
(2004) 04 AHC CK 0068
In the Allahabad High Court
Case No : Writ Petition No. 2733 (MB) of 2003

Quality Traders

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-04-2004

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 2005 All 3 : (2004) 4 AWC 3782 : (2005) 2 CTLJ 250

Hon'ble Judges : Kamal Kishore, J; Jagdish Bhalla, J

Bench : Division Bench

Advocate : Mohd. Mansoor Ahmad, for the Appellant; Anil Kumar and B.B. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Jagdish Bhalla, J.—By this writ petition under Article 226 of the Constitution of India, the petitioner firm, who is engaged in supply of meat groups items to the Military Stations seeks issuance of a writ in the nature of certiorari for quashing of the order dated 21.4.2003, contained in Annexure-1, whereby the name of the petitioner-firm has been removed from the approved list of A.S.C. contractors and also prayed, for a writ or direction in the nature of mandamus to the opposite parties not to treat the petitioner firm as an unregistered A.S.C. firm.

2. M/s. Quality Traders has questioned the correctness and validity of the order dated 21.4.2003, passed by the Major General, M.G. A.S.C. by means of which the name of the petitioner firm has been removed from the approved list of Army Supply Corps Contractors primarily on the ground that the impugned order has been passed in blatant disregard of the principles of natural justice ; the procedure as prescribed under Regulation 26 was not followed before removing the petitioner and the decision to remove the name of the petitioner firm had already been taken and implemented prior to issuance of show cause notice as on 9.1.2003 and 4.2.2003 when the petitioner firm was found to be lowest tenderer, it was not awarded the contract. In addition to above, the petitioner

firm was not allowed to participate in re-tendering process in respect of the Lucknow, Gwalior and Meerut stations which the petitioner firm was the lowest tenderer.

3. According to the learned counsel for the petitioner the impugned order dated 21.4.2003 is against the principles of natural justice, as the decision was taken prior to issuance of show cause notice and the procedure as prescribed under Regulation 26 was not followed before removing the petitioner. The fact that authorities were predetermined to remove the petitioner from the list of approved ASC contractors and the issuance of show cause notice dated 26.3.2003 was sham, is proved from the averments made in the short counter-affidavit filed on 17.4.2003 by an Officer of Central Command in Writ Petition No. 1941 (MB) of 2003, M/s. Quality Traders v. Union of India and Ors., wherein it has been mentioned "that a decision was taken not to enter into any business/transactions with M/s. Quality Traders for the supply of meat group items in future and to disassociate with erring firm M/s. Quality Traders".

4. According to learned counsel for the petitioner, the impugned order dated 21.4.2003 by which the decision was taken to remove the name of the firm from the list of Army Supply Corps Contractors was implemented before the issuance of this order and even prior to the issuance of the show cause notice as would be evident from the fact that the petitioner was not allowed in the re-tendering process held on 3.4.2003 and even in the tenders in which the rates quoted by the petitioner were the lowest, the tender was not sanctioned in favour of the firm without there being cogent and plausible explanation. Thus, the impugned decision of removal of the name of the petitioner from the approved list of ASC contractors was taken with a bias and pre-determined mind and the issuance of the show cause notice was mere formality.

5. Sri Anil Kumar, appearing for the opposite parties submitted that after the tender process, the Quarter Master General, Army Headquarter had sanctioned the contract of meat dressed at Supply Depot Army Service Corps, Meerut, for the period 1.4.2001 to 31.3.2002 and an acceptance of tender note was issued on 30.3.2001 to the petitioner M/s. Quality Traders. The petitioner-firm failed to execute the above contract although he was duty bound to accept the demand, tender the supplies as per demand placed, by the Contract Operating Officer, failing which the Contract Operating Officer was entitled to procure the supplies at the risk and expense of M/s. Quality Traders in terms of Clause 7 of I.A.F.Z. forming part of the contract deed. Since the petitioner-firm did not supply the meat dressed for the Meerut Station and the same was procured from other sources for the period 1.4.2001 to 31.3.2002 as such the recovery was effected from the petitioner, namely, M/s. Quality Traders.

