

IN THE COURT OF SHRI AJAY GULATI  
SPECIAL JUDGE (PC ACT), CBI-12, ROUSE AVENUE COURT  
COMPLEX, NEW DELHI.

CC No. 275/2019

CBI Vs. Om Parkash & Another

27.07.2020

Present:- Dr. Jyotsna Pandey Sharma, Ld. PP for CBI.  
Sh. Sudhir Nagar, Ld. Counsel for A1.  
Sh. Sanjeev Kumar Ld. Counsel for A2.  
Both the accused persons are on bail and have joined  
through video conference.

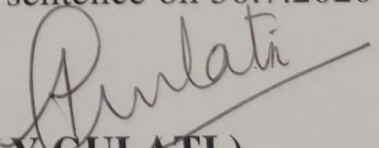
Present proceedings have been taken up through Video  
Conference hosted by court reader Sh. Virender Yadav.

Matter has been listed today for pronouncing the judgment.

Vide separate judgment announced through video conference

**Accused no. 1 Om Parkash** is held guilty and convicted for the substantive  
offence u/s section 13 (2) read with section 13 (1) (d) of the *Prevention of  
Corruption Act 1988*. **Accused no. 1 Om Parkash** and **accused no. 2 Anil  
Gupta** are jointly held guilty and convicted u/s 120 B IPC read in conjunction  
with section 13 (2) read with section 13 (1) (d) of the *Prevention of  
Corruption Act 1988* and section 420 IPC. Accused **Anil Gupta** is further held  
guilty and convicted for the substantive offence u/s 420 IPC.

To come up for arguments on the point of sentence on 30.7.2020  
at 2.00 PM through video conference.

  
( AJAY GULATI )

Spl. Judge (PC Act), CBI-12  
RADCC/New Delhi/27.07.2020

**IN THE COURT OF SHRI AJAY GULATI,  
SPECIAL JUDGE (PC ACT), CBI-12,  
ROUSE AVENUE DISTRICT COURT, NEW DELHI**

**CC No. 275/2019**

**Case ID**

**RC No. DAI/2014/A0002/ACB/CBI/New Delhi**

**U/s 120-B r/w 420 r/w 511 IPC &**

**Section 13 (2) R/W 13 (1) (d) of Prevention of Corruption Act.**

**Central Bureau of Investigation**

**Versus**

**1. Om Prakash S/o Sh. Chandan Singh,  
R/o Quarter No. 599/6, Rajpur-Heerpur,  
Railway Colony, Maninangar,  
Ahmadabad-380008.**

**....Accused No.1**

**2. Anil Gupta S/o Sh. H. R. Gupta,  
R/o H. No. 4/6, Jaidev Park,  
New Delhi-110026.**

**....Accused No.2**

**Date of Institution : 01.09.2015**

**Date of Argument : 24.01.2020.**

**Date of Judgment : 27.07.2020.**

## **JUDGMENT**

1. The accused persons were sent up to face trial pursuant to the charge-sheet submitted by the Central Bureau of Investigation into allegations leveled against the accused persons of having conspired to cheat the state exchequer and in pursuance of the conspiracy, for attempting to cause wrongful loss to the government and corresponding wrongful gain to the accused persons.

## **BACKGROUND:**

2. Although Charge-sheet was filed against 3 persons i.e. Om Prakash, Anil Gupta and M/s Shree Agrsen Advertisers, Charges were framed only against accused Om Prakash and Anil Gupta since M/s Shree Agrsen Advertisers was the sole proprietorship of accused Anil Gupta.

3. Accused no. 1 Om Prakash is a public servant (to be referred as **A-1**) i.e. Senior Section Officer, (Coaches & Wagons), *Kankariya*, Western Railways (at the relevant time) who is *alleged* to have issued 8 inspection certificates in yr. 2011, **without having any authorisation to do so**, certifying therein that M/s *Shree Agrsen Advertisers*, of which Accused no. 2 Anil Gupta (to be referred as **A-2**) was the sole proprietor, had put up a certain number of advertising panels for a specified period inside the coaches of *Karnawati Express* Train which was run by the Western

Railways between Ahmadabad and Bombay (Mumbai). The tender for displaying the advertising panels inside the coaches and outside the AC coaches of the said train was awarded to the proprietorship Firm of accused no. 2 i.e. M/s *Shree Agrsen Advertisers* for a *period of 5 years* commencing from 29.6.2008 till 28.6.2013. The advertising panels are displayed for highlighting various public utility campaigns of government departments and public sector undertakings. The expense for displaying advertising panels is borne by the advertising agency. The advertising agency which is awarded the tender for a train is to seek remuneration for putting up the advertising panels. This remuneration is in the form of display rate per panel. The display rates of these advertising panels are to be fixed by the DAVP (Directorate of Advertising and Visual Publicity). DAVP is an organization under the Ministry of Information and Broadcasting, GOI which deals exclusively with the publicity campaigns of various Government ministries and departments/instrumentalities, relating to government sponsored schemes/policies through various media. The bills for displaying the advertising panels in the train is also to be submitted to and paid by the DAVP, after due verification. Accused no. 2 was initially awarded tender for 733 advertising panels in January 2008 which was later on reduced to 466 in **January 2010**. However, for the *period 2011 -2012*, accused no. 2's *Firm* obtained work orders far in excess of its authorisation as a result of which it managed to display 2436 excess panels in the

*Karnawati Express*. Apart from displaying excess advertising panels without permission from the Western Railway Admn., accused no. 2 submitted 8 inspection certificates to the DAVP alongwith its bills for displaying advertising panels which certificates were *allegedly* issued by accused no. 1 and for which accused no. 1 had no authority to issue. These 8 inspection certificates are also of the yr. 2011, as already highlighted. As per the charge-sheet, for these 2436 unauthorised advertising panels, accused no. 2 submitted bills worth Rs. 34,87,680. The total amount of all bills submitted by accused was Rs. 1,47,40,866/- out of which Rs. 70,68,024/- was released by the DAVP but the remaining amount was withheld owing to an anonymous complaint received in the DAVP alleging irregularities in allotting work orders to M/s Shree Agrsen Advertisers which culminated in the CBI registering the present case.

4. It needs a highlight that M/s *Shree Agrsen Advertisers* (to be referred to as *the Firm*) was awarded a tender to put up advertisement panels/stickers on the inside of the coaches of *Karnawati Express* and outside the 5 AC coaches of the said train at an annual license fee of Rs. 17,05,000/- lacs which was to be enhanced every year (for next 4 years) at a specified % age. **The said annual license fee was payable in 4 installments for a year i.e. every quarter of a year.**

5. After the acceptance of the tender, a formal offer was made to the **Firm** i.e. *Agrsen Advertisers* by DRM (Commercial) Western Rlys. (WR) vide letter dt. 22.1.2008 for putting up **733** advertising panels in train *Karnawati Express* which was later on **reduced to 466** panels in *January 2010* after a feasibility report was submitted in this regard. The request for feasibility inspection was actually carried out after the '*Firm*' itself repeatedly highlighted the problem of space constraint in the train's coaches for putting up of permitted number of display stickers/ panels i.e. 733 advertising panels.

6. As per the charge-sheet, the bill claim of *the Firm* for display of unauthorised/excess panels was facilitated *in part* by the inspection certificates *allegedly* issued by accused no. 1. It was specifically alleged in the charge-sheet that accused Om Prakash had **no authorisation** to issue the inspection certificates and hence, there was a conspiracy between the accused persons so as to cheat the state exchequer which objective was achieved by misconduct on the part of *accused* Om Prakash acting as a public servant. Also, Investigation revealed that after getting the sole rights for display in *Karnawati Express*, Sh. Anil Gupta, Prop. of M/s Shree Agrsen Advertisers approached DAVP and submitted an application dated 17.02.2008 for getting approval of display rates in *Karnawati Express*. Alongwith the application, he submitted a notarized photocopy of tender

acceptance letter dated 22.01.2008 issued by Sh. N.K. Salve, DRM (Commercial), WR Ahmadabad to M/s Agrsen Advertisers. During investigation, it was highlighted that copy of the offer letter dated 22.01.2008 issued by Western Railways and which was submitted to the DAVP by *accused* Anil Gupta, concealed/suppressed facts and details regarding numbers of display panels authorised by the Western Rlys. Thus, the copy of tender acceptance letter dated 22.01.2008 issued by Western Rly. which was submitted by accused Anil Gupta to the DAVP along with its application for empanelment was a forged document.

7. It needs a **further highlight** that as per clause **42** of the contract dt. 27.1.2009 i.e. signed between Sr. DCM, Western Railway and Accused no. 2 (on behalf of *Agrsen Advertisers*) for the advertising tender, in case the advertising agency puts up unauthorized advertising panels beyond the number prescribed/permitted without seeking prior permission, it had to pay a penalty which was 8 times the normal rate for 1 advertising panel. **In the present case**, DAVP had sanctioned display rate of **each** advertising panel as Rs. 1800 per panel per month. The penalty rate for 1 extra panel thus worked out to Rs. 14,400 (8 times of Rs. 1800) per panel per month. M/s *Shree Agrsen Advertisers (the Firm)* had allegedly put up 2436 panels in excess of the revised number of 466 advertising panels for which the *Firm* had no authorisation. Thus, going by **clause 42**, the *Firm*

had to pay a penalty of Rs. 3,50,78,400 (14,400 x 2436). **However**, it has been **argued** on behalf of accused no. 2 that for the unauthorized display panels, the *Firm* only had to pay additional license fee. The amount so worked out by the *Firm* of accused no. 2 was paid to the Western Railway Authorities on 16.7.2012. The 'additional amount' of Rs. 3,33,914 was accepted by Western Railways. Vide letter dt. 22.4.2013, the *Firm* was informed by the Western Railways that no further dues were pending against the *Firm*. **What is worth** a note is that in the letter dt. 16.7.2010 vide which the amount of Rs. 3,33,914 was paid, the *Firm* only mentioned that it is paying 'additional amount' for excess display panels and seems to have purposely avoided using the word license fee or penalty amount *whereas* during the course of arguments Id. Counsel for A-2 repeatedly stressed that it has paid additional license fee for unauthorised additional panels. **Further**, the letter dt. 16.7.2012 does not explain at all as to how was this 'additional amount' worked out by the *Firm*.

**8.** It may be clarified that Accused no. 2's *Firm* had **paid all the installments** for the 5 year contract/tender period but after the suspension of the *Firm*'s empanelment in July 2012 by the DAVP as a result of the in-house vigilance inquiry, the *Firm* could not display any further panels and sought to close its financial liability by paying additional amount of Rs. 3,33,914 and the outstanding quarterly installments for the 5<sup>th</sup> year to



Western Rlys.

**9.** *In this background*, the primary allegation leveled against accused no.1 is of misconducting himself by acting beyond his authority in issuing the questioned inspection certificates in the course of conspiring with accused no. 2 to enable the *Firm* of Accused no. 2 to unduly enrich itself by deceiving the DAVP. In response to the prosecution allegation, accused no. 1 has set up the defense that the inspection certificates in question do not bear his signatures, and that he **never issued** the certificates in question. Prosecution examined 2 witnesses – PW 13 and PW 14 – both of whom were Railway officers and who categorically identified signatures of accused no. 1 on the inspection certificates. PW 13 was the superior officer of **A-1** and identified the signatures of A-1 on the questioned inspection certificates claiming that he was receiving signatures of A-1 in routine i.e. *during the relevant period of wrongdoing*, whereas PW 14 was a colleague of accused no. 1 of the same cadre and **had worked together for 25 years** but admitted in his cross examination that he never received any file or noting signed by **A-1** in his official capacity.

**10.** Accused no. 1 examined a hand writing expert in his defense to disprove the assertion of the prosecution. He deposed that the signatures appearing on the questioned inspection certificates were not those of accused no. 1. Further, accused no. 1 also produced an official from

Western Railways as a defense witness who brought certain official documents containing admitted signatures of accused no. 1 for visual comparison of the same by the Court with the signatures appearing on the disputed inspection certificates.

**The handwriting expert produced by accused no. 1 i.e. DW 2, was not cross examined by Id. Counsel for accused no. 2.**

**11.** Accused no. 2 put up the defense that the prosecution could not dispute that *Agrsen Advertisers* had actually put up the number of advertising panels as specified in the questioned inspection certificates and consequently, the Charge framed against A-2 that it claimed bills from DAVP without actually displaying the claimed number of advertising panels, cannot be proved. It was contended that apart from the inspection certificates, none of the prosecution witnesses have even disputed the photographs attached with the various bills submitted to DAVP as proof of advertising panels having been put inside the train coaches. Further, it was so argued that the **amount** of Rs. 3,33,914 submitted by accused no. 2, was accepted by Western Railways **without any reservations** vide letter dt. 22.4.2013 which proves that nothing was due against *Agrsen Advertisers* even after it had displayed excess/unauthorised panels. In so far as the questioned inspection certificates are concerned, it was argued on behalf of accused no. 2 that prosecution could not highlight any provision of law that

a specific authority or officer was designated for the purpose of issuing inspection certificates. Since, accused no. 1 was from the mechanical section *i.e.* Senior Section Engineer at the relevant time, and the maintenance in-charge of *Karnawati Express*, he was well within the scope of his authority to have inspected the installation of advertising panels and issued the questioned certificates.

**12.** **Thus,** the respective defense put forth by both the accused is at complete variance with each other. Accused no. 1 denies having issued the inspection certificates *whereas* accused no. 2 fervidly contends that inspection certificates were issued by accused no.1 **and that it was within his authority to issue them.** *Also, accused no. 2 contended that he was never informed by the Western Railway authorities that the sanctioned display panel limit of 733 panels (awarded vide the initial acceptance letter dt. 22.1.2008 and contract dt. 27.1.2009) was **infact** reduced to 466 in January 2010 after the feasibility examination for the number of advertising panels was carried out at the request of accused no. 2. On the other hand, prosecution maintains that accused no.2 was duly informed vide **letter dt. 11.1.2010** about reduction in the number of display panels and further that the conduct of the Firm Agrsen Advertisers itself clearly showed that the Firm was aware in yr. 2010 itself about the reduction in the number of display panels. Not only this, the request for feasibility examination was*

*carried out after the **Firm** itself highlighted during that it was not possible to display 733 panels in the allotted space in Karnawati Express.*

**13.** However, before proceeding to discuss evidence led, it is important to highlight **3** more factors – *first*, CBI **never** sought forensic examination regarding the signatures of accused no. 1 on the disputed inspection certificates; *second*, none of the official prosecution witnesses could cite any specific legal provision which specified that a designated authority was responsible for furnishing inspection certificates although prosecution relied on a circular of the Railway Board dt. 24.10.2000 which lays down that the contract was to be implemented through the Coaching Depot (which is a part of mechanical division of railways); and *third*, there is **no** evidence that accused no. 2 ever applied to the Senior Section Engineer (C&W) (i.e. accused no. 1 was holding this position at the relevant time) for inspecting the installation of advertising panels and for issuance of disputed inspection certificates. There is also **no proof** furnished by accused no. 2 that it received the inspection certificates under any official endorsement or by way of official communication.

**14.** The most interesting part of the present trial is the **acceptance** on the part of accused no. 2 that it had put up advertising panels beyond the permitted number and that it was **liable to pay** the additional amount for

panels. Infact, accused no. 2 did pay the additional amount of Rs. 3,33,914 vide letter dt. 16.7.2012 after which it was issued no-due certificate/letter dt. 22.4.2013 by Western Railway. **A-2** has substantially relied on this letter to substantiate his defense.

**CHARGE:**

**15.** Vide order dt. 3.3.2016, Ld. Predecessor charged Accused **Om Prakash** under section 13 (2) read with section 13 (1) (d) of the *Prevention of Corruption Act 1988* and also jointly with **accused Anil Gupta** u/s 120 B IPC read with section 420 IPC and section 13 (2) read with section 13 (1) (d) of the *Prevention of Corruption Act 1988*.

Accused **Anil Gupta** was also separately charged u/s 420 IPC.

**Prosecution Evidence:**

**16.** In order to prove the Charge, CBI examined 21 witnesses. Brief *resumae* of the witnesses and the purpose for which they were summoned, would be helpful.

**PW 1 P.K. Shrimal**– was posted as Assistant Commercial Clerk during the relevant period at Western Rlys, Ahmadabad; deposed regarding issuance of a certificate regarding display panels in *Karnawati Express*.

**PW 2 Shaikh M. Zuber** – was posted as Assistant Commercial Clerk at Bombay; handed over various files to CBI pertaining to award of tender rights to

*Agrsen Advertisers.*

**PW 3 Nar Singh Dev** – was posted as Director, DAVP; had handed over the office records to CBI pertaining to display of panels in *Karnawati Express* and the bills claimed by *Agrsen Advertisers*.

**PW 4 V R Murlidhar Menon** - was posted in the o/o Sr. Division Commercial Manager, WR at Ahmadabad; deposed about the joint feasibility inspection dt. 4.11.2009 regarding available display space for advertising stickers in *Karnawati Express*.

**PW 5 Pragna Rawal** - was posted during the relevant period as Assistant Goods Clerk in the o/o Sr. DCM, Ahmadabad; brought the 'Dak Register' for the period 1.1.2010 till 31.3.2010 and was cross examined regarding the dispatch of letter dt. **11.1.2010**.

**PW 6 Prafulla Kumar Behera** - was posted in the DAVP; deposed regarding the approval of display rates for advertising stickers by *Agrsen Advertisers* in *Karnawati Express*.

**PW 7 Jyoti Mehta** - was posted in the DAVP as Pay and Accounts Officer; deposed regarding the procedure to process the bills and regarding handing over the files relating to bills of *Karnawati Express* to the CBI.

**PW 8 Pranjol Chandra** – was posted as Sr. Div. Mechanical Engineer, WR, at Ahmadabad; deposed regarding grant of sanction for prosecution of accused no. 1 Om Prakash (**A-1**).

**PW 9 Yogesh Kumar Baweja** - was posted as Director in DAVP; deposed regarding the action taken on the anonymous complaint against DAVP officials with the allegation that they were unauthorisedly issuing work orders to *Agrsen Advertisers*.

- PW 10 G A Parmar** - was posted as Div. Commercial Inspector in o/o Sr. DCM, WRB; deposed regarding DAVP being informed about reduction of display panels, vide letter dt. **8.6.2012** issued by Sr. DCM, WR.
- PW 11 NK Salve** - was posted during the relevant period as Regional Commercial Manager, Ahmdbd.; deposed regarding the tender process for *Karnawati* Express, and **significantly**, regarding the allegedly forged letter dt. 22.1.2008 submitted by **A-2** while applying to DAVP for approval of display rates.
- PW 12 N V Reddy** - was posted as Director in DAVP; also deposed regarding receipt of anonymous Complaint alleging irregularities and corruption in DAVP and the follow up action on the same.
- PW 13 Ashutosh Vasant Purohit** - was posted during the relevant period as Sr. Coaching Depot Officer at *Kankaria*, Ahmadabad; he deposed about the procedure adopted for issuance of certificate of display, and further proved the display certificate issued by him as also those (allegedly) issued by Accused no. 1. He also identified the signatures of **A- 1** on the questioned display certificates *allegedly* issued by **A-1**.
- PW 14 Krishna Kumar Mishra** - was posted as Asst. Div. Mechanical Engineer in WR; witness identified the signatures of **A-1** on display certificates in question.
- PW 15 U S Jha** - was posted at the relevant time as Sr. DCM, Ahmdbd.; he deposed about execution of contract between Western Rlys. and *Agrsen Advertisers* regarding *Karnawati* Express, and reduction of space for display of advertisements in *Karnawati* Express.

**PW 16 D J Mishra** - was posted in the DAVP; deposed about the empanelment of *Agrsen Advertisers* and about the requisitions received from different govt. agencies for publicity, and award of work orders.

**PW 17 Tushar Karmakar** - was posted in the DAVP; this witness also deposed about the requisitions received from different govt. agencies for publicity, and award of work orders., and further about the bills raised by the *Firm* of **A-2** and amounts sanctioned by DAVP.

