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

Date of decision: 05th April, 2021

IN THE MATTER OF:

\+ **CRL.M.C. 263/2021**

VILAS RAO GHODESWAR ..... Petitioner

Through Mr. Mohit Mathur, Senior Advocate with Dr. A K Gautam, Mr. Ravi Mehrotra, Ms. Ankita Gautam, Mr.Harsh Gautam and Mr. Mohit Siwach, Advocates

versus

CBI ..... Respondent

Through Mr. Mridul Jain, SPP for CBI

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The petitioner seeks quashing of the order on charge dated 16.12.2020, and charge dated 23.12.2020, framed by Special Judge, (CBI-05), (Prevention of Corruption Act), Rouse Avenue District Court, New Delhi in CC No.249/2019.

2. Shorn of details, the facts leading to the filing of the present petition are as follows:

a) Information was received that irregularities had been committed in awarding of tender pertaining to renovation work at Pay and Account Office, (IRLA), AGCR Building, Ministry of Information and Broadcasting, New Delhi.

b) On receipt of the information, a preliminary enquiry being PE-

7(A)/2012-DLI was registered on 26.09.2012 at CBI, ACB, Delhi.

c) An enquiry was conducted by SI Ram Kumar Shukla, CBI, ACB, New Delhi.

d) On completion of enquiry, SI Ram Kumar Shukla registered an FIR being RC No.DAI-2013-A-0004 for offences under Sections 120B read with Sections 420, 468, 471 IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "The P.C. Act").

e) Charge-sheet was filed. The petitioner herein was arrayed as A-5 in the charge-sheet. The charge-sheet reads as under:

> ***"Investigation has disclosed that vide note dated 18.06.2008, Sh. Vilas Rao Ghodeswar, Chief Controller of Accounts, Ministry of Information and Broadcasting approved a proposal moved by Sh. N.K. Gupta, Sr. Accounts Officer. Thereafter Sh. Vilas Rao Ghodeshwar had constituted a tender committee without a single technical person.*** *The members of the tender committee were*
> *i) Sh. N.K. Gupta, Sr. AO as Chairman,*
> *ii)Sh. M.D. Gupta, AAO, Member,*
> *iii) Sh. R.K. Bhambi, AAO member and*
> *iv) Sh. Amit Dabas, Accountant, member.*
> *The committee was for the purpose to suggest suitable remedies to improve the condition of the office premises of the PAO. The tender committee had submitted an estimated area for renovation works at PAO(IRLA),AGCR building, Shastri Bhawan, M/o I&B, New Delhi.* ***Sh. Vilas Rao Ghodeswar, Chief Controller of Accounts had approved the estimated area of work of 4725 Sq. Ft for Rs.85,07,060/- which was beyond his financial delegation of power. The financial approval was to be obtained from the Addl. Secretary & Financial Advisor (AS&FA) M/o I&B Govt. of India, but no such approval was obtained by him.*** *Sh. R.C Mishra was the Addl. Secretary and Financial Advisor of M/o*

I&B, New Delhi during the relevant time. He has been examined and he disclosed that no approval was obtained from him in the present works. In this regard there are no files pertaining to approval of AS&FA in the O/o the CCA, M/o I&B, New Delhi. Without the approval of AS&FA by Sh. Vilash Rao Ghodeswar, CCA, a tender for renovation works was invited in the website of Ministry of Information and Broadcasting on 09.07.2008 with due date of submission on 24.07.2008. In response thereof five firms had submitted their applications. The firms are
1) M/s Sunsilk Carpets and Furnishers, Munirka, New Delhi
2) M/s Vidhi Carpets, C-264 Kamalpur Burari, Delhi-92
3) Sudan Carpets, 4641/21 Ansari Road, Daryaganj, New Delhi-22
4) Vimala Enterprises,12951 Sector-5, R.K.Puram, New Delhi and
5) Kamal Enterprises, 328/12, R.K. Puram, New Delhi.

2. M/s Vidhi Carpets had quoted lowest rate at Rs.79,80,420/-; M/s .Sunsilk Carpets & Furnishers quoted 2nd lowest rate at Rs.85,07,060/- and M/s Vimala enterprises quoted highest rate at Rs.90,33,700/-. The lowest one i.e. M/s Vidhi Carpets was rejected as its work experience was for only 2 similar works as against the minimum requirement of 7 similar works as mentioned in the NIT. The 3rd lowest one i.e. M/s Vimala Enterprises was rejected as it quoted higher rates than the others. the second lowest one i.e. M/s Sunsilk Carpets & Furnishers was considered successful in the tender and was awarded the work for Rs.85,07,060/-. The EMD drafts of unsuccessful firms were returned. M/s Kamal Enterprises and M/s Sudan Carpets had not submitted the draft of Rs.2.00 lacs for EMD. The tenders of both the firms were rejected by the committee for the said reason.

