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

Judgment dated: 22nd July, 2016

+ W.P.(C) 772/2015

NEW DELHI MUNICIPAL COUNCIL Petitioner
Through Mr. Vivek B. Saharya, ASC

versus

V.K. GULATI Respondent
Through Mr. Ashish Mohan, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE I.S.MEHTA

G.S.SISTANI, J (ORAL)

1. Present writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking to challenge the order dated 17.01.2014 passed by Central Administrative Tribunal (*hereinafter referred to as 'the Tribunal'*) in TA No.1473/2009 whereby the T.A. filed by the respondent was allowed and the report of the inquiry officer and the order dated 20.04.2000 passed by the disciplinary authority have been quashed.
2. The necessary facts to be noticed for disposal of this writ petition are that in the year 1991 a proposal was mooted by the Health Department of petitioner/NDMC through its Medical Officer of Health (MOH) for procurement of certain equipment including four Garbage Compactors and sewer cleaning machines. As per the proposal moved by the MOH it was proposed to buy the following equipments:-

	Qty.	Estimated Cost
1. Garbage Compactor (14 cubic meter)	4 Nos.	Rs. 27 Lacs
2. Mini Compactor (6 cubic meter)	5 Nos.	Rs. 18 Lacs

3. Sewer Cleaning Machine	1 Nos.	Rs. 15 Lacs
4. De-watering Pumps	4 Nos.	Rs.2.20.Lacs

3. It was also proposed to form a Purchase sub Committee on account of paucity of time in the financial year. The following persons were formed part of the Committee:-

1. MOH or his representative (i.e. person who had moved the proposal)
2. CE (Elect) or Additional CE (Elect)
3. Sh. A. K. Goyal, Executive Engineer (Auto)
4. Sh. V. K. Gulati, Asstt. Engineer (Compost Plant)/ respondent herein
5. Representative from Finance.

4. As per the petitioner, the tenders were invited in sealed double covers, first related to technical specifications and the second related to financial bid of the bidder. Two firms, who were competitors for similar equipment in the past years gave their bids, namely M/s Hydramech Engineers Pvt. Ltd. (*hereinafter 'Hydramech'*) and M/s Airtech Pvt. Ltd. (*hereinafter 'Airtech'*). At the time of evaluation of technical specifications submitted by the bidders, it was noticed that M/s Airtech had submitted quotes for two models, i.e 'Model R4' and 'Multipack'; while Hydramech had given bid only for Model R4. At this juncture, we deem it appropriate to mention that Model R4 was a tried and tested machine while the Multipack was a new variant sought to be utilized for the first time. A comparative statement was prepared with respect to bids of the two firms. As per the comparative statement, the offer of M/s Hydramech was Rs. 3,10,650/- (Model R4) per machine plus taxes whereas the offer of M/s Airtech was Rs.2,75,000/- (Model R4) per machine.

5. The committee looked into the aspect that Hydramech had offered operation and maintenance of 2 years without any extra costs and the same was not mentioned in the comparative statement. This was not offered by Airtech. Since the offer of Hydramech was not deemed to be in consonance with the tender requirements, Hydramech was called upon to give a fresh offer; which it did by reducing its quoted price by Rs. 30,000/-. Airtech was also called upon to negotiate. Pursuant to negotiations, it was decided that the Multipack model may be selected being of an improved quality and economical in operation. Further, it was also decided that since the Multipack model was untested, the petitioner herein would be at liberty to change the same within 6 months for the Model R4 by paying the differential amount. The price quoted for the Multipack model was also reduced by Rs. 20,000/- to Rs. 2,25,000/- exclusive of taxes and duties.
6. On 13.02.1991, as the offer made by M/s Airtech appeared to be lower than that of Hydramech, the Sub-Committee awarded the tender to M/s Airtech.
7. It is the case of the petitioner that the offer of free operation and maintenance was not considered in the comparative analysis. Upon proper calculations, the cost of incurred in operating and maintaining Model R4 for two years which has to be added, would have been Rs. 42,000/-. When this sum is added to the quoted price of Airtech, the cost per machine would mount to Rs. 3,17,000/- which was substantially higher than the offer of Hydramech. At the same time, the contract for operation and maintenance of the machine was also given to M/s Airtech at Rs. 3,500/- per machine.
8. We also deem it appropriate to mention that numerous complaints were received about irregularities in the purchase of refuse compactors. Owing

to the same, the Law Officer of the petitioner herein had also given his opinion that there was no infirmity in the said purchase. Further an independent agency, namely M/s RITES, was also engaged to certify the new machine.

