
(2007) 06 GAU CK 0015
In the Gauhati High Court

Krishna Devi @ Sabitri Devi	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 19-06-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 3 GLT 1024

Hon'ble Judges : Aftab H. Saikia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Aftab Hussain Saikia, J.—Heard learned Counsel representing the parties including learned Central Government Standing Counsel appearing for the official respondents.

2. The basic issue raised in this writ petition, filed under Article 226 of the Constitution of India for issuance of an appropriate writ/s, order/s and/or direction/s, pertains to permanent removal of the name of the petitioner's contractor concern M/s S.R. Engineering Constructions (for short, "the Firm") from the approved list of contractors.

3. Accordingly, the validity and legality of the impugned orders/communications dated 10.08.1999 and 04.12.1999 (Annexure-A and Annexure-F to the writ petition respectively) issued on behalf of the Chief Engineer, Headquarters, Eastern Command, Fort William, Calcutta, the respondent No. 2 addressed to the Firm, P.O. Dera Baba Rudru," District-UNA-174303, Himachal Pradesh whereby the name of the Firm was permanently removed from the list of approved contractors and the renewal of enlistment of the Firm was not approved by the Chief Engineer, Eastern Command, has been assailed in this writ petition filed on 29.01.2002. Be it also mentioned herein that the impugned order/communication dated 10.08.1999 also contains another address namely, M/s S.R. Engineering Construction, 2543-A, Sector 47-C, Chandigarh (U.T.).

4. The petitioner herein is one Smti Krishna Devi alias Sabitri Devi, widow of Late Sukh Ram Dhiman and her address as the petitioner herein has been recorded in the cause title as under:

Srimati Krishna Devi @ Sabitri Devi, widow of Late Sukh Ram Dhiman, Sole proprietor of M/s S.R. Engineering Construction, carrying on contract business of construction/s in the North Eastern Region, having its place of business amongst other places at Haleswar, Tezpur within Sonitpur District of Assam.

?Petitioner

5. A bare perusal of the address given by the petitioner in this writ petition would clearly indicate that no specific address of the Firm has been stated in the cause title. Moreover, in the statement made on oath in paragraph 2 of the writ petition, the petitioner has categorically averred that the petitioner's husband late Sukh Ram Dhiman started contract work/s of construction in the name and style of M/s S.R. Engineering Construction in the North Eastern Region and settled at Haleswar, Tezpur for the purpose in or about 1966-67 when he got listed his said concern as an approved contractor of MES. So, this would manifestly expose that the Firm was shown to have made operational at Haleswar, Tezpur only for one year, i.e., 1966-67. Save and except the said one year's period, there is no whisper in the sworn statements made in the writ petition that the Firm was ever functioning at Haleswar, Tezpur.

6. An ordinary reading of the impugned communications/orders would also go to show that those communications were basically addressed to M/s S.R. Engineering Construction showing the specific address Dera Baba Rudru, District: UNA-174303, Himachal Pradesh and at 2543 A, Sector 47-C, Chandigarh (U.T.).

7. Even on meticulous inspection of the entire materials made available on record, it transpires that in all the communications so exchanged between the parties and by the parties, i.e. the petitioner and the Union of India, nowhere it is found to indicate that at least one of those communications was ever addressed to M/s S.R. Engineering Construction, Haleswar, Tezpur, Assam. Even all the communications made by the Firm to the respondents/Union of India had recorded either of the two addresses abovementioned or both. That apart, another amazing feature to be noted herein that no material has been placed on the entire records to disclose that the petitioner Smti Krishna Devi @ Sabitri Devi was the proprietor or a partner of the Firm after the death of her husband. It is also admitted that she was acting through her attorney and son one Ghanashyam Dhiman as reflected in those communications. However, no document whatsoever has been appended to this petition to exhibit that her son was her lawful attorney at any point of time.

8. The official respondents in filing their affidavit-in-opposition has taken a preliminary objection as regards maintainability of the writ petition on the plea of locus-standi of the petitioner. Their stand is that the writ petitioner is not a registered Proprietor or a Partner of the Firm and she has not even filed any

documentary evidence to establish her locus-standi to represent the Firm.

9. On careful consideration of the relevant materials available on record, it is felt that this Court is successfully persuaded to accept such objection as regards the examination of credentials of the writ petitioner herein as not a single document/material has been produced on record to accept that she was the sole Proprietor of the Firm or a partner thereto.

10. At this stage, Khetri, learned Sr. counsel has made a contention to convince the Court that the petitioner is the wife of Late Sukh Ram Dhiman, who died on 21st May, 1998, and from the date of his death, she has become the sole Proprietor of the Firm. Amazingly beside such contention nothing has been brought to the notice of the Court to support his submission.

