

(2003) 09 DEL CK 0026

In the Delhi High Court

Case No : Civil Writ Petition No. 5991 of 2002

Arora Construction Company Pvt. Ltd. and Others

APPELLANT

Vs

The Director General (Works) CPWD and Others

RESPONDENT

Date of Decision : 26-09-2003

Acts Referred:

Citation : (2003) 7 AD 649 : (2004) 1 CTLJ 37 : (2003) 107 DLT 313 : (2003) 71 DRJ 639

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Sandeep Sethi and P.S. Bindra, for the Appellant; Sunil K. Mittal, for the Respondent

Judgement

A.K. Sikri, J.—The petitioner No. 1 (hereinafter referred to as 'the petitioner company'), which is a private limited company incorporated under the Indian Companies Act, is doing the business of civil contractor. The petitioner No. 2 is its Director. The petitioner company was enlisted with the CPWD as Class I (B & R) contractor for the last 20 years. In fact such enlistment is done by the CPWD for a specific period and on the expiry of the said period, case is considered for revalidation of enlistment. This is how the enlistment of the petitioner company as Class I contractor is considered for revalidation of enlistment. This enlistment was expiring on 30th January, 2001. Vide letter dated 7th February, 2002 the CPWD informed the petitioner company that its enlistment would not be revalidated beyond 30th January, 2001. The petitioner company sent representation dated 18th February, 2002 against this refusal. However, this representation of the petitioner company is also rejected vide communication dated 10th May, 2002.

2. Present writ petition has been filed impugning the aforesaid communications.

3. The petitioner company has tried to paint a rosy picture of its credentials and past performance. It is stated that on its enlistment as a contractor of CPWD, it has successfully executed and completed various important works, some of

which are as follows:

- (i) Mini Secretariat at Sector-12, Faridabad, Haryana.
- (ii) 200 Beds ESIC Hospital at Sector-8, Faridabad, Haryana.
- (iii) Government Polytechnic for Women at Sector-8, Faridabad, Haryana.
- (iv) 44 Nos., Type-I and 104 Nos., Type-II Quarters for IGNOU constructed at Maidan Garhi, New Delhi.
- (v) 66 Nos., Type-III, 30 Nos., Type-IV and 20 Nos., Type-V Quarters for IGNOU constructed at Maidan Garhi, New Delhi.
- (vi) Oncology Block of GTB Hospital at Shahdara, Delhi.

It is further stated that in most of the aforementioned projects the petitioner company most diligently executed and successfully completed the works awarded to it. The aforesaid works were found satisfactory by the respondents and even a Performance Report indicating the works to be satisfactory was also given to the petitioner company.

4. It is a common case of the parties that the revalidation is done on the review of performance of contractor during the period previous enlistment/revalidation. The CPWD has, in this behalf, framed its Rules for Enlistment of Contractors (for short 'the Rules'). The prevalent Rules are the Rules of 2001 and the relevant procedure as prescribed in these Rules read as under:

" 21.0 Revalidation Procedure : The revalidation shall be done on the basis of review of the performance of the contractor pertaining to the period of enlistment/revalidation. Cases shall be categorised and action as below:

(i) Category 'A' Enlistment of such contractors, who secure work (s) of appropriate magnitude during the period of enlistment/revalidation shall be considered for revalidation for a period of five years subject to evaluation of their performance.

(ii) Category 'B'. Enlistment of contractors, who secured work (s) of appropriate magnitude recently, in the final year of their enlistment, because of which the performance cannot be properly judged, shall be extended for one year for watching the performance and then revalidated for four years, if found satisfactory.