**PW 18 Kamlesh Tiwari** - was posted as Sr. DCM, WR, Ahmdbd. in 2014 and was questioned by the CBI; he explained the correct procedure for issuance of display certificates.

**PW 19 Anil Bisht** - was the **Investigating Officer**; deposed about the initial investigation conducted.

**PW 20 B S Chauhan** - was the 2<sup>nd</sup> Investigating Officer; deposed about the follow up investigation conducted by him.

**PW 21 SP Singh** - was posted as Inspector in ACB, CBI; deposed about conducting preliminary inquiry in 2013 against 7 advertising companies in regard to release of work orders by DAVP, in addition to conducting investigation regarding release of work orders to *Agrsen Advertisers*.

**17. PW-1 Shri P.K. Shrimali** deposed that he joined Western Railway as Assistant Commercial Clerk in the year 1975 and remained posted as such at Ahmedabad for the period 2003-2005 and from 2007 till retirement. This Witness proved the certificate dated 16.12.2009 Ex. PW1/A (in file D-14, at pg. 13) issued by him to *Shree Agrsen Advertisers* in regard



to display of 50 advertising panels in *Karnawati Express*.

**18.** In his **cross-examination** conducted on behalf of *accused Om Prakash*, the Witness *admitted* that the Mechanical Department/Carriage & Wagon section is concerned with the safety and maintenance of coaches and wagon and is 'not concerned' with commercial matters regarding the tender **but voluntarily** stated that the maintenance of the advertisement panels is also done by Carriage & Wagon section. To a specific question put to him, the Witness deposed that Mechanical Department is the authorized entity to carry the counting of actual displayed panels in the train and that in the present case, it was the Mechanical Department which was responsible to issue certificate for actual displaying of panels, and further, voluntarily added that job of mechanical department is to inform the commercial department. The Witness further deposed that he could not tell if there is no circular/order regarding job of Mechanical Department to inform the commercial department regarding actual display of panels. **He denied that there is no such practice.** The Witness stated that being officer of the Commercial Division, he had issued the certificate Ex. PW1/A.

**19.** In the **cross-examination** of the Witness conducted on behalf of *accused Anil Gupta*, the Witness deposed that he was asked as to whether the documents in File D-14 contained his signatures. He identified the certificate in the file bearing his signature. He admitted that the file

contained 50 coloured photographs of the panels displayed in the coaches of *Karnawati Express*, collectively Ex. PW1/A2/X.

**20.** *PW-2 Shri Shaikh M. Zuber* (in his chief examination) deposed that he joined Western Railway at Mumbai on 12.12.2003 as Assistant Commercial Clerk. The Witness stated that vide seizure memo dated 24.6.2014 Ex. PW2/A (File D-8), he handed over the file pertaining to *Karnawati Express* of the Western Railway to the CBI as also the file No. CA11/13/Sole/ *Karnawati Express* regarding sole tender of stickers/transfers inside/outside 2933/2934 *Karnawati Express* Train vide Ex. PW2/B (File D-9). The Witness also stated about handing over of another file bearing No. CA11/13/Sole/ *Karnawati Express* regarding sole tender of stickers/transfers inside/outside 2933/2934 *Karnawati Express* Train vide Ex. PW2/C (File D-10). The Witness further stated about handing over of *dak* dispatch register to the CBI vide memo Ex. PW2/D (File D-11, pages 1 to 185) which was being maintained in the office of Senior DCM, Western Railway, Ahmedabad pertaining to the period 2.1.2010 to 15.3.2010. *PW 2* also proved the letter dated 13.5.2014 Ex. PW2/E (File D-3) addressed to Shri B.S. Chauhan, DSP, CBI which was issued by Sh. Kamlesh Tiwari, stating that he can identify the handwriting and signatures of Sh. Kamlesh Tiwari being conversant with the same since he had worked under Sh. Kamlesh Tiwari.

***The Witness was not cross-examined on behalf of accused***

***Om Prakash.***

**21.** During the *cross-examination* of the Witness conducted on behalf of *accused Anil Gupta*, Witness stated that his statement was recorded by the officials of CBI during the course of which the Witness stated that display register in regard to display of advertisement panels in *Karnawati Express* train was not being maintained by Commercial Department at the relevant time.

**22.** *PW-3 Nar Singh Dev* deposed that in April 2014 he was assigned the charge of Director (outdoor publicity) DAVP, New Delhi. The Witness deposed that vide letter dated 5.11.2014 Ex. PW3/A (in File D-4), he had handed over information of office records of DAVP pertaining to display of panels in *Karnawati Express* train to the CBI i.e. in regard to file No. 50/MISC/08 OPI, *Karnawati Express* payment details, DAVP Admn. Office orders and DAVP Manual Vol. II. The Witness further deposed that as per file Ex. PW3/B, amount of Rs. 14740866/- was claimed by M/s. Shree Agrsen Advertisers for displaying panels in *Karnawati Express* Train during the period 2009 to 2012 out of which, after making payment for of Rs 7068024/-, Rs. 7672842/- was withheld by DAVP.

**23.** *The Witness was cross-examined by Learned PP for CBI*

during which he deposed that though he was called by the CBI on 5.11.2014 but his statement was not recorded and had **not** stated to the CBI what has been recorded in the statement mark PW3/PA from point X to X<sup>1</sup>.

**24.** In his **cross-examination** conducted on behalf of accused ***Om Prakash***, the Witness stated that since DAVP is a very small department and they do not have infrastructure to conduct inspection at all places, the actual display of panels have to be verified by DAVP in case the same are displayed within Delhi. However, if the same are displayed outside Delhi, then the same have to be verified either by the Field Exhibition Officer of DAVP or by the concerned department where the display has taken place. The Witness deposed that he could not state whether in the present case, inspection was not carried out by the DAVP regarding display of panels in Karnawati Express train as at that time, he was not posted in the DAVP. He further stated that after the display, the job of processing the bills is of the Accounts Wing which was not a part of charge of the Witness and therefore, could not state whether documents accompanying the bills were got verified from the department which had issued the inspection report.

**25.** In his **cross-examination** conducted on behalf of accused ***Anil Gupta***, the Witness stated that before empanelment of the agency with

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<sup>1</sup> This portion mentions about the responsibility of 2 named officials of the DAVP who were responsible for issuing the work orders to Agrsen Advertisers.

DAVP, thorough examination of the authorization to display is done by DAVP and in the present case, the empanelment was done on the basis of agreement with Railways.

**26.** *PW-4 Shri V.R. Murlidhar Menon* deposed that he was working as Chief Luggage Supervisor and remained posted in Sr. Division Commercial Manager Office, Western Railway, Ahmedabad during 2006 to 2011 and was looking after the work of publicity of Ahmedabad Division. The Witness deposed that pages 575 and 576 (Ex. PW4/A) placed in the file Ex. PW2/B pertain to the joint inspection regarding feasibility of stickers inside/outside Train no.2933/2934 which was carried out on 4.11.2009 on the verbal directions of the then Sr. DCM Shri U.S. Jha. A joint feasibility inspection team was constituted on 4.11.2019 as per which space for display of 466 stickers were found feasible/available inside and outside the said train.

**27.** The Witness also deposed that as per minutes of tender committee held on 19.9.2007 (this date is incorrect, the correct date of meeting being 17.1.2008) Ex. PW4/B, 733 stickers were offered to M/s. Shree Agrsen Advertisers for a period of 5 years in response to the tender offer of the *Firm* of Rs. 17,05,000 as annual license fee with the total value of the 5 year contract being worked out as Rs, 1,15,60,752. The Witness proved the letter of acceptance dated 22.1.2008 as Ex. PW4/C bearing the signature of Shri

N.K. Salve, the then Divisional Railway Manager, Commercial.

**28.** The Witness was again *examined-in-chief* on 5.7.2016 on which date the Witness proved **letter dated 11.1.2010** as Ex. PW4/D (in File D-9, at pg. 586) written by Sh. U.S. Jha, the then Sr. DCM, Western Railway, Ahmedabad vide which the *Firm* was informed about fresh feasibility of stickers to be displayed in the *Karnawati Express* as also the fresh schedule of bill as per attached Annexure (in file D-9, at pg. 585 and 585A), collectively Ex. PW4/E. Since, there was reduction in number of panels to be displayed, the amount of installment (*i.e.* annual license fee) was reduced from Rs. 17,05,000/- to Rs. 11,12,177/-. The amount was deposited by M/s. Shree Agrsen Advertiser as per revised schedule which shows that accused Anil Gupta was aware about the reduction of stickers from 733 to 466 to be displayed in the above-said train. The Witness also proved the letter dated 18.5.2010 as Ex. PW4/F, kept in the file of Western Railway (file D-10) addressed by accused Anil Gupta to Sr. DCM, Western Railway, Ahmedabad. Further, the Witness proved office copy of letter dated 11.1.2010 (file D-10, at pg. 3) as Ex. PW4/G, original of which (*i.e.* Ex. PW4/D) has been kept in the file D-9 vide which information regarding reduction of panels from 733 to 466 had been communicated to the *Firm*.

**29.** The Witness further deposed that letters dated 24.4.2009,

29.7.2009, 1.9.2009, 10.9.2009 and 9.10.2009 were written by Sh. Arjinder Singh Vohra of the *Firm* to Sr. DCM out of which letter dated 9.10.2009 Ex. PW4/Z6 was received on 12.10.2010 by the dispatch clerk whereas no receipt is shown qua the remaining four letters.

**30.** In his further *examination-in-chief* recorded on 23.3.2008, the Witness deposed that vide note-sheet Ex. PW4/Z7 (file D-9, at pg. 51), the Sr. DCM Shri U.S. Jha ordered for calculation of fresh bill after which the Witness prepared a fresh calculation on 12.1.2010 for which entry was made at page 52, Ex. PW4/Z8.

**31.** The Witness deposed that vide letter dated 21.5.2010 Ex. PW4/Z9 (file D-10, at pg. 4) Sh. P.K. Shrimali, the then ACM reminded the *Firm* of non-receipt of 2<sup>nd</sup> installment of annual license fee for the 3<sup>rd</sup> year for display of stickers in *Karnawati Express* with request to deposit the balance amount of Rs. 1,64,245/-. The Witness proved the note-sheet Ex. PW4/Z10 (in file D-10, pg. 1) in regard to the said letter.

**32.** The Witness further proved the letter dated 4.7.2010/28.9.2010 as also the letters dated 21.9.2010 Ex. PW4/Z13 and Ex. PW4/Z14 written by accused No. 2 to Sr. DCM for issuance of inspection certificates which were dealt with vide noting dated 28.9.2010 Ex.

PW4/Z15 (file D-10, at pg. 5) whereafter the Witness approved issuance of certificate after confirmation from CDO/Train.

**33.** The Witness further deposed that page 15 of file D-10 is the note dated 23.7.2012 made by the dealing clerk which dealt with the voluntary disclosure by the *Firm* of additional panels and the cheque of Rs, 3,33,914 sent by the Firm for additional display panels. The noting was exhibited as Ex. PW4/Z16 colly.

**34.** The Witness also deposed that letter dated 24.11.2012 Ex. PW4/Z21 (in file D-10, at pg. 91) was written by the *Firm* to Sr. DCM, Western Railway thereby confirming removal of all displays of interior panels inside Karnawati Express train and surrendering the sole rights of publicity in the said train as also for request of refund of security money.

**35.** The Witness further deposed about *letter* mark PW4/Z22 dated 28.3.2013 (in file D-10, at pg. 92) which was written by the *Firm* to Sr. DCM, W. Rlys. requesting it to provide details of their last payment and status of their payment with respect to additional panels, **and** letter Ex. PW4/Z23 dated 22.4.2013 (file D-10, at pg. 93) which was the reply sent by W. Rlys to the *Firm*.



**36.** In his **cross-examination** conducted on behalf of *accused Om Prakash*, the Witness stated that he had not come across any specific circular, order or manual relating to issue of display certificate to the advertising agencies and that during his posting, he had not come across any display certificate issued by Sr. Coaching Depot Officer. The Witness admitted that accused Om Prakash had never worked under him and that he had no occasion to see his signatures during the course of his employment.

**37.** In his **cross-examination** conducted on behalf of *A-2 Anil Gupta*, the Witness stated that at the time of processing of tender of *Karnawati Express* he was posted at Ahmadabad Division. PW4 further stated that for allotting the tender a committee was constituted but he was not the member of the said committee nor was he involved in any manner with the said committee. This Witness deposed that it was not the duty of Mechanical Department of railway to supervise the installation of stickers/transfers in the train. He further stated that after allotment of tender, the commercial department of railway was only concerned about collection of license fee. He **admitted** the suggestion that Commercial Inspector of commercial department of railway used to be posted at the railway station and his duty was to monitor, check and account for the advertisements at the railway station only and is not engaged for the advertisement etc. inside/outside the train, which was the duty of the Mechanical Department.

He further stated that he had gone through the agreement entered into between Western Railway and M/s Shree Agrsen Advertisers regarding advertisement in *Karnawati Express* and there might be a clause in the said agreement that if M/s Agrsen Advertisers intended to display additional stickers/transfers, apart from the allotted numbers, they had to seek prior permission from the Western Railway for the same on paying license fee at pro rata basis. The Witness after seeing the aforesaid agreement Ex. PW15/B stated that if M/s Agrsen Advertisers were to put additional sticker/transfers without permission, apart from the allotted one, then they had to pay 08 times penalty of the average price per unit advertisement. He further stated that Mechanical Department was required to report to the Commercial Department, in case additional stickers were installed by the concerned advertisers.

**38.** In further **cross-examination** on behalf of A-2 *Anil Gupta*, PW4 stated that as per letter dated 18.5.2010 sent by the *Firm* which was received in the office on 26.5.2010, M/s Agrsen Advertisers had deposited a demand draft for Rs. 1,64,245/- in favour of the Sr. Div. Manager of W. Rly. and the amount was credited to Western Railway. PW4 admitted that one of the functions of commercial department was to collect revenue through advertisement in the trains. Commercial department did not use to receive any intimation as to how many panels were displayed in the *Karnawati Express* during the relevant period. It was the function of the

Mechanical Department to see as to how many panels were displayed in the *Karnawati Express* by M/s Shree Agrsen Advertisers, at the relevant point of time. He further stated that in the terms and conditions of the contract, it used to be mentioned as to how many panels are to be displayed in *Karnawati Express*, and that had to be seen by the mechanical department.

**39.** PW4 further stated that mechanical department of Western Railway has never intimated the number of panels displayed in *Karnawati Express* to Commercial Department of Western Railway so long as he was working there. Till the time he was posted in the Commercial Department of Western Railway, he had never heard about any irregularity regarding additional panels.

**40.** PW4 further deposed that as per internal note sheet already exhibited as Ex.PW4/N & P (in file D-9), a letter was issued to the agency for discontinuation of film/stickers outside the windows of five AC coaches as advised by the Railway Board vide commercial circular No.54/2008. PW4 admitted that the reduction in license fees was made after discontinuation of display of outside panels in AC coaches. PW4, in answer to a specific question put to him by Id. Counsel for **A-2**, stated that M/s Shree Agrsen Advertisers had made a representation vide letter dated 01.09.2009 to Sr. DCM, Western Railway Ahmedabad mentioning their problem in displaying 733 panels in *Karnawati Express* Train. Again M/s

Shree Agrsen Advertisers made another representation vide letter dated 10.09.2009 to Sr. DCM, Western Railway Ahmedabad, for reconsidering the feasibility of installing media near entry and exit gate and get the feasibility examined so the exact number of displays could be ascertained.

**41.** PW4 further stated that he was a member of the committee constituted for fresh feasibility inspection in the Karnawati Express and during the inspection, they had physically inspected the feasibility of display of panels in Karnawati Express and had also considered the relevant documents.

**42.** *PW-5 Smt. Pragna Rawal* deposed that she remained posted as Assistant Goods clerk in the office of Sr. DCM, Ahmedabad from June 2008 till March 2013 during which period she along with Smt. Kalpana was assigned the work of 'dispatch and inward'. The Witness identified her signatures on the *dak* register (file D-11) Ex. PW2/C for the period 1.1.2010 till 31.3.2010 and stated that vide the said register, the letter dated 11.1.2010 of Sr. DCM addressed to M/s. Shree Agrsen Advertisers was not shown as having been dispatched. The Witness deposed that pages 27 to 31 of the said register are in her hand-writing. She also deposed that it is possible that the letter might have been directly handed over to the firm.

***The witness was not cross-examined on behalf of accused***

***Om Prakash.***

**43.** In her ***cross-examination*** conducted on behalf of *accused Anil Gupta*, the Witness deposed that *dak* register Ex. PW2/C contained entry at serial No. 104 on page no. 29 regarding letter dated 7.1.2010 (Ex. PW5/A2/X) dispatched by her to the firm M/s. Shree Agrsen Advertisers *vide* which the *Firm* was reminded of the 1<sup>st</sup> quarterly instalment to be paid for the 3<sup>rd</sup> year. The Witness also deposed that if any letter is handed over directly to the party without being dispatched through Dispatch and Inward Section, the dealing clerk might have obtained acknowledgment directly from the party but *voluntarily* stated that she is not sure about the same since she was not the dealing hand. The Witness further deposed that *dak* register Ex. PW2/C contained entry at serial No. 101 on page no. 161 regarding letter dated 26.2.2010 Ex. PW5/A2/X1 dispatched by her to the firm M/s. Shree Agrsen Advertisers *vide* which the *Firm* was reminded about the payment of 2<sup>nd</sup> quarterly license fee for the 3<sup>rd</sup> yr.

**44.** ***PW-6 Shri Prafulla Kumar Behera*** deposed that he joined DAVP in the year 1989 and was assigned duties to assist Production Manager (Outdoor Publicity) who was his immediate superior. The Witness also deposed that during the year 2009-2010, there were three Assistant Production Managers in DAVP and that the Director and the Production

Manager were looking over the work of the Assistant Production Managers.

**45.** The Witness also deposed that the letter dated 17.2.2008 Ex. PW6/A (file D-12, pgs. 227 and 228) was written by accused Anil Gupta to Production Manager regarding approval of display charges by DAVP for social awareness campaigns in *Karnawati Express*.

**46.** The Witness further deposed that copy of letter dated 22.1.2008 mark Ex. PW6/PA (file D-12, pgs. 224 and 225) regarding sole tender of stickers/transfer inside/outside 2933/2934 of above-named train was issued by DRM (Commercial), WR, Ahmedabad.

**47.** The Witness also deposed that the letter dated 21.1.2009 Ex. PW6/C (file D-12, at pg. 331) regarding offer of rate @ Rs. 1800/- per panel for display of advertisement in the above-named train was issued by Shri Padam Upadhaya, Production Manager to M/s. Shree Agrsen Advertisers. *In the further statement* of the Witness recorded on 17.1.2018, PW-6 deposed that the letter dated 15.5.2014 Ex. PW6/D (file D-2) was addressed by Shri Narsingh Dev, Director, DAVP to Shri B.S. Chauhan, DSP, CBI. The Witness also proved the chart Ex. PW6/E annexed with letter dated 15.5.2014 reflecting details of work given to the above-named train (i.e. *Karnawati Express*). The Witness also proved the note-sheet Ex. PW6/F

(file D-17, at pg. 1) regarding display of panels for Eye Donation Campaign allotted in favour of M/s. Shree Agrsen Advertisers. PW-6 further deposed that document Ex. PW6/G (file D-17, at pgs. 21 and 22) was signed by Shri P.N. Upadhaya, Production Manager whereby M/s. Shree Agrsen Advertisers was intimated about displaying the message related to Eye Donation and Diabetic Retinopathy in *Janshatabadi* Express and *Shatabadi* Express for the period upto 28.2.2011.

The Witness testified that the photographs collectively mark PW6/H (file D-17, pgs. 20-33) regarding displayed panels of above-named train were sent by the *Firm* to the DAVP.

