

IN THE HIGH COURT OF DELHI AT NEW DELHI

W. P. (C) 459 of 2010 & CM APPL 930/2010

Reserved on: May 13, 2011

Decision on: June 01, 2011

M/S. ROSHNI ENTERPRISES
THROUGH ITS PROPRIETOR

..... Petitioner

Through: Mr. A. Mariarputham, Senior Advocate with
Mr. Arvind Kumar Sharma and Ms. Megha Gaur,
Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Saqib with Mr. Ankur Chhibber,
Advocates for R-1 to 3.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be
allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

JUDGMENT

01.06.2011

1. This is the third round of litigation concerning the Petitioner's application dated 13th December 2006 for re-verification of its status as an Army Sustainment Command ('ASC') contractor by the Headquarters Western Command of the Army, Respondent No. 3 herein. The challenge in this petition is to the order dated 26th October 2009 as further amended by an order dated 31st October 2009 by Respondent No. 3 declining the Petitioner's request for re-verification as an approved ASC contractor.

2. The Petitioner M/s. Roshni Enterprises, is a proprietary concern of which Mrs. Roshni Devi wife of Shri D.P.S. Sangwan is the proprietor. The Petitioner made an application dated 28th November 1995 for registration as an approved ASC contractor. The Petitioner was granted registration on 19th December 1996. After

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re-verification the Petitioner was again registered as an approved ASC contractor on 7th January 2002 and this was valid up to 6th January 2007.

3. On 14th August 2006 Respondent No. 1 wrote to the Petitioner advising it to get itself re-verified well in time. A copy of the relevant form was also enclosed. The letter stated that in the event the re-verification was not completed before 6th January 2007 the Petitioner's name would be removed from the approved list of ASC contractors.

4. On 8th December 2006 Respondent No. 3 forwarded to Respondent No. 4, i.e., Deputy Director of Supply & Transport ('DDST') Headquarters at Delhi Cantonment for further processing the Petitioner's application dated 30th November 2006 for re-verification. The Petitioner on 11th December 2006 forwarded to the DDST the documents as asked by it on 8th December 2006. On 13th December 2006 Respondent No. 4 again asked the Petitioner to submit an application form. On 19th January 2007, Respondent No. 4 wrote to the Petitioner stating that there are certain shortcomings in the application as observed by the Board of Officers ('BOO'). The Petitioner was asked to resubmit the duly rectified application in a sealed envelope by registered post for further handing over to BOO and scrutiny of the same. On 20th January 2007 the Petitioner offered an explanation to the Additional Director of Supply & Transport ('ADST') clarifying that Mrs. Roshni Devi had not carried out any business activity during the year 2003-04 and that the only source of income was the interest amounting to Rs. 33,760/- (net after deduction). A copy of the latest income tax return and a letter from the State Bank of India ('SBI'), Delhi Cantonment for change of address were also enclosed. On 28th February 2007 the ADST again notified the Petitioner about certain shortcomings. In response thereto, on 5th March 2007 the Petitioner further clarified as under:

"1. (a) That the subject property No. WZ-169A, Lajwanti Garden, New Delhi – 110046 belongs to me and I am the owner of subject property. The property is not at all rented out and is in my possession.

(b) that as another property is a agricultural land and it is in my full possession, walls on this property cannot be drawn being a agricultural land.

(c) photographs of both the properties are enclosed.

2. The FDR submitted along with the application form is from 14th December 2006 to 12th December 2013, i.e. seven years whereas your requirement should not be less than six years. Hence the observation made by the Board of Officers is not correct”.

5. On 15th March 2007 Respondent No. 2 DDST wrote to the Petitioner asking for an affidavit to be submitted which was done by the Petitioner on 17th March 2007. By a letter dated 10th January 2007 the Petitioner requested for completion of the re-verification at the earliest so that the Petitioner would be able to participate in the tender contract process for the year 2008-09. The Petitioner had clarified in its letter that at present it was operating from WZ-169, A/5, Lajwanti Garden, New Delhi – 110046 and that it was not allied with any other firm.

6. Aggrieved by the non-completion of the re-verification, the Petitioner, on 18th December 2007, filed W.P. (Civil) No. 9529 of 2007 in this Court for a direction to the Respondents to complete the re-verification at an early date. The Petitioner pointed out that in terms of Clause 2 (d) of Appendix B to the ‘Revised Procedure for Conclusion of ASC Contracts for Perishable Items’ issued by the Ministry of Defence, Government of India on 26th September 2006 (hereafter ‘Revised Procedure’), re-verification had to be completed within a period of 15 days.

7. When the writ petition was taken up for hearing on 26th February 2008 a detailed order was passed by this Court directing the re-verification to be completed within one week. Thereafter on 4th March 2008, Respondent No. 3 rejected the Petitioner’s request for re-verification for the following reasons:

“(a) Your firm is an allied firm of M/s. DPS Sangwan and M/s. Sangwan Trading which have been suspended. Since suspension is extendable to allied firms, re-verification of your firm cannot be completed.

