
(2009) 12 GAU CK 0020
In the Gauhati High Court
Case No : WA No. 331 of 2007

Krishna Devi @ Sabitri Devi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Citation : (2010) 4 GLR 276

Hon'ble Judges : Ranjan Gogoi, J; Brojendra Prasad Katakey, J

Bench : Division Bench

Advocate : T.C. Khatri, P. Mahanta and S.K. Jain, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—Heard Sri T.C. Khatri, Learned Counsel for the appellant writ petitioner. None had appeared on behalf of the respondents.

2. The challenge in the appeal is against an order dated 19.6.2007 passed by a learned Single Judge of this Court in a proceeding registered and numbered as WP(C) No. 701 of 2002. By the aforesaid order the learned Single Judge has dismissed the writ petition filed by the appellant wherein two orders dated 10.8.1999 and 4.12.1999 were under challenge. By the aforesaid orders issued by the Chief Engineer, Headquarters, Eastern Command, Engineering Branch, the name of the partnership firm doing business in the name and style of M/s. S.R. Engineering Construction has been permanently removed from the list of approved contractors. The appellant writ petitioner claims to be the sole proprietor of the said firm, the status of which, according to her, had changed from a partnership firm to a proprietorship concern subsequently, details of which will be noticed later.

3. The learned Single Judge dismissed the writ petition, inter alia, on the ground that M/s. S.R. Engineering Construction had its business in the State of Himachal Pradesh and in the Union Territory of Chandigarh and that the registration of the

firm in Sonitpur District of Assam was only for one year, i.e., 1966-67. Accordingly, the learned Single Judge thought it proper to reach the conclusion that this Court did not have any territorial jurisdiction in respect of the subject-matter of the writ petition. The learned Single Judge also recorded a finding against the appellant writ petitioner with regard to her locus to maintain the writ petition on the ground that M/s. S.R. Engineering Construction being a partnership firm, the writ petition filed by the appellant writ petitioner as the sole proprietor of the said firm, which was claimed to be a proprietorship concern, was not maintainable. Furthermore, the learned Single Judge took the view that the writ petition was inordinately delayed and suffer from laches for which reason the same should not be entertained. Aggrieved by the aforesaid findings of the learned Single Judge this appeal has been filed.

4. Insofar as the issue of territorial jurisdiction is concerned, Sri Khatri, Learned Counsel for the appellant writ petitioner has placed before the court the materials brought on record to demonstrate that the firm had an establishment and business dealings in the District of Sonitpur, Assam. We have carefully considered the aforesaid materials presented before us at the hearing. The said materials primarily are in the form of correspondence exchanged by and on behalf of the M/s. S.R. Engineering Construction. We have also taken note of the fact that the learned Single Judge while holding that the registration of the firm was for the year 1966-67 did not record any finding to the effect that after the expiry of the said period the firm had discontinued business in the District of Sonitpur, Assam. We are, therefore, of the view that on the facts available it would be more reasonable to hold that the firm did have an establishment and business dealings within the territorial jurisdiction of this Court and, therefore, the orders impugned in the writ petition would be amenable to scrutiny by this Court.

5. Before we proceed to answer the question of locus of the appellant to maintain the challenge made in the writ petition and also the question of delay and laches it will be appropriate to consider the argument advanced by Sri Khatri, Learned Counsel for the appellant, which goes to the root of the matter. Sri Khatri has submitted that the impugned orders dated 10.8.1999 and 4.12.1999, though may have the effect of blacklisting the firm in question entailing civil consequences, no show-cause notice or opportunity was afforded to the petitioner-firm before issuing the impugned orders dated 10.8.1999 and 4.12.1999.