9. On 16.01.1995, petitioner issued a charge sheet against the respondent under Rule 14 of CCS (CCA) Rules, 1965. The charges against the respondent were as follow:-

“Article I

Tenders for the fabrication and erection of Refuse Compactor of 14 cu.m. capacity were invited in two cover system in January, 1991. After opening of the tenders in which only two offer of M/s Airtech and Hydramech were received to tender inquiry. The first cover about the technical specification was opened and detailed report about the offer of both the firms were prepared and submitted by him on 04/02/1991. As per his report M/s Airtech offered two modes i.e 4R and “Multipack”. The “Multipack” model could lift multi size container from 1 to 5 cu.m. which was an additional advantage. But before submitting this report, he failed to make verifications about the specifications and arrangements particularly the performance report of “Multipack” model.

Thus, Sh V.K Gulati, AE (CP), being municipal servant, failed to maintain absolute devotion to duty and acted in a manner unbecoming of municipal servant and thus violated the provisions of rule 3.1 (ii) and 3.1(iii) of CCS (Conduct) Rules, 1964.

Article II

In the case of tender for fabrication and erection of “Refuse Compactor, in January, 1991 he, as A.E. (C.P.) was member of the purchase/approval sub-committee. Two firms Ms/s Airtech and M/s Hydramech submitted their offers in response to the tenders for the fabrication and erection of Refuse Compactors of 14 cu.m. Capacity in January, 1991. The offer of both the firms were considered by the said approval sub-committee when the

firms were considered by the said approval sub-committee when he was also present in its meeting held on 05/02/1991, 6/2/1991, and 8/2/1991 to discuss the terms and conditions given in the offer before opening the financial bid. In the meeting held on 08/02/1991, it was decided that the financial bid of both the firms may be opened. Accordingly, the financial bids of both the firms were opened and the same were considered by the said sub-committee, in which he was also present, when the offer of M/s Airtech was considered lowest on the basis of improper computation and evaluation of tender bids in order to further commercial cause of Ms/s Airtech. He as member of the said committee, failed to ensure the proper computation and evaluation of offer of both the firms in true perspective, whereby ignoring the actual first lowest offer and did not consider the additional cost of operation and maintenance.

Thus, Sh V.K Gulati, AE (CP), being municipal servant, failed to maintain absolute devotion to duty and acted in a manner unbecoming of municipal servant and thus violated the provisions of rule 3.1 (ii) and 3.1(iii) of CCS (Conduct) Rules, 1964.

Article III

The tenders for the purchase of fabrication and erection of refuse Compactor of 14 cum capacity were invited for four number of refuse Compactors. During the course of meeting of the approval sub-committee on 13/02/1991, when he was also present as member, the subcommittee recommended to award the work to M/s Airtech for supply of model 4R at their quoted rates of Rs.2,75,000/- each plus taxes for four numbers subject to certain clarifications from the firm. Accordingly, negotiations were held on 26/02/1991 when he was also present as member. During the course of said negotiations, the requirement of one additional refuse Compactor was projected by MOH and accordingly the negotiation sub-committee decided that the purchase order for supply of five number of Refuse Compactor of 14 cum may be placed with M/s Airtech for "Multipack Model". The addition in the quantity of one more refuse compactor, during the course of negotiations, was in contravention to the provision of schedule of quantity contained in the said tender. Besides, M/s Hyderamech was not afforded with equal opportunity for quoting their rate with regard to additional quantity of Refuse Compactor and thus his

action as member of negotiation sub-committee created a post tender development depriving M/s Hyderamech of an equal opportunity thereof.

Thus, Sh V.K Gulati, AE (CP), being municipal servant, failed to maintain absolute devotion to duty and acted in a manner unbecoming of municipal servant and thus violated the provisions of rule 3.1 (ii) and 3.1(iii) of CCS (Conduct) Rules, 1964.

Article IV

In the case of tender for the fabrication and erection of Refuse Compactor of 14 cum capacity, the approval sub- committee, of which he was also the member, in its meeting held on 13/2/1991 recommended that the work may be awarded to M/s Airtech for supply of 4R model. But during the course of Negotiations held under the Chairmanship of FA, NDMC, on 26/2/1991, when he was also present, it was decided to purchase the “Multipack Model”. He, as a member of the negotiation sub-committee failed to point out about the fact that details of performance of Multipack model were not known to the department without which the purchase of “Multipack” model may not be proper as this model was not tried by NDMC and its performance was also not known.

Thus, Sh V.K Gulati, AE (CP), being municipal servant, failed to maintain absolute devotion to duty and acted in a manner unbecoming of municipal servant and thus violated the provisions of rule 3.1 (ii) and 3.1(iii) of CCS (Conduct) Rules, 1964.”