11. Again Mr. Khetri has also insisted upon to accept his submission to the effect that she was carrying her business being the Proprietor by executing a power of attorney in favour of Ghanashyam, her son but to that effect also no such document has been placed on record.

12. In view of such factual circumstances, this Court has no option but to accept that the petitioner has no locus for seeking such relief/s as prayed in the writ petition against the impugned communications/orders, which were addressed to the Firm showing the address either of Dera Babu Rudru in Himachal Pradesh or at 2543-A, Chandigarh (U.T.).

13. Now coming to another point which has struck this Court and that is as regards the jurisdiction of this Court to entertain this petition preferred under Article 226 of the Constitution of India. It appears from the entire records including the pleadings exchanged by and between the parties with all the supporting documents appended as Annexure thereto, that all the communications sent either by or to the Firm were made only in two addresses as already abovementioned.

14. In order to resolve this jurisdictional issue, it would be convenient and necessary to quote the impugned orders/communications dated 10.08.1999 and 04.12.1999 made to show the address of the Firm quoted therein. The impugned order/communication dated 10.08.1999 runs as under:

Tele-. 2222892

M/s S.R. Engineering Construction P.O. Dera Babu Rudru Dist.: UNA-174303, Himachal Pradesh

M/S S.R. Engineering Construction, 2543A, Sector-47-C, Chandigarh (U.T.).
Removal From approved List: M/S S.R. Engineering Construction (Index No. C-221

Dear Sirs,

1. Reference this HQ letter Nos.:

(i) 138301/C-22/216/Engrs/E8 dated 23 May" 94

(ii) 13830I/C-22/217/Engrs/E8 dated 22 Jun" 94.

2. In spite of above referred notices you have failed to submit the valid Income Tax Clearance Certificates.

3. Your name is therefore permanently removed from the list of approved contractors of this Command.

4. Two copies of "No Demand Certificate") IAFA-451) are sent herewith for completion and early return to this HQ for further action.

5. Please acknowledge receipt.

Yours faithfully Sd/- Illegible (M. Nandigrami) SW For Chief Engineer

Enclo.: No. 1 mark Certificate" (IAAA-451) on duplicate.

15. The following is the text of the impugned communications dated 04.12.1999:

Tele. -2222535

M/s S.R. Engineering Construction P.O. Dera Babu Rudru Dist.: UNA-174303, Himachal Pradesh

Removal From Approved List

Dear Sir,

1. Reference your letter No. SREC/ENLIST/UNA/94 dated 19th Sept." 99.

2. In this context your attention is invited to this HQ letter No. 138301/C-22/237 Engrs/E8 dated 18 May 96 under which it was intimated that Renewal of Enlistment of your firm has not been approved by the Registering Authority i.e., Chief Engineer Eastern Command.

3. Please note that action taken by the Registering Authority is appropriate in terms of conditions agreed upon between two parties.

4. It is also clarified that production of valid current ITCC rests with contractor being law of the land; as such question of serving "SHOW CAUSE NOTICE" is not applicable in this case.

5. This is without any prejudice.

6. Please acknowledge receipt.

Yours faithfully Sd/- Illegible (M. Nandigrami) SW For Chief Engineers.

16. Further the admitted address of the Firm would be more clear and specific if we refer to other communication particularly the letter dated 19.09.1999, which is annexed by the petitioner to the writ petition as Annexure-"B". The petitioner has given as many as three addresses through in the stationary without

mentioning any specific address in issuing that Particular communication. The letter dated 19.09.1999 maybe quoted as under:

S.R. Engineering Construction Specialist in:

Shellroof, Prestressed Concrete, R.C.C. Bridge, Barrages & Buildings

To The Chief Engineer, Engrs. Branch, HQ Eastern Command, Forth William, Calcutta-21.

Sub.: Removal from approved list

Dear Sir,

Reference your letter No. 138301/C-22/243/Engrs/E8 dt. 10 Aug" 99 received by us on 14th September, 1999 after more than a month.

2. The contents of the above letter is wrong and denied. We had sent your office the Income Tax Clearance Certificate vide our letter No. SREC/CH/20 dated 7th October,94. A photostate copy of the said letter is enclosed herewith for your ready reference, please.

3. It is not understood that your office has taken action against non-receipt of Income Tax Clearance Certificate after a lapse of more than 5 years and that too without serving on us So-cause Notice.

4. Your action is against the Public Policy and Natural justice by not serving SO-CAUSE NOTICE on us and secondly, the action is time barred. Hence, it is requested to withdraw/cancel your above mentioned letter at the earliest, to enable us to receive and compete the tenders.

