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**(2002) 12 P&H CK 0063**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 9284 of 2002**

Hotel Ridge View

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 19-12-2002

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2004) 1 CTLJ 565 : (2004) 136 PLR 747

**Hon'ble Judges :** S.S. Grewal, J;G.S. Singhvi, J

**Bench :** Division Bench

**Advocate :** Sanjiv Bansal, for the Appellant; Gurpreet Singh, Additional Central Government Standing Counsel, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S.S. Grewal, J.—This is a petition for quashing order dated 2.6.2002 (Annexure P5) whereby Major General, A.S.C., H.Q., (Western Command), Chandimandir (respondent No. 3) removed the petitioner's name from the approved list of A Class ASC contractor.

2. For the purpose of deciding the issues raised in the petition, we may briefly notice the facts.

3. On 29.1.2000, the proprietor of the petitioner, namely, Shri Ravinder Singh submitted an application (Annexure R7) for registration as approved contractor for the Army Service Corps in Western Command. The same was accepted by the competent authority and the petitioner was registered as "A" Class ASC contractor vide Annexure P1 dated 10.2.2000 with the condition that it will be eligible to hold ASC contracts not exceeding Rs. 7,20,00,000/- at any one time. In January, 2001, the petitioner participated in the tender for supply of meat for Delhi Cantt. The rates quoted by the petitioner were the second lowest but it was not invited for negotiations as per the policy guidelines issued by the Government of India, Ministry of Defence. Thereafter, petitioner participated in

the tenders for meat group items for Patiala. The tenders were opened at Ambala on 9.5.2002 in which the petitioner remained the 3rd lowest tenderer. According to the petitioner, it had also participated in the tenders at Chandimandir on 5.3.2002 for supply of eggs at Delhi Cantt. and remained the second lowest and on two other dates i.e. 22.2.2002 and 10.4.2002, the tenders were postponed by the concerned authorities. In May, 2002, the petitioner was served with notice Annexure P3 dated 18.5.2002 proposing removal of its name from the approved list of ASC Contractors on the ground that it had failed to secure any contract in Western Command in six successive tenures. In reply annexure P4 dated 28.5.2002 sent by the petitioner through its attorney, it was asserted that during the financial year, it participated in the tenders invited in March, 2002 for supply of eggs at Delhi Cantt. and the tenders invited in May, 2002 for supply of meat and Fowls Dsd for Patiala. It claimed that only four tenders had been invited on 22.2.2002, 15.3.2002, 10.4.2002 and 16.5.2002 and the rest calls were cancelled and, therefore, it cannot be accused of having failed to secure contract in six successive tenders. Thereafter, respondent No. 3 passed the impugned order and removed the name of the petitioner from the approved list of ASC Contractors with liberty to it to tender as an unregistered contractor for all items in the Command.

4. The petitioner has challenged Annexure P5 on the ground of arbitrariness, violation of rules of natural justice and non-application of mind. Its contention is that respondent No. 3 has mis-read and mis-applied the instruction issued by the Government of India, Ministry of Defence for regulating the award of contracts. According to the petitioner, the condition of securing a contract after six successive tenders was not brought to its notice and, therefore, non-compliance thereof could not be made a ground for removal of its name from the list of approved contractors. The petitioner has averred that show cause notice dated 18.5.2002 was issued and the impugned order has been issued on a factually erroneous premise i.e. its failure to secure contract in six successive tenders, in-as-much as, the concerned authorities had not even invited six tenders in which it could participate. The petitioner has also challenged para 23 of the instructions issued by the Government of India, Ministry of Defence for award of contracts by contending that the condition of securing contract within a specified time-frame is wholly arbitrary, capricious, unreasonable and unconscionable.

5. The respondents have justified the cancellation of the petitioner's registration by asserting that after registration as approved ASC Contractor in February, 2000, the petitioner has not participated in six tenders what to say of securing a contract. As regards the tenders submitted by the petitioner quoting second or third lowest rates, the respondents have averred that as per the instructions issued by the Government of India, Ministry of Defence vide letter No. PC/Raksha/68063/Q/ST5/5089/D(QS) dated 22.11.2000, only the lowest tenderer is invited for negotiations. They have relied on para 24 of the instructions issued by the Government of India to justify the petitioner's removal from the list of approved contractors. According to the respondents, in the course of two years

after its registration, the petitioner had participated only three tenders and failed to secure contract even though a large number of tenders were floated during the period. Paragraphs 9 and 10 of the written statement in which the respondents have detailed the reasons for removing the petitioner from the list of approved contractors read as under:- " 9 & 10. That the contents of paras 9 & 10 of the writ petition are wrong and, hence, denied. The petitioner was fully aware of the terms and conditions and now, as an after thought is taking plea of ignorance. Even in the reply to the show cause notice, there is no such plea of ignorance of the Government of India, Ministry of Defence Letter No. PC/RAKSHA/68063/Q/ST5/5089/D(QS) dated 22nd November, 2000. The petitioner has participated only in three tenders out of approximately 234 contracts in the last two years. It would be relevant to mention here that all parties dealing with Defence contracts have to be registered, competent and capable of getting contract within six successive tenders. This liability is of serious/sensitive nature and requires all parties to live upto the expectation. There is no requirement of any negotiations other than the lowest tenders since all the firms are registered and known to the Army authorities. Further, it is incumbent that the firms should get contracts and supply the material since they are dealing with Army and also it curbs the tendency of the firms to help a particular firm in getting a contract at a higher rate and avoids connivance. Further negotiations with the lowest tenderer is carried out as per Para 72 of the Government of India letter dated 22nd November, 2000. It is further submitted that the petitioner besides having 7.20 crore contract carrying capacity, has not been able to secure a single contract besides showing least amount of interest which is clearly evident from their participation in total three tender activities out of approximately 234 contracts of entire command, it is submitted that the imposition of the condition to secure a contract within six successive chances or three years is perfectly reasonable and rationale and is neither arbitrary nor illegal as alleged. The said condition is not liable to be struck down."