(iii) Category 'C'. A contractor who could not ensure any work during the enlistment period but submitted three or more tenders (out of which atleast 2 tenders should be during the first four years of enlistment/revalidation) for works of appropriate magnitude shall be eligible for extension of enlistment for one year, provided he was among the three lowest tenders in at least one work, so as to enable him to try to secure at least one work. After one year, he shall be regulated in the following manner:

a) If he has not been able to secure any work of appropriate magnitude during the extended one year, his enlistment shall stand cancelled and he shall be entitled to apply for fresh enlistment only after one year of expiry of his extended enlistment.

b) If he has secured at least one week of appropriate magnitude during the extended one year, he shall be granted extension of one more year so as to watch his performance. After this one year, when his performance report is available, the same shall be evaluated and if found satisfactory, the enlistment shall be revalidated for three years. For the purpose of (iii) above, the contractor should submit certificate in original from the concerned Executive Engineer in the proforma as given in Annexure-X."

5. As per the practice and procedure prevailing in the CPWD, normally the enlistment of contractor is initially for a period of five years which is considered for revalidation from time to time. Such revalidation was coming to an end on 31st December, 2000. The petitioner company states that as required by the aforesaid Rules, an application has to be submitted by the contractor in proforma supplied thereof. The petitioner company applied for revalidation/enlistment as Class-I contractor to the CPWD. It qualified for revalidation/enlistment under the said Rules. The petitioner company had executed and successfully completed the works during January 1, 1996 to 31st December, 2000. The case of the petitioner company is that works were executed and completed to the satisfaction of the CPWD and its Engineers in charge of the works. No complaint of any nature whatsoever relating to the these works were received by the petitioner company from the CPWD. However, its enlistment was revalidated for a short period till 30th January, 2001 as pointed out above. Thereafter, on 7th February 2002, the CPWD informed the petitioner company that its enlistment would not be revalidated beyond 30th January, 2001. On request of the petitioner company made vide representation dated 18th February, 2002, the case of the petitioner company was reviewed but rejected vide impugned communication dated 10th May, 2002.

6. The reason given in the communication dated 10th May, 2002 is that the decision is taken after considering the adverse report from quality assurance team after inspection of the petitioner company's work C/O 348 Nos quarter in General Pool at NH-IV, Faridabad SH: C/O 128 Nos. T-III Qtrs (3 storeyed) including W/S, S/I & Drainage. The petitioner company has averred that no complaint against any of these works was received from the CPWD. On the contrary, as per the performance reports issued by the CPWD it was certified that these works were executed satisfactory and up to the mark. It is further alleged that the impugned rejection is totally unreasonable and without application of mind, and Therefore, suffers from Wednesbury's unreasonableness. It is also alleged that the impugned communication is violative of the Rules framed by the CPWD as, in terms of those Rules, the petitioner company fulfills all the necessary criteria. It is also contended that the impugned action violates

principles of natural justice.

7. In the counter affidavit filed on behalf of the respondents, it is averred that the case of the petitioner company for revalidation was duly considered in accordance with the Rules and the competent authority rightly decided, keeping in view the performance of the petitioner company of the relevant period, that it is not to be revalidated beyond 30th January, 2001. The respondents have sought to explain that the policy of revalidation of enlistment had been introduced and notified in the year 1991 and under this policy the revalidation of enlistment of contractors, who were enlisted with the CPWD, started in January, 1995. The eligibility criteria for revalidation of enlistment has been provided in OM No. DGW/CON/83 dated 27th June, 1995. Under this policy and the OM for revalidation a contractor is required to submit along with his application a list of all the works of appropriate magnitude (Rs. 60 lacs or above for Class-I (B&R) executed (completed or in progress) during the last five year in CPWD. Latest income tax clearance certificate, Bank solvency certificate worth Rs. 2 crores (For Class-I (B&R) from the scheduled Bank are also required. ON the performance report of works submitted by the contractor, reports/comments are called from the concerned CPWD officers, evaluated as per procedure contained in the OM. The earlier revalidation of the petitioner company enlistment as Class-I (B &R) contractor in the year 1995 was done for five years vide I/O No. 670 (B&R) dated 31st January, 1995 with the same revalidation procedure as mentioned in OM dated 27th June, 1995. The respondents have also averred that judicial review can only be of the decision making process and not on the merits of the decision taken by the competent authority. Order can be interfered with only if it is arbitrary, mala fide or unjust, which is not the case here. Justifying the policy of the CPWD in reviewing the performance from time to time for revalidating the enlistment, it is stated that the aim of continued enlistment of contractor is to ensure that the experience of contractor's enlistment in CPWD is available to it. Thus to weed out non-performing or ill performing or poor performing contractors and those who are using CPWD enlistment as a license/passport to work in other departments/bodies, the process of revalidation of enlistment of contractors was introduced in the year 1991 which is valid and legal. The action is sought to be justified by pointing out that the competent authority after considering the case as per the Rules, came to the conclusion that its revalidation would not be revalidated beyond 30th January, 2001. This decision was communicated vide letter dated 7th February, 2002. On the request of the petitioner company made by representation dated 18th February, 2002 the competent authority reconsidered the case and came to the conclusion that petitioner company's revalidation as Class-I (B&R) could not be revalidated as quality of works executed by it had not been found to be satisfactory.