The Witness also proved the inspection report Ex. PW6/I (file D-17, at pg. 19) with regard to the inspection carried out by Ms. Suman Machhar, the then Field Exhibition Officer (VAN), DAVP on 11.8.2010 in *Karnawati Express*. The Witness deposed about the letter dated 8.12.2014 Ex. PW6/J (in file D-39) written by Shri N.V. Reddy, the then Addl. DG to Shri B.S. Chauhan, DSP, CBI vide which point wise information as sought by DSP CBI, was sent by Sh. Reddy. The Witness also deposed that the letter dt. 17.2.2015 Ex. PW6/K (file D-40) was addressed by Shri N.V. Reddy to the CBI.

**48.** In his **cross-examination** conducted on behalf of *accused Om Prakash*, the Witness stated that it was mentioned in the letter Ex. PW6/J (file D-39) that it was the prerogative of Railway Authority to depute their

officer to conduct inspection of display on railway property and issue inspection report. He also deposed that no record is maintained in DAVP about the officers/officials of various departments deputed for carrying out inspection of outdoor publicity media. He also admitted that there is no mechanism to counter-check the inspection display or inspection certificate received in DAVP.

**49.** In his **cross-examination** conducted on behalf of *accused Anil Gupta*, after seeing Ex. PW6/B (part of file D-12) which is note-sheet dated 14.1.2009, the Witness stated that he was present in the meeting which had finalized the rate contract. The Witness replied in negative to a question put to him as to whether or not, the committee had taken a decision regarding quantum of advertisements/number of panels. He admitted that in the minutes of the meeting in regard to rate of display of advertisement through inside/outside panels in the train, there is no mention about the numbers of panels on which advertisements are to be displayed by the *Firm*. The Witness replied in affirmative to a question put to him to the effect that payment to the agency was given after due verification of number of panels used for displaying advertisement by the said agency.

**50.** *PW-7 Smt. Jyoti Mehta* deposed that she joined DAVP, New Delhi in May 2013 as Pay and Accounts Officer. The Witness informed about the



procedure to process the bills in the Pay and Accounts Office. The Witness deposed that vide letter dated 10.12.2014 Ex. PW7/A (file D-41, pages 1 & 2), she handed over the details/bills collectively Ex. PW7/B (D-41, pages 3 to 108) to the CBI. The Witness also deposed that vide letter dated 19.12.2014 Ex. PW7/C (D-42, page 1), she handed over attested photocopy of the bills collectively Ex. PW7/D (D-42, pages 2 to 150) to the CBI.

***The Witness was not cross-examined on behalf of accused Om Prakash.***

***In the cross-examination on behalf of accused Anil Gupta,*** the Witness deposed that the bills after being verified by the concerned departments are sent to PAO for payment and the payments are released only after being thoroughly scrutinized in the office of PAO.

**51.** ***PW-8 Shri Pranjol Chandra*** deposed that since November 2012 he had been posted as Senior Divisional Mechanical Engineer (Co-ordination), WR, Ahmedabad and is the removing authority of Senior Section Engineer, WR, Ahmedabad. The Witness deposed that on receipt of relevant documents and statements of the witnesses pertaining to the present case, he accorded sanction for prosecution of accused Om Prakash. The Witness proved his forwarding letter as also the sanction for prosecution (in file D-43) both dated 25.8.2015, collectively as Ex. PW8/A.

**52.** In his **cross-examination** conducted on behalf of accused ***Om***

*Prakash*, the Witness deposed that he had not conducted any inquiry at the department level in connection with the allegations levelled in the present case. He denied that he had not applied his mind to the facts of the case and to the material placed before him by the CBI before according the sanction to prosecute.

His **cross-examination** on behalf of accused *Anil Gupta* is not relevant.

**53.** *PW-9 Shri Yogesh Kumar Baweja* deposed that in April 2014, he was posted as Director in DAVP, New Delhi. The file D-13 (Ex. PW9/A) pertains to DAVP (Vigilance) in regard to inquiry against M/s. Shree Agrsen Advertisers and officials of DAVP, New Delhi. The Ministry of Information and Broadcasting had forwarded copy of an anonymous complaint along with certain documents to DAVP for necessary action on allegations of irregularities and corruption in DAVP. The Witness stated that the anonymous complaint (part of Ex. PW9/A) was against excess orders given to M/s. Shree Agrsen Advertisers for display of inside panels in *Karnawati Express*. On the directions of Director General, DAVP, Shri N.V. Reddy conducted preliminary inquiry in the matter and submitted his initial report on 17.4.2012 (at pages 73 to 75 of Ex. PW9/A). Since Director General was not satisfied with the report submitted by Shri Reddy, he was again directed to conduct further inquiry whereafter Shri Reddy wrote letters to Railway officials in response to which the Senior Regional

Commercial Manager (WR) informed DAVP vide his letter dated 8.6.2012 that initially M/s. Shree Agrsen Advertisers was given the sole right for display of 733 stickers but later the quantity was reduced to 466. On the basis of letter dated 8.6.2012 (at page 102 of Ex. PW9/A), Shri Reddy recommended that the above-said **Firm** time and again has wrongly been informing the DAVP about the total quantity of display panels/stickers available in *Karnawati Express*, and proposed for suspension of the said agency from the panel of DAVP as also for recovery of excess payment. The Witness further deposed that the said recommendation of Shri Reddy was accepted whereupon the Witness issued notice on 13.7.2012 for suspension of M/s. Shree Agrsen Advertisers with warnings to Shri Padam Upadhyay, the then Production Manager, Shri Tushar Karmakar, the then Asstt. Production Manager, Shri P.K. Behera, the then Asstt. Production Manager and Shri D.J. Mitra, the then Asstt. Production Manager for issuance of excess release orders. The Witness proved the suspension notice of the *Firm* dated 13.7.2012 as Ex. PW9/A-2 (pg. 105 of Ex. PW9/A) as also the letter written by him dated 3.8.2012 as Ex. PW9/A-3 (pg. 131 and 132 of Ex. PW9/A).

*Learned counsel* appearing for **accused Om Prakash** opted not to put any **question to the Witness.**

**54.** In his **cross-examination** conducted on behalf of accused

*Anil Gupta*, the Witness stated that since he had not conducted any inquiry on the anonymous complaint, he was not in a position to state whether any action was initiated against the officials of the department or not. In his *further cross-examination*, a question was put to him that there is no allegation in file D-13 (i.e. Ex. PW9/A) against the agency of accused Anil Gupta that they had not displayed the panels allotted to it **or** that the agency had not displayed the panels which it ought to have displayed *to which* the Witness replied that since he was not handling the work of outdoor publicity at the relevant time, the complaint was received and examined by other officers. *Thereafter, the Court observed that the allegations against the firm are mentioned in the said complaint from point A to A.* The Witness stated that he had dealt with the file only after 2<sup>nd</sup> preliminary report of Shri N.V. Reddy was accepted by the Director General of DAVP and there were directions from him to take action on the report as also directions for issuing warning to the employees of DAVP.

**55.** *PW-10 Sh. G.A. Parmar* deposed that he was working as Divisional Commercial Inspector (HQ) in the office of Sr. DCM, Ahmedabad during the period 2008 to Sept. 2012. He stated that his duties were to look after administrative matters of the commercial staff and the earning figures of the coaching parcel goods of the railway in the office of Sr. DCM.

**56.** The Witness deposed that the letter dated 8.6.2012 Ex.

PW10/A (file D-10, at pg. 50) regarding information about reduction of display panels was written by Sh. D.K. Chanchodia, the then Sr. Divisional Commercial Manager, WR, Ahmedabad to DAVP.

**57.** In his **cross-examination** conducted on behalf of accused **Om Prakash**, the Witness admitted that at the relevant time, he was working in the Commercial department whereas accused Om Prakash was working in the Mechanical department. He also admitted to having never worked with accused Om Prakash, and that the post of Sr. Section Engineer (C&W) did not pertain to the Commercial department. He stated about him not receiving the covering letter dated 15.10.2012<sup>1</sup> (file D-10, at pg. 87) along with annexure mark PW4/PX.

**58.** In his **cross-examination** conducted on behalf of accused **Anil Gupta**, the Witness stated that he had not read the agreement entered between Western Railway and the *Firm*, and had no knowledge about the same. He admitted that before issuance of the tender, commercial department ascertains the number of panel to be displayed in view of the capacity in each coach and total number of coaches in a particular train, and also that previously floated tenders were also taken into consideration while issuing fresh tenders. The Witness **denied** the suggestion that he had not correctly prepared the feasibility report.

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<sup>1</sup> Vide this letter, copies of 6 questioned certificates allegedly issued by accused Om Prakash, were submitted to the Sr. DCM, Western Rly.

**PW-11 Shri N.K. Salve** worked as Regional Commercial Manager, Ahmedabad between September 2007 to 28.2.2008. The Witness deposed that Western Railway Ahmedabad had issued tender notice Ex. PW11/A (file D-9, pgs. 72 to 80) regarding display of stickers in the *Karnawati Express* whereafter two tenders were received, one from M/s. Shree Agrsen Advertisers and other from M/s. Hemson & Company. Under the convenorship of Shri Pankay Ukey, the then Sr. DCM (WR), the financial bids were opened on 19.9.2007 and M/s. Shree Agrsen Advertisers was declared highest bidder. The Witness deposed that photocopy of the letter dated 22.1.2008 mark PW11/A having photocopy of stamp of notary in the file of DAVP (file D-13, at pgs. 86 and 87), is forged and manipulated letter as the column of space/location for advertisement inside the coaches is not mentioned<sup>1</sup>.

*Learned counsel* appearing for accused **Om Prakash** opted **not to put any question to the Witness.**

**59.** In his **cross-examination** conducted on behalf of accused **Anil Gupta**, the Witness stated that the tender for advertisement was allotted to the *Firm* for 19 coaches.

**60.** **PW-12 Shri N.V. Reddy** deposed that he joined DAVP in

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<sup>1</sup> In the original letter dt. 22.1.2008 issued by the W.R. to the Firm, details of 733 stickers allotted to the Firm are mentioned.

2009 as Director and remained posted there till 20.3.2017, and was handling outdoor publicity during the period January 2012 till June 2012. The Witness deposed that an anonymous complaint Ex. PW9/A regarding gross irregularities in DAVP along with documents (*collectively* Ex. PW12/A) was received in the office of DAVP, New Delhi. The Witness also proved the office order Ex. PW12/B addressed to him by Shri Y.K. Baweja, Director, for conducting a preliminary inquiry on the said anonymous complaint where-after the Witness issued letters to the *Firm*, DAVP and Western Railways and also called comments from the firm M/s. Shree Agrsen Advertisers. The Witness also proved the letter dated 10.4.2012 Ex. PW12/C<sup>1</sup> (page 10 of Ex. PW9/A) signed by him.

**61.** Vide letter dated 14.4.2012 M/s. Shree Agrsen Advertisers sent their response along with annexure/documents, collectively Ex. PW12/E (pages 20 to 72). Subsequently, PW-12 wrote letter dated 11.5.2012 Ex. PW12/F to Sr. Divisional Commercial Manager, WR for verifying the actual number of panels assigned to M/s. Shree Agrsen Advertisers.

**62.** In his *further examination-in-chief* recorded on 25.9.2017, PW-12 deposed that in response to his letter dated 11.5.2012, letter dated

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<sup>1</sup> Vide this letter, detailed information was sought form the Firm during the course of preliminary inquiry including information about number of panels permitted to the Firm for display.

8.6.2012 Ex. PW12/F (page 102 of Ex. PW9/A) was addressed to him by Sr. DCM informing him the fact that initially M/s. Shree Agrsen Advertisers was given permission for display of 733 stickers which number was subsequently reduced to 466 w.e.f. 11.1.2010. The Witness also identified the signatures of Shri Y.K. Baweja, Director on the note dated 8.8.2012 Ex. PW12/H addressed to Technical Director, NIC, DAVP for uploading an advisory on suspension of M/s. Shree Agrsen Advertisers w.e.f. 13.7.2012. Warning letters were issued by DG, DAVP to the officers of OP Section for issuing excess work orders. DAVP also issued letter to Sr. Section Engineer on 3.8.2012 seeking confirmation of the authenticity of 6 certificates issued by him for which a reminder (Ex. PW12/I) was also issued vide letter dated 28.8.2012. Detailed chart Ex. PW12/J (file D-7) regarding *Karnawati Express* display panels allotted to the *Firm*, addressed to Shri B.S. Chauhan, Dy. SP, CBI, was prepared.

**63.** In his **cross-examination** conducted on behalf of accused ***Om Prakash***, Witness deposed that there is no mechanism in DAVP to ascertain the factual position about the number of panels having been displayed in a train. Further, he **admitted** that there is no record maintained in DAVP about the officials of various departments including Railways who can carry out inspection for outdoor publicity media *as also* that inspection certificates regarding display of panels submitted to DAVP along with the



bills in the present case were never got verified by DAVP and that no official from DAVP had been deputed to visit the concerned train or to the concerned department of the railways regarding the actual display of panels or authenticity of inspection certificates.

**64.** In his **cross-examination** conducted on behalf of accused **Anil Gupta**, the Witness admitted that payment was released by the department after duly verifying the bills submitted by the parties. To a question put to him that when he was inquiring into the anonymous complaint marked to him by DG, DAVP, whether he had examined all the documents before giving the 'first report', the Witness replied that in view of the time constraint, he could not examine all the aspects involved but mainly depended on the information submitted to him by the agency and the office. He **admitted** having stated in his statement under Section 161 Cr. PC that the officer of DAVP either from Headquarter or from Regional Offices can inspect the properties and give the report and that in addition, DAVP also engages 3<sup>rd</sup> party monitoring agencies for monitoring the display, based on the requirement. The Witness **denied** the suggestion that agency of accused Anil Gupta was wrongly suspended.

**65.** **PW-13 Shri Ashutosh Vasant Purohit** deposed that he worked as Sr. Coaching Depot Officer in the year 2009 at Kankaria,

Ahmedabad and remained posted there till December 2013. The Witness explained about the procedure adopted for issuance of display certificate. He deposed that on the request of the contractor, the display certificate Ex. PW13/A (file D-17, at pg. 38) was issued by him in favour of M/s. Shree Agrsen Advertisers. The Witness deposed that vide endorsement Ex. PW13/B on letter dated 10.8.2010 (page 18), he granted permission to DAVP for inspection in *Karnawati Express*.

**66.** The Witness also proved the display certificates Ex. PW13/C (file D-21, at pg. 3), Ex. PW13/D (file D-22, at pg. 58), Ex. PW13/E (file D-24, at pg. 8), Ex. PW13/F (file D-25, at pg. 15), Ex. PW13/G (file D-27, at pg. 57), Ex. PW13/H (file D-29, at pg. 34), Ex. PW13/I (file D-30, at pg. 12), and Ex. PW13/J (file D-31, at pg. 13) (all in original except Ex. PW13/D which is a photocopy) issued by Shri Om Prakash Singh, the then Sr. Section Engineer (C&W), WR, Ahmedabad in favour of M/s. Shree Agrsen Advertisers. Further, the Witness also deposed that vide letter Ex. PW13/L written by him to Sr. DME, Ahmedabad, he had sent joint inspection report of Shri K.K. Mishra and others to Sr. DME. Still further, the Witness also proved the letter dated 7.12.2009 Ex. PW13/M (D-9, page 583) addressed to Sr. DCM by Sr. DME, Ahmedabad informing him about the fresh feasibility for display of stickers in *Karnawati Express*.

**67.** In his **cross-examination** conducted on behalf of accused ***Om Prakash***, the Witness deposed that at the relevant time, he remained posted

at Kankariya from October 2009 to December 2013 where around 45-50 supervisors including JE, SE, SSE and DCWI (Divisional Carriage and Wagon Inspector) were working under him besides about 650 employees. During that period, he routinely used to see the signatures of accused Om Prakash and after that he had seen the signatures of accused Om Prakash on the day of recording his examination-in-chief before the court. He deposed that during the period December 2013 till he was called by the CBI in Feb. 2015 for recording his statement, he was posted as Sr. DME at Rajkot where staff of approx. 200 employees were under him and that approx. 80-100 supervisors including JEW, SE, SSE and DCWI were working under him. He stated that name of accused Om Prakash was mentioned in the display certificate Ex. PW13/H, Ex. PW13/C to Ex. PW13/G, Ex. PW13/I and Ex. PW13/J which certificates he had seen for the first time when he was called by CBI during investigation. He further stated it to be correct that none of the display certificate was signed in his presence. He stated that though he was not holding any special qualification in regard to identification or analysis of hand-writing and signatures but **denied the suggestion** that none of the certificates were signed by accused Om Prakash. Significantly, the Witness stated that in Railways, there is no clear specific circular, order or manual relating to issue of display certificate to the advertising agencies. He could not say whether any department proceedings were initiated against accused Om Prakash with respect to subject of the present case.

**68.** In his **cross-examination** conducted on behalf of accused **Anil Gupta**, a question was put to him as to which officer would have issued display certificate to the agency M/s. Shree Agrsen Advertisers? In reply to the same, the Witness stated that display conditions have been mentioned at page 513 of file D-9 at serial No. 42, however, since the tender document was voluminous, without going through the same in detail, he was not in a position to reply. He *admitted* that accused Om Prakash was the Sr. Supervisor in the Railways and was in-charge of the entire coaching depot.

**69.** **PW-14 Shri Krishna Kumar Mishra** stated that he was posted as Assistant Divisional Mechanical Engineer in WR at Rajkot on 25.6.2014. He deposed that the certificates collectively Ex. PW14/A (file D-10 of Ex. PW2/C, pages 81 to 86) issued on different dates by Sr. Section Engineer, appear to have been issued by Shri Om Prakash. Witness further stated that the signatures were not made in his presence but this is how Om Prakash used to sign. He deposed that Om Prakash used to sign by writing his full name also as well as by making initials. The Witness also deposed that on the important documents such as related to payment of money, Om Prakash used to write his full name whereas on other documents such as the present one, he only used to put his initials. The Witness further deposed that as per his knowledge, Om Prakash had no such authority to issue the certificates as have been issued by him in the present case.

**70.** In his **cross-examination** conducted on behalf of accused **Om Prakash**, the Witness admitted that he and accused Om Prakash were holding equivalent post and are of same cadre i.e. Senior Section Engineer and that there were about 56 Senior Section Engineer at Kankariya Coaching Depot of WR at the relevant time. He also admitted that different trains were marked to different Sr. Section Engineer for maintenance and inspection. He stated that his nature of job was not common with accused Om Prakash and he was not receiving any file or noting signed by accused Om Prakash. A question was put to the Witness that he cannot conclusively identify the signatures of the accused at point A on Ex. PW14/A to which he replied that this is how the accused to sign adding that “*par pakke taur par keh nahi sakte kyunki yeh daskat mere samne nai hue*” but this is how he used to sign on loose papers.

**71.** In his **cross-examination** conducted on behalf of accused **Anil Gupta**, the Witness deposed that he had given feasibility of 466 stickers for 16 coaches. He denied the suggestion that 998 panels could be displayed in *Karnawati Express* as against 466 suggested in the feasibility report.

**72.** **PW-15 Shri U.S. Jha** deposed that he was working as Sr. DCM Ahmedabad during the period June 2008 till 1.5.2010. The Witness

deposed about the contract dated 27.1.2009 Ex. PW15/B (D-9, pages 511 to 519) which was executed between the PW and accused Anil Gupta, proprietor of the *Firm* in regard to *Karnawati Express*.

The Witness further deposed that vide note dated 11.1.2010 Ex. PW15/F (in file D-9, at pg. 584), Sr. DME, ADI was informed about reduction of space for advertisement in inside the train, as per the joint feasibility report. The Witness testified the certificate Ex. PW15/G (in file D-16, at pg. 35) issued by Sh. Shrimali, ACM on behalf of Sr. DCM, to be a genuine certificate.

In his **cross-examination** conducted on behalf of accused ***Om Prakash***, the Witness stated that he has never been associated with the Mechanical Department of Western Railway. The unit of Mechanical Department which is handling the affairs of *Karnawati Express* is located at a distance of one and half kilometers from his office i.e. office of Divisional Commercial Department. He further stated that he had never worked with accused Om Prakash at any point of time.