6. According to learned counsel for the respondent, before passing the impugned order dated 21.4.2003, the: show cause notice in accordance with the provisions of para 24 (c) (iii) of the Government of India, Ministry of Defence Letter dated 22 November, 2000, was issued and after considering the reply submitted by the

petitioner dated 12.4.2003, the name of the petitioner-firm was removed from the approved list of contractor. Thus, there is no infirmity in the order.

7. As regard the sanction of contract in favour of the petitioner for the Meerut Depot, it has been submitted by the learned counsel for the respondents that there was difference in rates quoted in figures and words, i.e., Rs. 4,429 in figures and "rupees four thousand twenty nine" in words by the petitioner firm. The rates quoted in words were accepted by the sanctioning authority in terms of Clause 2 (it) (c) of I.A.F.Z. -2137A, which forms part of the tender documents. As regard the earnest money is concerned, learned counsel stated that in view of the sanction of meat dressed tender by the Quartermaster General, Army Headquarters, in favour of the petitioner, the earnest money amounting to Rs. 2,54,000, which was inadvertently released earlier in favour of the petitioner, was recovered under the provisions of para 5 of 1.A.F.Z.-2120 which is part of the contract deed, as such it is incorrect to say that the earnest money was released as the petitioner's firm was second lowest tenderer.

8. Sri Anil Kumar further pointed that the dispute in question was referred to an Arbitrator and the Arbitrator has made an award in favour of the Union of India, i.e., the opposite parties. In the award, the petitioner's firm was blamed for not executing the meat dressed contract at supply Depot A.S.C. Meerut, during the period, from 1.4.2001 to 31.3.2002, as a consequence whereof the petitioner firm was directed to pay Rs. 13,03,165 incurred by the department, during the period indicated above.

9. In contrast Sri Mohd. Mansoor, counsel for the petitioner, stated that the rates quoted by M/s. Mohd. Alamgir and Company were the lowest and the petitioner's firm was second at number. Since the petitioner was not the lowest bidder and the respondents were insisting to make supply on the rates not quoted by the petitioner, as such, the petitioner requested the authorities to rectify the rates in acceptance of tender and the sanction may be accorded at the rates which were mentioned in the tender form. He also pointed out that against the sanction of the contract in favour of the petitioner, M/s. Mohd. Alamgir and company, who was found to be lowest tenderer, has filed a writ petition being Writ Petition No. 1557 (MB) of 2001 before this Hon'ble Court inter alia on the ground that inspite of M/s. Mohd. Alamgir and Company (petitioner of Writ Petition No. 1557 (MB) of 2001) being the lowest tenderer, the tender has been sanctioned in favour of the present petitioner M/s. Quality Traders in gross violation of the procedure. Since the authorities opposite parties did not take any decision on the representation of the petitioner, the firm was constrained to file Writ Petition No. 2594 (MB) of 2001 in which the quashing of the order, dated 8.5.2001 recovering the earnest money was sought. It was also prayed therein that the amount recovered as earnest money from the other Depot, i.e., Bahragarh and Mhow Station be released and further not to proceed and compel the petitioner to make supply.

10. According to learned counsel, it is settled principles that even an administrative order which involves civil consequences must be consistent with

the rules of natural justice but in the instant case, the earnest money was recovered from the other contract of the petitioner without any prior intimation or notice. Not only this, the Commandant at Meerut issued a letter dated 12.4.2002 directing to withhold the amount from the pending bills of the petitioner out of any other contract held by him.

11. Before proceeding any further, we deem it necessary to refer to certain provisions of the Contract Act as it has been argued by the learned counsel for the petitioner that sanction of tender for Meerut Depot for the period 1st April, 2001 to 31st March, 2002, cannot be said to be a contract in true sense as in the present case the offer of M/s. Quality Traders was not accepted on the rates quoted by them as such it cannot be treated to be as an acceptance of offer.

12. "Contract" is a bilateral transaction between two or more than two parties. Every contract has to pass through several stages beginning with the stage of negotiation during which the parties discuss and negotiate proposal and counter proposals as also the consideration resulting finally in the agreement. It is at this stage that the agreement is reduced into writing and formal document is executed on which parties affix their signature or thumb impression so as to be bound by the terms of the agreement set out in that document.

