

Dr. B.L. Wadhera Vs Union of India (UOI) and Others

Court: Delhi High Court

Date of Decision: March 22, 2002

Citation: (2002) 99 DLT 484

Hon'ble Judges: S.B. Sinha, C.J; A.K. Sikri, J

Bench: Division Bench

Advocate: Ashok Anand, for the Appellant; K.K. Sud, ASG, U. Hazarika and Neeraj Jain for UOI, Anil Grover, for MCD and V.K. Shali, for Govt. of NCT of Delhi, for the Respondent

Judgement

S.B. Sinha, C.J.

Non-user of the Refuse Incinerator-cum-Power Generation Plant (hereinafter called "the plant" in short) which was

imported at a cost of Rs. 20 crores from a Danish supplier is the subject matter of this writ petition which is in the nature of Public Interest

Litigation.

2. The supply of the said plant was to enable the State to generate electric energy from garbage. The Ministry could not enter into any understanding

with the Municipal Corporation of Delhi/Delhi Vidyut Board for the said purpose. Allegedly, no demonstration was given by the said Danish

supplier as regards its successful operation. Disputes and differences having arisen between the Central Government and the said Danish supplier,

the matter was referred to arbitration in London. The London Arbitration Tribunal gave its award in 1993 against the Ministry of Non-

Conventional Energy Sources and in favor of the said Danish supplier. In the year 1999, the Ministry initiated fresh attempts through issue of global

advertisement for identifying new entrepreneur to make the plant operational. The result of the said effort, however, is not known. In the

meanwhile, towards maintenance of plant, a sum of Rs. 1 crore was expended till March 1988 where after the Ministry stopped providing funds.

Despite the same, Delhi Vidyut Board continued to maintain the plant and spent about a sum of Rs. 33 lakhs. The Ministry also paid a sum of Rs.

25.49 lakhs. From the afore-mentioned, the petitioner has contended:

(a) The fact that the above said plant did not work even for a day because of failure of the foreign supplier to demonstrate successful operation

and the foreign supplier referring the matter to foreign arbitration and securing an award in his favor, obviously raises irresistible inference that there

was something seriously wrong on the part of the said Ministry having entered into such an agreement with the foreign supplier of the Bank.

Reportedly the quality of the garbage promised to be supplied for incineration and consequent generation of power was not supplied which

became the reason for failure and non-performance of the plant. If that be so or if there could be any other reason for which the said Ministry failed

and award went in favor of the foreign supplier, it is a case where an enquiry was called for to fix responsibility for such mess up leading to the loss

of the huge cost incurred in installing the plant i.e. Rs. 20 crores and the interest on the said amount since March 1985, as also the further amounts

spent on the shut down maintenance of the plant, year after year as well as expenses on account of insurance etc.

(b) The effort at making the plant re-operational through private entrepreneur M/s Zen Global Finance Limited, failed even when the said private

entrepreneur had offered to carryout the necessary modifications in the plant designed at this own cost. The matter could not be finalised because

the said Union Ministry could not bring about understanding/agreements between the Government of NCT of Delhi and the MCD supplying

garbage free of cost at the plant site, and DVB purchasing the power to be generated from the plant.

This failure on the part of the said Ministry, the Delhi Government and MCD and DVB to be able to bring about understanding between

themselves and with the said private entrepreneur, is also a circumstance that needs to be gone into to fix responsibility for such failure.

[Emphasis supplied]

3. In the counter-affidavit of respondent No. 4, the afore-mentioned fact is not disputed.

4. Shri A.K. Varshney, the Principal Officer of the respondent No. 1/UOI filed an affidavit on 17th February 2001 wherewith a copy of the

Interim Final Award of the Arbitrator was annexed. On legal advice, an appeal preferred there against in this Court was withdrawn.

5. By an order dated 10th April 2001, a Division Bench of this court directed:

We have perused the counter affidavit filed by the Central Government. In view of the award made and withdrawal of the appeal against that, the

appropriate course to be adopted at this stage would be to fix up responsibilities on those who are responsible for causing the massive loss of

public exchequer. Necessary steps in that regard be initiated by the competent authority, if not already done.

6. The matter was purported to have been entered into by one Mr. Amitabha Pande, Joint Secretary in the Department of Science and

Technology, Ministry of Science and Technology, Government of India.

7. The Report is a tell-tale one. For all intent and purport, the Report suggests a total callousness on the part of those who were associated with

the transaction. Despite the same, a major mitigating factor namely, that the project was treated as an R&D project, was highlighted stating:

The history of the development of space technologies, for example, is replete with instances of monumental failures, yet it has been considered

worthwhile to continue with developmental exercises and experimentation. No monetary quantification of such failures can outweigh the benefits of

the knowledge gained, the experience acquired and the lessons learnt.

