the Executive Engineer (PW-5) who had to ascertain and determine the value in accordance with the contract of work done and the applicant was working only as an authorized representative of Engineer-In-Charge and was bound by his instructions and orders and the applicant diligently performed his legitimate sphere of duties and responsibilities attached to various posts manning the execution of work at bridge. The aforementioned agreement was thus essential for defence of the applicant.

(iii) Complete file maintained at SSW office in the year 1993-94, in respect of Ranhola Bridge containing letter number CEF/SSW/Ranhola Bridge/93-94 (PF) 3308 dated 6.12.1994 and documents disclosing action taken by the addressee and endorsee authority who had specifically directed to take suitable action.

Only letter dated 6.12.1994 (marked as Ex.D-3C) was

made available to the applicant instead of the complete file that was asked for. Through this document the applicant would have proved the fact of failure of design of structure submitted by the private designer which was not in conformity with the Indian Road Congress Codes and Indian Standard Guidelines. This document would have further proved that the applicant had nothing to do with the poor compaction of the concrete and it would have nullified the adverse effect of the Reports Ex.S-2, S-3 and S-4.

(iv) Duties and Responsibilities attached to the post of Junior Engineer, Assistant Engineer, Executive Engineer and Superintending Engineer while performing duties in field.

Though these documents, the applicant would have been able to prove that he was not empowered to act beyond a scope of instructions and orders given by Shri G.S.Arora at the time of execution of work. The applicant would have proved the scope of his duties vis-à-vis duties of his superiors.

(v) Letters number PA/JS/(IF)/623 dated 25.7.95 issued by Development Commissioner/Secretary (I&F) to Director General (Road Development Ministry of Surface Transport), along with letter number RW/NH/34066/2/95-S&R dated 16.8.95 issued by Superintending Engineer (Bridges) for Director General, Road Development, in response to the above said letter along with the document disclosing action on the same.

The main document disclosing action taken on the letter dated 16.8.95 by which the Department was intimated regarding the vital defect in design had been concealed. This document would have proved that there had been no defect in the execution of the work as the basic design itself was faulty. The said document would have proved that whenever a structure fails to meet the requirements of design aspect and when it is under reinforced, it is liable to fall, irrespective of the quality of concrete.

(vi) *Reply by CWC in response to letter number PA/JS/I & F/214 dated 5.9.94 by Secretary (I&F) to Chairman, Central Water Commission.*

The said letter was addressed in order to identify the defects in design and drawings and to confirm whether the existing design was sufficient to withstand the Indian Road Congress.

The said reply had clearly admitted that the design submitted by the designer of the bridge in question was not sufficient to bear 70R loading and was liable to fall and fall when subjected to actual designed load.

In the absence of the said document, the applicant was deprived of opportunity to effectively cross examine witness Sh.B.K.Mittal (PW-2) who was closely and squarely related to checking of the design of the Bridge.

(vii) *Minutes of the Meeting held on 3.2.1995.*

This document would have proved on record that CWC had clearly stated that collapse was due to failure of design and wrong placement and over-crowded reinforcement and thin section as shown in drawing. It was recorded in the said minutes that it was under reinforced structure which had fallen after giving proper warnings like appearance of cracks and showing sagging. Negligence of Sh.O.P.Sharma, Chief Engineer would have been proved on record through this document who allowed the bridge to collapse and did not take any remedial measures as suggested by Shri K.B.Rajoria PW-8 vide Ex.S-4.

It is pertinent to mention here that witness Shri O.P.Sharma was not produced as a witness even though he was a cited witness.

(viii) *Documents disclosing the base, date, documents on the basis of which Ex.S-5 had been framed.*

Non supply of the said documents deprived the applicant the opportunity of cross examining PW-2 effectively, the author and framer of Ex.S-2 thereby causing serious prejudice to the applicant.

(ix) The documents, data, drawings etc. on the basis of which document listed at S.No.4 of the impugned charge-sheet had been framed including the details of type of equipment used while conducting the said inspection and the codes relied upon while framing the said report.

These documents would have proved the fact that the defects and deficiency in design pointed out by Shri Rajoria, (PW-8) had been concealed by the prosecution.

(x) The applicant had demanded the details of the methodology adopted in collecting and testing the core samples and chipping concrete samples and disclosure of their respective standardized codes on basing which such methods had been adopted as stated in para 1 on page 1 in conclusions and listed document number 3 along with structure proof to the effect that such instructions had been followed.

In response to the above mentioned documents, Dr.Maiti (PW-1), the author and framer of Ex.S-3 made a mala fide attempt to cover the gap apparent on the face of the said Ex.S-3 and forwarded some loose papers which nowhere disclose any proof to the effect whether the instructions/orders etc. contained in the code had ever been followed at the time of collecting and testing the samples. Moreover, no document was produced either by Dr.Maiti or prosecution to prove whether any such tests had been carried out and in whose presence, on what date and time and at what place.