13. Section 2(h) provides that "an agreement enforceable by law is a contract". Section 2(g) sets out that "an agreement not enforceable by law is said to be void". Section 10 provides that all agreement are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a Jawful object, and are not hereby expressly declared to be void. Section 13 prescribes for "Consent" and lays down that two or more persons are said to consent when they agree upon the same thing in the same sense. Section 20 prescribes that where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

14. As regard the reference to the Arbitrator, Lt. Col. S. P. Awasthi, learned counsel for the petitioner submitted that the petitioner filed objection regarding the appointment and competence of the arbitrator on the ground that the Arbitrator cannot act as the present dispute is not a dispute arising out of a contract and further in respect of the controversy, a writ petition bearing Writ Petition No. 2594 of 2001 has been filed before the High Court and the matter is sub- judice. According to learned counsel for the petitioner, the Arbitrator without deciding the objections raised by the petitioner's firm passed an ex parte award. The correctness of the Award has been questioned by the petitioner before the District Judge and the petition has been admitted as such the Award is not enforceable in view of the provisions of Arbitration and Conciliation Act. Another mistake which has been committed by the opposite parties is that the issue regarding failure to perform the contract In respect of Meerut station in the year 2001 or whether the contract was rightly awarded, was pending adjudication before this Court hence there was no occasion for the respondents to proceed with the removal of the petitioner from the approved ASC list of ASC contractors

and should have waited for the final verdict in Writ Petition Nos. 2594 (MB) of 2001 and 1557 (MB) of 2001.

15. Learned counsel for the petitioners has advanced arguments that sanction of tender for Meerut Depot cannot be termed as a contract as defined under the Contract Act, of which default is being said to have been committed by the petitioner, but has not sought any relief as such we are not entering into this aspect of the matter.

16. We would like to mention at this juncture that by the letter dated 22.11.2002, the Ministry of Defence, Government of India, conveyed the Chief of Army Staff, New Delhi, regarding sanction of the President to the adoption of revised provision for conclusion of A.S.C. contract for perishable items. Part I deals regarding registration, removal, banning, suspension of A.S.C. contractors whereas Part II deals for conclusion of A.S.C. contract. Clauses 24 to 27 deals regarding removal of contractor from the approval list of A.S.C. contractors. Relevant provisions relating to registration, removal, banning and suspension of A.S.C. contractors is being reproduced herein under :

Procedure for Registration of Contractors :

3. Perishables and other items, required for consumption by troops and to be supplied by A.S.C. will be procured from registered A.S.C. contractors, any person, being a citizen of India, who wishes to supply articles of A.D.S.C. responsibility may apply to D.A.D.S.T./A.D.S.T. Sub Area/ O.C. A.S.C. Bn/D.D.S.T. Corps (who are concluding contracts)/ D.D.S.T. Area or M.G.A.S.C. Command on a plain paper expressing his/her/their willingness to be registered as an A.S.C. Contractor.

Performance of Contractors :

19. A proper record of the performance of each contractor will be maintained by executive officer. Following factors will be borne in mind while assessing the performance of the contractor :

(a) No. of times, a contractor has failed to meet his contractual obligations.

(b) Failure to employ adequate technically trained staff and infrastructure for smooth running of the contract.

"24 (a). M.G.A.S.C. Command, who is competent authority to include the name of a firm in the list of approved suppliers maintained by him, will also be competent to order the removal of a firm from the list of approved suppliers. If any contractor is to be removed from the approved list for a particular area D.A.D.S.T./ A.D.S.T. Sub Area/D.D.S.T. Area/ O.C. A.S.C. Bn/D.D.S.T. Corps (who are concluding contract) concerned will forward the recommendation to M.G.A.S.C. Command who should decide whether the contractor should be removed from the list or not. However, Director General of Supplies and Transport may review cases for registration/ removal and modify or set aside

orders of the M.G.A.S.C. in this regard, if he considers the M.G.A.S.C.'s orders unfair, unjust or detrimental to the interest of the State.

(b) A firm may be removed by the competent authority from the list of approved suppliers, if on account of its performance or other disabilities, it is no longer considered fit to remain in the approved list. A firm after due investigation would be liable to be excluded from consideration of its tender, if it by any unreasonable and baseless acts of commission or omission, impedes, retards, delays or vitiates in any manner the process of concluding a contract or operation of a contract and shall also be liable to be removed from the approved list of contractors.

