

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

Date of decision: May 2nd, 2014

+ CRL.REV.P. 51/2005

C.B.I.

..... Petitioner

Through: Mr. P.K. Sharma, Standing Counsel,
CBI with Mr. Rakesh Sharma, Adv.

versus

R.C.BHARGAVA & ANR.

..... Respondents

Through: Mr. Rahul Kumar & Mr. Siddharth
Aggarwal, Adv. for R-1.
Mr. Mohit Mathur with Mr. Pankaj
Verma, Adv. for R-2.

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.

1. Present is a criminal revision petition under section 397/401 Cr.P.C against the impugned order dated 12th October, 2004 passed by the Id.Special Judge, P.C Act, Delhi wherein both the respondents have been discharged.

2. The case of the petitioner is as under:-

M/s Maruti Udyog Limited (hereinafter referred to as 'the MUL') which was a Government company, at the relevant time was importing car components in completely knocked down condition (referred to as CKD kits) from Japan through various Indian ports. The charge sheet in question relates to the award of contract for transportation of CKD kits from Kandla

port to MUL factory premises at Gurgaon. Respondent no.1 was Director, Marketing and Sales and respondent no.2 was GM (Purchase) at the relevant time. Earlier the transport job was done through transporters on negotiation basis. However, to cut the costs of transportation, an open tender bearing no. MUL/MKT/s&tdated 9.6.1984 was floated by MUL and competitive bids were invited in sealed cover for transportation of CKD kits from Haldia, Kandla and Bombay Port to MUL premises at Gurgaon. The bids were received and the parties were shortlisted for negotiations. The Tender Committee was constituted which was headed by Shri R.C.Bhargava, Director, Marketing and Sales i.e., respondent no.1, Shri V.K.Mathur, GM (Purchase) i.e., respondent no.2, Shri S.M.Diwan, Sr.Manager(S&T) and Shri A.S.Manocha, GM (Finance) were the other members of the Committee.

3. It is stated that the bids for transportation job of Kandla and Haldia ports alone were considered by the Tender Committee and those for Bombay port were ignored as most of the shipments of car components were likely to arrive at Haldia and Kandla ports. In case of transportation job of Haldia port, decision was taken by the Tender Committee purely on the basis of competitive bids. There is no grievance about that. However, in case of transportation job from Kandla port, it is alleged that the contract for transportation job was given to one Mr.Y.P.Nanda, in the name of his firm M/s Delhi Ahmedabad Roadways (in short referred to as 'DAR') who had not submitted any bid in response to the tender dated 9.6.1984 ignoring all the bids received, including the seven short listed bidders.

4. It is alleged that Shri R.C.Bhargava, respondent no.1 had been living in the house of Shri K.K.Nanda who is the younger brother of Shri

Y.P.Nanda, during the relevant period from 7.1.1984 to 15.1.1987. Respondent no.1 was well acquainted with Shri Y.P.Nanda and his family and Shri Y.P.Nanda was introduced by respondent no.1 in an irregular manner in the first meeting of the Tender Committee held on 2.8.1984. It is alleged that respondent no.2 was also present in the said meeting but he did not object to the introduction of name of Shri Y.P.Nanda. He was also present in the meeting dated 13.8.1984 when final decision was taken to award contract to Shri Y.P.Nanda in the name of M/s DAR.

5. It is further alleged that neither Shri Y.P.Nanda nor his firm M/s DAR had submitted the bid in response to MUL's tender dated 9.6.11984 and M/s. DAR was not in existence when the bids were invited and when negotiations were held with Shri Y.P.Nanda on 4.8.1984 by the Tender Committee. It is alleged that as per the material on record, the said firm came into existence only on 31.8.1984 and the firm was not having infrastructure or experience and was not fulfilling the conditions of tender yet the contract was awarded to the said firm through Shri Y.P.Nanda. It is also alleged that the short listed parties were willing for negotiations and there was no reason for awarding contract to Shri Y.P.Nanda.

