

1697

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.4802 OF 1998 (O&M)

Reserved on : 25.07.2022

Pronounced on :24.08.2022

D.P. Gupta

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Amar Vivek, Advocate &
Mr. Abhay Gupta, Advocate,
for the petitioner.

Mr. R. D. Sharma, D.A.G., Haryana.

Mr. Ashwani Talwar, Advocate &
Mr. Sehaj Mahajan, Advocate
for respondent No.2.

ARUN MONGA, J.

Gupta vs. Gupta, having *inter se* career rivalry seems to be the real genesis of the *lis* in hand. Departmental proceedings though indicted petitioner-D.P. Gupta, but a close scrutiny of enquiry report would reflect that material relied upon by the inquiry officer was substantially the sole testimony of the departmental witness Sh. V.P. Gupta. At the relevant time, he was a Superintending Engineer and naturally aspired for becoming a Chief Engineer in the Housing Board, Haryana (for short hereinafter referred to as the Board/ HHB).

However, to his chagrin, the petitioner herein, was sent from his parent department of PWD (B&R) on deputation to the Housing Board and joined there as its Chief Engineer. Obviously, this blocked the promotion of the said V.P. Gupta and made him uncomfortable.

2. Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing two charge-sheets both dated 27.01.1997 (Annexures P-9 & P-10); inquiry report Annexure P-17 and the order of penalty dated 05.02.2003 Annexure P-19 for recovery of Rs. 4,01,65,104.65 from the petitioner. Almost all the charges in both the charge sheets relate to the works of execution of non-scheduled/extra items in the main works of Housing Colony, Sector 14, Panchkula and Head Office Building, Sector 6, Panchkula. Charges and allegations against the petitioner are the same which had already been investigated into by three independent agencies. None of the agencies could establish any charges against the petitioner. However, vide departmental inquiry report dated 06.09.1998 (Annexure P-17), petitioner was held guilty. Vide Punishment Order dated 05.02.2003 (Annexure P-19) assailed herein, respondent No.1 imposed penalty of Rs.4,01,65,104.65/- to be recovered from petitioner.

3. Succinct facts first. Pledged case is that the petitioner while working as Superintending Engineer in his parent Department - PWD (B&R), Haryana- was sent on deputation to HHB and joined there as Chief Engineer on 22.08.1994. Prior to that on 09.12.1993, the Board granted administrative approval for the construction of various houses in Sector 14, Panchkula. The administrative approval for construction of Head Office Building in Sector 6, Panchkula had

already been granted before 22.08.1994 i.e., before the petitioner was deputed as Chief Engineer in the Haryana Housing Board (HHB).

3.2. Prior to the petitioner's joining (on 22.08.1994), the HHB had already constructed approx. 600 houses in Housing Board Colony at Sector 14, Panchkula. Out of these, the HHB could not sell 278 houses as they didn't have buyers at that time because of lack of aesthetics and other features. Were these houses to remain unsold, HHB would have suffered huge losses as loan amount had to be paid back with interest to HUDCO. Moreover, there was a conditional concession stipulated in the letter of allotment of land of HUDA that in case the construction was completed within 3 years then HHB would be entitled to a rebate of 20% in the price of the land.

3.3. After the petitioner joined the respondent-Board, he made efforts to sell these houses. Haryana Police department was contacted which agreed to purchase 240 houses on the conditions that they will buy the houses at the old cost worked upto December, 1992 without interest and further that the houses be refurbished and the exterior of houses should be beautified and their aesthetics be enhanced to make them attractive to allottees.

3.4. Since there was a dire urgency for undertaking the refurbishing works and closing the deal and the sale of houses was possible only on earliest completion of works, it necessitated that certain urgent and immediate steps be taken to get the works executed. Thus, in his discretionary power, the petitioner side-stepped a few technicalities to complete the works and to sell those houses on a time bound basis. Fire Fighting Equipment had not been earlier installed

in Head Office Building of the Board in Sector 6, Panchkula. The same was also provided under the supervision of the petitioner.

3.5. However, thereafter, as already noted herein several complaints were made against the petitioner and one S.B. Kumar, who was the main concerned Executive Engineer also serving under the petitioner and who perhaps was more favourite of the petitioner than V.P. Gupta was, thus causing him a heartburn and feeling of neglect.

3.6. One such complaint had been filed in the name of Chander Shekhar resident of House No. 536, Sector 8, Panchkula. Thereupon, the Commissioner & Secretary to Haryana Govt. Housing Department marked the inquiry to the Chief Administrator of the Board regarding alleged irregularities *qua* allotment of works for fire fighting services in the Awas Bhawan, Sector 6, Panchkula and in the Housing complex, sector 14, Panchkula as also the beautification of houses etc. The latter returned a finding that all the types of works, which have been done, are valid and legal as per HHB Rules. Ultimately, he also returned a finding that being the Chief Engineer, HHB, the petitioner had full powers to invite single bid tenders and resort to necessary decisions for early completion of the already delayed projects, as per HHB Regulations, 1980 and there was no *malafide* intention on the part of the petitioner.

3.7. The then Chief Administrator of the Board completely exonerated the petitioner *qua* the complaint relating to beautification and improvement of aesthetics of Housing Complex and houses at an advance stage. It was also mentioned in the report of the Chief Administrator that three letters dated 10.04.95, 17.4.95 and 16.5.95

were sent to Chander Shekhar complainant, resident of House No. 536, Sector 8, Panchkula to appear in connection with his complaint but he did not turn up and that on 18.5.1995, said Chander Shekhar returned the letter dated 16.5.95 with the remarks that he had not made any such complaint and that he had nothing to say in this connection. The aforesaid report dated 26.05.1995/02.06.1995(Annexure P-2/B) of the Chief Administrator of HHB holds the field till date and has never been set aside or reversed.

3.8. However, later the matter was somehow referred to the Vigilance Department, who also conducted a thorough enquiry in the matter against the petitioner and one S.B. Kumar, but nothing was proved against the petitioner and he stood exonerated vide report dated 31.08.1995 Annexure P-21 Colly submitted by the Director, State Vigilance Bureau, Haryana to the Chief Secretary to Government, Haryana (in Vigilance Department).

3.9. Though the petitioner was not indicted in the inquiry of Vigilance Department, yet on 20.10.1995 he was suspended on the ground that the case had been referred to Vigilance Department with serious allegations. Petitioner represented to the Financial Commissioner vide representation dated 08.11.1995 (Annexure 3/A) to revoke his suspension. Respondents forwarded copy of suspension order to the Engineer-in-Chief, Haryana P.W.D. (B&R) for preparing the charge-sheet.

3.10. Subsequently, after going through the report of Vigilance Department, the Engineer-in-Chief, PWD(B&R) Haryana recommended petitioner's reinstatement vide letter dated 07.11.1995

(Annexure P-4). The petitioner was then reinstated vide order dated 09.05.1996.

3.11. A committee was formed by the Board with the agenda to give recommendations to the details of expenditure incurred, its necessity, justification and responsibility of execution of certain works concerning the construction of houses on the basis of single offer costing Rs. 3,43,84,813/- and Rs. 9.64 lacs for execution of works even without issuance of letter of allotment. The following were nominated for the Committee:-

- i) Shri M.M. Seth, Superintending Engineer (Roads) PWD B&R nominated by Engineer-in-Chief, Haryana, PWD B&R.
- ii) Shri D.K.Jain, Superintending Engineer(Public Health).
- iii) Shri M.R. Tayal, Senior Town Planner, HUDA.
- iv) Shri V.P. Gupta, S.E. as Member Secretary of HHB.

This Committee was asked to give its report at the earliest as reply to the present writ petition had to be filed in this Court on 31.5.96. The said Committee held its first meeting on 22.5.96 and submitted the report Annexure A –II filed by the respondents with the unamended written statement. In the said report, the Committee found that the items/works in question stood actually provided/executed and the same may be charged to the project cost. The said V.P.Gupta was also signatory to the report.

3.12. Notwithstanding the aforesaid, the petitioner was again suspended on same set of allegations vide order dated 21.06.1996. Later, he was slapped with the impugned charge-sheets (Annexures P-9 & P-10).

3.13. In spite of the competent authority's recommendation that said V.P. Gupta was not to be associated in the inquiry, he participated in the departmental inquiry proceedings which indicted the petitioner. Inquiry was completed but in the inquiry report dated 06.09.1998 (Annexure P-17) no finding of any embezzlement or misappropriation was recorded.

3.14. And yet, vide impugned order dated 05.02.2003 (Annexure P-19), the petitioner was held guilty of causing loss of Rs.4,01,65,104.65/- to the State exchequer.

