

State (Delhi Administration)

Vs

N. S. Giani and Others

Criminal Appeal No. 383 of 1975

(S. R. Pandian, K. Jayachanra Reddy JJ)

04.04.1990

JUDGMENT

REDDY, J. -

1. This criminal appeal is directed against the judgment and order of the Delhi High Court acquitting the respondent accused. These accused, five in number, along with one Gurbachan Singh were put up for trial before the Special Judge of Delhi for offences punishable under Sections 120-B, 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. Gurbachan Singh who was the brother of respondents 2, 3 and 4 herein was adjudged insane and his trial was separated. The remaining accused were convicted and sentenced to one and a half years and six years respectively under these two counts and also sentenced to pay fines. On appeal, the High Court reversed the same and acquitted all of them. Hence the present appeal before this Court pursuant to the leave granted.

2. Respondent 1, N. S. Giani functioned as Asstt. Iron and Steel Controller, Calcutta, Incharge of section for distribution of stainless steel, for the period from June 27, 1960 to July 1961. The accused 2 to 4 and Gurbachan Singh were brothers. Accused 5 was their friend and partner. It is alleged that respondent 1 was also known to the other accused, when he functioned as Deputy Asstt. Iron and Steel Controller. The accused 2 to 5 were manufacturing wire/fencing wire/wire nails/wire drawing units in the names of M/s. Bihar Steel and Wire Industries, Patna, Bawa Screw and Wire Products, Delhi, Bharat Wire Nail Industry, Delhi, National Wire and Nail Industries, Delhi and Weldon Wire and Wire Nail Industries, Faridabad during the period October 1959 and November 1959. When the first accused was promoted as Asstt. Iron and Steel Controller on May 27, 1960 and was incharge of section dealing with distribution of stainless steel for utensil manufacturing he is said to have entered into a criminal conspiracy with the other accused and Gurbachan Singh to give pecuniary advantage by corrupt or illegal means and by abuse of his own powers, by releasing huge quantities of stainless steel, the import and distribution of which was done by the Iron and Steel Controller, Calcutta. During the period from May 27, 1960 to June 26, 1961 the accused 1 in pursuance of the criminal conspiracy between the accused, obtained advantage for himself and for the other conspirators by abuse of his powers and his position as a public servant and dishonestly, fraudulently and unauthorisedly secured release orders of the quantities of stainless steel for the benefit of the other co-accused and Gurbachan Singh. The release orders are 15 in numbers :

(1) Dated September 26, 1960 for 9.92 tons to M/s. Bihar Steel and Wire Industries, Patna.

(2) Dated October 12, 1960 for 4 tons to the same unit as above.

- (3) Dated November 2, 1960 for 24, tons to M/s. Weldon Wire and Wire Nail Industries, Faridabad.
- (4) Dated November 5, 1960 for 25 tons to M/s. Central Commercial Corporation, Patna.
- (5) Dated December 15, 1960 for 30 tons to M/s. Metro Engineering and Metal Works, Delhi.
- (6) Dated December 15, 1960 for 25 tons to M/s. Swastic Metal Works, New Delhi.
- (7) Dated January 13, 1961/February 6, 1961 for 25 tons to M/s. Junu Rubber and General Industries, Delhi.
- (8) Dated January 16, 1961 for 25 tons to M/s. Indian Steel and Wire Industries, Dhekiajili, Assam.
- (9) Dated March 31, 1961/May 17, 1961 for 30 tons to the unit at (5) above.
- (10) Dated March 31, 1961/May 17, 1961 for 25 tons to the unit at (6) above.
- (11) Dated March 31, 1961/May 17, 1961 for 25 tons to the unit at (7) above.
- (12) Dated March 31, 1961 for 36 tons to the unit at (3) above.
- (13) Dated March 31, 1961 for 15 tons to the unit at (8) above.
- (14) Dated June 22, 1961 for 12 tons to the unit at (1) and (2) above.
- (15) Dated June 22, 1961 for 15 tons to the unit at (4) above.

