Delhi Development Authority vs Skipper Construction Co. (Pvt.) Ltd. & ... on 13 November, 2002

Equivalent citations: AIR 2003 SUPREME COURT 328, 2003 (1) SCC 547, 2002 AIR SCW 4812, 2002 (6) SLT 462, 2002 (8) SCALE 458, (2002) 9 JT 225 (SC), 2002 (10) SRJ 534, (2002) 8 SCALE 458, (2002) 8 SUPREME 26, (2003) 1 UC 179, (2003) 3 ALL WC 2147, (2002) 100 DLT 617, (2003) 1 BANKCLR 203

Bench: Umesh C. Banerjee, Shivaraj V. Patil

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           CASE NO.:
Special Leave Petition (civil)  21000 of 1993

PETITIONER:
Delhi Development Authority

RESPONDENT:
Skipper Construction Co. (Pvt.) Ltd. & Ors.

DATE OF JUDGMENT: 13/11/2002

BENCH:
Umesh C. Banerjee & Shivaraj V. Patil.

JUDGMENT:
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JUDGMENT Banerjee, J.

M/s Skipper Constructions (P) Ltd. was incorporated on 14th February, 1986 to undertake development and construction of commercial and residential complexes. The activity is generally financed from advances/deposits from prospective buyers. Skipper has had five other associates : Skipper Tower Private Limited; Skipper Builders Private Limited; Skipper Sales Private Limited; Skipper Properties Private Limited; and Anand Construction (Delhi) Private Limited.

The contextual facts depict that in an auction held on 8th October, 1980 in respect of the plot of land in Jhandewalan, the bid of Rs.982 lacs offered by Skipper Constructions was accepted by the Delhi Development Authority (DDA herein). The Company had deposited Rs.245.75 lacs on the date of auction and the balance amount of Rs.736.25 lacs was required to be deposited within 90 days. The records depict that the Company was able to raise a sum of Rs.645.66 lacs from the flat owners in stages, out of which Rs.583.25 lacs were paid to the DDA towards the cost of the land. The DDA, however, had agreed to recover the balance amount of Rs.398.75 lacs together with interest at the rate of 18% per annum amounting to Rs.392.61 lacs accumulated up to the end of year 1985 in five equal instalments in 2-1/2 years and delivered possession of the land against bank guarantee for the like amount. The Company accordingly approached the New Bank of India, Tolstoy Marg Branch in January 1986 with the request for issuance of bank guarantee of Rs.7.90 crores to be executed in

favour of the DDA. The said guarantee was required to be given as the cost of land was not paid in full by the Company to the DDA. The Company proposed to construct the flats on a portion of the Jhandewalan Tower, New Delhi.

The facts further depict that on receipt of the letter dated 23rd January, 1986 from the Skipper Company, the Tolstoy Marg Branch of New Bank of India recommended the facility of having the bank guarantee sanctioned by charging 1% commission per annum on diminishing balance of half yearly rests together with a margin of 15% in the form of FDR main security by equitable mortgage of property No.3, Aurangzeb Road, New Delhi and the lien over unsold space in Jhandewalan Tower amounting to Rs.676.09 lacs along with collateral security of counter guarantee of the Company and personal guarantee of the Directors Tejwant Singh and Harpreet Singh having net means of Rs.2,78,000/- and Rs.2,51,706/- respectively.

The factual score further depicts that the application of the party for issue of guarantee was duly received by the Head Office and after initial quibbles, the proposal was finally sanctioned by the Board of New Bank of India and the limit was enhanced from Rs.7.90 crores to Rs.8.70 crores.

The role played by the bank officials, however, did not find favour with this Court and without much of a narration on the factual score since the matter is kept pending in this Court for quite some time, it would be worthwhile only to note that liberality in advancement of loans and bank guarantees prompted this Court to have the matter inquired into by a sitting Judge of the High Court. Presently for our purpose, we are concerned with the Report as detailed out by Justice Saharya, a former Judge of the Delhi High Court and a former Chief Justice of Punjab and Haryana High Court.

Significantly, however, the issue was examined by the two Deputy Governors of the Reserve Bank of India relating to the question on the issuance of the guarantee for and on behalf of Skipper Constructions by the New Bank of India and Canara Bank. The Report of the Governors stands out to be singularly singular in its vagueness and we do think it fit, however, to put on record relevant extracts of the same.