6. It is alleged that respondents in conspiracy with Sh. Y.P. Nanda managed to award the contract to M/s Delhi Ahmedabad Roadways in utter disregard to the prescribed norms. Further allegations are that the "Tender Committee" consisting of respondent No.1, respondent No.2 and Sh.S.M.Dewan and Sh.R.K.Verma made false records to exclude the parties who had submitted the tender and called Sh. Y.P. Nanda for negotiations. Further allegations are that it was falsely recorded in the minutes of meeting of the Tender Committee dated 4.8.1984 that M/s Delhi Ahmedabad

Roadways was already engaged in the transport of finished cars from Gurgaon factory to Ahmedabad. Further allegations are that the name of M/s. Singhal Transport Corporation was introduced unauthorisedly in the minutes dated 2.8.1994. The purpose was to favour Sh. Y.P. Nanda. Later on it was decided that Sh. Y.P. Nanda would form another company in the name of M/s Delhi Ahmedabad Roadways and the work was given to the said company. It is alleged that respondents gave undue pecuniary advantage to the firm of Sh.Y.P. Nanda and had misused their official position. With the aforesaid allegations, charge sheet was filed against the respondents with the allegations of having committed offences punishable under Section 120B IPC read with section 5(2) r/w 5(1)(d) of the Prevention of Corruption Act, 1947 and substantive offences u/s 5(2) r/w 5(1)(d) of the Prevention of Corruption Act.

7. The learned ASJ after going through the different minutes of the meeting of the Tender Committee wherein decision was taken for finalizing the award of the contract and other relevant material on record held that the award of the contract to M/s Delhi Ahmedabad Roadways was a conscious decision taken by the competent authority in the company on the recommendation of the Tender Committee. It has been held that whatever was decided by the Tender Committee meeting was discussed and approved by the CMD and the Board of Directors and no fault was found in the transaction. Learned ASJ has further observed that the documents filed by the CBI would show that the arguments forwarded by the Tender Committee in favour of awarding the contract to M/s Delhi Ahmedabad Roadways were accepted by the CMD and the Board of Directors and the company never found any fault in the award of contract. It has been further observed that

initially the contract was awarded for one year and the company was satisfied with the performance of M/s Delhi Ahmedabad Roadways and hence it was extended to another two years. It has been further observed by the learned ASJ that the MUL at the relevant time was a public limited company and was a Government company which was subject to internal and external audit every year and it was also subject to the scrutiny by the Comptroller and Auditor General of India and there had been no allegation that there was any deviation from the statutory rules or requirement in the award of the contract by the auditors or the Comptroller and Auditor General of India and the matter remained buried in the files for 10 years and all of a sudden the FIR had been registered by the CBI in the year 1994 on source information. After considering the material on record, learned ASJ has held that the decision was taken in the interest of the company. The allegations did not give rise to a grave suspicion of any offence having been committed by them. Accordingly, no charge was framed against the respondents and they were discharged vide impugned order referred above.

8. Aggrieved with the same, present revision petition is filed.

9. Learned counsel appearing for CBI has contended that the name of M/s Singhal Transport Corporation was introduced unauthorisedly in the minutes dated 2.8.1994 by Sh. R.C. Bhargava i.e. respondent No.1. It is contended that the basic function of the Tender Committee was to choose the most suitable bid and negotiate with that party but the Tender Committee instead of negotiating with the party that had offered the valid bid chose to negotiate with Sh. Y.P. Nanda who was neither the bidder nor had any transport company at the relevant time. It is contended that Tender Committee ought to have invited the shortlisted bidders and if negotiations

failed, in that event, any party from outside should have been invited for negotiations. It is contended that there is no recording by the Tender Committee that negotiation proceedings with shortlisted bidders had failed with Tender Committee. It is further contended that the Tender Committee decided to negotiate with Sh. Y.P. Nanda in an irregular manner at the instance of Sh. R.C. Bhargava i.e. respondent No.1. It is further contended that the parties who had submitted their bids were illegally discriminated against and eliminated and M/s Delhi Ahmedabad Roadways wherein Sh. Y.P. Nanda was associated was unduly favoured.

