

(2012) 04 JH CK 0011

Jharkhand High Court

Case No: Criminal M.P. No. 1136 of 2011

Ripu Sudan Dubey

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: April 27, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120(B), 420, 468, 471
- Prevention of Corruption Act, 1988 - Section 13(1)(d), 13(2)

Citation: (2012) 2 Crimes 491

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: Bimal Kumar, Rajesh Lala and Anurag Kumar, for the Appellant; M. Khan, Advocate, for the C.B.I., for the Respondent

Final Decision: Allowed

Judgement

R.R. Prasad, J.

This application has been filed for quashing of the order dated 2.2.2011 passed by the Special Judge. C.B.I. Ranchi in R.C. No. 11(A) of 2009-R whereby and where-under cognizance of the offences punishable u/s 120(B) read with Sections 420, 468, 471 of the Indian Penal Code and u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act has been taken against the petitioner. The facts leading to filing of this case are that on the direction given by this Court in W.P. (PIL) No. 803 of 2009, a preliminary enquiry was made on the matter relating to large scale irregularities and embezzlement of crores of rupees by the Engineers of the Road Construction Department, contractors and other persons in the matter of procurement of Bitumen for construction of road wherein it was found that the then Executive Engineers, Road Division, Road Construction Department, Hazaribagh, Shyam Sunder Singh, Birendra Kumar and Sone Lal during the period 2002-07 entered into a criminal conspiracy with M/s. Classic Coal Construction Pvt. Ltd. whereupon on submission of false/bogus invoices by M/s. Classic Coal Construction Pvt. Ltd.

showing procurement of Bitumen from Government Company for the execution of work awarded to him, payments were made.

2. It was further found that the contractors were required to procure Bitumen from the Public Sector Undertakings like Indian Oil Corporation, Bharat Petroleum Corporation Limited etc. and before using Bitumen, contractors were required to submit invoices for procurement of Bitumen, a certificate regarding quality of Bitumen procured but the contractors without procuring Bitumen from the Government Company submitted false invoices pertaining to procurement of Bitumen and thereby took payment of Rs. 17,69,517/- on the basis of false certification by the engineers. On such allegations, a case was registered as R.C. No. 11 (A) of 2009-R on 16.9.2009.

3. During course of investigation, it was found that out of seven works awarded to M/s. Classic Coal Construction Pvt. Ltd., the petitioner the then Executive Engineer, Road Construction Department, Road Division, Hazaribagh now retired had made agreements with him with respect to two works, one with respect to widening and strengthening work of Gola-Muri Road and another with respect to Chitarpur-Rajrappa Road. As per the agreements, the contractor was supposed to procure and supply Bitumen to be utilized in the work on the requisition to be made by the executive engineer and hence, the petitioner had issued an authority letter/requisition on 16.4.2002 in favour of the contractor addressed to different Oil Companies for delivering 6235.99 M.T. of Bitumen with respect to agreement relating to execution of work of Gola-Muri Road and further had issued authority letter/requisition for delivering 355.807 M.T. of Bitumen for execution of work relating to Chitarpur-Rajrappa Road. Thereupon the contractor by claiming to have procured Bitumen from H.P.C.L., Ramnagar, Kolkata submitted 68 invoices worth Rs. 90,66,923/- relating to Gola-Muri Road and further 39 invoices worth Rs. 53,36,253/- with respect to Chitarpur-Rajrappa Road but all those invoices were forged but still payments were made (not by the petitioner) upon certification being made by the engineers.

4. In course of investigation, it was also found that M/s. Classic Coal Construction Pvt. Ltd. to whom the work had been awarded and the second bidder M/s. Sidharth Construction, Hazaribagh had connived with each other with dishonest and fraudulent intention for getting the work awarded to M/s. Classic Coal Construction Pvt. Ltd. who had quoted the rate 50% above scheduled rate.

5. The facts collected during investigation on the point of deposit of earnest money and the security money go to show that both the bidders had formed a cartel to which the petitioner had had knowledge, still he executed an agreement with M/s. Classic Coal Construction Pvt. Ltd whereby Government was put to loss. The investigation with respect to other works was also made but presently, we are not concerned with that as it related to different persons.

