

Delhi Development Authority

Vs

Skipper Construction and Another

SLP (C) No. 21000 of 1993

(S. B. Majmudar, B. P. Jeevan Reddy JJ)

29.11.1995

ORDER

1. By Order dated 29-11-1994, a Bench of this Court (P. B. Sawant, S. Mohan, JJ. and one of us, B. P. Jeevan Reddy, J.) requested Mr. Justice O. Chinnappa Reddy, former Judge of this Court "to investigate into the conduct of the officials of the DDA including its ex officio Chairman at the relevant time, in handing over the possession of the suit-land in M/s. Skipper Construction Pvt. Ltd. before receiving the auction amount in full and also in conniving at the construction thereon as well as at the advertisements given by it for booking the premises in the building in question." The learned Judge was also asked to "look into the legality and propriety of the Order dated 4-10-1988 passed by the then ex officio Chairman of the DDA and the directions given by the Central Government under Section 41 of the Delhi Development Authority Act." The context in which the said Order was made is explained in the judgment dated 25-1-1995 rendered by the said Bench. Pursuant to the said request, Mr. Justice Chinnappa Reddy held an enquiry and has submitted his Report dated 7-7-1995. After receipt of the Report, notice was given to the parties before us to assist us in the matter of passing appropriate orders on the basis of the said Report. In particular, we requested Shri Raju Ramachandran, Advocate, to assist us in formulating the appropriate directions in the matter. Copies of the Report were made available to all the learned counsel concerned herein. We heard them on 17-11-1995.

2. Paragraph 59 of the Report contains a summary of the conclusions arrived at by the learned Judge. So far as the period January 1981 to March 1982 is concerned, the learned Judge found Shri S. C. Dikshit, Director (C. L.) and Shri V. S. Ailawadi, Vice-Chairman, responsible for several irregularities. The learned Judge stated that both of them sacrificed the interest of DDA and went on recommending and granting extensions for which there was absolutely no justification. The learned Judge also found that such repeated extensions were in violation of the terms and conditions of auction and unauthorised by any statutory power or resolution of the DDA. So far as the period March 1982 to May 1982 is concerned, the learned Judge found that Shri K. S. Baidwan, Secretary to the Lt. Governor, Shri V. S. Ailawadi, Vice-Chairman and Shri Virender Nath, Commissioner colluded together and stalled the implementation of the order of the Lt. Governor, Shri S. L. Khurana directing cancellation of the bid and thereby facilitated M/s. Skipper Construction Company to obtain an order of stay from the civil court. The learned Judge further found that though the DDA did adopt a resolution as far back as 14-5-1984 accepting the recommendations of the Committee (appointed by it) devising a scheme for recovering the balance amount due from Skipper in instalments in view of the subsequent amount due from Skipper in instalments in view of the subsequent developments, Shri R. S. Sethi, Commissioner (Lands) designedly delayed the execution of the agreement thereby enabling Skipper to dupe the innocent members of the public by selling the same space in the proposed building to more than one person. The learned Judge also

found that Shri Prem Kumar, Vice-Chairman, was a silent accessory to the role played by Shri Sethi. The learned Judge held that the process of recovery of the balance bid amount was stalled in the first instance by repeated extensions granted by Shri Ailawadi and Shri Dikshit and next by the actions of S/Shri Ailawadi, Baidwan and Virender Nath which facilitated Skipper to obtain stay from the Court. The learned Judge recorded further that the process of recovery was stalled finally "by the turnabout taken by Shri H. L. Kapur, Lt. Governor and Shri Om Kumar, Vice-Chairman who twisted the issue by linking the question of payment with and subjecting the same to the sectioning of the building plans by the order embodied in the letter dated 14-10-1988". The learned Judge characterised the action of Shri H. L. Kapur and Shri Om Kumar as unjustified, uncalled for and in violation of the original terms and conditions of auction as well as the stipulations contained in the agreement, licence deed and the bank guarantee. The said action was found to be detrimental to the interest of the DDA.

3. Though not mentioned in the summary, we find that the learned Judge has also reported against Shri K. S. Bains, Vice-Chairman in the body of the Report. He has found him responsible for the failure to encash the bank guarantee furnished by Skipper immediately, at least in regard to the payment of third and fourth instalments.

4. At the same time, however, we must take note of a particular circumstance mentioned in the Report. In February 1982, the CBI had received information regarding alleged favours shown by the DDA authorities to Skipper. They prepared a note and forwarded it to the Lt. Governor, Shri S. L. Khurana, for appropriate action. The Lt. Governor opined that the matter required deeper probe and handed over the case to CBI for further enquiries and necessary action. His letter was registered as an FIR by the CBI against Shri V. S. Ailawadi, Vice-Chairman, Shri K. L. Bhatia, Commissioner (Lands), Shri S. C. Dikshit, Director (CL) and Shri Jagdish Chander, Programme Supervisor, The CBI examined several officers of DDA during the course of investigations and came to the conclusion finally that though there were several irregularities, no mala fide can be attributed to any of the said officers. The file was thereupon closed. In its Report, the CBI had also made certain recommendations including the following :

"It may be pointed out that prevailing practice in the DDA to grant frequent extension to private parties to enable them to deposit the premium amount, appears to be arbitrary, and chances cannot be ruled out, when the private parties can offer heavy amount as illegal gratification to the persons in authority only to allow them extension against the terms and conditions of the auction-sale. In order to prevent the scope of malpractice, it is also proposed that the DDA should either delete the conditions in the auction-sale notice whereby time-limit is prescribed for depositing the balance premium amount within 90 days or some effective checks should be imposed to curb the practice of unlimited discretion for allowing extension of time by the DDA officers to the private parties."