8. Learned counsel for the petitioner assailed the impugned order by contending as under:

(i) Consideration of revalidation application is governed by the Enlistment Rules

providing guidelines to be followed by the competent authority while disposing of the application. Refusal thereof affects the civil rights of the applicant, particularly when he was enlisted in the past, had altered his position pursuant to such enlistment and re-oriented himself to conduct further business in the belief that enlistment would be revalidated as per the existing practice and rules.

(ii) Respondent being State its every action must be transparent and informed of reason. It is liable to disclose reasons while refusing revalidation inasmuch as the impugned order dated 7th February, 2002 does not disclose any reason.

(iii) The subsequent order dated 10th May, 2002 which was issued pursuant to the petitioner's representation disclosing a reason found on review of the revalidation case, is merely an afterthought. This order discloses that the reason given therein was not the reason for original refusal of revalidation but is a reason found by the competent authority on review of the revalidation case. The reason given after review cannot save the original unreasoned refusal order dated 7th February, 2002.

(iv) The reason given in the order dated 10th May, 2002 cannot save the impugned action and the work in question was completed in 1995 and a certificate of satisfactory completion had been issued by the CPWD then and the petitioner is not liable beyond the defect liability period of 6 months after satisfactory completion. No notice was given to the petitioner at any point of time that the work was defective nor was he proceeded against with respect to the alleged adverse report nor was he given any other opportunity to meet the allegation of defect or adverse report. Therefore, the alleged adverse report has been considered against the petitioner behind its back, unilaterally and in the face of the respondent's own certificate that the work was completed satisfactorily. This action of the respondent is vocative of rules of natural justice, wholly unreasonable and unjust.

(v) The scope of enlistment is limited to entitlement to be considered for issue of tender papers subject to the conditions laid down in individual Notice Inviting Tenders in which eligibility criteria refers to satisfactory completion in addition to financial soundness and experience. It does not refer to adverse report because the contractor's liability in respect of a defect found after the satisfactory completion is limited to and has to be dealt with as per the contractual provisions.

(vi) Certificate of satisfactory completion for the said work is issued by the concerned Executive Engineer, a senior and competent functionary of the respondents. The respondents have neither challenged the said certificate nor given even in the counter affidavit, much less prior thereto, any reason or justification for disregarding the said certificate.

(vii) It is not the respondents' case that the alleged defect was of such nature that it could not have been seen when the certificate was issued but subsequently came to light and discovery thereof any inquiry was conducted and the alleged defect was attributed to the petitioner.

(viii) Allegation of defect in a work, and of such extent has to be a ground for refusal of revalidation and that too in respect of a contractor who was enlisted for 20 years. Such conduct is wholly arbitrary, smacks of mala fide intent and violative of right to equality enshrined in Article 14 of the Constitution.

(ix) Even as per the rules, the only requirement is that firms desiring enlistment in Class I A (Building & Roads) should have successfully completed at least 3 works each costing not less than Rs. 50 lacs during the last five years on the date of application. It is not disputed that the petitioner satisfied the said qualification requirement, having successfully completed works of the specified magnitude and thus even under the then existing Rules the petitioner was entitled for revalidation of enlistment.

