

**(2008) 07 DEL CK 0060**

**In the Delhi High Court**

**Case No : Writ Petition (C) 4684 of 2008**

Narender H. Chandwani

APPELLANT

Vs

M.C.D. and Another

RESPONDENT

**Date of Decision : 04-07-2008**

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Enlistment Rules, 2004 — Rule 22, 22.3

**Citation : (2008) 2 CTLJ 369 : (2008) 106 DRJ 419**

**Hon'ble Judges : Vipin Sanghi, J**

**Bench : Single Bench**

**Advocate : Fiayaz Khan and Honey Tanaji, for the Appellant; Amit Paul, for the Respondent**

**Final Decision : Dismissed**

## Judgement

Vipin Sanghi, J.—By this writ petition under Article 226 of the Constitution of India, the petitioner seeks a writ of certiorari to quash the decision of the MCD contained in its circular dated 19.05.2008, which reads as under:

The Commissioner, MCD vide orders dated 06.05.2008 has removed M/s Sona Consultant & Contractors, Prop. Sh. Narender H Chandwani, R/o H. No. O-55, Lajpat Nagar-II, New Delhi-24 from the approved panel of the contractors of MCD on account of none execution of work awarded against work orders No. 453/EE (Br.)-I/TC/CS/06-07 dated 25.01.2007.

This is notified & circulated to all concerned for information and necessary action.

2. The admitted position is that the petitioner was an enlisted contractor with the respondent-MCD. He is the sole proprietor of his firm M/s Sona Consultants & Contractors. He was also empanelled for execution of work in South and Central zones under the unit rate system for one year vide communication dated 27.06.2007, issued by the MCD. The petitioner was issued a work order dated 25.01.007 under the unit rate system for carrying out the work of "Development

work in unauthorized colony Hari Nagar Extension JKLM Block (253/1071) 7th Phase C/Z, Sub Head Providing RCC slab over crossing in J & K Block, Ward No. 65 CZ." The estimated cost of the work involved was stated to Rs. 1,98,598/-. The time of completion stipulated under the work order was four months. As per the work order the time was to be reckoned from the 10th day after the date of issue of the work order. The petitioner was directed to commence the work immediately. Another work order of even date was issued to carry out the work: "Development work in unauthorized colony Hari Nagar, I-Block (256/1071) 7th Phase CZ, Sub-Head: Providing RCC slab over crossing in Ward 65/CZ." The estimated cost of this work was Rs. 1,98,598/- and this work was also required to be completed within four months. This work order also contained an identical clause saying that the time shall be reckoned from the 10th day of the issue of the work order, and the petitioner was similarly required to start the work immediately.

3. It appears that the petitioner took no steps whatsoever to carry out the two works aforesaid. Accordingly, he was issued communication dated 19.02.2007 pointing out that the date of start and date of completion of the works was 04.02.2007 and 03.06.2007 respectively. He was called upon to take steps to execute the works. This communication has not been filed by the petitioner on record. However, I have perused the same from the record as produced by the respondent. The same also finds mention in notice issued to the petitioner on 11.09.2007 which has been filed by the petitioner on record. It appears that despite the aforesaid notice dated 19.02.2007 the petitioner took no interest in executing the work. He was, accordingly, issued a show cause notice vide letter dated 26.03.2007, which too has not been filed by the petitioner on record, though it is mentioned in the notice dated 11.09.2007. This notice, which is found on the original record of the MCD, alleged that by failing to execute the works the petitioner has violated the conditions of NIT/URM as well as enlistment rules. The petitioner was required to show cause as to why action against him be not taken as per Rule No. 22 of the enlistment rules. It appears that despite the said notice neither the petitioner took any steps to execute the works nor responded to this notice.

4. On 11.09.2007 the respondent issued yet another notice making reference to the earlier notice dated 19.02.2007 and the show cause notice of 26.03.2007. It was further stated that no reply had been received from the petitioner to the earlier show cause notice. The petitioner was required to be present before the Superintending Engineer concerned on 14.09.2007. He was also informed that this is the final opportunity granted to him. Only after the issuance of this communication the petitioner for the first time woke up and issued a communication dated 13.09.2007 stating that the existing RCC slab is in damaged condition and there is no item in the work order requiring the petitioner to demolish the RCC work and the brick work. He demanded the respondent to give a clear site immediately for early completion of the work. However, it appears that the petitioner did not avail of the opportunity of personal hearing

given to him by the respondent. On 04.04.2008 the respondent sent another notice to the petitioner giving him yet another opportunity to appear before the Superintendent Engineer concerned on 17.04.2008. The petitioner sent another communication dated 15.04.2008 reiterating his earlier position. The petitioner, however, did not appear before the Superintending Engineer on 17.04.2008. It appears that thereafter the case was processed and the impugned communication dated 19.05.2008 was issued by the respondent.