3. Investigation revealed that all the firms except M/s Sunsilk Carpet furnishers were found to be nonexistent firms. No such firms were found at the given addresses. The

EMD draft of M/s Vidhi Carpets and M/s Vimala Enterprises of Rs.2.0 lacs each were returned by the tender committee by taking bogus receipts on their letters only and there was no detail mentioned regarding the persons who actually received these back. These drafts were further cancelled and deposited by Sh. Vibhuti Thakur, Proprietor Sunsilk Carpets & Furnishers in his A/c No.12598 opened at Canara Bank, South Extn-1, New Delhi in the name of Sunsilk Carpets and Furnishers and another A/c No.010454632508 opened at SBI, Subrota Park, New Delhi in the name of Sunsilk Carpets and Furnishers. These facts establish that other firms were dummy firms of Sh. Vibhuti Thakur.

4. Investigation further revealed that the draft forms of EMD. of M/s Vidhi Carpets" and M/s Vimala Carpets were prepared by Sh. Vibhuti Thakur, Proprietor M/s Sunsilk Carpets & Furnishers under his writing and signature. The CFSL, New Delhi has given positive opinion vide Report No.CFSL-2013/D-652/3315 dated 13.08.2013.

5. Investigation also revealed that a quality control committee consisting of Sh. R.P.Sharma, Sr.A.O. Smt. Sunita Sharma, - AO and Sh. Om Prakash, Sr.A.O. all. of PAO, IRLA; M/o I&B,, New Delhi was also constituted by Sh. Vilas Rao Ghodeswar, CCA. They were required to check the ISI/ISO standards of the materials used by the contractor Sh. Vibhuti Thakur for the renovation works. The members of the committee are the account officials of PAO. The quality control committee required technical skilled persons but no technical person was involved. Whereas the constituted committee certified that the agency had used the quality of material upto the mark as per specification i.e. ISI/ISO, They also certified that the work was completed within the stipulated period hence no extension of time was required to be granted. They also certified that the material used by the agency was got approved by the Committee before the same are put into use. They also certified that the work station was *prepared as per the specification. They also certified that the waste material was cleared by the agency from the site. They also certified that the anti termite treatment of best quality was provided before use and during whole wooden works. Thus despite not being technically skilled they certified the materials casually. Therefore their lapses were referred to the concerned department for departmental action as criminality on their part could not be established.*

6. Investigation also revealed that the materials used by M/s Sunsilk Carpets were found to be substandard and payment were made at exorbitant rates against the prevailing rates of 2008 as well as rates stipulated in DSR2007. During investigation, the materials were inspected by Sh. Partap Singh, AE(Civil), CPWD, Nirman Bhawan, New Delhi who found the material used by the contractor as substandared and he calculated a loss of Rs.53,36,945.91 to the Govt. exchequer.

7. Investigation revealed that the accused Sh. Vibhuti Thakur (Pvt person) and Vilash Rao Ghodeswar, N.K.Gupta, M.D.Gupta, R.K.Bhambi and Amit Dabas (all public servants), entered into a criminal conspiracy and they dishonestly and fraudulently by abusing their position as public servants for the purpose of facilitating the contractor resorted to illegal means and by aforestated modus operandi, caused wrongful loss to the extent of Rs.53,36,945/- to the Govt. exchequer and corresponding wrongful gain to themselves.

8. The aforesaid facts and circumstances disclose commission of offence punishable u/s 120-B IPC r/w 420A71 IPC and 13(2) r/w Sec.13(1)(d) of P.C. Act 1988 and-substantive offences thereof by Sh. Vilash Rao Ghodeswar, CCA, Sh. N.K.Gupta, Sr.AO, Sh. M.D.Gupta, AAO, Sh. R.K.Bhambi, AAO; Sh.Amit Dabas, Accountant, all of O/o the PAO(IRLA),M/o information & Broadcast, New Delhi, Sh. Vibhuti Thakur, Proprietor of M/s Sunsilk Carpets &

Furnishers and M/s Sunsilk carpets & Furnishers.

