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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 3102/2024 & CM APPL. 12766/2024 CM APPL.
12767/2024
SURESH

..... Petitioner

Through: Mr. Umesh Sharma, Mr. M. K. Gaur
and Mr. Sumit Choudhary, Advocates

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Satyakam, ASC, GNCTD with
Mr. Pradyut Kashyap, Advocate for
R-1

Ms. Sangeeta Bharti, Standing
Counsel, Delhi Jal Board with Ms.
Malvi Balyan, and Ms. Aarushi Behl,
Advocates for R-2/DJB

Mr. Ravinder Agarwal and Mr. Lekh
Raj Singh, Advocates for R-3

Mr. Ripu Daman Bhardwaj, SPP with
Mr. Kushagra Kumar, Advocate for
CBI/R-4

Mr. Zoheb Hossain, Special Counsel
for ED with Mr. Vivek Gurnani,
Advocate for R-5

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Date of Decision: 1st March, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMOHAN, ACJ: (ORAL)**

1. This writ petition has been filed as a Public Interest Litigation ('PIL')
seeking issuance of following directions:



I) Writ, Order or direction in the nature of MANDAMUS or any other appropriate writ, order or direction, thereby directing the Respondent No. 2 to recover the entire amount as due from the Respondent No. 7 against the sale of the dredging material from river Yamuna since 2013 till the termination of the contract by DJB on 4/2/2022 with interest within a time frame and to deposit the due Income Tax, GST and all other statutory dues accrued from the Income.

II) Writ, order or direction in the nature of MANDAMUS or any other writ, order or direction thereby directing the DJB and all other related agencies to install CCTV and weighing machines at the site of dredging to be operated and run by a third party to regulate and ensure the real figure of dredging and extraction of sand from Yamuna for the purposes of fixing of royalties to be paid to the DJB by the contractor.

III) Writ, Order or direction in the nature of MANDAMUS or any other appropriate writ, order or direction **thereby quashing the tender under the name and style of "DREDGING OF SILT FROM RIVER YAMUNA NEAR INTAKE IN THE DJB PONDAGE AREA AT WAZIRABAD WATER WORKS vide N.I.T. NO. 03 2023-24) RE-INVITE."** and **declaring that the practice of granting the contract of dredging and lifting the sand from river Yamuna to one contractor under one work order is contrary to the interest of the government and to direct the Respondent No. 2 to frame rules and mandate the issuance of two separate NITs of tenders splitting dredging and lifting of material separately and award the said work separately to two different parties through two different tenders.**

IV) Writ, Order or direction in the nature of MANDAMUS or any other appropriate writ, order or direction, thereby directing the Respondent No. 3, to hold a detailed enquiry in the subject of grant and monitoring of the work order No. 05 (2013-14) to the Respondent No. 7 and the collusion and indulgence of the officials of DJB in the same.

V) Writ, Order or direction in the nature of MANDAMUS or any other appropriate writ, order or direction, thereby directing the Respondent No.4, to track the money trail by the Respondent No.8 contractor in its company through various questionable means and payment of money through indirect means to officials of DJB and the ministers of Delhi Government as the RC No.5 (s) is already registered against him under the scheduled offense described under the Prevention of Money Laundry Act, 2005.

VI) Writ, order or direction in the nature of MANDAMUS or any other writ, order or direction thereby ordering for forensic audit to establish the quantum of dredging done, quantity of material lifted from river Yamuna and its price (@ determined under the orders of the Hon'ble National Green Tribunal, Principal Bench at New Delhi in OA No. 168/2014.



VII) *Writ, order or direction in the nature of MANDAMUS or any other writ, order or direction thereby directing the Respondent NO. 6 to recover the dues GST alongwith interest, penalty on the amount of money paid as royalties by the Respondent No. 7 & 8.*

VIII) *Any other order which the Hon'ble Court may deem fit be also passed."*

(Emphasis Supplied)

2. The Petitioner's case, in brief, is that the Respondent No.2 – Delhi Jal Board ('DJB') had awarded a works contract to the Respondent No. 7 – Chinnar Shipping & Infrastructure (India) Pvt. Ltd., in the year 2013 ('erstwhile tender') for dredging and desilting of Yamuna River. It is stated that however, the Respondent No.7 in the garb of de-silting of Yamuna River, had actually indulged in the illegal act of extraction of sand from the said river and made illegal gains by selling it.

2.1. It is stated that an Original Application being O.A. No. 168/2017 was filed in this regard before the Principal Bench, National Green Tribunal, Delhi ('NGT'), wherein the NGT observed that the activity of Respondent cannot be termed as 'de-silting simpliciter'. The NGT accordingly, disposed of the said O.A. vide order dated 24th August, 2015, constituting a committee of officials of various government authorities with direction to consider the material placed before NGT and submit their recommendations to the GNCTD for passing of appropriate orders.

2.2. It is stated that the matter was thereafter, also considered by Lokpal of India ('Lokpal') in a complaint bearing no. 3574/2022.