3.15. In the meantime, the Financial Commissioner & Principal Secretary to Government Haryana (Appellate Authority) while deciding the appeal of co-delinquent S.B. Kumar and exonerating him, passed a very detailed and exhaustive order dated 21.01.2011 (Annexure P-21 Colly), discussed each and every aspect of the alleged controversy, and held that the Board was absolutely wrong in persecuting S.B. Kumar and granted reinstatement with all consequential benefits to him. The same set of allegations have also been levelled against the present petitioner.

3.16. The said order (Annexure P-21/Colly) passed by the Appellate Authority was challenged by the Board before this Court and the learned Single Judge vide order dated 14.09.2011 upheld the order of the Financial Commissioner. Not stopping here, the Board also preferred Letters Patent Appeal No.2068 of 2011 against the order of the learned Single Judge, which was also dismissed vide order dated 11.11.2011.

Order dated 11.12.2009 Annexure P-23 passed by the Additional Chief Judicial Magistrate, Panchkula shows that on the basis of complaint dated 05.09.1998 submitted by R.S. Gupta, Executive Engineer, Housing Board, Panchkula in this connection, an FIR No. 466 dated 05.09.1998 under sections 409,420, 120-B IPC and section 13(2) of the Prevention of Corruption Act was also registered at Police Station, Sector 5, Panchkula against J.P. Rattan, IAS (retired); D.P. Gupta (petitioner) and S.B.Kumar, Assistant Engineer. After investigation, a cancellation report was submitted by the police to the Court. The complainant (R.S. Gupta, Executive Engineer of the Board) filed objections, after which the Court ordered further investigation through and under the direct supervision of an officer not below the rank of Deputy Superintendent. Even after such further investigation at length carried out by Deputy Superintendent of Police, Panchkula, he submitted a report categorically stating that the accused persons had acted within the purview of Rules and Regulations; that they had acted under the powers vested in them; that no case of corruption and cheating had been proved during inquiry and that it was a fit case for cancellation for want of evidence. Again the report for cancellation of FIR was filed. Complainant filed a protest petition and also appeared as a witness in its support. CW2 Ved Prakash retired SE of the Housing Board also appeared in the Court as a witness. After considering the entire matter, the order dated 10.12.2009 Annexure P-23 was passed by the learned Additional Chief Judicial Magistrate holding that there was no prima facie case made out for the offences attributed to the accused persons and accordingly dismissed the complaint. Not satisfied, the

Housing Board filed another objection/protest petition No.01 of 25.01.2012 before the learned Additional Sessions Judge, Panchkula, who passed the order dated 12.07.2013 agreeing with the orders passed by the trial Court and the cancellation report furnished by the police and dismissing the objection petition.

4. In the written statement filed on behalf of respondents No.1 & 3, substantially the following defense has *inter alia* been taken:-

“That the present amended Writ Petition filed by the Petitioner is not maintainable in the present form because no legal/vested right of the petitioner has ever been infringed which entitles him to invoke again the extra ordinary writ jurisdiction of this Hon'ble High Court specifically when the Writ Petition No.4802 of 98 has been filed by the Petitioner for quashing the charge sheets (both) issued on 27.1.97 where by the Inquiry Officer had initiated the inquiry proceedings in compliance with the orders/ directions passed by this Hon'ble High Court on 23rd Feb. 1998. Over and above where in order to expedite the inquiry against Shri D. P. Gupta, Shri M. L. Tayal, IAS, Second Inquiry officer had been appointed by the Competent Authority (Respondent No.1) on 23.4.98 before passing the order/directions by the Hon'ble High Court on twenty ninth July, 98 in earlier original writ Petition No.4802 of 98 filed by the Petitioner. The Inquiry Officer again in compliance with the orders/directions passed by the Hon'ble High Court on twenty ninth July, 1998 the inquiry had taken place on every day under intimation to the petitioner and after giving due opportunities of hearing to the Petitioner as well as to the Presenting Officer of the Department. Sh.M.L.Tayal, IAS, Inquiry Officer submitted his findings in the form of Inquiry Report to the government on 6th of Sept.1998. It is pertinent to mention here that the Hon'ble High Court had given directions to the Respondents to complete the Inquiry proceedings within stipulated time period and in compliance with the said directions of Hon'ble High Court the Respondent No.3 completed the inquiry as per provision of Haryana Civil Services (P&A) Rules-1987 and also keeping in view the principles of natural justice, equity and good conscious and finally submitted the report to the Government, as such the petitioner has no right to re-invoke the extra ordinary Civil Writ jurisdiction of this Hon'ble High Court. Hence

the prayer of allowing the amended Writ Petition may kindly be rejected being devoid of any substance.

2. That it is further submitted that obviously once the charge sheets are issued to any delinquent officer/official, the whole formalities will have to be completed by the competent/punishing authority that too in consonance with the provisions of Haryana Civil Services (PA) Rules, 1987 and other relevant Government Instructions and Rules applicable from time to time in cases of officers/officials and accordingly when the appointing authority/punishing authority came over to the conclusion that Sh.D. P. Gupta (Petitioner) had committed certain acts of omission and commission, only there-after charges had been framed accordingly strictly based on record and on recommendations from the Housing Board, Haryana (respondent No.2) and the process does not come to halt there and to an end simply by getting/ obtaining the Inquiry reports submitted by the Inquiry Officer that too in compliance with the orders passed by the Hon'ble High Court on 29th July, 1998 but the rest of the process/procedure is also required to be taken/complied with by the competent/punishing authority and allowed to honour the directions of Hon'ble High Court, Respondent No.1 further gave the opportunity to Shri D. P. Gupta to submit his reply to the two Show Cause Notices issued to the petitioner by the Respondent No.1, besides the opportunity of personal hearing to the petitioner on 14.10.2002 and after going through the facts & circumstances of the case of petitioner, findings submitted by the Inquiry Officer and the defence reply submitted by the petitioner on 5.10.98, the punishment of recovery of Rs.4,01,65,105.65 was inflicted upon Shri D.P.Gupta, Superintending Engineer (Retd.). The orders issued by the Respondent No.1 has been passed on 5th Feb, 2003 under intimation to all the concerned. Hence in view of the position mentioned above in para-2 and even otherwise the petitioner had participated and involved himself at every stage of the inquiry proceedings held before Shri M.L.Tayal, I.A.S. (2nd Inquiry Officer), findings were submitted by the Inquiry Officer to the Govt. (competent/appointing authority). Not only this, petitioner had further submitted his defence replies to both the Show Cause Notices served upon the petitioner by the Respondent. No.1 and also appeared on 14.10.2002 to say/submit in his defence (orally as well as in writing). Since the petitioner has constantly been aware of the each and every stage of the Inquiry Proceedings and as well as further developments uptill the inflicting of punishment by the Competent Authority, as such now once punishment has been inflicted upon him that too consequent upon the

initiation and finalisation of Inquiry Proceedings by the Inquiry Officer, he has no right to file amended CWP In Hon'ble High Court, and invoke the extraordinary writ jurisdiction of this Hon'ble High Court, again with the prayer to allow him to amend the writ petition No.4802 of 98 when the answering respondent has already initiated and further has completed the inquiry that too further in compliance with the directions passed by the Hon'ble High Court on 29th July, 98 in Writ Petition No.4802 of 98. Hence the orders dated 5th Feb., 2003 passed by the Respondent No.1 is very much legal, just, valid and right in consonance with the principle of natural justice and binding upon the petitioner.

