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JAWAHAR LAL WALI

v.

STATE OF JAMMU AND KASHMIR AND ORS.

MARCH 5, 1993

B

[B.P. JEEVAN REDDY AND N. VENKATACHALA, JJ.]

C

Jammu & Kashmir Government Servants' Prevention of Corruption Act, 1975 : Section 4(d)—Charge under—Officer to pay the value of ice-making plant of 70 kg. capacity and installation charges—Officer making payment accepting supply of 35 kg. Capacity of plant—Whether corruption—Plea of bonafide belief whether could be established without examining himself in enquiry—Exoneration of another officer of similar charge of corruption—Effect of.

D

The Director of the Animal Husbandry Department in the State of Jammu and Kashmir wanted ice-making plants of 70 kgs. capacity complete with motor for its Central Artificial Breeding Stations. On 9.3.1968 a notification was issued inviting quotations. M/s. Ashoka Brothers responded to the notification. As it quoted the lowest rate, the Director accepted its quotation after obtaining necessary approval from the departmental committee set up for the purpose. The firm also was communicated the acceptance of its quotation. The Director also informed The Officers-in-Charge of the Central Artificial Breeding Stations of the acceptance of the quotation of the firm and authorised each of them to place the necessary order for supply of one such plant, to accept supply and to make payment of Rs. 8,600 the value of the plant and Rs. 450 its installation charges, on obtaining satisfaction that the plant so supplied was of the desired make and specifications.

F

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The appellant placed an order with the firm and on 17.1.1969, the supply was accepted and passed for payment the bill of costs relating to the plant subject to retention of Rs. 1,556.72 ps. towards guarantee of proper performance of the plant.

H

The Anti-Corruption department investigated into a complaint against the appellant and it discovered that the appellant had accepted an ice-making plant from the firm of 35 kgs. capacity as against 70 kgs. capacity plant paying the price of the latter.

The appellant was charged for corruption under clause(d) of Section 4 of the Jammu & Kashmir Government Servant's Prevention of Corruption Act, 1975 by the Anti-Corruption Tribunal and an explanation was sought from him. A

The appellant filed a written statement denying the charge levelled against him. He took the plea that he being a non-technical man accepted supply of 35 kgs. capacity ice-making plant from the firm under *bona fide* belief that it had to be regarded as 70 kgs. capacity ice-making plant because of its capacity to produce 70 kgs. ice, if put to use twice a day. B

At the inquiry appellant supported his plea by examining two witnesses, one from the firm and another from the Cold Storage Division of the Agro-Industries Development of the State. However, he did not examine himself to establish the truth of his *bona fide* belief set out in his defence plea. C

The Anti-Corruption Tribunal finding the appellant guilty of the charge recommended to the Governor of the State for imposition of a penalty therefor of demotion of the appellant from the post held by him to the next lower time-scale of pay for a period of five years. D

The appellant in a writ petition under Article 226 challenged the order of the Anti-Corruption Tribunal in the High Court, which was dismissed *in limine*. E

Hence this present appeal before this Court by special leave.

The appellant contended that the Anti-Corruption Tribunal was wholly unjustified in finding the appellant guilty of the charge of corruption, while another officer who accepted supply of the same type of plant from the same firm supplied on the basis of the same quotation and paid for it, was exonerated of the similar charge of corruption. F

Dismissing the appeal, this Court, G

HELD :1.01. The appellant was an officer who was required to accept supply of 'Ice-making plant of 70 Kgs. capacity with one motor', after obtaining satisfaction that the plant supplied was the desired plant and was according to the specifications. But, the very explanation given by the appellant in defence of the charge makes it evident that he accepted the H

A supply of Ice-making plant knowing it to be of 35 Kgs. capacity and not of 70 Kgs. capacity. Such conclusion is inescapable because of the fact of non-denial by the appellant in his explanation that the Ice-plant supplied and accepted was not of 35 Kgs. capacity. [224C-D]

B 1.02. The plea of the appellant being that he accepted the 35 Kgs. plant because of its capacity to produce 70 Kgs. ice if put to use twice in a day, goes against his accepting supply under the *bonafide* belief that it was a plant of the capacity of 70 Kgs. Whatever might have been spoken by his witnesses with regard to the production in a day by 35 Kgs. capacity plant, it cannot be a substitute for what should have been spoken by him as the belief entertained by him in accepting a lower capacity plant for higher capacity plant. [224E-F]

D 1.03. In the instant case, unfortunately, nothing can be said to have been established as to the *bona fide* belief entertained by the appellant at the time of accepting supply of Ice plant as to its capacity, for, he had not chosen to enter the witness-box to speak about such belief. In the circumstances, it cannot be held that the Anti-Corruption Tribunal was, in any way, unjustified in disregarding the plea put-forth by the appellant by way of the defence of the charge of corruption levelled against him and recommending to the Governor, the imposition of penalty of demotion on the charge of which he was found guilty. [224G-H, 225A]

F 1.04. The Enquiry Officer, if had found that another Officer who had received similar supply, could not be found responsible for the insertion of certain words made by a clerk in the office of the Director, and had exonerated the Officer concerned of the charge levelled against him on an improper appreciation of the material on record, the same cannot form the basis for exoneration of the appellant of similar charge levelled against him as urged by the appellant, particularly when the material received by the Officer in the other inquiry to exonerate the Officer concerned therein is not available in the instant case. [223H, 224A-B]

G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2791 of 1980.