(xi) Literature of machines appearing in Fig.1 at page of listed document No.3 and the maintenance register proving the fact of maintenance of said machines as per norms and standards as

suggested by Manufacturers to give due performance and proof of specific training imparted to the as core cutting is a specialized job and requires skilled workers and good machines.

Dr.Maiti PW-1 provided illegible photocopies of the documents. No material was placed on records to show whether the said machine purportedly used at the time of collecting samples had been done as per inherent requirement of the code.

This strengthened the defence plea that Dr.Maiti was having a concept of maintenance of machines/equipments purportedly used in collecting samples.

(xii) Documents proving the fact that due care and caution had been taken by NCB as stated in 2nd para at page 2 of the Report of the document listed at Sr.No.3.

The said document was very essential for effective cross examination of PW-1, Dr.Maiti.

(xiii) Documents, codes etc. disclosing and explaining the variables which are standardized and some of which are non-standardized.

Absence of these documents affected the cross examination of Dr.Maiti, PW-1. It is pertinent to mention here that the applicant had demanded documents explaining 'variables' as appearing in para 2 of page 2 of the Report (part of Ex.S-3) whereas Dr.Maiti, PW-1 vide para 5 at page 2 of Ex.D-19, submitted the clarifications regarding variation in percentage of cement contents which had no relevance with the contents of the reports against which the document had been demanded.

(xiv) Documents disclosing variation allowed in the result of chemical analysis and the method of testing and deducing the

compressive strength and variation allowed in the result including the disclosure of the equipment used to test the samples with that respective manufacturer literature.

These documents would have shown that testing was not done as per laid down norms and standards prescribed for the purpose.

(xv) Log books of vehicles number DLV-3, DED-3784, DNA-1935, DDV-403, DAE-30, for a period of January 91 to September 93.

These documents had been demanded to establish the fact that all superiors of the applicant like Engineer In Charge, Superintending Engineer and Chief Engineer had also visited the site and issued necessary instructions regarding execution of work, especially concrete work, the quality of which has been alleged to be poor.

(xvi) Complete Court File and Arbitration File in respect of the appointment of the Arbitrator and claim counter claim of the department in case number 736/98 in suit number 2559-A/94.

These documents were important for the defence of the applicant to bring on record the fact that the department had taken an entirely different stance before the Hon'ble High Court of Delhi and nowhere laid the blame at the door of the Execution Staff.

It is pertinent to mention here that the department has admitted before the Hon'ble High Court that there had been poor workmanship on part of the contractor and the department had accepted the work with due deductions in the same. It is specifically mentioned that the lapses that are appearing of workmanship are those which have been admitted by Engineer Incharge. The contractor had challenged the department vide Ex.D-10 stating that the design of the structure was faulty and not safe. Further Ex.D-3(c) and Ex.D-7 are the documents by

which the department admitted that structure had collapsed due to design failure.

(xvii) Notification issued by the Competent Authority i.e. L.G. approving the adoption of CPWD Manual in Irrigation and Flood Department.

The said notification was essential and was required to show that CPWD Manual/CPWD Code were not applicable at the material time and any reliance thereupon by the prosecution has no force and cannot advance the case of prosecution any further.

The non supply of above mentioned crucial documents deprived the applicant at a fair opportunity to defend himself against the cooked up charges.”

12. It was noted that the impugned judgment and order dated April 06, 2004 passed by the Tribunal had dealt with only two pleas i.e. the two technical pleas and has not dealt with the pleas of substance.

13. It was noted that the respondents in the two writ petitions would be entitled to an adjudication on the pleas urged by them and the grounds urged in support thereof. Indeed, it did require to be considered whether the inquiry officer erred in not ensuring the documents production whereof was sought after holding that they were relevant and the effect thereof. If the charged officers could show that the bridge collapsed due to a faulty design and in respect of the evidence sought to be brought on record that they permitted sub-standard material to be used, could establish that Ground 5.4 urged was correct, they would have successfully demonstrated that the charge of permitting sub-standard material to be used was sustained ignoring

the said pleas and deficiency in the evidence brought on record.

14. It was noted that the Tribunal has remanded the matter with a direction that the inquiry officer should examine the respondents as per the mandate of Rule 14(18) of the CCS(CCA) Rules and additionally that the Disciplinary Authority should supply the CVC advice rendered to the department pertaining to the penalty to be levied.