10. It is further contended that the lowest bidder M/s Marco Roadways had given the bid of Rs.24780/- and the other bidder M/s Kataria Transport had offered to reduce the bid to Rs.22745/- vide their letter dated 6.8.1884. It is contended that these parties ought to have been called for negotiations as they were fulfilling the tender conditions and were in a better position to execute the transport job rather than M/s Delhi Ahmedabad Roadways which lacked all the above. It is further contended that M/s Kataria Transport was the most suitable party as it had reduced the rate after it had come to know about negotiations with Sh. Y.P. Nanda on 4.8.1884. It is further contended that Mr. K. Krishnamurthy, CMD, /s MUL had agreed with the procedure adopted by the Tender Committee on the basis of misrepresentations and incorrect facts. In these circumstances, the alleged offence under Section 120B IPC read with section 5(2) read with 5(1)(d) of the PC Act is clearly made out against the respondents. It is contended that the trial court has wrongly discharged them by ignoring important material on record. It is contended that the respondents being public servants were required to act in a fair and impartial manner in the discharge of their duties

and not in an arbitrary manner in the matter of award of contract in question.

11. Learned counsel for the respondents have argued that there is no material on record to substantiate the allegations made by the petitioners in the charge sheet. It is submitted that the learned ASJ has passed the impugned order after considering the relevant material on record. The details of relevant minutes of meetings have been examined at length by the learned ASJ and other relevant material has been considered and thereafter it has been held that the decision was taken keeping in mind the interest of the company and it was a conscious decision taken having the approval of CMD and the Board of Directors of the MUL. It is contended that after considering the material on record learned ASJ has come to the conclusion that no fault is seen in the award of the contract to M/s Delhi Ahmedabad Roadways. It is contended that there is no material on record to substantiate the allegations that there was a conspiracy between the respondents in awarding the contract to M/s Delhi Ahmedabad Roadways, as is alleged. It is further contended that the present is a belated prosecution. The allegations are of the year 1984. The FIR was registered in the year 1994. There is no contribution of the respondents in the delay. There is no explanation for the delay also. The same also demolishes the case of the petitioner. In support of their contention respondents have relied upon **Pradeep Goyal v. Enforcement Directorate; 2007 (25) Civil CC (Delhi)**.

12. I have heard learned counsel for the parties and perused the material on record including the trial court record. The written submissions filed by the parties have also been considered.

13. Section 227 of the Code reads as under:-

“If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

14. The scope of Section 227 of the Code was considered by the Supreme Court in **State of Bihar v. Ramesh Singh : 1977CriLJ1606** wherein it has been held that:-

“Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a 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. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence; if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.”

15. The Supreme Court in the aforesaid judgment has added a word of caution that if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged

in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

16. In **Union of India v. Prafulla Kumar Samal and Another, 1979 CriLJ154**, the scope of section 227 Cr.P.C was considered. After advertent to various judgments of the Supreme Court, it has been held that in exercising the jurisdiction under Section 227 of the Code, the Special Judge, which under the present Code is a senior and experienced Court, cannot act merely as a post-office or mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This, however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. While considering the question of framing charges under this Section, he has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused had been made out. It was also held that by and large if two views are equally possible and the Judge is justified that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused.

17. In **Sushil Ansal vs. State through CBI** and **Nirmal Singh Chopra vs.State through CBI** and **Association of Victims of Uphaar Tragedy vs. Sushil Ansal and ors: 2002Crl.LJ1369**, this court after considering leading judgments of the Supreme Court as to under what circumstances the Courts

should pass discharge order under Section 227 of the Code and on what material an order for charge should be passed under Section 228 of the Code has held as under:-

“The principles that emerge governing orders under Sections 227 and 228 of the Code are that only in those cases where a Judge is almost certain that there is no prospect of the case ending in a conviction, and is of the view that the time of the Court need not be wasted by holding a trial, an order of discharge may be passed under Section 227 of the Code. However in case there is a strong suspicion, founded upon some material available on record, which leads the Court to form a presumptive opinion as to the commission of the offence by an accused, the framing of the charge would be warranted. No detailed or elaborate enquiry is required to be undertaken at this stage by delaying deep into various aspects of the matter to find out as to whether an accused can be held guilty or not. Probable defense of an accused is not to be looked into nor the probative value of the material on record has to be examined. In nut shell an order of discharge under Section 227 of the Code would be warranted only in those cases where the Court is satisfied that there are no chances of conviction of an accused and the trial would be an exercise in futility. In all other cases, an order for charge under Section 228 of the Code has to be passed so as to give the prosecution an opportunity to lead evidence and establish the allegations.”

