

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

% Judgment pronounced on: 6<sup>th</sup> April, 2015

+ **CRL.M.C. 4807/2014**

CENTRAL BUREAU OF INVESTIGATION ..... Petitioner  
Through Ms.Sonia Mathur, Adv. with  
Mr.Sushil Kr. Dubey, Adv.

versus

M/S TDI INTERNATIONAL PVT. LTD. .... Respondent  
Through Mr.Ashish Mohan, Adv.

**CORAM:  
HON'BLE MR.JUSTICE MANMOHAN SINGH**

**MANMOHAN SINGH, J.**

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C. seeking quashing of order dated 7<sup>th</sup> December, 2013 passed by Special Judge, CBI whereby the Special Judge rejected the fourth final closure report filed by petitioner/CBI in the matter and directed CBI to make further investigation into the matter.

2. The case was registered on source information against certain unknown officials of Airport Authority of India (AAI) and other unknown persons on the allegation that during 1995-1996, these officials entered into a criminal conspiracy with one Sh. Prem Bajaj, MD, M/s TDI International Pvt. Ltd. New Delhi with the object of causing wrongful pecuniary advantage to his firm in the matter of award and execution of contract of advertising rights on trolleys at five

international airports and by abusing their official position as public servants as they awarded contract for advertising rights on luggage trolleys supplied for five international airports to M/s TDI, thereby causing wrongful gain of Rs. 21.5 Crores to M/s TDI and corresponding loss to Airport Authority of India (AAI).

3. The matter was investigated thoroughly however allegations made in the FIR could not be substantiated and Closure Report under Section 173 Cr.PC. was filed on 25<sup>th</sup> November, 2005. The relevant extracts of closure report prepared after the investigation are reproduced as under :

“Investigation disclosed that this proposal was dealt by Sh. Inderjit Singh, the then GM (Commercial) on 03.10.95. On 15.11.1995 and 17.11.1995, M/s TDI submitted revised proposals and subsequent to discussions with officers of AAI, a letter dated 15.12.1995 signed by Sh. Inderjit Singh GM (Commercial) was issued to M/s TDI stating that their offer for the free supply of trolleys at five International Airports in lieu of advertising rights for seven years has been accepted but the sharing of maintenance costs between TDI and AAI would be worked out.

M/s Aaren Advertising Pvt. Ltd. Mumbai approached AAI with the proposal dated 27.12.1995 to supply trolleys free of cost and also undertook to do free retrieval and maintenance in lieu of advertisement rights on the trolleys. M/s Deltrol also submitted their proposal on 03.01.1996 to the Chairman, AAI. No action was taken on these proposals.

On 12.01.1996, after discussion between M/s TDI and AAI regarding the sharing of maintenance costs, a proposal was put up to Chairman AAI on 12.01.1996 for approval. At this stage, Sh. Sudhir Kumar ED (Finance) discussed the matter with the Chairman, AAI and recorded a note on

12.01.1996 that the Chairman had desired that M/s Aaren be also called and their proposal discussed in more specific terms.

M/s Aaren submitted their proposal on 18.01.1996 indicating a detailed plan of induction of 19500 trolleys free of cost and apart from the free maintenance and free retrieval they also offered to pay an amount of Rs.3.5 crores as licence fee to AAI. While discussions were being held between officers of AAI and M/s Aaren, M/s Sandeep Publicity also submitted their proposal on 06.02.1996 but the same was not considered. Investigation has also disclosed that on 02.02.1996, Shri Sudhir Kumar ED (Finance) after discussions with Chairman, AAI proposed that the proposals of M/s Aaren and M/s TDI be bench marked on a common standard and both parties be called to give a presentation of their proposal alongwith the prototype of trolleys.

A Committee of officers was then constituted to evaluate the two proposals. On 07.02.1996, the presentation of proposals as well as sample trolleys of M/s TDI and M/s Aaren, were seen by the Committee consisting of Sh. K. Tekchandani, Sr. ED (Ops.), Sh. M.A.Khan, ED (Commercial), Sh. Sudhir Kumar ED (F&A), Sh. H.P.Dash GM (Equipment) and Sh. Sunil Kumar Arora DGM (L&M). This Committee while doing the financial analysis arrived at the conclusion that though the proposal of M/s Aaren appeared to be attractive it was totally unworkable and financially untenable and therefore the offer of M/s TDI was superior. In the technical evaluation, the Committee found that the sample trolley of M/s TDI was of solid steel and chrome plated and M/s TDI was offering to import the entire plant and dyes to produce the same locally. On request of the AAI the firm also clarified that it would endeavour to supply stainless steel trolleys. This sample trolley of M/s TDI was found to be superior to the sample trolley of M/s Aaren and the Committee, therefore, recommended the proposal of M/s TDI on both technical as well as financial evaluation.

This recommendation of the Committee was accepted by the Chairman, AAI on 15.02.96 who recorded that equitable opportunity was given to those who had shown interest. Subsequently, separate agreements were executed between the Airport Directors of the five International Airports and M/s TDI on different dates.

