

(2016) 04 MEG CK 0004
In the Meghalaya High Court
Case No : Writ Petition (C) No. 115 of 2016

Shri Gangadhar Dewan

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 08-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 NEJ 88

Hon'ble Judges : Mr. Dinesh Maheshwari, CJ.

Bench : Single Bench

Advocate : Mr. R. Choudhury, Advocate, for the Petitioner; Mr. K. Paul, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Dinesh Maheshwari, C.J.(Oral) - The petitioner Shri Gangadhar Dewan, stating himself to be the proprietor of the firm "M/S Mahesh Kumar and Brothers" and being registered as Wet Canteen Contractor with the respondents, has filed this writ petition seeking the following reliefs: -

"Issue Rule. Asking the Respondents as to why a writ of mandamus and/or any other writ or writ of like nature be not issued, directing the Respondents to allow your petitioner to continue in the business in the terms and condition of the memorandum of agreement dated 01.04.2014 by way of review and renewal thereof beyond 31.03.2016 as per provision of circular dated 17.12.2015 (Annexure-4) and after hearing the parties be pleased to quash and set aside the letter No. PRI/11016/Non-CSD/2015/717, dated 25th March 2016 and make the rule absolute. Further be pleased to direct the Respondents particularly the respondent No. 2 and No. 4 to give effect memorandum of agreement dated 01.04.2014 and review the said memorandum of agreement for further period of 5 (five) years. And also be pleased to pass necessary order/orders directing the respondents to assess the amount of annual premium as per Govt Rates as applicable."

2. The petitioner has claimed the reliefs aforesaid with reference to the facts that he was managing the Wet Canteen and Grocery Shops of the respondents since long and in the last, entered into an agreement on 01.04.2014 (Annexure II) for running and managing the Wet Canteen and Grocery Shop at Headquarters Manipur Range, Assam Rifles; and that he had been carrying on the work under the agreement so executed between the parties without any cause of complaint.

3. According to the petitioner, though the earlier Guidelines for the functioning of Non CSD/Ancillary Shop provided that the period of such agreements shall be of two years but then, the operating procedure was amended on 17.12.2015; and the following clauses came to be substituted in paragraphs 4 (a), (b) and (c):-

"(a) All contracts will be normally effective w.e.f. 01 Apr for a period of two years. However they may be cancelled at any time by the competent authority without assigning any reason.

(b) The contracts may be extended annually for a max period of five years. The same will be approved by one up in the chain.

(c) Stn/unit BOO's will decide the annual increment in rebate for such extensions."

4. The petitioner has also indicted that as per clause 24 of the said Guidelines, he had indeed exercised the option of getting his contract renewed and made a submission in that regard to the authorities concerned as back as on 30.12.2015. According to the petitioner, having exercised such an option, he was confident of the renewal of his contract but then, the respondents proceeded to issue the Notice Inviting Tenders (NIT) for award of the contract in question for the years 2016-2018 whereupon, he made a representation dated 08.03.2016 to the Directorate General, Assam Rifles seeking cancellation of the NIT and for renewal of his contract. The petitioner asserts that on 16.03.2016, specific instructions were issued by the Directorate General Assam Rifles for renewal of his contract (Annexure VIII) and yet, even while ignoring such binding instructions, the authorities of Manipur Range proceeded to cancel his contract on 31.03.2016 and directed him to vacate the shop in question on 01.04.2016.

5. Learned counsel for the petitioner though has made detailed submissions in conformity with the averments taken in the writ petition but when queried on the form of this petition where Notice Inviting Tenders dated 29.02.2016 has neither been placed on record nor challenged, the learned counsel responded with the submissions that the petitioner did not participate in the said tender process; and for the claim of renewal and continuance of his contract, the NIT was not required to be challenged by the petitioner. However, the learned counsel for the respondents has immediately countered with the submissions and that the petition suffers from the shortcoming of concealment of material facts that the petitioner indeed participated, and remained unsuccessful, in the tender process under the NIT dated 29.02.2016. Learned counsel for the respondents has placed before the Court for perusal, amongst others, the proceedings of the said tender

process wherein three persons participated and has particularly referred to the tender form submitted by the petitioner, Shri Gangadhar Dewan. The copies of papers placed for perusal were also supplied to the counsel for the petitioner. Faced with this projection of facts by the respondents, learned counsel for the petitioner prayed for some time to contact his client and to take instructions; and the matter was passed over, so as to enable the learned counsel to complete his instructions.