9. The sanction for prosecution of Sh. Vilash Rao Ghodeswar, M.D. Gupta and Amit Dabas have been accorded by the competent authorities and the same are enclosed herewith in original. No prosecution sanction in respect of N.K. Gupta and R.K. Bhambi are required as they have retired from service"

f) After filing the charge-sheet, proceedings for framing of charge got initiated before the learned Special Judge (PC Act), CBI-05, Patiala House Courts, New Delhi.

g) The learned Special Judge (PC Act), CBI-05, Patiala House Courts, New Delhi, by an order dated 19.04.2016, did not frame charges against the petitioners. The learned Special Judge came to the conclusion that there is no evidence to conclude that conspiracy was hatched or entered into between A-1 to A-5 i.e. the public servants for committing the offence. The learned Judge held that had there been any conspiracy, tender would not have been published on the website and that too on two occasions. It was held that the quality of the work was checked by the Quality Control Committee and was found to be in order and thereafter the amount was released. It was held that there was no iota of evidence that rates quoted by the bidder was not as per the prevalent market rate or exorbitant in any manner. It was found that the allegation against the petitioner herein that he was not competent to approve the tender beyond Rs.10 Lakhs is not tenable because the amount was subsequently released and approved by providing budget for the same which amounts to ratification of the act and, if at all, this action can only be an irregularity for which Departmental proceedings can be initiated and it does not amount to criminal misconduct within the meaning of Section 13(2) read with Section 13(l)(d) of Prevention of Corruption Act, 1988. The learned Special Judge held that CBI has failed to bring on record that rate approved by tender committee was not as per the prevalent market rate and the petitioner and all other public servants were discharged. However, the learned Special Judge found that the addresses mentioned by other bidders were either non-existent or belonged to A-6, Vibhuti Thakur, and the FSL report has confirmed that the draft form of EMD of *M/s Vidhi Carpets* and *Vimala Enterprises*, the bidders other than *M/s Sunsilk Carpets and Furnishers* were prepared by A-6, Vibhuti Thakur, in his handwriting. However, the Special Judge held that since A-6 is the contractor and is not a public servant, though he is liable for offence of cheating and forgery, cannot be proceeded ahead with by the Special Court dealing with cases under the Prevention of Corruption Act, 1998, and if, CBI deems it appropriate they may take necessary action before the court of competent jurisdiction, A-6 was also discharged by the Special Judge.

h) This Order was challenged by the CBI in CRL.M.C.3426/2016 before this Court. This Court by an order dated 08.01.2019, set aside the order of the Special Judge. This Court held that the Special Judge failed to take note of the General Financial Rules, 2005, which were being referred to by the CBI, as also the Central

Public Works Department (CPWD) Manual on which the prosecution places reliance. This Court found that it had been conceded by the counsel appearing for public servant that contract in question entailed expenditure of over Rs.30 Lakh and the provision contained in Rule 126 of General Financial Rules, 2005 would require compliances to be made, including as to constitution of a Quality Assurance Cell comprising of professionals having necessary technical skills and experience in terms of the CPWD Manual. This Court held that the Special Judge failed to take note of the report of PW-13, Mr. Pratap Singh, Assistant Engineer, on which reliance was placed in the charge-sheet. This Court also felt that there are substantive material to show that the refund of earnest money deposited by lowest bidder (rejected) and third lowest bidder (also rejected) was in the form of demand drafts which were credited into the account of sixth respondent, indicating the process of tender *prima facie* to be sham, giving support to the case of CBI about existence of criminal conspiracy. This Court therefore directed that the question of charge or discharge shall be considered afresh after taking into consideration the evidence/material submitted with the charge-sheet in entirety.

i) On remand, the Special Judge, P.C Act, CBI-05, by the impugned order dated 16.12.2020, found that there was sufficient material for proceeding against A-1 to A-5 for offence of Criminal Misconduct under Section 13(1)(d) of P.C. Act punishable under Section 13(2) of P.C. Act. The learned Special Judge placed reliance on Rule 126 and 132 of the General Financial Rule, 2005. The learned Special Judge found that there is sufficient material to show that all the public servants did not discharge their duty as per the stipulated rules. The learned Special Judge referred to the statement of PW-13, Amitabh Sharma, AE (Civil), CPWD, wherein he stated that as per the provision of Section 16 of CPWD Manual, wide publicity should be given to the NIT and in respect of works costing more than Rs.5 lakhs. PW-13 stated that tenders must be invited in the most open and public manner possible, by advertising in the website/press. The learned Special Judge rejected the submission of the public servants that there was no requirement to publish the notice inviting tenders in newspapers in the present case. The learned Special Judge held that omission to follow procedure is suggestive of criminal conspiracy amongst the public servants in order to give undue advantage to A-6, Vibhuti Thakur, which has led to unlawful loss to the public exchequer. The learned Special Judge came to a conclusion that there is evidence to show that the selection process was designed in such a manner as to ensure that A-6 is awarded the contract. The learned Special Judge held that the facts show that Rule 126 of the General Financial Rules had been violated which specifies that repair work beyond Rs. 30 lakhs should be got carried through Public Works Organisations and the successful bidder, *M/s. Sunsilk Carpets and Furnishers*, is not a Public Works Organisation. The learned Special Judge places reliance on the order sanctioning prosecution for the petitioner which had stated that the CPWD Manual is applicable. The contention that there was no requirement of having a technical person in the committee was also rejected by the Special Judge. The learned Special Judge came to the conclusion that the column of "Rates" was conspicuously left blank in Notice Inviting Tender which is Rule 136 of the General Financial Rules. The learned Special Judge held that the petitioner did not have the power to authorize approval of work worth more than Rs.30 lakhs.