Investigation has revealed that the trolleys supplied by M/s TDI were also got inspected through the DGS&D who opined that despite some minor variations, trolley design matched with the sample trolleys approved by the committee and the trolleys were acceptable in general. Investigation has revealed that the proposals were examined technically and financially by the Committee consisting of senior officers of the AAI. Though by accepting the offer of M/s TDI as against the proposal of M/s Aaren, AAI appears to have incurred a loss but sufficient circumstantial or direct evidence has not come forth that the officers of AAI were aware that they were deliberately causing such a loss through their acts of omission and commission while taking this commercial decision in public interest.

Investigation has also not disclosed any evidence of any pecuniary benefit to any officer of AAI. The acts of the public servants were aimed at improving the quality of service to the passengers and no mens rea could be established through investigation. On account of want of sufficient evidence, this Hon'ble Court be pleased to order the closure of this case."

4. By order dated 7<sup>th</sup> November, 2006 the trial court declined to accept the Closure Report and ordered further investigation on the following grounds :
  - a. As per Clause 4.3 of the Commercial Manual (Revenue and Contracts) of October, 1993 open tenders were required to be floated for the supply of trolleys at the airport but the same was not done in this case.

- b. The consideration of offers by M/s TDI International and M/s Aaren and non consideration of offers by M/s Deltrol as well as M/s Sandeep Publicity have not been answered.
  - c. The technical evaluation of proposals of M/s Aaren and M/s TDI International was done by a Committee whose report makes it apparent that M/s TDI had not submitted any sample trolley which was acceptable at that point of time but still the proposal of M/s TDI International was preferred.
  - d. The contract was given to M/s TDI International on 15<sup>th</sup> February, 1996 for a period of 7 years which is beyond the powers of Chairperson, AAI.
  - e. The loss to AAI on account of awarding of contract to M/s TDI was a sum of Rs. 21.5 crore which is not a small figure.
5. In compliance of order dated 7<sup>th</sup> November, 2006, further investigation was carried out on the issues as directed by Special Judge. However, the allegations remained un- substantiated. As such again a closure report under Section 173(8) Cr.P.C. dated 30<sup>th</sup> June, 2008 was filed by CBI on 1<sup>st</sup> July, 2008.

**Details of further investigation carried out in brief are as under:-**

**First Issue**

Departure from clause 4.3 of the Commercial Manual - open tender process was followed because of urgent need to retrieve the situation of baggage trolleys as per direction of Secretary, Ministry of Civil Aviation.

**Second Issue**

M/s Deltrol case not considered in tender as their offer was limited to supply of 200 trolleys per month which failed to meet demand.

Also they offered the design already existing which was under criticism. M/s Sandeep Publicity not considered since proposal was received on 6<sup>th</sup> February, 1996 when AAI had already fixed date as 7<sup>th</sup> February, 1996 for evaluating sample trolley of M/s Aaren and M/s TDI.

Third Issue :- M/s TDI not submitted sample:-

M/s TDI had presented trolley on 7<sup>th</sup> February, 1996 the date fixed for evaluating the sample – evaluating committee reports reveals & TDI sample superior and better functional to sample of M/s Aaren.

Fourth Issue :- Period of contract

In case of award of contract through limited tender- no restriction of time- Chairman has power to extend the contract period.

Fifth Issue:- Loss of Rs 21.5 Cr. to AAI

No Loss- only hypothetical figure given by M/s Aaren.

6. In the conclusion of the report, it was disclosed that the investigation does not disclose any evidence that accused had used any corrupt or illegal means or accepted any gratification or that any pecuniary benefit accrued to any officer of AAI. The acts of the public servants were aimed at improving the quality of service to the passengers and no *mens rea* could be established through investigation. On account of want of sufficient evidence, this Court may be pleased to order the closure of this case.

7. The Special Judge by order dated 24<sup>th</sup> July, 2008 again refused to accept the Closure Report and directed further investigation to

pinpoint the role of officers of AAI and others. The following observations were made by the Court while rejecting the closure report :-

- i. No open tender was invited.
  - ii. Contract was given to TDI for a period of 7 years which was beyond the powers of Chairman.
  - iii. Letter dated 15<sup>th</sup> December, 1995 signed by Sh. Inderjeet Singh, General Manager (Commercial) makes it clear that offer of TDI for supply of free trolleys at five International Airports in lieu of advertising rights for 7 years was accepted subject to sharing of maintenance cost between TDI and AAI.
  - iv. M/s Aaren gave an offer of supply of free trolleys maintenance and retrieval of cost, besides payment of license fee to the tune of Rs. 3 crore which was declined on account that the proposal of TDI was tenable, workable and superior to that of the former company.
  - v. When it was decided on 15<sup>th</sup> December, 1995 that contract was to be awarded to TDI, subsequent discussions on 12<sup>th</sup> January, 1996 and presentation of proposal as well as samples of trolleys on 7<sup>th</sup> February, 1996 were farce activities.
8. In compliance with the above order dated 24<sup>th</sup> July, 2008 further investigation was carried but no new facts or evidence emerged to substantiate the allegation of any abuse of official position by public servants or with any corrupt and oblique motive. Further investigation also did not disclose any financial loss to AAI for awarding the said contract. Hence, third closure report was filed on 1<sup>st</sup> June, 2009.
9. Details of further investigation carried out in brief on issuewise are mentioned in the report, the same are read as under :

First Issue: - No open tender

- Composite contract introduced first time for three purpose (a) good quality & design trolley (b) Immaculate maintenance (c) expeditious retrieval of trolley- covered under clause 4 giving full power to member(finance) for creation of commercial/revenue earning facility of any type contract for first time.

