

Kanai Lal Bose Vs State of Jharkhand

Court: Jharkhand High Court

Date of Decision: July 18, 2014

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 239

Penal Code, 1860 (IPC) â€” Section 120B, 420, 465, 466, 468

Prevention of Corruption Act, 1988 â€” Section 13(1)(d), 13(2), 13(i)(d), 5(2), 5(i)(d)

Citation: (2014) 4 AJR 194

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: Jitendra Singh, Sr. Advocate and A.K. Das, Advocate for the Appellant; Mokhtar Khan, ASGI, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Rakesh Ranjan Prasad, J.

Both the cases, since arising out of the same case, were heard together and are being disposed of by this common order.

2. Cr. M. P. No. 1201 of 2010, filed on behalf of Kanai Lal Bose, Rajesh Gandhi and Ramesh Gandhi, is directed against the order dated

01/02/2001, passed by the Special Judge, CBI, Dhanbad in RC Case No. 20(A)/95 (D), whereby and whereunder cognizance of the offences

punishable under Sections 120B, 420, 465, 468 and 471 of the Indian penal Code and also under Section 13(2) read with Section 13(1)(d) of the

Prevention of Corruption Act, has been taken against them.

So far Cr. Revision No. 32 of 2011 is concerned, it is directed against the order dated 27/09/2010, passed by the Additional Sessions Judge-I,

Dhanbad, whereby and whereunder prayer made on behalf of the petitioners namely Ramesh Gandhi and Rajesh Gandhi for their discharge from

the case, was rejected.

Thus, it appears that petitioners Ramesh Gandhi and Rajesh Gandhi are the petitioners in both the cases, but according to the learned senior

counsel appearing for the petitioners, Ramesh Gandhi and Rajesh Gandhi would not be pressing criminal miscellaneous petition, rather they would

be pressing the matter relating to discharge.

3. Before adverting to the submission advanced on behalf of the parties, case of the prosecution needs to be taken notice of.

In the month of May, 1996, Coal India Limited (in short "CIL") invited tenders for the work of screening, loading and transportation of coal from

various collieries of BCCL to Alakdiha Coal Dump. Pursuant to that, three parties including M/s. Continental Transport and Construction

Corporation (M/S. CTCC) submitted their tender papers. The tenders were processed by a Committee consisting of four persons, all officials of

M/s. BCCL (accused Nos. 2 to 5) including the petitioner Kanai Lal Bose, the then General Manager (S & PW). During that course, they

intentionally and fraudulently proposed to extend the scope of work by including additional items, such as (i) provision for transit loss (ii) stacking

of grade wise coal (iii) provision for ground shortage (iv) proper supervision of stock and arrangement to maintain grade wise dispatches and (v)

loading of customer's truck as and when required to show favour to the said M/s. CTCC (accused No. 6) to which the petitioners Ramesh

Gandhi (accused No. 7) and Rajesh Gandhi (accused No. 8) were the partners. These additional items were approved by accused No. 1 B.R.

Prasad, who, at the relevant point of time, was posted as Chairman-cum-Managing Director of M/s. BCCL, in conspiracy with other accused

persons, though inclusion of additional items had never been approved by the Chairman of CIL. This had been done with a malafide intention to

favour accused Nos. 6 to 8 as operation of Alakdiha Coal Dump including supervision of loading of customer's truck at Alakdiha Coal Dump was

the responsibility of M/s. BCCL Officials. The work pertaining to loading of coal was awarded to M/s. CTCC by the accused person @ Rs. 5.25

per M.T. in the year 1987 whereas in the year 1992, for the same job, the work had been awarded at a lower rate of Rs. 4.08 per M.T.

4. Further it has been alleged that in the year 1992, M/s. BCCL had invited fresh tenders for transportation of coal to Alakdiha Coal Dump. That

was challenged by one Ramesh Gandhi before the Kolkata High Court. The accused No. 7 and 8 fraudulently and dishonestly represented before

the Management of M/s. BCCL, that the Kolkata High Court has restrained M/s. BCCL from interfering with the contract work awarded to M/s.