6. To effectively consider the argument advanced by Sri Khatri it will be necessary for the court to briefly take note of certain relevant facts which stand established by the materials available on record. In the year 1982, i.e., on 29.7.1982 M/s. S.R. Engineering Construction, which was a proprietorship firm, was converted to a partnership firm by executing a deed of partnership. The petitioner's husband became a partner of the said firm. The aforesaid change in the constitution of the firm was accepted by the respondents on 29.3.1989 and the firm was recognized with three partners, i.e., the petitioner's husband, one

Gopal Kumar Ajipal and another Satish Kumar Ajipal. In the year 1993 the respondents were informed about a further change in the constitution of the firm upon retirement of Gopal Kumar Ajipal and Satish Kumar Ajipal as partners and the induction of Smt. Saroj Dhiman and Sri Satyaprakash Kaushal as partners. On receipt of the aforesaid information the respondents asked for production of the relevant documents showing the aforesaid change of constitution of the firm. On 13.4.1994 the firm was temporarily de-listed till the required documents pertaining to change of constitution are furnished. The respondents reiterated the demand for such documents again on 7.5.1994 and 21.5.1994. The respondents also asked for the income tax clearance certificate of the firm. The firm in question furnished the income tax clearance certificate on 7.10.1994 showing three business partners of the firm. This was, however, not accepted by the respondents and on 11.11.1994 the respondents again insisted for production of the documents pertaining to change of constitution of the firm. Thereafter on 18.5.1996 and 27.7.1996 the firm was informed that no renewal was being granted to it on the ground of its failure to complete certain allotted works. While the aforesaid developments were going on, the respondents again demanded the documents from the firm showing change of its constitution. The same not having been forthcoming the impugned orders dated 10.8.1999 and 4.12.1999 came to be passed. It will be necessary to notice, at this stage, that the stand of the firm as reflected in the reply affidavit filed before this Court is to the effect that under the will executed by the husband of the petitioner on 14.5.1998 the partnership firm stood dissolved and the firm, once again, became a sole proprietorship concern.

7. The exchange of the above correspondence between the parties had to be recited to show the facts and events that had preceded the orders dated 10.8.1999 and 4.12.1999 delisting the firm. What transpires from the recital made above is that there was no specific notice issued by the respondents to the firm proposing removal of its name from the list of approved contractors by citing the particular/specific ground on which such removal was contemplated. In the facts revealed by the narration of the correspondence exchanged between the respondents and the petitioner and also having regard to the stand taken by the petitioner in the reply affidavit that under the will dated 14.5.1998 the partnership firm stood dissolved and was converted, once again, into a proprietorship firm, we are of the view that the impugned orders dated 10.8.1999 and 4.12.1999 should have been preceded by a notice clearly specifying the reasons for which removal of the firm from the list of approved contractors was contemplated. Only after such notice was issued and after consideration of the stand of the firm, as may have been submitted, further action should have been taken by the respondents. Such a course of action, according to us, would have been more appropriate and in consonance with the principles of natural justice.

8. The discussions that have preceded would adequately take care of the issue of locus of the appellant/writ petitioner which will depend on such finding that may

be reached by the respondents with regard to the status of the firm at different points of time, particularly whether the firm stood converted as a proprietorship concern under the will dated 14.5.1998. We, therefore, refrain from recording our views in this regard. If an order is held to be in violation of the principles of natural justice, as we are inclined to hold in the present case insofar as the impugned orders dated 10.8.1999 and 4.12.1999 is concerned, the question of delay in approaching the court cannot be construed to be a compulsive and justifiable reason for refusing an adjudication on merit.

9. We, therefore, interfere with the order dated 19.6.2007 passed by the learned Single Judge in WP(C) No. 701/2002 and set aside the impugned orders dated 10.8.1999 and 4.12.1999. We allow the appeal subject to the condition that the respondents shall now re-decide the matter after giving notice and opportunity to the firm. We also make it clear that the respondents will re-decide the matter within a period of four months from the date of receipt of this order. As we have directed the respondents to take a fresh decision in the matter within the time schedule indicated and as the name of the firm stood removed from the list of approved contractors, at least from the date of refusal of the interim order passed by this Court on 8.10.2007, we are of the view that notwithstanding our interference with the impugned orders dated 10.8.1999 and 4.12.1999 the question of allotment of any work to the firm will not arise until the de novo decision, as directed by us, is taken by the respondents in terms of our present order. In recording our above views we have also taken note of the fact that the petitioner firm had been restrained from allotment of any work by orders temporarily delisting the firm dated 13.4.1994 and 7.5.1994 which were passed prior to the impugned orders dated 10.8.1999 and 4.12.1999. The said orders were not the subject matter of challenge in the writ petition filed.

10. The writ appeal, consequently, is allowed to the extent indicated above.