- No corrupt method adopted.

Second Issue :- Contract beyond 5 Years term

- No restriction on power of chairman.

- contract separately executed by 5 Airports director.

Third Issue: - Contract accepted by letter 15<sup>th</sup> December, 1995 on sharing of maintenance cost basis

- M/s Deltrol trolley not upto mark

- No experience in advertisement business.

- Revised proposal of M/s Aaren considered with M/s TDI proposal on 7<sup>th</sup> February, 1996 by evaluating committee, thereafter contract awarded to M/s TDI on 15<sup>th</sup> February, 1996.

Fourth Issue:- M/s Aaren proposed for supply of trolleys free maintenance and retrieval cost beside payment of license fees declined.

- M/s Aaren trolley capable of carrying 100 kg load only against 200 kg of M/s TDI trolley.

- M/s Aaren had produced trolley of same design as previous.

- Proposal for supply of 12500 number of trolley in phase period of 7 years

- Technical & financial committee evaluated both trolley & thereafter decision taken.

Fifth Issue :- Decision already taken on 15<sup>th</sup> February, 1995 hence subsequently discussion on 12<sup>th</sup> January, 1995 and 7<sup>th</sup> February, 1996 farce activity

- :- Revised proposal of M/s Deltrol & Aaren considered.
- :- M/s Deltrol proposed to supply mild steel made 150 trolley per month and no capacity to provide 12,500 trolleys at one time.
- :- M/s TDI revised proposal considered by evaluating committee on 7<sup>th</sup> February, 1996 thereafter decision was taken.
- :- Contract award to M/s TDI on 15<sup>th</sup> October, 1996 on basis of letter dated 15<sup>th</sup> February, 1996.

Sixth Issue:- official position abused by officials in awarding contract

- :- Tender committee fairly considered proposal of M/s TDI & M/s Aaren.
- :- Aaren proposal was rejected on various reasons such as:-
- :- Carrying/load capacity – 100 Kg only.
- :- Same design- as available – which were inviting complaints.
- :- Phase wise provision for supply of trolley.
- :- deployment of 200 persons for retrieval purpose which was not adequate.

10. It is specifically mentioned in the closure report that investigation does not disclose about any loss to the AAI. For the sake of clarity, the calculations based on actuals for the pre- 1996 arrangements, if continued for next seven years (1996-2003) vis-a-vis the actuals of M/s TDI's composite contract (valid for the same period), have been tabulated below:-

| Sl. No. |  | Actuals in pre 1996 period | Projections if pre 1996 arrangement | Actual as per current composite |
|---------|--|----------------------------|-------------------------------------|---------------------------------|
|---------|--|----------------------------|-------------------------------------|---------------------------------|

|       |                                                                                                                                                                                                                |                          |                                                                                 |                                            |
|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|---------------------------------------------------------------------------------|--------------------------------------------|
|       |                                                                                                                                                                                                                |                          | would have continued in next 7 years (extrapolated to 7 years period 1996-2003) | contract (RDI) for 1996-2003               |
| 1.    | Number of Trolleys                                                                                                                                                                                             | 7392                     | 12500                                                                           | 12500                                      |
| 2.    | Revenue from advertising on trolleys (weighted average of – average rate of Rs.115/- p.m. per trolley at Delhi, Chennai, Calcutta, TVN and Average rate Rs.142/- p.m. per trolley for 3400 trolleys at Mumbai) | 127 per trolley p.m.     | Rs.13.34 crores                                                                 | No revenue to AAI<br><br>(Assigned to TDI) |
| 3.(a) | Capital cost of trolleys + taxed based on tender for 2000 trolleys in 1995                                                                                                                                     | 4120 per trolley         | Rs.5.15 crores                                                                  | No cost to AAI (free supply by TDI)        |
| (b)   | Interest on capital cost                                                                                                                                                                                       |                          | Rs.3.04 crores                                                                  | .....                                      |
| 4.    | Maintenance cost paid as per actual                                                                                                                                                                            | Rs.73/- per trolley p.m. | Rs.7.66 crores                                                                  | Rs.1.96 crores                             |
| 5.    | Net cost to AAI for providing free baggage trolley to passengers                                                                                                                                               |                          | Rs.251 crores                                                                   | Rs.1.96 crores                             |

The analysis of the above table indicates the following:

