

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JULY 2022

PRESENT

THE HON'BLE MR. ALOK ARADHE
ACTING CHIEF JUSTICE

AND

THE HON'BLE MS.JUSTICE J.M. KHAZI

W.A. NO.557 OF 2022 (GM-TEN)

IN

W.P.No.3360 OF 2022 (GM-TEN)

BETWEEN:

PHILIPS INDIA LIMITED
A COMPANY WITHIN THE MEANING
OF COMPANIES ACT 2013
HAVING ITS REGISTERED OFFICE
AT 3RD FLOOR, TOWER A
DLF IT PARK, 08 BLOCK AF
MAJOR ARTERIAL ROAD
NEW TOWN (RAJARHAT)
KOLKATA, WEST BENGAL-700156.

CORPORATE OFFICE AT
UNIT 402, 4TH FLOOR, TOWER 3
WORLDMARK, SECTOR 65
MAIDAWAS ROAD, GURUGRAM
HARYANA-122018.

REPRESENTED BY ITS AUTHORISED REPRESENTATIVE
AND ACCOUNT MANAGER SOUTH
MR. NAGRAJ KAMAT
AGED ABOUT 43 YEARS.

... APPELLANT

(BY MR. SAJAN POOVAYYA, SR. COUNSEL., FOR
MR. MANU PRABHAKAR KULKARNI, ADV.,)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF HEALTH AND FAMIL WELFARE
MEDICAL EDUCATION
M S BUILDING, AMBEDKAR VEEDHI
BENGALURU-560001
REPRESENTED BY THE PRINCIPAL SECRETARY.
2. DIRECTORATE OF MEDICAL EDUCATION
GOVERNMENT OF KARNATAKA
ANAND RAO CIRCLE
BENGALURU-560009
REPRESENTED BY THE DIRECTOR
OF MEDICAL EDUCATION.
3. UNION OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF EXPENDITURE
PROCUREMENT POLICY DIVISION
NO.264-C, NORTH BLOCK
NEW DELHI-110001
REPRESENTED BY THE UNION (EXPENDITURE).
4. FORESS HEALTHCARE LLP
A LIMITED PARTNERSHIP
REGISTERED UNDER THE LLP ACT, 2008
HAVING ITS REIGSTERED OFFICE
AT NO.2102/A, 24TH CROSS
5TH A MAIN ROAD, BSK 2ND STAGE
BENGALURU-560070
REPRESENTED BY DESIGNATED PARTNER
MR. SURESH JAYARAM.
5. SHANGHAI UNITED IMAGING HEALTHCARE CO., LTD.
A COMPANY INCORPORATED UNDER
THE LAWS OF THE PEOPLES
REPUBLIC OF CHINA

HAVING ITS REGISTERED OFFICE
AT NO.2258, CHENGBEI ROAD
JIADING DISTRICT
SHANGHAI 201/07, CHINA
REPRESENTED BY ITS CHAIRMAN
AND CEO MR. XUE MIN.

6. WIPRO GE HEALTHCARE PRIVATE LIMITED
A COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT NO.4
KADUGODI INDUSTRIAL AREA
WHITEFIELD, BENGALURU
KARNATAKA-560067
REPRESENTED BY MANAGING DIRECTOR.

... RESPONDENTS

(BY MR. DHYAN CHINNAPPA, AAG A/W
MR. VIJAYKUMAR A. PATIL, AGA FOR R1 & R2
MR. SHANTHIBHUSHAN, ASG FOR R3
MR. R.V.S. NAIK, SR. COUNSEL FOR
MR. NITHIN PRASAD, ADV., FOR C/R4)

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THIS WRIT APPEAL IS FILED U/S 4 OF THE
KARNATAKA HIGH COURT ACT, PRAYING TO SET ASIDE THE
IMPUGNED ORDER DATED 28/06/2022, PASSED BY THE
LEARNED SINGLE JUDGE IN WP NO.8360/2022 (GM-TEN)
FILED BY THE APPELLANT, AND CONSEQUENTLY ALLOW WP
NO.8360/2022 (GM-TEN). PASS ANY SUCH FURTHER
ORDERS.