6. Shri Sanjiv Bansal, counsel for the petitioner argued that order Annexure P5 should be declared illegal and quashed because the condition embodied in para 24(c)(ii) of the instructions issued by the Government of India were never brought to the petitioner's notice. He further argued that while ordering the petitioner's removal from the list of approved A-Class ASC contractors, respondent No. 3 did not correctly appreciate the scope of Clause 24(c)(ii) of the instructions issued by the Government of India and overlooked the fact that the petitioner did not even get opportunity to participate in six successive tenders. He then argued that the respondents cannot rely upon para 24(c)(i) of the instructions issued by the Government of India because the same did not form part of the show cause notice and the petitioner did not get opportunity to controvert the allegation that it had not quoted in response to four consecutive invitations to tender.

7. Shri Gurpreet Singh, Additional Central Government Standing Counsel invited our attention to para 11 of the application form submitted by the proprietor of

the petitioner for registration as an approved "A" Class ASC contractor to show that the petitioner was aware of the possible cancellation of the registration on the ground of its failure to secure contract after six successive tenders or during a period of three years and argued that the writ petition should be dismissed because the petitioner has deliberately misled the Court in believing that the petitioner was never informed of the penal provision contained in para 24(c) of the instructions issued by the Government of India. In support of this argument, Shri Gurpreet Singh referred to the averments contained in paragraphs 5 and 9 of the writ petition. Learned counsel then argued that the petitioner had submitted tenders only in 3 out of 19 tender invitations issued by the authorities of the Western Command and, therefore, the competent authority had rightly invoked para 24(c)(ii) in public interest. He made a reference to Annexure R6 to point out that the petitioner did not purchase tender forms in pursuance of tender invitations issued on 16.5.2000, 30.5.2000, 29.6.2000, 18.7.2000, 1.8.2000 and 4.9.2000 and again in pursuance of tender invitations dated 1.8.2001, 28.8.2001, 11.9.2001, 25.9.2001, 27.12.2001 and 22.2.2002.

8. We have given serious thought to the respective arguments and carefully perused the record. In our opinion, the petitioner deserves to be non-suited on the ground that it has not approached the Court with clean hands. A reading of the averments contained in paragraphs 5 and 9 of the writ petition shows that the petitioner has come up with a categorical assertion that the penal clause contained in the instructions issued by the Government of India was never brought to its notice prior to the issuance of show cause notice and, therefore, the same could not be acted upon to its prejudice. However, this is falsified by a bare reading of para 11 of application dated 29.1.2000 submitted by its proprietor for registration as approved "A" Class ASC Contractor. The relevant extracts of the paragraph reads as under:-

"11 (a) As regards the articles for which I/We are eligible to tender from the date given in the first notice calling for such tenders, if:-

(i) I/We fail or neglect to quote in response to four consecutive invitations to tender or during a period of two years whichever is less or quote obviously fictitious rates which are twenty percent or more above three quotations ultimately accepted.

(ii) I/We fail to secure contracts after six successive tenders or during a period of three years, whichever is less."

9. We are sure that if the petitioner had not made false and misleading statement in the two paragraphs of the writ petition, the Court may not have even issued notice to the respondents. Therefore, keeping in view the settled law that the Court will not grant relief to those who do not approach it with clean hands, we have no hesitation to dismiss the writ petition. In this connection, we may usefully refer to the decision of the Supreme Court and of this Court in *Hari Narain Vs. Badri Das*, : *Welcom Hotel and Others Vs. State of Andhra Pradesh*

and Others, : G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka and another, : S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, : Smt. Bhupinderpal Kaur v. The Financial Commissioner (Revenue), Punjab, (1968)70 PLR 169: Chiranji Lal and Ors. v. financial Commissioner, Haryana and Ors. (1978)80 PLR 582: Harbhajan Kaur v. State of Punjab and Ors. 1994 P.L.J. 287 and C.W.P. No. 15448 of 1993 - Jai Bhagwan Jain v. Haryana State Electricity Board, Panchkula, District Ambala), decided on 21.9.1994.

10. On merits also, we are satisfied that respondent No. 3 did not commit any illegality by removing the petitioner's name from the approved list of "A" Class ASC contractors of Western Command because of facts brought on record clearly establish that it " had submitted tenders in response to only three tender invitations during the period of more than two years and thereby incurred the liability to be dealt with under penal clause embodied in para 24(c)(ii) of the instructions issued by the Government of India read with para 11(a)(ii) of the application form.

11. We are further of the view that even if the petitioner's case is treated as not covered by the aforesaid paragraph of the instructions issued by the Government by India and Clause 11(a)(ii) of the application form, the impugned action can be justified with reference to para 24(c)(i) of the instructions because it is admitted position that the petitioner had failed to quote in response to four consecutive invitations to tender,

12. For the reasons mentioned above, the writ petition is dismissed.

Sd/-

G.S. Singhvi, J.