(c) Removal from the list of approved suppliers may, at the discretion of the competent authority be ordered, if a firm :

(i) Fails or neglect to quote in response to four consecutive invitations to tender or during a period of two years whichever is less or quotes obviously fictitious rates which are twenty five percent or more above the quotations ultimately accepted.

(ii) Fails to secure a contract after six successive tenders or during a period of three years whichever is less.

(iii) Fails to execute a contract/short term agreement or fails to execute it satisfactorily.

(iv) No longer has the technical staff or equipment considered necessary for execution of the contract assigned to them.

(v) Fails to furnish Income Tax Clearance Certificate/ Wealth Tax Return as required under rules.

(vi) Is declared bankrupt or insolvent or his financial position has become unsound and, in case of a limited company, it is wound up or taken into liquidation.

25. Order regarding removal of a contractor from the approved list will normally not be endorsed to other Command/Corps/ Areas/ Divs. /Sub Area or other Government departments. In case of a contractor who is also borne on the approved list of other M.G.S.A.S.C., such orders, will be endorsed to them in accordance with para 20 (g) above.

Procedure for removed of a contractor :

26. Before a decision is taken to remove the name of a firm from the list of approved suppliers for any one of the reasons contained in para 24 above, a show cause notice will be served asking him/her/them to explain as to why the proposed action should not be taken. On receipt of a reply to the show cause notice, the case will be examined and a decision taken by the competent authority. Orders removing firm from the list of approved suppliers will be

communicated to the firm, together with reasons therefor, under intimation to all concerned. It will however, be made clear in the order that it is open to the firm/contractor henceforth to tender as an unregistered firm /contractor.

Implication of removal :

27 (a) Removal does not carry much of a stigma with it and is for minor offences as given in para 24 (b) and (c). Removal of firm/contractors from one list of approved contractors of an Area/Corps/Div./Indep Sub Area/ Sub Area does not necessarily mean that he/she/they should be removed from that list of other areas of Department where he/ she/they may be rendering useful services.

(b) A firm with whom business dealings have been suspended or banned shall be automatically removed from the list of approved suppliers. The fact of such removal will be communicated to the firm along with the reasons thereof.

Re-instatement "Removed" contractors :

27. Once removed, the name of a firm/contractor may not be restored on the approved list unless It/he satisfies the normal registration requirement and the competent authority is satisfied that the firm/contractor should be registered. In no case, however, the reinstatement shall be effected within two years from the date of firm's /contractor's removal from their approved list. Further material change in circumstances leading to re-instatement will invariably be intimated to the D.G.S.T.

Earnest Money ;

54. Each tender must be accompanied by requisite amount of earnest money. Details of earnest money to be lodged by the tenderers will be recorded on the top of the first page of I.A.F.Z./2120. Public Sector Undertakings, Government Departments and Co-operative Societies as mentioned in paragraph 85 below are exempted from lodging earnest money. The amount of earnest money will be worked out at one percent of total value of the contract at current rates and it should be rounded off to nearest hundred.

55. Earnest money may be deposited in any of the following forms :

(a) By remitting cash in Government treasury.

(b) Demand drafts from Scheduled Banks. These can be accepted provided the amount involved is less than Rs. 5,000.

(c) Deposit at Call Receipt of Scheduled Banks (including the State Bank of India and its subsidiaries approved under the Bank Guarantee Scheme). This will be accepted provided the amount exceeds Rs. 5,000.

(d) Fixed deposit receipt in original.

56. Tenders unaccompanied by earnest money or accompanied by insufficient earnest money will be entered in the C.S.T. separately by Board of Officers

opening the tenders. The decision to reject or to accept such tenders will be taken by the panel of officers consisting of the representative of A.S.C., C.D.A. concerned and C.F.A. keeping in view the interest of the State. Detailed reasons will be recorded in the panel proceedings for accepting/rejecting such tenders. However, such tenders should not be accepted as a matter of routine. While rejecting such tenders, the earnest money will be returned immediately.

57. The earnest money of all tenderers will be retained till finalisation of deliberations by the panel of officers (including invitation offer if any). Thereafter, earnest money of only three lowest tenderers will be retained till sanctioning of the contract. Earnest money in respect of the remaining will be refunded, immediately thereafter.

