



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 236 OF 2023

Dr. Gufran Beig

}Applicant/

Orig. Accd.No.1.

: Versus :

1. C.B.I., A.C.B. Pune

(Vide Instant Crime No.RC 06(A) 2020

of C.B.I., A.C.B. Pune)

}Respondent No.1/

Orig. Complainant

2. State of Maharashtra

} ...Respondent No.2

WITH

CRIMINAL REVISION APPLICATION NO. 205 OF 2013

Vipin Raghunath Mali

}Applicant/Accused

: Versus :

C.B.I., ACB – Pune

}Respondent

Ms. Rebecca Gonsalves *with Ms. Chandani Chawla, for the Appellant in Cri.Revn. Appln-236-2023.*

Mr. Abhishek R. Avachat, *for the Appellant in Revn.205-2023.*

Mr. Amit Munde *with Mr. Jai Vohra, for CBI-Respondent No.1.*

Ms. Rashmi S. Tendulkar, *APP for State-Respondent No.2.*

CORAM : SANDEEP V. MARNE, J.

Judg. Reserved On : 27 August 2024.

Judg. Pronounced On : 9 September 2024.

JUDGMENT :

1) These Revision Applications are filed by Applicants who are Original Accused Nos. 1 and 2 challenging the orders dated 15 November 2023 passed by the learned Special Judge CBI (ACB Cases), Pune rejecting their applications seeking discharge in Special Case No. 1010/2021.

2) Indian Institute of Tropical Meteorology (**IITM**), Pune is an autonomous body functioning under the aegis of Ministry of Earth Sciences of Government of India. Revision Applicant-Dr. Gufran Beig was holding the position as Scientist-F in IITM and has retired from service. Revision Applicant-Vipin Mali was holding the position as 'Senior Technical Officer, Grade-II' in IITM. IITM implemented a program named 'System of Air Quality and Weather Forecasting And Research' (**SAFAR**) for monitoring and reporting air qualities in cities. IITM proposed display of results of SAFAR program at strategic locations within cities through Digital Display System. It appears that IITM had already installed Digital Display System in New Delhi. For display of SAFAR data in Pune City, IITM decided to procure Digital Display System for Pune City and surrounding areas. The Digital Display System for SAFAR Pune was to consist of 12 Outdoor LED Displays and 5 Indoor Display systems.

3) Applicant-Dr. Gufran Beig (Accused No. 1) was functioning as Project leader at IITM at the relevant time and accordingly prepared an Indent for procurement of Digital Display System for Pune City comprising of 12 Outdoor LED Display and 5 Indoor LED Display at approximate cost of Rs.4 crores. The Indent dated 4 October 2011 prepared by Dr. Gufran Beig was placed for approval of Director, IITM through Accused No.2-Vipin Mali. When the Indent passed through Accused No.1, he suggested constitution of Technical Evaluation Committee (TEC) and Commercial Evaluation Committee (CEC) and the file was placed before the Director. The Director approved the Indent and also proposal for constitution of TEC and CEC. The TEC finalised the specifications for procurement of Digital Display System and accordingly a tender was floated based on specifications finalised by the TEC. In the tender, four bids were received, which were evaluated by TEC consisting of five members. Two bidders were found to be technically eligible. The final bids were then opened and M/s. Video Wall India Pvt. Ltd. (**M/s. Video Walls**) was selected as the successful bidder and it was decided to negotiate the rates with him. After the process of negotiation, the CEC recommended purchase of Digital Display System from M/s. Video Walls at the cost of Rs. 4.66 crores alongwith one year operation and maintenance contract (**OMC**). The CEC also recommended award of maintenance contract to M/s. Video Walls for next two to five years at cost of Rs.1.61 crores. Recommendation of the CEC was accepted by the Director of IITM and accordingly the contract was awarded. Accused No.1 issued test report dated 26 March 2012 in respect of 12 Digital Display Boards supplied by M/s. Video Walls and it appears that the said displays were installed in the year 2012 in various parts of Pune City.

4) Seven years later, Central Bureau of Investigations (CBI) allegedly received source information about irregularities in supply and installation of 12 substandard and below specifications Digital Display System for Pune SAFAR by M/s. Video Wall. CBI accordingly conducted joint surprise check in association with Vigilance and Technical officers of IITM alongwith representatives of M/s. Video Walls. The surprise check was conducted on 30 August 2019 and one tile each of the 11 displays installed at various locations was removed and taken away for testing. It appears that the twelfth display was not found to be installed at the back gate of Pune Municipal Corporation on account of direction of the Municipal Corporation for shifting of the said display. The tiles of the LED panel was thereafter sent for testing to College of Engineering, Pune (COEP). Based on the test report of COEP, it was concluded that the LED displays did not conform to the specifications in the tender notice particularly with regard to the brightness. According to CBI, the brightness specified was 9000 NIT (Cd/M) whereas during the testing conducted by COEP the maximum brightness of the LED tile was found to be only 3312.73 NIT. The CBI also alleged that contractor-M/s. Video Walls procured the LED display units from China which were cheaper in quality and price and thereafter cheated IITM in connivance with Accused Nos.1 and 2.