- The number of trolleys that were in operation prior to 1996 were 7392. The numbers of trolleys for the period 1996-2003 were enhanced to 12500.
- Advertising Revenue:- Prior to 1996 the revenue from advertising on 7392 trolleys at the rate of Rs. 127/- per trolley was Rs. 9,38,784/- crores. If the same system would have continued for the period 1996-2003, the revenue from advertisement for the 12500 would have been Rs.13,33,50,000/- crores for the 7 years. As per the composite contract awarded to M/s TDI there will be no revenue from advertisement. Thus the net loss to AAI on this count as per new composite contract would be Rs.13,33,50,000/-.
- The Capital cost of trolleys plus taxes based on tender for 2000 trolleys in 1995 was Rs. 4,120/- per trolley. At this rate, the

Capital cost of trolleys plus taxes for 12500 trolleys for the period 1996-2003 i.e. 7 years comes to Rs. 5.15 crores. However, this expenditure is zero as per the composite contract awarded to M/s TDI. Thus the net gain to AAI on this count as per new composite contract would be Rs. 5.15 crores.

- The interest on capital cost for the period 1996-2003 at the previous rates come to Rs. 3.04 crores where as expenditure on this count as per the composite contract awarded to M/s TDI is nil. Thus the net gain to AAI on this count as per new composite contract would be Rs. 3.04 crores.
- The maintenance cost at the previous rates for the period 1996-2003 would have been Rs. 7.66 crores @ Rs. 73/- per trolley per month where as the maintenance cost under the composite contract awarded to M/s TDI would be only Rs. 1.96 crores. Thus the net gain to AAI on this count as per new composite contract would be Rs. 5.7 crores.
- From the above, it is clearly established that as per the composite contract AAI would have a gain of Rs. 13.89 crores and a loss of Rs. 13,33,50,000/- crores resulting in a net gain of Rs. 55,50,000/-.

Investigation does not disclose any undue pecuniary advantage either to M/s TDI or the public servants. The proposal of M/s TDI was found technically and financially viable. Therefore, the tender evaluation committee unanimously recommended acceptance of the proposal of M/s TDI.

As directed by this Court the name of the officers of AAI and others who dealt with the matter are as under:-

- (i) Sh. Inderjeet Singh, the then GM (Commercial) : He processed the proposal received from M/s TDI for supply of trolleys, issued a letter of intent on 15.12.1995 under his own signature to M/s TDI stating that proposal dated 23.8.1995 of M/s TDI has been accepted for supply of free trolleys.

- (ii) Sh. M.A.Khan, the then ED (Commercial), Sh. Sunil Kumar Arora, the then DGM (LM), Sh. K.Tekchandani, Sr. ED (Operations), Sh. Sudhir Kumar, the then ED (Finance), Sh. H.P.Dash, the then GM Equipment (Technical), Sh. D.P.Gupta, the then DGM Equipment; They were the members of Tender Evaluation Committee who rejected the offer given by M/s Aarens, Mumbai on the ground as discussed above and unanimously recommended to award the contract to M/s TDI.
- (iii) Sh. H.M.Sahul, the then Chairman. AAI: He accepted the recommendations of the Tender Evaluation Committee and gave final approval for award of contract to M/s TDI for supply of 12500 trolleys against advertisement rights on 15.2.1996.
- (iv) Sh. Prem Bajaj, Managing Director of M/s TDI, New Delhi:- The contract was awarded to his firm i.e. M/s TDI by the appropriate authority.

During the course of investigation, it is established that the proposal for supply of trolleys was examined technically and financially by the committee consisting of senior officers of various concerned divisions and no mens rea is established on the part of any public servant.

11. The Special Judge, by order dated 5<sup>th</sup> November, 2011 once again declined to accept the third Closure Report and observed that directions in order dated 24<sup>th</sup> July, 2008 have not been complied with. Further investigation and compliance of previous directions given vide order dated 24<sup>th</sup> July, 2008, was directed.

12. After further investigation, it was again concluded that no offence was made out and hence fourth Closure Report dated 31<sup>st</sup> August, 2012 was filed for want of evidence. It was the case of CBI that the observation of Court that CBI has not conducted investigation as

directed by his predecessor, is unjustified, as nothing remained to be investigated, however, according to CBI again the matter was investigated as per order of the Special Judge.

13. The details of further investigation carried out in brief are as under :-

#### First Issue

- :- Principle objective of contract was not revenue generation but replacement of trolley- matching with international standard.
- :- Supply to be made by M/s Aaron in phase manner.
- :- Procurement of trolley would have incurred huge capital expenditure of AAI hence in turn advertisement right were offered to proposed tender.
- :- Contract does not fall under – “Commercial manual” & not a revenue contract.
- :- Activities covered under- clause 4 of ‘delegation of power’.
- :- Combined activity (expenditure & revenue) – shortage of time – lead to composite contract.

#### Second Issue

- :- Reason for non consideration of other parties.

#### Third Issue

- :- M/s TDI had submitted sample before evaluating committee.
- :- Sample personally seen by Chairman, AAI.

