

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49832 of 2023

Arising Out of PS. Case No.-12 Year-2006 Thana- VIGILANCE District- Patna

Dr. Dilip Kumar Yadava Son Of Late Bochai Yadav Resident Of Shanti Niwas, Ambedkar Path, Near Mahima Mandir, Amba Vihar, P.S.- Rukanpura, District - Patna

... .. Petitioner/s

Versus

The State of Bihar through the Vigilance Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. P.N. Shahi, Sr. Advocate
		Mr. Krishna Chandra
For the Opposite Party/s	:	Mr. Arvind Kumar

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

7 10-09-2024 Heard learned counsel for the parties.

2. This application has been filed for quashing the entire criminal proceeding in connection with Special Case No. 10 of 2006, arising out of Vigilance P.S. Case No. 12 of 2006 including the order dated 02.07.2007 passed by the learned Special Judge, Vigilance- 1, Patna, by which the cognizance has been taken against the petitioner under sections 420, 465, 467, 468, 471, 120B, 218, 109 of the Indian Penal Code and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988.

3. The present F.I.R. has been instituted on the basis of joint report dated 03.03.2006 submitted before the



Additional Director General, Vigilance Investigation Bureau. In the report, it has been alleged that for purchasing an Excimer Laser Machine and other items for the use of Indira Gandhi Institute of Medical Sciences (in short “IGIMS”), Tender No.01 of 1996-97 was published but, no bid was received. Thereafter, second tender viz. Tender No.02 of 1997-98 was published in daily newspaper namely, Hindustan Times on 07.06.1997. One of the conditions in the second tender was that the tenderer would give a list of users apart from the quotation. Pursuant to the second tender, three companies/firms had participated in the bid. For evaluating the technical bid, a Technical Bid Committee was constituted comprising eight members. Thereafter, from 13 institutes details regarding the make, model, price and service of Excimer Laser Machine was requested by letters. Out of the 13 institutes, response regarding Nidek Excimer Laser Model EC-5000 was received from three institutes responding that they all were using Nidek EC-5000 and the machines were performing satisfactorily.

3.1. It is also reported that on 15.01.1998, a meeting of the Governing Body under the Chairmanship of Hon’ble Minister, Health, Education and Family Welfare took place, in which a Special Purchase Committee under the



Chairmanship of the Health Secretary was constituted. Thereafter, on 25.02.1998 in the meeting of the Special Purchase Committee, Dr. Supriyo Ghosh, Eye Institute, AIIMS, New Delhi, participated and opined that M/S Mayur Chiron and K.B.L. Nidek's EC 5000 machine could be purchased. On 19.03.1998, in the meeting of the Governing Body, it was decided that post negotiations would be deemed to be the decision of the Standing Committee of Finance. On 24.03.1998, the meeting of the Special Purchase Committee under the Chairmanship of the Health Commissioner C.K. Basu, took place in the Chambers of the Director, IGIMS. wherein apart from Shri C.K. Basu, five other officers also took part in the meeting. In the said meeting, no one on behalf of M/S Mayur Enterprises had participated in the negotiation whereas, M/S KBL Nidek, New Delhi enhanced the bid amount from Rs.1,23,60,320/- to Rs.1,41,20,000/- with Lasik machine and M/S Gainwell Medimart, Bangluru reduced the bid amount from Rs.1,32,23,430/- to Rs.1,28,00,000/- without auto eye tracking but with Lasik machine. In the said meeting, it was decided to purchase Laser Scan-2000 from M/S Gainwell Medimart, Bengalure. It is also alleged that if the Excimer Laser Machine was to be purchased without auto Eye Tracking then



K.B.L. Nidek's EC-5000 was available for the price of Rs.1,23,60,320/-, in respect of which there was a recommendation of the Specialists and a report was also available regarding users and had been reported as satisfactory. It is also alleged that during the enquiry, it transpired that the machines of M/S Mayur Chiron and Ms. K.L.B. Nidek were to be given preference as per the commendation of the Specialist Committee. However, the Special Purchase Committee informed that machine of M/S Mayur Chiron was not possible to be purchased since the price mentioned by it in the tender was higher than the fund allotted whereas, the offer of M/S K.B.L. Nidek, was rejected without any valid reason.