5) CBI accordingly recorded statements of various persons including the members of the then TEC and CEC. An FIR came to be registered on 30 June 2020 and CBI has filed chargesheet in Special Case No.1010 of 2021 before the learned Special Judge against total six accused, in which Applicants are arraigned as

Accused Nos.1 and 2. The other accused are (i) Shri. Anil Girkar, Managing Director of M/s. Video Wall, Mumbai, (ii) Smt. Manisha Girkar, Director of M/s. Video Wall, (iii) the Company-M/s. Video Wall India Pvt. Ltd., Mumbai and (iv) Shri. Manoj Kumar, the then authorised representative of M/s. Video Walls. It is alleged in the chargesheet that Accused Nos.1 and 2 deliberately diluted the pre-condition/criteria for procurement of Digital Display System and accommodated parties with lower credentials and drastically reduced the turnover limit criteria from Rs.50 crores to Rs.3 crores to facilitate M/s. Video Wall's bidding. It is further alleged that no estimate/reasonable price was prepared for supply/operation and maintenance contract of Digital Display Systems, on account of which LED display board was purchased at Rs.24,85,000/- each for Pune when in fact similar display boards were purchased for Delhi at Rs.17,29,000/-. It is further alleged that the Applicants deliberately rejected the bid of M/s. MIC Electronics Ltd. who was the then existing supplier of Digital Display Boards and was OEM manufacturer with a view to favour M/s. Video Walls, who was mere importer. That M/s. Video Walls deliberately submitted dummy bids of two other parties to grab the contract at higher rates and investigations revealed that tender documents of M/s. LED Images Pvt. Ltd., Pune and M/s. Digital Screen India Pvt. Ltd., Mumbai was purchased by Anil Girkar (Accused No.3), Managing Director of M/s. Video Walls. It is further alleged that Accused No.1 issued bogus test report in respect of Digital Display Board supplied by M/s. Video Walls. The rest of the allegations are essentially against the other four accused about submission of bogus documents alongwith their bids.

6) Accused No.1 retired from services of IITM, Mumbai on attaining the age of superannuation on 31 May 2021, whereas Accused No.2 continued in services of IITM. Disciplinary enquiry was initiated against Accused No.2-Vilas Mali by issuance of Memorandum of Chargesheet dated 25 July 2022. However, after conducting disciplinary enquiry, the Enquiry Officer submitted report on 15 February 2023 holding that the charge levelled against Accused No.2 was not proved. The Disciplinary Authority of Accused No.2 (Director, IITM) passed final order dated 26 April 2023 exonerating Accused No.2 in the domestic enquiry. It appears that domestic enquiry was not conducted against Accused No.1 on account of his retirement on 31 May 2021.

7) Both the Applicants filed applications seeking their discharge from Special Case No.1010/2021. However, by separate orders passed on 15 April 2023, the learned Special Judge has rejected applications of both the accused, which orders are subject matter of challenge in the present application.

8) I have heard Ms. Rebecca Gonsalves, the learned counsel appearing for Accused No.1-Dr. Gufran Beig. She would canvass the following submissions:

- (i) That Accused No.1 followed the procedure prescribed by IITM without any deviation during procurement process and there is absolutely no wrongdoing on his part;
- (ii) That the entire process of procurement is conducted by TEC and CEC and that therefore it is erroneous to selectively blame only Accused Nos.1 and 2 for decisions taken by the committees. More importantly, the minutes of

both the Committees have been ultimately approved by Director, IITM;

- (iii) That the other members of TEC and CEC are neither made accused in the case nor the then Director of IITM, who is the ultimate decision maker, is sought to be prosecuted for his decisions;
- (iv) That there is no complaint raised with regard to the decision-making process within IITM during registration of FIR and that there is absolutely no complaint from IITM about quality and/or functioning of Digital Display Systems.
- (v) That the approval process took place during the years 2010-11 and that the Digital Display Boards were installed during 2012-13 and the same were working without any complaints. The joint surprise check was conducted on 31 August 2019 i.e. after seven long years and the Applicant is sought to be prosecuted after his retirement from service.
- (vi) There is no material in the chargesheet to show any wrongdoing in finalising the specifications as well as tender conditions and therefore it cannot be contended that the Applicants are responsible for dilution of any pre-condition/criteria.
- (vii) The decision to reject bid of M/s. MIC Electronics was taken by the entire Committee unanimously on valid grounds and mere award of contract to M/s. MIC Electronics for SAFAR, Delhi Project did not mean that it ought to have been awarded contract in Pune as well.
- (viii) Erroneous accusation of submission of bogus test report is levelled against Accused No. 1 in absence of any complaint about functioning of the display boards. There is no

material on record to indicate that the test report submitted by Applicant was not genuine.

- (ix) The report of the COEP cannot be relied upon to conclude that the brightness of the entire display board was less than the specification as singular tiles from each of the display boards were seized during joint surprise check thereby damaging the boards in the process. The report of the COEP on the basis of only one tile of the display board cannot conclude the luminosity of the entire display boards. That there is no material on record to indicate that the test of singular tile of display boards is sufficient to conclude brightness of the entire display boards. In any case, the testing was done after 8 to 9 years and therefore not meeting of required specifications in brightness was bound to occur.
- (x) That Applicant is erroneously accused of accepting China made Display boards in absence of prohibition in the tender notice for supply of imported display board. In any case, the CEC was aware that imported LED panels were being supplied. Statement of DRI officers and import agents about M/s. Video Walls importing Digital Display Boards in India in 2011 cannot conclude that the very same LED were installed for SAFAR Pune Project. That there is no material on record to show that items of China make were supplied.
- (xi) There is nothing in the chargesheet to show that items supplied were cheaper or substandard and there is no material on record to infer that the items were over-priced resulting in wrongful loss to IITM. The boards were in running condition when joint inspection was conducted and

there is no material to show any complaints about their functioning.

- (xii) That there is absolutely no material to show any wrongdoing on the part of the Applicant or showing undue favour to M/s. Video Walls and most importantly, there is no allegation of receipt of any monetary benefit to the accused.

On above submissions, Ms. Gonsalves would pray for discharge of Accused No.1.