#### Fourth Issue

- :- Contract for 7 years because of involvement of huge investment involved.
- :- Covered under clause 4 of chapter 6.1 of Delegation of Power.

:- Chairman had full power ;no provision restricting his power.

Fifth Issue :- Financial loss

:- Not a revenue generation contract – so financial offer of M/s Aaren could not have been determining factor.

:- Financial loss calculated only hypothetical figure.

:- Details of calculation : w.r.t. M/s Aaren.

:- Financial analysis - showing no loss of revenue to AAI.

:- TDI awarded contract for supply of trolley against advertisement right along with repair maintenance, retrieval –by Chairman.

14. On issue No. 5 the loss to AAI on account of award of contract to M/s TDI was a sum of Rs 21.5 crores. The detailed report was submitted , the relevant extracts are reproduced here as under :

“As the investigation has disclosed, the object of the tender was to procure trolley meeting world class standards. This was not a revenue generation contract and consequently the financial offer of M/s Aaren could not have been the primary determining factor.

The Evaluation Committee had observed that the trolley sample submitted by M/s Aaren was exactly the same trolley which was already in use at International Airports and attracting criticism, and that the presentation given by M/s Aaren was sketchy and many issues were unclear including their idea about engaging a design institute to help design the trolley, after the award of the contract. AAI had no time for more experimentation and M/s Aaren was intimated accordingly but no further clarification forthcoming, their proposal as not considered fit enough for AAI. The proposal of M/s Aaren would not meet the principal objective which was to immediately replace the existing MS Pipe trolleys at the International airports. M/s Aaren had offered the same kind of trolleys as were already available and in use at the said airports and that too, in a phased manner over a period of time. If the same kind

of trolleys were to be retained, obviously no tender would be required at all. Thus despite the financial offer of M/s Aaren, the proposal was rejected in view of the fact that it would not fulfill the object of the procurement tender.

Further investigation has also disclosed that alleged loss of Rs. 21.5 crores to AAI on account of award of contract to M/s TDI rather than M/s Aaren was only hypothetical and computed based on comparison of the financial offer made by M/s Aaren. It is not justified on the following grounds:-

I. The trolleys offered by M/s Aaren were of the same specification which were in use at the international airports in India and subject matter of prevailing criticism and thus technically rejected.

II. In view of Aaren's letter No. 3234/1239 dated 28.2.1996, if trolleys were to be inducted in one go, the economics of their offer needed to be changed necessarily which they never did. Thus their offer was considered inconclusive.

III. Aaren offered to induct trolleys in phased manner over a period of seven years whereas the need was to immediately replace the existing trolley which were found to be defective and were facing severe criticism.

IV. During the discussion with AAI officials M/s Aaren indicated the gross revenue to be Rs. 35.00 Crores, though this figure, and other estimates used in summary proposal submitted by Aaren, did not fully corroborate with detailed calculations submitted alongwith the proposal.

V. Even if one goes with the computation made by M/s Aaren, it was found unworkable as:-

A. It was assumed by Aaren that 100% trolleys will get advertisement as against 40% in reality then.

B. The proposal of M/s Aaren projected generation capabilities far in excess (more than double) of possibilities that existed. The projection contained in the proposal of M/s Aaren were not borne out by even basic mathematical

evaluation and their representatives had little clue about the intricacies of the requirements as indicated below :

a) Revenue generation projected was Rs. 35.00 crores from the advertisements over a period of 7 years. This calculation was based on 100% trolleys getting advertisement, which was not possible, since as per AAI officials the prevailing experience was only 40% of the trolleys getting advertisements at that time and AAI required only 12500 trolleys as against 19500 trolleys offered by M/s Aaren. The revenue expected would have been Rs. 14.7 cores as per AAI computation whereas M/s Aaren's estimated expenditure on this project was around Rs. 32.72 crores as below:-

|      |                                                          |              |
|------|----------------------------------------------------------|--------------|
| I    | No. of trolleys to be supplied over a period of 7 years. | 19500        |
| II   | Total cost of trolleys                                   | Rs.10.50 Cr. |
| III  | Cost of retrieval                                        | Rs.5.50 Cr.  |
| IV   | Cost of maintenance                                      | Rs.6.25 Cr.  |
| V    | Interest                                                 | Rs.3.00 Cr.  |
| VI   | Office expenses and promotion                            | Rs.1.00 Cr.  |
| VII  | Licence fee to AAI                                       | Rs.3.50 Cr.  |
| VIII | Addl. 10% contingency                                    | Rs.2.97 Cr.  |
|      | Total                                                    | Rs.32.72 Cr. |