> "6.25. In regard to the conspiracy, the persons referred to represent different interests and constituencies. There is no clear evidence that there was any communication amongst them in the matter nor was there any concerted action apparent. In fact, there has been resistance with some of them at different points of time, to the whole proposal. There is, therefore, no evidence beyond a remote suspicion of any conspiracy.
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> 6.26. The question of loss to the banks is extremely critical because neither malafides nor personal gains have been established. Hence further action can be supported only on the basis of crystallisation of loss. The properties under dispute are still under examination in the courts. PNB is pursuing the matter in various judicial fora. At this stage, therefore, it is not possible to assess whether a loss would occur and if it occurs, what would be the extent of loss.

> 6.27 Responsibility of the CMDs & Board Directors 6.28 As regards the relative role of the persons referred to, the matter has been dealt extensively in the context of analysing the statements made by them. The banks' Boards as institutions have been found to be not actively involved though the Board of New Bank of India has a greater responsibility in the matter. Hence personal responsibility cannot be fixed in the case of seven (7) members of the Board referred to viz. Smt. T.R. Sahni, S/Shri Sudarshan Lal, S.S. Ranade, J.P. Awasthi, J.K. Sawhney, Dr. M.R. Kotdawala and Shri D. Seetharama.
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> In respect of CMDs, the role of Canara Bank being a participant rather than a lead bank, there is no evidence to show that there was any act of omission or commission on the part of late Shri B. Ratnakar in this regard and E.C. would not hold him responsible. The primary responsibility for initiating the case, considering it, taking it repeatedly before the Board, getting it approved, following it up at the implementation stage in whatever manner that happened should squarely be placed on the then CMD of the New Bank of India (viz. Shri R.C. Suneja). However, action can justifiably be contemplated once the loss to the bank is established and crystallized."

It is on the basis of the Report of the Deputy Governors of the Reserve Bank of India that Canara Bank officials as well wanted to put on record a clean chit to late Shri B. Ratnakar and the only person in terms of the report of the Deputy Governors responsible for financial irregularities seems to be R.C. Suneja. The defence of Suneja, however, in the affidavit had been a complete denial and a categoric denial as to the existence of any procedural illegality neither any malfeasance or misfeasance stand out to be noticed by the scrutiny of account by the two Deputy Governors of the Reserve Bank of India. The Board itself sanctioned guarantee upon proper inquiries being made and Mr. Suneja is not the only person in the Board who was responsible for the grant and it is in this context the Report stands contradicted by Mr. Suneja recording therein that no individual responsibility can be foisted on to the latter as otherwise it would be travesty of justice and to seek a scapegoat in Mr. Suneja. We do find some justification in such a statement why alone and not other members of the Board including the representatives of the Reserve Bank of India the answer seems to be delightfully vague in the two Deputy Governors' Report.

Saharya Commission did go into the issue and indicated in a tabular column the norms required to be followed when a bank guarantee is issued and the status in respect of its compliance.

A very significant finding in the report is to be found wherein it is clear that the Board of Directors of the New Bank of India had specifically declined on 13.3.1986 the proposal of giving Skipper a bank guarantee and in fact that meeting was a follow-up of an earlier Board meeting of 18.2.1986 where also the Board had not been too enthusiastic about the proposal. However suddenly in the meeting of 17.3.1986 the Skipper case rose from the dead like a phoenix and the matter was reconsidered when the same was not even on the agenda.

The report indicates further that there were several lacunae in terms of supervision by intermediary authorities such as Regional Office and also wrong forms were used in the transaction. While inquiring into the role of the individual officers and the members of Board the Commission comes to a finding that there was complete lack of prudence on the part of the officials. Further, the Commission comes to a definite finding after discussing the role played by the various officers at different levels in the hierarchy of the bank as follows :

> "I have no hesitation to conclude that the transaction from its very inception was unsafe. It was not adequately secured. It was not profitable. It was, therefore, not prudent for the two banks to get into it. I have also no hesitation to conclude that the concerned officials of the said two banks did not act diligently or prudently in extending the facility to the Company."