9) Mr. Avchat, the learned counsel appearing for the Applicant in Criminal Revision Application No.205 of 2023 would adopt the submissions of Ms. Gonsalves. Additionally, he would submit that disciplinary proceedings were initiated against Accused No.2 for very same charge. That he has been exonerated in the same. That if the charge could not be proved on the test of preponderance of probabilities, it is unlikely that conviction of Accused No.2 can be secured in criminal prosecution. In support of his contention, Mr. Avchat would rely upon judgment of the Apex Court in **Radheshyam Kejriwal Versus. State of West Bengal and Anr.**¹ and in **Ashoo Surendranath Tewari Versus. The Deputy Superintendent of Police, EOW, CBI & Anr.**². Additionally, he would submit that after rejection of discharge application, a fresh attempt is made by IITM to issue another chargesheet to Accused No.2, which has been stated by the Central Administrative Tribunal in Original Application No.1109 of 2023 by order dated 4 December 2023. Mr. Avchat would therefore pray for discharge of Accused No.2.

¹ (2011) 3 SCC 581

² Criminal Appeal No.575/2020 decided on 8 September 2020

10) Revision Applications are opposed by Mr. Mundhe, the learned counsel appearing for Respondent-CBI. He would submit that there is sufficient material on record to subject Applicants to trial and it is too premature at this stage to give a certificate of innocence to the Applicants. That Accused No.1 has played a major role in procurement of the Digital Display Boards, who was the Chairman of the Internal Purchase Committee and had necessary technical knowledge about the specifications required for Digital Display Boards. That statements of the other Committee Members recorded by CBI would indicate that it is Accused Nos.1 and 2 who have taken all the decisions relating to tender specifications, finalisation of tender conditions, evaluation of technical bids etc. That investigations have revealed that M/s. Video Walls has procured cheaper Display Boards from China and has supplied the same to IITM. That the 12 LED Display Boards have been procured at cost of Rs.38 lakhs, whereas the same are supplied to IITM at exorbitant cost of Rs.2.98 crores. That after conducting of tests, it has been revealed that the Display Boards are of substandard quality and did not meet the tender specifications. He would submit that Ms. Vidya More, Assistant Professor, Electronics and Telecom Department, COEP is an expert witness who has conducted the test with regard the LED Display Boards and that CBI must be permitted to lead evidence and expert opinion to bring home the charges. He would submit that the tender conditions required grant of preference to '*Made In India*' products and despite availability of M/s. MIC Electronics, who was not only a manufacturer of LED display boards but also had an experience of supplying and installing the same to IITM, whose bid was deliberately rejected by giving preference to M/s. Video Walls for supply of cheaper China-made Display Boards.

11) Mr. Mundhe would take me through the Affidavit-in-reply opposing the Revision Applications to demonstrate that the rate quoted by M/s. MIC Electronics Ltd was Rs. 2.63 crores, which was deliberately ignored for accepting the bid of M/s. Video Wall at an excessive cost of Rs.4.66 crores. That Accused No.1 issued bogus test report in respect of Digital Display Boards by blindly relying on the test certificate produced by M/s. Video Walls without himself conducting any test. Mr. Mundhe would therefore submit that there is enough material available on record for bringing home charges against the accused and therefore the prosecuting agency must be afforded an opportunity to take the case for trial rather than interdicting the same at a premature stage.

12) Mr. Mundhe would submit that this Court has rejected Criminal Writ Petition No. 1043/2023 filed by Manojkumar (Accused No.10) and that therefore there is no reason why the applications filed by the Applicants need to be entertained. So far as exoneration of Vilas Raghunath Mali is concerned, Mr. Mundhe would submit that mere exoneration in Departmental Enquiry does not mean that prosecution has to be necessarily dropped. That the purpose of conduct of two proceedings, as well as the approach and objective is entirely different and therefore exoneration in one proceeding, cannot affect the other proceedings. In support, he would rely upon judgment of the Apex Court in **Union of India Versus. Sardar Bahadur**³ and **State of Rajasthan Versus. B.K. Meena and others**⁴. He would also rely upon judgment of Single Judge of Allahabad High Court in **Bhagwan Singh Versus. Deputy**

³ (1972) 4 SCC 618

⁴ (1996) 6 SCC 417

Commissioner, Sitapur and another⁵. Mr. Mundhe would pray for dismissal of both the Revision Applications.

13) For considering the prayer of both the Applicants for discharge in Special Case No.1010/2021, it is necessary to sift and weigh the evidence on record for finding out whether a prima facie case is made out to raise grave suspicion for continuation of prosecution against them. With this limited remit of enquiry in the applications, I proceed to examine whether Applicants have made out case for discharge.

14) The prosecution is lodged essentially on an assumption that the contractor supplied and installed substandard Digital Display Boards which, are manufactured in China and which have been procured at a throw away price and supplied to IITM at exorbitant rates thereby causing loss of Rs.2.50 crores to IITM with corresponding wrongful gain to the contractor. While there are various independent allegations against Accused Nos.3 to 6, so far as the present Applicants are concerned, the broad accusation levelled against them are as under:

- (i) Deliberate dilution of preconditions/criteria for procurement of Digital Display Boards for SAFAR Project, Pune while acting as members of TEC as compared to the criteria for SAFAR Project, Delhi.
- (ii) Deliberate dilution of pre-bid conditions relating to turnover limit of last three years by bringing it down drastically from Rs.50 crores (applicable for SAFAR project, New Delhi) to Rs.3 crores for facilitating the accused

⁵ AIR 1962 ALL 232

supplier company to qualify for the bidding. This was done deliberately since the turnover limit of M/s. Video Walls was Rs.12.61 crores during the preceding 3 years.