THIS W.A. COMING ON FOR ORDERS, THIS DAY,
ACTING CHIEF JUSTICE DELIVERED THE FOLLOWING:

JUDGMENT

This intra-court appeal takes an exception to order dated 28.06.2022 passed by the learned Single Judge, by which writ petition preferred by the appellant has been disposed of with the direction to the appellate authority to decide the appeal preferred by the appellant within a period of four weeks from 30.06.2022. The learned Single Judge has further directed that interim order dated 05.04.2022 passed in W.A.No.400/2022 shall continue till disposal of the appeal by the appellate authority. In order to appreciate the grievance of the appellant, few facts need mention, which are stated infra.

2. The appellant is a Health Technology Company, whereas, respondent No.4 is a Limited Liability Partnership registered under Limited Liability Partnership Act, 2008. Respondent No.5 is a company incorporated under the Laws of the People's Republic

of China and Respondent No.6 is a company incorporated in India. The Director of Medical Education (hereinafter referred to as 'DME' for short) floated following two tenders namely:

a. for supply and installation of 3.0 Tesla MRI and 128 Slice CT Scanners to Medical colleges/ hospitals (TENDER No.75) dated 10.02.2022

b. for supply installation of 1.5 Tesla MRI and 128 Slice CT Scanners to Medical colleges/ hospitals (TENDER No. 46) dated 20.12.2021

The aforesaid tenders were invited under two bid system. A pre-bid meeting was held on 15.02.2022 and 23.12.2021 respectively and the terms of the aforesaid tenders were amended.

3. The appellant sent a communication dated 11.02.2022 to the DME and pointed out some discrepancies in the bids of submitted by Respondent

No.4 and 5. However, the aforesaid communication failed to evoke any response. The appellant thereupon, filed an appeal on 09.03.2022 before the appellate authority under Section 16 of Karnataka Transparency in Public Procurement Act, 1999 (hereinafter referred to as 'the Act' for short). The appellant thereafter filed applications seeking stay of all further tender proceedings on 24.03.2022.

4. The Principal Secretary to the Government of Karnataka, Health and Family Welfare Department (hereinafter referred to as 'the Appellate Authority' for short) issued notices dated 19.03.2022 and 28.03.2022 by which the date of hearing was fixed on 05.04.2022 which was deferred to 06.04.2022. Thereafter on 06.04.2022, the date of hearing fixed for 27.04.2022. It is the case of the appellant that notice dated 08.04.2022 was not served on respondent No.6. It is also averred that during the course of hearing,

the appellate authority indicted that the application for stay has been rejected. However, the copy of the order was not provided to the appellant. It was averred in the writ petition that the appellate remedy as therefore, rendered illusory and contrary to principles of natural justice.

5. It is averred that the appellant on 13.04.2022 learnt that in another matter viz., a public interest litigation, a division bench of this court had recorded the statement of Additional Advocate General about upgradation DIMHANS as higher psychiatry Center. An affidavit was filed on 04.03.2022 stating that MRI machine has been delivered to DIMHANS and the same shall be fully operational from 20.04.2022.

6. The appellant therefore, filed a writ petition on 16.04.2022 stating that the remedy of prosecuting

an appeal under Section 16 of the Act has been rendered illusory and inefficacious. The appellant therefore, sought quashment of tender No.46 and Tender No.75. The appellant also sought the relief of setting aside the award of tender in favour of respondent No.5 as an agent of respondent No.5 for supply and installation of two 1.5 MRI machines on turn key basis for DIMHANS hospital. The learned Single Judge passed an interim order on 19.04.2022 recorded the submission made by learned Additional Government Advocate that pursuant to award of tender to respondent No.4, respondent No.4 has already executed the work and CT scanners have been installed.

7. Against the aforesaid order, a writ appeal viz., W.A.No.400/2022 was filed. In the aforesaid writ appeal, an interim order was granted on 05.05.2022. The aforesaid intra-court appeal was disposed of by

division bench of this court vide judgment dated 16.06.2022 and the learned Single Judge was requested to decide the writ petition, until then, the interim order dated 05.05.2022 was made operative.

8. The learned Single Judge by an order dated 28.06.2022 disposed of the writ petition with a direction to the appellate authority to decide the appeal preferred by the appellant within a period of four weeks from 30.06.2022. The interim order dated 05.05.2022 was made operative till disposal of the appeal. In the aforesaid factual background, this appeal has been filed.

