

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL REVISION APPLICATION NO. 120/2006

Ram Dhiraj Roy s/o Parmar Roy,
Aged 76 years, Occupation – Retired,
R/o 3rd Anand Marg Lane, Moradabai
Maidan, North Ranchi, District – Ranchi
(Jharkhand).

.... **APPLICANT**

VERSUS

Central Bureau of Investigation,
through Dy. Superintendent of Police,
C.B.I., Nagpur.

.... **NON-APPLICANT**

Mr. Aakash Gupta, Counsel for the applicant,
Mrs. Mugdha Chandurkar, Counsel for the non-applicant.

CORAM : ROHIT B. DEO, J.
DATED : 01st DECEMBER, 2021

ORAL JUDGMENT :

Heard Mr. Aakash Gupta, learned Counsel for the applicant and
Mrs. Mugdha Chandurkar, learned Counsel for the
non-applicant/Central Bureau of Investigation.

2. Applicant-Mr. Ram Dhiraj Roy, former Chairman-cum-Managing
Director (CMD), Western Coalfields Limited (WCL) is arraigned as
accused 1 in Special Case 22/2003. Accused 2 is the former Chief

Engineer (Civil), WCL and accused 3 is the contractor, who is the alleged beneficiary. The Central Bureau of Investigation (CBI) which is the investigating agency, submitted the final report under Section 173 of the Code of Criminal Procedure, 1973 (Code) alleging commission of offences punishable under Sections 420 and 120-B of the Indian Penal Code (IPC) and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 (Act).

3. The gist of the prosecution case, as can be culled out from the material on record, is thus :

- (i) The WCL invited tenders for construction of 25 bedded hospital at Kamptee. M/s. Indus Engineering Company emerged the successful bidder and was awarded the contract on 10-4-1987. Accused 1, who was then CMD of WCL, visited the site on 08-10-1987 and decided to enhance the capacity of the hospital to 50 beds. Accused 1 allegedly decided to complete the peripheral and ancillary work simultaneously with the construction of the hospital building. It was pursuant to such decision that a note-sheet was prepared, and at the behest of accused 1-Mr. Ram Dhiraj Roy and accused 2-Mr. H.S. Gopinath, the then Chief Engineer (Civil), the work was awarded to accused 3, the Proprietor of M/s. Indus Engineering Company

without resorting to tender process.

- (ii) Open tenders were invited for undertaking the internal electrification work of the hospital and M/s. Telikrik Electricals and Electronics System Private Limited emerged as the lowest bidder. However, accused 2-Mr. H.S. Gopinath conspired with accused 1-Mr. Ram Dhiraj Roy and accused 3-Mr. V.B. Makhija and proposed to award the work of internal electrification to accused 3-Mr. V.B. Makhija, who did not participate in the tender process.
- (iii) The prosecution case is that as a fact, the Tender Committee recommended awarding the work of internal electrification to M/s. Telikrik Electricals and Electronics System Private Ltd. for Rs.13,85,728-60 (Rupees Thirteen Lacs Eight Five Thousand Seven Hundred Twenty Eight and Sixty Paisa) and a note-sheet was moved by Mr. G.R. Shrikantiah, the Deputy Chief Engineer (Civil) on 22-4-1988. It is alleged that accused 2-Mr. H.S. Gopinath conspired with accused 3-Mr. V.B. Makhija and proposed cancellation of the tender and awarding the work of internal electrification to accused 3. The Additional Chief Finance Manager and the Director (Finance) and Director (Personnel) objected. However, the work was awarded to accused 3, the existing contractor, who did not participate in the

tender process. Mr. G.R. Bhandari, Director (Personnel) and Director (Finance) recorded objections vide their respective notes dated 06-6-1988 and 10-6-1988. Accused 1 and accused 2 pressurised Director (Finance) Mr. D. Janardhan Rao who accepted the proposal vide note dated 11-6-1988.