3. That precisely, the relevant material facts of the case of the petitioner are that the petitioner had been charge-sheeted under rule-7 of the Haryana Civil Services (P&A) Rules, 1987 vide memo.No.8/83-B&R(E)-3/95, dated 27.1.97 in two parts for the allegations and the major ground is that Shri D.P. Gupta, has been held liable for violating the mandatory provisions of Rule 2.89 of PWD Code, para 6.3, 7.26 & 7.31 (ii) of PWD B&R Manual of Order, Item No.2 of 3rd schedule of Housing Board, Haryana (Regularisations of Business) Regularisations-1980 and provision contained in Table-3 of N.B.D code for getting the work started and executed pertaining to the fire fighting arrangement in the Head Office building, Sector 6, Panchkula by according his own approval on 17.11.94 wrongly merely on the basis of single offer procured by Shri S.B. Kumar, A.E. who was holding the current duty charge of the post of the Executive Engineer, Housing Board Haryana, Panchkula and without calling tenders and without seeking prior approval of Competent Authority. Technical sanction and approval of DNITs of the work from the competent authority and for according approval wrongly on 30.12.94 and 12.6.95 for further enhancement of scope of this work and also for causing avoidable financial loss of Rs.50,80,358/- to the Board with ulterior motive, mala fide intention and by misusing his official position. Further the petitioner has also been found responsible for violation of rule-3 of Govt. Employees Conduct Rules, 1966 while according the approval for various work mentioned in the statement of allegations and in the purchase/installation of equipments out of the office contingency. Likewise the petitioner has been held liable on account of lapses detailed in statement of allegations which are in two parts comprising 27 allegations mentioned in Part-I and 22 allegations in Part-2 and all the allegations have been duly mentioned in the punishment order inflicted upon the petitioner. Evidently the petitioner has violated the laid down procedure and

rules of Housing Board and committed the acts of omission and commission as mentioned in the charge-sheet. Sh. D. P. Gupta, has been found fully responsible for the said loss of 44 works as he got all the constructions/other works done without adopting the procedure. There was no exigency involved and Sh. D. P. Gupta, the petitioner did not obtain the approval of the competent authority, resultantly the petitioner is fully responsible/liable for the loss caused by him to the Housing Board and punishment of recovery of Rs.4,01,65,105.65/- has been rightly inflicted upon Shri D. P. Gupta, by the competent/punishing authority. As such orders dated 5.2.2003 passed by the Respondent No.1 is valid, constitutional, sustainable in the eyes of law and binding upon the petitioner.

4. That not only the petitioner is estopped to file the amended writ petition in the Hon'ble High Court because of the facts that the inquiry officer Shri M.L.Tayal, IAS (the 2nd Inquiry Officer) has promptly and expeditiously completed inquiry proceedings that too in compliance with the orders/directions passed by the Hon'ble High Court in CWP No.4802 of 1998 and that too well in advance before the original writ petition No.4802 of 98 has been admitted by the Hon'ble High Court on 13th January, 1999, but the petitioner has no right to invoke the extra ordinary writ jurisdiction of the Hon'ble High Court even by way of filing the afresh writ petition against the order dated 5.2.2003 because of the fact that petitioner should have exhausted the remedy of submitting by the memorial before His Excellency the Governor of State of Haryana against the punishment orders before availing legal remedies available to him.

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Vide order dated 01.12.2003, petitioner's application for amendment of the writ petition was allowed by this Court and the respondents also filed their amended written statement. Hence, at this stage objections to the amendment of the petition are infructuous.

RIVAL CONTENTIONS

5. In the aforesaid factual background, I have heard the learned counsel for the parties at length. The competing arguments are noted in the succeeding paragraphs.

6. Mr. Amar Vivek, Learned counsel for the petitioner firstly argued that there is no material on record to show that the petitioner has caused any loss to the Board, let alone loss of more than Rs.4 Crores.

6.2 Further he would argue that sole testimony of witness V.P. Gupta is unreliable and biased as he was in the race for becoming Chief Engineer.

6.3 He argued that the petitioner being Chief Engineer was fully empowered to award work under the Housing Board Haryana(Regulation of Business) Regulations, 1980, 3rd Schedule and that even administrative approval of every work was duly taken.

6.4 He then argued that in fact the petitioner should have been rewarded for early completion of work which was the need of the hour. As per the learned counsel, the qualitative improvement in the houses brought forward general public as purchasers and the Board earned huge profits of Rs.8.5 Crores from sale of houses which had remained unsold earlier and thus there was no loss to the Board. There was no malafide on part of the petitioner in carrying out the works in question.

6.5 He would argue that the impugned enquiry is not the first enquiry to be conducted against the petitioner. Apart from Vigilance enquiry, two other enquiries earlier had completely exonerated the petitioner. Therefore, as per the learned counsel, there was no requirement to conduct a 4th enquiry, more so on the report of biased officer V.P. Gupta just to implicate the petitioner somehow or the other.

6.6 To support his arguments, learned counsel for the petitioner relied upon Supreme Court's decision/judgment in **Union of**

India vs. K.D. Pandey and another¹ and Vijay Shankar Pandey vs. Union of India and another² to contend that where the enquiry report returned specific findings in respect of each of the charges after discussing the matter, then the disciplinary authority, if not satisfied with the said report, cannot remit the matter to enquiry authority for further enquiry and if so done, it would mean a second enquiry and it would be abuse of process of law.

6.7 He further contended that allegations against the petitioner and one S.B. Kumar, an Executive Engineer, working under the petitioner, were the same and based upon the very same set of facts, viz. irregularities in awarding works related to 278 houses. However, as mentioned above, the Financial Commissioner vide order dated 21.01.2011 (Annexure P-21 Colly) completely exonerated the said S.B. Kumar, and this order was challenged by the Board before this Court and the learned Single Judge vide order dated 14.09.2011 upheld the order of the Financial Commissioner. Not stopping here, the Board also preferred Letters Patent Appeal No.2068 of 2011 against the order passed by the learned Single Judge, which was also dismissed vide order dated 11.11.2011.

6.8 He would urge that the order of the Financial Commissioner 21.01.2011 (Annexure P-21 Colly) also deals with the case of the petitioner and vide detailed, exhaustive and very comprehensive orders, the Financial Commissioner held that it is apparent on record that there was total transparency in the execution of work.

¹ (2002) 10 Supreme Court Cases 471

MAHAVIR SINGH² (2014) 10 SCC 589
2022.10.25 17:29
I attest to the accuracy and
authenticity of this order/judgment

6.9 To support his arguments, he again relied upon Supreme Court judgment in **Rajendra Yadav vs. State of Madhya Pradesh**³ to contend that parity among co-delinquents has to be maintained when punishment is being imposed and the punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident.

6.10 He further reasoned that it is an admitted fact that the Board has earned a profit of Rs.8.5 Crores. Moreover, the expenditure incurred in the execution of work had actually been more than recovered from the allottees and, therefore, there is no loss to the State exchequer.

6.11 He disputed the impugned order arguing that it is hit by inherent bias and prejudice against the petitioner. The inquiry officer in his report has placed reliance on the testimony of V.P. Gupta and report of the Sub-Committee headed by V.P. Gupta, the then SE in HHB, who had made numerous complaints against the petitioner and that he being the complainant was biased against the petitioner. To support his arguments, learned counsel for the petitioner relied upon Supreme Court judgment in **Rattan Lal Sharma vs. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School & Others**⁴ to contend that where one of the members of the enquiry committee also deposed as a witness in support of one of the charges against the delinquent despite his objection, the entire disciplinary proceedings were held vitiated by bias.

³ (2013) 3 SCC 73

MAHAVIR SINGH⁴ (1993) 4 SCC 10
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authenticity of this order/judgment

6.12 For the sake of brevity the material points canvassed by learned counsel for the petitioner are succinctly enumerated in seriatim herein below:-

- (i) Enquiry report is bereft of evidence.
- (ii) Sole testimony of V.P. Gupta is biased/unreliable.
- (iii) Petitioner was fully authorized/competent to take decisions which are alleged to be his delinquency.
- (iv) Petitioner ought to have been rewarded for early completion of work.
- (v) No malafides on the part of the Petitioner in carrying out the work in question.
- (vi) Petitioner already stood exonerated by Technical Committee.
- (vii) Petitioner deserves parity of treatment with the co-delinquent S.B. Kumar.
- (viii) Financial Commissioner's order dated 21.01.2011 (Annexure P-21(Colly)) already deals with the case of the Petitioner as well while exonerating co-delinquent.
- (ix) There has been no financial loss to the State exchequer while executing work in question.
- (x) Impugned order is hit by inherent bias and prejudice against the Petitioner.
- (xi) Vigilance inquiry conducted on the same cause and the same allegations had exonerated the Petitioner.

7. *Per contra*, Mr. R. D. Sharma learned Deputy Advocate General of the State would argue that after regular inquiry in disciplinary proceedings, it was found that the petitioner had committed certain acts of omission and commission resulting into financial loss and impugned order was rightly passed. He submitted that this Court

has very limited scope to interfere in the same, as is the settled law, and sought dismissal of petition.

7.2. Learned State counsel would essentially argue that the charge-sheet has been issued by competent authority followed by a full-fledged departmental inquiry, that too conducted by a senior IAS officer who gave opportunity to both sides to adduce their respective evidence. Upon due appreciation thereof, the inquiry officer had rendered specific findings that the charges levelled against the petitioner were proved and there is no scope left for interference by this Court for exercise of power of judicial review. Reliance in this context has been placed on Supreme Court in **Harjit Singh and another vs. The State of Punjab and others**⁵, **State of Haryana and another vs. Rattan Singh**⁶ and **State of Karnataka and others vs. N. Gangaraj**⁷.