10. The inquiry officer rendered his report on 11.03.1998 and held that the charges stood proved against the respondent. The disciplinary authority by an order dated 10.04.2000, imposed a penalty of reduction of pay by one stage for a period of two years and respondent was not to earn increment during the period of reduction and on expiry of the said period the reduction would have effect of postponing all future increments of pay.
11. An appeal filed by the respondent before the Appellate Authority was also dismissed on 02.05.2001. Thereafter, the respondent preferred a writ

petition, being Civil Writ Petition No. 4672/2002, before this court, however, in view of the notification issued by the Central Government in exercise of powers conferred upon Section 14 (2) of the Administrative Tribunals Act, 1985, the said writ petition was transferred to the Tribunal and was registered as T.A. No. 1473/2009. By the impugned order dated 17.01.2014, the Tribunal allowed the T.A. and quashed the penalty order dated 10.04.2000 which has led to the filing of the present writ petition.

12. Mr. Saharya, Learned counsel for the petitioner, submits that the tribunal ought not to have disturbed or interfered with the findings of the departmental inquiry since there was no violation of the principles of natural justice nor any *mala fide* was alleged in the departmental proceedings. It has also been urged that the Tribunal has given undue importance to the fact that the departmental proceedings against the other members of the committee were dropped whereas respondent has been held responsible for the decision taken by the Committee.
13. It is also submitted that the Tribunal has failed to appreciate that the respondent was a member of the Purchase sub-Committee as being Assistant Engineer (Compost Plant), he was aware of the intricate details and requirements of the petitioners, thus respondent was most suited to evaluate the tenders technically.
14. Learned counsel for the petitioner submits that keeping in view the shape/ size/ performance of the Multipack machine, the respondent gave an opinion without making any proper verification with regard to specification or performance of the Multipack model.
15. Learned counsel further submits that the Tribunal was misled inasmuch as it did not consider that the respondent herein had prepared the comparative statement between the two competing firms. As per the comparative statement the offer of M/s Hydramech was shown as

Rs.3,10,650/- per machine plus taxes; whereas the offer of M/s Airtech was shown Rs.2,75,000/- (Model R4) per machine. The offer of M/s Hydramech included free operation and maintenance of machine for two years which was not mentioned in comparative statement table. Since, the offers made by the M/s Airtech appeared to be lower the sub-committee decided to award the tender to M/s Airtech in its meeting held on 13.02.1991.

16. Mr. Ashish Mohan, learned counsel for the respondent submits that the petitioner has failed to point out any infirmity in the order passed by the Tribunal. Counsel for the respondent further submits that respondent was just another member of the Committee and the entire burden cannot be shifted to any individual member when the decision was taken by the Committee as a whole. All the charges relate to the decisions taken collectively by the Committee as a whole and consequently, no independent liability can be fastened upon the respondent herein. He submits that the sub-Committee was formed in haste and no specific duties were assigned to its individual members nor it can be said that the entire committee had reposed its faith into the decision of the respondent herein.
17. Even otherwise, Mr Mohan contends that computation of cost and evaluation of tender bids was not the responsibility of the respondent herein, on the contrary, the said task was to be performed by the finance department and was carried out by the Accountant (HG), on the basis of which the petitioner had proceeded to award the work. Even the proposal to increase the quantity from four refuse compactors to five was placed before the Financial Advisor, who had approved the proposal.
18. He further submitted that the Tribunal has rightly considered the fact that the respondent was the junior most member of the Committee and thus he

cannot made solely liable, while the action was taken and subsequently dropped against the other members and for which no reasons have been placed on record.

19. Mr. Mohan, learned counsel for the respondent, further submits that the original file was misplaced in the office of the petitioner which fact was brought to the notice of the Tribunal. Counsel states that the original file was extremely relevant as the same would contain the grounds and the reasons as to why the proceedings with regard to the other members was dropped. He contends that the petitioner has acted in a *mala fide* manner in following a policy of pick and choose as action was only taken against the junior members of the Committee, while the senior most members who were actually in-charge of day to day proceedings of the committee and were responsible for taking decisions, including the decision to increase the number of refuse compactors, have been allowed to go scot free by the same inquiry officer. Counsel has also contends that the CBI had also investigated in the matter and after investigation, no criminal prosecution was initiated against any of the members of the committee. This clearly shows that the actions of the committee were *bona fide*.
20. He also submitted that the proceedings were liable to be vitiated owing to violation of principles of natural justice. The inquiry officer had proceeded on the premise that the case pertained to “*finalization of tender and not on performance of vehicle* [sic: machine]” as is evident from a reading of the order dated 22.01.1998 of the inquiry officer. It was because of this reason that the request of the respondent to produce one Mr. A. K. Vashisht was refused. Therefore, the charge relating to the assessing the performance of the refuse compactors could not have been framed or could have been sustained against the respondent.
21. We have heard learned counsel for the petitioner and respondent and also

perused the impugned order.

