
(2018) 03 UK CK 0024

In the Uttarakhand High Court

Case No : Special Appeal No. 111, 112, 115, 116 of 2018

MA GIRDHAR SINGH ADHIKARI

APPELLANT

Vs

STATE OF UTTARAKHAND AND OTHERS

RESPONDENT

Date of Decision : 13-03-2018

Acts Referred:

Citation : (2018) 03 UK CK 0024

Hon'ble Judges : V.K. BIST, J, MANOJ K. TIWARI, J

Bench : Division Bench

Advocate : Aditya Singh, Sanpreet Singh Ajmani, Anurag Bisaria

Final Decision : Disposed Off

Judgement

V.K. BIST, J

1. Since these Appeals raise common issues, we are disposing of the same by the following common judgment.

2. Present Special Appeals have been preferred by the appellant challenging the common judgment & order dated 26.02.2018 passed by the learned

Single Judge in Writ Petition No.480 of 2018 (M/S), Writ Petition No.483 of 2018 (M/S), Writ Petition No.484 of 2018 (M/S) & Writ Petition No.486

of 2018 (M/S), whereby the writ petitions filed by the appellant have been dismissed.

3. Special Appeal No. 115 of 2018 shall be the leading case.

4. Facts, giving rise to the present case, are that the appellant is registered with the respondent Department since 1991 as a Contractor. According

to the appellant, vide order dated 06.07.2015, appellant is registered as Class A Contractor by the respondent Department. It is alleged that

the works in question are under Pradhan Mantri Gram Sarak Yojna (hereinafter

referred to as PMGSY) run by the Ministry of Village Development (Government of India). Under the PMGSY, for the connectivity of the Villages, which are unconnected by the roads, the target have been fixed upto 2019. The PMGSY is a Centralized Funded Scheme by the Government of India, upon which 90% of the funding of the projects are to be made by the Central Government, therefore, the projects are targeted to be completed by 2019, as thereafter, the funding may lapse and the purpose of the scheme may get frustrated. According to the appellant, a notice was issued to the appellant on 18.01.2018 by the respondent no.4/Executive Engineer for explaining the cause of delay in completion of contract work awarded under the PMGSY Scheme pursuant to the Contract No. 158 dated 31.12.2016 of Jal Lakhnari Motro Road. It is alleged that, according to this notice, the appellant is shown in category 'C'. Thereafter, on 20.01.2018, the appellant replied the said notice mentioning therein that the appellant has completed about 70% of the work. According to the appellant, vide order dated 05.02.2018, the respondent no.2/ Chief Engineer placed the appellant at Sl. No. 32 and restrained the appellant from participating in any further tender process till the completion of contract work awarded under the PMGSY Scheme. It is alleged that, neither before passing the order dated 05.02.2018 the reply filed by the petitioner was considered nor the order dated 05.02.2018 was ever communicated to the appellant. According to the appellant, in the meantime, tender notice dated 12.01.2018 was issued by the Office of respondent no.2/Chief Engineer on the website, inviting the tender forms till 05.02.2018 for the construction of various roads and 08.02.2018 was fixed for submitting the hard copies of the tender documents. Pursuant thereto, the appellant submitted the technical bid with all the required details. The technical bid of the appellant with other bidders was opened by the Bid Evaluation Committee on 12.02.2018. According to the appellant, though, the appellant had fulfilled all the requisite eligibilities; but, due to the order dated 05.02.2018, the appellant has been declared disqualified in the technical bid. The appellant filed the abovementioned writ petitions challenging the orders dated 05.02.2018 and 12.02.2018. The learned Single Judge dismissed the writ petitions by the common judgment. Operative portion of the said judgment read as under:

3. The petitioner was constructing a road at Bageshwar, which was being constructed under a scheme known as Pradhan Mantri Gram

Sadak Yojana, for which 90 % of the funds come from the Central Government and target is fixed wherein and it has to be finished by March,

2019. The Public Works Department has categorized all the contractors into four categories i.e. A, B, C and D, depending

upon evaluation of their work in the ongoing projects. The petitioner falls in category C. Under this category, falls a contractor, who even after

lapse of 75% of the allotted time has not been able to make construction of even 33% of the work. Since the petitioner falls under this category, he

has been temporarily debarred from applying for fresh contract. It is not a case of the petitioner that he has been blacklisted. He will be given work in

future, provided he finishes the ongoing projects. In case the petitioner is awarded another work it will have the same fate as in the ongoing projects.

4. This Court finds no illegality in the orders passed by the respondents.

5. Consequently, writ petitions are liable to be dismissed and are hereby dismissed.

5. Learned counsel for the appellant contended that the appellant is not challenging the categorization done by the respondent; but, the appellant is

aggrieved by the action of the respondent, by which the appellant has been placed in category C. Learned counsel for the appellant referred

to paragraph no. 7 of the counter affidavit filed by the respondent no.4/ Executive Engineer in Writ Petition No. 480 of 2018 (M/S), in which the

respondent no. 7 has stated that the appellant/petitioner comes in category C, as in the month of November, after passing of the 75% of the

time of contract, work have been completed around 37% only. Learned counsel for the appellant argued that if it is admitted to the respondent that,

in the month of November, 2017, the appellant has completed around 37% of work, then, in that event, the appellant cannot be placed in category

C, inasmuch as, according to their own guidelines, only those persons are placed in category C, who has completed less than 33% of

work till November, 2017.

6. Learned Standing Counsel, on the other hand, would submit that, in fact, this is not an only thing and other things are to be considered, which were

considered in the matter and which could not be stated in the counter affidavit.

7. We have considered the submission advanced by the learned counsel for the parties and have perused the paper available on record.Â Considering all these facts, let the matter be reconsidered by the Competent Authority.Â Appellant is permitted to approach the Competent Authorities by tomorrow i.e. 14.03.2018.Â In case, the appellant approaches the Competent Authority within the stipulated period, a decision shall be taken by the Competent Authorities on the same, in accordance with law, within a period of two days?? thereafter by passing a speaking & reasoned order.Â It is expected that, till the decision is taken on the same, no third party interest shall be created.

8. The Appeals are, accordingly, disposed of.

9. Let a copy of this order be placed in all the connected Appeals.

10. Let a certified copy of this judgment be issued today itself.

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