5. This is for your information and necessary action, please.

Thanking you,

Yours faithfully Sd/- Illegible For M/s S.R. ENGG Construction

Enclosed: A photostate copy of the letter dated 7th October, 1994.

17. The above communication would clearly go to show that no specific address has been shown wherefrom the said particular communication has been made. More interestingly the communications so annexed in the affidavit-in-opposition filed by the appellants/Union of India also do not reflect any communication sent to the petitioner on her address at Haleswar, Tezpur in the district of Sonitpur. Only one communication dated 11th March, 1989 annexed as Annexure-2 reveals the address of the Firm at Haleswar, Tezpur, Assam. Since it was a communication of 1989, this Court is not impressed by such address given therein.

18. In view of the above facts and circumstances, there is no hesitation to hold that all those letters/communications were made/sent indicating the address either at P.O. Dera Babu Rudru, District-UNA, 174303, Himachal Pradesh or 2543-

A, Sector 47-C, Chandigarh (U.T.) and/or at Dargapur-13, District-Bardwan beyond the territorial jurisdiction of the Gauhati High Court. That being so, this Court is of the firm opinion that no cause of action wholly or partly ever has arisen within the jurisdiction of the Gauhati High Court to invoke writ jurisdiction under Article 226 of the Constitution of India.

19. Be that as it may, the impugned orders/communications referred that the cause of action arose in the year 1999, i.e. on 10.08.1999 and 04.12.1999, (Annexure-A and Annexure-F respectively as indicated above) but this writ petition has been filed on 29.01.2002 after a lapse of almost four years. On pointed quarry, Mr. Khetri, learned Sr. counsel has tried to explain the delay by contending that the death occurred due to in the obtaining of the probate on the death of her husband. But such statement has not been incorporated in the pleadings. A bare perusal of the sworn statements and contentions made in the writ petition would go to speak that no attempt has been made to explain such unreasonable and inordinate delay of four years in approaching this Court for seeking prayed relief. In that view of the matter, this writ petition is also liable to be dismissed on" the ground of delay and laches.

20. Besides, on merit also, the petitioner has failed to make out the case for invoking the writ jurisdiction under Article 226 of the Constitution of India for issuance of directions to grant relief as sought in this writ petition. It would be proper to have a look on the merit of the case. The petitioner has alleged in this writ petition that the name of the Finn was removed from the list of approved contractors by the impugned communications/orders. In other words the Firm was black-listed by the respondent authorities. The reason reflected in the impugned order/communication dated 10.08.1999 was that inspite of some referred notices so mentioned in the impugned communication itself the Firm failed to submit the valid Income Tax Clearance Certificate (for short, "ITCC"). Drawing attention of this Court, Mr. Khetri, learned Sr. counsel has stated that this communication dated 10.08.1999 was issued against the non submission of ITCC after five years referring to communications/letters dated 23.05.1994 and dated 22.06.1994. It is also stated that against such impugned notices the petitioner represented appropriately before the authority concerned vide communication dated 19.09.1999 as already quoted above and the said representation was also considered vide impugned communication dated 04.12.1999 with the observation that "the production of valid current ITCC rests with the contractor being law of the land; as such the question of serving "Show Cause Notice" is not applicable in this case."

21. On consideration of such submissions and having taken careful note of the fact situation, the impugned communications need no interference. In support of these impugned orders and also refuting the claims and allegations made by the writ petitioner, the Union of India/respondents in their response, have taken the stand that initially the Firm was a proprietorial firm wherein the husband of the petitioner was the sole proprietor but, thereafter, the said proprietorial firm was

changed to become a partnership firm with as many as three partners namely, i) Shri Sukh Ram Dhiman, (ii) Shri Satish Kr. Ajipal and (iii) Shri Gopal Kr. Ajipal, which goes to show that amongst all the three partners, petitioner's husband was one of the partners. The communication so annexed with the response filed by the official respondents would reflect such situation. Meaning thereby, a question of disputed fact has been raised as regards valid construction of the Firm itself along with change of address.

22. On meticulous inspection of the entire documents, this Court has failed to get the answer as regards the status and position of the petitioner, i.e., Smti. Krishna Devi @ Smti Sabitri Devi in the Firm.

23. On overall consideration of the factual premises so narrated hereinabove and having discussed the question of law as regards the maintainability of the writ petition, this Court is disinclined to accept this writ petition.

24. Considering the facts and circumstances of the case, this Court is of the view that it is a fit case to impose costs which is quantified at Rs. 15,000/-. It is ordered accordingly.

25. In the results, this writ petition fails and stands dismissed with costs as indicated above. The costs be deposited with the Registrar General, Gauhati High Court within one month from the day for its deposit with High Legal Aid Fund.