

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITIONS NO. 225 & 1088 OF 2019**

AZAREDO ELECTRICAL
CONSULTANTS, A PROP.
OF JOCUNDA ELEUTERIO

....Petitioner.

Versus

THE CHIEF ELECTRICAL
ENGINEER, GOVT. OF GOA
AND ANR.

.... Respondents.

Mr. Nigel Costa Frias, Advocate for the petitioner.

**Mr. Pravin Faldessai, Addl. Govt. Advocate for the
respondents 1 and 2.**

**Mr. D. Lawande, with Mr. J. Mathew, Advocates for the
respondent 3.**

Mr. P. Dangui, Advocate for the respondent 4.

**CORAM: DIPANKAR DATTA, CJ &
M. S. SONAK, J.**

DATED: 19th August 2021

ORAL ORDER (Per DIPANKAR DATTA, CJ.):

WRIT PETITION NO. 225 OF 2019

1. Standards of probity in public life are on the decline for quite some time past is a realization, which does not admit of any doubt. Corruption is so widespread nowadays in every sphere of public life that whenever, in course of proceedings before a Court of law, an allegation is levelled of malpractices by the holder of a public office having vitiated a particular deal or transaction, which is the subject matter of the Court's scrutiny, embarking on an inquiry by putting searching questions to the parties to ascertain the worth of such an allegation is the normal reaction of the Courts. Doubtless, all such situations call for maintaining a fine balance between the object of upholding the probity in public life and the need to protect a public servant against *mala fide* insinuation. The duty of the Courts, in such situations, is to guard against being unduly swayed by the mere seriousness or gravity of the allegations or of the grossness of impropriety alleged, so as to avoid a deflection of justice. It is the materials on record that become important to rule one way or the other. Many a times, the Courts unearth the corruption, and tend to come down heavily against the corrupt public servant. Instances of the prosecution failing are not uncommon either, because it may

have been launched for settling scores or based on no evidence. Whatever be the outcome of the inquiry, it is always the underlying intention of the Court to keep the system of governance free from corruption and to ensure purity in all public deals or transactions. Failed prosecutions having tarnished a public servant's reputation so irreparably to make it difficult for him to have the indelible mark erased forever, are also not rare. To prick the conscience of the Court and to prejudice the mind of the judge(s) at the outset by highlighting and putting gloss on certain acts by branding it as acts of gross impropriety by a public servant in an attempt to obfuscate the real issues, obviously for obtaining a favourable order is, at times, made part of the provocative 'art of advocacy' rather than its persuasive part. If the move clicks and the Court is prejudiced, the public servant faces rough weather and may find it difficult to wriggle out though not being on the wrong side of the law. It is in situations such as these that the Court's duty is to rise above the initial predilection and while eschewing the bias, to rule on the merits of the rival claims dispassionately.

2. These introductory words are necessitated because of what we have witnessed in course of these proceedings. Mr. Costa Frias, learned advocate for the petitioner in Writ Petition No.225 of 2019 was heard to allege that malice in fact of the third respondent, *i.e.*, the former Chief Electrical Engineer of the Government of Goa, was the trigger for the official respondents not to proceed with its earlier decision for a re-tender, the initial tender to procure the electrical items/products (hereafter “the electrical items”, for short) for the Government of Goa in the Power Department having failed for lack of competition, and that the subsequent decision to procure the electrical items from the fourth respondent has been engineered by the third respondent for the obvious reason that the fourth respondent happens to be a firm of the husband of the third respondent. The allegation was serious enough for us to take strict notice and to view the conduct of the third respondent wearing glasses of suspicion. However, having heard the parties at some length and on consideration of the documents to which our attention has been invited by Mr. Lawande, learned advocate for the third respondent and Mr. Dangui, learned advocate for the fourth

respondent, we have no doubt in our mind that our initial response was not quite appropriate; and, with the utmost dispassion at our command, we would proceed to spurn the challenge laid by the petitioner as one which is wholly devoid of merit.

3. It is not in dispute that the petitioner had responded to a notice inviting tender for supply of the electrical items to the Department of Power and emerged as the L-1 bidder. However, since the competition was restricted only to two bidders, the Power Department decided to proceed for a re-tender. It is the petitioner's allegation that despite such decision for re-tender to procure the electrical items through an open tender process, such process for a re-tender was done away with without any justification and that the Department proceeded to procure such items through the Goa Handicrafts Rural and Small Scale Industries Corporation (hereafter "the Corporation", for short) and that the items were supplied to the Corporation by the firm of the husband of the third respondent. The imputation of Mr. Costa Frias is that the third respondent, abusing her official position as the Chief Electrical Inspector, ensured that the process

of re-tender is aborted and that the firm of her husband gets the award for supply of the electrical items through the Corporation. An additional plea of conflict of interest of the incumbent Chief Electrical Inspector is also sought to be raised by referring to the request that was made by the fourth respondent to the Corporation to change the specifications of the electrical items and that the third respondent had immediately devoted attention to ensure that the specifications are revised as per the supplier's request to suit its convenience.