9. Learned Senior counsel for the appellant submitted that the statutory remedy under Section 16 of the Act had been rendered inefficacious and illusory. It is further submitted that in view of the affidavit dated 04.03.2022 sworn by the appellate

authority, the appellate authority was incapacitated to adjudicate the issue in appeal preferred by the appellant on account of official bias. It is further submitted that the appellate authority, which had implemented a part of the order could not be expected to decide the issue in a fair and in a impartial manner. It is contended that learned single Judge erred in holding that the apprehension of the appellant about the official bias is without any basis. It is urged that the State Government be directed to nominate any other officer in place of the appellate authority to adjudicate the appeal preferred by the appellant. In support of aforesaid submission, reliance has been placed on decisions in **'MANAK LAL VS. PREM CHAND SINGHVI AND OTHERS', AIR 1957 SC 425.**

10. On the other hand, learned Additional Advocate General has submitted that the appellant's

apprehension about lack of impartiality and official bias is unfounded. It is further submitted that no question of bias is involved in adjudicatory process before the appellate authority.

11. Learned Senior counsel for respondent No.4 while inviting the attention of this court to averments made in the writ petition has contended that the issue of official bias has been raised on untenable grounds. It is submitted that the allegation of official bias is wholly misplaced. In support of aforesaid submission, reliance has been placed on decision in **'H.C.NARAYANAPPA AND OTHERS VS. STATE OF MYSORE AND OTHERS', AIR 1960 SC 1073** and **'A.K.KRAIPAK AND OTHERS VS. UNION OF INDIA AND OTHERS', (1969) 2 SCC 262.**

12. We have considered the rival submissions made on both sides and have perused the record. In

an adjudicatory proceeding under an Act, an appellate authority will usually be administration itself when an Administrator acts as an adjudicatory authority in a dispute between his Department and a private party, he may have some official bias towards the Department. The Supreme Court in '**P.D.DINAKARAN VS. HON'BLE JUDGES INQUIRY COMMITTEE**', **(2011) 8 SCC 330** after taking note of the judgments of the foreign courts as well as various High Courts of the country, summed up the principles of bias by applying the test of real likelihood from the point of a fair minded informed observer. Para 71 of the aforesaid judgment is reproduced below for the facility of reference:

71. *The principles which emerge from the aforesaid decisions are that no man can be a Judge in his own cause and justice should not only be done, but manifestly be seen to be done. Scales*

should not only be held even but it must not be seen to be inclined. A person having interest in the subject matter of cause is precluded from acting as a Judge. To disqualify a person from adjudicating on the ground of interest in the subject matter of lis, the test of real likelihood of the bias is to be applied. In other words, one has to enquire as to whether there is real danger of bias on the part of the person against whom such apprehension is expressed in the sense that he might favour or disfavour a party. In each case, the Court has to consider whether a fair minded and informed person, having considered all the facts would reasonably apprehend that the Judge would not act impartially. To put it differently, the test would be whether a reasonably intelligent man fully apprised of all the facts would have a serious apprehension of bias. In cases of non-pecuniary bias, the 'real likelihood' test has been preferred over the 'reasonable suspicion' test and the Courts

have consistently held that in deciding the question of bias one has to take into consideration human probabilities and ordinary course of human conduct. We may add that real likelihood of bias should appear not only from the materials ascertained by the complaining party, but also from such other facts which it could have readily ascertained and easily verified by making reasonable inquiries.

Thus, it is evident that the issue of official bias has to be determined on the touchstone whether there is a real danger of bias on the part of a person against whom such apprehension is expressed in the sense that he might favour or disfavour a party. The aforesaid issue has to be determined with reference to the facts of each case.

13. In '**J.Y.KONDALA RAO VS. A.P.STATE ROAD TRANSPORT CORPORATION, AIR 1961 SC 82**, the Supreme Court while referring to decision of

the Supreme Court in '**S.C.NARAYANAPPA VS. STATE OF MYSORE, AIR 1960 SC 1073** quoted relevant extract of judgment, which reads as under:

14. Then this Court proceeded to state that the provisions of the Act did not sanction any dereliction of the principles of natural justice, for the Act visualized in case of conflict between the undertaking and the operators of private buses that the State Government should sit in judgment and resolve the conflict. Much to the same effect has been stated by Shah, J., in Petn. No. 2 of 1960, D/- 28-4-1960: (AIR 1960 SC 1073), though in slightly different phraseology. The learned Judge stated:

"It is also true that the Government on whom the duty to decide the dispute rests, is substantially a party to the dispute but if the Government or the authority to whom the power is delegated acts judicially in approving or modifying the scheme, the approval or modification is not open to challenge on a presumption of

bias. The Minister or the officer of the Government who is invested with the power to hear objections to the scheme is acting in his official capacity and unless there is reliable evidence to show that he is biased, his decision will not be liable to be called in question, merely because he is a limb of the Government."