- (iii) Non-preparation of any estimate/reasonable price for supply and OMC to ascertain reasonableness of rates at which the contract could be awarded, resulting payment of higher cost of Rs.24,85,000/- per unit as compared to cost of Rs.17,29,000/- for SAFAR project, New Delhi.
- (iv) Deliberate rejection of bids of M/s. MIC Electronics while acting as members of TEC on bogus and flimsy grounds and with malafide intention of accommodating the bidders of M/s. Video Walls.
- (v) Non-procurement of details relating to make and model of every item supplied, as well as manuals and technical/electronic drawings/circuit diagrams thereby facilitating M/s. Video Walls to conceal the fact that it was not the Original Equipment Manufacturer (OEM) to supply cheaper China imported products.
- (vi) Issuance of bogus test report by Accused No. 1 in respect of the Digital Display Boards supplied by M/s. Video Walls and recommending passage of bills without having actually tested the items at laboratory.
- (vii) Failure on the part of Accused No.1 to ask for the source of procurement as well as the make of the items. Accused No.1 entered into criminal conspiracy with the other accused by abusing their official position as public servant and causing undue favour, provide supply to the Company causing huge wrongful loss of Rs. 2.50 crores to IITM and corresponding wrongful gain to M/s. Video Walls.

15) As observed above, there are various additional accusations against Accused Nos. 3 to 6, which are not relevant for the purpose of deciding the present applications. On above broad allegations, it is alleged that Applicants have committed offences under Section 120-B read with Sections 420, 465, 468 and 471 of the Indian Penal Code as well as Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

16) Sanction for prosecution of Applicant-Dr. Gufran Beig appears to have been issued on 25 April 2022 and for Applicant-Mr. Vipin Mali, the same appears to have been issued on 6 May 2022. CBI has filed chargesheet against total 6 accused on 23 December 2021.

17) After going through the entire chargesheet, it must be observed at the very outset, and Mr. Mundhe does not fairly dispute, that there is no allegation of cause of any financial gain to either of the Applicants in the entire transaction and award of contract to M/s. Video Walls by IITM. There is ofcourse allegation of cause of wrongful loss to IITM to the tune of Rs.2.50 crores and corresponding gain to Accused Nos.3 to 6. However, so far as the Applicants are concerned, there is no direct or indirect allegation that they have secured any pecuniary advantage for themselves in the matter of award of contract to M/s. Video Walls.

18) It appears that IITM had already installed Digital Display Boards under SAFAR project at New Delhi and it proposed to install Outdoor LED display units at 12 different locations in Pune City to display data relating to air quality in Pune City. Accused No.1 in his position as Scientist-F was arraigned the role of

Project Leader and he prepared the Indent on 4 October 2011 for procurement of 12 Outdoor LED display units and 5 Indoor display units comprising of total one quantity of Digital Display System at approximate cost of Rs. 4 crores. In para-4 of the Indent, the display boards would be indigenous or imported. The Indent prepared by Accused No.1 was processed by Accused No. 2, who was posted in store section, by putting up a File Note dated 4 October 2011. It appears that Accused No.1 was the Chairman of Purchase Committee and he made a Note in the file on 4 October 2011 for constitution of TEC and CEC consisting of five officers each. The file was put up before the Director, IITM, who approved the same on 5 October 2011. This is how the Director approved constitution of TEC and CEC, which included both Accused Nos.1 and 2. The TEC was headed by Mr. P.G. Saptashi, Ex-Head, Department of Environmental Science, University of Pune as Chairman, whereas the CEC was headed by Dr. R. Krishnan, Scientist-G, superior official to Accused No.1 (who was functioning as Scientist-F) as its Chairman.

19) TEC met on 2 November 2011 and discussed the procurement bill and finalised the specifications, the minutes of the meeting of the TEC dated 2 November 2011 is signed by all the five members. Thus, the specifications relating to Outdoor LED display as well as Indoor LED display were finalised by TEC comprising of 5 members. The specifications finalised by the TEC were placed before the Director, who approved the same on 18 November 2011. Thereafter, the tender conditions were also finalised by TEC, which were approved by Director, IITM on 22 November 2011. The tender notice was published in prominent newspapers in New Delhi, Chennai, Calcutta and Bangalore in English, Hindi and Marathi. In

pursuance of the tender notice, bids were received from (i) M/s. Digital Screen India Pvt. Ltd. (ii) LED Image India Pvt. Ltd. (iii) MIC Electronics Ltd. and (iv) M/s. Video Walls. The four bids were placed before TEC for its valuation in the meeting held on 2 January 2012. The TEC found only two bidders technically eligible, namely, M/s. LED Images Pvt. Ltd. and M/s. Video Walls. The final minutes of the TEC were placed for approval before the Director, IITM who approved the same on 6 January 2012. The two technically qualified bids were thereafter opened by CEC for commercial evaluation and CEC found that the bid of M/s. Video Walls was 'L-1'. The CEC recommended negotiations with L-1 bidder. The minutes of CEC dated 9 January 2012 were placed before the Director, IITM who approved the same on 17 January 2015. Thereafter, IITM negotiated with M/s. Video Walls in the meeting held on 24 January 2012, which was attended by representatives of M/s. Video Walls. The said representative informed CEC that the major components in the LED boards would be imported and offered only 5% discount. The CEC thereafter unanimously recommended purchase of Digital Display System from M/s. Video Walls at total basic cost of equipment with one year OMC of Rs.4,66,96,680/-. Additionally, CEC also recommended procurement of OMC for maintenance of equipment for next two to five years at the cost of Rs.1,61,18,699.40/-. The minutes of the CEC meeting dated 24 January 2012 were approved by the Director, IITM on 20 January 2015. This is how, M/s. Video Walls came to be selected by IITM as supplier of Digital Display Systems by following the above detailed procedure.

20) While deciding discharge application, though ordinarily this Court is not required to consider evidence in detail, the above procedure is discussed only for the purpose of examining whether

selection of the supplier was an arbitrary decision taken by Accused Nos.1 and 2 on their own. The above procedure would indicate that all the decisions relating to technical evaluation as well as commercial acceptance are taken by Committees of five persons each. More importantly, the decisions of TEC and CEC have been approved by the Director, IITM. However, only Accused Nos.1 and 2 are sought to be prosecuted and the prosecution is not lodged either against the other members of TEC or CEC or even against the then Director, IITM who had approved all the decisions relating to technical valuation, as well as commercial acceptance of the bids. Therefore, the above material available on record does not create any grave suspicion against the Applicants in relation to Allegations Nos. (i), (ii) and (iii) quoted above.