4. The applicant preferred an application seeking discharge. The applicant averred that the decision to set up a 50 beds hospital was taken in 1985 and it was when the proposal was sent to Director of Projects/Director (Technical) that approval was granted to Phase-I comprising 25 beds. The applicant joined WCL in 1987. Several representations were received by the applicant from Trade Unions seeking enhancement of the hospital capacity to 50 beds as originally proposed. The norms laid down by the National Coal Wage Agreement envisaged one bed for 120 employees and considering that WCL then employed 6000 workers in the area concerned, the demand of the workers was justified. The applicant contended that he is not involved in the allotment of work to accused 3. WCL issued an office order dated 21-8-1986 where-under the powers were delegated and as per the schedule to the said office order, the power in respect of work of Rs.50,00,000/- (Rupees Fifty Lacs) and

less were delegated to the Chief Engineer (Civil). The consideration and approval of the proposal of awarding work was in the exclusive domain of the Chief Engineer (Civil). The applicant then contended that no irregularity is committed in allotting the work of internal electrification. The material on record shows that the matter was initially discussed by the Chief Engineer (Civil) and Director (Finance) and the Director (Finance) recommended that in view of the urgency, the work may be awarded as proposed by the Chief Engineer (Civil) and ratification by the Board be obtained. The Director (Personnel) concurred and all that the applicant did on 25-6-1988 is to note “approved as concurred by Director (Finance)”. The applicant emphasized that the approval was given by him subject to obtaining ratification from the Board which was the responsibility of the Chief Engineer (Civil). Adverting to the allegation that the applicant pressurised the Director (Finance), the applicant contended that the Director (Finance) was neither his subordinate nor did the applicant have any disciplinary control. The Director (Finance) is an appointee of the President of India and it is inherently incredible that he would be pressurized to write a note, muchless pressurized by the applicant who did not have power even to transfer the Director

(Finance). The applicant contended that the Director (Finance) was initially a suspect/accused and the fact that he is not charge-sheeted would suggest that he is acting under the pressure of the investigating agency.

5. The learned Special Judge rejected the discharge application vide order dated 09-3-2006 reasoning that at the stage of discharge the evidence in support of the prosecution need not be marshalled and that reading of the statements of witnesses show involvement of accused 1 in the alleged offence.

6. The learned Counsel for the applicant Mr. Aakash Gupta has reiterated the submissions, which did not find favour with the learned Special Judge. Mr. Aakash Gupta would invite my attention to certain decisions, to which a reference shall be made at a later stage.

7. Mrs. Mugdha Chandurkar would stoutly rebut the submissions advanced by Mr. Aakash Gupta. Mrs. Mugdha Chandurkar would, relying on certain decisions, submit that at this stage, there cannot be a mini trial and it would suffice if the material on record raises a strong suspicion. Mrs. Mugdha Chandurkar would emphasize on the statement of the Director (Finance) which according to her, *prima facie*, reveals

the complicity of the applicant in the crime.

8. Mrs. Mugdha Chandurkar would further emphasize that the construction of the enhanced capacity of the hospital was allotted to the existing contractor without taking recourse to the tender process and similarly, the work of internal electrification was awarded to accused 3 existing contractor, who did not participate in the tender process. Mrs. Mugdha Chandurkar would submit that the material on record indicates that on 23-12-1987 discussions were held in the chamber of the applicant and on the same day the work of additional construction of the hospital was awarded to accused 3. Mrs. Mugdha Chandurkar submits that accused 2, vide note dated 03-6-1988 requested Mr. G.R. Bhandari and Mr. D. Janardhan Rao to reconsider the earlier decision of approving the allotment of the internal electrification work to M/s. Telikrik Electrricals and Electronics System Private Ltd. It is submitted that while Mr. G.R. Bhandari did not relent, Mr. D. Janardhan Rao after discussing the matter with the applicant, recommended allotment of the internal electrification work to the existing contractor accused 3.

