

(2011) 08 PAT CK 0114

Patna High Court

Case No: Cr. Appeal (SJ) No. 97 of 1994

Gyan Singh Saini and Another

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: Aug. 5, 2011

Final Decision: Dismissed

Judgement

Dharnidhar Jha, J.

The two appellants had been tried alongwith others by the learned Special Judge, C.B.I., South Bihar, Patna in Special Case No. 7 of 1969 arising out of R.C. No. 1/69 after being charged of commission of offences u/s 120B read with 420 IPC as also Section 5(2) read with 5(1)(d) of the Prevention of Corruption Act, 1947. The two appellants were also charged u/s 109 IPC read with Section 5(2), read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. By judgment dated 22.3.1994 the appellants were held guilty of committing the above offences and each of them was directed to suffer rigorous imprisonment for two years for committing offence u/s 120B read with 420 IPC as also to pay a fine of Rs. 50,000/- each, else, to suffer rigorous imprisonment for further period of six months. So far as the conviction of the appellants for offence u/s 109 read with Section 5(2) read with 5(1)(d) of the Prevention of Corruption Act was concerned, the learned Trial Judge did not pass any order of sentence and noted that sentences were already passed on the appellants for their conviction for offences u/s 120B IPC which may be sufficient on all counts. The appellants, as such, have preferred the present appeal. The case related to alleged systematic defrauding the Bihar Electricity Board, Patna Division by undesired purchase of Hard Drawn Bare Copper (HDBC) Wire during the period 1961 to 1967. As per the allegation, there being no requirement for purchasing the above quality of copper wire for which tenders in the form of Exts.-9 and 10A were floated in the local newspapers inviting the desirous suppliers to supply HDBC wire in huge quantity, i.e., 47,661 K.G. at a higher rate of Rs. 32 per K.G. though the prevailing rate during the period was around Rs. 11.15 paise. The prosecution case further was that there was no necessity of HDBC wire; it was lying in the stock of the

Bihar Electric Works Division Patna Zone in abundance. But, still the purchases were made and supplies were received from the two appellants and others causing dishonest wrongful loss to the said Electric Works Department Division. So far as the two appellants were concerned, it was alleged that appellant Gyan Singh Saini supplied 5,905 K.G. of the above quality of copper wire costing Rs. 1,92,739.20 only whereas Bachitar Singh supplied 300 K.G. of the same wire of the value of Rs. 9,600/-. Thus, it was alleged that the accused persons who were the Superintending Engineer, Executive Engineer and the Senior Accounts Officer of the Electric Works Division of the above said Board in connection with the suppliers including the two appellants, caused a total loss to the Government or its corporate body to the tune of Rs. 15,47,660.04.

2. The case was investigated into by the C.B.I, and, ultimately, the accused persons were sent up for trial, some of whom died during trial and some died during the pendency of the present appeal, as a result of which three connected appeals bearing nos. 116 of 1994 and 104 of 1994 abated as regards the substantive sentence of imprisonment imposed against two appellants, namely, B.B. Mukherjee and Harish Chandra Seth. B.B. Mukherjee was the Divisional Accounts Officer of the corporate body and Harish Chandra Seth was the supplier being the proprietors of M/s Harish Electrical Services, Patna.

3. During the course, of the trial as many as 23 witnesses were examined and over 250 documents were tendered in evidence. Without going into the individual depositions of the witnesses, it might be useful to point out that P.Ws. 3, 4, 6, 7, 9, 10 and 12 who were the employees of the same corporate body of the Patna Division were deposing before the trial court that there was no need to purchase the HDBC wire in the Patna Division of the Electric Works Division of the Bihar State Electricity Board and none of its subordinate bodies of the division had sent any indent/requisition and no requisition had further been received from Ranchi, Bhagalpur or any other divisions. So far as the evidence of P.Ws. 14, 15, 17, 19, 21 and 23 is concerned besides speaking on different documents like the earlier set of witnesses, they were also giving deposition to the fact that during the relevant period the market price was somewhere around Rs. 14 or 15 per K.G. of the specified copper wire.

4. From evidence and materials brought on record, the appellants do not dispute that they were suppliers and had supplied the above quantity of copper wire, i.e., 5905 K.G. and 300 K.G. respectively to the Electric Works Division, Patna in response to tenders in the form of Exts.-9 and 10/A. What they pleaded in the court below and what they have been pleading here before me is that the tenders were floated and they had submitted their letters of intent or quotations for supplying the desired goods and their rates were approved. They are not faltering in committing any offence. The learned Trial Judge rejected the plea and held them guilty of committing the offence on reasoning which have been pointed out in detail by the

learned Trial Judge.