21) So far as the allegation of deliberate rejection of bid of M/s. MIC Electronics is concerned, TEC recorded following reasons for rejection MIC's bids.

(2) Ms. MIC Electronics Ltd., Hyderabad- :

Representatives from the company made presentations. Several clarifications were sought by the Committee. After reviewing presentation and obtaining the feedback from PS-unit, committee observed following:

- (A) The dimension of the LED display board is not found to be as per the tendered specification. The vendor has quoted length as 9.5' whereas requirement is 10' or above. The size can not be compromised because the visibility from a distance is one of the most important parameters, which is directly related to the dimension. For best resolution the pitch of LED is specified as 10mm (physical) and 5mm (visual) with 3 mm oval through hole in the tender document. Although, representative has made claim that MIC will supply the desired pitch but after studying the profile and details in the website of company, no reference of this pitch resolution board is found neither any evidence is found which confirm that MIC has supplied a board with such resolution in the recent past.

(B) In the recent past, IITM purchased similar types of goods from this company for SAFAR-CWG-2010 and it is found that after sale services provided by the company is very poor and unsatisfactory which were confirmed by IMD Official In-charge who is looking after SAFAR-Delhi project during and after relocation. It has been reported that even after several reminders, company could not do the work promptly in spite of the that all supplied material was under warranty. Committee observed very casual approach when inquired about the status and performance of the earlier supplied goods (Digital Display Boards) by the same company to the IITM. Representative accepted that they are still making a quality check and experimenting with various options. specially the software part which is very important. Committee has observed that company is still not sure about the testing, performance & requirement even after more than 1 year of operation. It has also been informed to the committee that IITM has asked the same vendor/bank to extend the Bank Guarantee of last year's PO due to non performance of the contract agreement. Committee also felt the lack of seriousness in the commitment of the representative while answering the queries.

Since the project SAFAR-PUNE is target oriented and related with the prestige of the institute, no compromise can be made with respect of quality of goods & maintenance. Hence it is decided unanimously by the Technical Evaluation Committee members to reject their offer

22) Thus, the TEC found that the dimension of LED display board quoted by MIC was not as per the tender specifications. MIC had quoted length of 9.5 ft against the requirement of 10 ft. or above. The TEC felt that comprising size was impossible as visibility from distance was one of the most vital parameters.

23) Considering the reasons for rejection of MIC's bid, the question that arises is, whether those reasons of TEC can be termed as bogus or flimsy, as alleged, when MIC's bid did not meet the basic criteria of minimum size of LED display. The answer to the question, to my mind, appearing to be emphatic negative. Apart from the fact that the rejection does not appear to be flimsy, the decision to reject the bid was unanimously taken by Committee of five members headed by Mr. P.G. Saptarshi, Chairman. Therefore, there is no

sufficient material on record to bring home the charge of rejection of bid of MIC on bogus or flimsy grounds.

24) So far as the charge of issuance of bogus test report levelled against the First Accused is concerned, it appears that after receipt of the 12 digital display boards, Accused No.1 issued test report dated 26 March 2012 in his capacity as Indenting Officer certifying that the items were tested and found OK as per the specifications. The test report appears to be in a printed form which is filled in handwriting. The CBI possibly expects Accused No.1 to get the digital display boards tested from an independent agency rather than blindly relying on the test certificate produced by M/s. Video Walls. In this regard, it would be apposite to refer to the time taken by COEP in testing the seized tiles of 11 display boards. The tiles were seized on 30 August 2019 and the COEP gave its test report relating to readings of luminance measurement on 12 May 2021. While this aspect is considered not to suggest that testing of Boards at the relevant time in 2012 would have also taken one or two years, there is nothing on record to indicate that the IITM possessed either the wherewithal to test the display boards or that such massive sized display boards were expected to be transported to any testing lab and whether a budget was sanctioned for testing of the display boards through external agencies. Also the testing lab which issued the test report is not made accused in the case. In ordinary course, official holding senior position of Scientist-F would ensure that the display boards are functional. One such satisfaction about functioning of the display boards is recorded, I do not see any reason why any adverse inference can be drawn with regard to his test report, in absence of requirement for compulsory testing of equipment from outside agencies. Therefore even *qua* the

accusations of issuance of bogus test report, there appears to be no sufficient material on record for raising grave suspicion against Accused No.1.

25) So far as supply of Digital Display Boards manufactured in China are concerned, the Indent itself specified that the equipment would be either indigenous or imported. There was no prohibition in the tender notice for bidders to procure the equipment from China. There is nothing on record to indicate that any of the 11 boards installed at different locations in Pune City developed any problem for seven long years during 2012 to 2019. IITM did not receive any complaint about possible malfunctioning of any of the display boards. Therefore, inference sought to be drawn by CBI that the display boards supplied to IITM were of substandard quality is not supported by any material on record. CBI contradicts itself in branding the display boards as cheap when it seeks to compare the price of display board installed at Pune at Rs. 24,85,000/- with the ones installed in Delhi Rs.17,29,000/-. Though, it is sought to be alleged that the display boards were procured by the supplier at throw away price of Rs.38,00,000/- and supplied to IITM at exponentially high cost of Rs.2.98 crores, no material is collected by CBI during the course of investigations to suggest that the LED boards imported by M/s. Video Walls in January 2011 were the ones supplied to IITM in the year 2012-13. There appears to be no such link evidence.

26) The most striking factor in the present case is institution of disciplinary enquiry against Accused No.2-Vipin Ranganath Mali levelling same allegations based on same evidence.