7.3. Learned State counsel would next argue that in any case the limited scope of this Court, if any, is confined only to those cases where there is any procedural irregularity in holding the departmental inquiry or to those cases where there is violation of principles of natural justice which is not the case herein.

7.4 He would also lay stress on the fact that neither there is any violation of principles of natural justice nor any perversity of any kind pointed out in the inquiry report. It is not the case of the petitioner that he was not associated in the inquiry proceedings or was not accorded proper opportunity by the inquiry officer either of hearing or of adducing his evidence or of cross-examination of any witness.

⁵ 2005(3) RSJ 378 (P&H)

⁶ RSJ (1950-1988) Vol.4 page 14 (SC)

⁷ (2020) 3 SCC 423

7.5 On merits, the learned State counsel would urge that findings of the inquiry officer clearly established that while working as Chief Engineer on deputation with the Haryana Housing Board, the petitioner committed violation of procedure prescribed under Section 18(1) of the Housing Board Haryana Act, 1971 read with Schedule 3 of Housing Board, Haryana (Regulation of Business) Regulations, 1980.

7.6 He would further argue that Regulation at Sr. No.26 of the 1980 Regulations, Part V clearly lays down that PWD Code will be applicable. Thus, the petitioner while working as Chief Engineer had committed various acts of omission and commission violating para 2.89 of PWD Code; para 6.3, para 7.6 of Manual of orders; para 7.31(ii) of PWD B&R Code; Sr. No.33 of Haryana Housing Board Regulation of Business; 15.2(b) Punjab Financial PFR Vol.I Part II.

7.7 He submitted that the aforesaid provisions are a direct pointer that the petitioner committed blatant violations thereof in calling of tenders; requirement of deposit of earnest money; getting prepared DNIT estimates of the work to be got done; to give wide publicity in the market for competitive bids of different parties and that the so called negotiations as alleged by the petitioner were required to be carried out only with the lowest bidder.

7.8. Learned State counsel would thus lay stress on the point that in view of the aforesaid acts of omission and commission committed deliberately by the petitioner, he was liable to be proceeded *qua* his misconduct as per Rule 3 of the Government Employees

(Conduct) Rules, 1966 and was, therefore, rightly charge-sheeted and both the charge-sheets were prepared by the Housing Board, Haryana.

7.9. *Qua* contention of the learned counsel for the petitioner that no loss has been caused to the Haryana Housing Board and instead profit of Rs.8.5 Crores was earned during incumbency of the petitioner's tenure, the learned State counsel would submit that such plea has no legs to stand in view of the blatant violations of prescribed procedure and is thus necessarily to be rejected by the Court.

7.10 Elaborating the misconduct of the petitioner, the learned State counsel also pointed out that there was no provision made for installation of Fire Fighting system in flats to be constructed in the Housing Complex in question and yet petitioner had the Fire Fighting system installed which clearly reflects his misconduct. Thus, he made/incurred unnecessary expenses and/or bifurcated various works without prior approval of the higher authority which leads to the conclusion that his integrity was doubtful as all the works were done by throwing the procedure to the wind.

7.11. As regards the parity with the Executive Engineer S.B.Kumar, it was not disputed that he faced the same charges, of *inter alia* being the perpetrator of wasteful/unnecessary expenditure and by throwing all the rules/procedure to the wind, but had been exonerated by the Appellate Authority, which order had been challenged before but was eventually upheld by the Single Bench of this Court and the LPA against the judgment of Single Bench was dismissed by the Division Bench of this Court. The learned State counsel would, however, again lay emphasis on the fact that such an argument in his

opinion *prima facie* is suicidal *qua* the petitioner. He would submit that said S.B. Kumar had taken the defense that he acted under the directions of his Chief Engineer i.e. the petitioner herein. Thus, if his (S.B. Kumar) defense was upheld, the same is necessarily a direct finger pointed at the petitioner and he cannot cash on the exoneration of S.B. Kumar citing any discrimination, which in any case does not exist.

7.12 He would also rely on Supreme Court's decision in **Anil Kumar Upadhy vs. U.O.I**⁸ in support of his argument that merely the exoneration of another co-employee or having been given lesser punishment is no ground to seek exoneration by another similarly situated employee.

7.13. *Qua* the defense of the petitioner that all the actions taken by him were approved by the higher authority, the learned State counsel would submit that all such approvals were taken as ex-post facto and the fact remains that blatant violation of PWD Code read with Business Regulations of the Housing Board *ibid* cannot be undone merely because the higher authority on the administrative side had approved irregularities.

7.14 In the end, he would submit that at best even if it is assumed that in fact no loss was caused (only for the sake of argument), even then since the allegation of misconduct as envisaged under Rule 3 of the Government Employees (Conduct) Rules, 1966 stood proved against the petitioner, he cannot be allowed to go scot free for his misconduct. He would urge that in the premise this Court may remand

the matter to the competent authority to reconsider the punishment for the said misconduct, if it comes to the conclusion that no case of established loss to the Board is made out.

7.15 State counsel then summed up his arguments that merely because the Housing Board did not suffer any loss is no ground to absolve the petitioner of his guilt which was proved on the basis of inquiry report.

8. Mr. Ashwani Talwar, learned counsel for the respondent No.2-Board, in principle, adopted the arguments of the learned State counsel and would urge that in view of the detailed inquiry report already rendered, this Court ought not to interfere in judicial review. He would argue that it is a settled proposition of law that once the charges in civil proceedings are proved on the basis of preponderance of probabilities, a writ jurisdiction should not be invoked. He would also urge that in the instant case, the inquiry officer, after recording the entire evidence as per the departmental instructions and after following the principles of natural justice had returned categorical findings against the petitioner holding that all the charges had been proved qua the loss caused to the Housing Board.

9. In the light of the aforesaid assistance rendered by the learned counsels, I shall now proceed to deal with the competing submissions and render my opinion in the succeeding paragraphs.

10. Adverting to the arguments of the learned counsel for the petitioner, *in seriatim*. First and foremost the photographs, of course if genuine, speak for themselves. Trite it is to say “Every picture tells a story”. In this context, a bare look at the photographs of the site which

had been taken before the petitioner joined the Housing Board contained at Annexure P-2 vis-à-vis two photographs appended at Annexure P-2/A taken after the beautification works were got done by the petitioner, need no further description. It is borne out from the bare look on the photographs *ibid* that undoubtedly there was a complete make-over of the entire Housing Complex and it is no surprise why the flats as existed before the beautification and were in complete shambles, to say the least, had been rejected by the prospective buyers as against the refurbished ones after the necessary renovations and beautification. It is quite understandable that Housing Board is unable to bring anything on record as to how it suffered any losses, even if notional, when the ground reality remains that it sold the flats with nearly a double profit of Rs.8.5 Crores, instead of the looming colossal loss which it would have suffered on the rejection of the flats as they existed before renovation and beautification. That apart, Housing board would have suffered further loss on account of payment of loan with interest to HUDCO, on which it actually got a rebate because of timely sale of flats after completion of the necessary renovations and development works.

The allegations against the petitioner were that he had violated the procedural requirement of calling competitive tenders/bids, accepted single bids and sanctioned consequential expenses and, thereby caused loss to the Board. Firstly, the learned State counsel has not disputed the fact that all the actions taken by the petitioner had been approved by his higher authority, the Chief Administrator, though ex-post facto. The approval by the Chief

Administrator of the Board, though ex-post facto, shows that he was satisfied about the necessity and urgency for execution of the works and for providing the items in question. Obviously, the so called violations of the procedure attributed to the petitioner, if any, for omission to call competitive tenders/bids stood regularized by the Chief Administrator of the Board. Secondly, the fact remains that the additional works/ provisions were actually got executed/made by the petitioner for the improvement/ renovation/beautification of the houses. Obviously, these resulted in corresponding improvements in the quality of the houses adding to their value and making them presentable and attractive to customers, so as to fetch increased marketable price. The additional expenses for the improvement/ renovation/beautification of the houses had been included in the project cost of the Board. Still thereafter, the Board sold the renovated/beautified houses much above the project cost and earned huge profit of Rs. 8.5 crores. To be kept in mind, that before renovation/beautification, the houses had remained unsold for want of customers and huge losses were looming for the Board vis-à-vis the project cost coupled with its inability to repay the HUDCO loan and consequential loss. Thus, in reality, the Board did not suffer loss and in fact earned huge profits because of the additional works/ provisions got executed/made by the petitioner for the improvement/ renovation/beautification of the houses. Thirdly, even hypothetically assuming against the petitioner that the amounts paid for additional works/ provisions got executed/made by him for the improvement/ renovation/beautification of the houses were higher than the then prevailing market rates, it was incumbent upon the

respondents to how what were the then prevailing market rates for those additional works/ provisions. If the then prevailing market rates were found lower than the expenses actually sanctioned/incurred by the petitioner for the same, then alone could it be said that the amount of difference was the loss suffered by the Board. Here, the Board did not bother to undertake any such exercise. Instead, it chose to proceed on the premise that the whole of the expenses sanctioned/incurred by the petitioner for the additional works/ provisions got executed/made by him for the improvement/ renovation/beautification of the houses, was the amount of loss caused to/suffered by the Board. On that premise, the impugned order Annexure P-19 was passed inflicting penalty on the petitioner for recovery of the amount of Rs.,01,65,105/- . The ground reality as stated above is that those improvements/ renovations/beautification of the houses had actually resulted in huge monetary benefits to the Board. Such an approach of the Board is amazing and astonishing, to say the least.

