
(2002) 04 DEL CK 0085

In the Delhi High Court

Case No : CW No. 134 of 2001 and CM 232 of 2001

Shri J.P. Aggarwal

APPELLANT

Vs

Director General of Works and Others

RESPONDENT

Date of Decision : 29-04-2002

Acts Referred:

Constitution of India, 1950 — Article 19, 21

Citation : (2002) 7 AD 142 : (2002) 3 ARBLR 426 : (2002) 99 DLT 44

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : R. Rajappan, for the Appellant; Maninder Acharya, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—The petitioner by this writ petition seeks a writ of mandamus directing the respondents to immediately revalidate the registration of the petitioner and permit him to participate in the tenders for Class-II (B & R) Contractors. Petitioner also seeks quashing of the memorandums dated 1.7.1994, read with memorandum dated 13.10.1991, 12.12.1994, 27.6.1995, 17.10.1995 setting out the requirements for revalidation of enlistment of contractors in CPWD in respect of Class-I and V, declare the same as irrational, biased, discriminatory, defective and quash the same as violative of Articles 19 and 21 and other relevant provisions of the Constitution of India. Petitioner also assails memorandums dated 6.6.2000, 21.8.2000 and 11.10.2000.

2. Counsel for the petitioner, during the course of arguments confined his submission and relief to direction to the respondents for renewal of the enlistment of the petitioner as Class-II contractor. Petitioner and other contractors were granted revalidation of their enlistment vide the office order No. 44/95(B & R) dated 20.11.1995, appearing at page 120 of the paper book Annexure-P.11. This enlistment was for a period of 5 years. Learned counsel for the petitioner in support of his case states that the petitioners were entitled to

revalidation and relies on condition No. 11. The said condition reads as under :

"11. The revalidation of enlistment notified in this order is valid for a period of 5 (five) years with effect from 1.12.1995. The contractors will be required to apply for revalidation of their enlistment 3 months before the expiry of their enlistment. In case they fail to execute any work during this period, the enlistment of the contractor is liable to be not revalidated."

3. Learned counsel for the petitioner submits that the only requirement as per the above condition for revalidation is to apply 3 months prior to the expiry and to give particulars of the work executed. Revalidation is to be granted unless work is not executed. Learned counsel submits that it is not in dispute that the petitioner during the last 5 years has executed the works, particulars of which are given at annexure P. 12 to P. 17. Counsel submits that the said memorandum did not prescribe any minimum limit of work or magnitude thereof, which was required to be executed. The revalidation of petitioner enlistment was governed by the condition, as given in the said memorandum and the respondents are precluded from enforcing any fresh conditions or a criteria for denying renewal of the enlistment to the petitioner.

4. Counsel further submitted that the respondents had sought to frame certain rules for enlistment dated 19.7.1999, however the operation of these rules was been kept in abeyance by virtue of the order dated 16.8.1999, pending consideration by a Committee, which appears at page 117 Annexure P. 10. Learned counsel for the petitioner assails the requirement as communicated by the respondents by Annexure P. 10 (colly) i.e. communication No. C-14-423/II/B&R/325 dated 11.10.2000, in terms of which the petitioner was asked to furnish a solvency certificate of Rs. 60 lacs issued by the RBI, Income Tax Clearance Certificate and the list of works submitted costing more than Rs. 25 lacs, during the last 5 years to enable revalidation. Counsel submits that the said conditions, which are sought to be imposed by the respondents, can only be imposed or insisted in cases of fresh enlistment. It is not permissible for the respondents to impose these conditions for renewal or revalidation of the enlistment. He submits that the condition of a minimum work of Rs. 25 lacs is contrary to the condition of para 11 of Order 20.11.1995, which only required the petitioner to have executed some works and no minimum quantum had been specified for grant of renewal.

5. Class-II contractors in CPWD are permitted to submit tenders for works up to a tendered limit of Rs. 1 crore. However, as noticed in the memorandum dated 14.9.1995, the minimum work to be executed in the last 5 years for revalidation was Rs. 25 lacs. Counsel also refers to the office memorandum dated 14.9.1995, appearing at page 195 of the paper book, wherein the enhancement of tendering limits and revision of eligibility criteria for applicants seeking enlistment in various classes of contractor is given. First para of this memorandum is relevant. It reads as under :

"It has been decided to revise the tendering limits of CPWD contractors enlisted in various categories/clauses as well as eligibility criteria for contractors seeking fresh enlistment, following criteria regarding cost of works (three works each of the specified magnitude) required to be completed during the last 5 years and the minimum limits of solvency certificate to be obtained, will be applicable in respect of all applications received on or after 15.9.95. Applications received up to 14.9.1995 for enlistment will be processed on the basis of criteria contained in Ministry of Urban Development O.M.No. 28012/29/91-113 dated 9.4.92 reproduced in DG(W) O.M. referred to above.