9. With the assistance of the learned Counsel, I have scrutinized the material in the charge-sheet, and having done so, I am of the considered view that the material is not sufficient even to raise a strong

suspicion, and the learned Special Judge fell in error in dismissing the application seeking discharge.

10. The CBI has placed on record a written notes purporting to cull out the material in the charge-sheet which according to the CBI is sufficient to frame charge.

11. The CBI contends that it was the applicant who took the decision to enhance the capacity of the hospital and he was in a position to influence the other officers of WCL. According to CBI, it was only after the visit of the applicant to the work site that a note-sheet was moved proposing to get constructed the additional construction through the existing contractor. CBI reasons that failure or omission to take recourse to tender process is an abuse of position. Adverting to the allotment of internal electrification work, according to CBI, PW 9 Mr. D. Janardhan Rao, Director (Finance) was called to the chamber of the applicant and then he changed his earlier decision and consented to allotment of work of internal electrification to the existing contractor. The CBI contends that while the said witness was named in the First Information Report as accused, he was not charge-sheeted and made a prosecution witness.

12. The applicant does not dispute that he did take the initiative to enhance the capacity of the hospital at Kamptee from 25 beds to 50 beds, as originally proposed. *Prima facie*, it will have to be granted to the CBI, that the tender process was not followed and that the work was allotted to the existing contractor. It would not be necessary to make any observation on the submission that the applicant had no role to play in the said decision, which was in the exclusive domain of the Chief Engineer (Civil). In my considered view, since there is no material on record to suggest, even *prima facie*, that the decision to allot the additional work to the existing contractor was actuated or intended to confer gain on accused 3, or that there was any financial loss caused to WCL in the process, the mere fact that the tender process was not followed leads to no interference of abuse of post or office. The work of the hospital was ongoing and the decision to allot the additional work to the existing contractor may possibly make sense in the circumstances obtaining. It is well settled that while tender process is the norm, there can be exceptions made for legitimate reasons. I have not come across any material in the charge-sheet to raise even a strong suspicion that the work was allotted to accused 3 due to oblique motives or for considerations extraneous.

13. The CBI is heavily relying on the statement of Mr. D. Janardhan

Rao, the then Director (Finance) who states that on 10-6-1988 he was called by the applicant and pressurised to change notings dated 10-6-1988 and to approve the award of contract of internal electrification to accused 3.

14. Notably, it is not even the case of CBI that the earlier note recorded by Mr. D. Janardhan Rao was changed. The allegation is that Mr. D. Janardhan Rao changed his opinion thus :

“Discussed with CMD when CE (C) was also present. Despite the fact that the procedure followed in this cause is irregular, the proposal made by CE (C) may be approved for the following reasons :

1. *The work has to be complete in all respects by 1st October in view of the Nehru Centenary Celebrations.*
2. *If the work of electrifications is entrusted to another contractor, the quality of work will suffer due to patch work and also it may not be possible to adhere to the time schedule.*
3. *The amount involved is only about Rs.12.5 lacs.*
4. *However, a strict penalty may be stipulated for any delay in completion of work.*

In view of the urgency, the work may be awarded as proposed by CE (C) and Board’s ratification obtained. D(P) may also kindly see.”

15. The elaborate reasons recorded by Mr. D. Janardhan Rao justifying the deviation from the normal procedure *prima facie* rules out that the change in opinion was due to pressure exerted. Pertinently, the statement of the witness uses the expression “pressurise” without disclosing any further detail. I would be entitled to sift the material on

record, even at the stage of framing charge, albeit for the restricted purpose of ascertaining whether a case is made out to proceed. Such a limited exercise impels me to hold, that on a holistic reading of the statement of the witness Mr. D. Janardhan Rao, whom the CBI initially named as an accused in the First Information Report, reveals that the witness attempted to pass on the buck. The witness was a responsible officer appointed by the President of India. He was not an ordinary subordinate whom the applicant could have pressurised. As Director (Finance) Mr. D. Janardhan Rao had nothing to fear from the applicant who neither exercised disciplinary control nor could have otherwise taken any adverse action. I am satisfied that the statement of the accused turned witness Director of Finance is not material, muchless sufficient material, to frame charge.