The units mentioned herein belong to the co-accused and it is alleged that the stainless steel was made over their authorised agents. It is also alleged that release of these huge quantities of 325.92 tons were said to have been made despite the clear-cut policy and instructions of the government to the contrary. It was also the declared policy of the government that no new capacity for the manufacture of stainless steel utensils was to be recognized and no newcomer to this industry was to be given any stainless steel during the first of these period and a public notice dated April 1, 1960 of the Iron and Steel Controller and the Import Policy for this period was there to the effect that import of stainless steel was not to be allowed for manufacture of stainless steel utensils during the period. The units, to which releases were made were newcomer units and they were not entitled to any stainless steel release. It was also alleged that the releases mentioned at serial Nos. 1 and 4 were made by securing applications of M/s. Bihar Steel and Wire Industries and Central Commercial Corporation by Mr. Giani, accused 1 from another section in the office of Iron and Steel Controller Calcutta, with which section he was not the concerned officer and no other application of other units recommended by Director of Industries, Bihar was got by this accused. No sanction of stainless steel was given to any other unit in that manner. Likewise the releases mentioned at serial Nos. 1 and 2, serial Nos. 3 and 12, serial Nos. 5, 6, 7 and serial Nos. 8, 13, 14 and 15 and the rest were held to be irregular and accused 1 having conspired with the other accused acted dishonestly and fraudulently and got those releases in favour of the other accused. The trial court, as mentioned above, convicted all the accused but the appellate court reversed the same.

3. In this appeal by the State, the learned counsel submits that the High Court has not given cogent and compelling reasons for reversing the judgment of the trial court and that there is ample evidence to show that accused 1 obtained pecuniary advantage by abusing his position as public servant and in conspiracy with the other accused. It is also submitted that in respect of allotments to the Bihar Steel and Wire Industries, the judgment of the High Court suffers from a patent fallacy. It is also submitted that the very fact that so many irregularities have been committed by accused 1 in getting these releases in favour of the other accused, by itself shows that accused 1 acted dishonestly and the other accused conspired with him. The plea of the accused has been one of denial. Accused 1, in his elaborate statement, has given explanation in respect of each of these releases and the sum and substance of which is that whatever allotments were made were permissible under the policies and that he did not make the allotments on his own responsibility but they were made under the orders of the Iron and Steel Controller. He denied having shown any favour to the other accused. As mentioned above, the government has set out a particular policy regarding the allotment of the stainless steel quota. It is a common case that prior to the imposition of the ban by the government, licences were granted to manufacturers of stainless utensils for the import of stainless steel on the basis of their assessed capacity. However, a circular was issued by the Development Commissioner, Small Scale Industries to the Directors of all the States (Ex.P. 578) advising the Directors that the requirements of stainless steel for the manufacture of utensils may be sponsored on a basis of 20 per cent of the assessed capacity of the small scale industries and no new capacity should be recognised for this and the sponsoring authority should directly forward the applications to the Steel Control Organisation at Calcutta and that import applications of new units need not be routed through the office of the Development Commissioner but that import applications in respect of all small industrial units, whether new or old, may be sent direct to the respective Iron and Steel Controller Office at Calcutta, Bombay and Madras. This policy was further explained by another letter dated December 7, 1959 (Ex.P. 732) where the Directors of Industries were advised that already enough capacity existed in the country for the production of stainless steel utensils and that further capacity for such items should not be set up and they were requested not to encourage any proposal from the small scale industries for the manufacture of these items. A public notice was subsequently issued on April 1, 1960 by the Government of India, Ministry of Steel notifying the new import licensing policy that no imports were to be allowed to be made by manufacturers of stainless steel utensils. The policy under Ex.P. 578 has been revised by a subsequent note dated June 4, 1960 marked as Ex.D. 123 which indicated the policy to be followed with regard to the supply of stainless steel to the manufacturers of utensils, both old and new, to whom import licences had been banned under the public notice Ex.P. 678. It was stated therein that in addition to the stainless steel imported under licences to various parties, certain quantity of stainless steel has also been imported and that this stock of stainless steel would be distributed to the manufacturers of stainless steel utensils who could not be granted import licences by virtue of the ban dated April 1, 1960. It is further stated that a small stock of about 50 tons would be reserved to meet the demands of newcomers whose demands could not be sponsored in time for import licences during the period October 1959 to March 1960. In pursuance of this policy, a circular was issued from the office of the Iron and Steel Controller to the Directors of Industries of all the States on July 22, 1960 (Ex.P. 655) vide which the Directors were requested to forward a statement of all the applications from new units who has actually applied in time. After the receipt of the said statements, the Iron and Steel Controller indicated the guidelines for the distribution of the stainless steel to the various applicants whose applications had been sponsored by the Directors of Industries. These guidelines are contained in the office note Ex.P. 713 wherein it was stated that no uniform basis of figures were available and it was also found that the Directors of Industries, Bombay had issued recommendations on the basis of 20 per cent of the actual assessed capacity. It was, therefore, decided that in case of Bombay applicants,