4. We have been shown an order dated 17th January, 2019, issued by the Department of Industries, Government of Goa on the subject of “Preferential Purchase Scheme – Purchase of Products manufactured by local SSI Units through SSI Units through Rate Contract”. The first two paragraphs of such order are relevant and hence quoted below: -

“In pursuance of the Orders referred to above Government is pleased to notify the rates of the items indicated below :

1) Steel Furniture	Schedule – 1	
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2) RCC Slabs/Pavers Blocks & poles	Schedule – VI (A, B,C. D)	Appended to this order.
3) Fabricated Items, nuts and bolts	Schedule X	

All the State Governments/Offices, Semi Government Departments, Government Undertaking Corporation, Autonomous Bodies, etc. are directed to procure the above mentioned items through the Goa Handicrafts Rural & Small Scale Industries Development Corporation (GHRSSIDC) at the rates indicated in the attached Schedule at the rates accepted by Rate Contract Committee (RCC) members in the meeting held on 03.07.2018.”

(emphasis supplied)

5. Schedule X appended to the order contains a whole list of fabricated items and at serial no.56 is “Metal parts for disc insulator 2 Boted as per department specification & drawings”, which were the items for which the Power Department had initiated the tender process. According to Mr. Lawande, it is because of this order dated 17th January, 2019 that the Power Department, perforce, was required to have the electrical items sourced through the Corporation. It is also his contention that the fact of the husband of the third respondent being a supplier

of the electrical items to the Corporation, is a mere coincidence and that there was no impropriety, either on the part of the third respondent or her husband, in the entire deal of procurement of electrical items for the Power Department.

6. Mr. Dangui has referred to the reply affidavit of the fourth respondent, *i.e.*, the firm of the husband of the third respondent and more particularly to paragraph 8 thereof, to contend that the rates at which the electrical items are being supplied by the fourth respondent are much cheaper than the rates that had been quoted by the petitioner while emerging as the L-1 bidder. It is his contention that the decision taken by the Power Department to procure electrical items from the Corporation is neither illegal, nor arbitrary. Over and above that, neither did the third respondent, nor her husband, indulge in any unfair dealing so as to warrant judicial review.

7. The Government is the guardian of the finances of the State. As such guardian, the Government is expected to protect the finances of the State. In matters relating to procurement of items/products, it is always open to the Government to look for

and accept the best quotation. The Government in the Power Department was required, nay duty bound, to procure the electrical items of requisite quality and specifications at the best acceptable rates. If indeed, the Power Department has done away with the re-tender process based on the contents of the Government Order dated 17th January, 2019 and has been procuring the electrical items in terms of such order through the Corporation, we see no illegality or arbitrariness in such administrative action, so as to call for a judicial review. The allegation of the petitioner that the third respondent has abused her official position, is completely baseless and does not merit any consideration having regard to the facts and circumstances. We agree with Mr. Lawande and Mr. Dangui that no exception ought to be taken in the present case since the Government Order has been adhered to in letter and spirit and it is only a coincidence that the fourth respondent has been selected by the Corporation for supplying the electrical items. Although it would have been proper for the third respondent to allow some other officer to deal with the request of the fourth respondent for change of the specifications to stay away from any controversy, nothing

substantial turns on it. It was the Corporation that forwarded the request of the fourth respondent to the third respondent. If indeed such changes, as suggested by the fourth respondent, were required to meet the requirements of the Power Department, allowing of the request by the third respondent matters little unless such action is shown to smack of want of *bona fides*. It has not been so shown. Even otherwise, mere indiscretion, without anything more, cannot be equated with *mala fides*.

8. Thus, we see no reason to interfere. Writ Petition No.225 of 2019 stands dismissed. There shall be no order as to costs.

WRIT PETITION NO. 1088 OF 2019

9. Facts of Writ Petition No.1088 of 2019 being similar to the facts of Writ Petition No.225 of 2019, the aforesaid order passed in Writ Petition No.225 of 2019 shall govern Writ Petition No.1088 of 2019, with the result that the same too stands dismissed without costs.

M. S. SONAK, J.

CHIEF JUSTICE

SANTOSH S MHAMAL  Digitally signed by SANTOSH S MHAMAL
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