15. Now, if the charged officers can make good the contentions urged by them in para 4.12 and para 4.16 and the Grounds urged in para 5.1, 5.4 and 5.5 of the Grounds, that would mean that the entire inquiry report stands vitiated and it would be a case of denial of fair opportunity of defence as also a case of the inquiry officer ignoring material evidence.

16. Pertaining to the two issues decided by the Tribunal, it was opined that the Tribunal has not adjudicated whether non-compliance with the Rule has prejudiced the defence and especially when we look to the pleadings in para 4.12 and para 4.16 and the relatable Grounds urged in para 5.1, 5.4 and 5.5 and as noted above. It was noted that in the decision reported as 1980(3) SCC 304 Sunil Kumar Banerjee vs. State of West Bengal & Ors, non-adherence to Rule 8(19) of the All India Service Disciplinary Rules 1969, which is pari material with Rule 14(18) of the CCS(CCA) Rules 1965 was held to be non-fatal except upon prejudice caused being shown. A somewhat discordant note has been struck by the Supreme Court in the decisions reported as 2008 (3) SCC 484 Moni Shankar vs. UOI & Anr. and 1998 (3) SCC 227 Ministry of Finance & Anr. vs. S.B.Ramesh.

17. On the issue of CVC advice not being disclosed to the charged officers, the Tribunal had noted the decision of the Supreme Court reported as JT 1992 (6) SC 673 State Bank of India vs. D.C.Aggarwal, but has not

factored the fact that the advice by CVC was to dismiss the charged officers from service but the Disciplinary Authority has levied a penalty less than what was advised by the CVC and in this context has not considered whether any prejudice was caused.

18. Accordingly, vide decision dated September 29, 2010 the impugned order dated April 06, 2004 was set aside and OA No.452/2002 and OA No.453/2002 were remanded to the Tribunal for fresh adjudication with a direction that all contentions urged and pleas raised in the Original Applications shall be decided by the Tribunal including on the two issues on which we find truncated decision by the Tribunal.

19. We are now concerned with the same issue for the second time pertaining to S.C.Gupta and Upender Agnidev and one more person Sh.J.M.Sharma.

20. Without deciding the issues which the Tribunal was called upon to do, deciding the Original Applications filed by Upender Agnidev and S.C.Gupta vide impugned order dated July 04, 2011 challenge in W.P.(C) No.1054/2012 and W.P.(C) No.1228/2012 the Tribunal has short cut the matter by holding that the bridge collapsed due to faulty design and for which the Tribunal has heavily relied upon the fact that in an arbitration dispute between the contractor who constructed the bridge and the department, the award was in favour of the contractor who successfully established that the bridge collapsed due to a faulty design. Accordingly, the Tribunal has held that the said two officers i.e. S.C.Gupta and Upender Agnidev could not be indicted. Vide separate order dated February 21, 2012, following the decision dated July 04, 2011, relief has been granted to J.M.Sharma.

21. Regretfully, the matter has to be remanded back to the Tribunal once again. The reason is that, the design of the bridge was approved by the Superintending Engineer Sh.R.C.Sood, in spite of deficiencies pointed out in the drawing by the consultant and at the inquiry evidence was led of said fact. Sh.R.C.Sood has been visited with a penalty, and we are not concerned with the same.

22. As regards the other charged officers, the report of the inquiry officer has taken into account evidenced of sub-standard material being used. This evidence could not have been ignored by the Tribunal. Indeed, at the earlier round of litigation when the matter was remanded to the Tribunal, said aspect was highlighted by the Division Bench requiring the Tribunal to take into account said evidence but at the same time keep in mind the contentions urged by the charged officers.

23. As regards the arbitral award, it is not unknown to see Government briefs being lost due to inapt handling by lowly paid counsel who are pitted against the might of contractors who have the benefit of the best counsel. Further, as in the instant case, it would be in the interest of the officers themselves to see and ensure that the award is against the department for then the evidence pertaining to the defective material used by the contractor would be buried and the view taken would be that it was a design fault. This would be used by the officers as a shield in domestic proceedings.

24. Noting that the Tribunal has once again done a clumsy job and regretfully has not instructed itself with the issues highlighted by a Division Bench of this Court in the decision dated September 29, 2010, we dispose of the writ petitions quashing the impugned orders dated July 04, 2011 and February 21, 2012. OA No.70/2006, OA No.452/2002 and OA

No.453/2002 are restored for fresh adjudication by the Tribunal with a direction that all issues required to be decided keeping in view the decision dated September 29, 2010 passed by this Court would be decided.

25. Parties shall appear before the Registrar of the Tribunal on May 20, 2013 who shall list the original applications before the concerned Bench for fresh adjudication.

26. No costs.

27. DASTI.

(PRADEEP NANDRAJOG)
JUDGE

(V. KAMESWAR RAO)
JUDGE

APRIL 22, 2013
mamta