(x) Additional reasons other than those disclosed in the impugned order are sought to be given to justify the action. Reference has been made to report of a Superintending Engineer in respect of Faridabad work and another report of Superintending Engineer alleging that the work of the petitioner was not of appropriate quality. These reports seem to have been made with a view to resist the petitioner's claim in the arbitration case initiated by it. The reasons given in the impugned order cannot be supplanted or supplemented by fresh reasons with a view to justify the order. It is well settled that an administrative order has to be judged of its validity and legality by the reasons given in the order and the administrative authority cannot be permitted to advance additional reasons therefore. (Refer: 1. Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , State Govt. Houseless Harijan Employees Association Vs. State of Karnataka and Others, and Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and another, .

9. On behalf of the respondents, Mr. Sunil Mittal argued that in terms of policy of revalidation of enlistment introduced and notified in the year 1999, the petitioner company applied for further 5 years' revalidation citing following works executed in CPWD:

(i) C/o 44 Nos. Type-I and 104 Nos. Type-II quarters for IGNOU.

(ii) C/o 66 Nos. Type-III, 30 Nos. Type-IV & 20 Nos. Type-V quarters for IGNOU.

(iii) C/o 128 Nos. Type-III quarters at Faridabad.

(iv) C/o Oncology Block of GTB Hospital at Shahdara, Delhi. This work was in progress.

10. He further submitted that taking into consideration the reports of above four works from concerned site officers, Quality Assurance Unit, CPWD along with banker reports, I.T.C.C. etc. the competent authority came to the conclusion that the petitioner company's enlistment should not be revalidated beyond 30th January, 2001. The petitioner company represented its case and challenged the report of Faridabad work and requested investigation. The petitioner company's

case was reviewed and the quality of work got checked from Quality Assurance (Core Wing) (for short` the Wing") of CPWD. This Wing reported in respect of Faridabad work vide its letter dated 15th April, 2002 that quality of wood work, sanitary and water supply was not up to the mark and indicated specially poor quality in respect of external plaster (washed stone grit plaster). As inspection reports of the Wing for other works were already available, these reports were considered and it was decided by the competent authority that there was no need to change the previous decision. It is also submitted that the alleged completion of various works by the petitioner company does not prohibit quality control unit to make their independent assessment regarding quality. In case if the quality of work executed is found to be not in confirmation with standards/specification at any stage, the department is within its right not to grant revalidation. Learned counsel submitted that in the instant case, that subjective decision of the competent authority was based on objective criteria i.e. relevant material in the form of inspection reports. Such a decision is neither arbitrary nor discriminatory or violative of fundamental rights of the petitioner company. It was also argued that during the progress of works at S.No. (i) & (ii) the petitioner company was communicated about its poor performance. Regarding these works even a complaint was received from the clients i.e. Pro-Vice Chancellor, IGNOU vide his letter dated 10th March, 1999. On this report the Additional Director General (TD), CPWD directed the CE (CSQ) to inspect the works at IGNOU executed by the petitioner company and report dated 26th April, 1999 was submitted by CE (CSQ) about bad performance of the petitioner company. It was also submitted that inability of the department to take action under the work agreement does not mean that it has to continue with such ill performing petitioner company and cannot weed them out. Learned counsel also submitted that there was no question of violation of principles of natural justice in such a case. The revalidation of enlistment of the petitioner was processed as per rules. There was no need to issue any show cause notice or give an opportunity to the petitioner company of being heard. As the decision of not revalidating the petitioner company's enlistment was not only communicated but was also reviewed on its request. Refuting the argument of the petitioner company based on certificates furnished by the Assistant Engineer, Executive Engineer, Superintending Engineer of the work C/o 128 Nos.type-III quarters at Faridabad, he submitted that these certificates do not prohibit inspection of the Wing to assess the quality of work. Bad quality of work done by the petitioner company also appeared in letters written by Executive Engineer and Superintending Engineer wherefrom it may be seen that peeling of grit plaster was reported. The life of a building is not only six months or a year i.e. defects liability period, but the life span of a building is more than 50 yearRs. When serious defects appear within few years of completion of a building, quality of construction stands certified by nature. In light of reported peeling of grit plaster and inspection reports of the Wing, such certificates as relied upon by the petitioner company cannot be considered. It is with this object that poor performing contractors are weeded out time to time by way of non-revalidation

of their enlistment as had been done in the instant case.