CATEGORY TENDERING LIMITS VALUE OF MACH. MINIMUM LIMIT OF AS
REVISED COMPLETED WORK SOLVENCY CERTIFICATE (MINIMUM) DURING THE
LAST 5 YEARS -----

BUILDING & ROADS

Class I up to Rs. 5 crores(**) Rs. 60 lakhs Rs. 2 Crores. Class II up to Rs. 1 Crore Rs. 25 lakhs Rs. 60 lakhs Class III up to Rs. 40 lakhs Rs. 10 lakhs Rs. 25 lakhs Class IV up to Rs. 15 lakhs Rs. 3 lakhs Rs. 10 lakhs Class V up to Rs. 5 lakhs Nil Dispensed with. (**) To be applicable after enlistment of contractors in Class I A.

It is with regard to this particular memorandum and the interpretation thereof, on which parties are at variance. Counsel for the petitioner contends that the said memorandum is not applicable as it is applicable for those seeking fresh enlistment. I am unable to accept this submission. The opening words of this memorandum are :-

"It has been decided to revise the tendering limits of CPWD contractors enlisted in various categories/clauses as well as eligibility criteria for contractors seeking fresh enlistment.

From the foregoing it is clear that it revises tendering limits of these enlisted as also revises criteria for these seeking fresh enlistment. It is this very memorandum, which goes on to prescribe a minimum value of completed work in 5 years of Rs. 25 lacs, as well as the solvency certificate of Rs. 60 lacs. Learned counsel for the petitioner then submitted that the respondents had granted renewal of enlistment to the petitioner on 28.11.1995, in terms of the memorandum which was in existence on 14.9.1995, without insisting upon either the execution of work of Rs. 25 lacs or for that matter, the solvency certificate of Rs. 60 lacs.

6. Learned counsel for the respondent refuting the submissions made referred to the memorandum dated 12.12.1994 bearing No. DGW/CON/77/A&C Annexure-P.4, which was in existence even at the time of grant of enlistment to the petitioner. The relevant portion of the said memorandum provided as under:

"In order to be eligible for revalidation, the contractors should have satisfactorily executed atleast one work in CPWD of the magnitude as per criteria for

enlistment in appropriate Class in CPWD, in the last five (5) years. The contractors should furnish details of every work of such magnitude and above, executed by them in CPWD during this period. In case they have not completed any work, details of work in progress may also be given."

7. Having considered the rival contentions and provisions of the various memorandums, as noticed above, I am of the view that though the re-validation to the petitioner was granted on 29.11.1995, the non-insistence by the respondents on the petitioner furnishing details of works executed during the last 5 years as also the insolvency certificate in terms of memorandum of 14.11.1995, will not confer on the petitioner any vested right to insist that the said conditions be ignored even for the fresh re-validation after a period of 5 years. The petitioner cannot claim any right or privilege to receive different treatment once the policy with regard to requirement of works of magnitude of Rs. 25 lacs in the last five years as also the solvency certificate of Rs. 60 lacs is being enforced uniformly. There is also rationale and justification for insistence upon the solvency certificate. It can be seen that a Contractor who is enlisted in class-II with a tendering limit of Rs. one Crore, can simultaneously quote for different works within the limit of Rs. one Crore. Hence the respondents' action in introducing a condition to ensure financial soundness by requiring solvency certificate of Rs. 60 lacs being furnished cannot be regarded as an arbitrary condition. Besides, a solvency certificate of Rs. 60 lacs does not mean requiring a minimum bank balance of Rs. 60 lacs. The certificate is to be issued by the Bank, considering the financial liquidity and the capacity of the Contractor to execute works within the tendering limit of Rs. one Crore. The issuance of insolvency certificate is based on well established financial principle and criteria adopted by the Banks and financial institutions. Besides, there is no challenge to the eligibility condition or the condition with regard to the solvency certificate. The decision of a Division Bench of this Court in CWP No. 2591/1994 titled Bhupinder Kumar Sahni and Ors. v. Union of India and Ors." also lends support to the respondents' case.

8. In view of the foregoing discussion, I find that the petition has no merit and is liable to be dismissed. The petitioner is bound to comply with the eligibility conditions for revalidation. As discussed, the writ petition fails and is dismissed.