the licensed tonnage should be multiplied four times so that 80 per cent of the recommended quantity may be taken into consideration. Similarly it was decided to make allotment at the rate of 62 per cent to the established units and so far as the newcomers were concerned, 100 tons out of the available quantity of the stainless steel was kept aside for meeting their demands which could not be sponsored in time for the licensing period from October 1959 to March 1960. The Directors of Industries were also informed that that the releases to newcomers covered their requirements up to September 1960 and that these releases should also be taken into account at the time of considering issue of recommendation for the next licensing period. By an office memorandum dated December 1, 1960, the Deputy Iron and Steel Controller sought the advice of the Ministry of Steel with regard to the import licensing policy for stainless steel sheets to the utensils manufacturers and it was pointed out that the policy laid down by the Ministry banning the grant of import licences to utensils manufacturers did not debar new units of stainless steel utensils makers from applying for such releases from barter imports and that the demands from such units should also be considered. In the reply received from the Ministry (Ex.D. 178) it is noted, policy for the distribution/allocation of stainless steel sheets to the utensil manufacturers for the period October 1960/March 1961, that it would be difficult to indicate the percentage of release to be made for October 1960 to March 1961 and that in view of the fact that large quantities were reported to be in stock with the importers, it was decided that Iron and Steel Controller should immediately release to the extent of 50 per cent of the quantity released in the previous period to all firms who had applied as advance allotment and that the balance quantum of release could be determined after knowing the full sponsored demands and the quantity available for distribution. It appears that this position was again reviewed and in view of the availability of the stock, certain decisions in respect of the old and the new units, are mentioned in the note (Ex.D. 110). As per this note it was decided to release 90 per cent of the recommended quantity to the old units and in respect of the new units, 400 tons approximately was set apart and the said policy was explained to the Directors of Industries. These policies were explained by some of the witnesses who were examined, PW 73 Shri A. S. Bam, Iron and Steel Controller, PW 62, Shri S. C. Mukherjee, Deputy Iron and Steel Controller, Calcutta and PW 68 Shri Parkash Kumar Ghosh, Assistant, Steel Import Branch, Office of the Iron and Steel Controller, Calcutta.

