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

Date of decision: 27th November, 2019

+ W.P.(C) 658/2017 and CM Nos. 7554, 46645, 46646. 47582/2018

MADANJIT KUMAR Petitioner
Through: Petitioner in person

versus

UNION OF INDIA & ORS Respondents
Through: Mr. Vikas Mahajan, CGSC with
Mr. Aakash Varma, Mr. Prajesh V.S.,
Mr. Anil Kumar and Mr. Deepak Goyal, Advs.
for R-1/UID
Ms. Tatini Basu, Adv. for R-2/CVC
Mr. Kunal Sharma and Mr. Shubhendu
Bhattacharyya, Advs. for R-3 and 6

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER
27.11.2019

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D.N. PATEL, CHIEF JUSTICE (ORAL)

W.P.(C) 658/2017

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

“a) ISSUE a writ of MANDAMUS directing the Respondent Nos. 1-2 to constitute high power committee to

inquire in to the affairs of the Respondent No. 3 and to identify the real perpetrator of such financial and administrative irregularities which caused huge losses to the public exchequer especially in the light of the inspection report of CAG for the years 2014-2016 under the supervision of this Hon'ble Court

AND

b) ISSUE further MANDAMUS directing the Respondent No. 1 and 2 to lodge appropriate proceedings against the errant officials of the Respondent No. 3 for their illegal act and misappropriation of public money which resulted in huge financial loss to public exchequer which runs into crores of Rupees.

c) ISSUE further MANDAMUS directing the Respondent No. 1, 4 and 5 not to proceed with the sale of Respondent No. 3.

d) Pass any other or further order as this Hon'ble Court may deem in the facts and circumstances of the case and in the interest of justice.”

2. Petitioner in person has pointed out that the Comptroller and Auditor General's report reveals various things against respondent no.3 as well as about the working style of the respondent no.6. It is submitted by the petitioner that even after receiving the report of the Comptroller and Auditor General, nothing has been done by the respondents and therefore petitioner is seeking a suitable direction for initiating appropriate actions

to be taken against the respondent nos. 3 and 6 in the light of the aforesaid report.

3. We have heard the learned counsel appearing for the respondent no. 1 who has submitted that a detailed counter affidavit has been filed. It is further submitted by the learned counsel for the respondent no. 1 that the petitioner was transferred by the respondent no.3-company and his writ petition challenging the same was dismissed. Moreover his appeal against the aforesaid transfer order was also dismissed. Thereafter, these allegations have been revealed against the respondent nos. 3 and 6 by this petitioner. Later on, for the misconduct, this petitioner was dismissed from the service against which he preferred a writ petition before this Court. The W.P.(C) 7087/2016 as well as LPA 703/2016 against the dismissal order have also been dismissed. It is further submitted by counsel for the respondent no. 1 that all care has been taken of the Comptroller and Auditor General's report. Moreover, a Fact Finding Committee was constituted in the light of the allegations revealed in one magazine and the said Fact Finding Committee's report dated 24th August, 2017 is also on record which was accepted by the concerned Ministry of Science and Technology. The said report found that the allegations leveled against respondent nos. 3 and 6 are not substantiated. Thus, it is submitted by the learned counsel for the respondent no.1 that the company – respondent no.3 is now a profit making company. Moreover, the performance assessment of the company is also found to be “outstanding”. The company has also received awards for best performance and best “Turnaround Strategy”. Furthermore, it is submitted by the learned counsel for the respondent no.1 that the allegations levelled against the respondent no. 3 and respondent no. 6

who is the Chairman cum Managing Director of respondent no.3 are found baseless after conducting adequate inquiry in this regard. Moreover, the report given by a Multi-Members Fact Finding Committee has also been accepted by the concerned department which has given a clean chit to the Respondent Nos.3 and 6. There is an affidavit filed on behalf of the respondent no.9 which essentially delineates the conclusion of the said Fact Finding Committee report dated 24th August, 2017 (page no. 704 of the memo of this writ petition).

4. Having heard the petitioner in person, it appears that going by the Comptroller and Auditor General's report for the years 2014-2016 and the fact that no action has been initiated by the respondents pursuant to said CAG report, the present petition has been preferred for constitution of the High Power Committee to inquire into the affairs of the respondent no.3 and to lodge appropriate proceedings against the errant officers of the respondent no.3.