It would be apposite to reproduce the charge levelled against Accused No.2 in the departmental enquiry:

Article-1

That during the period 2011-12, Shri. Vipin R. Mali, while posted and functioning as Sr. Technical Officer, Gr.II and in-charge of Purchase Section at Indian Institute of Tropical Meteorology (IITM), Pune entered into criminal conspiracy with Dr. Gufran Beig, the Scientist 'F' and Project-in-charge of SAFAR Project at IITM, Pune and private persons, i.e. Directors and Authorized Representative of private supplier company M/s. Video Wall India Pvt. Ltd., Mumbai and in pursuance thereof, by abusing his official position as Public Servant shown undue favour to the private party M/s. Video Wall India Pvt. Ltd., Mumbai by facilitating the private accused persons to manipulate the tender procedure and award of the contract in their favour and also accepted below specifications cheap, Made in China, Digital Display Boards on exorbitant rates for SAFAR project, Pune and thereby caused huge wrongful loss to the tune of Rs.2.50 crores approximately to IITM and corresponding wrongful gain to the private party and themselves.

And thereby aforesaid Shri. Vipin R. Mali, while posted and functioning as Sr. Technical Officer, Gr.II and in-charge of Purchase Section at Indian Institute of Tropical Meteorology (IITM), Pune contravened the provisions of Rule 3 of CCS Conduct Rules.'

27) After conduct of detailed enquiry into the charge, the Enquiry Officer gave report dated 15 February 2023 holding that the charge levelled against Accused No.2 was not proved. The Enquiry Officer found that (i) the tender for procurement was an open tender and sufficient publicity was given for the same, (ii) the formation of TEC/CEC were done as per the laid down practice, (iii) L-1 was awarded the contract and (iv) the SAFAR project functioned for the last 8-10 years. The Enquiry Officer held the allegations relating to disqualification of M/s. MIC Electronics, preparation of estimates for the supply and OMC of the Digital Display System of SAFAR project, Pune, failure to ensure Make and Model, manuals, technical/electronic diagrams, supply of cheap Chinese components

to be disproved. Thus, all the elements of accusations that are sought to be levelled against the Applicants formed part of departmental enquiry conducted against Accused No.2 and the charge was held to be disproved by the Enquiry Officer. The Disciplinary Authority being Director, IITM accepted the findings of the Enquiry Officer and exonerated Accused No.2 by order dated 26 April 2023.

28) It is well settled law that the test of proving charges in disciplinary enquiry is preponderance of probabilities as against the test of proof beyond reasonable doubt in criminal prosecution. The question therefore is, if the charges could not be proved on the test of preponderance of probability in the departmental enquiry, will the CBI be in a position to secure conviction of Applicants by applying stricter test of proof beyond reasonable doubt in criminal prosecution? The answer to the question appears to be in the negative. Though, Mr. Munde has sought to contend that the purpose of conduct of two proceedings is different and that therefore the findings recorded in one proceeding cannot affect the other, this submission would be more apposite in a reverse situation if Applicants were to be acquitted in criminal prosecution and they were to seek dropping of disciplinary proceedings. In a converse situation, the submissions sought to be canvassed by Mr. Munde would have no application. Therefore, his reliance on judgments in **B.K. Meena** (supra), **Sardar Bahadur** (supra) and **Bhagwan Singh** (supra) would be irrelevant for determining the issue at hand.

29) Mr. Avchat has relied upon judgment of the Apex Court in **Radheshyam Kejriwal**. The Apex Court has held that the

exoneration in adjudication proceedings which are conducted on the basis of preponderance of evidence involving lesser degree of standard of proof than criminal prosecution would have material bearing on continuation of criminal prosecution. In paras-25, 26, 29 to 31, 38 and 39, the Apex Court has held as under:

25. Mr. Malhotra, then contends that finding of the Enforcement Directorate in the adjudication proceedings is not binding or relevant in the criminal court where the appellant is facing the trial. In support of the contention, reliance has been placed on a full Bench decision of the Lahore High Court in the case of *B.N. Kashyap vs. Emperor* and our attention has been drawn to the following passage: (AIR p.27)

“There is no reason in my judgment as to why the decision of the civil Court particularly in an action in personam should be allowed to have that sanctity. There appears to be no sound reason for that view. To hold that when a party has been able to satisfy a civil court as to the justice of his claim and has in the result succeeded in obtaining a decree which is final and binding upon the parties, it would not be open to criminal Courts to go behind the findings of the civil Court is to place the latter without any valid reason in a much higher position than what it actually occupies in the system of administration in this country and to make it master not only of cases which it is called upon to adjudicate but also of cases which it is not called upon to determine and over which it has really no control. The fact is that the issues in the two cases although based on the same facts (and strictly speaking even parties in the two proceedings) are not identical and there appears to be no sufficient reason for delaying the proceedings in the criminal Court, which unhampered by the civil Court, is fully competent to decide the questions that arise before it for its decision and where in the nature of things there must be a speedy disposal.”

We do not find any substance in this submission of Mr. Malhotra also.

26. We may observe that standard of proof in a criminal case is much higher than that of the adjudication proceeding. The Enforcement Directorate has not been able to prove its case in the adjudication proceeding and the appellant has been exonerated on the same allegation. The appellant is facing trial in the criminal case. Therefore, in our opinion, the determination of facts in the adjudication proceeding cannot be said to be irrelevant in the criminal case. In the case of *B.N. Kashyap*, the full Bench had not considered as to the effect of a finding of fact in a civil case over the criminal cases and that will be evident from the following passage from the said judgment :

“I must, however, say that in answering the question, I have only referred to civil cases where the actions are in personam and not those where the proceedings or actions are in rem. Whether a finding of fact arrived at in such proceedings or actions would be relevant in criminal cases, it is unnecessary for me to decide in this

case. When that question arises for determination, the provisions of Section 41, Evidence Act, will have to be carefully examined.”