18. In the light of above propositions of law, the present case is examined.

19. As noted above, a tender was floated by MUL on 9.6.1984 and a tender committee was constituted which was headed by Mr.R.C.Bhargava i.e., respondent no.1 and Mr.V.K.Mathur, respondent no.2, Mr.S.M.Dewan and Mr.A.S.Minocha were its members. The first meeting of the Tender

Committee was held on 2.8.1984. In the said meeting, the Committee was informed that M/s Marco Roadways was the lowest tenderer at Rs.19,780/-. It was noted that the rate quoted was based on use of 3 Nos.18' platform trucks and one number ordinary truck. It was further observed that in the tender documents it was mentioned that parties may quote rates on the basis of 18'/20' trucks but subsequent trial revealed that 18' truck loading was not safe due to overhang on the back. Therefore, parties with quotation based on 18' truck loading were called to revise their offers on the basis of 20' truck. M/s Marco Roadways was the only party whose rates were for 18' truck so their revised offer was obtained and they had given an offer of Rs.24,780/- for the job. The said minutes also record that in the past similar lots of CKDs were transported from Kandla by M/s.Bombay General Freight Carriers, M/s South Roadlines and M/s Singal Transport Corporation and rates charged by them were also quoted. The committee noted that the work done by M/s Singal Transport Corporation in the past was satisfactory and M/s Singal Transport Corporation was business associate of their Ahmedabad dealer M/s Cargo Motors Limited of which Mr.Y.P.Nanda was a share holder and were introduced by M/s Cargo Motors vide their letter dated 6.6.1984. It also recorded that past performance of M/s Singal Transport Corporation was satisfactory. In the open tender, they quoted the rate of Rs.31,800/-. The committee observed that dependability on their dealer would be more than any other transport contractor and took a decision to encourage dealers with the work relating to Maruti. Therefore, the Committee decided to negotiate with their dealer who was willing at a rate not exceeding lowest bid. Subsequently, as per advice of Tender Committee meeting was held on 4.8.1984 by respondent No.1 and Sh. S.M.

Dewan with Mr.Y.P.Nanda of M/s Cargo Motors. The minutes of the meeting were recorded on 6.8.1984 wherein it is alleged that Mr.Y.P.Nanda gave an offer of Rs.24,250/-.

20. The material on record shows that after finalization of rates with Mr.Y.P.Nanda, a letter dated 6.8.1984 was received from M/s Kataria Transport (a firm that had given bid for the tender) offering a rate of Rs.22,745/-. M/s Kataria Transport had also marked the letter to the Chairman, MUL and Shri S.M.Dewan.

21. The Tender Committee in its 3rd and final meeting held on 13.8.1984 after discussing the history of transportation from Kandla port and reiterating its policy that MUL can depend upon its dealers more than any other transporter because of their long term commitments the dealer had with MUL and their interest in continuity of their production, recommended the offer of M/s Cargo Motors. The Committee noted the advantages of giving the contract to M/s Cargo Motors. It is further noted in the minutes that M/s Kataria Transports had spoken to respondent no.1 on 4.8.1984 and had come to know about the award of contract to M/s Cargo Motors and therefore had reduced the rate to Rs.22,745/- from Rs.29,745 to frustrate the contract. The Committee further noted that the Committee had not recommended for giving the job to M/s Kataria Motors as it had not done any transport job in the past and taking chance of assigning the CKDs job to that party would not be safe.

22. The record shows that relevant minutes of the meetings were placed before the CMD for his approval. The minutes dated 14.8.1984 were

forwarded with a detailed note dated 1.9.1984 by respondent no.1 clearly specifying that Sh.Y.P.Nanda was to set up a new firm. The CMD had agreed with the proposal.