CTCC, as a result of which, M/s. BCCL decided to drop the transportation work for Alakdiha Coal from NIT and thereby M/s. CTCC was

allowed to continue with the work and thereby the accused persons (6, 7 and 8) were benefited. Further it has been alleged that M/s. BCCL

sustained huge wrongful loss on account of payment being made to M/s. CTCC towards transit loss, supervision of loading of customer's truck

and maintaining grade wise stock and loading of coal to the tune of Rs. 1,32,51,305.33. Thus, it has been alleged that accused persons committed

offences punishable under Sections 120B, 420, 465, 466, 468 and 471 of the Indian Penal Code and also under Section 13(2) read with Section

13(i)(d) of the Prevention of Corruption Act and correspondingly Section 5(2) read with Section 5(i)(d) of the Prevention of Corruption Act. On

such allegation, FIR was registered as R.C. No. 20(A) of 1995(D). The matter was taken up for investigation. During investigation, it was found

that M/s. CIL, Kolkata had issued NIT for transportation of coal/coke from colliery to the stockyard for unloading, screening, stacking size-wise

and grade-wise at stockyard. The last date of submission of the tender was 1.7.1986 on which day at 3.00 P.M. technical bid was to be opened.

On that day itself i.e. on 1.7.1986 a telephonic message was received by the Dy. C.M.E. (Sales) of BCCL, Dhanbad (accused No. 3) to the

effect that date of sale of tender paper has been extended up to 18.7.1986 and last date of submission of tender has been extended up to

22.7.1986. Despite the extension of date, tenders, as per the order of the then C.M.D. B.R. Prasad, were opened on 1.7.1986 in utter disregard

to the instruction issued by M/s. CIL, Kolkata. As per the instruction issued by M/s. CIL, tender documents received by C.I.L. and other

subsidiaries all over India, pursuant to NIT issued by M/s. CIL were to be sent to M/s. CIL, Kolkata for further processing and scrutiny and

thereby it was instructed by CIL to the officials of M/s. BCCL, vide its letter dated 26.6.1986 to bring the tender papers with him so that

necessary processing and scrutiny be done before the next meeting of the tender committee. Instead of acting in accordance with the instruction,

the then Dy. C.M.E. (Sales), M/s. BCCL (accused No. 3) sent a telex message on 1.7.1986 requesting Dy. G.M. (SY & T) and Chief of

Marketing, M/s. CIL, Kolkata to give post facto approval to the opening of tender on 1.7.1986. This request was rejected by CIL, Kolkata, vide

its letter dated 21.7.1986 and directed the then CMD, BCCL for cancelling the aforesaid tender and to re-tender the same. On receiving the said

letter, the then CMD vide its letter dated 21.7.1986 wrote to the Chairman, M/s. CIL, Kolkata to allow him to proceed with tender and to award

work by October, 1986.

Further it was found that the then Chief of Marketing, CIL, Kolkata vide its letter dated 12.9.1986 did inform to the then CMD, M/s. BCCL,

Dhanbad that the tender of Alakdiha, has not been processed by the Tender Committee and, as such same is being returned to M/s. BCCL for

appropriate action by G.M. (Sales), BCCL so that the earnest money to the parties be refunded. In spite of that, Tender Committee consisting of

accused Nos. 2 to 5, held its meeting on 31.10.1986, in which representatives of all the three concerns who had submitted tender papers including

representative of M/s. CTCC attended. Thereupon Tender Committee made recommendation for inclusion of following additional items, though it

were never part of the NIT and more over loading of coal was the responsibility of BCCL.

5. On receiving recommendation, the then CMD directed the Tender Committee to combine item No. 1(ii) and item No. 3(b)VI for obtaining a

package offer covering all the items referred above from all the tenderers and to consider once again before one is awarded contract. Thereupon,

tender committee dishonestly and fraudulently recommended for award of work to L-1 tenderer, M/s. CTCC, though the rate quoted by M/s.