H From the Judgment and Order dated 14.3.79 of the Jammu & Kashmir High Court in W.P. No. 49 of 1979.

Ms. Alpana Podar and Kailash Vasdev for the Appellant. A

Ashok Mathur for the Respondents.

The Judgment of the Court was delivered by

VENKATACHALA, J. This Civil Appeal by Special Leave is preferred by an officer of the Government of Jammu & Kashmir questioning an order dated 14.3.1979 of the High Court of Jammu & Kashmir dismissing *in limine* his Writ Petition No. 49 of 1979, in which he had impugned the Order dated 6.1.1978 of the Anti-Corruption Tribunal finding him guilty of corruption under the Jammu & Kashmir Government Severants' Prevention of Corruption Act, 1975, hereinafter referred to as 'the Prevention of Corruption Act', and recommending to the Governor of the State of Jammu & Kashmir imposition of penalty of demotion in his post to the next below lower time-scale of pay for a period of five years. B C

The facts which have given rise to this Appeal, briefly stated are : D
The Director of the Animal Husbandry Department in the State of Jammu & Kashmir, who wanted for Central Artificial Breeding Stations of his Department "Ice-making plants of 70 Kgs. capacity complete with motor", issued a notification on 9th August, 1968 inviting quotations therefor from the intending suppliers. M/s. Ashoka Brothers is a firm which responded to that notification by quoting the lowest rate for supply of such plants needed by the Department. The Director accepted that quotation after obtaining necessary approval therefor from a departmental committee set-up for the purpose and communicated such acceptance to the said firm. He, thereafter, informed the Officers-in-Charge of the Central Artificial Breeding Stations of both Srinagar and Jammu of the acceptance of the quotation from the firm M/s. Ashoka Brothers for supply of "Ice-making plant of 70 Kgs. capacity complete with motor" and authorised each of them to place the necessary order for supply of one such plant and accept supply and make payment therefor on obtaining satisfaction that the plant so supplied was of the desired make and specifications by indicating that the amount to be paid therefor was Rs.8,600 being the value of the plant, and Rs. 450 being charges of installation of the plant. The appellant, who accordingly placed an order with the firm M/s Ashoka Brothers for supply of the Plant covered by the quotation, accepted such supply from the firm on 17th January, 1969 and passed for payment the bill of costs relating to the plant subject to retention of Rs. 1,556.72 ps. towards guarantee of E F G H

- A proper performance of the plant. Subsequently, the Department of Anti-Corruption of the State of Jammu & Kashmir, which investigated into a complaint against the Officer-in-Charge of the Central Artificial Breeding Station, Srinagar, discovered that that Officer had obtained supply of an Ice-making plant from the same firm, the aforesaid quotation of which had been accepted, of 35 Kgs. capacity Ice-making plant as against 70 Kgs. capacity plant required to be supplied, and had paid the price of the latter.
- B The said discovery, it is said, led the Anti-Corruption Tribunal to investigate the actual capacity of the Ice-making plant the supply of which had been obtained by the appellant for his Station from the said firm on the basis of the self-same quotation, having paid for 70 Kgs. capacity plant.
- C That investigation, since disclosed that the appellant had received a 35 Kgs. capacity Ice-making plant instead of 70 Kgs. capacity Ice-making plant and paid for the latter, a charge of corruption under clause (d) of Section 4 of the Prevention of Corruption Act came to be levelled against the appellant by the Anti-Corruption Tribunal and an explanation had come to be sought for therefore in that regard from him. The appellant, who denied the said charge levelled against him by filing a written statement thereto, sought to defend his action of accepting supply of 35Kgs. capacity Ice-making plant instead of 70 Kgs. capacity Ice-making plant from the firm and making payment for 70 Kgs. capacity Ice-making plant, by putting forward a plea therein that he, being a non-technical man, accepted supply of 35 Kgs. capacity Ice-making plant from the firm under the *bonafide* belief that it had to be regarded as 70 Kgs. capacity Ice-making plant because of its capacity to produce 70 Kgs. ice, if put to use twice in a day. He sought to support that plea at the inquiry by examining two 'witnesses one from the firm which had supplied the plant and another from the Cold Storage Division of Jammu & Kashmir State Agro Industries Development.
- F However, the appellant did not enter the witness-box to establish the truth of his *bonafide* belief set out in his defence plea.