5. It is necessary to point out that the enquiry by the CBI was confined to the period up to March 1982 only.

6. On going through the Report of Justice Chinnappa Reddy, we find that the learned Judge has taken great pains and extreme care in coming to the conclusions which he did. The conclusions arrived at by the learned Judge are entitled to great weight and constitute, in our opinion, sufficient basis for initiating disciplinary action against the officers concerned. The Report points out how the several officers of the DDA flouted the orders of the Lt. Governor, acted against the interest of

DDA and how they, by their several acts, helped Skipper in achieving its nefarious design to defraud both the DDA and the innocent members of the public. It is a different matter that ultimately Skipper's designs came to nought so far as DDA is concerned but that was only because of this Court's order's. So far as the members of the public are concerned, they lost heavily because they believed in and acted upon the several advertisements, and proclamations made by Skipper. The members of the public, it appears, have lost more than Rs. 20 to 30 crores in the bargain. This could not have happened but for the active connivance and collusion of some of the officers of the DDA. The interest of justice demand that the officers found indulging in such acts be proceeded against and dealt with sternly so that it may serve as a lesson to others. A democratic Government does not mean a lax Government. The rules of procedure and/or principles of natural justice are not meant to enable the guilty to delay and defeat the just retribution. The wheels of justice may appear to grind slowly but it is the duty of all of us to ensure that they do grind steadily and grind well and truly. The justice system cannot be allowed to become soft, supine and spineless. Hence, the following directions with respect to each of the officers concerned :

(1) Shri V. S. Ailawadi, IAS : We are told that he has retired recently from the post of Additional Secretary, Ministry of Welfare, Government of India, on 31-5-1995. The Government of India (Department of Personnel) is directed to institute appropriate disciplinary proceedings against him for the irregularities and illegalities committed by him as Vice-Chairman of the DDA as borne out by the Report of Justice O. Chinnappa Reddy and the material gathered by the learned Judge in his enquiry. Since Shri Ailawadi has retired from service, it is obvious that the proceedings taken against him will be directed against his pension and other terminal benefits in accordance with the rules.

(2) Shri K. S. Baidwan, IAS : He is stated to be holding the post of the Home Secretary in the Government of National Capital Territory of Delhi at present. Disciplinary action shall be taken against him by the Government of India (Department of Personnel) for imposing a major penalty for the irregularities and illegalities committed by him as Secretary to the Lt. Governor. The Report of and the material gathered by Justice O. Chinnappa Reddy shall constitute the basis for taking such action.

(3) Shri Virender Nath, IAS : He is stated to be holding the post of Commissioner and Secretary of Tourism and Mines, Government of Haryana, Chandigarh at present. For the irregularities committed by him as the Commissioner (Lands), DDA, disciplinary proceedings for imposing major punishment shall be taken against him by the Government of India (Department of Personnel). The Report of and the material gathered by Justice O. Chinnappa Reddy shall constitute the basis for taking such action.

(4) Shri R. S. Sethi, IAS : He is stated to be holding the post of Joint Secretary in the Ministry of Home Affairs, Government of India at present. In respect of irregularities committed by him as the Commissioner (Lands), DDA, Government of India (Department of Personnel) shall take disciplinary proceedings against him for imposing a major penalty. The Report of and the material gathered by Justice O. Chinnappa Reddy shall constitute the basis for taking such action.

(5) Shri Om Kumar, IAS : He is stated to be holding the post of Joint Secretary

(Ordinance) in the Ministry of Defence, Government of India. It is brought to our notice that he was brought to the DDA as Vice-Chairman to set right the mess which the DDA had become under Shri Prem Kumar, Vice-Chairman. We take note of the fact that by that time the matter relating to sale of the said plot to Skipper had become sufficiently complicated. Having regard to these facts, we direct that disciplinary proceedings for a minor penalty be taken by the Government of India (Department of Personnel) against him for the irregularities committed by him as the Vice-Chairman of the DDA. The Report of and material gathered by Justice O. Chinnappa Reddy shall constitute the basis for taking such action.

(6) We are not directing any disciplinary proceedings against Shri S. C. Dikshit in view of the Report of the CBI mentioned supra. It may be noticed that Shri S. C. Dikshit's role is referred to by Justice O. Chinnappa Reddy only for the period up to March 1982 and the Report of the CBI covers this period.

(7) It is directed that no court or authority shall be competent to interdict or otherwise interfere with the disciplinary or other proceedings that may be taken against the aforesaid authorities pursuant to this Order. Any further directions necessary in that behalf can be sought for from this Court. The disciplinary proceedings shall be commenced within three months from this date and shall be concluded within one year.

7. A copy of the Report of Shri Justice O. Chinnappa Reddy along with a copy of the evidence/material gathered by the learned Judge shall be sent to the Government of India (Department of Personnel). The cost of making copies shall be paid by the DDA on a bill being served upon its counsel.

8. The Government of India (Department of Personnel) shall submit a report of the progress of the disciplinary proceedings at intervals of every three months to this Court.

9. A sum of Rs. 5000 shall be paid by the DDA to Shri Raju Ramachandran, Advocate, towards his fee in this matter.

10. Orders will be separately passed with respect to the recommendations made by Justice Chinnappa Reddy with regard to the Working of the DDA.