4. Keeping in view the policy mentioned above regarding the allotment, the case against the principal accused namely Mr. Giani, the Asstt. Iron and Steel Controller was considered in detail by the High Court. He was charged with having released 325.92 tones of stainless steel to the several units owned by the other respondents. The charges mention the details of allotment to several units. So far as the first charge of conspiracy is concerned, the circumstances taken into consideration by the trial court are the owners' relationship inter se all the other accused and accused 1's acquaintance with them and the evidence of PWs 54, 70, 72 and 79. The main circumstance on the basis of which the prosecution sought to establish the offence of conspiracy is that accused 1 made all these allotments in favour of the said accused who own all these firms in different names. The High Court has pointed out that mere relationship among the other accused cannot be a ground to conclude that there was a conspiracy between them and accused 1. So far as the previous acquaintance between accused 1 and other accused, there is no material. This aspect of pervious acquaintance has given an inference on the basis that all the other accused are brothers and the releases were made in their favour. The evidence of PWs 54, 70, 72 and 79 has also been discussed at length by the appellate court. The trial court did not rely on the evidence of PWs 70 and 72. PW 54 is the Joint Director of Industries but he has merely proved a note made by him (Ex.P. 540). Para 8 of that note mentions that a representative of the party contacted him and told that if their case could be sponsored they would be able to get 60 tons of stainless steel. From that PW 54 drew an inference that the

proprietor of the concern is very influential. The evidence of PW 54 shows that he merely drew an inference. A number of circumstances are pointed out by the appellate court and it has rightly held that even the evidence of PWs 54 and 79 hardly prove the charge of criminal conspiracy.

5. Now coming to the irregularities committed by respondent 1 Mr. Giani, the relevant documents commence from Ex.P. 50. The High Court has considered the oral and the relevant documentary evidence in respect of each of the allotments and the corresponding release orders to all the firms mentioned in the various charges. Regarding the allotment to the firm M/s. Metro Engineering and Metal Works, Delhi which is a preparatory concern of Baldev Singh, one of the respondents, the prosecution relied on the evidence of PWs 57 and 62 and also the other documents. The prosecution contended that these allotments should not have been made to the newcomers. But in view of the abovementioned policy it cannot be said that it is an invariable rule precluding the Controlled from entertaining the applications. The application (Ex.P. 50) would indicate that the Director of Industries was approached in the first instance and when he declined, the applicant approached the Director of Small Scale Industries and that application was processed by accused. 1. Having examined the entire material, the High Court rightly held that there was no deliberate departure by accused 1 from the instructions given by PW 62 to the Director. The record also shows that the release was made only after obtaining the necessary instructions from his superior. Now coming to the second period from October 1960 to March 1961 the record shows that M/s. Metro Engineering and Metal Works, Delhi sent its indent to the Director of Industries and ultimately there was release of 30 tons to this unit for the second period. The attack of the prosecution is that this has been granted without obtaining the orders of the superiors. PW 73 is the relevant witness. However, PW 62 the Deputy Controller of Iron and Steel has stated that after the Director of Industries has recommended a larger quantity of M/s. Metro, Swastic and Junu, accused 1 could release the additional quota. This clears the suspicion, if any, against accused 1. The High Court likewise has considered in respect of the release to M/s. Swastic and has rightly held that their case is similar to that of M/s. Metro Engineering and Metal Works. We have examined the material on record and we agree with the High Court that there is no irregularity committed by accused 1. Now coming to the release to M/s. Weldon Wire and Nail Industries, Faridabad. Ex.P. 915 is the application dated August 10, 1960. The same was forwarded by the Director of Small Scale Industries with a covering letter that it was not possible for the Director of Industries to give the party a quota. On receipt of this application, the first accused wrote a letter Ex.P. 1 to the Director of Industries, Delhi to ascertain whether the applicant had established any factory in Delhi. Then there was correspondence and ultimately allotment was made and quota was released. The criticism against the said release is that the application was not sponsored by the Director and that accused 1 called for a report only from the District Industries Officer, Gurgaon and accepted the said report without waiting for the recommendation of the Director of Industries, Punjab. So far as the first objection is concerned, it appears from the record that sponsoring of the application by the Director was not a condition precedent for consideration of the application and it is open to the Controller to consider the application when it was forwarded by the Director of the Small Scale Industries. So far as the second objection is concerned, it is clear from Ex.P. 840, a letter addressed to Director of Industries, that only a copy was sent to the District Industries Officer and that the report of the District Industries Officer was not directly sent to the Controller. On the other hand it was sent to the Director of Industries, Punjab. Therefore it should naturally be presumed that the Director of Industries was fully aware of the application of M/s. Weldon. It is only after the receipt of the report of the District Industries Officer (Ex.P. 874) accused 1 waited for 10 days and then he put up a note on October 29, 1966 and the Director of Industries was also aware that the report of the District Industries Officer did not correspond. Under these circumstances, it was quite reasonable for