Also to be noted that, despite Court query, no satisfactory answer has come forth from the Housing Board as to how the loss was caused to the Board and as to how the same was calculated, particularly in light of the fact that the same very flats were rejected by the prospective buyers upon inspection and subsequently sold on profit after the petitioner had got carried out the necessary renovations and development works.

11. Before advertng any further on merits of the case, it is pertinent to note that this is the second foray of the petitioner, in fact third if amendment of the second writ petition is to be counted, before

this Court. He had earlier filed a writ petition bearing CWP No.9964 of 1997 challenging his suspension which resulted out of the same charge-sheet in question and order dated 17.02.1998 was passed by a Division Bench of this Court, which is of certain significance and is reproduced herein below:-

“The petitioner is working as Superintending Engineer in the Public Works Department, Buildings & Roads Branch. He has filed this petition with a prayer that the order dated June 21, 1996, by which he was placed under suspension be quashed. The petitioner alleges that the charges which have been levelled against him have already been inquired into by the appropriate authority and that he was found to be innocent.

On December 5, 1997, the Division Bench (Amarjeet Chaudhary and V.S. Agarwal, JJ.) had directed that the Government shall “reconsider the case of the petitioner with regard to reinstatement.” The case was adjourned to January 16, 1998. On that date, the case was listed before this Bench. It was represented that vide order dated January 15, 1998, Mrs. Asha Sharma, Commissioner & Secretary to Government, Haryana, has been appointed as an Inquiry Officer to go into the charge sheets served upon the petitioner vide letter dated January 27, 1997. It was further stated that the petitioner's case was under active consideration of the Government. A request for an adjournment for a month was made. While adjourning the case, we had directed that “the enquiry officer shall proceed with the matter as expeditiously as possible and the enquiry shall be completed at the earliest.” It was further directed that “the order passed by the respondents in pursuance of the directions given by the bench on December 5, 1997, shall be produced in Court” on the next date of hearing. The case was ordered to be posted on February 16, 1998. It has been listed for hearing today.

Mr. Madan Dev, learned counsel for the respondents, states that he has no instructions in the matter. He is not in a position to inform the Court about the present stage of the inquiry proceedings. He is also not aware as to whether or not the

directions given by the Bench on December 5, 1997, have been complied with.

Mr. Patwalia, learned counsel for the petitioner, submits that the Inquiry Officer has not proceeded in the matter till today. This is so in spite of the fact that the petitioner had personally appeared before her on January 29, 1998, and submitted a written request. He has produced a photocopy of the communication submitted by the petitioner. It is taken on record as Mark-'C'.

Prima facie, it appears that the respondents have not complied with the directions given by the Court on December 5, 1997, and January 16, 1998. It also appears that Mrs. Asha Sharma has not proceeded further with the inquiry.

Respondent No.1 shall file an affidavit of a responsible officer with regard to the non-compliance of the directions of the Bench given on December 5, 1997. Mrs. Asha Sharma shall also file an affidavit giving the details of the proceedings, if any, conducted by her so far. In case the inquiry proceedings have not been conducted, she would explain as to why the directions given by the Court have not been complied with.

To come up on February 20, 1998.”

12. Subsequently, the petitioner was reinstated and thus the first writ petition challenging the order of suspension became infructuous and the same was disposed of on 23.02.1998 in terms of the following order:-

“The petitioner, a Superintending Engineer in the Haryana Public Works Department Buildings and Roads Branch, has filed this petition with a prayer for the issue of an appropriate writ “quashing the order dated 21-6-1996” by which he was placed under suspension.

Mr. H.S. Hooda appears for the respondent - State and states that the petitioner is being reinstated. He further states that the enquiry pending against the petitioner shall be expedited and every effort shall be made to complete it at the earliest.

In view of the above, this writ petition has been rendered infructuous. It is accordingly disposed of. No costs.”

13. In the aforesaid background, it was incumbent on the inquiry officer to proceed expeditiously in the matter since the petitioner had already been put to as many as two inquiries plus 3rd by Vigilance and was to undergo 4th departmental inquiry, notwithstanding that he was exonerated in the investigation carried out under the Code of Criminal Procedure resulting out of an FIR instituted by the Housing Board as well as the detailed inquiry instituted by the Vigilance Department on a complaint moved by the Housing Board. The conduct of the department was criticized and adversely commented upon by the Division Bench of this Court (as the matter was earlier being heard by the Division Bench) during the pendency of the instant writ proceedings. Jawahar Lal Gupta, J. (as he then was in this Court) speaking for the Division observed as below in order dated 29.07.1998:-

“The petitioner is working as a Superintending Engineer in the Public Works Department (Buildings & Roads) Branch. On June 21, 1996, he was placed under suspension. Two charge sheets dated January 27, 1997 were served on him. He filed Civil Writ Petition No.9964 of 1997. It was alleged that the charges which had been levelled against him had already been enquired into by the appropriate authority and that he was found to be innocent. This writ petition was listed before a Bench of this Court on December 5, 1997. It was conveyed by the Department that Mrs. Asha Sharma, Commissioner and Secretary to Government Haryana had been appointed as an Enquiry officer to go into the charge sheets served upon the petitioner vide letter dated January 27, 1997. It was also stated that the petitioner's case was under active consideration of the Government. At the request of the counsel for the Department, the case was adjourned with a direction

that the Enquiry officer shall proceed with the matter as expeditiously as possible and that the enquiry shall be completed at the earliest. It was further directed that the order passed by the respondents shall be produced in court. The matter was then posted before this Bench on February 17, 1998. It was observed that the respondents had not complied with the directions given by the court on December 5, 1997 and January 16, 1998. Ultimately, the case was listed on February 23, 1998 when the Advocate General appeared and stated that the petitioner was being reinstated and that the enquiry shall be expedited. He had assured the court that every effort shall be made to complete the enquiry proceedings at the earliest. Five months have elapsed since then. Nothing has been done. The petitioner has again approached the court with the prayer that the charge sheets, copies of which have been produced as Annexures P-9 and P-10, be quashed as no enquiry has been conducted in spite of the undertaking given to this court. It has been further prayed that he be designated as Chief Engineer with effect from the date the persons Junior to him have been promoted. The petitioner has pointed out that he is at Sr.No.6 in the seniority list and a person who is at Sr.No.21 has already been promoted.

In spite of opportunity, no written statement has been filed on behalf of the Government. On behalf of the Housing Board, Mr. Manoj Sangwan states that the written statement is ready and that in any case, the Board is a proforma party.

Mr. Bishnoi, counsel for respondent No.1 states that a new officer (Mr. H.L. Tayal) has been appointed as an Enquiry Officer vide order dated April 6, 1998. However, the counsel concedes that in spite of the fact that Mr. Tayal had been asked to complete the enquiry within three months positively by holding day to day hearing, the proceedings have not commenced till today.

We cannot compliment the Government on the manner of its functioning. It leaves a lot to desire. It leaves an impression that the department is either deliberately harassing the petitioner or prolonging the proceedings against him on one pretext or the other. Why have the enquiry proceedings not been completed so far in spite of the undertakings given to this court? Why was Mrs. Asha Sharma replaced by Mr. H.L. Tayal? Why has not Mr. Tayal conducted

the proceedings from April 6, 1998 till today in spite of a specific direction given by the Government in that behalf? These questions arise in the case. Counsel for the Government is unable to give any answer.

On behalf of the petitioner, it has been pointed out that he is due to retire on September 30, 1998 and that an effort is being made to ensure that he does not get promotion before attaining the age of superannuation. The suggestion on behalf of the petitioner does not appear to be totally unfounded. Mr. Patwalia contends that the petitioner is being punished without even being found guilty. Persons Junior to him have already been promoted and he is being forced to face the ignominy of working under persons who are far below him in seniority. He prays that the respondent should be directed to consider his claim for promotion.