5. Sri S.N.P. Sinha, the learned Senior Counsel appearing on behalf of the two appellants has submitted and has agitated the same points which were urged and agitated by the two appellants in the court below that the appellants were acting bona fide in response to floated tenders by submitting the letters of intent or quotations by quoting whatever price. It was contended that if the authorities were not convinced about the competitiveness of the price or the same being excessive, it was up to them to have rejected the quotations of the two appellants and not to have placed any order for supply of any part of the desired material. The appellants were not having any mens rea nor they could be said to intend to defraud the Board and, as such, the ingredients of Section 420 as also the necessary ingredients of Section 120B do not appear constituted on facts: Sri Sinha cited before me three decisions, one of this Court reported in 1984 BBCJ 469 and the two of the Supreme Court reported in AIR 1965 SC 682 and [Union of India \(UOI\) and Another Vs. J.S. Khanna, etc.,](#)

6. Sri Bipin Kumar Sinha, the learned Standing Counsel appearing on behalf of the Central Bureau of Investigation has taken me through, the evidence of witnesses as also the documentary evidence and has submitted that material was in abundance on record to indicate that it was from the very inception of things that a deep rooted conspiracy was hatched up not only by the engineers of the department but also by the suppliers as well, as they were deeply hand in gloves with the engineers so as to misusing the funds at their disposal and thereby getting benefited by the fraud the engineers were perpetrating upon the treasury in connivance with the engineers and other suppliers.

7. Ext.-9 is the tender dated 13.2.1965 and Ext.-10/A is another tender dated 11.9.1965 which were floated so as to inviting the letters of intent or quotations from desirous party for supply of the above-noted quality of copper wire to the Electric Works Division, Patna at the relevant time. There were three divisions also one was headquartered at Bhagalpur, the other at Muzaffarpur and the third at Ranchi. The evidence has come from witnesses, like, P.Ws. 3, 4, 6, 7, 9, 10 and 12 that there was no need of the copper wire and it was lying in abundance in the store of the Patna Division and the purchase was simply unnecessary and a fraud on the use of legitimate funds. The appellants, expecting the engineer-accused persons had not denied or challenged the evidence of these witnesses even by suggesting the HDBC wire was not in the stock and further that it was required to be purchased. The evidence is that the market rates which were prevailing at that particular time was somewhere around Rs. 11/- only but for misappropriating or defrauding the exchequer the rates were quoted at the higher side of it; to be exact by tripling the prevailing rate in conspiracy with the engineers of the Board, so as to misusing the fund. In support of the allegations, the documents, like the quotations Exts.-12K and 12N of the two appellants alongwith the quotations of other suppliers in Ext.-12

series were brought on record. I have already noted that the appellants do not deny that they had submitted their quotations and had also supplied the materials. So in that background, it was at all not necessary to discuss in much details the contents of the documentary evidence. However, the supply is acknowledged, as may appear from Ext-2 series some of the bills submitted by M/s Fairdeal, Patna which was the firm of appellant Gyan Singh Saini. The appellant had submitted bills dated 17.11.1966, 25.3.1966, 11.8.1966, 8.10.1966, 19.5.1966, 25.3.1966, 13.10.1966 and 13.10.1966 which were in respect of the total supplies made by the appellants of 5,905 K.G. of the above noted wire. These bills have been marked differently in Ext.-2 series and indicate that different quantities of the above noted copper wire was supplied on different dates by appellant Gyan Singh Saini and the same bills also indicate that they were acknowledged to be accepted by the Junior Engineers of the Patna Works Electric Division of the Electricity -Board and the same was duly entered physically in the stock. Likewise, appellant Bachitar Singh appears having supplied 300 K.G. of the copper wire and had submitted bill Ext.-2/Z-31 which is dated 27.1.1967 in response to order No. 1514 dated 31.12.1966 for the value of Rs. 9,600.00 which he is said to have defalcated or misappropriated in league with the engineer-accused persons and that quantity of copper wire also was similarly acknowledged receipted and inducted into the stock and maintained therein of the above noted works division of the Bihar State Electricity Board. The rate on which the bills were submitted are very much indicated in the bills and on account of the same being passed by different officers or authorities who were also accused persons, who were the engineers of the Electricity Board. These documents indicate that the supply order was placed at the rate of Rs. 32 per K.G. of the HDBC wire and the payment was also made at that particular rate. What appears further from Ext.-9 and 10/A, the two tenders, is that the supplies were required to be made of the H.D.B.C. wire made by the Indian Cable Company (I.C.C.) and the National Insulated Cable Company of India Limited (NICCO). The evidence shows that these companies had stopped manufacturing that quality of wire from 1962, but that evidence appears oral. Hence, I do not give much importance to that aspect of the case. My attention gets engaged with another aspect of the matter when I go to Ext.-5 series. The C.B.I, was corresponding with the above two manufactures and were seeking information's from them on different points which were material for the investigation of the present Case. Two of the points which have engaged my attention are that as to whether they that's, manufacturers like, ICC and NICCO, had supplied the H.D.B.C wire of their respective makes into Patna market for sale to general or specialized consumers and if they had then what was the prevailing price at which they had done it or what was the prevailing price of their products in the general market during the relevant period. The letter sent to Indian Cable Company (ICC) has been responded by the ICC by Ext.-5 and they responded by their memo bearing No. A/112 dated 1.6.1970 that they have not supplied the material in the Patna market and the per K.G. price of their produce prevailing at that particular time which was covered by the present case, i.e., from 1961 to 1967, was varying

