

**HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO**

**CRIMINAL PETITION No.2570 of 2015**

-

**ORDER :**

The petitioners are A.3 to A.10 among ten accused of C.C.No.28 of 2014 on the file of the Principal Special Judge for CBI Cases, Hyderabad, where the learned Special Judge has taken cognizance against the accused for the offences punishable under Sections 420, 468, 471 read with 120-B IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, which is out come of crime registered by the respondent-CBI in RC 6(A)/2013-CBI, ACB, Hyderabad and after investigation filed the final report that was taken cognizance. Impugning the final report and cognizance taken by the learned Special Judge, this criminal petition is filed seeking to quash the said C.C.No.28 of 2014 contending that the petitioners are innocent and not liable for the accusation.

2. The police final report pursuant to the crime supra filed by the CBI against the ten accused including the petitioners speaks in nutshell that Bharat Dynamics Limited (BDL), a Government of India Enterprise under the administrative control of the Ministry of Defence (MoD) to be a manufacturing base for guided weapon systems, producing the 1<sup>st</sup> Generation Anti Tank Guided Missile (SS11B1). This product is a culmination of a Licence Agreement, the Government of India entered into with Aerospatiale, Fresh Republic. On successful completion of the SS11B1 project, the BDL embarked on production of 2<sup>nd</sup> Generation ATGMs – the French Milan-2 and Russian Konkurs and these projects were taken up for licence production with technical collaboration from M/s.Euromissile, French Republic and M/s.KBP, Tula, Russia. These projects are covered a broad spectrum of the requirements of the Indian Army's infantry and mechanized forces. The BDL has three manufacturing units located

at Kanchanbagh, Bhanur and Visakhapatnam.

3. On credible information, a Joint Surprise Check (JSC) was conducted on 26.03.2013 and based on the findings of the JSC, Crime No.RC 6(A)/2013 was registered on 26.04.2013 against the officials of BDL, Bhanur and the supplier by name M/s.Kemptronix, in connection with irregularities in procurement of Transistors for Receiver Assembly of Konkurs – M Missile and the investigation reveals that BDL, Bhanur has decided to procure several electronic items including the Transistors and to procure this item, BDL floated limited tender enquiry on 17 firms for procurement of 2T880b Transistors for a quantity of 35,000 numbers, having specification AAO 339.594 TY/Size 2T 880b in Russian Alphabests or Drg. No.2T 880B vide Enquiry No.IMM/GR/K-310104 dated 13.09.2011 with due date 17.10.2011 and the limited tender enquiry contained terms and conditions with technical specifications, such as, test certificate to be provided along with supplies, the test certificate containing the details like conforming to relevant Russian standard, operating temperature conditions, batch production details, date of manufacturing, electrical and mechanical parameters checked, that to be provided and that the product should be in strict compliance with the technical requirements as per Russian standards and the components to be supplied are from latest production batches of the year 2010 and shelf life should be 25 years, the components should be packed in suitable antistatic packing for transportation and storage. In response to the eight firms including M/s.Kemptronix supra submitted quotations, which include a regret letter of one firm and M/s.Kemptronix-A.2 represented by its Proprietor Sri Anil Singvi (A.1) stood at L1 quoting Rs.889/- per piece and the quotations were referred to SEG and Indigenization Department asking for technical suitability and the Department asked to get clarifications from the bidder M/s.Kemptronix regarding compliance of terms and conditions. Accordingly, M/s.Kemptronix was asked to clarify and submitted point wise reply assuring the compliance of all the terms and conditions. Since the bidder M/s.Kemptronix clarified that the operating

temperature of the component would be -55 C to 125 C, the batch code, year and date of manufacture were quoted differently, therefore, a committee constituted for technical discussion with the bidder M/s.Kemtronix and held a meeting on 02.12.2011, wherein the bidder has agreed to supply the desired product covered by minutes of meeting, in which the committee members had signed including the vendor, which speaks *“Discussions held with M/s.Kemtronix for Technical clarifications for KM electronic items. Supplier has agreed to supply the items with Russian make items and manufacturing date is in the year 2010-2011 batch. The temperature range of the product is -60 deg. to +125 deg. Supplier has agreed to submit the all required certificates like manufacturer CoC, inspection reports along with supplies”*. Pursuant to which, the purchase order dated 01.02.2012 for Rs.3,04,92,700/- + 5% VAT was placed on the L1 bidder M/s.Kemtronix for supply of 35000 numbers of 2T880b Transistors. The investigation further reveals that it is there in the purchase order, the recommendation of Technical Committee regarding the word “Russian make” was omitted, however, in the annexure enclosed to the purchase order that the product should be in strict compliance with the technical requirements as per Russian Standards and confirming to relevant Russian Standards, therefore, they committee mischief by change of the ‘Russian make’ to ‘Russian Standards’.