Mr. Bishnoi states that he has received instructions that the enquiry proceedings shall be completed within one month from today. He further states that in case, the department fails to do so, the petitioner's claim for promotion shall be considered.

In view of the above assurance, we adjourn the hearing of this case to August 31, 1998.

A copy of this order certified by the Court Secretary shall be given dasti to the counsel for the parties.”

14. It appears that having been criticized and adversely commented by this Court, it is then that the department decided to expedite the proceedings and yet took as long as 19 months to conclude the inquiry proceedings.

ADVERTING NOW TO THE GENESIS OF THE DEPARTMENTAL PROCEEDINGS

15. It appears that with the change of incumbent Chief Administrator in the Housing Board and after repatriation of the petitioner to his parent department, his rival V.P. Gupta, the then Superintending Engineer in the Housing Board, became an activist with

the sole agenda of wreaking vengeance against the petitioner, perhaps because of the grouse that he himself had been deprived of the opportunity of becoming a Chief Engineer of the Housing Board owing to the petitioner's appointment to that post. The successor Chief Administrator vide an order dated 08.02.1996 forming part of Annexure P-18 constituted a Committee to look into the financial irregularities committed in allotment of works during the period the petitioner was Chief Engineer. The said order reads as under:-

“In pursuance of the decision taken in 125th Board's meeting held on 03-01-1996 as per Agenda Item No. 135.21, a committee consisting of Sh.V.P. Gupta, Superintending Engineer, Shri V.K. Verma, Executive Engineer, HBH Panchkula, Shri Mukesh Gupta, A.E. HBH, Panchkula and Sh. D.R. Mahajan, A.E., HBH, Panchkula is constituted in order to thrash out such matters where serious financial irregularities have been committed in the allotment of works without following procedure in contravention of the rules on the basis of single offer, release of advance payment and without obtaining Administrative approval etc.

2. The Committee must submit its report within 10 days positively.

*Chandigarh, Dated
The 8th Feb., 1996*

*Shakuntla Jakhu, IAS
Chief Administrator
Housing Board Haryana.”*

16. What is to be noted in this context is that in a note dated 24.11.1995 the Secretary (endorsed by the Chief Administrator of the Board) had suggested that in the light of financial/procedural irregularities and technical audit report, a detailed technical audit of Panchkula Division may be carried out so that clear picture could emerge and it was proposed that the Government be requested to accord approval for carrying out technical audit by the technical committee including Shri V.P. Gupta or his representative, J.L. Sharma

Accounts Officer, V.K. Verma, XEN and D.R. Mahajan AE. Upon this, the Commissioner, Housing wrote the following note dated 27.11.1995:

“Technical audit is advisable and should be conducted. However, V.P.Gupta’s heading the committee may not be advisable because he has been making degrees of complaints regarding this and has become a member and interested party and, therefore, bias can be alleged against him. We may leave it to the Chief Administrator to detail another officer instead of Shri V.P.Gupta, other members may be as thought fit by Chief Administrator. Minister Housing may kindly see for approval. ”

The said note was signed on 15.02.1995 in token of its approval by the Minister Housing thus prohibiting the inclusion of V.P.Gupta in the committee. These notes/orders are part of Annexure P-18. In spite of this order passed by the Minister Housing prohibiting the inclusion of V.P. Gupta in the committee, an order dated 08.02.1996 Annexure P-18 reproduced above, was issued by the Chief Administrator constituting a Committee consisting of, inter alia Shri V.P. Gupta, besides others to thrash out such matters of financial irregularities by allotment of works without following procedure /rules on the basis of single offer, release of advance payment and without obtaining administrative approval etc. Undated report of the said Committee has been filed as Annexure III with the written statement of the respondents. Therein, Sh. V.P. Gupta, Superintending Engineer of the Board had opined/proposed that responsibility of the defaulters (for financial irregularities etc) should be fixed and reasonability of the rates be assessed. Said Sh. V.P. Gupta was later examined as the star prosecution witness in the disciplinary inquiry proceedings and on his testimony, the Inquiry Officer indicted the petitioner of all the charges

levelled against him. Ordinarily, I would have perhaps refrained from going into the merits of the case any further and would quash the entire proceedings at this stage itself. The reasons are not far to seek. Departmental proceedings are vitiated on the very first principle of violation of natural justice, in as much as, the preliminary enquiry conducted by Sh. V.P. Gupta is the very basis of issuance of charge-sheet leading to the institution of departmental inquiry, wherein he later appeared as a star witness against the petitioner. Thus, V.P. Gupta is the complainant, prosecutor and Judge, all three rolled into one. Things did not stop here. The entire findings against the petitioner for violation of the procedure were recorded by the Inquiry Officer merely relying on the statement of Sh. V.P. Gupta, without actually verifying and cross-checking of the facts from the relevant records by the inquiry officer.

17. Furthermore, the Administrative Secretary of the Government in control of the Housing Board had sought comments from the Chief Administrator of the Housing Board qua the allegations against the petitioner. The Chief Administrator gave comments on each and every allegation which are reproduced herein below:-

“The allegations levelled in the complaint pertain to the Engineering Wing of Housing Board and as such the comments/report of the Chief Engineer of the Board has been obtained and is placed at Flag 'X'. I have gone through the record and the report of the Chief Engineer and my comments are as under:

Para 1&2:

Para No.1 and 2 of the complaint are regarding allotment of works of fire fighting services in Housing Complex, Sector-14, Panchkula and Awas Bhawan, Sector-6, Panchkula. It is pointed out that the

works were allotted to the firm M/S Fire Guard Engineers, Chandigarh after consulting the Chief Fire Officer, UT Chandigarh and the Fire Officer, HY. Panchkula. Both the officers recommended this firm and the works were allotted as per norms and requirement of Bye-laws. As regards the responsibility of rates, the Chief Engineer has reported that the works were allotted at 7.6% above at which the work of similar items allotted by the Punjab Water Supply and Sewerage Board, Chandigarh after a gap of nearly one year period and 6.7% below than the amount at which the similar works were allotted by IFFCO, Chandigarh after a gap of three months period, to the same firm. The Chief Engineer has annexed Annexure 'I' in support of this contention.

The Chief Engineer has justified the award of work by negotiations for which he has full powers as per Housing Board Haryana (Regulations of Business) Regulations, 1980 (item No.7) under the 3rd schedule of Delegation of Powers on the grounds that the projects of housing complex of Housing Board and Awas Bhawan were at an advanced stage and he had to dispense with the lengthy procedure of calling tenders to avoid further delay in the completion of these works.

Although I agree with the comments of the Chief Engineer that he has used his powers in the interest of the Board, yet I observe that the fire fighting arrangements should have been taken up much earlier alongwith the construction of the main projects and the normal procedure of calling of tenders could have been resorted to avoid any objection or criticism of this type.

Para 3 & 4 & 5:

Para 3 pertains to the work of providing and fixing Decorative Drapery Rods for hanging of curtains. Regarding this, the Chief Engineer has reported that there are only two authorised distributors at Chandigarh for these rods and he got this work executed from the authorised distributor M/S J.K. & Co. Chandigarh @ 550/- per 12 Rft rod which is very lower and lesser than quoted rate of Rs.625/- per rft rod by the other distributor M/s Comffits Marketing, Chandigarh.

Para 4 pertains to the work of providing textured grannules quoting on the exterior concrete/plastered surface of all types of houses of

Housing Complex in Sector 14, Panchkula. Regarding this, the Chief Engineer has reported that this work was done as decided during the inspection of houses by Director General Police, M.D. Haryana Police Housing Corporation, M.D. HSIDC and also the Chairman, and the Chief Administrator, Housing Corporation Haryana to improve the esthetics of the exterior of the houses. He has allotted this work to M/S Associated Coats (India) Chandigarh who are the authorised dealer-cum-applicator of such type of work on behalf of manufacturer/M/s Bakelite Bylam Ltd. Secunderabad for Chandigarh and also for States of Haryana, Punjab and Himachal Pradesh for doing this work. He awarded the work to this firm by using his powers of negotiations as per item No.7. of Housing Board Haryana (Regulations of Business), Regulations, 1980. According to him he has allotted this work at the most reasonable rate of Rs.18.50 per sft, which is not only lower but is also much lesser than the rate of Rs.23/ per sft quoted by M/s Bhiwani Plywoods Ltd., Chandigarh the only other authorized dealer-cum-applicator for Chandigarh, Haryana, Punjab and UP States.

Regarding para 5 the Chief Engineer has reported that chequered tiles have been purchased directly from the reputed manufacturer M/S National Tiles Corporation Industrial Area, Panchkula at their price list and the quality of tiles purchased are not available at the rate lesser than the rate at which these have been purchased.