58. In case retender is ordered, earnest money deposited earlier pertaining to the item(s)/ station(s), will be refunded immediately a retender is ordered.

59. Earnest money of a successful tenderer will be refunded as soon as the security deposit has been furnished unless it is used as a part of security deposit."

17. Now we come to the merits and de-merits of the case.

18. The main contention of the learned counsel for the petitioners is that the impugned order dated 21.4.2003 removing the name from the approved list of Army Supply Corps Contractors is against the principles of natural justice and Regulation 26 as the authorities have already made up their mind and have taken a final decision prior to issuance of show cause notice dated 26.3.2003 to remove the petitioner from the approved list of A.S.C. Contractors. It has specifically been asserted that the decision to remove the firm was taken earlier to the taking birth of the impugned order is evident from the acts and fact that in the short counter-affidavit filed on behalf of opposite parties in Writ Petition No. 1941 (MB) of 2003, where it has been mentioned in paragraph 6 (f) that : "a decision was taken not to enter into any business/transaction with M/s. Quality Traders for the supply of meat group items in future and to disassociate with erring firm M/s. Quality Traders". The said short counter-affidavit was filed on 17.4.2003 whereas the impugned order removing the name of petitioner from the approved list was passed on 21.4.2003.

19. Learned counsel for the respondents has not been able to give any satisfactory explanation as to why the petitioner firm was not allowed to participate in the tender process held before the issuance of show cause notice dated 26.3.2003. An ambiguous reply has been given that on account of petitioner's firm being blamed by the Arbitrator as such, the petitioner was not allowed to participate in the tender process held prior to the issuance of show cause notice dated 26.3.2003. Thus, the allegations of the petitioner that in the tender invited for the Gwalior Station on 9.1.2003 and on 4.2.2003 for other stations, i.e., Lucknow and Meerut, the petitioner firm was lowest tenderer but was not awarded the tender, seems to be true.

20. At this juncture, it would be relevant to mention that an officer of the rank of Colonel in uniform has appeared along with the record during the course of arguments. He narrated us the procedure for acceptance of tenders and stated that depending upon the value of the contract, the tender is sent to the authority concerned for approval. If the value of tender is more than Rs. 1.5 crores, (now two crores) it is sent for approval along with the recommendations to the Quartermaster General and as such, after completion of necessary formalities, the tender relating to Meerut Station for the period 1.4.2001 to 31.3.2002 was sent to the Quartermaster General Headquarter. He further explained as to how the averments regarding disassociation with the firm came before passing of the impugned order dated 21.4.2003. According to him, the decision on file was taken on 17.4.2003 as such, the averments regarding disassociation with the firm-petitioner came in the short counter-affidavit. When confronted with the specific query, as to why the firm was not allowed to participate in the tender process before passing of the Impugned order, the officer candidly stated that the petitioner's firm was not sanctioned subsequent tenders, the tender form in re-tendering process was not given and was also not allowed to participate on 3.4.2003 as the authorities have made up mind to start proceedings for removal of the petitioner from the approved list on account of failure to perform the contract sanctioned for the Meerut Depot.

21. Learned counsel for the respondents relying upon the decisions rendered by the Hon'ble Supreme Court in Joseph Vilangandan Vs. The Executive Engineer, (PwD), Ernakulam and Others, ; Grosons Pharmaceuticals (P) Ltd. and Another Vs. The State of Uttar Pradesh and Others, and a decision of this Court in M/s. Monica Plastic Pipes (P.) Ltd., Muzaffarnagar v. Director of Industries 1998 (16) LCD 388 (paragraph 23), contended that there is no statutory rule which requires that an approved contractor cannot be blacklisted without giving an opportunity of show cause. Suffice to say that the petitioner's name had been removed as per law is perfectly valid and in accordance with law after affording opportunity to show cause with regard to proposed action.

22. In the oft quoted cases of Joseph Vilangandan, the appellant agreed to do an item of construction work and agreement was entered into with the respondent. However, the work could not be commenced for certain reasons. The respondent wrote to the appellant to show cause why the work may not be arranged otherwise at your risk and loss, through other agencies after debarring you as a defaulter and making good the loss that may accrued to the department, from your subsisting contracts. The Hon'ble Supreme Court while quashing the order passed against the appellant, reiterated the principle enunciated in Erusian Equipment's case and observed that there were no words in the notice which could give a clear intimation to the addressee that it was proposed to debar him from taking any contract and the appellant was thus not afforded adequate opportunity to represent against the impugned action.