from Rs. 11.2 to Rs. 11.77. On account of the packaging of the material differently, and certain other costs might be applicable which may vary from paise 13 to 35 and that amount had to be the reported price. Thus as reported by ICC by Ext.-5/C, the price could not go beyond Rs. 14 per K.G. of their product. Similarly, the NICCO was also responding to the queries of the C.B.I, by Ext.-5/B and it was reported by them to C.B.I, that within years 1965-67 they had not sold H.D.B.C. wire in the market, i.e., in Patna market and as regards the price it was almost similarly quoted by Annexure-5/B as quoted by the ICC.

8. Not only the above evidence, price at which similar materials were purchased by other subsidiary boards or other division of the Board were also collected. Those appear in the form of Ext.-11 series. In 1965 as may appear from Ext.-11 which is the comparative chart of rates quoted by different suppliers to a similarly floated tender by a different division out of the four divisions of the Bihar State Electricity Board was Rs. 16.48 paise in the maximum. The rate in 1966 which appears quoted for similar materials as may appear from the another comparative chart Ext.-11C was somewhere in between 18 to 20. Ext.-11A indicates that the rates were very low, almost around the same price as has been noted at the lowest in Exts.-11B and 11C. Another comparative chart on rates of quotations on supply of similar materials is Ext.-12 series which also indicates that from February, 1965 to September, 1965 the price had never escalated and it was almost in the same range of Rs. 13.14 per K.G. of the material. Another document Ext.-19/B dated 6.3.1965 is a quotation of one of the suppliers in the present case but in a different matter and it appears from that particular quotation that the rate which was quoted by M/s B.D. Mehta for the similar material was Rs. 12 per K.G. of additional amount of Rs. 18/- on the total consignment with further charge of taxes at the rate 2% of the total value of the material. Thus, also the price which was quoted in Ext.-19/B could never have gone above Rs. 13 per K.G. Thus, the evidence was in abundance that the purchase which was never required, which was never needed by any subsidiary sub-boards or divisions and which was made without any requirement at a price, higher than the prevailing price in the open market and that could have been with the only purpose so as to misappropriating and defrauding the exchequer of the Bihar State Electricity Board, a corporation under the Government of Bihar.

9. The matter does rest at the above. On further examination of evidence what appears is that for defrauding the exchequer the rules were thrown to the winds. P.W. 17 would say that the Central Government Circular (Ext.-B) was directing that if a tender for purchase of any material was to be floated a copy of the same must be circulated among the District Public Relations Officers of all the districts. Evidence indicated that in order to inject competitiveness, the tenders were to be floated at the national hook up, but in the present case Exts.-9 and 10A were published in local newspapers of Patna only with a view to avoiding competitive bidding and the attention of other suppliers. This is more evidently clear from the evidence of P.W. 8 who was one of the employees of M/s Fort Gloster Industries Limited, Calcutta, who