j) Accordingly, charges were framed on 23.12.2020 which read as under:-

> *"That you A-1 Naresh Kumar Gupta, A-2 Mata Deen Gupta, A-3 R.K.Bhambi and A-4 Amit Dabas while working as Sr. A.A., A.A.O., A.A.O. and Accountant respectively in the office of PAO (IRLA) A.G.C.R.Building, Ministry of Information and Broadcasting, New Delhi during June-July, 2008- 2009 processed the tenders received for "Providing suitable working conditions to the staff of PAO (IRLA), A.G.C.R.Building, Ministry of Information and Broadcasting, New Delhi" for an estimated area of 4725 sq ft approximately and recommended to award the work to M/s. Sunsilk Carpets and Furnishers, sole proprietorship firm of Vibhuti Thakur for Rs. 85,07,060 on 29.07.2008 and you A-5 Vilas Rao Ghodeswar approved the proposal on 29.07.2008 itself which resulted in loss of Rs. 53,36,945 to Government Exchequer as the tender was at exorbitant cost and the work was not awarded to any Public Works Organisation as per Rule 126 (4) of GFR, 2005 and NIT was issued only on website of Ministry of Information and Broadcasting, New Delhi without its publication in any Newspaper I Indian Trade Journal and without estimation of cost involved on the basis of specifications*

of the work to be carried out being mentioned in NIT and the tender was restricted to contractors having successfully executed minimum seven similar works in 010 CCAI 010 CA of various Ministries of GoI instead of having executed similar works in any Government Office in order to favour A-6 Vibhuti Thakur proprietor of M/s. Sunsilk Carpets and Furnishers who filed dummy bids of other non-existent firms by submitting EMD of two firms Vidhi Carpets and Vimla Enterprises from his bank accounts to give false impression that there were five bidders.

Further, you A-1 Naresh Kumar Gupta, A-2 M.D. Gupta, A-3 R.K.Bhambi and A-4 Amit Dabas on 02.08.2008 sought approval of Vilas Rao Ghodeswar , CCA, for placing at the disposal of PAO budget provision of Rs. 45 lakhs though this power was with Additional Secretary & Finance Adviser and the power of Vilas Rao Ghodeswar , CCA was only for Rs. 10 lakhs and you A-5 Vilas Rao Ghodeswar , CCA approved the same on 05.08.2008 and you A-1 Naresh Kumar Gupta, A-2 M.D. Gupta, A-3 R.K.Bhambi and A-4 Amit Dabas on 29.08.2008 sought approval of A-6 Vilas Rao Ghodeswar , CCA, for directions to PAO to release the payment of Rs. 45,08,556 to M/s Sun Silk Carpets and furnishers which was approved by you A-5 Vilas Rao Ghodeswar , CCA on the same day i.e.29.08.2008 though you had no such power.

Further, in similar fashion, payment of Rs. 47,07,296 was got released to M/s Sun Silk Carpets and furnishers which was approved by you A-5 Vilas Rao Ghodeswar , CCA on 26.02.2009 though you had no such power. The quality of work done by Vibhuti Thakur was also got checked by a committee which had no technical member having expertise to check the quality of work done.

That you A-1 Naresh Kumar Gupta, A-2 M.D. Gupta, A-3 R.K.Bhambi and A-4 Amit Dabas A-5 Vilas Rao

Ghodeswar thereby abused your positions as public servants and conspired with A-6 Vibhuti Thakur and obtained for him pecuniary advantage of Rs. 53,36,945 and therefore committed the offence of Criminal Misconduct under section 13 (1) (d) of P.C.Act, 1988 (before its amendment on 26.07.2018) punishable under section 13 (2) of P.C.Act, 1988 and within my cognizance."

k) The orders dated 16.12.2020 and 23.12.2020 are under challenge in the present petition.

