

(2002) 08 DEL CK 0044
In the Delhi High Court
Case No : C.W. 6463 of 2001

Amrit Lal

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 01-08-2002

Acts Referred:

Citation : (2002) 100 DLT 412

Hon'ble Judges : Jiwan Dass Kapoor, J;B.A. Khan, J

Bench : Division Bench

Advocate : G. Lal, for the Appellant; D.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

J.D. Kapoor, J.—This petition was dismissed by order dated 5.4.2002 for non-prosecution. Petitioner thereafter filed C.M.4968/2002 for its restoration. While this application was being considered, both parties agreed for disposal of this petition on merits.

2. Petitioner a Class-II contractor was registered with CPWS in 1991. His enlistment was revalidated from time to time and last such revalidation ended on 28.2.2001. He sought its extension but respondents refused to grant it on the ground that he had failed to obtain requisite marks in terms of procedure provided for such revalidation under Office Memorandum (in short "O.M.") dated 27.6.1995. Feeling aggrieved he has filed this petition on the ground that respondent had wrongly assessed his performance and declined revalidation of enlistment.

3. The procedure for revalidation of enlistment has been broadly mentioned in O.M. dated 27.6.1995. Under the aforesaid O.M., a contractor is required to submit along with his application a list of all the works executed/completed or in progress which for Class-II (B&R) contractor is Rs. 25 lakhs & above during the last five years in CPWD. He is required to secure and execute at least one work in the last five years in CPWD. The overall grading of the contractor is based on

the average of marks for all the completed works and if he secures 35 or more marks out of 100 in the overall grading, he will be entitled for revalidation of enlistment for a period of five years from the date of issue. Under the aforesaid O.M. for revalidation, the petitioner was required to secure 35 marks out of 100. which provides that there will be separate evaluation sheet for each completed work indicated by the contractor.

4. Admittedly the petitioner while submitting the application for revalidation furnished the details of work "Construction of Chakkar and Administrative Block at Farm Area Tihar Jail" which are as under:-

"(1) Estimated cost put to tender : Rs. 26,81,334/- (ii) Gross Value of work executed : Rs. 36,93,723/- (iii) Stipulated date of commencement : 5.9.1997 (iv) Stipulated date of completion : 4.5.1998 (8 months time)) (v) Actual date of completion : 2.2.2000"

5. As is apparent, the aforesaid work was got delayed for 639 days which according to the petitioner was due to various hindrances attributable to the respondents and increase in the magnitude of the work. According to the petitioner the Executive Engineer in charge of the work certified vide letter dated 29.6.2000 that though the justified delay as per hindrances register is for 660 days but the contractor took only 639 days to complete the work. The Superintending Engineer also extended the time till actual date of completion i.e. 22.2.2000 without levy of compensation. Thus, the grievance of the petitioner is that though petitioner being fully entitled for revalidation, the revalidation was refused illegally and arbitrarily.

6. The petitioner has also taken refuge of the formula for awarding marks under item "tor". The said formula is as under:-

S.No. Offence Progress as on the date of filing of the Writ Petition. Progress under monitoring by the Hon"ble Court.

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7. It appears that Mr. G. Lal, learned counsel for the petitioner has proceeded on entirely misconceived notion that the competent authority was obliged to accept the report of Assistant or Executive Engineer. The final authority for awarding the performance of the petitioner was Superintending Engineer and number of factors were to be taken into consideration while revalidating the enlistment. Some of these are tor, quality of work, cost of work executed on reduced rates and general behavior of contractor.

8. Admittedly the petitioner was enlisted with CPWD as Class-II Contractor in 1991. The earlier revalidation of the petitioner enlistment in 1995 was done for five years by adopting the same criteria as mentioned in memorandum dated 27.6.1995. The petitioner has applied for further five years revalidation w.e.f. 10.11.2000. This time the petitioners has failed to secure the qualifying marks and accordingly his enlistment was not revalidated for five years and his

enlistment was revalidated only up to 28.2.2001.

9. Merely because the authority extended time for completion of work does not mean that delay was condonable or that it had no bearing on the performance of the contractor. The object of extending the period is to get the work completed from the same contractor and avoid further delay which is involved in recalling the tender or employing a new contractor. As per formula of turn when actual completion period is of 3.5 time or more, nil mark is to be awarded and so was done in the case of the petitioner.

10. The system evolved by the respondent for revalidation of their enlistment appears to take advantage of the experienced and efficient contractors. Contractors who may have experience in executing work of high magnitude of the CPWD are kept on tenterhooks to complete the work in time so that they don't take revalidation as matter of routine or right. It is with this object that non-performing or ill performing contractors are weeded out from time to time by way of non revalidation of their enlistment.

11. Works like construction of roads/building of bridges undertaken by the CPWD are mainly for the welfare of the public at large and if these are delayed for years together it is ultimately the public who suffers. The daily life of citizens gets disrupted. Such delay also tells heavily upon public exchequer. It is perhaps with this object that no-performing or ill-performing contractors are weeded out from time to time by way of non-revalidation of their enlistment.

12. For the foregoing reasons, we do not find any infirmity or illegality in the principle and formula adopted by the authorities in not revalidating the enlistment of the petitioner as it is the objective satisfaction of the competent authority and overall assessment of the work of the contractor by the competent authority which govern refusal or grant of revalidation of enlistment of the contractors. Petition is misconceived and devoid of merits and is hereby dismissed.