11. Heavily relying upon the judgment of Division Bench of this court in the case of Tejinder Kumar Dua v. UOI & anr.(CWP NO. 6462/2001) the learned counsel concluded his submissions by stressing that basically the contractors apply for enlistment in CPWD for executing appropriate works in CPWD. The aim of revalidation is to ensure that the advantage of experienced and efficient contractors in executing works of high magnitude is available to CPWD. Thus it is a necessity to weed out non-performing, ill performing or poor performing contractors by way of non-revalidation of their enlistment.

12. No doubt the court is concerned with the decision making process and not the merits of the decision. It goes without saying that whether the works executed by the petitioner company were proper or not, is not to be adjudged by the court and it is the function of the respondents. The respondents have stated that these works were got inspected by their Wing on the basis of which a decision has been arrived at.

13. The case relates to the revalidation of the enlistment of the petitioner company. The Division Bench of this court in the Tejinder Kumar Dua (supra) was concerned with same type of case and commenting upon the objective behind system of revalidation of enlistment, it observed:

" 11. 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.

12. 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 suffer. The daily life of citizens gets disrupted. Such delay also tells heavily upon public exchequer. It is perhaps 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.

13. 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."

14. It is clear from the above that the principle and formula adopted by the CPWD in its policy has also been upheld by the Division Bench. This judgment of

the Division Bench is binding on this court.

15. Thus, in so far as procedure adopted by the respondents in taking decision in the case of the petitioner company is concerned, as it is not the case of the petitioner company that the procedure laid down in the said scheme is violative, on this aspect the petitioner cannot make any quarrel. However, the petitioner company seeks judicial review of the decision of the respondents on the touch stone of Wednesbury's principle. It is submitted that the petitioner company who was already enlisted in the past, non-revalidation of its enlistment bars it from participating in the tender process and, Therefore, affects its civil rights. Therefore, such action should be transparent and informed by reasons. It is this aspect of the matter which is dealt with hereinafter.

16. The application for revalidation of enlistment submitted by the petitioner company was rejected initially vide letter dated 7th February, 2002 which is to the following effect:

" With reference to your application received on 30.1.2001 for revalidation of your enlistment as Class-I (B&R) contractor in CPWD, I have been directed to inform you that your application for revalidation has been carefully considered and it has been decided that your enlistment will not be revalidated beyond 30.1.2001. Accordingly, your enlistment as Class-I (B&R) contractor of CPWD shall stand withdrawn with immediate effect.

You are further informed that no application from you for fresh enlistment will be entertained till expiry of one year from the date of issue of order."

17. No doubt in the aforesaid letter, no reasons are given. In the representation dated 18th February, 2002 against the aforesaid rejection, the petitioner company has stated that on enquiry it came to know that the decision is because of alleged performance report given by the present SE, DCC -V in respect of " work of construction of 128 numbers of NH-4, Faridabad" (for short 'the Faridabad work'). It was submitted by the petitioner company that this work was completed on 30th June, 1995 and, Therefore, consideration of performance report of this work, which does not fall within the category of works completed during last 5 years, is arbitrary and unlawful. It was, Therefore, stated that this work should not be considered for the purpose of revalidation. It was also mentioned that performance report given by SE DCC-V was incompetent in view of completion certification recorded by the SE grading the quality of work as 'very good'.