29. We do not have the slightest hesitation in accepting the broad submission of Mr. Malhotra that finding in an adjudication proceeding is not binding in the proceeding for criminal prosecution. A person held liable to pay penalty in adjudication proceeding can not necessarily be held guilty in criminal trial. Adjudication proceedings are decided on the basis of preponderance of evidence of a little higher degree whereas in a criminal case entire burden to prove beyond all reasonable doubt lies on the prosecution.

30. In the case of *Iqbal Singh Marwah* relied on by Mr. Malhotra, the question which fell for consideration was as to whether bar under Section 195 (1) (b) (i) and (ii) operates for taking cognizance when a complaint is filed alleging that will filed by the accused in a probate case is forged and while holding that the bar would not operate if the will is forged before its filing in the court, hence the aforesaid observation of this court has no bearing in the facts and circumstances of this case.

31. It is trite that standard of proof required in criminal proceedings is higher than that required before adjudicating authority and in case accused is exonerated before the adjudicating authority whether his prosecution on same set of facts can be allowed or not is the precise question which falls for determination in this case.

38. The ratio which can be culled out from these decisions can broadly be stated as follows :-

(i) Adjudication proceeding and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceeding is not necessary before initiating criminal prosecution;

(iii) Adjudication proceeding and criminal proceeding are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceeding is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceeding by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20 (2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceeding in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceeding is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where allegation is found to be not sustainable at all and person held innocent, criminal prosecution on the same set of facts and circumstances can not be allowed to continue underlying principle being the higher standard of proof in criminal cases.

39. In our opinion, therefore, the yardstick would be to judge as to whether allegation in the adjudication proceeding as well as proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceeding is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceeding, the trial of the person concerned shall be in abuse of the process of the court.

(emphasis added)

30) The judgment in ***Radheshyam Kejriwal*** has been followed by the Supreme Court in its subsequent decision in ***Ashoo Surendranath Tewari*** (supra) in which order passed by the Central Vigilance Commission was relied upon for refusing prosecution sanction. The Apex Court held in para-8 of its order as under:

8. Applying the aforesaid judgments to the facts of this case, it is clear that in view of the detailed CVC order dated 22.12.2011, the chances of conviction in a criminal trial involving the same facts appear to be bleak. We, therefore, set aside the judgment of the High Court and that of the Special Judge and discharge the appellant from the offences under the Penal Code.

31) Again in recent judgment in ***Karnataka Emta Coal Mines Ltd. & Anr Vs. Central Bureau of Investigation***⁶ the Apex Court has held as under:

10.1. Coming next to the submission made by learned counsel for the respondent that the judgment dated 24th March, 2016 passed by the Karnataka High Court in a writ petition filed by KECML against KPCL is of no consequence, as the said judgment was

⁶ Criminal Appeal No. 1659-1660 of 2024 decided on 23 August 2024.

confined to examining the demands made by KPCL on KECML for reimbursement towards the value of the coal rejects, the same is found to be erroneous. **It is well-settled that in a case of exoneration on merits in relation to adjudication proceedings in a civil matter where the allegations are found to be unsustainable and the party is held as innocent, criminal prosecution on the same set of facts and circumstances cannot be permitted to continue.** In *Radheshyam Kejriwal*(supra), a three judges Bench of this Court reconciled the conflict between the view taken in *Standard Chartered Bank(1) v. Directorate of Enforcement and Collector of Customs v. L.R. Melwani* on the one hand where it was held that adjudication proceedings and criminal proceedings are two independent proceedings and both can go on simultaneously and findings in the adjudication proceedings is not binding on the criminal proceedings and the judgments in *Uttam Chand v. ITO, G.L. Didwania v. ITO, K.C. Builders v. CIT* where the view taken was that when there is a categorical finding in the adjudication proceedings exonerating a person which is binding and conclusive, the prosecution cannot be allowed to stand, this Court summarized the ratio of the decisions in the following words:
.....

(emphasis added)

32) However, there are few contra decisions of the Apex Court holding that mere exoneration in the departmental inquiry cannot be a ground ipso facto to discharge the accused in a criminal case. In *State (NCT of Delhi) v. Ajay Kumar Tyagi*⁷, which is rendered after the judgment in *Radhesham Kejriwal* by the same learned Judge (His Lordship Justice C. K. Prasad), the Apex Court considered the issue as to whether mere exoneration in departmental inquiry would be a reason enough for dropping the prosecution. The Apex Court held:

20. It is well settled that the decision is an authority for what it actually decides and not what flows from it. The mere fact that in P.S. Rajya [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] , this Court quashed the prosecution when the accused was exonerated in the departmental proceeding would not mean that it was quashed on that ground. This would be evident from para 23 of the judgment, which reads as follows: (SCC p. 9)

⁷ (2012) 9 SCC 685

“23. Even though all these facts including the report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view that the issues raised had to be gone into in the final proceedings and the report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued. Therefore, we do not agree with the view taken by the High Court as stated above. These are the reasons for our order dated 27-3-1996 [P.S. Rajya v. State of Bihar, Criminal Appeal No. 434 of 1996, order dated 27-3-1996 (SC)] for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs.”

(emphasis supplied)

From the reading of the aforesaid passage of the judgment it is evident that the prosecution was not terminated on the ground of exoneration in the departmental proceeding but, on its peculiar facts.

21. It is worth mentioning that the decision in P.S. Rajya [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] came up for consideration before a two-Judge Bench of this Court earlier, in State v. M. Krishna Mohan [(2007) 14 SCC 667 : (2009) 1 SCC (Cri) 922] . While answering an identical question i.e. whether a person exonerated in the departmental enquiry would be entitled to acquittal in the criminal proceeding on that ground alone, this Court came to the conclusion that exoneration in departmental proceeding ipso facto would not lead to the acquittal of the accused in the criminal trial. This Court observed emphatically that the decision in P.S. Rajya [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] was rendered on peculiar facts obtaining therein. It is apt to reproduce paras 32 and 33 of the said judgment in this connection:

“32. Mr Nageswara Rao relied upon a decision of this Court in P.S. Rajya v. State of Bihar [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] . The fact situation obtaining therein was absolutely different. In that case, in the vigilance report, the delinquent officer was shown to be innocent. It was at that juncture, an application for quashing of the proceedings was filed before the High Court under Section 482 of the Code of Criminal Procedure which was allowed relying on State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] holding: (P.S. Rajya case [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] , SCC p. 9, para 23)

‘23. Even though all these facts including the report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view that the issues raised had to be gone into in the final proceedings and the report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued.’”