3. Mr. Mohit Mathur, learned Senior Advocate appearing for the petitioner contends that the Senior Accounts Officer (A-1) submitted a note for consideration and necessary orders of the petitioner regarding dilapidated condition of the office of PAO (IRLA). The petitioner constituted a committee for taking appropriate action on the proposal. Notice Inviting Tender (NIT) was issued through the website of Ministry of Information and Broadcasting and it was affixed on conspicuous places of the Ministry in order to give wide publicity. Mr. Mohit Mathur, learned Senior Advocate contends that the CPWD Manual would not apply to the present case. He would contend that the fact that no technical member in the committee as stipulated by the CPWD Manual was there in the tender committee cannot lead to an offence under the Prevention of Corruption Act as the CPWD Manual is not applicable to the contract. Learned Senior Advocate would state that his argument is further fortified by the fact that there is no statement by any witness on record to suggest that the Department was required to follow the CPWD Manual for awarding the tender for providing suitable working conditions to the staff. He would state that for expenditure,

regarding fixtures and furniture, purchase and repairs, the petitioner had full powers for which purpose there was no necessity of getting any approval from the Additional Secretary & Financial Advisor. He would contend that not a single witness has spoken regarding there being any meeting of minds to make out an offence of conspiracy. He would contend that the Court while framing charges has to apply its own mind to come to a conclusion as to whether the offence is made out or not. He would contend that the learned Special Judge (PC Act), (CBI-05), Rouse Avenue District Court has only acted as the mouth piece of the prosecution which it ought not to have done. He would state that in the absence of any material, charges could not have been framed against the petitioner.

4. *Per contra,* Mr. Mridul Jain, learned SPP appearing for CBI would state that PW-13, Amitabh Sharma, AE has detailed the process of tendering and relevant rules of GFR and CPWD Manual and the procedure adopted by the petitioner is contrary to the GFR and CPWD Manual. He would state that apart from gross violation of GFR and CPWD Manual the facts indicate that entire tendering process is sham and vitiated. He would state that all five quotations received were provided by A-6 Vibhuti Thakur, Bank draft was submitted only by three firm and the all three bank drafts were got prepared at the behest of A-6. He would state that material shows that the payment was made at exorbitant rates and loss was caused to the public exchequer and that criminal conspiracy was hatched by the accused persons to obtain pecuniary advantage and documents were also forged in the said process.

5. Heard Mr. Mohit Mathur, learned Senior Advocate appearing for the petitioner, Mr. Mridul Jain, learned SPP appearing for the CBI and perused

the material on record.

6. The relevant provisions of the General Financial Rules, 2005, the CPWD Manual and Manual on Policies and Procedure for Procurement of Works framed by the Ministry of Finance, Department of Expenditure read as under:

<u>GENERAL FINANCIAL RULES, 2005</u>

> ***"Rule 123***. *Original works means all new constructions, additions and alterations to existing works, special repairs to newly purchased or previously abandoned buildings or structures, including remodeling or replacement.*
>
> *Repair works means works undertaken to maintain building and fixtures.*
>
> ***Rule 124. Administrative control*** *of works includes:*
>
> > *(i) assumption of full responsibility for construction, maintenance and upkeep;*
> >
> > *(ii) proper utilization of buildings and allied works;*
> >
> > *(iii) provision of funds for execution of these functions.*
>
> ***Rule 125. <u>Powers to sanction works</u>*** *: The powers delegated to various subordinate authorities to accord administrative approval, sanction expenditure and re-appropriate funds for works are regulated by the Delegation of Financial Powers Rules, 1978, and other orders contained in the respective departmental regulations.*
>
> ***Rule 126***.
>
> > ***(1)*** *A Ministry or Department at its discretion may*

directly execute repair works estimated to cost upto Rupees ten Lakhs after following due procedure indicated in ***Rule 132****.*

(2) *A Ministry or Department may, at its discretion, assign repair works estimated to cost above Rupees ten Lakhs and upto Rupees thirty Lakhs to any Public Works Organisation, which includes State Public Works Divisions, other Central Government organisations authorised to carry out civil or electrical works such as Central Public Works Department (CPWD), Military Engineering Service (MES), Border Roads Organisation etc. or Public Sector Undertakings set up by the Central or State Government to carryout civil or electrical works.*

(3) *All original works costing upto Rupees ten Lakhs may be assigned by the Ministry or Department concerned to a Public Works Organisations as defined in* ***Rule 126(2).***

(4) *All original works estimated to cost above Rupees ten Lakhs and repair works estimated to cost above Rupees thirty Lakhs may be got executed through a Public Works Organisations as defined in Rule 126(2) after consultation with the Ministry of Urban Development.*

Rule 127. <u>Work under the administrative control of the Public Works Departments</u> *: Works not specifically allotted to any Ministry or Department shall be included in the Grants for Civil Works to be administered by Central Public Works Department. No such work may be financed partly from funds provided in departmental budget and partly from the budget for Civil works as mentioned above.*

Rule 128. <u>General Rules</u> *: Subject to the observance of these general rules, the initiation, authorization and execution of works allotted to a particular Ministry or*

Department shall be regulated by detailed rules and orders contained in the respective departmental regulations and by other special orders applicable to them.