4. The investigation further revealed that 100 nos. of Transistors initially supply by M/s.Kemtronix on 08.03.2012 and that they were accepted on 31.03.2012 by the Inward Goods (Quality Control), Department, BDL, Bhanur, and the second lot of 5000 nos. of Transistors supplied on 30.04.2012 and accepted on 14.05.2012 and the final lot of 29900 nos. of Transistors were supplied on 23.05.2012 and they were accepted on 25.06.2012. All these quantities were accepted by the Quality Control (Inward Goods) and dispatched to BDL Kanchanbagh under different stock transfer vouchers. M/s.Kemtronix with malafide intention manipulated the Certificate of

Conformation and supplied the Transistors, which are subject to testing in Electronic Lab at BDL Bhanur. The components supplied by M/s.Kemptonix-A.2 represented by A.1 were subjected to testing in Electronic Lab at BDL, Bhanur and after investigation they were found within the specified parameters and the minimum and maximum values for each parameter were recorded and incorporated in the inspection reports. However, during production testing of Konkurs-M electronic modules, it was found that the functional command was dropping during panel testing and that the technical investigation revealed that the problem was due to 2T880b Transistor and D816D (Diode). The supplier M/s.Kemptonix was intimated about the problem and called for an immediate meeting on 24.11.2012 and during discussion A.2 representing M/s.Kemptonix-A.1 disclosed that that the 2T880b Transistors were manufactured in USA of STI make but not Russian make as agreed.

5. M/s.Kemptonix also wrote a letter to BDL on 13.12.2012 informing that they found a firm in Russian which can supply 2010 batch 2T880b, quantity 1000 nos. at the rate of Rs.3,500/- each and that they can arrange 1000 nos. as exchange of material on payment deducting from the balance payment and that the technical parameters are matching with that of Russian make transistors and requested to allow their Technical Engineer to sort out the technical matter. But, no reply was sent to M/s.Kemptonix by BDL. It is further revealed in the investigation that the test conducted at the Electrical Division, BDL, Kanchanbagh, found that the components supplied by A.1 were erratic on positive side and was not as linear as that of Russian make on negative side. In this connection, a meeting was called on 07.01.2003, wherein it was decided to withhold placing of purchase order, if any, on M/s.Kemptonix-A.1 and A.2 for the items already issued by BDL, Bhanur Unit and also decided to reject the material supplied by M/s.Kemptonix and to procure the items of Russian origin only and not the equivalent standards. As such, A Joint Surprise Check was conducted on 26.03.2013 at BDL, Kanchanbagh and found 50% of the material supplied by

M/s.Kemptronix was rejected and thereby BDL incurred a loss of about Rs.1.5 Crore and basing on the request of vigilance officials of BDL, an in-house test was conducted at Electronic Division, BDL, Kanchanbagh, and a report was submitted on 12.04.2013 to that effect, whereunder two samples of Russian make Transistors and two samples of Transistors supplied by M/s.Kemptronix were tested with an equipment "Curve Tracer Sony Tektronix 370A" and noticed that the Russian Transistors were showing linear behaviour throughout the temperature range -

60 C +120 C, whereas the Transistors supplied by M/s.Kemptronix were found erratic on positive side and was not as linear as that of Russian make on negative side. In this connection a meeting was called on 07.01.2013, wherein it was decided to withhold placing of purchase orders, if any, on M/s.Kemptronix for the items already issued by BDL, Bhanur unit and also decided to reject the material supplied by M/s.Kemptronix.

6. A team from BDL, Bhanur, visited Electronic Division of BDL, Kanchanabagh, and discussed about the problem and during further testing at Kanchanbagh, the problem of dropping command was still noticed, therefore, it was suggested that calibration of test panel and grouping of the components. The grouping of components was conducted to improve the performance. In face, M/s.Kemptronix (A.1) entity, represented by A.2, approached M/s.Sudarshan Tech Services for supply of the components from M/s.Semiconductor Technology Inc. (STI) of USA and the components were supplied in lots and in all three lots, the supplier has concealed its name i.e., M/s.Sudarshan Tech Services, Bangalore, and the manufacturer name i.e., M/s.STI, USA in the Certificate of Conformation (CoC) and when Quality Control Lab insisted for CoC, the vendor issued a CoC in its letterhead and submitted the photograph of CoC concealing the details of the Company. In the letterhead stating the product conforms to Russian MIL Standard and as per manufacturer's