18. The record was summoned. Noting in the file shows that on the basis of the application initially submitted, it was examined by an officer and the revalidation was recommended. When the file was placed before the ADG(TD). In the note dated 19th July, 2001, referring to some letter dated 29th October, 1994 he remarked that report from CE/ND Z-4 would have to be sought. Letter dated 29th October, 1994 is addressed by the Executive Engineer to the petitioner company which relates to construction of staff quarters of IGNOU at Maidan

Garhi and it is alleged that progress of the work was poor due to bad management. On the aforesaid note of ADG (TD), the DG (W) made a note on 17th August, 2001 to the following effect:

"We must know whether he completed the old work or not. Action should have been taken as directed by ADR. "

19. It appears that because of this noting, the report was sought and SE DCC-V gave the report in respect of Faridabad work pointing out certain defects. What is to be seen is that the ADG (TD) wanted to have the report in respect of staff quarters at IGNOU at Maidan Garhi. Further the DG (W) wanted to know whether the petitioner had completed the said work. In so far as Faridabad work is concerned, the respondents had on record not only the completion certificate but this certificate also certified that the performance was very good. What prompted, in these circumstances, SE, DCC-V to give report about the quality of work is not understandable.

20. The decision was taken to reject the application of the petitioner company because of this report of the SE DCC-V pointing out certain defects in the work. It appears that after the receipt of the aforesaid report, the case of the petitioner company was reconsidered. Noting in the file points out that in view of two conflicting reports; one by SE reporting the work as `very good" as well as resourcefulness on 17th September, 1998 and SE, DCC-V in his report dated 14th January, 2002 stating the quality to be very poor, it was decided to get the work inspected through SE (QA). He submitted his report dated 15th April, 2002. It was compared Along with earlier report dated 14th January, 2002 by SE, DCC-V. Although it was found that in some respect earlier dated 14th January, 2002 was not correct and work in respect of certain items was satisfactory, adversely commented by SE in his earlier report. It may be mentioned that quality of following items had been found to be satisfactory in report dated 15th April, 2002 although in the earlier report dated 14th January, 2002 it was stated to be unsatisfactory:

- (i) C.C.Flooring, Cast in situ mosaic flooring.
- (ii) Kota stone flooring over Kitchen platform.
- (iii) Internal plastering.
- (iv) Tile work.

In the report, it was further stated that workmanship of the shutters i.e.finishing and painting had been reported to be not proper and reduction of Rs. 40, 000/- had also been made in the final bill on this account. It was also stated that not much seepage from W.C.bathroom and kitchen was observed. However, minor seepage has been reported by occupants and reduction of Rs. 30, 000/- on this account was made in the final bill. The quality of external plastering i.e. washed stone grit plaster has been reported as poor and it was mentioned that in a span of less than seven years after completion of work washed stone grit plaster done

on the external surface of quarters has fallen at many places as the item executed cannot be considered as satisfactory. On the basis of this report, thus, considering that the workmanship was poor, the case of petitioner company was rejected vide letter dated 10th May, 2002 which reads as under:

" With reference to your above cited letter regarding review of revalidation case of your enlistment as Class-I(B&R) contractor in CPWD. I have been directed to intimate you that your revalidation case has been reviewed by the competent authority and considering the adverse report received from quality assurance team after inspection of your work C/o 348 Nos quarter in General Pool at NH-IV, Faridabad SH: C/o 128 Nos.T-III Qtrs(3 storeyed) including W/S.S/I & Drainage, " it has been decided again that your enlistment can not be revalidated as quality of work executed by you has been found to be satisfactory."

21. A perusal of the file shows that there has been thorough consideration of the matter and reasons are recorded. No doubt in the earlier letter dated 7th February, 2002, these reasons were not communicated, the petitioner company had found out these reasons which were even communicated to it vide letter dated 10th May, 2002. The petitioner company, Therefore, cannot assail the order on the ground that the action of the respondents is not transparent and informed of reasons. It is also not correct that the reason for rejection contained in subsequent letter dated 10th May, 2002 was not the reason for original refusal of revalidation. However, learned counsel for the petitioner company is right in submitting that in justifying the order of rejection, when it is challenged in the court, the respondents cannot go beyond the reasons disclosed in letter dated 10th May, 2002. Even the perusal of the file shows that only on this ground, namely, workmanship in respect of the Faridabad work was rejected. Therefore, what is to be seen is that whether it was proper on the part of the respondents to reject the request of the petitioner company for revalidation on this ground.