accused 1 to assume that the Director had no objection for the release. With regard to the second, M/s. Weldon Wire and Nail Industries, Faridabad's indent (Ex.P. 760) and the letter written by Mr. Giani (Ex.P. 747) would go to show that a copy of the indent Ex.P. 760 was sent by the District Industries Officer with his recommendations for the issue of 60 tons in favour of that unit. It is clear that thereafter accused 1 acted. This is one of the irregularities which is mainly relied upon by the prosecution contending that the indent was not recommended by the Director and as a matter of fact, the Director rejected the indent. Accused 1, in his statement, under Section 342 CrPC, explained that the Director of Industries, Punjab did not care to send the indent of this unit in spite of his letter and after waiting for 15 days he issued the release. It must also be noted in this context that the District Industries Officer recommended and the same was accepted. The High Court also has noted that no question was put to accused 1 with regard to the alleged orders passed by the Director of Industries, Punjab rejecting the indent. Under these circumstances, the High Court has rightly held that there is no irregularity seen in the action of respondent 1 which brings him within the mischief under Section 5(1)(d). We have also considered the evidence regarding the allotments made in favour of M/s. Junu Rubber General Industries, Delhi, M/s. Bihar Steel and Wire Industries, Patna and M/s. Indian Steel and Wire Industries. It may not be necessary to consider these releases in detail. The two irregularities mainly relied upon by the prosecution, as already mentioned, are one in favour of M/s. Weldon Wire and Nail Industries for the second period and M/s. Bihar Steel and Wire Industries for the first period. It is contended that these two cases would bring accused 1 within the mischief under Section 5(1)(d) and that the prosecution did not necessarily prove that there is pecuniary advantage and it is enough if it is proved that corrupt or illegal means were adopted or there is abuse of official position by the public servant. But in this case the evidence on which the prosecution seems to rely on to prove the guilt of accused 1 that he has employed corrupt or illegal means or had otherwise abused his position as a public servant is only in the nature of circumstantial evidence. These circumstances do not necessarily lead to an inference or at least a presumption that the irregularities committed by him amount to obtaining a benefit in favour of the friends by corrupt or illegal means. In the case of release of M/s. Weldon Wire and Nail Industries, the copy of the indent had been received by accused 1 with the recommendation of the District Industries Officer and the Director of Industries sent no order to accused 1 rejecting the indent. As a matter of fact PW 77, Deputy Director of Industries, Punjab, in his evidence, stated that he did not raise any objection in respect of release in favour of M/s. Weldon Wire and Nail Industries and the prosecution could not show that the firm was not eligible for the release. The mere failure on the part of respondent 1 to wait would amount to only a technical irregularity. Now coming to the release in favour of M/s. Bihar Steel and Wire Industries, it has not been proved that if accused 1 had placed the application of the firm before the Controller, it would have been rejected by the latter and that a lesser tonnage would have been allotted. On the other hand, PW 73, one of the concerned officers, stated that if this application has been put before him, he would have sanctioned the release. Under these circumstances it is difficult to infer any dishonest intention on the part of accused 1. In any event this evidence does not necessarily lead to the only inference that accused 1 acted dishonestly. The view taken by the appellate court appears to be quite reasonable and sound and there are no grounds to interfere. The appeal is therefore dismissed.

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