16. *Arguendo*, even if it is granted to the CBI, that the applicant did play any role in the deviation from the ordinary norm or process, an administrative irregularity is not necessarily criminal culpability. While plain practical sense may justify, to many, the decision to award the additional civil construction work or the internal electrification work to the existing contractor, even if such decision is held to be irregular, there ought to have been further material to show that the decision is tainted with extraneous and dishonest considerations. I have not come

across such material in the charge-sheet

17. Adverting to the decisions cited at the bar, the learned Counsel for the CBI Mrs. Mugdha Chandurkar would rely on the following decisions :

- a) State of Bihar vs. Ramesh Singh, 1977 Cri.L.J. 1606,
- b) Union of India vs. Prafulla Kumar Samal and Another, 1979 Cri.L.J. 154,
- c) Supdt. And Remembrancer of Legal Affairs, W.B. vs. Anil Kumar Bhunja, 1979 Cri.L.J. 1390,
- d) Niranjana Singh Karam Singh Punjabi vs. Jitendra Bhimraj Bhijja and Others, AIR 1990 SC 1962,
- e) State of Maharashtra vs. Som Nath Thapa, AIR 1996 SC 1744,
- f) State of Maharashtra vs. Priya Sharan Maharaj and Others, (1997) 4 SCC 393,
- g) State of M.P. vs. S.B. Johari and Others, AIR 2000 SC 665,
- h) Sanghi Brothers (Indore) Pvt. Ltd. vs. Sanjay Choudhary and Others, AIR 2009 SC 9,
- i) State of Madhya Pradesh vs. Sheetla Sahai and others, (2009) 8 SCC 617,
- j) P. Vijayan vs. State of Kerala and Another, AIR 2010 SC 663,
- k) Shoraj Singh Ahlawat and Others vs. State of UP and Another, AIR 2013 SC 52,
- l) Satya Narayan Sharma vs. State of Rajasthan, (2001)8 SCC 607,
- m) Asian Resurfacing of Road Agency Private Limited and Another vs. Central Bureau of Investigation, (2018)16 SCC 299,

- n) Iqbalsingh s/o Manaksingh Soni vs. Central Bureau of Investigation, Criminal Revision No.28/2016.

18. The test to be applied for deciding a discharge application is well settled. The propositions laid down in the decisions cited by Mrs. Mugdha Chandurkar reiterate the well established position of law. Indeed, there cannot be a debate on the proposition that at the stage of framing charge a mini trial is not expected and that the evaluation of material can be done only for the limited purpose of ascertaining whether the facts disclose all the ingredients of the alleged offence and whether ground exists for presuming that the accused has committed the offence.

19. The learned Counsel for the applicant Mr. Aakash Gupta would invite my attention to the decision of the Apex Court in ***Yogesh Alias Sachin Jagdish Joshi vs. State of Maharashtra, (2008) 10 SCC 394*** to buttress the submission that if the Judge is satisfied that evidence produced gives rise to suspicion only, as distinguished from grave suspicion, he would be well justified in discharging the accused.

20. In my considered view, there is no material in the charge-sheet to even raise grave suspicion, and compelling the 91 years old applicant to face the agony and trauma of a trial, only as a ritualistic formality,

would amount to an abuse of the process of law.

21. This application deserves to be allowed, and is accordingly allowed in terms of prayer clauses – A and B, which read thus :

“A. Quash and set aside the order dated 9-3-2006 passed by the Judge, Special Court for CBI, Nagpur in Special Case No.22/2003 below Exhibit 93.

B. Allow the application Exhibit 93 and discharge the applicant.”

JUDGE

belkhede/adgokar