3.2. It is also reported that the price of EC Machine of M/S Nidek Firm was less than the fund allocated by the Government and the same could have been purchased and the Specialist had also recommended this machine and users had reported the performance of the same to be satisfactory. But for extending the wrongful gain, decision was taken to purchase Laser Scan-2000 from M/S Gainwell Medimart for which earlier the committee of Dr. Supriyo Ghosh and Dr. Mahesh Chandra had made no recommendation and the local representative of Gainwell Medimart was orally called for



negotiations and thereafter Laser Scan-2000 was selected for purchase.

3.3. It is also reported that for purchase of Eximer Laser Machine, an agreement was prepared on 13.04.1998 in which on behalf of the I.G.I.M.S., Dr. D.K. Yadav, Dr. Mahesh Chandra, Dr. Mrinal Anand, Dr. Subhash Prasad and Shri S.R. Gayin and on behalf of Laser Site Technology, its Indian representative T. Chidambaram signed. After the purchase order, M/S Gainwell Medimart through Shri T. Chidambaram sent a letter to the Health Commissioner, Bihar, by which it was pointed out that the cost of Auto Eye Tracking machine was \$42,000.00 and if the institute wanted the same it could procure the same by paying additional cost. In the said letter, it has also been requested to issue a fresh supply order after modifying earlier supply order. Thereafter, the institute executed a second contract letter dated 28.05.1998 in which auto eye tracking system was removed. It has also been reported that during enquiry, it transpired that the manufacturer firm had stopped the manufacturing of the machine in the year 1997 itself. Even if the machine had been manufactured in the USA but the same was being imported from Costa Rica, which was contrary to the conditions and was indicative of the fact that



machine being a second hand one. When the machine reached its destination at I.G.I.M.S. then the inspection Committee found several deficiencies in the machine and the same was found to be a second hand junk machine, which is lying useless. It is also reported that the junk machine was sent to India in haste and was lying at Calcutta Airport for several days, for which the airport authority demanded a demurrage of Rs.8,62,808/-. Thereafter, the Director, P.S. Chaudhary took the said amount to Calcutta and stayed there for several days and paid the said amount and thereafter the machine was sent to the institute. It is also reported that the said machine was received in the institute, but from the report of the committee it came to light that the supply had not been made in terms of the contract and that it was an old broken machine and the then Director Dr. Major P.S. Chaudhary, instead of directing for return of the machine and taking action, has called the engineers of M/S Gainwell Medimart and requested for replacing the broken parts of the machine.

3.4. It is also reported that from the above facts, it is evident that the accused persons under a conspiracy for personal gain contracted with M/S Gainwell Medimart for substandard Excimer laser Machine against the conditions



although there was no written communication to the firm for negotiation and the expert had also not recommended this firm. It is also alleged that the then Health Secretary, C.K. Basu, gave wrong information to Dr. Supriyo Ghosh, got a second opinion and executed a second agreement with M/S Gainwell Medimart without auto eye tracking and user list was also ignored so that Excimer 2000 could be purchased. In the first agreement or in the second agreement, there was no adverse remark of any person against the purchase of Excimer Laser Machine from M/S Gainwell Medimart. Dr. Mahesh Chandra, Dr. Mrinal Anand and Dr. Subhash Prasad had made remarks in context of auto eye tracking in the first agreement but they have not made any remark with respect to Excimer Laser. It is also alleged that after second agreement, none of the persons of the committee filed any complaint and said members of the committee in connivance with the President of M/S Gainwell Medimart namely, T. Chidambaram and local agent namely, Neel Mohan awarded the contract to the M/S Gainwell Medimart without auto eye tracking machine and paid a sum of Rs.80,00,000/- to the said firm whereas, till date the said machine is lying unworkable and unused. It is also alleged that T. Chidambaram, the President of the Company and local agent of the said firm



namely, Neel Mohan gave wrong information on behalf of the firm and are involved in the said crime from the very beginning and the then Director, P.S. Chaudhary, after his joining, also involved in the conspiracy and showed interest in getting money paid to the said firm for his own gains. In this manner, the accused persons under a conspiracy got wrong documents prepared and by taking illegal gains, a substandard machine was purchased at an excessive loss causing heavy financial loss to the Government.