23. The material on record shows that after the Board meeting, the CMD had put up the note dated 1.10.1984 reflecting the discussion in the Board meeting and had desired detail note about relevant merits of different bidders. Thereafter the desired note was put up by Mr.S.M.Dewan and Mr.V.K.Mathur i.e., respondent no.2 giving in detail the relevant merits of different bidders and the said note clearly specifies the reasons for awarding contract to a firm to be set up by Mr.Y.K.Nanda and M/s Singal Transport Corporation. The above note was supported by another note prepared by respondent no.1 dated 19.10.1984 giving the reasons for awarding the contract to Mr.Y.K.Nanda. The CMD had agreed with the conclusion awarding the contract to M/s Delhi Ahmedabad Roadways.

24. The perusal of the material on record shows that awarding contract to M/s Delhi Ahmedabad Roadways had the approval of CMD and the Board of Directors. The material on record shows collective decision of the senior management is there to award the contract in question and not as a result of any conspiracy, as is alleged. The arguments forwarded by the Tender Committee for awarding the contract to M/s Delhi Ahmedabad Roadways were accepted by the CMD and Board of Directors. Initially the contract was awarded for a period of one year. However, the performance of M/s Delhi Ahmedabad Roadways was found satisfactory and the contract was extended for another two years.

25. The material on record shows that a conscious decision was taken to award the contract in question. Further the material on record shows that

contract was awarded on a price less than that of a lowest bidder. The reasons for not giving the contract to lowest bidder i.e., M/s Marco Roadways and M/s Kataria motors have also been given and the decision to award was taken in the interest of the company. The material on record shows that decision to award contract was taken giving the history of earlier transport contracts from Kandla port wherein the contracts could not be completed causing loss to the company. Therefore, it was found that a dealer prior in association with the company would be reliable person. M/s Singhal Transport Corporation was also one of the bidders.

26. The partnership on record deed clearly shows that M/s Delhi Ahmedabad Roadways had been carrying on the business w.e.f. 1.8.1984 i.e., prior to the award of contract. The work was done by M/s Cargo Motors through M/s Delhi Ahmedabad Roadways in association with M/s Singal Motors Corporation which was a party to the tender and had made its bid.

27. The material collected during investigation is not such which would give rise to grave suspicion against the respondents. The Id.ASJ has discharged the respondents after considering relevant material on record.

28. The allegation that respondent no.1 had known Mr.Y.P.Nanda because he had been residing in the house owned by Mr.K.K.Nanda, has also been examined by the Id.ASJ.

The relevant finding is as under:-

“The allegations against Shri R.C.Bhargava are to the effect that he knew Shri Y.P.Nanda because he had been residing in the house owned by Shri K.K.Nanda, the younger brother of Shri Y.P.Nanda. The evidence

collected during the investigation reveals that the house of Shri K.K.Nanda was taken on company lease by Maruti Udyog Limited. Even otherwise, there was no need to show acquaintance between Shri R.C.Bhargava and Shri Y.P.Nanda, because Shri Y.P.Nanda, as a partner of M/s Cargo Motors was a dealer of Maruti Vehicles. The various minutes of the meeting and the noting on the file clearly show that the contract was awarded to M/s.Delhi Ahmedabad Roadways because of the association of Maruti Udyog Ltd. with M/s.Cargo Motors.....”
.....”

29. No infirmity is seen in the findings of the Id.ASJ. There is nothing on record which suggest any pecuniary advantage to respondents. There is nothing on record to show that any pecuniary loss was caused to the company. The administrative decision was taken to award the contract to M/s Delhi Ahmedabad Roadways for the benefit of the company after taking approval of CMD/Board of Directors. The material on record does not suggest that a prima facie case is made out against the respondents.

30. The learned trial court has considered the delay aspect also by observing that the allegations pertain to the year 1984 whereas FIR was registered in 1994. The delay is not even explained before this court.

31. In view of the above discussion, no infirmity or perversity is seen in the impugned order which calls for interference of this court in exercise of its power under revisional jurisdiction.

The revision petition stands dismissed.

VEENA BIRBAL, J

May 2nd, 2014
ssb/kks