22. In this behalf, argument of learned counsel for the petitioner company was that the Faridabad work was completed in the year 1995 and a satisfactory completion certificate had been issued as the defect liability period was six months, the respondents could not get the said work examined after a lapse of seven years. Moreover, there was no reason to get the said work examined as it was not stated that the alleged defect was of such a nature that could not have been seen and the certificate was issued. But subsequently came to light. It was also submitted that the respondents were required to examine the works executed in past five years and since this was the work executed beyond five years, could not have been considered for revalidation. Further argument was that at no stage any notice of alleged defect was given to the petitioner company in respect of this work.

23. Admittedly the Faridabad work was completed on 30th June, 1995 as is recorded in the certificate of Executive Engineer produced as Annexure P-6 wherein it was also recorded that performance and workmanship is very good and the financial and technical capability of the petitioner company was also very

sound. After the completion of this work, the respondents had revalidated petitioner company's enlistment for a period of five years i.e. from January, 1996 to December, 2000. Thereafter, one more extension of one year up to 30th January, 2001 was given. Therefore, whether this work could be considered at all or not, when the case of the petitioner company was considered for the period from 31st January, 2001 is open to question mark? That apart, as pointed out above when the petitioner company had submitted certificate of the Executive Engineer regarding satisfactory completion and good workmanship Along with its application for revalidation, what prompted the respondents to obtain report of SE DCC-V is not discernible.

24. Admittedly, as per rules, in order to succeed in getting extension of enlistment the petitioner company was to show that it had successfully completed at least three works each costing not less than Rs. 50 lacs during last five years on the date of application. That was the only requirement. What is the process which needs to be adopted while examining as to whether the applicant has fulfilled this eligibility criteria or not ? While examining the case of revalidation, whether the competent authority is to look into the application and see that the applicant had completed requisite three works satisfactorily on the basis of certificate issued by its Engineers? Or for arriving at such `decision" the competent authority can, notwithstanding such certificates, get the same works inspected again by its Wing? One has to keep in mind that the concerned Executive Engineer/Superintending Engineer under whose the supervision the works are executed, is the proper person to issue such certificates. Once he has issued the certificate certifying satisfactory completion of work who is also a senior and responsible officer of the CPWD, normally such certificate is to be acted upon. However, that would not preclude the competent authority to seek independent examination by its Wing, in case there are justified reasons to doubt the validity of such certificates or there are certain subsequent happenings exposing the quality of work performed by the applicant, after issuance of such certificates by the concerned Engineer. Therefore, before such an exercise is undertaken, there should be some material before the competent authority justifying the action directing CE (CSQ) to undertake this exercise.

25. It is also to be borne in mind that the case of the petitioner company is that the inspection of the work carried out after seven years would not be much of a consequence. The report of SE DCC-V dated 7th February, 2002 is itself discounted by CS(QA) in his report dated 15th April, 2002. In this report the comment on workmanship of the shutters and seepage may not be of consequence as there were reductions made in the final bill and it is thereafter that the Executive Engineer had given satisfactory completion certificate. The only other defect is the quality of external plastering. However, admittedly, during all these years, no notice of these defects was given to the petitioner company. These were the considerations which should have been borne in mind by the competent authority while examining the case for revalidation.

26. Since as per the rejection letter dated 10th February, 2002 the petitioner company could move an application after the expiry of one year and as one year has already expired, no useful purpose would be served in issuing any mandamus, as prayed for by the petitioner company. However, the direction which is required to be given is that on petitioner company's making fresh application (or if the petitioner company has already made any such fresh application), the competent authority shall keep the aforesaid aspects in mind while considering the case of the petitioner company for revalidation.

27. This writ petition is disposed of with the aforesaid observations.

28. There shall be no order as to costs.