23. In Grosons Pharmaceutical (P.) Ltd. (supra), the grievance of the appellant

before the Hon''ble Supreme Court was that the order of blacklisting passed against him was against the principles of natural justice inasmuch as he had not been supplied with all the materials on the basis of which the charges in the show cause notice were based. The Hon''ble Supreme Court while dismissing the appeal observed as under :

"Admittedly, the appellant has only contractual relationship with the State Government and the said relationship is not governed by any statutory rules. There is no statutory rule, which requires that an approved contract cannot be blacklisted without giving an opportunity of show cause. It is true that an order blacklisting an approved contract results in civil consequences and in such a situation in the absence of statutory rules, the only requirement of law while passing such an order was to observe the principles of *audi alteram partem* which is one of facets of the principles of natural justice."

24. In another case on which reliance has been placed by the learned counsel for the respondents is of *M/s. Monica Plastic Pipes (P.) Ltd.* 1998 (1) AWC 2.48 (NOC) : 1998 (16) LCD 388. The facts of this case are that the U. P. Jal Nigam floated a tender for supply of P.V.C. pipes. The petitioner participated in the said tender and quoted Rs. 94.10 per meter for P.V.C. pipe and entered into a contract. On 25.1.1997, the Director sent a notice to the petitioner on the ground that the petitioner has violated the "Fall Clause" by quoting lower rate for supply of P.V.C. pipes to Jal Nigam and to show cause as to why the petitioner be not blacklisted and recovery of the difference amount be not made. After receipt of the supply three orders were issued including the order debarring and blacklisting the firm carrying on business with any Government department for a period of five years. Aggrieved by these orders, the firm filed a writ petition before this Court. This Court dismissed the writ petition holding that the firm, was afforded more than the reasonable opportunity of hearing. It is significant to mention that this Court while dismissing the writ petition had relied upon the proposition of law laid down by the Hon''ble Supreme Court in *M/s. Erusian Equipment and Chemicals Ltd. v. State of West Bengal*, (on this case reliance has also been placed by the learned counsel for the respondents) and *M/s. Southern Painters, Fertilizers v. Chemicals Travancore, Ltd.* In *Erusian Equipment* (supra) the Apex Court observed :

"That blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction.

Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist. The State, which has the right to trade, has also the duty to observe equality. The Government cannot choose to exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who has been dealing with the Government in

the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality."

25. It is important to add here that in M/s. Southern Painters (supra), which has been followed in M/s. Monica Plastic (supra) it was observed that the cry of natural justice is that prior notice and opportunity of being heard should be given before refusing to issue tender form to a qualified contractor and deleting his name from qualified contractor's list and blacklisting him for 10 years as personal and professional reputation of the contractor would be at stake.

26. We have examined the aforesaid cases relied upon by the learned counsel in light of the contention made by the learned counsel for the respondents but in none of the cases on which reliance has been placed by the learned counsel it has been articulated by the Apex Court or by this Court as suggested by him. On the contrary in all the aforesaid cases it has been emphasised that prior notice and opportunity of being heard is must before refusing to issue tender form to a qualified contractor and deleting his name from qualified contractor's list. In the instant case, no notice was given before refusing to participate in tender process in respect of Lucknow, Gwalior and Meerut Stations and further no plausible and valid reasons have been given for not sanctioning the tender held on 9.1.2003 and 4.2.2003 when even show cause notice was not issued for removal of the petitioner firm from the list of ASC contractors. It would be relevant to add at this place that the petitioner in the letter dated 12.4.2003 has indicated that without there being any reason, the tenders have not been sanctioned in his favour although, he has been found to be lowest tenderer and show cause notice relating to tender for the year 1.4.2001 to 31.3.2002 has been issued at this belated stage Just to deprive him aforesaid contract in which the petitioner was found to be lowest tenderer. In the said letter dated 12.4.2003, the petitioner firm has indicated its apprehension of being removed from the approved list of ASC contractors and the show cause notice is merely an empty formality as the show cause notice at this\\belated stage (26.3.2003) in respect of tender relating to 2001-2002 is to deprive the firm from securing any contract.

