

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

Reserved on: 19.08.2015

Date of decision: 28.08.2015

+ CRL.REV.P. 196/2012

CBI Petitioner

Through Ms.Rajdipa Behura, SPP with Ms.Monica
Gupta and Ms.Sanskriti Jain, Advocates.

versus

SRIOM DALAL Respondent

Through Mr. Amit Sharma and Mr.Aditya Bhardwaj,
Advocates.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR , J.

1. The present revision petition has been preferred by the Central Bureau of Investigation seeking quashing of the order dated 30.8.2011 by Special Judge, CBI-01, Patiala House Courts, New Delhi in R.C No.07220009(E)/0006 /2009-CBI-EOU-III, New Delhi whereby the respondent has been discharged of the offence under Section 7 of the Prevention of Corruption Act (for short P.C Act) and Section 120B of the IPC.

2. One Kedar Nath Bansal, Chairman of Echelon Institute of Technology, (EIT), Faridabad lodged a complaint against the then Chairman of All India Council of Technical Education (hereinafter called as 'AICTE') and three others including the respondent on 8.7.2009 alleging that the accused persons in pursuance of a criminal

conspiracy demanded illegal gratification from him for permitting increase in the number of seats in EIT for the academic year 2008-09 and also by covert and overt ways forestalled the extension of approval of the institute. It was alleged by aforesaid Kedar Nath Bansal that he had made a complaint with the Secretary of Higher Education, Ministry of Human Resource Development whereafter the grievance of the complainant was redressed. As a retaliatory measure, the accused persons being associated with AICTE organized a raid in the premises of the institute on the basis of unverified and flimsy complaints.

3. The respondent, at the relevant time was posted as Regional Officer, North West Regional Office, AICTE, Chandigarh. The other accused persons were H.C.Rai, the then advisor (E&T), AICTE; Smt.Rominder Randhawa, Deputy Director, AICTE and R.A.Yadav, Chairman of AICTE.

4. The complaint led to the registration of the FIR on 16.7.2009 under Section 120B of the IPC and Sections 7 & 8 of the P.C Act against the respondent and three others referred to above.

5. After investigation chargesheet was submitted on 29.9.2010 only against three accused persons including the respondent and the Chairman of AICTE was not sent up for trial.

6. The Special Judge, CBI, vide his order dated 30.8.2011 discharged all the accused persons including the respondent as no offence, was made out either under Section 7 of the Prevention of Corruption Act, 1988 or under Section 120B of the IPC.

7. It would be relevant here to note that the CBI has not challenged the order with respect to other two accused persons who were also chargesheeted along with the respondent namely H.C.Rai and Rominder Randhawa.

8. The specific allegation against the respondent is that on 10.2.2008 at about 3.30 p.m he had called the complainant and had demanded Rs.15 lakhs for the increase in the number of seats in EIT for the academic year 2008-09. The aforesaid amount was quantified by the respondent by charging Rs.25,000/- per seat for increase of 60 seats in Computer Science in Engineering stream. The complainant did not accede to the aforesaid demand of the respondent on telephone and the matter was discussed with the office bearers of EIT. The office bearers of EIT made a conscious decision of not paying anything to the respondent; rather they decided to take the matter to the AICTE. It has been alleged by Kedar Nath Bansal that a letter was written by him on 18.2.2008 to the respondent and another letter to the AICTE Headquarters on 19.3.2008 but the proposal for increase in the number of seats was not acted upon. Thereafter, as alleged, on 26.3.2008 a confidential letter was written to the Special Secretary, Higher Technical Education, Ministry of Human Resource Development, Government of India, apprising him of the bungling resorted to by the officials of AICTE. In the aforesaid letter to the Special Secretary, Higher Technical Education, 12 points were formulated against the officials of AICTE. For the sake of completeness, the contents of such letter where the aforesaid 12 points have been summarized and which

part of the letter has been taken note by the Trial Court is being reproduced below:-

“1. AICTE officers conduct themselves as they are above law; have no fear of anybody as if they are not governed by any service conduct rules.

2. They have no hesitation in manipulating the records of AICTE.

3. They go on asking time and again for papers/documents already submitted for delaying and the delaying tactics leading to selling out colossal amount of money under the table.

4. Experts for Inspections/Committees are chosen under personal consideration and not on academic merits as can be judged from the fact that hardly any expert from IIT's or other national institutes is included in the inspection committees.

5. They threat that the expert will not be made available to you on the 'Expert Committee' inspection date.

6. The Council website is not updated. Even the names of the colleges after the approval are not hosted at website for many days and that too without obligation.