5. Looking to the facts and circumstances of the case, it appears that as per paragraph 3 of the counter affidavit filed by the respondent no.1, "Best Turnaround Strategy Award" has been given to respondent no.3 and after the appointment of new CMD, it is constantly making profits. For the ready reference, para 3 of the counter affidavit filed by the respondent no.1 reads as under :

"3. The petitioner has attempted to paint a picture of the respondent No.3-company going into losses on account of financial irregularities in the recent years. The actual position is exactly the opposite. The Respondent No. 3 which was making losses for many Years despite two

revival packages in the past in 1996 and 2006 has actually turned around in the past four years, after appointment of the new CMD, and is consistently making profits which are rapidly increasing. It may also be significant to add that the respondent no.3 company has also recently been awarded the "Best Turnaround Strategy" award in the Hindustan PSUs awards.

The improvement in the performance of CEL since 2013-14, is borne out from the following data :-

Year	Sales	Profit/(-)Loss	Accumulated Profit/(-)Loss
	Rs/Lakhs	Rs/Lakhs	Rs/Lakhs
2012-13	19213.13	-241.23	-4915.41
2013-14	17205.09	314.64	-4606.86
2014-15	16829.34	496.45	-4200.46
2015-16	21117.59	1120.51	-3344.95
2016-17 (Est)	29500.00	2399.00	-1650.00

6. Furthermore, it appears from the facts of the case that there is an internal audit, a statutory audit, a transaction audit and audit conducted by the Board as stated by the respondent no.1 in their counter-affidavit. Thus, the audit of respondent no.3 as required under the law has duly been conducted. Moreover, the performance assessment of the respondent no.3 is found to be outstanding. For the ready reference, paragraph no. 7 at page no. 298 reads as under :

“7. Contents of para 7 do not concern the answering respondent and call for no comments. However, it may be relevant to mention here that in case CAG has made any comments with regard to the financial accounting pertaining to CEL, the same are required to be responded to by CEL to the CAG. It may also be added that whatever comments or issues are raised by the CAG, the same are to be taken to their logical conclusion by the CAG itself.

In so far as petitioner's allegations that he made some quires into the financial affairs of the respondent no.3 and filed various applications under the RTI Act, 2005, suffice it to say that the petitioner does not have any locus standi to make any such enquiries. There is a well established system to ensure proper accounting and highest standards of corporate governance in PSUs Including Internal audit, Statutory Audit, Transaction Audits, CAG, Audit Committee of the Board etc. It is also worth to mention here that Respondent No. 3 Company has consistently been rated as "Outstanding" in field of Corporate Governance by the DPE (Department of Public Enterprises) since joining of Respondent No 6 as CMD.

The contents of para 7 also clearly shows that the present writ petition has been filed by the petitioner out of vengeance. As submitted in the preliminary submissions the present petition though titled as "PIL" has been filed by the petitioner to settle his grudges against the

management of Respondent no.3 which had transferred the petitioner to Chandigarh. Pertinently, the petitioner filed a writ petition challenging his transfer before this Hon'ble Court which was dismissed and thereafter even the LPA filed by the petitioner was also dismissed. It is after losing the legal battle the petitioner has filed the present writ petition making all sorts of untenable allegations, without disclosing the fact of the mentioned writ petition and LPA filed by him having been missed by this Hon'ble Court."

7. Further, it appears that for the allegations about the working style of respondent no.3 and respondent no.6 which were revealed from one magazine, a Fact Finding Committee was constituted by the Department of Science and Technology with the following members :

"(i) Shri Birijeshwar Singh, IAS (Retd.), former Chairman, National Highways Authority of India - Chairman

(ii) Shri K.P. Pandian, former JS & FA, Deptt. of Science & Technology -Member

(iii) Ms. Manju Bagai, former Legal Advisor, CSIR – Member

(iv) Shri K.R. Vaidheeswaran, JS, DSIR/CSIR - Member."

8. Paragraph nos. 4 and 5 of the counter affidavit filed on behalf of respondent no. 9 reads as under:

4. In February, 2017 issue of the journal "TelecomLive" magazine, certain allegations were made against the CEL and its CMD, Dr.Nalin Shinghal. Complaint Ceil, Cabinet Secretariat had also forwarded complaint against Dr.Nalin Shinghal, CMD CEL vide OM NO.501/I/08/2017-VCC dated 28.04.2017 (ANNEXURE-III). A Fact Finding Committee (FFC) was constituted by DSIR with the approval of Minister of Science & Technology (ANNEXURE- IV). The FFC was chaired by Shri Brijeswar Singh IAS(retired), former Chairman, National Highways Authority of India (NHAI). The other members were Shri K.P.Pandian, former JS&FA,

Department of Science & Technology, Ms.Manju Bagai, former Legal Advisor, Council of Scientific & Industrial Research (CSIR) and Shri K.R.Vaidheeswaran, Joint Secretary, CSIR/DSIR. The

FFC took oral deposition from Shri Anil Kumar, Editor-in-Chief, TelecomLive magazine and also examined the files/documents pertaining to the cases referred to in the magazine article, including the allegations regarding splitting of the order by CEL in UP Rajkiya Nirman Nigam to facilitate limited tender, BSF's Solar Power Project with battery backup i.e., off-grid, BSF's Solar Power Project Grid connected i.e., without battery, UP Police's Solar Power Projects at 250 Police Stations and helper on deputation working at CMD's residence. The FFC found

that the allegations against Dr.Nalin Shinghal, CMD, CEL were NOT substantiated. Copy of the FFC report is at ANNEXURE-V.