6. In the second round of call, the learned counsel for the petitioner has responded with the submissions that according to his instructions, the petitioner's firm of this writ petition viz., "M/S Mahesh Kumar and Brothers" did not participate in the tender process under the NIT dated 29.02.2016 and rather, the participation had been of a different firm viz., "Ch. Jagannath Madanlal". The learned counsel for the petitioner submits that the petitioner Shri Gangadhar Dewan does not dispute the fact that the referred tender form carries his signatures, but maintains that the petitioner firm M/S Mahesh Kumar and Brothers did not participate in the tender process.

7. Having considered the matter in its totality, this Court is clearly of the view that this writ petition deserves to be dismissed; and for that matter, with heavy costs.

8. The petitioner, even while seeking the relief in the writ petition for renewal/continuance of his contract, has chosen not to question the process under the NIT dated 29.02.2016 nor has claimed any relief in that regard. The writ petition as framed is even otherwise incomplete and no effective relief could be granted to the petitioner because of the fundamental reason that even before filing of the petition, the fresh tender process for the contract in question had already been completed resulting in creation of the rights in a third party; and the third party's rights cannot be done away with in this petition as framed.

9. Not much of further comments on frame of the petition appear necessary because this petition is also required to be dismissed on the conduct of the petitioner where he has failed to approach the Court with clean hands and clear conscience; and has concealed the significant and material facts about his participation in the tender process for the same contract. It is evident on a bare look at the averments in the petition that even while elaborating on several other factual aspects including the fact of issuance of NIT, the petitioner avoided to state any fact regarding his participation in the tender process. Then, the suggestion as made on behalf of the petitioner by the learned counsel after taking instructions only exacerbates the shortcomings in the conduct of the petitioner.

10. The copy of tender form placed for perusal by the counsel for the respondent makes it clear that it was distinctly signed by the petitioner Shri Gangadhar Dewan as proprietor of the firm "Ch. Jagannath Madanlal". The fact is not disputed by the learned counsel for the petitioner that the said tender form

indeed carries the signatures of the petitioner. The suggestion that a different firm participated in the tender process is only a crude and rather baseless attempt on the part of the petitioner to cover-up the fatal flaw of concealment of material facts.

11. It remains trite that a proprietorship is a business entity that is owned by one individual and in which, there is no legal distinction between the owner and the business. Thus, a proprietorship firm, whatever be its name, is essentially the business identity of an individual and nothing else. In the present case, though the tender form was submitted in the name "Ch. Jagannath Madanlal" but exclusively with the signatures of the petitioner Shri Gangadhar Dewan as the tenderer; and then, the seal impressions on the tender form clearly show that the petitioner projected himself as the "proprietor" of the tenderer firm "Ch. Jagannath Madanlal". Thus, for the purpose of the tender in question, even if the petitioner adopted another business name, the fact remains that the two firms, i.e., the writ petitioner (M/s Mahesh Kumar and Brothers] and the tenderer (Ch. Jagannath Madanlal) are, for all practical purposes and legal implications, nothing but the business names of the petitioner Shri Gangadhar Dewan; and are of his exclusive ownership.

12. It is rather strange that even in the face of such simple and crystal clear facts, the petitioner Shri Gangadhar Dewan has chosen to instruct the learned counsel to the effect that a different firm participated in the tender process and not the petitioner firm. Such an attempt on the part of the petitioner is clearly indicative that he has no respect for the basic principles of fair play and the requirement of being forthright with the Court.

13. Although the writ petition itself is a baseless one relating only to the contractual matter with no legal right in the petitioner but, on the attempt as made, of concealment of the material facts and then, coming out with the face of pretension, this Court is clearly of the view that the petitioner deserves to be saddled with heavy costs while dismissing this writ petition.

14. Accordingly, this writ petition is dismissed with costs of Rs. 1,00,000 (Rupees one lakh) 50% of this amount of costs shall be paid by the petitioner to the contesting respondents and the other 50% shall be deposited with the Meghalaya State Legal Services Authority.

15. The petitioner shall be required to make the payment and to deposit the amount of cost positively within 30 (thirty) days from today and to produce the receipts on the record of this petition. If the petitioner fails to carry out the requirement of payment/deposit within time, the Registry shall send the information to the respondent No. 2, Director General Assam Rifles, who shall be under obligation to make recoveries from the petitioner and, after adjusting the amount payable to the respondents, to deposit the remaining amount with the Meghalaya State Legal Services Authority.