4. Learned senior counsel for the petitioner submits that the petitioner is named in the F.I.R. and the charge-sheet was submitted against him on 20.06.2007 and cognizance has been taken against the petitioner on 02.07.2007 but till date charges have not been framed. He further submits that the petitioner is on bail and has been represented in the court below through his lawyer.

5. Learned senior counsel for the petitioner also submits that the investigation is still pending against some other co-accused persons and the police papers have not been supplied to the petitioner. Further, the petitioner has not made any payment to the supplier namely, Sumit Bagaria @ Sumit Najoria @ Sumit Bajoria and it is the other co-accused who has



made payment after the petitioner relinquished charge.

6. It has been submitted by learned senior counsel for the petitioner that the petitioner was the Director of the I.G.I.M.S. for the first time on *ad-hoc* basis from 19.12.1997 to 29.05.1998, again from 31.05.2001 to 30.11.2001 and then again from 04.11.2003 to 18.11.2003. However due to this case, he handed over the charge on 15.07.2007. Lastly, petitioner retired on 30.06.2016 as a Professor Community Medicine. The specialty of the petitioner was in Community Medicine and Hospital Administration. The petitioner was not an Ophthalmologist who could have acquired any knowledge in purchase of the equipment related to the field of Ophthalmologist.

7. It has further been submitted by the learned senior counsel for the petitioner that the petitioner was not a member of the Tender Opening Committee rather Tender Opening Committee was headed by Dr. Mahesh Chandra consisting of 6 members, which had opened all the three Tenders for the purchase of Excimer Laser Machine and had prepared the comparison chart of all the three bidders. Subsequently, a “Technical Bid Committee” was constituted consisting of 8 members pursuant to the suggestion of Sri



Mahesh Chandra, and admittedly, the petitioner was not the member of Technical Bid Committee.

8. It has further been submitted by the learned senior counsel for the petitioner that Two Men Committee of Technical Expert was constituted to make recommendation regarding the equipment, comprising of Dr. Mahesh Chandra, Head of Department (Ophthalmologist) I.G.I.M.S. and Dr. Supriyo Ghosh, Professor in Rajendra Prasad Eye Centre of AIIMS, New Delhi. This Committee was constituted to go into the Technical Specification submitted by the individual Companies, who had participated in the tender process and to find out as to which of the machines of which company would be best for the use of the I.G.I.M.S.

9. It has been argued by learned counsel for the petitioner that the petitioner was appointed only as a working Director of I.G.I.M.S. for routine functions in view of the resignation of the regular Director. Since the petitioner was hesitating being the Chairman of the Purchase Committee for such large purchases, he communicated his hesitancy and objection in respect of being the Chairman of the Purchase Committee to the BOG of the I.G.I.M.S. and pursuant to which, the BOG constituted a Special Purchase Committee which was



headed by Mr. C.K. Basu, the then Health Commissioner, Bihar.

10. It has also been argued by learned senior counsel for the petitioner that in view of the reports dated 03.03.1998 and 29.03.1998, the Special Purchase Committee under the Chairmanship of the Health Commissioner, took a decision to purchase the said Excimer Laser Machine from M/s Gainwell Medi Mart Ltd., Bangalore. On the basis of the said recommendation of the Technical Expert Committee the then Head of the Department namely Dr. Mahesh Chandra prepared a comparative statement of all the equipment which was to be considered by the Special Purchase Committee including the Excimer Laser Machine and Mr. C. K. Basu signed the said comparative statement on 31.03.1998 itself and returned the same to the petitioner who thereafter signed the same.

11. The submission of the learned counsel for the petitioner is that the petitioner had not made any payment whatsoever to the seller. Immediately after issuing the purchase order, the petitioner relinquished his charged as a Director and as it was during the tenure of the subsequent Director namely Major Gen. P.S. Chaudhary, the said machine was received and payments were made. The machine was received on 27.09.2000 during the tenure of Major General P.S. Choudhary who was the



director of the I.G.I.M.S. On opening of the machine, it was found that three wheels of the unit were also broken and therefore, it was replaced.