3. Learned counsel for the Petitioner states that the urgent relief sought in the present proceedings is the stay of the award of the tender by the DJB to Respondent No. 8, with respect to "DREDGING OF SILT FROM RIVER



YAMUNA NEAR INTAKE IN THE DJB PONDAGE AREA AT WAZIRABAD WATER WORKS vide N.I.T. NO. 03 2023-24) RE-INVITE” dated 11th September, 2023. He states that in fact, the contract for dredging should be split up from the contract for lifting of the sand. He states that this work should be awarded to two separate contractors so as to avoid illegal exploitation of the valuable natural resource i.e., sand. He states that the modus of splitting the work of dredging and lifting into two separate contracts has also been adopted by the Government of Andhra Pradesh. He states that the Petitioner has filed CM APPL. 12766/2024 seeking a restraint against Respondent No. 2 from proceeding with the award of tender during the pendency of this petition and is praying for an interim stay.

3.1. He states that the Petitioner is a public-spirited person and has no personal interest in the matter. He states that the Petitioner has collected the documents filed as annexures to this writ petition from the documents available on the official website of the Government Departments.

4. In reply, learned counsel for Respondent No. 2 states that in pursuance to the directions dated 1st March, 2023, issued by the Lokpal, the Respondent No. 2 has instituted a suit for recovery of the balance amount of Rs. 38,18,648/- from the erstwhile contractor i.e., Respondent No. 7. She states that a sum of Rs. 732.78 lacs already stand recovered from Respondent No. 7 as recorded in the said order. She relies upon the contents of the order dated 01st March, 2023 passed by the Lokpal.

5. Having considered the submissions of the counsel for the Petitioner as well as Respondent No. 2 and upon perusal of the record, we are of the considered opinion that the present petition cannot be maintained as a PIL.



A perusal of the prayer-III of this PIL and the interim prayer sought in CM APPL. 12766/2024, for stay of the tender, is indicative of the fact that the present petition does not espouse any genuine cause.

6. Further, a perusal of the final order dated 1st March, 2023, passed by the Lokpal shows that in the said proceedings, in pursuance to a complaint dated 7th June, 2022, a preliminary report was sought by the Lokpal from the Central Vigilance Commission ('CVC'). The said order records that a preliminary enquiry report was submitted by Central Vigilance Officer ('CVO') of the DJB. Thereafter, a second report was sought from the CVO. The first and second report submitted by CVO DJB in 2023 were duly considered by the Lokpal, in this order and it returned the following findings:-

"We have considered the report of the CVO, DJB received through CVC provided in the report. It emerges from the report that decisions in the instant case were taken at multiple stages by various officials dealing with the respective issues. The allegations levelled in the complaint against the public servant i.e. Chairperson/Chairman, DJB could not be substantiated. It has also been informed, inter alia, that all due payments of dredging work were adjusted towards recovery of lifted material and no net payment was released to the agency after Hon'ble NGT Order dated 15.04.2015. With vigorous pursuance with the agency, an amount of Rs.732.78 lakhs has been recovered from the agency for the lifted dredged material including encashment of bank guarantee, forfeiture of security, deposition in cash, etc. as per details given in the report. Balance payment of Rs.38,18,648/- remains to be recovered from the agency which is being pursued by the DJB. The contract has also been terminated on 04.02.2022 due to non-fulfilment of contractual obligation by the Agency.

In view of the above, we direct that the balance amount of Rs.38,18,648/- may be recovered from the agency as early as possible and a compliance report may be submitted by the DJB through CVC to the Lokpal Secretariat within a period of four weeks i.e. on or before 07.04.2023."

7. The issue of allegations of wrongdoings by the officials of DJB and



the recovery of the royalty amount from Respondent No. 7 has been noted in the said proceedings. The Lokpal has also issued directions to DJB to recover the outstanding amount from Respondent No. 7 and as stated by DJB, the appropriate proceedings stand instituted. The computation of the royalty amount was also a subject matter of scrutiny before the Lokpal and the report submitted by the CVO, DJB on this aspect has been accepted by the Lokpal.

8. The Petitioner in the present proceedings seeks to challenge the DJB's computation of the royalty amount, recovered from the erstwhile contractor in the present petition, and has set out its contra computation at para 6.16 of this petition. In our considered opinion, the alleged computation is prima facie based on surmises and is unsubstantiated from the record. The said facts and figures cannot form the basis of initiating an enquiry in the writ proceedings. The contentions at para 6.16 raises disputed questions of fact, which would require leading of evidence and even otherwise cannot be adjudicated upon in the writ petition. The prayers (I) and (VI) therefore, cannot be maintained.

9. The Petitioner further seeks a direction to CVC i.e., Respondent No. 3 to hold an enquiry with respect to award and implementation of the erstwhile tender in favour of Respondent No. 7 during the extended period. However, as noted above, in the proceedings before the Lokpal, this issue was referred to CVC, which investigated it and reported back to the Lokpal. Therefore, prayer (IV) cannot be maintained for an action which has already been undertaken.

10. The proceedings before the Lokpal record that Rs. 732.78 lacs



towards royalty already stand recovered by DJB from the Respondent No. 7. The Lokpal directed DJB to initiate proceedings for recovery of a balance sum of Rs. 38,18,648 towards royalty. As noted above, as per the learned counsel for DJB, the civil suit has already been filed. In view thereof, the prayer (VII) does not arise for consideration.

11. As noted above, we are not persuaded that the present petition has been filed in public interest. We are not persuaded by the credentials of the Petitioner who has filed this petition. Further, in view of the fact that Lokpal, NGT and CVC have already enquired into the same issue/matter and the facts alleged in the petition have been duly considered by the said authorities, we find no material in the present petition for directing re-enquiry. In view of the aforesaid observations, we do not find any merit in the present petition and the same is dismissed along with pending applications.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MARCH 1, 2024/rhc/hp/aa