8. No case of any impropriety, manipulation or personal financial gain was found. It was noted in the Report:

Lastly, I find no reason why the plant, which has been set up at considerable cost to the nation, and has been under regular up-keep and shut-

down maintenance since its closure in July 1990, cannot still be redeemed and made to serve the purpose it was intended for, if sufficient attempts

are made to redesign the overall project. The quantum of garbage being generated in Delhi has almost doubled since 1987 when the plant was set

up and its composition has also undergone major changes with the affluence level of its citizens and increase in plastics/paper usage. The civic

bodies-MCD as well as NDMC - are already finding it increasingly difficult to collect and dispose of the entire waste; the existing landfills have

already reached their full capacity and finding land for new landfills is a challenge. The adverse environmental effects of landfills can also not be

ignored. It is also technically not feasible to dispose of the entire waste through options like composting, which have their own drawbacks. The

major advantage of Incineration technology lies in its capacity to handle mixed municipal waste and to reduce the waste volumes by over 90%.

Though air emissions from such plants are a cause of concern, but with technological advancements worldwide over last two decades, it is possible

to limit these to within the strictest international standards. It is also far better to have a centralized incineration facility for garbage instead of

burning it indiscriminately in the open (which is a common sight despite the ban imposed on such practice). What is only required by the Timarpur

plant is proper feedstock - and there is no reason why, with some careful planning and efforts on part of the MCD of its waste collection activity,

the same cannot be arranged, as was also opined by the independent consultants R&H. The pulverization technology developed by the DST can

also be gainfully utilized and integrated with the incineration plant, to ensure consistent supply of high calorific value garbage required by the plant.

The project, Therefore, needs a fresh appraisal keeping in view all these factors and, attempts should be made to make it operational again.

9. The petitioner has made an elaborate response/submission on the said report of the enquiry. It was pointed out that except the materials on

record, no attempt has been made by the said enquiry officer to make an enquiry or investigation from any of the persons or authorities involved in

the initial decision making or going in for the project.

10. The petitioner herein has made elaborate statements as to what had happened. An attempt had been made in the said response/submission to

highlight bureaucratic incompetence and uncalled for political intervention.

11. It was contended that the enquiry officer has tried to blame the system.

12. Mr. Wadhwa, the petitioner herein has sought to point out that taking wrong decisions at different stages by non-application of mind has

brought out the failings of the individual officers or group of officers. It is not a case where the failure can be attributed to the system itself.

13. Mr. K.K. Sood, the learned Additional Solicitor General, on the other hand, would contend that as nothing has been found on record to point

out any ill motive or mala fide on the part of an individual officer, the court may not direct any further enquiry at this stage.

14. Having heard the learned counsel for the parties, we are of the opinion that in its own interest, the administration itself should have directed a

thorough enquiry into the matter. The cost of the plant amounting to Rs. 22 crores went down the drain. It is not known how much amount had

been spent in contesting the arbitration proceedings in London. It is not in dispute that despite the fact that an award had been made against it,

further amount had been spent towards alleged maintenance of the plant but even then no effective use thereof was made.

15. A power may not be exercised maliciously. The exercise of a power may not be motivated by personal gain but yet in a transaction of this

nature, holders of public offices are expected to take great care and caution. The Central Government, upon identifying those persons who might

have acted recklessly throwing all norms to the wind, may or may not take action. But there could not have been any reason as to why despite the

order of this court as regards fixing the personal liability upon the concerned officer or group of authorities, the same could not be found out. We

accept the contention made on behalf of the petitioner that it was not a case where an enquiry could have been would up by throwing the entire

blame on the system itself. Prima facie, we also fail to appreciate as to how purchase of the plant could be attributed to the failure in a research

project. The plant was yet to be made use of. No order should have been placed for procurement of the plant unless its utilities were well known.

The basic fact as to whether such a plant can be put to use or not should have been gone into. If such basic concepts of putting a plant to use had

not been adhered to, the failure cannot be attributed to the system. No other example has been brought to our notice where in a similar fact

situation, the Government had to spend a lot of money in treading an unknown path. We, Therefore, are of the opinion that the matter should

further be enquired into.

16. Before us, the Comptroller and Auditor General is a party. The said constitutional authority at one point of time or other may have to make an

enquiry with regard to the afore-mentioned transaction. We, Therefore, request the said Authority to make further enquiry into the matter. A report

may be submitted before the concerned Ministry whereupon, it would be open to the Central Government to take such action as is deem fit and

proper.

17. This writ petition is disposed of with the afore-mentioned directions and observations but in the facts and circumstances of this case, there

would be no order as to costs.