5. The submission of the petitioner is that the work of demolition of the RCC slab and the brick work was not included in the specific items under the contracts/work order. The petitioner was entitled to demand a clear work site for being able to execute the works and since the respondent had failed to provide a clear work site, there was no question of there being any default on the part of the petitioner in not executing the works. He further submits that the impugned order has been issued without compliance of the principles of natural justice and the said order is vague and harsh, inasmuch as, the petitioner has been removed from the approved panel of contractors of MCD for an indefinite period.

6. On the other hand, learned Counsel for the respondent, who has appeared on advance notice and produced the records, has justified the action of the MCD. He submits that the petitioner has acted highly negligently and irresponsibly. The work orders were issued on 25.01.2007. The work was required to be taken up immediately and was required to be completed within four months. The time was to be reckoned from the expiry of 10 days from the date of issue of the work order. However, the petitioner slept over the matter and it appears that he did not even visit the work sites for months. Despite the notice dated 19.02.2007 he did not mobilize his work force, tools and tackles to execute the work and did not even respond to the show cause notice dated 26.03.2007 issued under Rule 22 of the enlistment Rules. He relied on the enlistment Rules and particularly upon Clause 22.3 thereof. Relevant extracts of Rule 22.3 of the enlistment Rules read as follows:

The name of the contractor may be removed from the approved list of contractors, by the enlisting authority, if he;

(a) has, on more than one occasion, failed to execute a contract or has executed it unsatisfactorily, or....

7. He also submits that the grievance of the petitioner that the work item relating to demolition of the RCC slab and brick work was not covered by the work order also appears to be incorrect, inasmuch as, the work orders contemplate situations where extra items of work or substituted items of work are required to be executed in the course of execution of the contracted works and provide the procedure to be followed, if such situations arise. He submits that the petitioner claims to be an experienced and old contractor working in the MCD and he should have been aware of the procedure to be adopted in such situations. The work order itself provides that when the orders are given for

execution for any extra/substituted item, prior order from the competent authority is to be obtained before executing the same to avoid any further complication. Had the petitioner the intention to carry out the works within the stipulated period, he would have immediately visited the site upon the award of the works and brought it to the notice of the respondent that there were extra or substituted items of work involved. He would not have sat over the matter despite repeated notices and woken up after nearly 8 months of the issuance of the work order.

8. Having heard learned Counsel for the parties, I am satisfied that the petitioner has been highly negligent in undertaking the works under the contracts. Assuming that there is some merit in the submission of the petitioner that the work orders did not take into account the work items related to demolition of RCC slab and brick work, firstly the petitioner took no steps to bring to the notice of the respondent the existence of the said extra items of work. Had the petitioner any intentions of executing the work in right earnest, the petitioner would have immediately, upon the issuance of the work order, inspected the site and reported the matter to the MCD. He would have taken steps to get the approval/orders of the competent Authority to do the extra items of work. However, he took no steps despite being issued the notice dated 19.02.2007 and even chose to ignore the show cause notice dated 26.03.2007 issued under Rule 22 of the enlistment Rules. This conduct of the petitioner clearly shows his lack of commitment to execute the works under the contract. It was only when he was issued the notice dated 11.09.2007 that he, for the first time, raised the aspect of extra items of work, as aforesaid. Even thereafter he did not follow up the matter with the respondent, and again went into hibernation, only to wake up in April 2008. I also find merit in the submission of learned Counsel for the respondent that merely because of the existence of the said extra items of work, the petitioner could not have avoided to execute the contracted works. The petitioner ought to have brought to the notice of the respondent the extra items of the work soon after the issuance of the work orders, and to obtain the prior permission/order from the competent authority to be able to complete the extra items of work as well. Had the petitioner taken these steps, the same would have demonstrated his seriousness to execute the works in question, and would have thrown the ball in the respondents court.