6. Upon completion of the investigation, charge sheet was submitted against 17 persons leaving out those three persons against whom first information report was lodged. On submission of charge sheet cognizance of offences was taken which is under challenge. Mr. Bimal Kumar, learned Sr. counsel appearing for the petitioner submitted that basically the case was registered on the allegation that contractor on being awarded work was supposed to purchase Bitumen from the Government Company under the requisition to be sent by the Executive Engineers which, in fact, was sent by the petitioner but the contractor without procuring Bitumen from those companies submitted invoices claiming to have procured Bitumen from the Government

7. Company. The said invoices were certified and counter signed by some of the engineers (not the petitioner). On that basis, payments were made to the contractor but, those invoices, according to the case of the prosecution, were found to be forged as the invoices had never been issued by the Government Company still payments were made and therefore the case of misappropriation and forgery was lodged but the petitioner has never been alleged to have done anything towards certifying the invoices which were allegedly forged nor the petitioner has been alleged to have made payment to the contractor upon such forged invoices.

8. In this regard, it was further submitted that M/s. Classic Coal Construction Pvt. Ltd. on being found successful bidder by High Power Committee to which the petitioner was never the member, was awarded work and then, as per the procedure laid down under the PWD Code, the petitioner being Executive Engineer entered into an agreement with M/s. Classic Coal Construction Pvt. Ltd. Thereupon, the petitioner issued an authority/requisition in favour of the contractor addressed to different Oil Companies for delivering Bitumen to be used in repairing the work. Thereafter the petitioner got transferred and as such, he had nothing to do with the certification of the invoices or payment of the amount to the contractor, on the basis of forged document, still the petitioner is being prosecuted on the assumption that the petitioner had entered into an agreement with M/s. Classic Coal Construction Pvt. Ltd, who having formed cartel with another bidder M/s. Siddharth Construction, Hazaribagh succeeded in getting the contract on higher rate but the petitioner was never the person who awarded the contract to M/s. Classic Coal Construction Pvt. Ltd. rather it was High Power Committee, to which the petitioner was never a member who awarded contract to the said Company and only upon contract being awarded, the petitioner under the procedure of department had entered into an agreement with the Company and thereby the petitioner can never be said to have conspired with the Company in issuing work order and thereby no offence either of cheating or forgery or even under the Prevention of Corruption Act is made out so far this petitioner is concerned.

9. It was further pointed out that similar was the case with other Executive Engineers named in the first information report who had also executed an

agreement with M/s. Classic Coal Construction Pvt. Ltd. but the charge sheet has never been submitted against them presumably for the reason that action of those Executive Engineers named in the first information report has no element of any criminality. But in case of the petitioner, similarly situated, C.B.I. has formed another opinion which is without any foundation and as such, entire criminal case including the order taking cognizance is bad.

10. As against this, Mr. Khan, learned counsel appearing for the C.B.I. submitted that though the petitioner has not been named in the first information report but during investigation, it got revealed that M/s. Classic Coal Construction Pvt. Ltd and one M/s. Siddharth Construction, Hazaribagh had connived with each other and had formed a cartel whereby M/s. Siddharth Construction, Hazaribagh who had quoted rate more than the rate quoted by M/s. Classic Coal Construction Pvt. Ltd. helped M/s. Classic Coal Construction Pvt. Ltd. to get the contract.

11. In this regard it was submitted that number of circumstances are there to establish that both had formed a cartel which would be evident from the fact that for purchasing the tender document, draft of Rs. 10,000/- had been purchased from the same Bank on the same day and by the same person the staff of M/s. Classic Coal Construction Pvt. Ltd.

12. Further for depositing earnest money, two N.S.Cs each worth Rs. 5,36,000/- were purchased but money had been invested by Pawan Kumar Singh, an employee of M/s. Classic Coal Construction Pvt. Ltd and that the address of the investor in both the cases was the same, though one N.S.C. had been issued in the name of Pawan Kumar Singh whereas other N.S.C. was in the name of Kumar Anuj of M/s. Siddharth Construction, Hazaribagh. However, when contract was awarded to M/s. Classic Coal Construction Pvt. Ltd., N.S.C. held in the name of Kumar Anuj of M/s. Siddharth Construction, Hazaribagh was kept as security deposit of M/s. Classic Coal Construction Pvt. Ltd.

13. It was pointed out by Mr. Khan that the petitioner was having knowledge of all these facts and as such, he can easily be said to have connived with the Construction Company and facilitated contract being awarded to M/s. Classic Coal Construction Pvt. Ltd. who put the State to a great loss by taking payment on the basis of invoices which were forged.