Also revenue generation possible as per their own written contention in their presentation at Rs. 350/- per trolley per month and 40% of trolleys getting advertisements was no more than Rs 16.34 crores. The committee of AAI had made the financial analysis of the input collected from the parties during presentation comes to conclusion that based on available/furnished parameters the total revenue from advertisements even from 19500 trolleys will be:

| Trolleys proposed to be inducted every year | Additional trolleys inducted during the year | Year for which the trolleys to be deployed | Product (2x3) |
|---------------------------------------------|----------------------------------------------|--------------------------------------------|---------------|
|                                             |                                              |                                            |               |

| 1     | 2     | 3 | 4     |
|-------|-------|---|-------|
| 10300 | 10300 | 7 | 72100 |
| 10600 | 300   | 6 | 1800  |
| 10800 | 200   | 5 | 1000  |
| 12800 | 2000  | 4 | 8000  |
| 14800 | 2000  | 3 | 6000  |
| 17000 | 2200  | 2 | 4400  |
| 19500 | 2500  | 2 | 2500  |
| Total | 19500 |   | 99800 |

Note: 99800 (product) x 350 (Revenue per month per trolley) x  
0.40 (40% occupancy of advertisement)= Rs. 16.34 crores.

Hence, the financial projection which was made by the party were not corroborated by the parameters mentioned by the M/s Aaren in the proposal. Hence, the AAI Committee observed that this against the projected revenue of Rs. 35 crores stated verbally showing a marginal profit of Rs. 2.28 crores in 7 years, was imaginary and not found fit for consideration.

b) On expenditure side, the proposal provided for Rs. 5.50 crores for retrieval system with a manpower of 200 retrievers paid @ Rs. 2000 per month. This would actually mean an expense of Rs. 200 x Rs. 2000 x 12 x 7 = Rs. 3.36 crores and with provision for bonus (8.33 %), PF (11.61%), ESI (4.75%) and the service charge of the contractor (15%) extra, the cost comes to Rs. 4.9 crores and not Rs. 5.50 crores.

c) The committee had also observed that AAI was facing litigation in various High Courts, on the demand of employees involved in Trolley Retrieval for regularization with AAI on its payroll (Subsequently concluded in favour of regularization by Hon'ble Supreme Court). AAI were required to regularize services of 536 persons (412 retrievers, 49 Supervisors, 50 guards, 20 Asst. Managers and 5 Managers) employed for Trolley retrieval Services at 5 International Airports. M/s Aaren was unwilling to take

this manpower, as they have only provided for Rs. 5.50 crores as retrieval cost in the contract for seven years period for all International Airports. Thus, AAI would have saddled with this manpower and resulting staff cost as its financial obligation, that too on a permanent basis if M/s Aaren proposal would have been accepted.

d) M/s TDI accepted this manpower and absorbed the services of all these persons without any additional cost to AAI under this contract. Thus AAI saved a sum far exceeding the alleged loss, on this account by awarding the work of Trolley Retrieval to M/s TDI under this contract.”

It is alleged in the report that in view thereof M/s Aaren would have incurred a loss of Rs. 17.78 crores in place of estimated profit of Rs. 2.28 cores during the 7 years period. In such circumstances, there was the inherent risk that M/s Aaren may have abandoned the contract midway resulting in chaos and possibly considerable expenditure and loss to AAI.

It is stated by CBI that further investigation does not disclose any loss to AAI, even if the status quo would have been maintained and this composite contract would have not been awarded at all. For all sake of clarity, the calculation based on actuals for the pre 1996 arrangement, if continued for next 7 years for which this contract was awarded, AAI would have spent Rs. 2.51 crores. As against it spent Rs. 1.96 crores, thereby saving an amount of Rs.0.55 crores. Detailed computation shown in the following table;-

AAI did not receive any advertisement revenue since it was assigned to M/s TDI in lieu of capital cost and 65 % of maintenance cost.

For the sake of clarity, the calculation based on the actuals for the pre 1996 arrangement if continued for next 7 years (1996 to 2003) vis-a-vis the actuals of M/s TDI composite contract (valid for the same period) have been tabulated below:-

| Sl. No. |                                                                                                                                                                                                                | Actuals in pre 1996 period | Projections if pre 1996 arrangement would have continued in next 7 years (extrapolated to 7 years period 1996-2003) | Actual as per current composite contract (RDI) for 1996-2003 |
|---------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|---------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|
| 1.      | Number of Trolleys                                                                                                                                                                                             | 7392                       | 12500                                                                                                               | 12500                                                        |
| 2.      | Revenue from advertising on trolleys (weighted average of – average rate of Rs.115/- p.m. per trolley at Delhi, Chennai, Calcutta, TVN and Average rate Rs.142/- p.m. per trolley for 3400 trolleys at Mumbai) | 127 per trolley p.m.       | Rs.13.34 crores                                                                                                     | No revenue to AAI<br><br>(Assigned to TDI)                   |
| 3.(a)   | Capital cost of trolleys + taxed based on tender for 2000 trolleys in 1995                                                                                                                                     | 4120 per trolley           | Rs.5.15 crores                                                                                                      | No cost to AAI (free supply by TDI)                          |
| (b)     | Interest on capital cost                                                                                                                                                                                       |                            | Rs.3.04 crores                                                                                                      | -----                                                        |
| 4.      | Maintenance cost paid as per actual                                                                                                                                                                            | Rs.73/- per trolley p.m.   | Rs.7.66 crores                                                                                                      | Rs.1.96 crores                                               |
| 5.      | Net cost to AAI for providing free baggage trolley to passengers                                                                                                                                               |                            | Rs.251 crores                                                                                                       | Rs.1.96 crores                                               |