22. At this stage, it would be useful to reproduce the observations made by the learned Tribunal in paragraphs 37, 38, 42 and 43 of the impugned order dated 17.01.2014:

“37. It is well known that new technologies keep on emerging in every field. It is clear that in the instant case a particular firm, which got the tender, had initially itself indicated that one machine quoted by it is an old model machine, already tried and tested, and the second one is a new one, which incorporates the latest technology. The Committee, therefore, in its wisdom, later on went for the machine which incorporated the latest technology, and, actually, in order to test and improve its performance, even suggested design changes for improving its performance, because of which the whole process of purchase, started in a hurry in March 1991, and ended in a whimper, by the actual purchase being effected only two years later in the year 1993.

38. It is admitted by the applicant that he had supported the machine offered with new technology, which machine had till then in 1991 perhaps not even been manufactured, and so could not have been tested too, and had been quoted only on the basis of designs and pamphlets available. The other members of the Committee being senior to the applicant need not have gone by the opinion of the applicant, but they appear to have convinced themselves to try out the new technology machine. The applicant, therefore, cannot be held responsible for the choice of the model of the machine to be purchased.

...

42. It appears to us that the Service Law does not provide for the junior-most individual Member of a Committee to be held responsible for all decisions and actions of the Committee, without his having been assigned a specific role, and his having failed to perform that specific role, or having performed that role in a malafide or mischievous manner. That does not appear to be the case in this case. The applicant was the Assistant Engineer In-charge of the Compost Plant, or Compost pit, and who was the end user of the compost garbage to be brought to the compost pit. In such circumstances, he could not have been held responsible for all the decisions taken by the Committee which included four persons much senior to him, and much more knowledgeable, and

who had further involved the Accounts Section for the purpose of preparation of comparative statement of the tenders, and had obtained the permission of the Chairman of NDMC himself for the machine model selected by the Committee, before placing the orders. Obviously, therefore, the applicant cannot be held responsible for the actions of all those persons.

43. The most telling aspect which absolves the applicant of any charge of delinquency as framed against him is the endorsement of the Daily order Sheet dated 22.01.1998 of the Inquiry Officer himself, reproduced by us in para 26/ above, where he had held that the case against the applicant related only to the finalization of tenders of the Committee of which he was a part, and did not relate to the aspects of performance of the vehicle, because of which Shri A.K. Vashisht was refused to be allowed as a Defence Witness, while we find that ultimately he has gone on to hold the applicant responsibility for not certifying and verifying the performance of the vehicle in respect of the machine for which tenders were accepted. Therefore, it is clear that the Inquiry Officer himself has gone astray, and that the Disciplinary Authority was wrong in having accepted the report of the Enquiry Officer.”

(Emphasis Supplied)

23. According to us, the Tribunal has correctly analysed the report of the inquiry officer and there is no fault in the reasoning of the Tribunal.
24. The respondent was the junior most member of the committee and since no specific role was delegated to him at the time of formation of the committee, he could not have taken any independent decision as all the other members in the committee were not only senior but were also part of the deciding authority. It was not the duty of the respondent to compute and evaluate the tender bids of both the bidders; the computation and evolution relating to financial bid of the offers of both the firms was to be done by the Finance Department and as per the Department the bid of M/s Airtech was found lowest and accordingly, the petitioner awarded the work to M/s Airtech. Further, all the recommendations made by the committee were placed before the Administrator for approval. It is to be

noted that it was MOH who had suggested that 5 refuse compactors were required instead of 4 and the said increase in the quantity was duly placed before the financial advisor, who gave its concurrence to the proposal and the Administrator who had approved the proposal. We may note that the disciplinary proceedings were initiated against all the officers, but the proceedings were ultimately dropped against the seniors without any reasons being placed on record. Therefore, the respondent cannot be held guilty for the choice of machine which was purchased by the petitioner department because the decision of purchase was a collective decision of the Committee and respondent was not individually responsible for certifying or verifying the performance of the subject machine.

25. We do not find any infirmity in the order passed by the Tribunal which would require us to interfere in the proceedings under Article 226 of the Constitution of India. No ground is made out to entertain this petition. The writ petition and the application are dismissed accordingly.

G.S.SISTANI
(JUDGE)

I.S. MEHTA
(JUDGE)

JULY 22, 2016 //b