In fine, the report concluded as below :

> (a) that the two Banks granted the facility of Bank Guarantee in violation of statutory norms as well as established practices and procedures;
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> (b) that Mr. R.C. Suneja, Chairman-cum-Managing Director of the New Bank of India while holding public office in fiduciary capacity was the prime functionary, who, intentionally, fraudulently and to further the interests of the Company played a major role in the grant of the facility thereby defrauding the bank and causing it huge losses;
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> (c) that other functionaries of the New Bank of India as named in Issue No.2 violated the established norms and procedure in grant of the facility as well as non-fulfillment of the conditions laid down in the Bank Guarantee;
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> (d) that Mr. B.R. Ratnakar, Chairman-cum-Managing Director, Canara Bank, intentionally and with knowledge that sanction of the proposal was neither in consonance with the norms nor was it for the benefit and in the interest of the Bank, involved the Bank in the transaction;
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> (e) that the other functionaries of the Canara Bank as named in Issue No.2 directly assisted the Company to get participation of Canara Bank in the unprofitable transaction and did not ensure fulfillment of the conditions contained in the guarantee;
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> (f) that it stands established that the two banks intentionally and with full knowledge sacrificed all norms, caution, care and prudence in granting the facility;
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> (g) that the concerned functionaries of the Reserve Bank of India did not take due notice of the quarterly/half yearly reports submitted by its nominee Directors and therefore due to their inaction corrective steps could not be initiated within time;

(h) that because of the inaction of the senior functionaries of the Department of Banking in dealing with the allegations/complaints against Mr. R.C. Suneja, initiation of corrective measures got delayed to a point when substantial damages had already been caused; and

(i) that the manner of scrutiny of proposal of the Company, the grant of the facility, the monitoring of the conditions of the facility, inaction on the reports by the RBI Nominee Director and inaction on the complaints made to Government especially the one made by 28 sitting M.Ps. establishes that things were "rotten" and stinking not only in the two Banks but all over.

It is indeed essential to note that in spite of concluding that there were in fact intentional acts on the part of the officials the Commission did not, however, feel it expedient to note or quantify the amount of misfeasance and malfeasance on the part of the bank officials.

Incidentally, this Court in its decision pertaining to an issue of more or less similar nature did hear the matter in great length in the matter of proposal to reopen the quantum of punishment imposed in the departmental inquiry held on certain officers of the Delhi Development Authority who were connected with the land of DDA allotted to Skipper Construction Company. It was proposed to consider imposition of higher degree of punishment in view of the role of those officers since the Court had no occasion to examine whether the right punishments were awarded to the officers in accordance with the known principles of law or whether the punishment required any upward revision. It is in the light of the above situation this Court by its order dated 17.11.2000 and upon reliance to the Wednesbury principles stated the law to be as below :

" . where administrative action is challenged under Article 14 as being discriminatory equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Here the court deals with the merits of the balancing action of the administrator and is, in essence, applying "proportionality" and is primary reviewing authority.

But where an administrative action is challenged as "arbitrary" under Article 14 on the basis of Royappa (E.P. Royappa v. State of T.N. 1974(4) SCC 3) (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is "rational" or "reasonable" and the test then is the Wednesbury test. The courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. [In G.B. Mahajan v. Jalgaon Municipal Council (1991 (3) SCC 91 at 111)] Venkatachaliah J. (as he then was) pointed out that "reasonableness" of the

> administrator under Article 14 in the context of administrative law has to be judged from the stand point of Wednesbury rules. In Tata Cellular v. Union of India (1994 (6) SCC 651 at 679-80), Indian Express Newspapers Bombay (P) Ltd. v. Union of India (1985 (1) SCC 641 at 691), Supreme Court Employees' Welfare Assn. v. Union of India (1989 (4) SCC 187 at
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> 241) and U.P. Financial Corpn. v. Gem Cap (India) (P) Ltd. (1993 (2) SCC 299 at 307) while judging whether the administrative action is "arbitrary" under Article 14 (i.e. otherwise then being discriminatory), this Court has confined itself to a Wednesbury review always.

Thus, when administrative action is attacked as discriminatory under Article 14, the principle of primary review is for the courts by applying proportionality. However, where administrative action is questioned as "arbitrary:" under Article 14, the principle of secondary review based on Wednesbury principles applies.