- By its order dated 6.1.1978, the Anti-Corruption Tribunal, which refused to accept the defence plea of the appellant against the aforesaid charge levelled against him under clause (d) of Section 4 of the Prevention of Corruption Act, found him guilty of the charge, and recommended to the Governor of the State of Jammu & Kashmir for imposition of a penalty therefor of demotion of the appellant from the post held by him to the next lower time-scale of pay for a period of five years. The said order of the
- H Anti-Corruption Tribunal was impugned by the appellant before the High

Court of Jammu & Kashmir in a Writ Petition filed by him. But, that Writ Petition being dismissed *in limine* by the High court on 14th March, 1979, a Special Leave Petition being filed by him in the matter before this Court, this Civil Appeal has arisen for our decision after grant of Special Leave. A

Shri M.L. Verma, learned Senior counsel appearing for the appellant, contended that the Anti-Corruption Tribunal was wholly unjustified in finding the appellant guilty of the charge of corruption under clause (d) of Section 4 of the Prevention of Corruption Act for obtaining supply of Ice-making plant for the Central Artificial Breeding Station of Jammu of 35 Kgs. capacity against 70 Kgs. capacity, while another Officer who had accepted supply of the same type of plant from the same firm supplied on the basis of the said same quotation and paid for it, had been exonerated of the similar charge of corruption. It is true that another Officer against whom similar charge had been levelled was exonerated of that charge on appreciation of evidence which had come on record in the course of inquiry held against him, as was pointed out by the learned counsel. What that Officer (Dr. D.N. Pandita) is said to have done after obtaining supply of the Ice-making plant on 24th March, 1969 from the said firm and making 90 per cent payment out of the amount of Rs. 12,773.20 ps. payable to the firm, cannot but be regarded as an intrigue. When he received a letter dated 25th August, 1969, from the firm for releasing to it the balance amount of 10 per cent of the cost of Ice-making plant he is said to have, in turn, written another letter to the Director indicating that the plant had the capacity to produce 70 Kgs. ice in two instalments of 24 hours and sought clarification and guidance whether the supply was to be treated as one supplied according to the specifications and the balance amount retained could be released in favour of the firm. That letter, although is seen to have been written on 28th August, 1969, is returned on the same date with an endorsement : "Returned. The specifications indicated in the approved rate list are clear. There is no need for further elucidation. The plant should have the capacity to produce 70 Kgs. of Ice *per day*". This endorsement signed for the Director by Dr. Mohd. Ramzan, although, was made use of by the Officer for making balance payment to the firm, Dr. Mohd. Ramzan stated in that inquiry that the words 'per day' in the endorsement had been inserted by his clerk, Shri Payralal, subsequent to the signing of that endorsement by him. The Enquiry Officer, if had found that the Officer who had received the supply could not be found responsible for the insertion of certain words made by a clerk in the office of the B C D E F G H

- A Director, and exonerated the Officer concerned of the charge levelled against him on an improper appreciation of the material on record, the same cannot form the basis for exoneration of the appellant of similar charge levelled against him as urged by the learned counsel for the appellant, particularly when the material received by the Officer in the other inquiry to exonerate the Officer concerned therein is not available in the instant case.

- B Besides, the appellant, in the instant case, it was not disputed, was an Officer who was required to accept supply of 'Ice-making plant of 70 Kgs. capacity with one motor', after obtaining satisfaction that the plant supplied was the desired plant and was according to the specifications. But, the very explanation given by the appellant in defence of the charge makes it evident that he accepted the supply of Ice-making plant knowing it to be of 35 Kgs. capacity and not of 70 Kgs. capacity. Such conclusion is inescapable because of the fact of non-denial by the appellant in his explanation that the Ice plant supplied and accepted was not of 35 Kgs. capacity. What he has said in the explanation was that the Ice plant, the supply of which he accepted, was capable of producing 70 Kgs. ice, if put to use two times a day, and, therefore, he cannot be held guilty of accepting a plant of 35 Kgs. capacity. It could have been something different, if the appellant's plea was, as suggested by the learned counsel, that the appellant did not know at the time of obtaining supply that it was of 35 Kgs. capacity plant and not of 70 Kgs. capacity plant but accepted its supply under a *bonafide* belief that it was of 70 Kgs. capacity. But, the plea of the appellant being that he accepted the 35 Kgs. plant because of its capacity to produce 70 Kgs. ice if put to use twice in a day, goes against his acceptance supply under the *bonafide* belief that it was a plant of the capacity of 70 Kgs. Whatever might have been spoken by his witnesses with regard to the production in a day by 35 Kgs. capacity plant, it cannot be a substitute for what should have been spoken by him as the belief entertained by him in accepting a lower capacity plant for higher capacity plant. In the instant case, unfortunately, nothing can be said to have been established as to the *bonafide* belief entertained by the appellant at the time of accepting supply of Ice plant as to its capacity, for, he had not chosen to enter the witness-box to speak about such belief. In the circumstances, it is difficult for us to think that the Anti-Corruption Tribunal was, in any way, unjustified in disregarding the plea put-forth by the appellant by way of the defence of the charge of corruption levelled against him and recommending to the

Governor the imposition of a penalty of demotion on the charge of which A
he was found guilty. In this view of the matter, there can be no good reason
for us to hold that the High Court, again was unjustified in rejecting the
appellant's Writ Petition in which he had impugned the order of the
Anti-Corruption Tribunal.

For the foregoing reasons, this Civil Appeal has to fail and it is, B
accordingly, dismissed. However, in the facts and circumstances of the
case, we make no order as to costs.

V.P.R.

Appeal dismissed.