15. The analysis of the above table as indicated in fourth report are as follows :

- i) The number of trolleys that were in operation prior to 1996 were 7392. The numbers of trolleys for the period 1996-2003 were enhanced to 12500.
- ii) The Capital cost of trolleys plus taxes based on tender for 2000 trolleys in 1995 was Rs. 4120 per trolley. At this rate, the capital cost of trolleys plus taxes for 12500 trolleys for the period 1996-2003 i.e. 7 years comes to Rs. 5.15 crores. However, this expenditure is zero as per the composite contract awarded to M/s TDI. Thus the net gain to AAI on this count as per new composite contract would be Rs. 5.15 crores.
- iii) The interest on capital cost for the period 1996-2003 at the previous comes to Rs. 3.04 crores whereas expenditure on this count as per the composite contract awarded to M/s TDI is nil. Thus the net gain to AAI on this count as per new composite contract would be Rs. 3.04 crores.
- iv) The maintenance cost at the previous rates for the period 1996-2003 would have been Rs. 7.66 crores @ RS. 73 per trolley per month whereas the maintenance cost under the composite contract awarded to TDI would be only Rs. 1.96 crores. Thus, the net gain to AAI on this count as per new composite contract would be Rs. 5.7 crores.
- v) Prior to 1996, the revenue from advertising on 7392 trolleys at the rate of Rs. 127 per trolley was Rs. 938784/-. If the

same system would have continued for the period 1996-2003, the revenue from advertisement for the 12500 trolleys would have been Rs. 13,33,50,000/- for 7 years. As per the composite contract awarded to M/s TDI, there will be no revenue from advertisement. Thus the net loss to AAI on this count as per new composite contract would be Rs. 13,33,50,000/-.

- vi) From the above, it is clearly established that as per the composite contract, AAI would have a gain of Rs. 13.89 cores and a loss of Rs. 13,33,50,000/- cores resulting in a net gain of Rs. 55,50,000/-.

As such, further investigation does not disclose any pecuniary advantage either to TDI or to the public servants.

The proposal of TDI was found technically and financially viable. Therefore, the tender evaluation committee unanimously recommended acceptance of the proposal of TDI.

The alleged loss of Rs. 21.5 crores to AAI on account of award of contract to M/s TDI rather than M/s Aaren was only hypothetical. The trolley offered by M/s Aaren was technically rejected and were not acceptable and therefore the proposal of M/s TDI was preferred by the officers of AAI.

16. On issue No.6, to pinpoint the officers of AAI and others, who were privy to conspiracy, detailed report submitted by CBI is reproduced here as under :

“The name of the officers of AAI and others who dealt with the matter are as follows:-

i) Shri. H.M.Sahul, AVM, the then Chairman, AAI.

Further investigation revealed that Sh. H.M.Sahul accepted the recommendations of the Tender Evaluation Committee consisting of Sh. K.Tekchandani, Sr. ED (Operations), Shri Sudhir Kumar, ED (F&A), Sh. M.A.Khan ED (Commercial), Sh. H.P.Dash, General Manager (Equipment) and Sh. Sunil Kumar Arora, Dy. General Manager (LM).

He gave final approval for award of contract to M/s TDI for supply of 12500 trolleys against advertisement rights on 15<sup>th</sup> February, 1996 along with repair, maintenance and retrieval in lieu of grant of advertisement rights.

ii) Sh. Inderjeet Singh, the then GM (Commercial), AAI.

Further investigation revealed that the proposal of M/s TDI was processed by him vide his note dated 3.10.1995. The proposal was also discussed by Sh. K.Tekchandani, Sr. ED (Ops) with the Chairman, AAI for further discussion between operations, commercial and financial officials along with offers received from two other agencies.

Thereafter, a letter dated 23<sup>rd</sup> August, 995 with the approval of the Chairman was issued to TDI conveying in principle acceptance of their proposal of providing 'free trolleys in lieu of advertising rights' subject to terms, conditions and operational mechanism to be worked out; primarily for the vendor to liaise with the manufacturers of trolleys overseas to ensure that the design of trolleys meet the specifications projected in the proposal and prototype to be assessed and evaluated on merit by AAI.

Thereafter Sh. Inderjeet Singh was transferred out to another department in the NAD wing of AAI on the 20<sup>th</sup> December, 1995.

- iii) Sh. K. Tekchandani, Sr. ED (Operations)
- iv) Sh. Sudhir Kumar, ED (F&A)
- v) Sh. M.A.Khan, ED (Commercial)
- vi) Sh. H.P.Dash, GM (Equipment)
- vii) Sh. D.P.Gupta, DGM (Equipment)

The aforesaid officials were the members of the Technical Evaluation Committee who was mandated to compare two available proposal only by the then Chairman, AAI Sh. H. M. Sahul. The AAI Committee submitted their findings to Chairman, AAI who finally approved the proposal of M/s TDI on 15.2.1996.