**73.** PW15 deposed that the name of the officer who had issued the inspection certificates Ex.PW13/C, Ex.PW13/D, Ex.PW13/E, Ex.PW13/F, Ex.PW13/G, and Ex.PW13/H is not mentioned on the above stated inspection certificates and only the signature and seal of Sr. Section Engineer (C & W), Western Railway ADI is there. He was not aware as to who had issued the inspection certificates. He further deposed that the fact that these inspection certificates were issued by Mr. Om Prakash, Sr.

Section Engineer was disclosed to him by his colleague Sh. Purohit, the then Coaching Depot Officer.

**74.** PW15 *further* stated that when he visited CBI office in connection with the present case, he was shown the file by the CBI and at that time he was not aware as to who had issued the inspection certificates. He also stated that he had told the CBI officials that aforesaid inspection certificates were not original inspection certificates and were *forged certificates*. **He had termed the aforesaid inspection certificates as forged as same were not issued by the competent person/authority.** *He admitted that he had not termed the aforesaid inspection certificate as forged on account of its contents.* Witness volunteered that he neither confirmed nor denied the contents of these inspection certificates and whatever conclusion he had reached, was on the basis that these were not issued by the competent person/authority.

**75.** PW-15, in answer to a specific question stated that since the tender was awarded by Sr. Divisional Commercial Manager Office, therefore, only Sr. DCM Office was competent to issue any such inspection certificates. However, he admitted that there was no separate order, circular or manual etc. prescribing/mentioning the name of authority who is competent to issue the inspection certificates. He was not aware if apart

from Sr. DCM Office, any other officer/authority also used to issue inspection certificates.

**76.** In his **cross-examination** conducted on behalf of **A-2 Anil Gupta** on 4.7.2019, PW15 admitted that the increase and decrease of number of inside display panels in the coaches of the train depended upon the internal design of the coaches of the train. He *further* admitted that the coaches of a rake of the *Karnawati Express*, sometimes were substituted by another coach of similar design for the purpose of maintenance etc., and the record of type of coaches in a particular rake of the train is to be maintained for the purpose of ascertaining the display of inside display panels.

**77.** PW15 *further stated* that during his posting in the Commercial Department at Ahmadabad Division, he had not come across any record maintained by the commercial department regarding change of type of coaches except once. PW15 also stated that change in the type of coaches took place once, in the month of November-December, 2009 and thereafter, the number of panels were reduced. He had come across the change of the type of coaches from the old rake to the new rake and that is why he ordered for a fresh joint survey to ascertain the number of panels. He had seen the display of inside panels in all the coaches of *Karnawati Express*, as and when he visited the train for inspection but he had not maintained any



noting regarding the same. PW15 further stated that when he visited for ticket checking in the *Karnawati Express*, at that time there was no agenda for checking the inside display panel and it was also not his agenda to count the total number of inside display panels of the said train.

**78.** In his *further cross-examination* conducted on behalf of A-2 Anil Gupta on 4.7.2019, Witness stated that as per clause-42 of agreement Ex.PW15/B the licensee would have displayed additional number of panels with permission from Railway Administration well in advance and in case party was found to have displayed extra panel without permission, then the penalty of eight times were to be imposed. He **admitted** that as per the *Dak* register, there is no record of dispatch of letter dated 11.01.2010 and he had not come across any acknowledgement of abovesaid letter. PW15 further stated that letter dated 26.2.2010 Ex. PW2/B was issued by the office of Sr. DCM, Western Railway acknowledging receipt of Rs. 5,39,207/- towards first installment of annual license fee for third year and in the said letter itself, amount of Rs.5,39,207/- was raised for second quarterly installment for third year. He further admitted that there is no mention of letter dated 11.01.2010 in the letter dated 26.02.2010.

**79.** PW15 further testified that letter dated 18.05.2010 Ex.PW4/F was received in the office of Commercial Department, Western Railway on

25.05.2010. He admitted that the letter dated 18.05.2010 had reference of letter dated 11.01.2010 and that the letter dated 21.05.2010 of Sr. DCM, Western Railway, Ahmadabad Ex.PW4/Z9 had reference of letter dated 11.01.2010, vide which demand of Rs.1,64,245/- was raised. He also admitted that vide letter dated 18.05.2010 Ex.PW4/F a draft for Rs.1,64,245/- was sent to the Department, which was deposited in the Railway Accounts.

**80.** *PW-16 Shri D.J. Mitra* deposed that he was posted in DAVP in the year 2014. He proved the standard operating procedure (SOP) dated 11.7.2011 Ex. PW16/1 (file D-5, page 5) stating that the release order cannot be issued by Outdoor Publicity without prior approval of DG. The Witness deposed that DAVP received an application dated 17.2.2008 Ex. PW6/A (file D-12, at pg. 228) from M/s. Shree Agrsen Advertisers along with sole right letter dated 9.2.2008 Ex. PW16/2 (file D-12, at pg. 226) of DRM (Commercial) WR, Ahmedabad.

**81.** The Witness deposed that vide Ex. PW16/3 (file D-15) requisition was received from Department of Consumer Affairs on 22.9.2009 in which note about 50 inside display panels in *Karnawati Express* for a period of 3 months was finally approved by Mr. Frank Noronha, whereafter order was issued in favour of M/s. Shree Agrsen Advertisers vide letter dated 9.12.2009 Ex. PW16/4 (file D-14). Thereafter

the display report and the photographs were submitted by the *Firm* and inspection/verification certificate was issued by the Railway. Final bill of Rs. 2,97,810/- was submitted by the *Firm* which was finally approved. The file was collectively exhibited as Ex. PW16/5 (file D-14).

**82.** Further, requisition letter was issued by Ministry of Health and Family Welfare vide letter dated 27.7.2009 Ex. PW16/6 (in file No. D-16) for which office note was initiated by the Witness pursuant to which order for 125 panels for display in *Karnawati Express* was issued by Shri Padam Upadhaya vide his letter Ex. PW16/8. M/s. Shree Agrsen Advertisers vide invoice Ex. PW16/9, claimed an amount of Rs. 9,92,700/- from DAVP which amount was approved by the DAVP, complete file of which is Ex. PW16/10.

**83.** Requisition Ex. PW16/11 (file D-20) was received from Bureau of Energy Efficiency on 26.11.2010 for which office note was initiated for 500 inside train display panels in the *Karnawati Express* by the *Firm* (i.e. Agrsen Advertisers) for one month which was approved by the then DG Mr. Frank Noronha, file of which collectively is Ex. PW16/12 (file D-20) whereafter vide letter dated 20.1.2011 Ex. PW16/13 (D-21), the order was issued in favour of M/s. Shree Agrsen Advertisers. The bill of the *Firm* for an amount of Rs. 20,64,816/- was approved vide noting dated 29.3.2011 Ex. PW16/14 (in file D-21).

**84.** The Witness further deposed that the requisition letter dated 10.6.2011 Ex. PW16/15 was sent by Ministry of Health & Family Welfare, DGHS to Shri Y.K. Baweja, the then Director Campaign Officer, DAVP. In response to the enquiry by Akash Laxman from the Firm regarding the availability of panels with the Agency, M/s Shree Agrsen Advertisers sent a letter dt. 1.7.2011 (Mark PW16/A) addressed to Director (OP) DAVP informing about availability of 840 panels. The work order was allotted to the *Firm*. The Witness also deposed that M/s. Shree Agrsen Advertisers submitted the display report and the photographs with the DAVP. The bill raised by the firm for two months amounting to Rs. 35,64,445/- was withheld owing to inquiry, complete file of which is **Ex. PW16/17**(file D-24).

**85.** The requisition letter of Ministry of Rural Development, IEC Division was sent to Director, OP, DAVP on 14.7.2011. Order Ex. PW16/19 was issued by the then Director (OP) Shri Akash Lakshman to the *Firm* for 200 inside train display panels in *Karnawati Express* for 6 months. The firm submitted photographs and display reports to DAVP and inspection/verification certificate was issued by Western Railway whereafter bills were raised by the *Firm*. However, bill for a sum of Rs. 21,60,000/- was withheld owing to inquiry.

**86.** In his **cross-examination** conducted on behalf of accused ***Om Prakash***, the Witness stated that neither DAVP has any mechanism to verify the number of display panels inside the train displayed by any contractor nor the same were verified by DAVP in the present case but then ***voluntarily*** stated that since sole right was awarded to M/s. Shree Agrsen Advertisers by Western Railway, DAVP must have verified the same. A question was put to the witness whether during his tenure, he or anybody else from his Section in DAVP had conducted any verification of the inspection certificates furnished by the *Firm* to which the Witness replied that the same was not made by his Section of DAVP as the Western Railway had issued those certificates.

**87.** In his **cross-examination** conducted on behalf of ***A-2 Anil Gupta***, the Witness stated that where the sole right is awarded to a contractor/agency, no staff is deputed for verification of number of panels in the train. He further stated that in DAVP no report of any lady officer regarding verification of number of panels in a train was received during his tenure. He also stated that during allotment of work to M/s Shree Agrsen Advertisers, DAVP had asked from M/s Shree Agrsen Advertisers regarding number of panels available with them and the said agency had also replied about the said query.

**88.** In the *further cross-examination* conducted on behalf of **A-2** on 1.8.2019, PW16 admitted that the release orders were issued either by Mr. Padam Upadhaya, the then Production Manager **or** by Mr. Akash Lakshman, the then Director, DAVP and in compliance of the release orders, display photographs were submitted by the advertising agency and DAVP considered them as correct. This witness was not aware if any anonymous complaint was received in DAVP regarding malpractices of DAVP officials in collusion with advertising agencies. He further stated that no warning was issued to him by Sh. N. V. Reddy, after the preliminary inquiry of the anonymous complaint. Witness was not aware if any such warning was issued to Sh. Padam Upadhaya, Tushar Karmakar and P. K. Behra, by Sh. N. V. Reddy.

**89.** PW 16 **further stated** that apparently, there was no financial loss to DAVP but **he could not say** if there was any financial loss to the departments on behalf of whom the release orders for the display of panels was issued to *Agrsen Advertisers*. No such complaint regarding financial loss to the concerned department qua display of inside panel, was received in DAVP during his tenure. He **admitted** the suggestion that he had not placed any document on record to suggest that there was any financial loss to the concerned departments for whom the release orders were issued.

**90.** *PW-17 Shri Tushar Karmakar* deposed that since 2003, he had been working as Assistant Production Manager in DAVP having duties to supervise the campaign of outdoor publicity media, preparing plans and processing rate application for outdoor media. The Witness deposed that application dated 17.2.2008 Ex. PW6/A of M/s. Shree Agrsen Advertisers to Production Manager (OP) DAVP as also the letter dated 9.2.2008 Ex. PW16/2 of DRM (Commercial) WR, Ahmedabad were put up before Rate Settlement Committee on 7.1.2009 by the then DG In-charge.

**91.** In his subsequent *chief-examination*, the witness gave details of how requisitions were received and various work orders were issued to M/s Agrsen Advertisers after being processed at various levels in the DAVP *i.e.* display panels in relation to publicity campaigns of the government deptts./instrumentalities. Brief particulars of the same are –

- A requisition **Ex. PW17/B**(in file D-15) was sent by the *Ministry of Consumer Affairs, Food & Public Distribution* to DAVP for outdoor publicity for various medias including inside panels in *Karnawati Express* for a period of 3 months which was approved vide noting dated 17.2.2010 **Ex. PW17/C**.
- **Ex. PW16/5**(in file D-14), regarding display of 50 inside panel in *Karnawati Express* for a period of 3 months.
- Requisition of *Ministry of Health and Family Welfare*, **Ex. PW17/E** (in file D-17) for display of 140 inside train panels from

31.7.2010 to 28.2.2011, duly approved on 10.9.2010 whereupon the work order was issued to M/s. Shree Agrsen Advertisers vide letter dated 4.10.2010 **Ex. PW17/F**. Thereafter the display report along with photographs were submitted by the *Firm* and the verification certificate Ex. PW13/A as also the inspection report Ex PW6/1 was issued by Smt. Suman Machhar and then the bills were raised. The Witness proved the file No. 10/95/10-11/OP-II in regard to the above as **Ex. PW17/G**.

- Requisition was received from *Petroleum Conservation Research Association* vide letter Ex. PW17/H (in the file D-19) for display of various outdoor media including 200 inside train panels for a period of 3 months which note was approved on 27.5.2011. The Witness proved the entire file in regard to the above *collectively* as **Ex. PW17/I-X**.

- Office note bearing No. 38/04/10-11/OP-III (in file D-18) for order for display of 200 inside panels in the train for a period of 3 months (**Ex. PW17/J**). The display report and photographs were submitted by the *Firm* to DAVP along with the original verification certificate **Ex. PW17/K**. File no. D-18 was *collectively* exhibited as **Ex. PW17/M**.

- Office note dt. 10.5.2011 (in file D-23) bearing No. 53/01/11/OP-I for display of 100 inside panels in the train. The



above-said file was *collectively* exhibited as **Ex. PW17/O**.

- Office note **Ex. PW17/P** dated 21.6.2011 (in the File D-22) for issue of order of 100 inside train panels for a period of one month pertaining to display of information and broadcasting *Bharat Nirman campaign*. Thereafter, the release order was issued to the firm vide letter dated 24.6.2011 Ex. PW17/Q.

- Requisition letter dated 22.7.2011 bearing No. 54/01/11/OP-I - **Ex. PW17/R** (in file D-26), for putting 100 display panels inside the train. The Witness proved the entire file D-26 *collectively* as **Ex. PW17/T1**.

- Requisition bearing No. 75/02/11/OP-I vide letter dated 23.6.2011 **Ex. PW17/V1** for outdoor publicity was received in **File D-28** (collectively exhibited as **Ex. PW17/V4**) pertaining to *Bureau of Energy Efficiency*. The release order was issued to the firm for 500 inside train panels vide letter dt. 19.9.2011 **Ex. PW17/V3**. The parties submitted photographs, display report and the inspection certificate, which were proved *collectively as Ex. PW17/V5*.

- Requisition was received (in File D-29) vide letter dated 14.7.2011 **Ex. PW16/18** pertaining to *Ministry of Rural Development*. All the notings pertaining to the requisition were proved by the Witness *collectively as Ex. PW17/X*.

- Requisition was received (in File D-30) vide letter dated

15.6.2011 **Ex. PW17/Y1** pertaining to *National Disaster Management Authority* (NDMA). The release order was issued to the firm for 130 inside train panels vide letter dated 25.11.2011 **Ex. PW17/Y3**. The *Firm* submitted photographs, display report and the inspection certificate. The above-said correspondence contained in *file D-30* has been proved collectively as **Ex. PW17/Y4**.

- Requisition was received (in File D-32) vide letter dated 29.11.2011 **Ex. PW17/Z1** pertaining to *Bureau of Energy Efficiency*. The release order was issued to the firm for 100 inside train panels vide letter dated 26.12.2011 **Ex. PW17/Z3**. The above-said correspondence contained in *file D-32* has been proved *collectively* as **Ex. PW17/Z4**. The *Firm* submitted photographs, display report and the inspection certificate, which were proved *collectively* as **Ex. PW17/Z5**.

- Requisition was received vide letter dated 22.12.2011 **Ex. PW17/Z6** (received in File D-34) from *Petroleum Conservation and Search Agency*. The notings regarding the above-mentioned requisition has been proved by the Witness collectively as **Ex. PW17/Z7**. The release order was issued to the *Firm* for 200 inside train panels vide letter dated 30.1.2012 **Ex. PW17/Z8**. The above-said correspondence contained in file D-34 has been proved *collectively* as **Ex. PW17/Z9**. The *Firm* submitted photographs,

display report and the inspection certificate, proved *collectively* as **Ex. PW17/Z10** (file D-33).

**92.** The Witness also deposed that file D-5 containing letter dated 7.11.2014 of Mr. N.V. Reddy along with two office orders, both dated 15.7.2011 issued by Shri Akash Lakshman, Director (collectively *Ex. PW17/AA'*) were sent to Shri B.S. Chauhan, Dy. SP, CBI. **This witness deposed about the excess work orders issued to the Firm which totaled to 2112 excess panels.**

**93.** In his **cross-examination** conducted on behalf of accused *Om Prakash*, the Witness stated that for the tender awarded to the firm M/s. Shree Agrsen Advertisers for display of inside panels in the Karnawati Express, the inspection certificate can be issued by any officer, preferably a Gazetted Officer of sole right awarding authority i.e. Railways in this case. There was no mechanism in place in DAVP to cross check the documents submitted by any contractor, *voluntarily* stating that if there was any doubt about the authenticity of the documents, then verification of the documents used to be carried out. He stated that so far as he could recollect, in the present case, DAVP had not carried out any verification of the documents submitted by the *Firm* along with the bills. He further stated that so far he

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1 This letter states that it is the sole responsibility of the Agency to inform the DAVP about the number of panels allotted to it *or* available with it for display.

could recollect the *Firm* had furnished the photographs of the advertisement displayed in the train. He also stated that as per his knowledge, Ms. Suman Machhar, the then Field Exhibition Officer, Ahmedabad once had carried the inspection in the train to check the inside panels displayed by the *Firm*, and that there was no irregularity detected in the said inspection report. The DAVP never inquired from Western Railways about the verification or authenticity of any inspection certificate furnished by the contractor to the DAVP. A question was put to the witness as to whether he had any knowledge about the correctness of the contents of the inspection certificates furnished to DAVP by M/s. Shree Agrsen Advertisers to which the Witness replied in affirmative stating that the contents of the inspection certificates furnished to DAVP by M/s. Shree Agrsen Advertisers were correct.

**94.** In his **cross-examination** conducted on behalf of accused *Anil Gupta*, the Witness admitted that in the present matter, total 14 work orders were issued either by Shri Padam Upadhyay, the then Production Manager, Outdoor Publicity or by Shri Akash Lakshman, the then Director, Outdoor Publicity. The Witness also stated that when the work orders were issued in favour of M/s. Shree Agrsen Advertisers, the DAVP was not having information as to how many display panels were authorized to the *Firm* for display in the train. He admitted that before making the final

payment for such advertisement, there are many checks and balances to scrutinize the bills as per standard government procedure and that in the present matter, the payments were released to the *Firm* as per the above-said standard government procedure and after checking the bills. He also admitted that before making payments, it is also verified whether the work awarded to the contractor through work orders were properly executed or not. He stated that in the present case, M/s. Shree Agrsen Advertisers had submitted the photographs of the display of panels inside the train against all the work orders. He admitted that while verifying the bills of the *Firm*, the said photographs were also verified.

**95.** *PW-18 Shri Kamlesh Tiwari* deposed that towards the fag end of the yr. 2014 when he was posted as Sr. Divisional Commercial Manager, WR, Ahmedabad CBI officials came to him for making certain queries in regard to the present case which were replied by the Witness to Shri B.S. Chauhan, Dy. SP, CBI in the form of a letter dated 5.12.2014 Ex. PW18/1 (**in file D-38**). He also stated that the certificate for display panels in the train should be issued by the Commercial department after due joint verification by supervisors from Commercial and Mechanical departments, and that Sr. Coaching Depot Officer can issue such certificates for displaying the advertisements as per terms and conditions of the contract. He also stated that Sr. Section Engineer **cannot issue the inspection**

**certificate** to a private party and that the Commercial department never received any information/intimation regarding issuance of such certificates by accused Om Prakash or by Sr. Section Engineer. Further, no records were available in the Commercial department regarding issuance of such certificates.

**96.** In his **cross-examination** conducted on behalf of accused **Om Prakash**, the Witness stated that he had no specific knowledge if there is any circular or manual as to who is the competent officer/ authority to issue inspection certificate. However, as per Railway Board Letter dated 24.10.2000, Coaching Depot is the nodal point for implementing the contract through the Coaching Depot Officer, *voluntarily* stating that by implication, Sr. Coaching Depot Officer can issue inspection certificate.