CTCC and M/s. Patliputra Transporters and Contractors were the same as Rs. 5.25 paise per M.T. The tender committee further recommended

for release of mobilization advance to the extent of 10% of the estimated value of work. This rate accepted by the Tender Committee was in

excess as later on similar kind of work contract had been awarded @ Rs. 4.05 paise. In spite of that, the then CMD approved recommendation

made by the tender committee whereby award was given at the package rate of Rs. 9.90 paise per M.T. inclusive of all the additional items. Upon

work being executed, a sum of Rs. 1,02,39,799.66 (Rs. 1.02 crores approximately) was paid for loading of the coal at colliery @ Rs. 5.25 paise

per M.T. and further amount of Rs. 91,54,973.52 was paid to M/s. CTCC, Dhanbad for loading of coal in consumer's truck @ Rs. 5.25 paise

per M.T. during the relevant period, i.e. 1987-93, though loading of coal was the responsibility of M/s. BCCL as per provision of NIT and,

thereby, recommendation and its approval by the then CMD of awarding additional work was dishonestly done to favour M/s. CTCC and on

account of that, wrongful loss to the tune of Rs. 1.93 crores approx. was caused on account of awarding work as additional items and further

wrongful loss of Rs. 0.44 crores (approx) was caused on account of making excess payment towards loading of coal. Thus, M/s. BCCL suffered

wrongful loss to the tune of Rs. 2.37 crores.

6. On completion of investigation, charge sheet was submitted on 25.1.2001, upon which the court took cognizance of the offences under Sections

120B, 420, 465, 468 and 471 of the Indian Penal Code and also under Section 13(2) read with Section 13(i)(d) of the Prevention of Corruption

Act, corresponding to Section 5(2) read with Section 5(i)(d) of the Prevention of Corruption Act, 1947.

7. Upon submission of the charge sheet, when it was found by the then CMD that the Investigating Officer, during investigation, did not take into

account several records deliberately, rather suppressed it and that had that been taken into account, result of the investigation would have been

otherwise, the then CMD did file representations before the authorities of the Central Government including to the Cabinet Secretary, Government

of India making prayer to direct the concerned authority of the C.B.I. to take into account all the relevant facts and documents which had been

suppressed by the Investigating Officer.

Subsequently, the then CMD was asked to present his representation before the Joint Director, East CBI, Kolkata. Accordingly, he made

representation and also he had had meeting with the Joint Director, East CBI, Kolkata to whom it was stated that had the Investigating Officer

been taken all the relevant records into account, he would not have found any culpability of any of the accused persons. It was explained to him

through his representation and also orally that Chief of the Marketing of M/s. CIL, vide its letter dated 18.9.1986 addressed him, had authorized

M/s. BCCL for processing the tender and to award contract relating to operation of Alakdiha Stockyard. Documents were also there to show that

approval of the award of the contract had been accorded by the Board of M/s. BCCL. Thereupon the C.B.I. made a prayer before the concerned

court for allowing him to go for further investigation. The prayer was allowed. During investigation, the Investigating Officer after taking statements

of Director of M/s. BCCL and also the Company Secretary of M/s. BCCL did find that the then Chief of Marketing of CIL had written a letter

dated 18.9.1986 to the petitioner, CMD, BCCL authorizing BCCL to deal with the matter related to the contract for operation of Alakdiha

Stockyard of M/s. BCCL in the manner which he deems fit and proper. Further it was found that final approval of the award contract was

accorded by the Board of M/s. BCCL in its 102nd meeting held on 8.4.1987.

8. Having found the aforesaid facts, the Investigating Officer submitted supplementary charge sheet before the court below on 29.5.2003. Much

thereafter an application was filed before this Court, vide Cr. M.P. No. 264 of 2007 by the then CMD, whereby entire criminal proceeding of

R.C. No. 20(A) of 1995(D) including the order taking cognizance dated 25.1.2001 was challenged wherein it had been argued that the

Investigating Officer while submitting charge sheet had misrepresented the fact distorting the same to cause prejudice to him and, thereby, it had

mislead the Court to take cognizance of the offence against him which would be evident from the supplementary report submitted which apparently

indicates that only when M/s. BCCL was authorized to process the tender and to award contract, the Board undertook the processing of the

tender and made recommendation for awarding contract to M/s. CTCC which was approved by the Board of M/s. BCCL. However, the court

did hold that defect or illegality in investigation however serious had no direct bearing on the order taking cognizance unless illegality in investigation

brings about a miscarriage of justice and thereby the court did not find it proper to interfere with the order taking cognizance. However, liberty was

granted to him to agitate the ground on the basis of materials available on the record at the stage of commencement of the trial against him.