9. I find no merit in the petitioner's submission that the impugned order has been issued without complying with the principles of natural justice. As aforesaid, he was given a show cause notice on 26.03.2007 which he has failed to file on record. He did not respond to this notice. He was given further opportunities vide notices dated 11.09.2007 and 10.04.2008 to appear before the concerned Superintending Engineer. But he did not even avail of these opportunities. He kept on harping that the extra items of work, as aforesaid, are not covered under the work orders. Even at that stage he did not take up the contracted works.

10. Reliance placed by the petitioner on the decision of this Court in M/s. V.K.

Dewan and Co. Vs. Municipal Corporation of Delhi and others, appears to be misplaced. That was a case where the contractor had been blacklisted for a period of 3 years. The Court quashed the blacklisting order on the ground that no authority under the Rules or contract existed, permitting the contractors blacklisting. That is the material difference in the present case. A perusal of Rule 22.3 shows that the name of the contractor can be removed from the approved list of contractors by the enlisting authorities if he has, on more than one occasion failed to execute a contractor or has executed it unsatisfactorily. In the present case, there were two contracts covered under the two work orders, as aforesaid, both of which were not executed by the petitioner. Consequently, the respondent was authorized and justified in issuing the impugned order.

11. The submission of the petitioner that the impugned circular is vague and bars him for all times to come also does not appear to be correct, particularly on a perusal of the records produced by the respondent and the enlistment Rules. From the record produced by the respondent it is seen that on account of failure of the petitioner to perform the contracted works, the proposal was, inter alia, to suspend business with the petitioner for a period of two years. This proposal was, however, not accepted by the competent authority. Since the case falls under Clause 22.3(a), the name of the petitioner has been removed from the approved list of contractors by the enlisting authority.

12. The instructions for enlistment of contractors in MCD are found on the record of the MCD. The enlistment procedure is contained in Clause 5 of these instructions which requires the applicant to submit the application form to seek enlistment. The application forms are issued only from 01st January to 15th January and from 01st July to 15th July every year which can be obtained for a charge. The enlistment period is stated to be for five years under Clause 6. The eligibility criteria for enlistment is contained in Clause 10, which reads as follows:

#### 10. Eligibility Criteria

The contractors shall have to satisfy the minimum eligibility criteria specified in Table-1, before they can be considered for enlistment.

10.1 The criteria for experience shall be completion of three or two works, as the case may be, of prescribed nature and magnitude executed on contract basis, during the last five years. The works should have been executed in the same name & style in which the enlistment is sought.

10.2 The financial soundness shall be judged on the basis of the solvency certificate or the working capital certificate, as the case may be, issued by the Bankers of the contractor on the format prescribed in Annexure-V. Such certificate shall be issued by a scheduled bank and shall be submitted, in original, in a bank sealed cover, addressed to the enlistment authority.

10.3 The criteria for the experience and financial soundness existing on the date of receipt of application by the enlistment authority shall be the governing

criteria for the applicant. Table-1 indicates the criteria as at present.

13. The purpose of enlistment is only to entitle the contractor to be considered for issue of tender papers subject to the conditions laid down in each notice inviting tender. It does not confer any right on the contractor to be necessarily issued the tender papers or for award of work. Enlistment is done for various categories which are mentioned in table 1 of these instructions. The tendering limits upto which an enlisted contractor is entitled to tender is also contained in table 1. So are the competent authorities empowered to enlist the tenderers specified in table 1.

14. The consequence of issuance of the impugned circular is that the petitioner has been removed from the approved panel of contractors of MCD and his current enlistment is, therefore, no longer valid. From the aforesaid, it appears that merely on account of the issuance of the impugned circular, removing the petitioner from the approved panel of contractors of MCD, the petitioner is not debarred from applying for fresh enlistment in terms of the instructions issued by MCD. The eligibility criteria, as set out hereinabove, does not render a person like the petitioner, who has been once removed from the approved panel of contractors of MCD, ineligible from again seeking enlistment. If he makes an application for his enlistment afresh, his application would be considered in accordance with the enlistment rules/instructions.

15. For the aforesaid reasons, in my view, the impugned order cannot be labeled as being vague or harsh. I see no merit in this petition. Dismissed. Dasti.