In his **cross-examination** conducted on behalf of accused **Anil Gupta**, the Witness stated that he could not recollect if his statement was recorded by the CBI Officials or not. However, Shri B.S. Chauhan, Dy. SP, CBI had come to meet him in his office and then he had prepared the reply as per the queries raised by Shri Chauhan. He **admitted** that there was **no specific provision in the contract** as to who shall issue the certificates. He further admitted that Sr. Section Engineer used to look after the maintenance of coaches of the train in question. After seeing the document Ex. PW15/B (D-9), the witness deposed that if any additional panel had to be installed in the

train in question with permission, then 3 times tariff has to be paid by the licensee and that if the said additional panel is installed in the train without permission by the licensee, then the licensee has to pay the tariff of 5 times as a penalty for the same.

**97.** *Further*, after seeing the document Ex. PW4/Z23 (D-10, internal page 93), the Witness deposed that two payments were made by the *Firm*, first towards 4<sup>th</sup> quarterly installment of annual license fee for the 5<sup>th</sup> year and second for additional panels. He stated that in the said document Ex. PW4/Z23, it was mentioned that there were no other dues pending against the *Firm*.

**98.** *PW-19 Insp. Anil Bisht* deposed that FIR of the present case was entrusted to him for investigation on 3.1.2014 by the then SP Shri D.K. Barik of ACB, CBI. This Witness conducted the investigation in the present matter till 24.3.2014 whereafter the investigation was handed over to Shri B.S. Chauhan, the then Dy. SP, CBI. The Witness deposed that during the course of his investigation, he had seized two files Ex. PW17/A (file D-12) and Ex. PW9/A (file D-13) from Shri Padam Upadhyay vide seizure memo dated 24.1.2014 Ex. PW19/1.

**99.** In his **cross-examination** conducted on behalf of accused *Anil Gupta*, the Witness deposed that since he was under transfer, he had

not gone through the contents of documents of file D-12 and file D-13 and that he had not recorded the statement of Shri Padam Upadhyay from whom he had seized the files. The above-said files after seizure were deposited in the *malkhana*.

The learned counsel appearing for accused **Om Prakash** adopted the cross-examination of the Witness conducted on behalf of accused Anil Gupta.

**100.** **PW-20 Shri B.S. Chauhan** deposed that further investigation of the case was entrusted to him on 24.3.2014 during the course of which he collected the relevant documents from DAVP, WR, Ahmadabad and other related departments. The Witness deposed about collecting the following material during the course of investigation:

- i) certified copies of “Dak and Dispatch register”, collectively **Ex. PW20/1**
- ii) documents contained in the file bearing No. 50/Misc./08/OP-I (D-35) Ex. PW20/2
- iii) 21 files including the file No. 23/329/11-12/OP-III, collectively **Ex. PW20/3 (D-22)**.
- iv) letter dated 26.8.2013 (internal page 3 of file D-3) of Sr. DCM, WR, Ahmedabad as **Ex. PW20/4** as also the letter dated 13.5.2013 (internal page 4 of file D-3) as **Ex. PW20/5**.



- v) Permission for physical inspection from PRO of WR and physical inspection report, *collectively as Ex. PW20/6.*
- vi) Report of Sr. CDO, KKF dated 1.12.2014 Ex. PW20/7.
- vii) He recorded the statement under Section 161 Cr. PC of the witnesses including the statement of Shri Nar Singh Dev, Ex. PW20/8.

**101.** The Witness also deposed about receipt of sanction for prosecution of accused Om Prakash, preparation of the charge-sheet Ex. PW20/9, and filing of the same in the Court. The Witness also proved the FIR dated 3.1.2014 (file D-1) handed over to him by the then IO/Insp. Anil Bisht as Ex. PW20/10 along with the record of the case.

**102.** In his **cross-examination** conducted on behalf of accused **Om Prakash**, the Witness stated that he had ascertained from the competent authority of Western Railway as to who was the competent authority for issuance of Inspection Certificate in the instant matter and the relevant information was provided to him in writing by the Western Railway as also about the rules & bylaws etc. He **denied the suggestion** that there was no rule, bylaws, circular/manual etc., describing the competent authority for issuance of inspection certificate. He **also denied** that no such information was provided to him by any official of Western Railway. This Witness

further deposed that as per his inquiry there is no set mechanism in DAVP for verification of inspection certificate. He admitted that he had not taken specimen signatures/hand writing of any accused for the purpose of comparison with the documents on record. He denied that he had recorded the statement of the witnesses of his own to suit the case of CBI. He also denied that **A-1** Om Parkash had been falsely implicated in the present case.

**103.** In his **cross-examination** conducted on behalf of **A-2 Anil Gupta**, the Witness stated that he had not asked the competent authorities of Western Railway to supply the comprehensive chart showing the spaces where 733 inside display panels were to be affixed/placed in the *Karnawati Express* neither had he personally inspected the Train.

PW20 further deposed that during the course of investigation, he had also examined the roles of DAVP officials but had not found any incriminating material against the DAVP officers/officials and hence, they were not charge sheeted. He also deposed that he had inquired regarding dispatch of letter dated 11.01.2010 from the concerned authority of Western Railway and seized the dispatch register, and in which the dispatch of letter dated 11.01.2010 was not reflected.

**104.** In his *further cross-examination*, PW20 stated that he had not made any inquiry from the Notary Public who had notarized the copy of

letter dated 22.01.2008 issued by Sh. N. K. Salve, DRM, (commercial), Western Railway, Ahmadabad. He admitted that the photographs of the displayed advertisements were placed in the files of the work orders awarded to M/s *Shree Agrsen Advertisers*. He further deposed that he had inquired from the DAVP officials about the verification of these photographs and they replied that they had no mechanism in DAVP to verify the photographs.

**105.** PW20, after seeing the internal page 512 of D-9 Ex. PW2/B stated that if it was found that the licensee/agency had displayed advertisement without permission, he was liable to be charged five times of the tariff rates fixed by Railway Administration as penalty for such display/advertisement/excess space. He admitted that the agreement is silent about the authority competent to issue the inspection certificate.

PW-20 further stated that he had not inquired whether accused Om Prakash and accused Anil Gupta were related to each other or not, or that they had any affiliation amongst themselves. He stated that during investigation, it had not surfaced if accused Anil Gupta had given any monetary benefit to accused Om Prakash.

**106.** *PW-21 Insp. S.P. Singh* deposed that while posted in ACB, CBI, New Delhi, a preliminary inquiry was marked to him by the then SP, ACB, CBI in the year 2013 wherein it surfaced that in the 2008, M/s. Shree

Agrsen Advertisers was awarded sole rights by the Sr. Divisional Commercial Manager, WR, Ahmedabad for display of 733 inside panels in *Karnawati Express* for a period of 5 years. The *Firm* was empaneled by DAVP in 2009 whereafter inside panels were displayed by the *Firm* from 2009 to 2012. On the request of the *Firm*, Sr. DCM, WR, inspection was conducted regarding feasibility of display of panels inside the train upon which the number of panels were reduced from 733 to 466 for which letter dated 11.1.2010 Ex. PW4/G (D-10) was issued by Sr. DCM, WR, Ahmedabad vide which the *Firm* was directed to deposit revised license fee i.e. for one year. The Witness deposed that during investigation, he came to know that *though* there was reduction in the inside train panels from 733 to 466, the *Firm* had displayed additional panels upto 990 without any permission from WR, Ahmedabad, causing loss to the government exchequer and wrongful gain to the *Firm* pursuant to which the Witness recommended for registration of the FIR in the present matter.

**107.** In his **cross-examination** conducted on behalf of **A-1 Om Prakash**, Witness stated that he did not record statement of any official of Mechanical department of Western Railway, except recording statement of *accused* Om Prakash. He did not recollect if he had come across any rule or circular prescribing the officer authorized to issue the inspection certificate. He further deposed that during his preliminary inquiry, he had noticed that in the instant matter, Western Railway had suffered financial loss but was

unable to tell if the alleged financial loss suffered by Western Railway was adequately compensated by M/s Shree Agrsen Advertisers in terms of the agreement. He did not know if the concerned department of Western Railway had not initiated any department proceedings against *accused* Om Prakash. However, he denied the suggestion that in the preliminary inquiry no evidence was found against *accused* Om Prakash.

**108.** In his **cross-examination** conducted on behalf of **A-2Anil Gupta**, Witness stated that during preliminary inquiry he had not come across any anonymous complaint regarding corrupt practices in DAVP, New Delhi. He further stated that during his inquiry, it had **not** come to his knowledge that Sh. N. V. Reddy had ever issued any warning to Sh. Padam Upadhaya, Tushar Karmakar, P. K. Behra and Sh. D. J. Mitra, after vigilance inquiry of the anonymous complaint. He did not recollect specifically if any incriminating material had surfaced against the officials/officers of DAVP who had issued the release orders to M/s *Shree Agrsen Advertisers*.

**109.** PW21 further stated that during the preliminary inquiry, he did not visit the office of Western Railway, Ahmadabad. He had called for the documents from the Western Railway and an official of Western Railway came to Delhi along with those documents.

**110.** PW21 also deposed that on a source information, he had conducted preliminary inquiry against seven advertising companies /firms namely **M/s** Graphis Ads Pvt. Ltd., **M/s.** Jagran Engage, **M/s** Times Innovative Media Ltd., **M/s** Reliance Broadcast Networks Ltd., **M/s** Greenlines, **M/s** Pioneer Publicity and **M/s** N.S. Publicity. RC was registered against the aforesaid companies vide RC 1A/2014/ACB, New Delhi. Witness was unable to tell if closure report was filed by the concerned IO in RC 1A/2014/ACB, New Delhi, and whether the same had been accepted vide order dated 26.11.2015. He had no knowledge if **M/s** Shree Agrsen Advertisers had made additional payment to the Western Railway for display of additional panels. He denied that he had not conducted the preliminary inquiry in a proper manner.

**111.** In their *respective statements* recorded under **Section 313 Cr. PC**, the accused persons either denied or expressed their ignorance about the investigation carried out in the present case. Accused **Om Prakash** stated that alleged inspection certificates were never issued by him which neither bear his name nor signatures or the seal and that he has been implicated in the present case only on the basis of suspicion, conjectures and surmises. He also stated that he had no relation with accused Anil Gupta and had never dealt with him in his official capacity. He had never been requested by anybody including co-accused Anil Gupta to issue the

inspection certificates hence, there is no question of his issuing the alleged inspection certificates. **He categorically asserted that he had no authority to issue the questioned inspection certificates.**

**112.** Accused **Anil Gupta** stated that he had suffered because of the false complaints made against him by unknown persons. He had submitted all the proof along with photographs for the displayed panels in regard to the work allotted to him by the DAVP. He further stated that he had displayed all the panels including the additional panels for which he was legally entitled as per the agreement with Western Railways and had paid the additional charges to Western Railway for such additional panels for which Western Railways had even issued 'No Due Certificate' to him. The questioned inspection certificates were issued by the Western Railway under its seal and the same was genuine, and that he had not forged any document.

*Accused Om Prakash* alone opted to lead evidence in his defense.

**113.** **DW1** Shri Pawan Kumar, Assistant Divisional Mechanical Engineer (Coaching), WR, Ahmedabad deposed that accused Om Prakash was his subordinate and as such he recognized the hand-writing and signature of the accused. After going through the attested copy of

Measurement Book (collectively Ex DW1/A) maintained in respect of Mechanical Cleaning and Yard Cleaning Work for the period 2012-2013, running from 359363 to 359399 of the said book, the DW stated that the said documents bear his signatures and on each page at point A. Thereafter, on the same documents, witness identified the signatures of accused Om Prakash at Point B.

**114.** In his **cross-examination** on behalf of the CBI, the Witness deposed that being Assistant Divisional Mechanical Engineer (Coaching), his duties were to look after the work of all the supervisors; *voluntarily* stating that Sr. Section Engineer and Junior Engineer were working as Supervisors. Witness stated that the Sr. Section Engineer looked after the work of train maintenance and other contractual work. Accused Om Prakash was working as an Inspector (Divisional Carriage and Wagon Inspector) and the said work was assigned to any of the Sr. Section Engineer.

**115.** When shown by Id. PP, the Witness identified the signatures of accused Om Prakash on the *vakalatnamah* dated 26.9.2015 Ex. DW1/PX as also on the bail bond dated 4.11.2015 Ex. DW1/PX-1. However, the Witness denied that the document Ex. PW13/C bore the signatures of *accused Om Prakash* at point A.



**116.** The Witness admitted that during the period 2009 to 2012, accused Om Prakash had not worked with him. He admitted that people may either put their full signature or sometime just put their initials, and that initials and signatures of a person may be same or different depending upon person to person. The Witness stated that “he was not aware” as to in which style *accused Om Prakash* used to put his initial or signature in the year 2009-2012. The Witness also deposed that since document Ex. PW13/C is of 2.2.2011 so he could not confirm or deny that signature at point A on the said document is of accused Om Prakash or not. The Witness admitted that Sr. Section Engineers do not have any authority to issue inspection certificate in regard to inside display panels in the train, *voluntarily* stating that Sr. Section Engineer can only furnish information to the senior officers regarding display panels, if so asked by senior officers.

*Learned counsel appearing for accused Anil Gupta opted not to cross-examine the witness.*

**117.** **DW2** Shri Deepak Jain, hand-writing and finger print expert deposed that he had examined the disputed signatures mark Q1 to Q8 (on the inspection certificates) with the comparative signatures mark A1 to A29 of *accused Om Prakash*. After examination and comparison from the documents as well as their enlarged photographs, the DW came to the conclusion that the disputed signatures mark Q1 to Q8 have not been

written by the same person who had written the comparative signatures mark A1 to A29 *i.e.* accused Om Prakash. DW 2 proved his report dated 15.10.2019 Ex. DW2/1.

**118.** In **cross-examination** on behalf of CBI, the Witness admitted that a person cannot write and sign exactly in the same manner; *voluntarily* stating that natural variations are always bound to occur. He *further admitted* that a person may adopt different style of signatures for different purposes. On a specific question by Ld. PP whether the similar model of questioned signature is compared with similar model of admitted signature, DW2 *admitted* that the principle of comparison is 'like compare like' but stated that the said principle was not followed because accused Om Parkash told him that he never signed like the model present in the questioned signatures and so he was not in a position to give the specimen signature in the same model as is visible in the questioned signatures. Witness admitted that he had taken photographs of the original documents as well as photographs of the photocopies from the Court and thereafter, examined the same. DW2 after seeing his report, in response to a *specific* question regarding pen pressure, stated that at the time of taking photographs of the signatures under comparison, he had also examined the pen pressure by examining the indentation marks available on the reverse of the original paper containing the signatures<sup>1</sup>. In further reply to a specific question put

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<sup>1</sup> It needs a highlight here that after this response of the Witness, the Court observed that the

by Id. PP, he stated that he had only examined pen pressure from the original signatures and did not observe the corresponding exhibit containing that original signature. He denied the suggestion that he did not remember the exhibits in which he noted down the pen pressure as mentioned in his report, and so his reasoning in the report is wrong.

**119.** DW2 further stated that he had given a certificate U/s 65-B of Indian Evidence Act in his report to the effect that photographs of the signatures under comparison are the true production of the corresponding original/photostat signatures. He further stated that he was having a merchant lens of power 10X but he had not taken out the said merchant lens while taking photographs. In reply to a specific question regarding flow of a signature, Witness stated that it is not always necessary that every person shall have fluent writing / signatures without having break/ inconsistencies, and the same depended upon his writing skills - if he has low executional skill then his signatures/writing shall not be fluent and shall have breaks or inconsistencies but if he is having superior executional skill then his writing /signature shall be fluent, without break/inconsistencies and shall be written with rapid speed.

**120.** DW2 further deposed that generally, in a forged signature, the

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witness had only taken photographs from his camera in the court room and had **not examined** the questioned documents.

forger takes pain only in executing the outward appearance of the genuine signature of the original writer and in such a case there may be break, inconsistencies and speed may be lower to the speed of the original genuine signatures. However, in case of impersonation forgery these symptoms may not be present because in that case the forger writes the signatures of the alleged person in his own style. He **further** stated that the observation in para no. 8 of his report where he mentioned that disputed signatures have been written with fast speed does not mean that the disputed signatures are genuine signatures of the alleged person and that the entirety of the reasons and observations mentioned in the report show that the disputed signatures are the product of impersonation forgery.

**121.** DW2 admitted that he did not examine or compare the date written below the signature on Ex. PW13/I. DW2, in answer to another specific question stated that by the phrase “motion of pen”, he meant that the manner of moving of the pen in the process of writing which denotes the speed of the writing and speed of the writing can also be examined from the photograph /photostat signatures. He further stated that if a photostat document is not fit for comparison, then motion of pen cannot be examined. He **denied** the suggestion that without seeing the original document, opinion cannot be given about the motion of pen. He also **denied** the suggestion that his report was baseless and no specific reasons of

comparison were given.

Towards the end of the cross examination, Ld. PP put 2 specific questions regarding comparison of disputed and admitted signatures -

**Question:** I put it to you that in your report you have not specifically mentioned that which questioned signature had been compared by you with which admitted signature and your report is based on general comparison. Is it correct ?

**In reply,** DW-2 stated that the fact as to which questioned signature had been compared by him with which admitted signature has already been mentioned in para no.13 of his report. Witness pointed out that the phrase “interse and in comparison to each other” shows that he had not only examined each questioned signature inter-se in the same set of signature but also compared each and every questioned signature with each and every comparative signature.

**Question:** I put it to you that your report also does not mention the letter wise examination of questioned as well as admitted signatures.

**In reply,** DW 2 explained that the formation of letters were not decipherable in both sets of signatures so there corresponding structural foundation had been compared.

**122.** DW-2 denied that he had given a false report in favour of accused Om Parkash to save him from conviction as he had received

remuneration from him.

**No other defense witness stepped into the witness box.**

**123.** I have heard *Ms. Jyotsna Sharma Pandey*, Id. **PP** for **CBI**, *Sh. Sudhir Nagar*, Id. **Counsel** for accused no. 1 Om Prakash as also *Sh. Sanjeev Kumar*, Id. **Counsel** for accused no. 2 Anil Gupta. I have also gone through the record of the case as also the rival submissions of the Id. Counsel for the parties, including written submissions.

Submissions on behalf of **Accused no. 1**–

**124.** As was briefly outlined in the opening paras of the judgment, accused no. 1 flatly denied having ever issued the questioned inspection certificates which formed the basis for accused no. 2 to claim certain bills from the DAVP for displaying advertising panels in *Karnawati Express*. Not only did accused Om Prakash deny having issued the said inspection certificates, a major limb of his defense was that as Senior Section Engineer (C & W), he was not empowered to issue the said certificates and hence, there was no scope of him having signed on them. In his defense statement recorded **u/s 313** of the Cr.PC, he categorically stated that he was not empowered to issue the inspection certificates. Even DW 1 who was a

senior Railway official and who appeared in the defense of accused Om Prakash reiterated that Senior Section Engineer has no authority to issue inspection certificates regarding display of advertising panels inside the train.

**125.** Two prosecution witnesses *however i.e. PW 13 and 14*, identified the signatures of accused no. 1 on the inspection certificates **Ex. PW 14/A (colly)**<sup>1</sup>. **PW 13** was categoric in testifying that he identified the signatures of accused Om Prakash on the questioned inspection certificates as accused Om Prakash was working under him and he had the occasion of dealing with the files bearing his signatures which were routinely put up before him. *Highlighting* the testimony of PW 13, Ld. Counsel for accused no. 1 argued that PW 13 **admitted** in his *cross-examination* that at the relevant time, there were about 650 subordinates working him. Hence, it was so argued, that it was simply improbable that PW 13 would have remembered the signatures of such a large number of subordinates. PW 14 was the 2<sup>nd</sup> witness who identified the signatures of accused Om Prakash on the questioned certificates. He was a colleague of accused Om Prakash and both belonged to the same cadre. *Regarding* the testimony of PW 14, Ld. Counsel for accused Om Prakash submitted that the said witness admitted in his *cross-examination* that he had never received any file from the accused **Om Prakash in his official capacity**. Further, regarding the testimony of PW

<sup>1</sup> These 8 questioned certificates were also exhibited as Ex. PW 13/C to Ex. PW13/ J

14, Id. Counsel argued that in his *cross-examination* this witness though identified the signatures on the disputed inspection certificates to be that of **A-1** Om Prakash, he also stated that he wasn't sure whether the signatures were of Om Prakash since the disputed certificates were not signed in his presence.