Ultimately this Court concluded as follows:

“33. The said decision was, therefore, rendered on the facts obtaining therein and cannot be said to be an authority for the proposition that exoneration in departmental proceeding ipso facto would lead to a judgment of acquittal in a criminal trial.”

22. This point also fell for consideration before this Court in Supt. of Police (CBI) v. Deepak Chowdhary[(1995) 6 SCC 225 : 1995 SCC (Cri) 1095] , where quashing was sought for on two grounds and one of the grounds urged was that the accused having been exonerated of the charge in the departmental proceeding, the prosecution is fit to be quashed. The said submission did not find favour with this Court and it rejected the same in the following words:

“6. The second ground of departmental exoneration by the disciplinary authority is also not relevant. What is necessary and material is whether the facts collected during investigation would constitute the offence for which the sanction has been sought for.”

33) 23. The decision of this Court in CBI v. V.K. Bhutiani [(2009) 10 SCC 674 : (2010) 1 SCC (Cri) 407] , also throws light on the question involved. In the said case, the accused against whom the criminal proceeding and the departmental proceeding were going on, was exonerated in the departmental proceeding by the Central Vigilance Commission. The accused challenged his prosecution before the High Court relying on the decision of this Court in P.S. Rajya [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] and the High Court quashed the prosecution. On a challenge by the Central Bureau of Investigation, the decision was reversed and after relying on the decision in M. Krishna Mohan [(2007) 14 SCC 667 : (2009) 1 SCC (Cri) 922] , this Court came to the conclusion that the quashing of the prosecution was illegal and while doing so observed as follows:

“6. ... In our opinion, the reliance of the High Court on the ruling of P.S. Rajya [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] was totally uncalled for as the factual situation in that case was entirely different than the one prevalent here in this case.”

24. Therefore, in our opinion, the High Court quashed the prosecution on total misreading of the judgment in P.S. Rajya case [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] . In fact, there are precedents, to which we have referred to above, that speak eloquently a contrary view i.e. exoneration in departmental proceeding ipso facto would not lead to exoneration or acquittal in a criminal case. On principle also, this view commends us. It is well settled that the standard of proof in a department proceeding is lower than that of criminal prosecution. It is equally well settled that the departmental proceeding or for that matter criminal cases have to be decided only on the basis of evidence adduced therein. Truthfulness of the evidence in the criminal case can be judged only after the evidence is adduced therein and the criminal case can not be rejected on the basis of the evidence in the departmental proceeding or the report of the inquiry officer based on those evidence.

25. We are, therefore, of the opinion that the exoneration in the departmental proceeding ipso facto would not result in the quashing of the criminal prosecution. We hasten to add, however, that if the prosecution against an accused is solely based on a finding in a proceeding and that finding is set aside by the superior authority in the hierarchy, the very foundation goes and the prosecution may be quashed. But that principle will not apply in the case of the departmental proceeding as the criminal trial and the departmental proceeding are held by two different entities. Further, they are not in the same hierarchy.

34) Thus there appears to be cleavage of opinion about continuation of prosecution after dropping of civil proceedings on merits. In the present case, mere exoneration of Accused No. 2 has not been considered as the only factor for ordering discharge of Applicants. Exoneration of Accused No.2 in the Departmental Enquiry is only being considered as an additional factor while deciding the question of continuation of criminal prosecution. The issue of discharge is essentially considered by sifting and weighing the evidence on record. Undoubtedly, exoneration of Accused No.2 in

the Departmental Enquiry is on merits as the Enquiry Officer has absolved him of various allegations which are identical in nature. So far as Accused No.1 is concerned, he was not subjected to Departmental Enquiry possibly on account of his retirement on 31 May 2021 and impermissibility to initiate Departmental Enquiry in respect of the incidents occurring four years prior to retirement. However, since nature of charges levelled in Departmental Enquiry against Accused No.2 are identical to the role ascribed to Accused No.1 in criminal prosecution, it can safely be concluded that the CBI would not be in a position to secure conviction even against Accused No.1 on the basis of material collected by it during the course of investigations.

35) So far as withdrawal of Criminal Writ Petition No.1043/2023 by Accused No.6 (Manoj Kumar) is concerned, the same cannot be a reason for not granting relief in favour of the Applicants, who are public servants and against one of them, Departmental Enquiry is conducted resulting in his exoneration. Furthermore, as against Accused Nos. 3 to 6 who face allegation of causing pecuniary gain to themselves, no such accusation is levelled against the Applicants. Similarly Accused No. 3 to 6 also face graver charges of forgery, etc. Therefore, case of Applicants is different than that of Accused No. 6.

36) Therefore, I am of the view that the prosecution against the Applicants cannot be permitted to be continued. I am unable to hold that CBI has any chance of securing conviction of the Applicants based on the material collected by it. In fact, continuation of prosecution of the Applicants would not only be an empty formality, but an abuse of process of law.

37) Applications accordingly succeed and I proceed to pass the following order:

- (i) Orders dated 15 April 2023 passed by the learned Special Judge are set aside.
- (ii) Both the Applicants are discharged in Special Case No.1010 of 2021.

38) With the above directions, both the Criminal Revision Applications are allowed and disposed of. There shall be no order as to costs.

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[SANDEEP V. MARNE, J.]