product catalogue and specifications, make STI and attached a photocopy of STI Company's letterhead concealing the location and address of the STI Company. In Column 'Company Name', affixed rubber stamp of M/s.Kemptronix and in the column of 'Part No.', 2T880B was typed. In the original CoC the Company name is mentioned as Sudarshan Tech Services, Bangalore, and the Part No. is mentioned as 2T880B, which is unconnected number mentioned in the CoC on the request of M/s.Kemptronix to deceive the BDL, whereas the actual product code is mentioned as STI P/N 2N5149. According to it, the code 2T880b was deliberately got encrypted as '2T880B' on the body of the Transistors as it is manufactured in Russia at the instance of M/s.Kemptronix by the manufacturer M/s.STI at USA. The product supplied by STI has its own manufacturing code '2N5149' and also the product does not contain the Russian Alphabet E and not 'b', which is required as per purchase order. The Konkurs-Missile project is a Russian Collaboration and the Missiles are compatible to only Russian standards and not USA standards. The investigation further revealed that M/s.Kemptronix concealed the supplier's name and the manufacturers address and other details by pasting white stickers on the CoC and took photocopy and sent it along with the supplies. The officials in pursuance of criminal conspiracy, released the payment on the perfunctory lab test reports, which included checking of only 8 parameters and relied on the report submitted by the supplier in respect of other 25 parameters. The total payments of Rs.3,20,17,335/- were released within a span of 7 to 10 days to the supplier based on perfunctory lab test reports and the supplier in turn purchased the components only for Rs.23,84,760/- at the rate of Rs.66.80 ps. per unit and the same were supplied to BDL at the rate of Rs.871/- per unit the same was accepted by BDL officials i.e., A.3 to A.10 in connivance with the supplier, thereby caused wrongful loss to the exchequer and derived illegal gain.

7. Coming to the specific rolls of the officials of BDL i.e., A.3 to A.10

as per charge sheet, A.3 being Senior Manager, IMM Department, has initiated the proposal for procurement of 35000 nos. of 2T880B Transistors in Limited Tender Enquiry and obtained approval from competent financial authority and he issued draft purchase order on M/s.Kemtronix and he did not comply with the recommendations of Technical Committee, wherein as per the technical committee report, the supplier had agreed upon to supply the items of 'Russian make' but while issuing the draft purchase order, with malafide intention and in pursuance of criminal conspiracy deliberately omitted the word 'Russian make' instead of mentioned as 'conforming to relevant Russian standard' in the annexure attached to the purchase order. A.4, DBM of IMM-VD Department, is one of the signatories of the technical committee report signed on 02.12.2011 and being responsible for procurement of product components and sub-assemblies. A.4 issued the purchase order dated 01.02.2012, however, he deliberately not incorporated the word 'Russian make' as recommended by the Technical Committee, thereby, favoured M/s.Kemtronix in the supply of spurious material at a whopping price. So far as A.5, Senior Manager, SEG & Indigenization Department, responsible for devising the drawings and specification for the product as per Russian standards and he is also responsible for preparing validation report duly vetted by Quality Control and by the Controllerate of Quality Assurance (Systems), being one of the signatories of the technical committee report dated 02.12.2011 and having knowledge about the product and deviation in the supplies. A.5 is also one of the committee members to ensure that the product is genuine and as per the Russian standards and not of American standards and thereby failed to identify the source of the supply i.e., STI and accommodated for procurement of transistors of Russian standard than that of Russian make. So far as A.6, DGM QC (IG) Department, who is responsible to conduct tests of the material other than electronic items and acceptance of material upon clearance by the labs basing on their inspection reports and he is responsible to check the availability of documents, such as, purchase order copy, drawing, catalogue, standards, etc., test certificates, in connivance

with the supplier failed to obtain Certificate of Conformance/Compliance and other test reports from M/s.Kemptronix along with material and cleared the same based on the inspection reports and confirmation by the E-lab. So far as the allegation against A.7, who Ex-Deputy Manager, E-lab and office-in-charge, Quality Control, Electronic Lab, BDL, Bhanur, is that he signed the inspection report dated 21.06.2012 for being carried out the inspection of a large quantity of transistors, in confirmation with the supplier M/s.Kemptronix, tested the material without there being receipt of proper CoC without relevant certificates to the material covered. A.8, Ex-DBM, IMM Department, completely omitted the words 'Russian make' as recommended by technical committee while issuing purchase order to M/s.Kemptronix. Whereas A.9, Senior Manager, Quality Control (IG) Department, he cleared the material without there being proper CoC and test reports received from the supplier M/s.Kemptronix along with material. So far as A.10, Assistant Manager, Quality Control (IG) Department, he signed the IRV having accepted and cleared the material without there being proper CoC and test reports received from the supplier M/s.Kemptronix along with the material.