- viii) Sh. Prem Bajaj, MD, M/s TDI, New Delhi

The contract was awarded to his firm by the appropriate authority of AAI on 15.02.1996.

## 17. FINDINGS OF THE FURTHER INVESTIGATION

Further investigation does not disclose any evidence that accused had used any corrupt or illegal means or accepted any gratification or any pecuniary benefit to any officer of AAI. The acts of the public servants were aimed at improving the quality of service to the passengers and no mensrea could be established through further investigation. On account of want of sufficient evidence, this Court may kindly pass the order of closure of this case.”

17. By impugned order dated 7<sup>th</sup> December, 2013 once again, while rejecting the fourth closure report filed by petitioner, Special Judge has directed to comply and investigate in terms of observation made by Special Trial court by order dated 24<sup>th</sup> July, 2008. Aggrieved by the

said order passed by Special Judge, the present petition has been filed seeking the following prayer :

- “i) Set aside the order rejecting closure report dated 07.12.2013 passed by Ld. Special Judge Sh. V.K. Gupta, Patiala House, New Delhi District Court, New Delhi.”

18. It is argued by Ms. Sonia Mathur, learned counsel appearing for petitioner by referring the grounds mentioned in the present petition that nothing incriminating material has been found despite of thorough investigation done by the CBI various times and specific reports have been submitted before the Special Judge on all the issues and nothing more is required for investigation, thus, the impugned order has been challenged. She has relied upon all the reports and the details given on issue wise. She has also referred various decisions.

19. The Supreme court in case of ***Vasanti Dubey vs. State of Madhya Pradesh***, 2012(2) SCC 731 has held that there is no power, expressly or impliedly conferred under Cr.P.C. on a Magistrate to call upon police to submit a charge-sheet, when they have sent a closure report. The Magistrate may or may not accept the report and take suitable action according to law, he could not impinge upon jurisdiction of police, by compelling them to change their opinion so as to accord with his view.

20. In the case of ***Harinder Pal Singh vs. State of Punjab***, 2004 Crilj 2648 the Court has held that Magistrate is empowered to not accept the closure report filed by the police agency but he cannot direct the police for further investigation again and again to form a particular opinion or to submit a challan.

21. It is settled law that if police report and the evidence/documents filed therewith is sufficient to satisfy the magistrate that he should take cognizance, his power is not fettered by the label which the investigation agency chooses to give to the report submitted by it under Section 173(2) Cr.P.C.

22. It is a well settled law that upon receipt of a police report under Section 173(2) Cr.P.C., a Magistrate is empowered to take cognizance of an offence under Section 190(1)(b) Cr.P.C. even if the police report is to the effect that no case is made out against the accused. Section 190(1)(b) Cr.P.C. does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the IO and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) Cr.P.C. and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 Cr.P.C. for taking cognizance of a case under Sec. 190(1)(a) Cr.P.C. though it is open to him to act under Sections 200 or 202 Cr.P.C.. Reference is made to the case of ***M/s India Carat Pvt. Ltd. vs State of Karnataka & Another***, AIR 1989 SC 885.

23. Special Judge while issuing direction has disregarded the law laid down in the case of ***State of Maharashtra vs. Sharadchandra Vinayak Dongre***, AIR 1995 SC 231 that Section 190(1)(b) Cr.P.C.

provides that a Magistrate has the power to take the cognizance upon a police report of such facts as are provided therein on being satisfied that the case is a fit one for taking cognizance of the offence. Therefore, if the police report and the evidence and material/documents filed therewith is sufficient to satisfy the Magistrate that he should take cognizance, his power is not fettered by the label which the investigating agency chooses to give to the report submitted by it under Section 173(2) Cr.P.C.

24. Having perused all the closure reports submitted by the CBI before the Special Judge and argument of Ms. Sonia Mathur, it is very clear that the matter was investigated from various angles as well as from the suggestion of the Court from time to time and the allegations could not be substantiated during investigation which went for more than six years and no useful purpose would be served as on investigation all the queries raised by the Special Court have been answered. The arguments of Ms.Sonia Mathur have not been rebutted by the other side. The impugned order passed by the trial court is unreasonable and unwarranted as once the Court after reading of report(s) has noticed that answer of all the queries have been answered after investigation, the question of further investigation does not arise unless the Court feels that proper investigation is not carried out and the matter is to be investigated on left out issues.

25. In view of the facts and circumstances of present case impugned order of the Special Judge dated 7<sup>th</sup> December, 2013 directing CBI to further investigate the matter in view of observation/direction dated 24<sup>th</sup>

July, 2008 is quashed and set aside. The closure reports submitted by CBI are accordingly accepted by allowing the present petition. The FIR is accordingly quashed.

26. No costs.

**(MANMOHAN SINGH)**  
**JUDGE**

**APRIL 06, 2015**