
(2011) 02 AHC CK 0382

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 39744 of 2009

N.A. Enterprises

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Constitution of India, 1950 — Article 19

Citation : (2011) 3 ADJ 165 : (2011) 2 AWC 1873

Hon'ble Judges : D.S.R. Varma, J; Abhinava Upadhyay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Sri Nasiruzzaman, learned Counsel for the Petitioner and Sri S.F.A. Naqvi, learned Counsel appearing for the Respondents.

2. The relief sought in this petition is for issuance of a writ of Certiorari quashing the order dated 9.6.2009 passed by the second Respondent whereby the request of the Petitioner to enlist him as a contractor in the Central Public Works Department (hereinafter referred to as the CPWD), has been rejected.

3. It is the case of the Petitioner that for the past three decades he has been performing the work of contract for the CPWD as a Class "A" contractor and was governed by the earlier scheme of enlistment.

4. Be that as it may, now the new scheme of enlistment has been introduced in the year 2005 and as per the said scheme of 2005, the Petitioner had made an application for his enlistment as contractor in the CPWD. His request was initially rejected by the competent authority. The said order was challenged by the Petitioner in Civil Misc. Writ Petition No. 34373 of 2006, which was disposed of by this Court with the direction to the Respondents therein to reconsider the entire evidence placed before the appropriate committee and take a final decision in the matter. Accordingly, representation was made by the Petitioner before the competent authority and the same was placed before the Advisory Committee

consisting of three members. The Advisory Committee, however, also rejected the prayer of the Petitioner for his enlistment as a contractor vide order dated 9.6.2009, which has been challenged in the present writ petition.

5. It is the contention of learned Counsel for the Petitioner that the competent authority as well as the Advisory Committee had taken into account the faults committed by the Petitioner while performing his contractual obligation in the past prior to the new scheme which has been introduced in the year 2005 while rejecting his enlistment. The contention is that the said assessment in order to reject the enlistment of the Petitioner was not proper and it takes away his fundamental right guaranteed under Article 19 (g) of the Constitution of India. In other words, it is his vehement contention that the past event cannot be made basis for taking away the valuable right of the Petitioner guaranteed under Article 19 (g) of the Constitution of India. Learned Counsel for the Petitioner further tried to demonstrate before this Court about the alleged conduct of bias on the part of the Respondents.

6. In retaliation of the aforesaid submission, learned Counsel for the Respondents brought to the notice of the Court various averments refuting the allegations levelled in the writ petition.

7. From the averments and counter averments as borne out from the record, it appears that on three earlier occasions the Petitioner though completed the work, there was some abnormal delay and some compensation was also levied on two different occasions for a sum of Rs. 10,000/- and 40,000/-. It could be further seen from the impugned order that the said delay was caused particularly when the specific condition was incorporated in the terms of contract and that the time was essence of the contract.

8. From the impugned order it could further be seen that in all three occasions the Petitioner completed the work but with abnormal delay on account of which the Government was put to certain loss also.

9. No doubt, all the works allocated to the Petitioner were completed but as pointed out above, with abnormal delay, which resulted in imposing compensation against the Petitioner. These instances specified in the impugned order, which had taken place before the advent of the new scheme of 2005, had remained unchallenged and in fact the Petitioner had conceded to the imposition of the said compensation.

10. In the year 2005, new rules for enlistment have been introduced by which it is apparently imperative for the department to scrutinize the performance and fitness of each contractor for the purpose of enlistment. Clauses 6.4 and 6.5 are reproduced as under:

6.4. The enlistment authority shall have the right to independently verify the details furnished by the contractor and to get works done by the contractor inspected and/or to get such other reports as may be considered necessary.

6.5. If the enlistment authority finds the contractor suitable for enlistment, it shall issue the enlistment order and, otherwise, send a letter of rejection of the application to the contractor. The decision of the enlistment authority shall be final and binding on the contractor.

11. From the above, it is obvious that the enlisting authority has to weigh the evidence independently after verifying the details furnished by the contractor and inspect such other reports as may be considered necessary.

12. Coming to the case in hand, it appears that both the competent authority and the Advisory Committee had taken into consideration all the necessary materials as they found fit which included the past breaches committed by the Petitioner in performing the contractual obligation, as already noticed above.

13. Eligibility is different from fitness. Every eligible person cannot and need not necessarily be a fit person, particularly in a case like the present one. Fitness for the present purpose shall have to be based essentially on various works, if any, performed by the aspirant/contractor, and that is what has been done by the competent authority as well as the Advisory Committee as directed by this Court. When a person was found to be committing breaches repeatedly, it is for the authorities concerned either to reject or accept the enlistment of the aspirant depending upon various factors. Some times simple breaches may not amount to unfitness. In the instant case, the Advisory Committee has recorded a finding that on three occasions there was breach by the Petitioner and on two occasions substantial amount was imposed as compensation against the Petitioner. Therefore, the competent authority as well as the Advisory Committee found the Petitioner unsuitable and unfit to be enlisted.

14. Therefore, it is for the competent authority to assess the fitness or suitability of a particular agency as a contractor and such discretionary jurisdiction which is attached with public interest, is totally within the domain of Respondents. As already recorded above, the rejection order which has been impugned herein, had been passed invoking the jurisdiction of the department under Rules 16.4 and 16.5.

15. What is to be further noticed is that the Petitioner had applied for enlistment as per such rules only, which means that he conceded to the rules and the jurisdiction of the competent authority under such rules. Therefore, when the Petitioner made application under the said rules for enlistment, he is bound by the decision taken by the authorities under those rules, of course, subject to judicial scrutiny from the perspective as to whether the same suffers from arbitrariness, unfairness or out of any malice.

16. Any of the above factors should be detected or identified either from the impugned order or from the pleadings. Obviously, it has to be further seen that the competent authority had also given instances for its satisfaction about the unfitness of the Petitioner for being enlisted as a contractor. We could not apparently see any mala fide or arbitrariness in view of the said facts that have

been put on record and, therefore, we are precluded virtually from expressing any view either with regard to the view expressed by the competent authority or by the Advisory Committee, as the case may be. We also could not find any arbitrariness or mala fides on the part of the Respondents while passing the impugned order.

17. It is further more to be seen that when it is the specific contention of the Petitioner that the past conduct of the Petitioner prior to the introduction of the Rules of 2005 cannot be made basis for rejecting the enlistment, it has to be seen that the Rules of 2005 are not under challenge and as already recorded above that he having conceded to the rules and made application under the new Rules, cannot take a "U" turn and say that 2005 Rules cannot be made applicable and even if they are made applicable, past conduct cannot be taken as a ground for rejecting the enlistment. While examining the fitness of a particular contractor for enlistment, the competent authority has always right to examine the competence and suitability or fitness, as the case may be, for enlistment after gathering all the instances and various circumstances available before it. That is what has been done by the competent authority initially and by the Advisory Committee later as per the direction of this Court and, therefore, we are precluded from further dwelling into the merits of the case. It is the totally subjective satisfaction of the competent authority and this Court cannot probe into the matter in detail and take a different view unless and until there is ex facie arbitrariness or unfairness or mala fide on the part of the Respondents.

18. For all these reasons, we do not find any merit in the writ petition and see no reason to interfere with the impugned order passed by the second Respondent.

The writ petition is accordingly dismissed. However, this order does not preclude the Petitioner from making representation or application to the Government and upon such an application/representation being made, the Government may consider the same on merits in accordance with law.