The Chief Engineer has resorted to the practice of allotment of work by negotiations because the construction of houses were at an advanced stage and he did not want to delay the works further by calling of tenders etc. My observation is that such work should be planned and taken up at appropriate time alongwith the construction of main project, the allotment of works by negotiation as stipulated under item No.7 of Housing Board Haryana (Regulation of Business), Regulation, 1980 could be avoided and normal procedure of calling of tenders is followed.

Para-6:

Regarding para 6 the Chief Engineer has reported that SINTEX make water storage tanks have been purchased directly from the manufacturer of these tanks at the DGS and D rate contract.

Regarding para 7 it is mentioned that H.No.426 Sector 6 Panchkula was allotted to the Chief Engineer as his official residence. This house was in bad shape and the necessary repairs were carried out in view of the status of the Chief Engineer.

Para-8: Shri S.B. Kumar, AE has been holding the current duty charge of the post of XEN Panchkula Division since 31.5.93. At present two posts of Executive Engineers are lying vacant and the case of promotion already stands submitted in the Govt. Since Shri Kumar is one of the Senior most Assistant Engineers competent as well, he can be given the current duty charge of the post of Executive Engineer after waiving of the condition of degree of Engineering by the Govt. in particular case of outstanding merit keeping in view the provisions contained in relevant rules applicable upon him.

The Chief Engineer has reported that all works executed/being executed in the incumbency of this officer has been found to be technically sound and also of very good quality.

The complainant is Shri Chander Shekhar resident of H.No. 536, Sector-8 Panchkula. 3 letters dt. 10.4.95, 17.4.95 and 16.5.95 were sent to him to appear before the undersigned in connection with his complaint but he did not turn up. On 18.5.95 Sh. Chander Shekhar has returned our letter dt. 16.5.95 with the remarks that he has not made any complaint and he has nothing to say in this connection.

To sum up my observation is that there is no malafide on the part of Chief Engineer and the Executive Engineer and the Chief Engineer has used his powers for early completion of the already delayed projects. But still I would comment that all such works like fire fighting, provision of dropery rods etc. should be taken side by side the execution of the main projects so that the necessity of award of work by negotiations does not arise. The practise of allotment of works by negotiations should be resorted to only when warranted in emergency cases.”

18. The aforesaid comments favourable to the petitioner rendered by the Chief Administrator of the Board have been given a complete short shrift by the respondents in the pleadings. During

arguments it was urged that the then Chief Administrator himself was indicted in vigilance inquiry and, therefore, had to necessarily support the petitioner and his comments are not to be looked into. I am afraid, if that were so, the Court is left not only wondering but equally wandering in bewilderment, as to what stopped the department to challenge the vigilance inquiry report ? To be noted, the Director, State Vigilance Bureau in his detailed letter/report dated 31.08.1995 Annexure P-21 submitted to the Chief Secretary, Haryana Government, Vigilance Department had completely exonerated not only the petitioner and also the Chief Administrator. The stand of the department flies in the face of the outcome of vigilance inquiry conducted into the same allegations upholding the same view as had been taken by the Chief Administrator aforesaid. Apart from the Chief Administrator having clarified the position, it is pertinent to mention here that a whistleblower seems to have also been planted against the petitioner for filing a complaint but when the complainant was asked to appear in the vigilance inquiry, he never showed up as is borne out from the vigilance inquiry report dated 31.08.1995 (Annexure P-21 Colly). Speaking of the vigilance inquiry report, the same has in fact dealt with each and every allegation of financial loss. Having perused the same, I find that the petitioner was rightly exonerated. In fact, while dealing with the allegation of financial loss, the said report also dealt with the issue of not calling any tenders based on what was explained by the petitioner while recording his statement in following words:-

“Shri. D.P. Gupta, Chief Engineer Housing Board in his statement at SF No. 411-441 has stated that the works were to be completed by 31.12.1994, and

these was hardly any time left for calling the tenders so the works were allotted at the most reasonable and economical market rates to the specialized agencies/ firms who had executed similar works and were executing similar works in the State of Himachal Pradesh, Punjab and Haryana after verifying and comprising the rates by the Executive Engineer and negotiations by him and with concurrence of the Chief Administrator. The work were allotted on single offer to the specialized firms and as paras 3,5, 6 and 7 of the Housing Board Haryana (Regulation of Business) Regulations, 1980, the Chief Engineer has full powers/competency to accept any tender and to approve non-scheduled/extra items and the works have been approved by him within his competency.

Shri D.P. Gupta in his statement at page No. 5-7 of PF No.2 has stated that authorities of the Housing Board had decided during the course of inspection of site by different officers that the firefighting equipment be installed and outlook of the houses be beautified by applying coating of textured granules and approval for these works were also given by the Chief Administrator, Housing Board who was fully competent to do so as per Notes 1 and 2 of Regulations of Business of Housing Board. Housing Board is a commercial organization and has its own rules and regulations under which administrative and financial powers have been delegated to the Chairman, Chief Administrator and other officers of the Board. There is commercial accounting system in the Housing Board Haryana and the budgeting system in the Public Works (B&R) Department. The copies of Rules of Housing Board Haryana have been taken in custody which can be seen at page No. 153-171 of PF No. 1 and at page No. 230 of SF.

It is clear from the above statement and the scrutiny of the works that the works of fire fighting arrangements, application of textured granules coating, special cement paint and water repellent have got done on single offer in the Housing Board Colony, Sector-14, Panchkula and Awas Bhawan, Sector-6, Panchkula and their scope has also been enhanced, the revised estimates have also not been prepared. In this regard, Shri R.K. Aggarwal, Engineer-in Chief has written in his technical opinion that the works were to be executed by inviting tenders, approval of estimates and without

enhancing the scope of the works and only after obtaining technical and administrative approval. In his statement, he has written that these works have been done in violation of PWD Code and Manual of Order. But Shri D.P. Gupta, Chief Engineer, Housing Board has stated that he was fully competent to get these works executed under Para 5 and 7 of the Housing Board Regulations 1986 and in meeting of Housing Board Haryana.

19. The finding of the inquiry officer of the vigilance is as below:-

“It is clear from the above statement and the scrutiny of the works that the works of fire fighting arrangements, application of textured granules coating, special cement paint and water repellent have got done on single offer in the Housing Board Colony, Sector-14, Panchkula and Awas Bhawan, Sector-6, Panchkula and their scope has also been enhanced, the revised estimates have also not been prepared. In this regard, Shri R.K. Aggarwal, Engineer-in-Chief has written in his technical opinion that the works were to be executed by inviting tenders, approval of estimates and without enhancing the scope of the works and only after obtaining technical and administrative approval. In his statement, he has written that these works have been done in violation of PWD Code and Manual of Order. But Shri D.P. Gupta, Chief Engineer, Housing Board has stated that he was fully competent to get these works executed under Para 5 and 7 of the Housing Board Regulations 1986 and in meeting of Housing Board Haryana held on 23.11.1993, it was decided approval be taken on the basis of actual expenditure incurred and approval of application of textured granules coating has been accorded by the Chief Administrator and the case files of installation of fire fighting equipments have also been seen by him after approval. Thus, it is clear from the above that the works got done by enhancing their scope on single offers by Chief Engineer after obtaining approval/occurrence from Chief Administrator of the Haryana Housing Board. And the work of Firefighting Arrangements have been done on expert suggestion and discussion with Shri Vineet Aggarwal, Chief Engineer and Chief Fire Officer, U.T. Chandigarh and as per requirement of National Building Code and the work of application of textured granules, special cement

paint have also got done after inspection of different officers to the site and their suggestions and advice under Housing Board Haryana Regulations, 1986. I feel it reasonable to mention here that the integrity of Shri D.P. Gupta, Chief Engineer, Housing Board cannot be doubted at all because he has outstanding reputation for honesty in getting the works done. I would also like to mention here that the Housing Board Colony, which has been constructed is a Modern Type of Colony and has been constructed with latest techniques and all the houses of this colony have been sold by which the Board has earned a profit of Rs. 13 crores which includes about Rs. 8 crores as interest and administrative charges. Works in the Haryana Police Housing Corporation are also being done in single offers. The houses constructed in the Housing Board Colony appear to be of good quality and the occupants of these houses have also appreciated quality of constructions of the houses. But during the course of enquiry, it is found that this enquiry is being conducted on account of the difference between the Hon'ble Minister for Housing and Chairman of the Housing Board and also because of the negligence of the Chief Administrator of the Housing Board. Had there been no difference between Chairman and Hon'ble Housing Minister, they would have sorted out the difference by calling the Chief Administrator. All this had happened as the Chief Administrator of the Housing was not of the rank of Senior Commissioner, so it is suggested that in future the Chief Administrator of the Board should be of the rank of Senior Commissioner so that such complaints are avoided, so it is suggested that present Chief Administrator be transferred and in his place, an officer of rank of Senior Commissioner be posted."

