
(2005) 01 DEL CK 0103
In the Delhi High Court
Case No : WP (C) 7398 of 2001

Attar Singh and Bros.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-01-2005

Acts Referred:

Citation : AIR 2005 Delhi 188 : (2005) 117 DLT 103 : (2005) 80 DRJ 23

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Gopal Narain Aggarwal, for the Appellant; Sidharth Mridul, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Rule.

With the consent of the parties, writ petition is taken up for disposal.

2. Petitioner, by this writ petition seeks a writ of certiorari for quashing the Office Memo No. DGW/CON/156 dated 17.8.2001, by which the

exemption from deposit of lump sum earnest money was withdrawn by the respondent. Petitioner also seeks a mandamus for revalidation of its

empanelment as Class II (B&R) in Delhi Region for a period of five years w.e.f. 1.12.2000 and not up to 30.11.2001, as communicated vide

office order dated 31.8.2001.

3. I have heard learned counsel for the petitioner, Mr. Gopal Narain Aggarwal in support of the writ petition. Mr. Aggarwal submits that petitioner

has been a registered second class contractor with CPWD in the category of (Buildings and Roads) since 1983. Petitioner is sought to be denied

revalidation for a period of 5 years, which was the period of revalidation

contemplated without any just cause. It is urged by the learned counsel that petitioner had been granted only one year revalidation vide order dated 31.8.2001. Petitioner was also required to meet the condition regarding securing of one work of appropriate magnitude to consider further revalidation for 5 year term. He submits that this was an onerous condition and hardly an opportunity inasmuch as the extended revalidation period itself expired on 30.11.2001.

4. Mr. Aggarwal submits that this is not a case where the petitioner has been either found to be in default or had been proceeded against for any breach. Petitioner is sought to be denied the revalidation unjustly. Besides, he submits that the communication of 31.8.2001, except exhorting the petitioner to secure work, does not give any reason for which the respondents are seeking to deny the revalidation for a period of five years.

5. The second limb of the submission of Mr. Aggarwal relates to the withdrawal of exemption from deposit of the earnest money. He submits that petitioner like others under the prevailing instructions had been exempted from depositing individually the earnest money for each tender in view of the general exemption granted and the one-time deposit made. This system had worked well all through. There was no reason or rationale for the respondents to alter the same and that too during the currency of the enlistment. He also complains of discrimination inasmuch that one M/s. Simka Builders, details of which are given at page 47 of the paper book, was permitted to tender without deposit of earnest money on 10.5.2001.

6. Mr. Sidharth Mridul, Government Standing counsel, opposes the writ petition. He has drawn my attention to the application submitted by the petitioner for revalidation. The application discloses that the solvency certificate had not been supplied with the comments that it had been applied for. Similarly, the particulars of works which had been executed ranged from 19.4 lacs, 8.26 lacs and 4.91 lacs. Mr. Mridul relies on the requirement to secure the works during the 5 years period of empanelment. Clause 10 provides as under:-

They are required to secure works in the Department. In case they fail to secure any work during the period of five consecutive years they will be liable to be weeded out from the approved list of contractors of this Department. Reference to secure a work during the period of five years is obviously is to a

work of magnitude commensurate with the Class-II (B&R)

Contractor. The minimum value prescribed at page 83 at the relevant time was Rs. 25 lacs, with an upper limit of Rs. 1 Crore. It is not any body's

case that petitioner had secured the work of the requisite amount. Learned counsel for the respondent on instructions from Mr. J.R. Kalra,

Executive Engineer, clarifies that even prior to the period of 2000, the value prescribed for second class B&R contractor was one work of Rs. 25

lacs for revalidation and three works of the same value for enlistment. Mr. Mridul further relies on letter dated 18.12.2000, communicating the

shortcomings to the petitioner in the requirements for revalidation. These were absence of solvency certificate, copy of the ITCC from 1995-96 to

1998-99, non-execution of any work, costing more than Rs. 25 lacs in the last five years. Petitioner had only claimed that he had submitted tenders

for work costing more than Rs. 25 lacs, the same had not fructified.

7. Be that as it may, petitioner had been duly notified as far back as 18.12.2000 of the shortcomings and the deficiencies in his application, seeking

revalidation. Petitioner made attempts to comply with the same vide his letters of 22.5.2001 and 26.6.2001. Respondents, in these circumstances,

although not required, but, however, purely on taking a lenient view of the matter, had granted revalidation for a period of one year.

8. There is considerable merit in the submission of the learned counsel for the respondent. It is not in dispute that respondents have the power to

revise the terms of enlistment and revalidation, keeping in view their requirements and the prevailing conditions provided the same conform to law.

Petitioner's original enlistment term had expired. He had failed to meet the requirements for revalidation. As such, the respondents could not be

faulted with for not granting revalidation for a period of five years, as claimed by the petitioner. The submission that petitioner was hardly given any

time, when it was asked to secure work at the end of August, 2001 and the revalidation was to expire in November, 2001 also would not advance

or carry conviction. Petitioner, based on his earlier performance was to meet the requirements. This period was something by way of concession

which was made available to the petitioner while granting one year extension of revalidation. As regards, reasons not being mentioned in the order

dated 31.8.2001 it may be noted that in fact there is no specific challenge to the

order dated 31.8.2001. Understandably so since it granted revalidation and extension of one year. The petitioner's grievance was non-grant of revalidation for five years. For this reasons have been communicated to the petitioner in writing and have been produced on record. Petitioner had in fact attempted to make good some of the deficiencies and as such this plea is not available to the petitioner.

9. As regards the grant of exemption from earnest money to M/s. Simka Builder, learned counsel for the respondent has rightly pointed out that the said contractor had sought revalidation in time and had been so granted. Besides, the exemption from earnest money was granted on 10.5.2001, which was prior to Office Memorandum dated 17.8.2001, by which the exemption of earnest money was withdrawn. It is further stated that the decision to withdraw the exemption was actuated for considerations of ensuring that there was open competition and to discourage formation of cartels and to ensure serious bidding.

In view of the foregoing discussion, I find no merit in the writ petition and the same is dismissed.