Proportionality and punishments in service law The principles explained in the last preceding paragraph in respect of Article 14 are now to be applied here where the question of "arbitrariness" of the order of punishment is questioned under Article 14.

In this context, we shall only refer to these cases. In Ranjit Thakur v. Union of India (1987 (4) SCC 611) this Court referred to "proportionality" in quantum of punishment but the Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. In B.C. Chaturvedi v. Union of India (1995 (6) SCC 749) this Court stated that the Court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in Ganayutham (Union of India v. Ganayutham 1997 (7) SCC 463).

Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

In fine, however, this Court in the last noted decision of which one of us (U.C. Banerjee, J.) was a party concluded :

> "In the result, we do not propose to pursue the matter further and we drop further proceedings. The show-cause notice is disposed of accordingly."

The situation presently is slightly different. The Administrative Authority did not feel it expedient to take any step or steps as against the erring officials and discharged its obligation by recording the above.

The Report of the Deputy Governors as regards the relative role of persons who have in fact dealt with the matter is rather significant. The clean chit has been made available to Smt. T.R. Sahni, S/Shri Sudarshan Lal, S.S. Ranade, J.P. Awasthi, J.K. Sawhney, Dr. M.R. Kotdawala and D. Seetharama and the CMD of the New Bank of India has been found to be squarely responsible for such a mess up and having irregularity obviously the decision was not of one individual but of the body in its entirety. It is thus extremely significant as to how the responsibility stands foisted on to one individual rather than a body of persons who had taken up on themselves to sanction the limit or for issuance of the guarantee. We thus are not in a position to record our concurrence with report of the Deputy Governors of the Reserve Bank of India. Undue burden stands foisted on to one particular individual, whereas others have not been assigned any role which runs counter obviously to the entire banking practice. We are not trying to exclude Mr. Suneja but he cannot be held to be the only responsible officer for a transaction of this magnitude :

> Incidentally, as noticed above, it is not the Managing Director only who takes the decision but the Board itself and when that be the usual practice, this anxiety to let off others does not stand to reason and hence we find some justification in the criticism levelled by the learned Advocate appearing for Mr. Suneja. It seems the two Governors of the Reserve Bank of India have been proceeding more on ethical value rather than practicability of the situation ethical since in common and popular acceptation no one ought to speak ill of a dead man. Canara Bank has been let off absolutely free the only reason available that the latter is not a lead bank, rather a participant bank : a participant bank thus can do no wrong if that be the methodology of working of the banking structure of the country it is a sad day for the entire banking industry. We, however, refrain ourselves from making any further comments thereon by reason of the proposed order, which we record hereinbelow.
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> Order In our view, the matter requires a further look by a functionary of the State for the purposes of ascertainment of the quantum of loss suffered by the bank or banks by reason of malfeasance and misfeasance of the concerned officials of the public sector banks, in particular that of Canara Bank and New Bank of India, irrespective of factum of death or retirement. The matter in issue is to be dealt with and be considered by the Central Vigilance Commission for the purposes aforesaid. We are aware of the factum of there being a Report of the Central Vigilance Commission, but unfortunately this Court had not had the privilege of having a detailed Report in the matter by reason of certain technicality. We do feel it expedient on that score to record that the Central Vigilance Commission shall investigate the matter in terms of this order as an independent agency of the country without being inhibited by any

restraint or any other Report or Reports for the purposes of assessment of the situation. It is in this context, however, that the Commission should also take note of the Report of the Deputy Superintendent of Police, CBI, New Delhi.

The observations made in this order are confined to the disposal of the objection pertaining to Saharya Commission's Report being a part of I.A. No.56, which stands disposed of earlier. They are not to be taken as any expression on merits affecting the investigation to be made by the Central Vigilance Commission pursuant to this order.

The Commission is however further directed to file a present status Report pertaining to its earlier Report dated 1st July, 1992 by Shri Harinder Singh, Director, Central Vigilance Commission, bearing No.V25/BNK 19.

The Registry is directed to communicate this order to the Central Vigilance Commission so as to enable the Commission to complete the inquiry within a period of 18 months and file a Report in a sealed cover before this Court.