9. Thereupon, the then CMD B.R. Prasad in the light of the observation made by the High Court and also the petitioners of Cr. Revision No.

32/2011, filed applications under Section 239 of the Code of Criminal Procedure for discharging them from the case. It was disposed of on

27.9.2010 holding therein that sufficient materials are there against the petitioner for framing of charge. Being aggrieved with that, Cr. Revision No.

37/2011, was filed on behalf of said B.R. Prasad, which was allowed whereby he was discharged.

10. Mr. Jitendra Singh, learned Sr. counsel appearing for the petitioners submits that the Court having heard counsel appearing for the parties and

looking to the materials did find that the CBI has come forward with two fold accusations, which are as follows:-

1. In spite of intimation being given by the authority of M/s. CIL not to process the tender received from the tenderers, pursuant to NIT issued by

M/s. CIL, officials of M/s. BCCL by ignoring it proceed with the process of the tender.

2. In the NIT issued by M/s. CIL, parties were asked to put forth their offer for transportation of coal/coke from the collieries to the stockyard

and unloading, screening and stacking size wise and grade wise at the stock yards only whereas the tender committee while processing the matter

relating to tender included five items which have been stated above and asked the tenderers to submit their bids. On submission of the price bid

over the additional items when M/s. CTCC was found to be L-1 recommendation was made to award contract to him which the petitioner

approved it.

11. In relation to accusation No. 1, this Court examined the matter with reference to the materials collected by the I.O. during investigation and

also further investigation and came to the conclusion that the Tender Committee had proceeded with the matter relating to the process of the

Tender only after getting green signal from the headquarter and, thereby, the Court did find the allegation to be baseless.

12. With respect to second accusation, this Court did find that there was justification for the inclusion of the additional items and the decision of

inclusion of the additional items got approval by the Director (Finance) CIL when he became satisfied with the clarification submitted by the

Tender Committee. When the Tender was finalized it was sent for its approval before the Board of Directors, who on its meeting held on

08/04/1987, approved the proposal and only thereafter the contract was awarded to M/S. CTCC and this fact was found to be correct by the

Investigating Officer during reinvestigation and under these circumstances, this Court did hold that any accusation made by the CBI that the

accused persons in conspiracy with each other had included the additional items to put M/S. CTCC in advantageous position falls flat. In view of

such findings, there remains nothing against the accused persons and, thereby, they also deserve to be discharged.

13. As against this, learned counsel appearing for the C.B.I. submits that admittedly in the NIT floated by M/s. CIL the items which were included

by the Tender Committee were never the subject matter of the contract. The Tender Committee got it included which was approved by the then

CMD and on account of that M/s. BCCL suffered huge loss and it was also found that during investigation, M/s. CTCC has been awarded

contract at an exorbitant rate which also caused loss to BCCL and in this manner total loss caused to the BCCL was to the tune of Rs. 2.37

crores and, therefore, the trial court has rightly rejected the prayer for discharge.

Further it was submitted that it is true that during investigation, statements of some of the Board Members were recorded, whereby they have

stated that recommendation made by the Tender Committee, approved by the then CMD, did also got approval by the Board but that was

approved in routine manner and, therefore, the supplementary charge sheet submitted, never wipes out the first charge sheet, which had been

submitted after finding culpability on the part of the accused persons. Further submission is that the petitioners have raised the point that some of

the persons such as K.C. Pratihari, who had also participated in the meeting of the Tender Committee, has not been made accused, but the fact is

that though said Pratihari participated in the process of the Tender but he had little role to play and that he was not a party to a decision to go for

additional items and, therefore, the CBI having found no culpability on his part, did not submit charge sheet against him.

