
(2008) 02 AHC CK 0074
In the Allahabad High Court

M.M. Agarwal and Sons

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Citation : (2008) 2 AWC 1589

Hon'ble Judges : V.M. Sahai, J;R.N. Misra, J

Bench : Division Bench

Judgement

V.M. Sahai and R.N. Misra, JJ.—This writ petition has been filed by the petitioner for quashing the order dated 24.1.2004 (Annexure-19) passed by the respondent No. 4, by which the enlistment of the petitioner's firm from the approved list of contractors was cancelled. Further, relief has been sought to issue mandamus to the respondents to restore the enlistment of the petitioner's firm.

2. We have heard Shri Col. S.D. Tiwari, learned Counsel for the petitioner and Shri A.K. Rai, learned Counsel for the respondents.

It appears from the record that M/s. M.M. Agarwal and Sons was enlisted in the list of the approved contractors in the respondents department. More Mukut Agrawal was allegedly the sole proprietor of the said firm, who died on 10.12.2004. The name of the petitioner's firm from the approved list of the contractors was struck off by the respondents against which the Writ Petition No. 7731 of 2001 was filed and it was disposed of vide order dated 22.3.2003, directing the respondents to pass the fresh order by giving detail reasons. The respondents gave opportunity to the petitioner for hearing and ultimately passed the impugned order (Annexure-19) against which this writ petition.

3. The enlistment of the petitioner has been cancelled mainly on three grounds as mentioned in the impugned order. The first ground is of subletting. The second ground is the dissolution of the original firm and reconstruction of the new firm and the third ground is that the petitioner had levelled unfounded allegations in a complaint against the authorities concerned regarding acceptance of some

tenders. As regards the first ground of subletting is concerned, this is admitted fact that late M.M. Agarwal had executed a power-of-attorney in favour of Hari Shankar Bansal, his grandson for performing the contract given to him by the respondents. This fact is not disputed that Hari Shankar Bansal was the proprietor of another firm namely M/s. S.G. Traders, which was probably enlisted in the approved list of the contractors in the defence department. Thus, indirectly late M.M. Agarwal got the tenders in his name but rendered the benefits of the contract to his grandson Hari Shankar Bansal, who was the proprietor of another firm, meaning thereby the firm M/s. S.G. Traders became the main contractor. This ground was sufficient for cancelling the enlistment of the petitioner. As regards the second ground is concerned it has been held in the petition that M/s. M.M. Agarwal and Sons was the sole proprietary firm and its proprietor was M.M. Agarwal. It has been specifically alleged that the said firm was not partnership firm but this contention of the petitioner itself is contradicted by the Will of M.M. Agarwal, which is Annexure-21 to the writ petition. This Will clearly shows that M.M. Agarwal was the partner of the petitioner's firm having 60 per cent shares and the remaining 40 per cent share was owned by Hari Shankar Bansal, who was also proprietor of another firm and was holding the power-of-attorney of M.M. Agarwal to perform the contractual work given by the respondents. The petitioner cannot deviate from his own document. After the death of M.M. Agarwal the partnership firm automatically dissolved and his wife and grandson constituted a new firm in the eyes of law for which no information had been given to the respondents. This was also sufficient for cancellation of the enlistment of the petitioner. As regards the third ground is concerned, admittedly some complaints were moved by late M.M. Agarwal against the authorities of the defence department regarding some tenders, which were allegedly given to other persons on higher rate. When he was asked to substantiate the allegations made by him, he could not give any evidence that was also misconduct on the part of the contractor.

4. The learned Counsel for the petitioner has laid much emphasis on the letter of the respondents (Annexure-22) bearing No. PC-1 66545 / policy / E83578 / D / W Government of India, Ministry of Defence, New Delhi-110 Oil and has contended that in pursuance to the said letter the petitioner's firm should have been recognized by the respondents. But we see no force in this contention. The gist of the said letter is that the reconstituted firm or the legal heirs of the deceased person had to apply afresh for continuing their firm in the approved list of contractors. The said letter shows that a newly constituted firm shall meet all the criteria as laid down in the policy instructions issued by Engineer-in-chief for fresh allotment of contractor from time to time. One of the partners or the legal heir seeking re-enlistment has to render irrevocable undertaking in the form of affidavit to the newly constituted firm and take over the liabilities and assets of the original firm. Admittedly, no such formality was completed by the petitioner.

5. In view of our above discussions, we are of the view that the impugned order passed by the respondents is within the frame of law, therefore, this writ petition

is devoid of merits and is hereby dismissed. However, it is open for the petitioner to apply afresh before the authorities concerned for enlistment of its name in the list of approved contractors as given in the letter, Annexure-22 or any other rule in force at the time of such application.