***Rule 129**.*

***(1)** No works shall be commenced or liability incurred in connection*
with it until, -

(i) administrative approval has been obtained from the appropriate authority in each case;
(ii) sanction to incur expenditure has been obtained from the competent authority;
(iii) a properly detailed design has been sanctioned;
(iv) estimates containing the detailed specifications and quantities of various items have been prepared on the basis of the Schedule of Rates maintained by CPWD or other Public Works Organisations and sanctioned;
(v) funds to cover the charge during the year have been provided by competent authority;
(vi) tenders invited and processed in accordance with rules;
(vii) a Work Order issued.

(2) On grounds of urgency or otherwise, if it becomes necessary to carry out a work or incur a liability under circumstances when the provisions set out under sub rule 1 of rule 129 cannot be complied with, the concerned executive officer may do so on his own judgement and responsibility. Simultaneously, he should initiate action to obtain approval from the competent authority and also to intimate the concerned Accounts Officer.

(3) Any development of a project considered necessary while a work is in progress, which is not contingent on the execution of work as first sanctioned, shall have to be covered by a supplementary estimate.

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Rule 132. <u>Procedure for Execution of Works</u> *: The broad procedure to be followed by a Ministry or Department for execution of works under its own arrangements shall be as under :-*

(i) the detailed procedure relating to expenditure on such works shall be prescribed by departmental regulations framed in consultation with the Accounts Officer, generally based on the procedures and the principles underlying the financial and accounting rules prescribed for similar works carried out by the Central Public Works Department (CPWD);

(ii) preparation of detailed design and estimates shall precede any sanction for works;

(iii) no work shall be undertaken before Issue of Administrative Approval and Expenditure Sanction by the competent Authority on the basis of estimates framed;

(iv) open tenders will be called for works costing Rupees five lakhs to Rupees ten lakhs;

(v) limited tenders will be called for works costing less than Rupees five lakhs;

(vi) execution of Contract Agreement or Award of work should be done before commencement of the work;

(vii) final payment for work shall be made only on the personal certificate of the officer-in-charge of execution of the work in the format given below:

" I …………………………, Executing Officer

of (Name of the Work),am personally satisfied that the work has been executed as per the specifications laid down in the Contract Agreement and the workmanship is upto the standards followed in the Industry."

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Rule 136. ***<u>Definition of Goods</u>*** *: The term 'goods' used in this chapter includes all articles, material, commodities, livestock, furniture, fixtures, raw material, spares, instruments, machinery, equipment, industrial plant etc. purchased or otherwise acquired for the use of Government but excludes books, publications, periodicals, etc. for a library."*

<u>CPWD MANUAL</u>

"16.1 Wide publicity.

1. *Wide publicity should be given to the Notice Inviting Tenders (Form CPWD 6). Tenders must be invited in the most open and public manner possible, by advertisement in the website/press and by notice in English/Hindi and the written language of the district. A copy of the notice should be sent to the Central PWD Divisions, Zonal Office, Circle Office, operating at the station of the work and head quarters of the Divisional Office. The notice may also be sent to the Local Municipality Collector's office, and the State PWD Divisions for works in places where there are not enough CPWD registered contractors.*
2. *Notices for all the works, irrespective of their value, shall be posted in the CPWD website. Proof thereof in the form of a printout of NIT details and the Tender ID no. from the web page shall be kept on record. In view of this*

requirement, sending of NITs/NIQ's to the Contractors' Associations is dispensed with.

3. *In respect of works estimated to cost more than Rs.5 lakhs, a brief advertisement inviting tenders should invariably be inserted in the press in the classified category.*
4. *Advertisement for Notice Inviting Tenders should be sent to the Directorate of Advertising and Visual Publicity, Ministry of Information and Broadcasting for insertion in the press. Sometimes, tenders may have to be invited for different works by the same Division at the same time, or at short intervals of one or two days. In such cases, it is not desirable to send separate press advertisements for each work, and as far as possible composite advertisements in the prescribed format should be sent to avoid unnecessary expenditure on advertisement.*
5. *In urgentcases, the authority competent to approve the NIT may, for recorded reasons, decide to send the advertisement of tenders directly to Press. In such cases the newspaper bills shall also be settled by the CPWD.*
6. *Draft specimen of Press Notice to be issued as a combined Advertisement is given in Appendix 19."*

MANUAL ON POLICIES AND PROCEDURE FOR PROCUREMENT OF WORKS FRAMED BY THE MINISTRY OF FINANCE, DEPARTMENT OF EXPENDITURE

*"**1.2.2** No works shall be commenced or liability incurred in connection with it until:-*

(i) Administrative approval has been obtained from the appropriate authority.