14. This Court while dealing with the matter relating to discharge of the co-accused B.R. Prasad, the then CMD, did examine the entire records

and found that the prosecution has come forward with two fold accusations, which have already been indicated by the learned senior counsel

appearing for the petitioners. While dealing with those accusations, this Court did find and record the fact as under:-

So far the first accusation is concerned, the Investigating Officer, who had submitted charge sheet seems to have failed to take into account or did

not take into account the relevant records containing order under which the authority of BCCL had been asked to go ahead with the process of the

tender submitted by the tenderers, pursuant to NIT issued by CIL. However, when the matter was taken for further investigation, it got transpired

that the then Chief of Marketing of CIL, Kolkata, Mr. Krishnamurty with the approval of the then Chairman, CIL, Kolkata had sent a letter dated

18.9.1986 to the then CMD to go ahead with the process of tender. This fact subsequently found to be correct by the CBI during further

investigation did demolish the entire accusation of the CBI that the authority of BCCL had proceed with the process of tender, in spite of intimation

being given by the official of CIL of canceling the tender. The Investigating Officer during further investigation seems to have recorded the

statement of Mr. Krishnamurty, who has accepted the fact that he had sent the said letter dated 18.9.1986.

Coming to other accusation, it be stated that in the NIT, additional items of which contract was awarded to M/s. CTCC had never been included

in the NIT. However, when the tender committee after receiving tender papers held meeting, it felt inclusion of all the items would be necessary for

proper maintenance of the stock of coal and/or its storage, sales, dispatch from the stockyard, grade-wise smoothly without any discrepancy or

slippage. The decision of inclusion of those items for which the tenderers had been asked to submit their price bid had been forwarded to the then

CMD, who before approving it, endorsed the matter to the Director (Finance), CIL, who having been satisfied with the clarification submitted by

the tender committee for inclusion of the additional items accorded its concurrence to the proposal with a suggestion that mobilization advance be

done away. As per his suggestion, mobilization advance which was earlier proposed to be given to the contractor was done away with. Thereupon

recommendation made by the tender committee was sent for its approval before the Board of Directors, who in its meeting held on 8.4.1987

approved, the proposal, only thereafter the contract was awarded to M/s. CTCC. Earlier this fact of approval of the recommendation by the

Board of Directors had never been brought on the record by the Investigating Officer while submitting charge sheet but during re-investigation, this

fact was found to be correct which is evident from the supplementary report submitted by the Investigating Officer wherein it has been stated as

follows:

During investigation all the seven Board Members were examined. All of them have confirmed having attended the said Board Meeting and that the

proposal in question was placed before them in the said Board Meeting dated 8.4.1987 while agenda item No. 102.9(i) and this proposal relating

to award of contract to M/s. CTCC was approved by the Board.

They have also accepted that the approval of its finality was unanimous as there is no note of dissent in the meeting of the said Board Meeting and

thereby accusation made by the CBI that the accused persons in conspiracy with each other had included the additional items to put M/s. CTCC

in advantageous position falls flat.

15. Having found the aforesaid facts, this Court, after having regard to the principles laid down for discharge to the effect that if the evidence which

the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross examination or reverted

by the defence, the evidence, if any, cannot show that the accused committed offence, then there will be no sufficient ground for proceeding with

the trial, discharged the said petitioner B.R. Prasad after taking notice of the aforesaid facts and also the fact that the decision was taken

collectively by the various authorities, which were within their competence to take such decision and that while taking such decision there may be

an error of judgment but that never lead to accusation in absence of any material that the authorities abused their positions or took decision to

cause any wrongful gain to themselves or to a third party or causing wrongful loss to the State.

16. Thus, when this Court on the same materials, upon which, these petitioners are being prosecuted, came to the conclusion that nothing is there

to establish that the accused persons were in conspiracy with each other, there is no option but to discharge the petitioners Ramesh Gandhi and

Rajesh Gandhi from accusation. Accordingly, the order dated 27/09/2010, refusing to discharge the petitioners Ramesh Gandhi and Rajesh

Gandhi, is hereby set aside and both the petitioners are discharged.

17. In case of the petitioner Kanai Lal Bose (Cr. M.P. No. 1201 of 2010) the order dated 01/02/2001 taking cognizance against him, is hereby

set aside.

In the result, both the applications stand allowed.