**126.** Ld. Counsel further highlighted the testimony of DW 2 (**handwriting expert**) to buttress his submission that questioned signatures on the inspection certificates were not those of accused no. 1. It was also argued by the Id. Counsel that the Investigating Officer was unable to find any truth in the allegation of conspiracy between the 2 accused persons. The cross-examination testimony of IO (PW 20) was highlighted wherein he deposed that he could not find any proof of monetary transaction between the accused persons or even any affiliation between them. In concluding statement, Id. Counsel implored the Court to visually compare the signatures of accused no. 1 appearing on the admitted documents brought by DW 1 from official records of the Railways, with the questioned inspection certificates.

Submissions on behalf of **Accused no. 2** –

**127.** The defense of accused Anil Gupta was premised primarily on 2 grounds – **first**, that accused Om Prakash had the authority to issue inspection certificates and he actually did issue them to Anil Gupta's *Firm*;



and **second**, at no point of time was the *Firm* informed about the reduction in the number of authorised display panels from 733 to 466. The detailed submissions made were as follows:

- 1. The letter dt. 11.1.2010 vide which reduction in the number of display panels in *Karnawati* Express was ‘purportedly’ conveyed to accused no 2, was infact never dispatched from the concerned office which fact is confirmed by the deposition of PW 5 who had brought the *dak* register of the relevant period. Further, A-2 was never associated with the joint inspection team constituted for reviewing the feasibility of display panels. In view of the above facts, there is no evidence to show that A-2 was ever informed about the reduction in number of permitted display panels.**
- 2. There is no evidence that DAVP suffered any financial loss. Further, Western Railway has at no stage lodged any complaint with any authority regarding any monetary loss having been suffered due to display of excess panels. On the contrary, Western Railways issued a ‘No-Due’ certificate on 22.4.2013 (Ex PW 4/Z-23) to M/s Agrsen Advertisers after it had paid additional amount for display of excess panels and outstanding**

**quarterly license fee for the 5<sup>th</sup> year. Further, PW 16 D.J. Mitra who was a DAVP official deposed in his cross examination that “apparently, no financial loss has been caused to the DAVP”.**

- 3. The Charge framed against A -2 is with the regard to the allegation that the Firm of A-2 has claimed bills without actually displaying the claimed number of advertising panels/stickers. However, none of the prosecution witnesses has disputed that the Firm actually displayed the panels for which it claimed bills from the DAVP.**
- 4. PW 3 Mr. Nar Singh who was Director in the DAVP, in his cross examination on behalf of A-1, deposed that inspection certificates can be issued by the Field Exhibition officer (FEO) of DAVP, or by the concerned department where the display has taken place. Since, Accused Om Prakash being the Senior Section Engineer was the maintenance in-charge of *Karnawati Express*, he had the legitimate authority to issue the inspection certificates.**
- 5. PW 11 N K Salve relied on Mark PW11/A which is the forged document *allegedly* submitted by Firm of A-2 to DAVP along**

**with its application for empanelment to the DAVP. However, this document could not be proved.**

- 6. PW 7 Ms. Jyoti Mehta who was from the accounts deptt. of DAVP, deposed that all bills submitted to DAVP were passed after proper scrutiny which meant that there was no way that the Firm of A-2 could have misrepresented to the DAVP while submitting the bills.**
- 7. As per the deposition of PW 9 Sh. Y. K. Baweja, 4 officials of DAVP were issued warnings for granting excess work orders to the Firm of A – 2. Of these 4 Officials, 3 were listed as prosecution witnesses i.e. PW 6, PW 16 and PW 17, whereas they should have been arrayed as accused. Hence, their testimony is tainted.**
- 8. PW 15 Mr. Jha, deposed in his cross-examination on behalf of A-2 that letter dt. 26.2.2010 Ex. PW2/B which was issued by Western Rlys. to A – 2 and vide which 2<sup>nd</sup> quarterly license fee for the 3<sup>rd</sup> yr was demanded from the Firm did not contain any reference of the reduced number of display spaces. Further, vide**

**this letter the ‘unrevised’ quarterly license fee was demanded as per the original contract dt. 27.1.2009 which again shows that the Firm of A-2 was not informed about reduction in the display spaces.**

9. **PW 17 Tushar Karmakar (who was from the DAVP) admitted in his cross examination that that the contents of questioned Inspection Certificates were correct. Further, this witness deposed that photographs attached with the inspection certificates were got verified.**

**FINDING:**

**128.** Before returning the findings, it will be appropriate to reproduce the language of relevant offences:

**Section 13 (1) (d) and section 13 (2) of the PCA 1988.**

*Criminal misconduct by a public servant* – (1) A public servant is said to commit the offence of criminal misconduct, -

(a) –

(b) –

(c) –

(d) if he, -

(I) by corrupt or illegal means, obtains for himself or for any

other person any valuable thing or pecuniary advantage; *or*

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage;

*or*

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; *or*

(e) -

**Section 120 A IPC.** *Definition of criminal conspiracy – When two or more persons agree to do, or cause to be done, -*

(1) *An illegal act, or*

(2) *An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy*

**Provided** *that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.*

**Explanation –** *It is immaterial whether the illegal act is the ultimate object of such an agreement, or is merely incidental to that object.*

**Section 415 IPC.** *Cheating –*

*Whoever, by deceiving any person, fraudulently or dishonestly*

*induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat.*

**Explanation** - A dishonest concealment of facts is a deception within the meaning of this section.

**129.** The prosecution case can be split up into 2 parts for convenience – *first* part deals with the allegation that **accused no. 2** (acting through the **Firm**) secured work orders from the DAVP far beyond his authorisation by deliberately concealing the same and thereafter submitted bills for displaying unauthorised number of advertising panels in *Karnawati Express* when infact he had been authorized to set up only 466 panels, implication of which is that not only did he obtain a wrongful gain for himself at the expense of DAVP, he was also liable for a huge penalty in terms of *clause 42* of the initial contract dated 27.1.2009 entered into between Western Railway and *M/s Shree Agrsen Advertisers* acting through accused no. 2, its sole proprietor **but which penalty amount was never paid**. Also, **A – 2** submitted (questioned) inspection certificates knowing that those certificates have been issued by an unauthorised officer. *Second*

part deals with the unauthorized issuance of inspection certificates by accused no. 1 in conspiracy with accused no. 2 thereby abusing his position as a public servant.

**130.** Taking up first the *submissions* put forth on behalf of *accused no. 2*, the *2 primary* arguments put forth on behalf of accused no. 2 regarding **the Firm** not being aware of the reduced number of sanctioned advertising panels **and** the Western Railways or DAVP not suffering any loss, suffer from **foundational fallacy**.

**131.** Dealing with the first allegation, it was **argued** on behalf of accused no. 2 that reduction in the number of advertising panels from 733 to 466 was never conveyed to *M/s Agrsen Advertisers*. Besides, prosecution witnesses have not even disputed that *M/s Agrsen Advertisers* had actually put up the claimed number of display panels inside *Karnawati Express*. It was **further** argued that Western Railway is not the complainant in the present case whereas DAVP to which the Bills were submitted by *M/s Agrsen Advertisers* and which entity has made the part payment, has not suffered any loss *i.e.* as per the testimony of PW 16 *Mr. Mitra*. Further, it was strenuously argued that acceptance by the Western Railways of the additional amount of Rs. 3,33,914/- from the *Firm* and issuance of a 'no-dues' letter dt. 22.4.2013 was conclusive proof of the fact that Western

Railways had not suffered any loss and that any wrongdoing on the part of the *Firm* of **A-2** stood condoned. Consequently, the allegation of wrongful loss and cheating cannot be sustained even at the outset, much less proved.

**132.** Further elaborating the argument, Id. Counsel for accused no. 2 argued that the evidence led on behalf of the prosecution points out to just 1 document which is dated 11.1.2010 and which is a letter addressed to the *Firm* Agrsen Advertisers by Western Rlys. authorities informing it of the reduction in the number of sanctioned advertising panels and along with an annexure containing fresh (**reduced**) license fees computed in view thereof for the remainder of the contract/tender period. However, evidence of PW 5 who proved the '*Dak*' register of the relevant period conclusively proves that this letter was never dispatched to the *Firm*.

**133.** *In response to this argument*, Ld. PP highlighted that vide letter dt. 18.5.2010 Ex. PW4/F, reduced quarterly fee had been paid by the **Firm**, as per the revised fee schedule appended as Annexure to letter dt. 11.1.2010. Infact the letter dt. 18.5.2010 mentioned in its subject header – *with reference to letter dt. 11.1.2010*. In regard to letter dt. 18.5.2010, it was argued by the Id. Counsel appearing for **A-2** that this letter was actually in response to letter dt. 21.5.2010 and since the letter dt. 21.5.2010 addressed by office of DCM, Western Rlys to the *Firm* contained reference of letter



dt. 11.1.2010, letter dt. 18.5.2010 also mentioned about letter dt. 11.1.2010 in the subject header *without putting any thought* into the relevance of letter dt. 11.1.2010. It was further argued by the Id. Counsel for A-2 that the letter dt.18.5.2010 bears the wrong date as it was a typing error and infact, it was sent in response to letter dt. 21.5.2010 and consequently, merely on the basis of letter dt. 18.5.2010 it cannot be held that the *Firm* had knowledge of the reduced spaces.

**134.** In so far as the *argument* pertaining to lack of knowledge of A-2/ the *Firm* regarding reduction of display panels from 733 to 466 is concerned which is the star argument advanced on behalf of A-2 i.e. *Firm* not having been conveyed the said decision, the contention of the Id. Counsel for A-2 by placing reliance on letter dt. 18.5.2010 is irrational, to say the least. The documentary evidence on record conclusively disproves the above contention. **First**, had the letter dt. 18.5.2010 been sent in response to letter dt. 21.5.2010, even assuming for a moment that there was a date typing error, the letter would have contained reference of letter dt. 21.5.2100 *whereas* the letter dt. 18.5.2010 contained reference of letter dt. 11.1.2010 only which clearly shows that the Firm had clear knowledge of letter dt. 11.1.2010 and the letter dt. 18.5.2010 was sent in response to the letter dt. 11.1.2010. **Second**, assuming the worst against the prosecution and best in favour of A-2 *i.e.* letter dt. 18.5.2010 was in response to letter dt.

21.5.2010, even then the letter dt. 18.5.2010 shows that the *Firm* had clear knowledge of reduced display spaces and reduced license fees because in the letter dt. 21.5.210, it was specifically mentioned that the 2<sup>nd</sup> quarter license fee for the 3<sup>rd</sup> year is required to be paid as per the “revised license fee schedule”. Thus, unless *the Firm* was aware of the contents of letter dt. 11.1.2010 and the attached annexure containing revised license fee, it could not have deposited the reduced quarterly license fee. It needs a highlight that the fee paid vide letter dt. 18.5.2010 was the precise amount mentioned in the annexure of revised license fee attached to letter dt. 11.1.2010. Payment of the revised license fee by the *Firm*, in specific response to the letter dt. 11.1.2010 is a clear pointer towards the patent knowledge which the *Firm* had about the reduction of advertising display spaces and the consequent reduced license fees. **Even assuming the best in favour of the accused no. 2**, the *Firm* had knowledge of the reduced advertising spaces in the very least as on 21.5.2010. All the 8 questioned inspection certificates pertain to the period **after** 21.5.2010 and as per the Charge-sheet also, the period when the unauthorised panels were displayed is from 2011 to 2012.

**135.** Apart from the above, there is significant more which needs a highlight in this regard. Soon after the DAVP conducted internal inquiry leading to across the board suspension of the *Firm* from all empanelment (and not just for *Karnawati Express*) on 13.7.2012, the *Firm* came out with

voluntary disclosure regarding the excess number of panels on 16.7.2012 (Ex. PW2/C, at CP no. 58, in file D-10) **i.e.** just 3 days later. A perusal of this letter reveals that the *Firm* made voluntary disclosure of excess panels with reference to the reduced number of display spaces **i.e.** 466. What is even more surprising is that along-with voluntary disclosure on 16.7.2012 of excess panels displayed by it in *Karnawati Express*, on 16.7.2012 itself the *Firm* deposited the 'additional amount' of Rs. 3,33,914 without showing any calculation as to how was the said amount worked out. Thus, it was immediately after its suspension by the DAVP on 13.7.2012 when the *Firm* realised that the investigation noose was tightening did it first come out with voluntary disclosure and then paid up the 'additional amount'. The above highlighted sequence clearly shows that all along the *Firm* had clear knowledge of the unauthorised panels being displayed by it but it was only after it realised that its efforts for unlawful enrichment has been highlighted that it tried to cover its tracks. There is nothing to show that before coming out with its voluntary disclosure letter dt. 16.7.2012 regarding unauthorised panels, the *Firm* had sought any information from Western Railways regarding reduced number of display panels. Therefore, the argument addressed before this Court that **A-2** cannot be held guilty for displaying excess panels since it had no knowledge about the same is just not unacceptable. It was after depositing the additional amount calculated by the *Firm* on its own, that the *Firm* sent out an explanation to the DAVP vide

letter dt. 26.7.2012. Interestingly, even in this explanation, the *Firm* submitted to the DAVP that '466 panels only indicated a minimum commitment of license fee to the Rlys'. What is even more surprising is that while making voluntary disclosure of excess panels vide letter dt. 16.7.2012 to Western Rlys., the *Firm* did not mention that it was never informed of the reduction in display panels but in the letter dt. 26.7.2012 *i.e.* just 10 days later, while rendering its explanation to the DAVP, the *Firm* stated that it was never informed about the reduction in display spaces. The *Firm* thus tried to mislead the DAVP at every available opportunity. It needs a highlight that even prior to the receipt of complaint in DAVP, the *Firm* had been misleading the DAVP about the display panels available with it **i.e.** in regard to requisition Ex. 16/15 from *Ministry of Health & Family Welfare* qua which the *Firm* informed the DAVP that it had 840 display panels available. Even in the preliminary inquiry conducted by Sh. Reddy, the *Firm* candidly admitted that it had been exceeding the number of authorised display panels *i.e.* Ex. PW12/E. It is interesting to note the language used by the *Firm* in its response to the preliminary inquiry. The *Firm* responded by submitting that 733 panels was only an indicative number specified by the Western Rlys. and that it had been increasing the number of display spaces as per feasibility of coaches and available space. However, at no point of time till its suspension by the DAVP did the *Firm* come forward with voluntary disclosure. Even if the above facts are ignored, what cannot be ignored is that the *Firm* itself repeatedly highlighted the problem in

displaying 733 advertising panels in *Karnawati Express* and it was due to the letters written by the Firm to the western railway authorities that a joint feasibility inspection was conducted to rework the available space for putting up of display panels in the train which ultimately resulted in the permitted display panel numbers being brought down from 733 to 466. One such letter written addressed by the Firm to Sr. DCM Ahmedabad was proved by PW 4 as Ex. PW4/2X2. This letter was followed up by another letter dt. 10.9.2009 Ex. PW4/2X3. These letters conclusively prove that the Firm could not have displayed even the originally permitted number of display panels, what to speak of excess panels, and yet it went on to deceive the DAVP and secured work orders for unauthorised display panels even beyond 733.

**136.** Regarding the 2<sup>nd</sup> main argument advanced on behalf of A-2 *i.e.* no loss was caused to the DAVP or Western Rlys, the Indian Penal Code describes causing wrongful loss as the loss by unlawful means of property to which the person losing it is legally entitled **and** wrongful gain as gain by unlawful means of property to which the person gaining is not legally entitled. Wrongful gain or wrongful loss is the most important component of the term '*Dishonestly*' which in turn is an important ingredient of the offence of **Cheating**.

**137.** In so far as the financial loss to Western Rlys. is concerned, in the present case, language of clause 42 of the contract dt. 27.1.2009 leaves no doubt that the penalty amount for displaying excess advertising panels without due permission was to be worked out on the basis of display rate i.e. 8 times the sanctioned display rate. The relevant language of **clause 42** is reproduced here-in under:

**Clause 42**

**Display Condition:-**

The advertisements should be placed inside the coach after taking permission from Coaching Depot officer- Ahmedabad. **The advertisements have to be placed under the supervision of Carriage Supervisors and Commercial Inspectors of the section under which the train falls.** The Licensee shall take prior approval for all the display Advertisement material by submitting small size true copies to Railway Administration.

The Advertisements on all the coaches need not be similar in text, design, colour scheme and language but should not be different from coach to coach. The colour scheme and design of the Advertisements should be of uniform standard and it should be of good quality and aesthetically presentable. The design and colour scheme should be approved by the Railway Administration.

The Advertisements copy showing the design, colour scheme, language etc should be sent in duplicate for approval. The Railway Administration reserves the right to refuse any advertisement matter/design/colour scheme, if the same is considered unsuitable for display. No appeal will be entertained against the decision, which shall be final.

The Licensee will display the advertisements inside of coaches at the spaces earmarked and Translucent Vinyl Stickers outside of

windows of all the AC coaches. It will amount to breach of contract and the contract is liable to be terminated for such an act if repeated after the first warning and/or fine.

**There will be penalty of 8 times of the average price per unit advertisement arrived at the rate quoted by you** in case display of advertisements is done other than the specified location **or in excess of permissible number of advertisements**. However, no penalty will be charged in case of permission by the Railway Administration for display at other than the specified location due to any problem at the specified location for fixing the advertisements.

**138.** The display rate per unit advertisement was finalised by the DAVP as Rs. 1800 per advertising panel. **However**, ld. counsel for accused no. 2 argued that for display of extra panels, the Firm was required only to pay additional license fee where-after the liability of the Firm ceased. *In the understanding of the Court*, this is where the argument becomes fallacious. The license fee for putting up advertising panels and rates for display of advertising panels are 2 completely distinct components of the contract dated 27.1.2009. The license fee was to be charged from the advertising agency for permitting it to utilize the advertising space in a train for 5 years **i.e.** it was a fee for permitting the agency to do a 'specified act'. On the other hand, rate sanctioned by DAVP for display of a unit of advertisement was the remuneration which the agency was to receive for doing the permitted act. It is obvious that a commercial organization/entity would obtain permission to do a specified activity on payment of a hefty amount

and then try to earn from the activity so permitted. *To give a simple example*, a theatre group hires an auditorium to stage a play. For hiring the auditorium, it has to pay a fee which corresponds to the license fee **i.e.** fee to do a permitted activity which is to stage a play. When the play is actually staged *i.e.* the permitted activity, the theatre group then earns from the sale of tickets which corresponds to the per unit advertisement display rate in the present case. Taking the example further, if the theatre group was to misuse the permission granted (to stage a play) or to exceed the permission granted, it is upto the auditorium authorities to levy penalty either on the basis of license fee charged by it or on the basis of revenue earned by theatre group from the activity which was not permitted or in excess thereof, or even both. The auditorium management could also reserve the right to immediately terminate the permission granted.

**139.** It is clear from the 2<sup>nd</sup> highlighted portion of clause 42 that for unauthorised panels *i.e.* in excess of permission granted, the advertising Agency was to pay penalty of 8 times “**of the average price per unit advertisement arrived at the rate quoted by you**”, ‘you’ here being referred to the Agency and ‘rate quoted’ being referred to the display rate fixed by the DAVP on the application of the *Firm*. Patently thus, Western Rlys. was entitled to recover a much higher amount as penalty from accused no. 2. The amount of penalty worked out in the understanding



of the court has been mentioned in the initial paras of the judgment **i.e.** Rs. 3,50,78,400. However, the amount would be marginally less since PW 17, in his testimony, gave the break-up of excess display panels which add upto 2112 which is slightly less than the number 2436 mentioned in the charge-sheet.

**140.** What is noteworthy is that the *Firm* had the option to pay additional license fee for display of panels at ‘unauthorised space’ **only where it had sought prior permission in this regard from the competent authority, in terms of Clause 43 of the Contract dt. 27.1.2009.** *This was clearly not the case here.* The relevant language of clause 43 is reproduced hereunder:

**Clause 43.**  
**Special Conditions**

The fine for display at unauthorized spaces will be 8 times of the normal rate for a minimum period of three months, in addition to removal of such display immediately when it comes to notice.