8. After investigation police filed final report and that was taken cognizance by the Special Judge. Impugning the final report, the petitioners (A.3 to A.10), who are employees or ex-employees of BDL, filed this quash petition. The grounds sought in the criminal petition are that they have not committed any offence either of cheating or forging of documents for the purpose of cheating or using as genuine a forged document for the purpose of cheating, much less, with any criminal conspiracy and much less any offence under the Prevention of Corruption Act, 1988 (for short, 'the Act') or any other misconduct in any manner in discharge of their duties and the ingredients of the offences mentioned in the final report and they are no way applicable to any of them. It is also the contention of petitioners that the purchase order issued in favour of A.1 and A.2 specifically indicates supply of 'Transistor/AAO339.594TY/2T 880b in

Russian alphabets', this itself discloses the purchase order specifically requires A.1 and A.2 to supply the above product of Russian make and the allegation that purchase order refers only confirming of 'relevant Russian standard' completely ignores the specification indicated in the Purchase Order for supply of 'Transistor/AAO339.594TY/2T 880b in Russian alphabets' and A.3, A.4 and A.8 on the basis of purchase order, are no way liable to be implicated as the purchase order reads in totality. The combined reading of the technical report and purchase order demonstrates A.1 and A.2 agreed to supply the items with Russian make and thereby A.3 to A.10 none of them committed any of the offences and taking cognizance against them is unsustainable. It is also averred in the grounds that A.1 and A.2 encrypted the Code : 2T 880b on the body of the Transistor as if it was manufactured in Russia, thereby A.1 and A.2 deliberately given an impression of the Transistors supplied are Russian make, in which the petitioners/A.3 to A.10 have no role, thereby the accusation against A.3 to A.10 no way sustains and there is no allegation that they cheated or any documents forged or forged for the purpose of cheating or using as genuine a forged document or electronic record against A.3 to A.10 for the offences punishable under Sections 120-B or 420, 468 and 471 IPC, apart from no offence under Section 13 of the Act. So far as A.5 is concerned, the very basis for the allegation that he issued purchase order, which specifically mentioned the Transistor Code as '2T 880b in Russian alphabets' and being one of the Committee Members recommended to that effect and there was no failure in discharging his duties to make him liable and even coming to A.6, A.9 and A.10, who are working in Inward Goods Quality Control Department, their function is to conduct a test of the material 'other than electronic items' and accepts the material upon clearance by the labs basing on inspection report. So far as A.7 is concerned, who was working as Deputy Manager and Officer-in-charge, Quality Control Electronic Lab, BDL, Bhanur, he tested the third lot of Transistors out of total supply made by A.1 and A.2 and his predecessors in his office tested and satisfied about the requisite parameters in respect of earlier lots, thereby there

was no necessity to doubt the nature of products supplied by the supplier of genuinity thereof and as a whole reading of the charge sheet collectively and individually the petitioners/A.3 to A.10 are no way involved, much less conspired with A.1 and A.2 in committing the offences and the accusation is baseless and liable to be quashed.

9. The charge sheet mentions the specific role of the petitioners/A.3 to A.10 and the lapses that tantamounts to offence and the petitioners are not disputing about A.1 and A.2 supplied only the material of Russian standard and not of Russian make and so far as respective role concerned whether it is out of privy with A.1 and A.2 or mere negligence in discharge of their duty as a dereliction of duty with no privy or it is for any gratification or out come of misconduct with some motive, all these matters require to be decided at best in the elaborate hearing before charges, if at all and so far as quashing the proceedings concerned from the material available before this Court, on its face there is nothing to show any of their total innocence.

10. Having regard to the above, this criminal petition is disposed of by left open all the defences without prejudice to raise before the trial Court by filing an application for discharge, if there are no grounds to frame charge in respect of to the respective roles in discharge of duties, pursuant to which and as to the acts and lapses that constitute any offence or not against each of them.

11. Miscellaneous petitions pending, if any, shall stand closed.

---

**Dr. B. SIVA SANKARA RAO, J**

25.11.2015

mar