27. It may also be pointed out that Clause 28 provides for reinstatement of "removed" contractors and lays down that a firm which has been removed may not be restored on the approved list unless the firm satisfies the normal registration and the competent authority is satisfied the firm/contractor should be registered. In the same clause it is further provided that in no circumstance reinstatement shall be effected within two years from the date of firm/s contractors' removal from their approved list. A perusal of the impugned order would indicate that there is no mention of the period for which firm is being de-listed leading to a definite inference that it has been removed for all time to come. Omission of this material fact in the impugned order dated 21.5.2003, has also caused serious prejudice to the petitioner.

28. We further find that the authorities without giving any notice to the petitioner

to deposit the earnest money within a stipulated period recovered Rs. 2,54,400 from the other contract agreement of the petitioner (Bairagarh and Mhow station) ignoring the settled position of law that an order invoking civil consequences must be made consistently with the rules of natural justice and that they have a duty to proceed in a manner which is free from even the appearance of arbitrariness, unreasonableness or unfairness. (D.K. Yadav Vs. J.M.A. Industries Ltd.,). Similarly the Commandant at Meerut issued a letter dated 12.4.2002, directing to withhold the amount from pending bills of the petitioner out of any other contract held by him. This again was done without following minimum requirement of the principles of natural justice.

29. As far as release of earnest money is concerned even if it is assumed that the petitioner was the second lowest tenderer, as alleged by the petitioner, then too there was no occasion for the authorities to release the earnest money as clause 57 of the procedure for conclusion of ASC contract lays down in specific words that earnest money of all the tenderers will be retained till the finalisation of the deliberation by the panel of officers and the earnest, money of only three lowest tenderers will be retained till sanctioning of the contract. Needless to mention that there is no whisper in the counter-affidavit that the earnest money of the third lowest tenderer was retained till the sanction of contract.

30. Admittedly, the opposite parties did not pay any heed to the request of the petitioner that the issue regarding failure to perform the contract in respect of Meerut station in the year 2001 or whether the contract was rightly awarded was pending adjudication before this Court and further against the sanction of tender in favour of the petitioner M/s. Mohd. Alamgir and Company has filed Writ Petition No. 1557 (MB) of 2001. In our opinion, the authorities should have acted fairly, reasonably and would have waited for the final verdict in writ petitions.

31. We are satisfied with the submission made by the learned counsel for the petitioner that the authorities have implemented the decision not to transact with the petitioner's firm not only before passing of the impugned order but before issuance of the show cause notice. In the case of K.I. Shephard and Others Vs. Union of India (UOI) and Others, , which has been relied by the petitioner in support of his contention that the authorities have taken decision before passing of the impugned order, the Hon"ble Supreme Court articulated that once a decision has been taken, there is a tendency to uphold it and, representation may not yield any fruitful purpose. He has also relied on H.L. Trehan and Others Vs. Union of India (UOI) and Others, , wherein the Hon"ble Supreme Court reiterated its earlier view taken in K. I. Shepherd's case (supra), that there is a tendency to uphold the decision and the representation may not yield any fruitful purpose. In paragraph 12 of the report, the Hon"ble Supreme Court held as under :

"In our opinion, the post- decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance

of getting a proper consideration of the representation at such a post decisional opportunity."

32. It is settled principle that the authority, which takes administrative action, Involving any deprivation of or restriction on inherent fundamental right of a person, must proceed in a way, which is free from bias, arbitrariness, unreasonableness and unfairness. The person concerned must be informed of the case and given a fair opportunity to meet the case before an adverse action is taken. The order of removal from the approved list visits with civil consequence of jeopardising not only livelihood but also career and livelihood of dependents.

33. It is not every kind of bias, which in law is taken to vitiate an act. It must be a prejudice, which is not founded on reason. Some times it is impossible to determine it. But In the instant case, it is crystal clear that authorities have acted with bias attitude and the decision which was in pipeline, was implemented before its origin.

34. For the reasons discussed above, the writ petition is allowed and the order dated 21st April, 2003, passed by Major General, M.G. A.S.C. (Head Quarters) Central Command, Lucknow, is hereby quashed. Consequent to this, the petitioner firm shall not be treated as unregistered firm.

35. Costs easy.