I. In case the licensee desired to utilise **additional space**/number of Medias of an advertisement or to change the dimension of the display, or its location, he shall obtain prior written permission From the Senior Divisional Commercial Manager, Western Railway, Ahmedabad. If the **additional space**/advertisement/media or the location asked for by the licensee **are found feasible** and gives aesthetic appearance, the Sr. Divisional Commercial Manager, Ahmedabad will **permit such displays** on payment of **three times of the tariff rate fixed by the administration** for such displays. If it is found that the licensee has displayed advertisement without permission, he is liable to be charged for such advertisement/excess

space, five times of the tariff rate fixed by the Railway administration as penalty for such displays. In addition, the Railway administration has the right to take away all such advertisement materials at the licensee's cost.

**141.** Ld. Counsel for A – 2 has placed great reliance on letter dt. 22.4.2013 issued to the *Firm* by Western Rlys. authorities vide which the *Firm* was informed that no-dues were pending against it after the *Firm* had deposited 'additional amount' for unauthorised excess display panels. There is no doubt that this letter was issued to the *Firm*. However, what is surprising is that after having informed DAVP that the additional amount had been only accepted conditionally, Western Rlys went ahead and issued no-due certificate but did not bother to inform the DAVP of such a crucial decision. DAVP authorities wrote 3 letters to the Western Railway seeking confirmation of regularisation of excess/additional panels, as claimed by the *Firm* vide its explanation dt. 26.7.2012. These 3 letters were written on 3.8.2012, 28.8.2012 and 4.10.2012. To these letters, Western Rly responded vide letter dt. 11.9.2012 conveying that the additional amount has been accepted 'only conditionally' pending confirmation. However, note pg. 13 – 20 of Ex. PW2/C *i.e.* file D-10 which are the relevant notings with regard to the action to be taken after the *Firm* came out with voluntary disclosure and deposited additional amount, shows that at no point of time was the amount accepted conditionally. Only a note for accepting the amount was moved vide note dt. 20.7.2012 (Ex. PW 4/Z 16, in file D-10) but nowhere in the

follow up notings was the proposal accepted. Infact vide note dt. 24.7.2012 at pg. 15, certain information was sought from Sr. CDO. and other officials. It is thus not clear as to what was the basis for Sr. DCM, Western Rly. to write to Director DAVP that the 'additional amount' of Rs. 3,33,914 had been accepted conditionally. What is even more surprising is that after having written letters to Sr. CDO and other officers for seeking necessary information regarding display of additional panels by the *Firm* as also regarding the inspection certificates issued by the Senior Section Engineer (C&W), no further noting was put up and thereafter, the noting at pg. 20 pertains to surrender by the *Firm* of its sole advertising rights and then issuance of letter to the *Firm* informing it of the last payment status *i.e.* letter dt. 22.4.2013. **The issuance of no-due certificate was thus clearly in violation of the contractual terms.** The question that arises next is as to why did the Western Railway authorities accept the amount of Rs. 3,33,914 towards display of excess advertising panels even after the *Firm* came out with voluntary disclosure? The charge-sheet is conspicuously silent on this aspect. Needless to observe, investigating officer has either overlooked it or deliberately ignored it. But that does not wash away the fact that Western Railways was entitled to a significant amount which it has been deprived of **but** for which the Western Rlys. is itself responsible although no specific official responsibility has been fixed and the issue seems to have been just brushed under the carpet despite the fact that it has caused a humungous

loss to the Western Railways.

**142.** So far as causing wrongful loss to the DAVP is concerned, in order to conclude beyond doubt that A-2 had criminal intent to cheat, it is important to analyse in the specific factual set up of this case whether at any point of time had the *Firm* informed the DAVP about the number of advertising panels that it had been permitted to display in *Karnawati Express*? Evidence adduced by the prosecution shows that a crucial document Mark PW/11 A (letter dt. 22.1.2008), even before the very start of the tender period, was manipulated by the *Firm* wherein the number of display panels permitted to was *deliberately omitted*. The original letter Ex. PW4/C *i.e.* letter dt. 22.1.2008 was the acceptance of tender conveyed to the *Firm* by Western Rlys. which specified the number of displays permitted in *Karnawati Express*. Further, Ex. PW17/AA (in file D – 5) which is a letter dt. 7.11.2014 addressed by the DAVP to the CBI shows that there is a duty cast upon the Advertising Agency to keep the DAVP correctly informed, at all times, the status of display of available media for advertisement. In the present case, the *Firm* never informed the DAVP authorities about the number of initially permitted display panels (733) as also the reduced number (466). Even assuming the best in favour of the *Firm/A-2* *i.e.* the reduction of panels was never informed to the *Firm*, even then it exceeded the initially allotted number of 733 panels. There is simply no basis to

justify the excess display panels beyond 733. At the cost of repetition, it needs a re-mention that in response to the preliminary inquiry conducted by Sh. NV Reddy, the *Firm* submitted its response vide Ex. PW 12/E wherein it admitted in clear terms that it has been increasing the nos. of display panels as per feasibility of space available in coaches. In its response, the *Firm* tried to mislead the DAVP by stating that it had been authorised to display 733 panels which was only an ‘indicative number’ of display panels *thereby* conveying the wrong impression that Western Rlys. had permitted it to increase the display space by its own judgment. In the understanding of the Court, the act of Accused no. 2/*Firm* caused wrongful loss to the DAVP by deliberately concealing the number of display panels permitted to it and thereafter dishonestly claiming bills for huge amounts for the excess work orders to which it was never entitled in the first place. In so far as the submission regarding the testimony of PW 16 D. J. Mitra is concerned, the same is to be carefully assessed. He deposed that “apparently there is no financial loss to DAVP”. Use of the word ‘apparent’ is very crucial in understanding whether a financial loss has been suffered. If we take a superficial view, the whole exercise of advertising panels being displayed as per the work orders received from the DAVP seem to be a legal one. But this exercise has to be viewed in the backdrop of a significant factor – there was unjust enrichment by the *Firm* by displaying a higher number of advertising panels than it was authorised to display and correspondingly, there was wrongful loss caused to the DAVP since it had to pay bills for

those advertising panels for which the *Firm* had no authority to display in the first place. Thus “apparently” there may not be any loss but when analysed carefully there has been an immense loss to the state exchequer. In the face of ambiguous deposition by this witness about DAVP not suffering any loss, it is the Court which has to conclude whether or not actions of accused have resulted in financial loss. In the understanding of the Court, as explained above, the loss was caused to the DAVP which was the agency responsible for making payments for putting up display panels.

**143.** Taking up the other arguments/submissions advanced on behalf of **A-2**, Ld. counsel for the accused no. 2 argued that accused no. 2 has been charged with claiming bills for displaying advertising panels **without actually displaying the same** *i.e.* submission no. 3. However, during the course of leading evidence, none of the prosecution witnesses has deposed to the effect that accused no. 2/*Firm* did not display the number of advertising panels for which he/*Firm* subsequently submitted the bills. The photographs submitted as proof of advertising panels have not been disputed by the prosecution nor is the ‘content’ of the inspection certificates (allegedly) issued by accused no.1 denied by any of the prosecution witnesses. Consequently, the Charge u/s 420 IPC stands disproved at the outset.

**144.** It needs a highlight that the charge-sheet was filed with the allegation that the firm of accused no. 2 has attempted to cheat the Government Exchequer by putting up excess number of advertising panels than what was permitted to it and thereafter, submitted bills to claim for excess/unauthorized display panels. In the order dt. 3.3.2016 *vide* which Charge was directed to be framed, Ld. Predecessor clearly observed in para 15 of the said Order that accused no. 2 was well aware of the reduction in the number of authorised display panels and yet he submitted bills for excess panels. However, the Charge which was actually framed u/s 120-B IPC read with section 420 IPC and section 13(2) read with section 13 (1) (d) of the Prevention of Corruption Act 1988 as also the Charge u/s 420 IPC did not mirror the intent of the order directing framing of Charge. The precise language of the Charge is reproduced below:

I, Gurdeep Singh, Special Judge ( PC Act), CBI-05, Patiala House Courts, new Delhi do hereby charge you, accused:

- (i) Om Parkash  
S/o Sh. Chandan Singh; and
  
- (ii) Anil Gupta  
S/o Sh. H. R. Gupta, as under;

That, during the period 2008 to 2012 at Directorate of Advertising and Visual Publicity, Suchna Bhawan, CGO Complex, Lodhi Road, New Delhi (DAVP) and other places, you accused Om Parkash and

Anil Gupta agreed amongst yourselves to do or caused to be done illegal acts by illegal means with the object to cheat DAVP by claiming the bills for display in Karnawati Express Train of much higher numbers of panels than they were authorized and *actually displayed*.

In prosecution of the object of above said criminal conspiracy, accused Anil Gupta obtained inspection certificate regarding display of sticker/panels from you accused Om Parkash, Sr. Section Engineer, Kankaria Coaching Complex, Western Railway, Ahmedabad, who was not authorized to issue the certificate and gave incorrect certificate regarding display and committed criminal misconduct by abusing his official position as public servant.

Further, in prosecution of the object of above said criminal conspiracy, you accused Anil Gupta submitted bills amounting to Rs. 1,47,40,866 in which the amount in respect of 2436 numbers of panels amounting to Rs. 34,84,680/- was *claimed without display of panels* and received Rs. 70,68,024/- from DAVP and thereby, cheated DAVP. Thereby, you both committed **offences punishable under Section 120B IPC read with section 420 IP and Section 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act, 1988** and within my cognizance And I hereby directed that you both be tried on the aforesaid charge by this Court.;

I Gurdeep Singh, Special Judge (PC Act), CBI-05 Patiala House



Courts, New Delhi do hereby charge you, accused Anil Gupta s/o Sh. H.R. Gupta, as under;

That during the period 2008 to 2012 at Directorate of Advertising and Visual Publicity, Suchna Bhawan, CGO Complex, Lodhi Road, New Delhi ( **DAVP**) and other places, you accused Anil Gupta deceived the DAVP by making it believe that you were granted sole right of display of 733 panels of Karnawati Express and induced DAVP in placing the order for display in the Karnawati Express whereas, you were only authorized to display 466 number of stickers panel in the available space.

Thereafter, you obtained false certificate of display from your co-accused Om Parkash who was not authorized to issue the same. And on the basis of the false certificate, claimed bills in excess, amounting to Rs. 1,47,40,866 in which the amount in respect of 2436 numbers of panels amounting to Rs. 34,84,680/- was claimed *without display of panels* and received Rs. 70,68,024/- from DAVP and thereby, committed **offence punishable under Section 420 IPC** and within my cognizance.

**145.** The first para of the Charge u/s 120-B IPC read with relevant sections under the PC Act and u/s 420 IPC clearly conveyed that accused no. 2 had claimed bills for unauthorized display panels i.e. underlined part though admittedly, in the end of the first para Ld. Predecessor incorporated allegation that bills were claimed for display panels which had not been

displayed i.e. italicized part. Similar intent is conveyed in para 3 i.e. italicized part. Similarly, in the Charge u/s 420 IPC, the underlined words clearly conveyed that **A-2** has induced DAVP to place orders for display beyond the permitted number *though* even in this Charge, in the 2<sup>nd</sup> para i.e. italicized words, Id. Predecessor incorporated the allegation of claiming bills without actual display of panels. **However**, in the understanding of the Court, the defect in Charge has not prejudiced the accused no. 2 in any manner. As already highlighted, the charge-sheet clearly implicated accused no. 2 on account of charging an undue amount from DAVP for displaying excess number of display panels. The language of the Charge though appears to be not conveying the clear intent of the allegations, nevertheless does convey the essence of wrongdoing on the part of **A-2 as alleged in the Charge-sheet**. Thus, even though the Charge should have been clearly framed with the allegation that accused no. 2 cheated and caused wrongful loss to DAVP by putting up a higher number of advertising panels than what was permitted to it, the non-framing of Charge in specific terms has not caused any prejudice, for the reasons explained above. In any case, there is no denial by the accused no. 2 that it had put up excess number of panels *nor* does it deny that it submitted the 8 questioned inspection certificates. Infact, one of the 2 major defenses put forth is that the western rlys. accepted the additional amount of Rs. 3,33,914 for displaying excess panels and thereafter issued 'no -dues' letter to the *Firm* of accused no. 2.

The core of the Charge, any which ways had it been framed, was of causing wrongful loss to the Government/State exchequer and which stands proved by the very defense that Accused no. 2 has led.

**146.** Dealing with the argument that **A-1** had the authority to display advertising panels (*submission no. 4*), it maybe repeated that inspection of display panels and issuance of certificates after such inspection was a necessary requirement for the *Firm* to submit Bills to the DAVP. It thus flows from logic that there has to be designated authority/ies who is/are authorised to inspect the train for the purpose of issuing such inspection certificates. Though none of the witnesses could specify any such authority which had the sole authority to issue inspection certificates, conduct of the *Firm* itself shows that the inspection certificates were to be procured from the commercial division. Testimony of **PW 4** confirms this. PW 4 proved letters dt. 4.7.2010/28.9.2010 Ex. PW 4/Z 13 and letter dt. 21.9.2010 Ex. PW4/Z 14 which shows that the *Firm* of accused Anil Gupta had applied to Sr. Divisional Commercial Manager, WR for issuance of inspection certificates and thereafter, the inspection certificates were issued after confirmation from Coaching Depot Officer. Having said that, it must be admitted that the evidence on record is not clear at all as to who was to issue the certificates. PW 13 was the Sr. Coaching Depot officer at *Kankariya* in 2009 and he deposed that he also issued display certificate to

the *Firm* at its request. Thus PW 4 who was from the Commercial division and PW 13 who was from the Mechanical division, both issued certificates to the *Firm*. As per the Railway Board circular dt. 24.10.2000, the nodal department for implementation of the contract was the Coaching Depot Office which is a part of the mechanical division, to which accused no. 1 belonged. However, if we compare the testimony of PW 1 and PW 4, there appears a contradiction inter-se between the two on the point of who was to issue the inspection certificates and **even** contradiction within the cross examination of PW 4.

**147.** PW 1 asserted that it was the Mechanical division/section which had the responsibility of issuing the inspection certificates whereas PW 4 in the initial cross examination asserted that it was **not** the duty of Mechanical section to supervise installation of the advertising panels but further on, deposed that in case of additional display of panels/stickers, it was the duty of Mechanical division to inform the Commercial department, and also that it was the function of Mechanical department to see how many panels were displayed in *Karnawati Express* (contradiction in the testimony of PW 4 with his own testimony). Important to highlight that PW 4 also deposed that so long as he was posted, mechanical section never intimated to the Commercial section regarding display panels in *Karnawati Express* even though in regard to request letters Ex. PW 4/Z13 and PW4/Z14 for

*issuance of display certificates, witness himself stated that certificates were issued after receiving confirmation from the CDO. Surprisingly, none of the Counsels highlighted Clause 42 of the contract dt. 27.1.2009 which clearly lays down that the display of advertising panels is to be supervised by 2 specific officers – Carriage Supervisors and Commercial Inspectors. Carriage Supervisor is from the Mechanical division and senior in rank to the Senior Section Engineer who is also from the mechanical division whereas Commercial Inspector is from the Commercial department. It is thus clear that even accepting that officers of commercial department as well as mechanical division could have issued inspection certificates, it was **definitely not** in the administrative domain of Senior Section Engineer to issue such certificates. Even otherwise, it is the assertion of accused Om Prakash himself that he was not authorised to issue the inspection certificates in view of which the argument of Id. Counsel for the accused Anil Gupta that questioned inspection certificates were legitimately issued by accused Om Prakash being Senior Section Engineer and maintenance in-charge of *Karnawati Express*, becomes irrelevant.*

**148.** The 5<sup>th</sup> **submission** which was the argument regarding document Mark PW11/A (the false document dt. 22.1.2008 submitted by the *Firm* to the DAVP along with its application for empanelment on the basis of sole tender being awarded to it) is fallacious in its inception. Mark

PW11/A (also relied on as Mark PW6/PA) was never issued by any office of the Western Railways. It was forged by the *Firm* and submitted to the DAVP. The original letter dt. 22.1.2008 is on record as Ex. PW4/C i.e. the letter issued by Western Rlys to Agrsen Advertisers specifying the number of display panels which it was authorised to display in *Karnawati Express*. A comparison of the 2 documents shows that in the notarized copy of letter dt. 22.1.2008 submitted by the *Firm* to the DAVP along with the application for empanelment, the column specifying the number of display stickers authorised to the *Firm* was completely missing. Thus, to contend that Mark PW 11/A has not been proved is a meritless argument. Deposition of PW 11 who was a senior officer of DAVP is sufficient to prove that this forged letter was submitted by A-2/ *Firm* to the DAVP. It is an admitted position that the *Firm* had applied to the DAVP in February 2008 for empanelment. Document mark PW 11/A is in the file of DAVP alongwith the application of the *Firm* for empanelment.

**149.** In regard to the testimony of PW 7 Jyoti Mehta who deposed that all Bills submitted to DAVP are passed after scrutiny (i.e. **submission no. 6**), it needs a reiteration that the inquiry before the Court is whether the *Firm* had misrepresented to the DAVP about the number of display panels authorised to it. If DAVP had no idea about the authorised number of display panels, scrutiny of bills would have overlooked this material aspect.

The Accounts section would not have scrutinised the Bills by cross checking as to whether the work orders issued by the DAVP to the *Firm* were as per the limit of display panels set by the Western Rlys because the *Firm* always kept the DAVP in dark about this aspect. The evidence on record *i.e.* forged letter dt. 22.1.2008 clearly shows that the *Firm* deliberately kept the DAVP in dark about its authorisation from the western rlys. Infact, while being awarded one of the work orders pursuant to requisition received from the Ministry of Health & Family Welfare *i.e.* Ex. PW 16/15, the *Firm* misrepresented to the DAVP that it had authorisation to display 840 panels. PW 16 was not even cross examined in regard to this aspect by accused Anil Gupta.

**150.** In regard to the **submission no. 7** which highlighted citing of 3 DAVP officials as prosecution witnesses who were infact issued warning notices by the Director of DAVP after internal vigilance inquiry for issuing excess work orders to the *Firm*, the court is unable to see any merit in the argument. These witnesses had been reprimanded for their negligence by their superior authority. This aspect cannot stand in the way of those officers being listed as prosecution witnesses. Even otherwise, the 3 officers only deposed regarding the approval of display rates by the DAVP to the *Firm* and further about issuance of work orders to the Firm of A-2. None of them deposed that A-2/the *Firm* had misled the DAVP into giving work orders to the Firm.

**151.** So far as testimony of PW 15 Mr. Jha is concerned i.e. **submission no. 8** wherein he admitted that letter dt. 26.2.2010 (Ex. PW5/A 2/ X-1) was sent to the Firm *vide* which the 2<sup>nd</sup> quarter license fee of the 3<sup>rd</sup> yr. had been demanded as per unrevised fee schedule, it only appears to be an inadvertence on the part of the office of Sr. Divisional Commercial Manager, Western Rlys. The record reveals that between 11.1.2010 and 26.2.2010, the incumbent of this Office had changed and it is fair to assume that the letter dt. 26.2.1010 was sent in routine without checking up the fact that license fee had been reduced. Both the letters were addressed to the Firm by Sr. DCM, Western Rlys.

**152.** Finally, regarding **submission no. 9** which relates to the testimony of PW 17, it is not understandable as to what reliance can be placed upon the testimony of PW 17 to the effect that the contents of the questioned inspection certificates were 'correct' when he himself admits that the inspection certificates were never got verified by the DAVP from the Western Rlys. Further, there is no explanation as to why was selective verification done i.e. only of the photographs and not of the Inspection Certificates? It is also not understandable as to how verification of the photographs could have been done without verification of the accompanying Inspection Certificates especially since the photographs are



submitted after a particular advertising campaign is over (alongwith the bills) and thereafter taken off from the coaches? The testimony of PW 17 thus contradicts the testimony of PW 7 Ms. Jyoti Mehta (who was from accounts section of DAVP) who stated that all bills submitted to the DAVP were passed after due verification which in turn significantly affects the primary argument of accused no. 2 to the effect that since the bills were passed after full scrutiny, there cannot possibly be any wrongdoing on the part of the accused no. 2 (the inference drawn being that had there been any wrongdoing, the bills would not have been passed by the DAVP).