14. Thus, under the circumstances as aforesaid, the order taking cognizance never warrants to be quashed. Having heard learned counsel appearing for the parties, it appears that under the order passed by this Court in a Public interest Litigation, the C.B.I. on taking up the matter, held preliminary enquiry. In course of which it got transpired that M/s. Classic Coal Construction Pvt. Ltd. on being given award for execution of seven works, it did execute the work but dishonestly and fraudulently submitted false invoices pertaining to procurement of Bitumen from the Government Company for using the same in execution of the work and on the basis

of forged invoices which had never been issued by the Government Oil Companies, payment of Rs. 17,61,59,817/- was taken after the said invoices were certified/counter signed by the engineers. In course of preliminary enquiry, culpability of three engineers were found and, as such, a case was lodged against those three engineers as well as M/s. Classic Coal Construction Pvt. Ltd and also against unknown. During investigation, it was found that this petitioner who at the relevant point of time was posted as Executive Engineer had executed deed of agreements entered into with M/s. Classic Coal Construction Pvt. Ltd with respect to two works; widening and strengthening work of Gola-Muri Road and widening and strengthening work of Chitarpur-Rajrappa Road. On execution of the agreements, work order had been issued by the petitioner. However, it was found that M/s. Classic Coal Construction Pvt. Ltd had connived with M/s. Siddharth Construction, Hazaribagh so as to have contract in vaour of M/s. Classic Coal Construction Pvt. Ltd. In such pursuit, M/ s. Siddharth Construction, Hazaribagh quoted rate higher than M/s. Classic Coal Construction Pvt. Ltd. According to the case of the C.B.I. the circumstances which have been highlighted go to show that both the companies had formed cartel and thereby M/s. Classic Coal Construction Pvt. Ltd succeeded in having contract in its favour and that the petitioner was having knowledge of alt the aforesaid circumstances still he entered into an agreement with it. On account of that, charge sheet has been submitted against the petitioner. But it has never been the case of the C.B.I. that this petitioner ever certified those alleged forged invoices or the petitioner did anything towards payment being made to the contractor on the basis of forged invoices, as by the time Bitumen being procured on the basis of requisition issued by the petitioner, the petitioner got transferred from that place.

15. Thus, the case seems to have been lodged basically on the accusation that M/s. Classic Coal Construction Pvt. Ltd. took payment of huge amount on the basis of forged and fabricated invoices claimed to have been issued by the Government Company and that such payment was made in connivance with public officer who had certified/counter signed those invoices but the petitioner is being prosecuted for the reason that the petitioner in spite of knowing that both the bidders M/s. Classic Coal Construction Pvt. Ltd and M/s. Siddharth Construction. Hazaribagh were hand in gloves facilitated award of contract in favour of M/s. Classic Coal Construction Pvt. Ltd. whose bid amount was quite excessive but the petitioner was never the person, who awarded contract to M/s. Classic Coal Construction Pvt. Ltd. rather the contract was awarded to M/s. Classic Coal Construction Pvt. Ltd. by the High Power Committee to which petitioner was never a member and that the petitioner had simply forwarded tender documents of both the bidders before the committee and therefore, no fault lies with this petitioner in awarding contract to the company on much higher rate and as such, there does not appear to be any culpability on the part of the petitioner. In spite of that charge sheet has been submitted, though absolutely in similar circumstances, the C.B.I. never found any culpability on the part of three Executive Engineers named in the first information

report who as per the materials collected showing in the charge sheet had accepted the tender papers in the similar circumstances as it is appearing in case of this petitioner. In that case according to C.B.I. M/s. Classic Coal Construction Pvt. Ltd. formed cartel with other company but in their case, no culpability on their part was found but strangely culpability was found on the part of the petitioner though even in the circumstances appearing against the petitioner are taken to be true, no offence is made out of cheating or forgery as the petitioner in the circumstances cannot be said to have fraudulently or dishonestly induced any person or did anything to cause loss to the Government. At the same time, there appears to be no element attracting offence of forgery. Under the circumstances as stated above, the petitioner cannot be said to have committed any misconduct attracting offence under the Prevention of Corruption Act for simple reason that neither there has been any role of the petitioner in awarding contract to M/s Classic Coal Construction Pvt. Ltd. nor anything admittedly has been done by the petitioner in making payment to it.

16. Accordingly, the order dated 2.2.2011 taking cognizance of the offence is hereby set aside so far the petitioner is concerned. In the result, this application is allowed.