12. The next submission of the learned senior counsel for the petitioner is that few doctors received training for operating the Laser Scan 2000 unit and the Bank Guarantee furnished by the vendor was revoked by the petitioner being the Director of the I.G.I.M.S. in view of the malfunction of the machine on the ground that the supplier had not fulfilled the terms and conditions of the supply order and agreement. During the tenure of the petitioner as the Director of the I.G.I.M.S., the earnest money and security deposit made by M/s Gainwell Medi Mart Ltd., had been forfeited and an Arbitration proceeding was filed after due approval of the Board of Governors and the Government of Bihar and thereafter, the learned Arbitrator was appointed for arbitration and the arbitration proceeding is pending for adjudication.

13. The argument of the petitioner is that the alleged purchase of machine was made in the year 1998, the F.I.R. was lodged on 04.03.2006 and the charge-sheet was submitted against the petitioner on 20.06.2007, cognizance was taken on 02.07.2007, but thereafter nothing happened in the



case. The investigation is still pending against other co-accused and the charges have not been framed till date.

14. Learned counsel for the Vigilance Department submits that during the enquiry it was found that the members of the Purchase Committee by abusing their official position and in violation of the conditions prescribed in the tender and letter dated 31.03.1997 issued by the Health Department purchased the Excimer Laser Machine without Lasik of inferior quality for IGIMS. He further submits that in the negotiation, M/S Mayur did not participate whereas M/S. K.L.B. New Delhi and M/S Gainwell Medimart Private Limited, Bangalore were present for the negotiations. The Special Purchase Committee finalized Laser Scan 200 at the rate of Rs.1,28,00,000/- from M/S Gainwell Medimart Private Limited, Banglure without auto eye tracking machine whereas Nidek Excimer Laser Model EC 5000 from K.L.B. New Delhi without auto eye tracking machine was available at the rate of Rs.1,23,60,320/-.

15. Learned counsel for the Vigilance Department also submits that against the recommendation of Expert Dr. Ghosh Laser Scan 2000 was purchased from M/S Gainwell Medimart Private Limited Bangaluru for which no user report was ever called for although the same was



mandatory as per the conditions of the N.I.T.

16. Learned counsel for the Vigilance Department submits that several complaints were filed before the Department of the Vigilance regarding irregularity and illegality committed by the Purchase Committee of the I.G.I.M.S in the purchase of the machine and in light of the aforesaid complaints inquiry was conducted and subsequently a separate vigilance inquiry team was constituted to inquire into the matter.

17. It has also been submitted by learned counsel for the Vigilance Department, upon inquiry that the files related to purchase of Excimer Laser Machine revealed that the members of the purchase committee by abusing official positions and in violation of the conditions prescribed in the letter dated 31.03.1997 issued by the Health Department, Govt. of Bihar has purchased Excimer Laser Machine (without lasik) of inferior quality for the I.G.I.M.S., which after installation become un operational.

18. I have considered the submissions of the parties and perused the materials available on record. From the record, it appears that for a business transaction of 1996, the F.I.R. has been registered in the year 2006. After investigation by the Vigilance Department i.e. after a period of 10 years of



alleged transaction. In the said F.I.R., the petitioner was not arrayed as an accused. However, after 12 years of lodging of the F.I.R. a supplementary charge-sheet was filed in the year 2018 in which the petitioner was arrayed as an accused and on the basis of the aforesaid supplementary charge-sheet, cognizance was taken against the petitioner in the year 2019 and summons have been issued in the year 2021. It also appears that the investigation has been kept pending against the official accused i.e. former Director General of I.G.I.M.S. and even after 17 years of lodging of the F.I.R. the investigation is still going on. In this way, there is unwarranted inordinate delay in investigation of the case. On account of pendency of investigation, the petitioner has already suffered mental and physical agony. Further, nothing could be shown by the Vigilance Department to attribute the aforesaid inordinate delay which was in any way caused by the petitioner. Therefore, this Court is of the opinion that right of the petitioner for speedy trial has been infringed.

19. The Hon'ble Supreme Court in the case ***Pankaj Kumar vs State Of Maharashtra & Ors; (2008) 16 SCC 117*** has held in paragraph nos. 22 to 28 as follows:-

“22. It is, therefore, well settled that the right to speedy trial in all criminal



prosecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases.