(ii) Sanction to incur expenditure has been obtained from the competent authority.

(iii) A properly detailed design has been sanctioned.

(iv) Estimates containing the detailed specifications and quantities of various items has been prepared and sanctioned on the basis of the schedule of rates maintained by CPWD or other Public Works Organizations,

(v) Funds to cover the charge during the year have been provided by competent authority.

(vi) Tenders have been invited and processed in accordance with rules.

(vii) A work order has been issued.

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1.3 Classification of works

1.3.1 *The civil works are classified under two categories: (a) Original Works and (b) Repairs Works. "Original works" means all new constructions, additions and alterations to existing works, special repairs to newly purchased or previously abandoned buildings or structures, including remodelling or replacement. "Repair works" means works undertaken to maintain building and fixtures, (vide Rule 123 GFR 2005)"*

7. It is well settled that a Court while considering the question of framing charge has to sift and weigh the evidence and find out whether or not a prima facie case against the accused has been made out. It is equally

well settled that the Court does not act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, and has to ascertain as to whether there are material which discloses the existence of the ingredients constituting the evidence. The Supreme Court in State v. S. Selvi, (**2018) 13 SCC 455,** has observed as under:

> *"**6**. It is well settled by this Court in a catena of judgments including Union of India v. Prafulla Kumar Samal [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] , Dilawar Balu Kurane v. State of Maharashtra [Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135 : 2002 SCC (Cri) 310] , Sajjan Kumar v. CBI [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , State v. A. Arun Kumar [State v. A. Arun Kumar, (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505] , Sonu Gupta v. Deepak Gupta [Sonu Gupta v. Deepak Gupta, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265] , State of Orissa v. Debendra Nath Padhi [State of Orissa v. Debendra Nath Padhi, (2003) 2 SCC 711 : 2003 SCC (Cri) 688] , Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya [Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76 : 1991 SCC (Cri) 47] and Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja [Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038] that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court*

discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the materials as if he was conducting a trial.

7. In Sajjan Kumar v. CBI [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , this Court on consideration of the various decisions about the scope of Sections 227 and 228 of the Code, laid down the following principles: (SCC pp. 376-77, para 21)

> *"(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.*
>
> *(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.*

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal." "

8. Keeping the above mentioned principles and applying the same to the facts of this case it can be seen:-

a) That as per Rule 126 of the General Financial Rules, 2005, all original works estimated to cost above Rs.10 Lakhs and repair works estimated to cost above Rs.30 Lakhs should be executed through a Public Works Organisation as defined in Rule 126(2) of the General Financial Rules, 2005, after consultation with the Ministry of Urban Development. The entity to which work has been awarded is not a Public Work Organisation as defined in Rule 126(2) of the GFR.

b) Under Rule 132 of the GFR, the detailed procedure relating to expenditure on such works is to be prescribed by departmental regulations framed in consultation with the Accounts Officer and are generally based on the procedures and the principles underlying the financial and accounting rules prescribed for similar works carried out by the Central Public Works Department (CPWD) which has not been done.

c) As noted in the impugned judgment, PW-22, the then Additional Secretary & Financial Advisor has stated that the Chief Controller of Accounts i.e. the petitioner herein can award works upto Rs.10 lakhs and the approval of the Additional Secretary & Financial Advisor is required if work is above Rs. 10 lakhs. It is noted in the impugned judgment that PW-22 has stated that the award of work in instant case should have been done after approval of the competent Authority but no approval was obtained by the petitioner herein who is the Chief Controller of Accounts. He has stated that the file was not put up before him while working as Additional Secretary & Financial Advisor, Ministry of Information and Broadcasting.

d) PW-13, Amitabh Sharma, AE (Civil), CPWD, has stated that before tenders for a work are invited, a detailed estimate showing the quantities, rates and amounts of the various items of work, and also the specifications to be adopted, should be prepared. He has also stated that no work shall be undertaken before Issue of Administrative Approval and Expenditure Sanction by the competent Authority on the basis of estimates framed. He has also stated that as per the provision of Section 16 of CPWD Manual, wide publicity should be given to the Notice Inviting Tenders (NIT). Tenders must be invited in the most open and public manner possible by advertising in the website/press. He has stated that the rates quoted by the applicants are to be compared with prevalent market rates. No such procedure has been adopted in the present case. The Manual On Policy And Procedure For Procurement Of Works was brought by the Government because it was found that every Government organization procures a wide variety of goods and services and executes works to perform the duties and responsibilities assigned to it and it was felt to review the government procurement system with a view to avoiding scope for subjectivity and improving objectivity and transparency in decision making. In this case the GFR, the CPWD

Manual and the Manual On Policies And Procedure For Procurement of Works Framed by The Ministry of Finance, Department of Expenditure has been given a complete go-by by the public servants.