5. The FFC report was sent by this Department to the Cabinet Secretariat for placing before the Group of Officers (GOO) (ANNEXURE-VI). In response, the Cabinet Secretariat vide its OM NO.501/I/15/2017-VCC dated November, 2017 conveyed that Group noted the specific reply of DSIR and decided not to pursue the matter further (ANNEXURE-VII).”

9. The aforesaid Fact Finding Committee has gone into the details of the allegations raised against respondent no.3 and respondent no.6 and submitted a detailed report dated 24th August, 2017, which found that allegations raised against respondent nos. 3 and 6 are not substantiated. It is pertinent to note that allegations raised in this petition are exactly the same which were placed before the said Fact Finding Committee for inquiry.

10. The conclusion arrived at by the aforesaid Fact Finding Committee is find place in paragraph no. 179 of the counter-affidavit filed by the respondent No.9 at page no. 704 of this petition which reads as under :

“179. (i) Allegation (I) regarding award of work on nomination basis to the Channel Partner is NOT substantiated. Moreover, CEL successfully completed the work.

(ii) Allegation (II) regarding supply of material on credit M/s Shanti Associates is NOT substantiated, but CEL should do more to recover payments from its debtors.

(iii) As regards Allegation (III), CEL has not been blacklisted by Railways. But CEL could not complete the Orders placed by Railways and lost its security deposits. CEL's selection of vendors was poor. However, blame does not attached to CEL alone as Railways are also at fault. RDSO (Railways) had issued

"Standards" as part of the tender conditions, when. RDSO lacked laboratories to carry out testing for these standards. To that extant the contract was void ab initio.

(iv) Allegation (IV) regarding appointment of consultants by CEL flouting the rules is NOT substantiated.

(v) Allegation (V) regarding splitting of orders by CEL in UPRNN case to facilitate limited tender is NOT substantiated. GEL had followed its tender procedures. Since there is no general debarring of CEL by Railways, the question of CEL submitting a false certificate /Affidavit does not arise.

(vi) Allegation (VI) regarding showing favour to Samriddhi Automation by technical rejection of other bidders is NOT substantiated as he was technically qualified L1 bidder through a fair and transparent process and the work was successfully Completed.

(vii) Allegation (VII) regarding harassment of "Whistleblower" having a child with special needs, by transferring him from Delhi in violation of DOPT instructions, is NOT substantiated. Shri Madanjit Kumar was not a "whistleblower" within the meaning of 'Whistleblowers Act' nor was DOPT instruction applicable.

(viii) It is observed that the documents pertaining to the Para of inspection report of CAG given in the TelecomLIVE magazine in support of the allegations have been obtained from the public domain and those given by Shri Madanjit Kumar have largely been obtained from CAG through RTI, to which allegations of corruption have been tagged on. The complaint is based on the inspection report of CAG. As per the established procedure to deal with CAG inspection report, it is being addressed by CEL separately and replies / clarifications have been sent by CEL to CAG.

(ix) On the basis of the examination of the documents submitted by CEL and Shri Anil Kumar, Editor-in-Chief, TelecomLIVE magazine, as brought out in this report, the allegation of corruption against Dr. Nalin Shinghai, CMD, CEL, is NOT substantiated."

11. Thus, in view of the aforesaid Fact Finding Committee's conclusion given in their report dated 24th August, 2017, qua allegations leveled against respondent nos.3 and 6, which are also overlapping with

the allegations levelled in this writ petition, we see no reason to further monitor this case when the said report has been duly accepted by the concerned Ministry as per the communication dated 3rd November, 2017.

12. In view of the aforesaid facts and circumstances of the case and the Fact Finding Report as stated hereinabove, we hereby dispose of this writ petition. Nonetheless, we hereby direct the respondents that in case of any irregularity or any illegality is found in future, action will be taken by the respondents against respondent no.3 or against erring officers of the respondent no.3 in accordance with law, rules, regulations as per Government policy applicable to the facts of the case and also after giving an adequate opportunity of being heard to the concerned parties.

13. With these observations, this writ petition is hereby disposed of.

CM Nos. 7554/2018, 46645/2018, 46646/2018 and 47582/2018

1. In view of the disposal of the writ petition, all these applications are also disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J.

NOVEMBER 27, 2019/kr