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

Date of Decision: 31st October, 2019

+ W.P.(C) 4020/2016

HARISH BATRA AND ANR

..... Petitioners

Through: Mr. N.S. Dalal & Mr. Manu Kharra,
Advs.

versus

GOVT OF NCT OF DELHI AND ORS

..... Respondents

Through: Mr. Gautam Narayan (ASC) for
GNCTD with Ms. Shivani Vij, Adv. for R-1.

Mr. Satvik Varma, Mr. Tanveer Oberoi &
Mr. Akshat Malpani, Advs. for R-2 & R-3.

Ms. Monika Arora, Mr. Kushal Kumar and
Mr. Harsh Ahuja, Advs. for R-4/Nr.DMC.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, Chief Justice (Oral)

CM APPL.18091/2018

This application has been preferred by the counsel for respondent Nos.2 and 3 for condonation of delay of 76 days in filing status report.

Having heard the counsel for the respondent Nos.2 and 3 and looking into the reasons stated in the application, there are reasonable grounds for condonation of delay. We hereby condone the delay of 76 days in filing status report. The status report is taken on record.

The application is allowed and disposed of.

W.P.(C) 4020/2016

1. This Public Interest Litigation has been preferred with the following prayers:

*“(i) Issue an appropriate writ, order or direction thereby directing the Constitution of S.I.T. for scam committed by the officials of D.S.I.I.D.C. and the corruption going on there;
(ii) Issue an appropriate writ, order or direction thereby directing the respondents to take action against all the officials, who are involved in the scam and corruption;
(iii) Award costs of the present writ petition in favour of the petitioners and against the respondents;
(iv) Pass any such other or further orders as this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the case in favour of the petitioners and against the respondents.”*

2. Counsel appearing for the petitioners submitted that the contracts were given by the respondent No.2 to the concerned companies for removal of the waste and dumping of the same and for such other work there were malpractices adopted by the concerned respondent authorities and hence, the investigation is required to be carried out by the special investigation team. It is submitted by the counsel for the petitioners that there are violations of the terms of the contract and without any photography, videography and without proper assessment of the removal of the waste and dumping of the same, the payments have been made. The amount, as per petitioners, in this case, is approximately ₹8 crores.

3. The counsel appearing for the petitioners has taken this Court to the special conditions which are enumerated at page No.26 of the memo of this writ petition and has submitted that the special conditions have been violated and the money has been paid to the contractor in breach of these conditions.

It is submitted by the counsel for petitioners that, in fact, for the work not done by the contractors the money has been paid and, therefore, special investigation team may be constituted for the scam committed by the officials of respondent No.2/Delhi State Industrial and Infrastructure Development Corporation Ltd. (DSIIDC) and such other officers. It is also submitted by the counsel for petitioners that it is claimed by the contractors that huge quantity of the waste has been removed and dumped but there is no measurement of the quantity of the waste removed and dumped by the contractors and hence, the payment is made without any proper verification of the work done by the concerned contractors.

4. It is also submitted by the counsel for petitioners that applications have been preferred under Right to Information Act, 2005 for supply of photography or videography of the work done but no proper reply has been given by the concerned respondent. Thus, in the absence of any photography or videography, the payment has been made by the respondents and hence, special team be constituted to look into the corrupt practices followed by the officers of respondent No.2 - DSSIIDC.

5. Counsel appearing for the respondent No.2 - DSSIIDC submitted that a detailed counter affidavit dated 6th August, 2016 in response to this petition has been filed. Counsel for the respondent No.2 further submitted that a status report dated 15th March, 2018 has also been filed wherein details of the work done by the different contractors have been mentioned. It has been submitted by the counsel for respondents that the main allegation in this writ petition is about the breach of the conditions of the contracts and the contractors by whom the work has been done, have not been deliberately joined as party respondents and that they are necessary parties to this

litigation. The work done by the contractors for removal of the waste and dumping of the same have been narrated in detail and truckwise details on the receipts have been presented before this Court in the counter affidavit as well as in the status report filed by respondent No.2.

6. It is further submitted by the counsel for respondents that the work was assigned in the year 2012 and the period for which the work has been done by the two different contractors in 2013-2014 and 2014-2015. It is further submitted by the counsel for respondents that for the work done by the contractors, the payments have been made. The truckwise detail has been given and the payments are made in accordance with law. Even otherwise also, for the breach of the terms of the contract, no Public Interest Litigation is tenable in law. Thus, in fact, this is not a Public Interest Litigation at all. Hence, the same may not be entertained by this Court.

7. Having heard the counsel for both sides and looking at the facts and circumstances of the case, we do not see any reason to entertain this writ petition mainly for the following reasons:

- (i) The allegation, levelled by these petitioners in this Public Interest Litigation, is about the breach of the terms of the contract and the payment made by the respondent No.2 to the contractors for which the petitioners have prayed for the constitution of special investigation team. It appears that the persons to whom the contract was given have not been joined as party respondents at all and they are necessary parties to this litigation.
- (ii) It further appears from the facts of the case that for the alleged breach of the special conditions, which are enumerated at page

No.26 of the memo of this writ petition, have not been complied with as per the allegations of these petitioners. This violation of the conditions of the contract cannot be looked into by this Court in this type of litigation. Whenever such type of allegations are being levelled against the respondents or upon the contractors, cogent and convincing evidences are required to be led. In a writ petition the breach of the contract cannot be established, especially, when the respondents have filed an affidavit and stated that there are no violations of the conditions of the contract.

- (iii) Much has been argued out by the counsel for petitioners about photography and videography. Photography and videography was to be done as one of the conditions of the contract. Looking at the reply and status report filed by respondent No.2, we see no reason to entertain this ground of photography and videography for appointment of a special investigation team.
- (iv) Moreover, the work was given in the year 2012 to two contractors. The work was done in the year 2013-2014 and 2014-2015. Looking to the annexures filed along with the status report filed by the respondent No.2, it appears that in detail, truckwise, how much quantity of the waste was removed and dumped by the contractors, have been given. For the disposal of this writ petition, suffice it is to say that the explanation given by the respondents requires no appointment of the special investigation team. As and when any suit is being filed by any aggrieved party, further graphic details can

be given by the respondents along with further evidences on record.

8. In this type of litigation, we see no reason to appoint or constitute a special investigation team in view of the explanation given by the respondents in the counter affidavit and the status report filed by the respondent No.2, hence, we see no reason to entertain this writ petition.

9. In view of the aforesaid observations, there is no substance in this writ petition and the same is dismissed.

CM No. 32312/2017

10. In view of the final order passed in W.P.(C) 4020/2016, this application stands disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J

OCTOBER 31, 2019
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