7. Though it is a Nodal Agency for Technical Education, E-mail/inter communications are never used.

8. AICTE asks for affidavits from the Principals/Directors to the effect that no loan has been taken, whereas there is hardly any college which has not taken loan. The submission of such affidavit places AICTE Officers in very comfortable position to exploit the stake-holders.

9. *The AICTE requirement of academic covered area is 12.5 sq.m per student. Most of the institutions having more than 500 student's intake does not fulfill this requirement, and hence, officers are in-comfortable positions to exploit the situation.*

10. *The Regional Officer located at Chandigarh was transferred and relieved and even his reliever took charge in April/May 2007 but Sh.Hariom Dalal, RO managed to get the transfer orders revoked within 24 hours which is very uncommon.*

11. *The Regional Officer Sh.Hariom Dalal posted in Chandigarh is on deputation for the last many years. Her is the junior most officer posted as RO.*

12. *Council does not provide any guidance or help to any promoter right for filling of the application for issue of letter of intent of issue of letter or approval. Instead the council has been reduced to a mere agency for issuing permits to such societies an trusts that have neither the infrastructure nor the adequate faculty. The institutions that want to promote quality education and do not fall in line are badly harassed and humiliated."*

10. According to the chargesheet, a One Man Committee was constituted to look into the complaint against AICTE officials. Before such One Man Committee, the complainant desired to submit a fresh complaint on 8.8.2008. Subsequently in the letters dated 13.8.2008 and 29.8.2008, written by the complainant, there was a strong hint of the illegal demand made by the respondent.

11. The Trial Court, taking into account the fact that the illegal demand was made by the respondent on 10.2.2008, but accusation

regarding the same was made for the first time before the One Man Committee on 8.8.2008, doubted the veracity and genuineness of such an allegation. The Trial Court also took note of the fact that in the confidential letter which was written by the complainant to the Special Secretary, Higher Technical Education, Ministry of Human Resource Development on 26.3.2008, there was no whisper of any such accusation against the respondent. Only in the letter dated 13.8.2008 which was submitted to the One Man Committee, did the complainant for the first time come out in written about the demand of gratification by the respondent. In the subsequent letter dated 29.8.2008, a specific date on which such demand was made was stated with the additional accusation of having been threatened of dire consequences in case of non payment of demand money.

12. Be it noted that the proposal for the increase in the number of seats in EIT was approved on 6.8.2008 and the complainant was also informed about the same on 8.8.2008. The records of AICTE reveal that the proposal for increase in seats in EIT was actually considered on 9.7.2008 but only for the reason that there was absence of requisite number of teaching faculty in the institute of the complainant, the proposal was not approved. After the requisite number of faculty was shown on 4.8.2008, that the recommendation was made for increase in the number of seats in EIT.

13. Thus the only material against the respondent is the assertion of the complainant about the respondent having made a demand of illegal gratification on 10.2.2008 on telephone. The call details of the mobile phone of the complainant and the respondent do show that the call was

made but that by itself would be no ground for believing even prima facie that the talk was with respect to the demand of illegal gratification. The contents of the conversation thus being unknown and untraceable, there would be practically no material to put the respondent on trial.

14. There is no doubt that the Court which is entrusted with the task of framing the charge and thereafter trying an accused is required at that stage to exercise his judicial mind for determining whether a case for trial has been made out or not, but for doing so, a detailed enquiry or a mini trial is not envisaged by the code. The judicial precedent permitting a Judge at the stage of framing charge to sift the evidence in order to find out and determine as to whether an accused be tried for the offence alleged or not, abound in number but sufficiency of the ground would only be adjudged by the nature of offence which have been recorded by the investigating agency. There is a requirement of strong suspicion against an accused for him to be put on trial and anything short of strong suspicion would not suffice.

15. The contention of the CBI that the delay in the approval of increase in seats to EIT is attributable to non payment of illegal gratification demanded by the respondent is too far-fetched.

16. The respondent cannot be put to trial on such weak material/evidence.

17. It is not the scheme of the Code of Criminal Procedure that in all cases, the complainant/informant be given an opportunity to enter the witness box and explain the circumstances. The case of the

prosecution could not have been placed higher in trial that what has been shown in the investigation and the charge-sheet.

18. This court finds no reason to differ with the order impugned.

19. The present revision petition consequently fails and is dismissed.

20. The petition is disposed of accordingly.

ASHUTOSH KUMAR, J

AUGUST 28, 2015

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