23. *In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time for the conclusion of trial.*
24. *Tested on the touchstone of the broad principles, enumerated above, we are of the opinion that in the instant case, the appellant's constitutional right recognised under Article 21 of the Constitution stands violated. It is common ground that the first information report was recorded on 12-5-1987 for the offences allegedly committed in the year 1981, and after unwarranted prolonged investigations, involving aforestated three financial irregularities; the charge-sheet was submitted in court on 22-2-1991. Nothing happened till April 1999, when*



the appellant and his deceased mother filed criminal writ petition seeking quashing of proceedings before the trial court.

25. *Though, it is true that the plea with regard to inordinate delay in investigations and trial has been raised before us for the first time but we feel that at this distant point of time, it would be unfair to the appellant to remit the matter back to the High Court for examining the said plea of the appellant. Apart from the fact that it would further protract the already delayed trial, no fruitful purpose would be served as learned counsel for the State very fairly stated before us that he had no explanation to offer for the delay in investigations and the reason why the trial did not commence for eight long years. Nothing, whatsoever, could be pointed out, far from being established, to show that the delay was in any way attributable to the appellant.*
26. *Moreover, having regard to the nature of the accusations against the appellant, briefly referred to above, who was a young boy of about eighteen years of age in the year 1981, when the acts of omission and commission were allegedly committed by the concerns managed by his parents, who have since died, we feel that the extreme mental stress and strain of prolonged investigation by the Anti-Corruption Bureau and the sword of Damocles hanging perilously over his head for over fifteen years must have wrecked his entire career.*
27. *Be that as it may, the prosecution has failed to show any exceptional circumstance, which could possibly be taken into consideration for condoning the prolongation of investigation and the trial. The lackadaisical manner of investigation spread over a period of four years in a case of this type and inordinate delay of over eight years*



(excluding the period when the record of the trial court was in the High Court), is manifestly clear.

28. *Thus, on facts in hand, we are convinced that the appellant has been denied his valuable constitutional right to a speedy investigation and trial and, therefore, criminal proceedings initiated against him in the year 1987 and pending in the Court of the Special Judge, Latur, deserve to be quashed on this short ground alone."*

20. In a similar situation, in the case of ***Santosh De vs. Archana Guha & Ors; (1994) Supp 3 SCC 735***, wherein a delay of eight years in commencing the trial was held to be violative of the right of the accused to a speedy trial and the decision of this High Court to quash the criminal proceedings on that ground was affirmed by the Hon'ble Apex Court. It will be relevant to quote paragraph no.18 of the aforesaid decision, which is as follows:-

"18. While we appreciate that a serious criminal offence might have taken place at the hands of Respondents 1 to 9, we cannot be oblivious to the fact that almost 17 years have elapsed since the date of that occurrence and there are these several delays pointed out earlier which remain unexplained. We think that in the circumstances the rights of Respondents 1 to 9 to a speedy trial have been breached and no interference with the judgment under appeal is called for. The appeal is dismissed."
(emphasis supplied)

21. Further, from the reading of the materials on record, I am of the view, that a commercial dispute is being



given the colour of criminal case and the dispute is primarily a commercial one and no criminality can be fastened on the petitioner. During the entire investigation, no material has come against the petitioner to connect him with the alleged crime. Moreover, an arbitration proceeding is pending between the I.G.I.M.S. and the company. The company had replaced the machine which was supplied by them earlier. It also appears that specialized doctors had trained the doctors of I.G.I.M.S. to use the machine and had performed eye surgery also. If the doctors of I.G.I.M.S. failed to utilize the machine for the surgery the petitioner machine cannot be prosecuted. Further, the petitioner was the Director of I.G.I.M.S. and from the F.I.R. as well as the materials collected during the entire investigation no specific role has been assigned to the petitioner to warrant his prosecution in a criminal case.

22. In view of the above discussions, this Court is of the opinion that the prosecution of the petitioner is illegal and cannot be continued as no offence is made out against the petitioner and the dispute is entirely a commercial dispute. Further, the prosecution of the petitioner also cannot be sustained as the right of the petitioner to a speedy trial has been breached.



23. In the result, this application is allowed. The F.I.R. *vide* Special Case No. 10/06, arising out of Vigilance P.S. Case No. 12/2006, including the order dated 02.07.2007 passed by the learned Special Judge, Vigilance- 1, Patna and all consequential proceedings arising out of the aforesaid F.I.R. are hereby quashed with respect to the present petitioner only in the interest of justice.

(Sandeep Kumar, J)

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