stated that in the case of supplies to the Government companies or its corporate bodies, they generally supplied materials at a very low rate and he had personally met the accused Superintending Engineer, Executive Engineer and the Divisional Accountant, that's, B.B. Mukherjee with an offer that they should purchase from the company of P.W. 8 at lower rate the same wire P.W. 8 was ready to supply them but they refused even talking to them and rejected the offer. This clearly indicated the bent of mind as to how accused persons connived with each other so as to defrauding the exchequer. Not only that the record of the case indicates that the supply which had been ordered and the purchase which was made by the accused persons could have been obtained by simply asking for the same from the earlier suppliers at the previously fixed rate. That also appears not done. Evidence has come that some of the accused persons who were engineers, like, late B.B. Lal were in need of money on account of illness of his wife. Evidence further indicates that one P.K. Singh who was the Executive Engineer was leading a lavish life and had least respect for rules so much so that he had ousted B.B. Mukherjee from his quarter under his legitimate occupation and had allotted the same to one of his relatives who was not an employee of the Board and B.B. Mukherjee was residing in the house of one of the suppliers, namely, M/ s Chandra Brothers. These evidence on record indicated as if the accused persons, specially the engineers, did not have any respect for rules and propriety and they were least concerned about following procedure. They were treating the public office as their personal legacy so as to favour their near and dear ones and who could have been very obliging to them. Thus, they were misusing their official positions and thereby indulging in actions which were completely antithesis to the conduct of a public servant as regards discharging his public duty.

10. The above findings on purchase and supply of H.D.B.C. wire against the prevailing norms and prices in the market gets assurance from a document to which the present appellant was one of the parties. Ext.-19(A) is a bill furnished by M/s Baheti Trading Company, Kolkata to one of the present appellant, namely, Gyan Singh Saini, Proprietors of M/s Fairdeals, Frazer Road, Patna. It is dated 8.9.1966 and it is mentioned in the above bill that the HDBC wire was purchased at the rate of Rs. 20 per K.G. Not only that another bill which is dated 8.9.1966 and which forms part of the same Exts.-19A indicates that the appellant Gyan Singh Saini had purchased 1.36 K.G. of the H.D.B.C. wire at the rate of Rs. 17.95 paise. The first bill which was furnished by the present appellant to the Electric Works Division, Patna Division which is dated 25.3.1966 and that contained the rates of per K.G. of H.D.B.C. wire at Rs. 32/- only. Thus, the own document of the appellants which was seized by the C.B.I, during investigation, as appears through Ext-18 series, indicates that there was a definite element of conspiracy than connivance between the accused persons for defrauding the exchequers and thereby digesting the money and putting the Patna Electric Works Division, under the Bihar State Electricity Board.

11. By placing before me the three decisions, one rendered by this Court and the two by the Supreme Court, Sri Sinha was submitting that there was complete lack of evidence showing meeting of mind and connivance between the parties for doing an illegal act by legal means and a legal act by some illegal means. The definition of conspiracy which is contained in Section 120A of the Indian Penal Code is not illustrative. One has always to be conscious about the position of law that no definition or proposition or even an illustration which has been framed by the legislature could be an end in itself as the legislature could be always incapable of visualizing all situations which may occur at different point of time. The application of law has always to be made to the facts of the case. Every case may have a particular set of facts. The application of any particular provision has to be judged in the peculiar facts of a peculiar case. Here in the present case, I have noted as to how by bending rules and procedures the tenders were floated, how the quotations were submitted by enhancing the rates which were never prevailing even in the open local market. The engineers and the suppliers both were professionals. They are supposed to be aware of the prevailing market price and they are as such supposed to, when submitting or considering the quotations to keep in their minds the prices which could be prevailing in the market. There might be not an agreement but, there does exist understanding strong circumstances of deeper between the accused during the course of transactions regarding the purchase and supply of the goods which could develop and appears developing in the present case also. When the rates were furnished the evidence indicates that B.B. Lal had initially rejected the quoted rates of H.D.B.C. wire but all on a sudden the purchases were made on higher rate. The evidence indicates that initially there was a thought process in the division not to purchase H.D.B.C. wire at such higher price specially when the material was in abundance lying in the stock of the division. The purchase was as such made against no needs at price which could never have been approved by any reasonable person who was discharging the duty of the head of the division. It appears that prices were approved and the quotations were accepted only to misappropriate money through an illegal process. Thus, in a case of such transactions in which the main motto, was to profit themselves, if a party attempting to profit by making offer of supply at price which was never prevailing, then he could not argue that he had never entered in conspiracy for defrauding the exchequer by presenting wrong bills and before that quoting wrong higher price. There, is a definite element of conspiracy and understanding between the engineers and the two present appellants and in that view they appear properly convicted for the act for which the sentences were passed upon each of them. In the result, I find no merit in this appeal and the same is dismissed.