9. This Court cannot lose sight of the fact that the contract has been given to *M/s Sunsilk Carpets and Furnishers* and all other bidder except the successful bidder were either dummy firms or firms belonging to A-6. In view of the above, it cannot be ruled out that the entire process was initiated only to favour A-6.

10. Conspiracy is generally hatched in secrecy and it is difficult if not impossible by obtaining direct evidence. Conspiracy is mostly proven by circumstantial evidence by taking into account the cumulative facts of the circumstances indicating the guilt of the accused rather than adopting an approach by isolating the role played by each accused (refer State (NCT of Delhi) v. Shivcharan Bansal, **(2020) 2 SCC 290**).

11. As early as 1959, the Supreme Court in Badri Rai & ANR v. State of Bihar, **1959 SCR 1141,** has observed as under:

> "**5**......*A conspiracy is hatched in secrecy, and executed in darkness. Naturally, therefore, it is not feasible for the prosecution to connect each isolated act or statement of one accused with the acts or statements of the others, unless there is a common bond linking all of them together. Ordinarily, specially in a criminal case, one person cannot be made responsible for the acts or statements of another. It is only when there is evidence of a concerted action in furtherance of a common intention to commit a crime, that the law has introduced this rule of common responsibility, on the principle that every one concerned in a conspiracy, is acting as the agent of the rest of them. As soon as the court has reasonable grounds to believe that there is*

identity of interest or community of purpose between a number of persons, any act done, or any statement of declaration made, by any one of the co-conspirators, if the act or the declaration has any relation to the object of the conspiracy......"

12. It has been often stated in various judgments that conspiracy is like a moving train where conspirators can get in and get out at any stage and it's not necessary or essential that all the parties should have been present from start to finish and take part in each and every act of the other conspirators.

13. Whether there was a conspiracy to favour A6 in getting the contract right from the inception when A-1, Mr. N.K. Gupta, initiated the process or not is a fact that can only be established during trial. Suffice it to say that all the procedural norms have been given a go-by and all the bidders are either dummy bidders or are entities of A-6. This does raise a grave suspicion that there was a conspiracy right from the inception to favour A-6 and whether the petitioner was a part of the conspiracy or not can be ascertain only after evidence is led.

14. The argument of Mr. Mathur that the action of the petitioner in the present case can at best be a case of procedural infirmity and no criminality can be attached, cannot be accepted. This Court cannot ignore the fact that the committee constituted by the petitioner herein did not have an expert who could suggest remedies to improve the condition of the office premises. This Court also cannot ignore the fact that Rule 126(4) of the General Financial Rules, 2005, recommends that all the repair works estimated to the cost of about Rs.30 lakhs may be executed through the Public Works Organisation. Public Works Organisation has been defined in Rule 126(2) of the General Financial Rules, 2005 and the entity to which work is awarded

is not a Public Works Organisation. Though Mr. Mathur would contend that Rule 126 of the General Financial Rules, 2005 would not apply and Rule 136 would apply to the present case, but this Court is not inclined to accept this submission because the tender is not only for purchase of goods but also for carrying out repair works. This Court cannot also ignore the fact that the sanction from the Additional Secretary & Financial Advisor was not obtained who alone could sanction/approve such type of works. This Court also cannot ignore the fact that the procedure adopted by the public servants is also contrary to the Manual on Policies and Procedure for Procurement of Works framed by the Ministry of Finance, Department of Expenditure.

15. It is settled law that at the stage of framing charge or consideration of an application of discharge the Court has to proceed with the presumption that materials brought on record are true and evaluate such material with a view to find out whether the facts emerging therefrom, taken at their face value, discloses the existence of the ingredients of the offence. This Court finds that the material on record, at this stage, is sufficient to frame charge for the offence of Criminal Misconduct under Section 13(1)(d) of P.C. Act punishable under Section 13(2) of P.C. Act The judgment of the learned Special Judge is a well considered Judgment. This Court does not find any infirmity in the order of the Special Judge. In view of the above, this petition is dismissed.

SUBRAMONIUM PRASAD, J.

APRIL 05, 2021
Rahul