Thus, it is evident that there has to be reliable evidence to indicate that the authority adjudicating the objection is biased and the decision cannot be questioned merely because the officer is a limb of the Government.

14. Now we may advert to the facts of the case in hand. In the instant case, on the basis of direction issued by Supreme Court dated 05.09.1995 issued in case of '**SHEELA BARSE VS. UNION OF INDIA AND OTHERS**', (1995) 5 SCC 654, relating to treatment to be given to mentally ill people, suo motu Public

Interest Litigation was registered even before issuance of tenders i.e., on 15.02.2022 and 23.12.2021. A division bench of this court had issued directions contained in the order dated 05.03.2020. The said order reads as under:

A memo dated 5th March 2020 is taken on record. It corrects the factual statements made on page 2 of the memo dated 27th February 2020. It is an accepted position that the Dharwad Institute of Mental Health and Neurosciences (for short 'DIMHANS') does not have a CT scan machine. Moreover the post of a Medical Superintendent at DIMHANS is vacant for a considerable time. We direct the State Government to take immediate steps for procuring a MRI machine of requisite specifications for the use of DIMHANS. We grant time of six weeks to the State Government to provide a MRI machine of requisite specifications to DIMHANS. The post of Medical Superintendent in an important institution

like DIMHANS cannot be kept vacant. We, therefore, direct the State Government to take all possible steps and ensure that the post is filled in within a period of three months from today. The memo dated 27th February 2020 states that the painting and renovation of DIMHANS is in progress and is nearly in completion. It is further stated that a day care centre for mentally ill persons has been started and is functioning at full strength. The work of painting and renovation of the hospital has to be completed immediately and preferably within a period of one month from today. The State will place on record the details of the patients to whom the benefit of day care centre has been provided. It must be also placed on record whether adequate staff is available to manage the day care centre and what is the nature of facilities available in the day care centre. On or before 17th April 2020, the State Government will file a report setting out the completion of work of

painting and renovation of the hospital and all details regarding day care centre as stated above. The progress made in appointing the Medical Superintendent and procuring a MRI scan machine shall be also placed on record. A copy of the Government Order dated 6th September 2013 is taken on record. For considering the report which shall be filed on or before 17th April 2020, the petition shall be listed under the caption of Orders on 20th April 2020.

Thereafter, on 04.03.2022 the Principal Secretary, Health and Family Welfare Department filed an affidavit on 04.03.2022 stating that MRI machine has been delivered to DIMHANS and the same shall be fully operational from 20.04.2022. Thus, the appellate authority has complied with the direction issued by this Hon'ble Court and has ensured supply of one MRI machine out of total of 3 tesla MRI, 1.5 tesla MRI and 128 CT Scanners each

which had been tendered.

15. The appellate authority has in the aforesaid process of ensuring compliance with the orders of this court, has not adjudicated the issue raised by the appellant either with regard to irregularities in the tender or with regard to ineligibility of respondent No.4 on the ground that it is a company based in China. It is pertinent to mention here that the appeal before the Appellate Authority has been preferred after the filing of the affidavit dated 04.03.2022.

16. The appellant in the writ petition in paragraphs 26 and 27 has merely stated that notice for the date of hearing was not issued to respondent No.6 and the copy of the order rejecting the application for stay was not provided to the appellant. The appellant has nowhere stated that whether it had applied for obtaining the copy of the order. The aforesaid facts are

insufficient to draw an inference with regard to official bias. There is no material on record to infer any official bias on the part of the appellate authority and the same cannot be inferred merely because the appellate authority has complied with the directions contained in the order passed by division bench of this court in a Public Interest Litigation.

For the aforementioned reasons, we do not find any ground to interfere with the view taken by the learned Single Judge. In the result, the appeal fails and is hereby dismissed.

**Sd/-
ACTING CHIEF JUSTICE**

**Sd/-
JUDGE**