In para 11 of the written statement, the respondents no doubt pleaded that the Government in the Vigilance Department, after considering the enquiry report of the State Vigilance Bureau, Haryana and technical opinion given by Shri R.K. Aggarwal, the then Engineer-in-Chief, Haryana, PWD (B&R) Department, held the petitioner guilty for serious financial and procedural lapses. However strangely enough, for undisclosed reasons, any such decision/order of the Government in

the Vigilance Department holding the petitioner guilty has not been brought on record. In this state of affairs, I am of the opinion that the report Annexure P-21 of the Director, State Vigilance Bureau cannot be ignored.

20. Having perused the detailed D.O letter dated 26.05.1995/02.06.1995 Annexure P-2B sent by the Chief Administrator, Housing Board to the Commissioner & Secretary to Government, Haryana, Housing Department, vigilance inquiry report Annexure P-21, the order dated 21.01.2011 passed by the Appellate Authority (Annexure P-21 Colly) passed in the case of S.B. Kumar; the order dated 10.12.2009 (Annexure P-23) passed by the ACJM, Panchkula accepting the closure report of case FIR No. 466 dated 05.09.1998 under sections 409,420, 120-B IPC and section 13(2) of the Prevention of Corruption Act registered at Police Station, Sector 5, Panchkula against the petitioner and others, as well as the Revisional Court order dated 12.07.2013 (Annexure P-24) passed by the Additional Sessions Judge, Panchkula dismissing the Board's objection petition, I am of the opinion that the shoe is completely on the other foot. It appears that department has indulged in a complete witch hunt and has relentlessly hounded the petitioner who, however, has stood firm on his ground at every stage, whether it was an independent agency involved i.e. police (investigation in FIR) or even the judiciary i.e. ACJM followed by Additional Sessions Judge and the Vigilance (Director, Vigilance). Having failed with the independent agencies, the only way for the department to nail the petitioner was through departmental proceedings. No wonder, it succeeded in doing

the same. None of the four allegations against the petitioner which are the real bone of contention viz. a) execution of work on the basis of single offer, b) without seeking prior administrative approval, c) without seeking technical sanction, d) causing loss to the Board, stand to reasoning, if the inquiry report relied upon by the department in the departmental proceedings is viewed against the findings rendered in the vigilance inquiry report read with the reasoning given by the Appellate Authority while exonerating the co-delinquent employee S.B. Kumar. In fact, the reasoning of the appellate authority was put to challenge before this Court by way of writ petition by the Housing Board in CWP No.17232 of 2011 titled ***Housing Board, Haryana, Panchkula vs Sh. S.B. Kumar and another*** and speaking for this Court Ranjit Singh, J. (as he then was in this Court) in judgment and order dated 14.09.2011 castigated the Housing Board in very strong words in the following terms:-

“I have perused the impugned order, Annexure P-1. Each and every aspect of the case has been considered in detail and so also the facts involved in this case. A perusal of the impugned order would clearly show that action in this case was taken by the petitioner basically as per the direction given to him by the Chief Engineer. Rather, it is noticed that as a result of the actions taken by the Chief Engineer and respondent No.1, the Board has earned a net profit of Rs.8.50 crores in respect of the same very project, for which respondent No.1 was served five charge sheets.

The technical opinion, which was relied upon, was found to have been considered by the Vigilance Department and it did not find anything against respondent No.1 in respect of the technical report given by one Sh. R.K. Aggarwal. The revision authority accordingly found that respondent No.1 was made to suffer a lot for no fault on his part and the order which was passed in his favour on 20.12.2003, directing his reinstatement was also not given effect to. The revisional authority has noticed that respondent No.1 had been made to suffer due to personal malice, vendetta and on account of gross violation of

established norms and procedure. It is also observed that the enquiry and the report is by an officer is who prejudiced and biased and this enquiry was no enquiry in the eyes of law. Strong adverse observations are made against the petitioner-Board in appointing Sh. V.P. Gupta, the then Superintending Engineer to enquire into the matter, who was not found impartial or objective.”

21. No doubt, one of the defense taken by S.B. Kumar the co-charged employee though was that he acted under the instructions of the senior official i.e. the Chief Engineer at the relevant time, but merely on that ground, the aforesaid other aspects/ merits of the case as observed by the Learned Judge cannot be given a go by.

22. I am in respectful agreement with the view taken, as well as the strong adverse observations made by the learned Single Judge. The conduct of the Board in appointing Shri V.P. Gupta, the then Superintending Engineer to enquire into the matter, who was not found impartial or objective, cannot possibly be countenanced. Even otherwise, I am of the opinion that the petitioner was wrongly proceeded against, because accounting procedure for the Board is governed by Housing Board Haryana (Regulation of Business) Regulations, 1980, which as per 3rd Schedule, Item No. 7 categorically specify the award of work by negotiation and the Chief Engineer has full power to do so. Pertinent to note here that, on this point even a legal opinion of Legal Remembrance Haryana was also sought by the Board. The latter's opinion was also that the third schedule of Housing Board Haryana (Regulation of Business) Regulations, 1980 gives full power to the Chief Engineer qua acceptance of tenders for execution of works even if the work is to be allotted by negotiation.

23. It is not disputed that vide order dated 09.12.1993 administrative approval for construction of Head Office Building in Sector 6, Panchkula was granted and vide Agenda Item No.123.16, administrative approval for the construction of various types of houses in Sector 14, Panchkula was accorded. Para 2.89(2) of PWD Code is as under:-

“On the receipt of written orders, the officer who is directed to carry out the work should immediately intimate to audit officer concerned that he is incurring a liability for which there is no provision or inadequate provision of funds and should at the same time state approximately the amount of the liability which is likely to be incurred by complying with the written orders received by him. The Audit Officer will then be responsible for bringing the facts instantly to the notice of higher Financial Authorities with a view to take necessary steps being taken either to stop the progress of the work or to regularize its execution. There should be no hesitation in enforcing disciplinary action against any officer whether administrative or executive who may fail or delay to comply with these orders”.

24. In the present case, written orders were given by the petitioner to carry out certain works. On 7th of every month the audit was conducted and the funds were given for execution of the work. No objection was ever raised by any authority of the Board and the funds were released by the Head Office. Special information regarding this was given to the then Chief Administrator as well as the then Chairman of the Board and no one ever pointed out any defect or objection. The bare perusal of Para 2.89 (2) of PWD Code goes to show that the moment the officer informs the audit officer then the whole responsibility lies on the shoulder of the Audit Officer. It is pertinent to mention here that till date it has not been shown if the Audit Officer has pointed out any irregularity in execution of works and allotment of

funds. As per General Rules of PWD Specification, it is clear that for big projects and specialized work, the Chief Engineer concerned may issue separate specifications and separate schedule of rates for any or all items of work.

25. It is also relevant to mention here that the Haryana Housing Board earned a profit of Rs.8.5 Crores by selling the houses in Sector-14, Panchkula. Funds were provided by the Board item wise, month wise with the progress and execution of work. Expenditure incurred month wise was audited by the Chief Accounts Officer in the accountancy meetings and the consolidated report used to be put up before the then Chief Administrator for approval. Board had taken a decision on 28/10/2002 to charge the cost of these work items to the cost of these houses and thus the expenditure incurred on these items had been charged to the works in final costing and has already been recovered from the allottees.

26. Nothing is produced on record or contended in course of arguments to show as to how the figure of alleged loss of Rs.4 Crores has been arrived at. It is no one's case that the amount in question has not been actually spent, or that the expenses are bogus or fake or the relevant works have not been executed for the houses. Instead, all the works have been carried out to refurbish and renovate 278 unsold houses and thereafter these houses had been sold and Board had earned huge profit therefrom. Even additional cost stood recovered from the allottees by the Board.

27. Consequently, I deem it appropriate to allow this petition.

The same is allowed. The impugned charge-sheets (Annexures P-9 &

P-10), Inquiry Report (Annexure P-17) and the order (Annexure P-19) are quashed with all consequential benefits to the petitioner including his being considered for promotion if otherwise found eligible and meritorious as per the applicable promotion policy/rules. Resultantly, if the petitioner is found entitled to any monetary benefits, the same shall be paid to him within six months of the supply of certified copy of this order.

28. Pending civil miscellaneous application, if any, also stands disposed of.

August 24, 2022
ashish/mahavir

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No