**153.** Coming now to the allegation qua **Accused no. 1** which is of conspiring with accused no. 2 for cheating the DAVP and misuse/abuse of his authority by issuance of inspection certificates, the certificates in question carry 2 important fixtures which *prima facie* convey that the certificates were issued by accused no. 1 – *first*, the certificates bear the stamp of the position which accused no. 1 was holding at the relevant time **i.e.** Senior Section Engineer (C&W); and *second*, the certificates *allegedly* bear the signatures of accused no.1.

**154.** Ld. Counsel for accused no. 1 did not give any satisfactory explanation regarding the stamp of Senior Section Engineer (C&W) affixed on the questioned inspection certificates. It is most relevant to highlight

here that accused no. 1 brought in a defense witness **i.e.** DW 1 who was his superior officer and who brought certain official records bearing the admitted signatures of accused no. 1, presumably for the Court to compare the admitted signatures with the signatures on the questioned certificates. **The official seal of accused no. 1 appearing on the record brought by DW 1 i.e. Ex DW1/A is identical to the official seal appearing on the questioned certificates.** Though in his statement recorded under section 313 Cr.P.C., accused no. 1 denied that the seal appearing on the questioned certificates was his *i.e.* of Sr. Section Engineer, the evidence led by DW 1 clearly nails the accused no. 1. No plea was raised on behalf of **A-1** that the stamp was not in his possession or that it used to be in the possession of any of his subordinate staff. He also did not raise any plea that any of his subordinate staff might have misused the office stamp. The plain assertion of accused no. 1 is that he never issued the certificate. However, the comparison of seal of Senior Section Engineer (C&W) on admitted documents Ex DW1/A with the seal of Senior Section Engineer (C&W) on the questioned certificates removes any doubt that the stamp of Sr. Section Engineer (C&W) affixed on the questioned certificates is original. If that be so, the affixation of stamp of Senior Section Engineer (C&W) on the questioned certificates had to be explained by accused no. 1. It was not for the prosecution to have proved the circumstances in which the stamp appeared on the questioned inspection certificates.

**155.** In so far as the signatures of accused no. 1 on the questioned certificates is concerned, 2 prosecution witnesses one of whom was the superior of accused no. 1 **i.e. PW 13** and the other a colleague of accused no. 1 of the same cadre **i.e. PW 14**, have identified signatures of accused no. 1 on the inspection certificates in question. As a counter, accused no. 1 brought in a handwriting expert as defense witness to disprove the prosecution assertion regarding signatures of accused no. 1 on the questioned inspection certificates.

**156.** The chief testimony of PW 13 with regard to identification of signatures of accused no. 1 on the questioned inspection certificates was very clear. He testified in categorical terms that accused no. 1 was his subordinate and his signatures were routinely put up before him. To this, Id. counsel for accused no 1 submitted PW 13 had about 650 persons working under him at the relevant time including 80-100 supervisors and hence it is just not plausible that PW 13 would have possibly remembered the signatures of each of his subordinates. In the understanding of the Court, Id. Counsel for accused no. 1 could not appreciate the testimony in the correct perspective. Simply because PW 13 had about 650 employees working under him, does not mean that PW 13 would have been receiving files from each of these 650 employees. The testimony of PW 13 shows that a

hierarchy of officials much junior to him were working under him but that does not mean that each one of those had been assigned such a responsibility that they had to route the files bearing their signatures to PW 13. Some of them probably would not have even been dealing with file work. PW 13 remained superior of accused no. 1 for almost 4 years i.e. 2009 to 2013 at *Kankariya* and hence, it is logical that PW 13 remembered the signatures of accused no. 1. Moreover, before identifying the questioned signatures in the Court, PW 13 had identified the signatures of accused no. 1 in Feb 2015 when he was called for questioning by the CBI. Thus, not much time had elapsed between 2013 and February 2015 and it is safe to presume that there was no memory lapse experienced by PW 13. I find the testimony of PW 13 with regard to the identification of signatures of accused no. 1 on the questioned certificates to be cogent, convincing and without blemish.

**157.** So far as testimony of PW 14 is concerned, he was categorical in admitting that during his posting at *Kankariya*, he never had the occasion to receive any file from accused no. 1 in his official capacity. However, PW 14's testimony-in-chief is relevant for 2 reasons. *First*, in his chief examination, he identified the signatures of accused no. 1 on the questioned certificates and stated that accused no. 1 used to sign by "somewhere writing his full name and somewhere by putting his initials", and further deposed that on documents like the questioned certificates, he only used to

put his initials while on important documents relating to money, he used to write his full name. *Second*, when he was given a suggestion in cross-examination that he could not conclusively identify the signatures of accused no. 1 on the questioned certificates, he again responded by saying that “*this is how he used to sign par pakkay taur par keh nahi sakte kyunki yeh daskat mere samne nahi hue. This is how he used to sign on loose sheets*”. Ld. counsel for accused no. 1 thus argued that PW 14’s testimony is ambiguous and not certain, and his identification of accused no. 1’s signatures on the questioned certificates fails to pass the test of ‘beyond all reasonable doubt’. **The Court however thinks otherwise.** PW 14 clearly identified the signatures of accused no. 1 on the questioned certificates in his chief examination and even gave an explanation that on unimportant documents like the inspection certificates, he used to put his initials like the ones appearing on the questioned certificates. Further, in his cross examination on behalf of accused no. 1, he again asserted that accused no. 1 used to sign like the signatures appearing on the inspection certificates. Though he followed it up by saying said he was not very sure, that uncertainty has to be viewed in the context of his complete statement which was to the effect that he was not sure because the certificates were not signed in his presence which is a very obvious fact. Infact after having said so, he **again asserted** that “this is how he used to sign on loose sheets”. It is important to highlight that as per the chief examination of PW 14, he and

accused no. 1 worked together for **almost 25 years**. Needless to say that it is most natural for colleagues who have worked together for 25 years to recognize and be familiar with each other's signatures. In the understanding of the Court, both PW 13 and PW 14 were emphatic and clear in identifying the signatures of accused no. 1 on the questioned inspection certificates. It **needs a brief highlight** here that while addressing arguments against framing of Charge, Id. Counsel for accused no. 1 took the plea that he was well within his authority to have issued the inspection certificates. This plea finds a mention in the order of Charge dt. 3.3.2016, at para 10 and is thus a part of the judicial record.

**158.** So far as defense evidence is concerned, **DW 1** himself was unable to conclusively comment that the signature alleged to be that of accused no. 1 on the inspection certificate was not of accused no. 1 *i.e.* Ex. PW13/C. He deposed that he could neither confirm nor deny that the signatures on the questioned certificate were of accused no. 1. DW 1 also admitted that he had no idea as to how accused no. 1 used to sign during the relevant period *i.e.* the period to which the questioned certificates pertain. In so far as **DW 2** is concerned, his testimony reveals that he did not even use the best equipment available with him when he took photographs of the questioned certificates. Also, he mentioned in his report about the pen pressure on the questioned certificates and deposed that he had examined

the questioned documents for gauging the pen pressure which assertion of the witness was shot down by the Court itself by specifically recording the observation that he only took photographs and did not examine the documents. Still further, in his report, the witness mentioned that signatures executed with fast speed is an indication of genuine signatures but in **cross examination** by the Id. PP, he declined to accept the 'suggestion' that since he himself had mentioned in his report that questioned signatures were executed with fast speed, the questioned certificates were genuine. DW 2's testimony is thus self-contradictory and fails to inspire confidence. The report of DW 2 is very general in nature and clubs various characteristics of the disputed and comparative signatures when infact they should have been discussed individually and in greater detail. Last and the **most significantly**, a bare look at the admitted/comparative signature photograph no. A 22 shows that it is identical to any of the 8 questioned certificates. After having a look at the comparative signature photograph no. A 22, there is nothing more that needs an explanation. Thus, the defense evidence itself proves that the questioned certificates bear the signatures of accused no. 1 and hence, nails the guilt of accused no. 1.

**159.** On the Charge of Conspiracy which concerns both the accused, *Ld. counsel* for accused no.1 argued that there is no way that the prosecution could prove the conspiracy when the Investigating Officer (PW

20) could not discover anything in this regard, which is clear from his testimony. Accused no. 1's role is shown to be that of conspirator and it is in furtherance of the conspiracy that he misconducted himself as a public servant by allegedly issuing the questioned inspection certificates which he was not authorised to issue. If allegation of conspiracy is disproved, there is no reason for accused no. 1 to have issued inspection certificates. There is no evidence to show exchange of money between accused no.1 and accused no. 2. There is also **no evidence** that accused no. 1 and accused no. 2 were on friendly terms and thus there was a possibility that accused no.1 *aided* the effort of accused no.2 to unduly enrich himself by submitting unauthorisedly issued inspection certificates. There is no evidence at all of any previous acquaintance between accused no. 1 and accused no. 2. There are no records of mobile telecommunication between the accused persons which could point towards a possible conspiracy. However, there is no denial on behalf of accused no. 1 that at the relevant time when the inspection certificates were issued, he was holding the Charge of SSE (C&W).

**160.** Having given due consideration to the argument, even though the investigation conducted by the IO to find out whether or not there was a conspiracy between accused no.1 and accused no. 2 did not yield anything, the evidence strongly suggests that accused no.1 agreed to issuance of



inspection certificates with the knowledge that the said certificates would eventually be used for 'undue enrichment' because of the nature of the certificates issued and the fact that he *i.e.* accused no. 1 was not authorised to issue those certificates. The fact that accused no. 1 did not have authority to issue such certificates and thus misused/abused his official position for facilitating undue enrichment/wrongful gain by accused no.2 is sufficient to prove the guilt of accused no. 1 qua the Charge u/s 120 B IPC. *In the understanding of the Court*, if a public servant holding a position of authority is being asked to exercise his authority improperly, it is legitimate to draw a presumption that such a public servant is privy to the knowledge that the improper exercise of authority is directly linked to undue gain by the person at whose behest the public servant is improperly exercising his authority.

**161.** One of the major aspects on which the defense of accused no. 2 falters is the lack of any documentation or even oral evidence to prove that accused no. 2 **formally applied** to the office of accused no. 1 for issuance of inspection certificates. There is *also* no proof of any official correspondence vide which the inspection certificates were handed over/released to accused no. 2. Interestingly, accused no. 2 does not say that he applied to the office of accused no. 1. The only plea raised is that since accused no. 1 was the Senior Section Engineer and the mechanical *in-*

*charge* of the *Karnawati Express* which included its maintenance aspects, he was within his authority to have issued the inspection certificates.

**Conspiracy is defined in the Indian Penal Code as an agreement to do or cause to be done (i) an illegal act/crime or (ii) an agreement to do a legal act by illegal means.**

**162.** The act in question was submission of bills to DAVP for display of advertising panels and seek remuneration for it which already had been fixed at the rate of Rs. 1800 per panel. There is no dispute that the Firm of accused no. 2 was granted contractual rights to display advertising panels all of which were put up in terms of the orders issued by the DAVP itself. Thus, submission of bills to DAVP cannot be said to be an illegal act. However, for submitting the bills, the process adopted was illegal and hence, the angle of conspiracy has to be analysed accordingly. The manner in which accused no.1 issued the questioned certificates *i.e.* without receipt of a formal application from accused no. 2 and without any formal dispatch/issuance of certificates itself points out clearly towards a meeting of minds of the accused persons to seek unlawful gain.

**163.** Further, absence of any proof of monetary transaction between A- 1 and A – 2 is not something which conclusively proves the innocence of A – 1. It is obvious that if there had been an illegitimate monetary

transaction between A-1 and A-2, same would have been by discreet means. Even otherwise, misconduct of *accused* Om Prakash falls u/s 13 (1) (d) (iii), for which it is not necessary that the public servant should have gained a pecuniary advantage for himself also. It is sufficient that he obtains a valuable thing or pecuniary advantage for “any person”.

**164.** One of the supplementary arguments advanced by the Id. Counsel for accused no. 2 was that the previous tender of *Karnawati Express* was allotted to a company named as Hemsons & Co. to which a higher number of panels were permitted for less number of coaches. Witnesses were *cross-examined* on the aspect of number of display panels permitted in *Karnawati Express* in the previous tender which was allotted to Hemsons and Co. This fact was time and again highlighted during the course of final arguments by the Id. Counsel for A-2, purportedly to impress upon the Court that *Karnawati Express* had much more capacity for advertising panels than what was permitted to the *Firm*. The Court is unable to see any merit in the argument or understand the logic of advancing it. The contract dt. 27.1.2009 between Western Rlys and M/s Agrsen Advertisers (the *Firm*) is completely independent of the previous tender. Even factoring in the deposition of one of the prosecution witnesses to the effect that previous tenders were taken into consideration while awarding fresh tender, if the *Firm* was not happy with the allotted advertising panels, it should have protested at the initial stage. Id. Counsel for A-2 tried to

vilify the Western Rlys for having allotted less number of display panels than what were allotted to the previous Agency, which fact in any case has no relevance to the questioned conduct of **A-2**/the *Firm*.

**165.** The final question to be determined is whether the questioned inspection certificates i.e. Ex. PW 14/A *colly* have been forged or are false in content? Highlighting the testimony of witnesses, Id. Counsel for A-2 submitted that the questioned certificates cannot be held to be false or forged on account of its contents since even the relevant witness **i.e.** PW 15 has deposed to the effect that in his opinion the said certificates were forged since these have been issued by an officer who was not competent to do so **and not because its contents were wrong**. Id. Counsel for A-2 repeatedly highlighted that at no stage did any of the witnesses depose that the contents of the questioned certificates were incorrect. Further, **PW 17** who was a DAVP official deposed that the contents of the inspection certificates were found to be correct.

**166.** Having gone through the record carefully, I am unable to accept this argument advanced on behalf of **A-2**, for the following reasons. In all the 8 questioned inspection certificates, the date of issue is **immediately after** the date of start of display of advertisements and not after the display period had ended. In other words, at the time when the

questioned certificates were issued, the advertisements had just been displayed. If that be the case, how could the certificates certify that the *Firm* had put up a specified number of display panels for the period specified therein? Such a certificate could have been issued only after the period of display had ended. For this crucial fact alone, it is sufficient to conclude that the questioned certificates contained falsified contents. The details of these certificates are mentioned below:

1. Ex. PW13/C – date of issue is 2/2/2011 whereas the period of display was with effect from 1/2/2011 for 1 month.
2. Ex. PW13/D – date of issue is 23/7/2011 whereas the period of display was with effect from 11/7/2011 for 1 month.
3. Ex. PW13/E – date of issue is 23/7/2011 whereas the period of display was with effect from 21/7/2011 for 7 months.
4. Ex. PW13/F – date of issue is 1/8/2011 whereas the period of display was with effect from 30/7/2011 for 1 month.
5. Ex. PW13/G – date of issue is 3/10/2011 whereas the period of display was with effect from 1/10/2011 for 1 month.
6. Ex. PW13/H – date of issue is 3/10/2011 whereas the period of display was with effect from 1/10/2011 for 6 months.
7. Ex. PW13/I – date of issue is 28/11/2011 whereas the period of display was with effect from 19/11/2011 for 1 month.
8. Ex. PW13/J – date of issue is 28/12/2011 whereas the period of display was with effect from 28/12/2011 for 1 month.

**167.** Another very important related aspect is that of the photographs of the display panels which were required to be submitted along with the inspection certificates. This argument has already been considered in the preceding paras and found without merit. Ld. Counsel appearing for A-2 strenuously argued that photographs were submitted by the *Firm* along-with the Bills and none of the witnesses have disputed this fact but on the contrary, **PW 17** even deposed that the photographs submitted along with the certificates were got verified. However, what is relevant is that when the photographs of display panels are considered along-with the questioned documents, there can be no certainty that these photographs were actually displayed for the entire period specified in the questioned certificates since the said certificates itself are false, as already explained above. Thus, mere submission of photographs of display panels do not aid the defense of **A – 2** in any manner.

**168.** Yet another important aspect relates to the verification sought by Sr. DCM, Western Rly from Sr. CDO (MG) ADI regarding the questioned certificates vide letter dt. 7.11.2012 (in file D-10, Ex. PW2/C at CP pg. 88). The verification of the questioned inspection certificates was sought from the office of Sr. CDO since the questioned certificates were issued by the Sr. Section Engineer (C & W) who was under the office of Sr.

CDO. Along with the letter seeking verification, copies of the questioned inspection certificates were also appended. However, no reply was received from the SSE. Also, Sh. Y K Baweja, Director DAVP directly issued 2 letters to Senior Section Engineer (C&W) seeking confirmation regarding the issuance of questioned inspection certificates i.e. letter dt. 3.8.2012 and 28.8.2012 but no reply was received from the office of Sr. Section Engineer (C&W). In the understanding of the Court had the questioned certificates been authorisedly issued by the SSE (C&W), he would have responded to the letters dt. 3.8.20102 and reminder letter dt. 28.8.2012. Alternatively, he would have clarified that he never issued the certificates. Silence of the SSE in the face of repeated communications addressed to him for seeking confirmation of the authenticity of the questioned certificates, is again a clear pointer towards his guilt.

**169.** A comparison of the chart showing excess advertising panels displayed by the *Firm* i.e. Ex. PW6/E (in file D-2) with the chart of bill payments made to the *Firm* i.e. Ex PW3/B (file D-36) reveals that 6 bills which pertain to excess display panels stood paid to the *Firm* which proves that the offence u/s 420 IPC was complete since A-2 acting through its *Firm* managed to cheat the DAVP and induced it to deliver property to the *Firm*. The details are as under -

Order no. 75/04/11/OP-1 – period of display was from 26.9.2011 to 25.10.2011

Order no. 38/04/10-11/OP-111 – period of display was from 25.01.2011 to 24.04.2011

Order no. 30/5/10-11/OP-111 – period of display was from 27.01.2011 to 26.02.2011

Order no. 61/03/11/OP-1 – period of display was from 1.12.2011 to 31.01.2012

Order no. 61/03/11/OP-1 – period of display was from 1.12.2011 to 31.01.2012

Order no. 75/13/11/OP-1 – period of display was from 28.12.2011 to 27.01.2012

**170.** In view of the above discussion which is based on clear and convincing documentary evidence, this Court is of the firm conclusion that the guilt of accused no. 1 as also of accused no. 2 stands proved beyond all reasonable doubt. Accused Om Prakash and accused Anil Gupta entered into a conspiracy to cheat the DAVP in furtherance of which accused no. 1 misconducted himself as a public servant and issued 8 inspection certificates to the *Firm* of A-2 all of which were false in content and which certificates he had no authority to issue, and on the basis of which accused no. 2 submitted bills to the DAVP to cause to himself wrongful monetary gain through dishonest means. *Further*, accused no. 2 by dishonestly concealing the authorised number of display panels permitted to it by the Western Rlys., managed to deceive DAVP to secure work orders from the



DAVP far in excess of the due authorisation of the *Firm* of A-2 and thereby, cheated the DAVP by inducing DAVP to deliver property i.e. money, to the *Firm* of A-2.

**171.** Consequently, this Court holds **Accused no. 1** guilty and convicts him for the substantive offence u/s section 13 (2) read with section 13 (1) (d) of the *Prevention of Corruption Act 1988*. Further, **Accused no. 1** and **accused no. 2** are held guilty and convicted u/s 120 B IPC read in conjunction with section 13 (2) read with section 13 (1) (d) of the *Prevention of Corruption Act 1988* and section 420 IPC. Accused **Anil Gupta** is further held guilty and convicted for the substantive offence u/s 420 IPC.

ANNOUNCED THROUGH VIDEO  
CONFERENCE ON 27<sup>th</sup> JULY, 2020.

**AJAY**  
**GULATI**  
(AJAY GULATI)  
Special Judge (PC-Act)/CBI-1  
RADCC/ New Delhi

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