(b) Your case for re-verification has not been recommended by HQ Delhi Area being allied firm of a/m firms.

(c) Affidavit given by you regarding sole proprietorship of M/s. Roshni Enterprises is not matching with report of Deputy Commissioner of Police wherein it is stated that Shri DPS Sangwan and Smt. Roshni Devi are directors of M/s. Roshni Enterprises. This

tantamount to production of incorrect affidavit. Photocopy of Deputy Commissioner, Special Branch, Delhi report No. 9201/CV-11/CVR/SB, dated 6th September 2007 is attached for ready reference.”

8. The above decision was brought to the attention of this Court when the petition was heard on 10th March 2008. The Petitioner was given liberty to challenge the rejection by a substantive writ petition. The Petitioner then filed W.P. (C) No. 2702 of 2009 challenging the order dated 4th March 2008. On 19th May 2009 a detailed order was passed by this Court disposing of W.P. (C) No. 2702 of 2009. Before the Court it was pointed out by Petitioner that the Deputy Commissioner of Police (‘DCP’), Special Branch Delhi had, on 10th January 2008 confirmed to the Army Authorities, that the Petitioner is functioning from the address given in the application since November 2006; and Mrs. Roshni Devi is the proprietor of the Petitioner and nothing adverse has been found against her. By a further letter dated 17th January 2008 Headquarters, Delhi Area informed Headquarters, Western Command that nothing adverse was found against the Petitioner as per the police report. This Court noted that the order dated 4th March 2008 did not refer to any of these letters. The Petitioner also pointed out that the Respondents did not confront or allege that M/s. Roshni Enterprises was an allied firm of M/s. DPS Sangwan and M/s. Sangwan Trading, which had been placed under suspension. This was not put to the Petitioner and therefore, no opportunity was given to explain that M/s. Roshni Enterprises was not an allied firm. In particular, the Petitioner relied upon para 29 sub-clause (d) of the Revised Procedure which defines the term ‘allied firms’ as “all firms/companies, which come within the sphere of effective influence of the banned/suspended firms/proprietorship/companies.” Certain factors were listed out for determining whether an entity was an allied firm. The Petitioner contended before the Court that the Petitioner’s concern and the other concerns, i.e. M/s. DPS Sangwan and M/s. Sangwan Trading were operating from separate addresses. However, this was not examined as this Court felt that the Petitioner had never been confronted with the above objection. This Court observed that “as the matter is being remitted back for fresh decision, the question of allied firms can also be examined by the Respondent authorities”. Consequently, the following directions were issued by this Court:

“8. The Petitioner is given liberty to file additional documents along

with a supporting affidavit with the Respondents within three weeks. In case they reject the Petitioner's request for reverification, the speaking order will deal with the letter issued by Deputy Commissioner of Police, Special Branch, Delhi dated 10th January 2008 and the letter dated 17th January 2008. They shall also deal with the question of allied firms and the contention of the Petitioner. The reverification application will be disposed of within a period of one month after the Petitioner files his affidavit in term of the order passed today. The order dated 4th march 2008 is set aside. The Petitioner will be at liberty to seek redressal of grievance in case of an adverse order”.

9. Thereafter the impugned order dated 26th October 2009 was passed by Respondent No. 3 rejecting the Petitioner's request for re-verification in view of the provisions of paras 17 (b) and 34 (b) of the Revised Procedure and in particular for the following reasons:

“(a) Address of your firm i.e. M/s. Roshni Enterprise (Proprietor Smt. Roshni Devi) has been shown as WZ-156, Lajwanti Garden, New Delhi – 46 as per Bank Report, PAN Card and Vehicles details read from Government of National Capital Territory of Delhi, Transport Department, 5/9 Under Hill Road, Delhi – 54. The mentioned address is common to followings firms, which have been suspended earlier by Army authorities:-

(i) M/s. Sangwan Trading (Proprietor Jai Prakash brother of Smt. Roshni Devi).

(ii) M/s. Sangwan Enterprise (Proprietor Deepak Sangwan son of Smt. Roshni Devi).

(b) Your new address WZ-169A/5, Lajwanti Garden, New Delhi – 46 has not been verified by civil authorities.

(c) During reverification process, it has emerged that Smt. Roshni Devi (Proprietor of M/s. Roshni Enterprises) has blood relations with Shri Jai Prakash (Proprietor of M/s. Sangwan Trading) and Shri Deepak Sangwan (Proprietor of M/s. Sangwan Enterprises). Thus M/s. Roshni Enterprises is an allied firm of M/s. Sangwan Trading and M/s. Sangwan Enterprise and both these firms have been suspended by Army.”

10. Soon thereafter on 31st October 2009, the Respondent issued a correction to the aforementioned order dated 26th October 2009 in the following terms:

“2. Following amendment may please be made in our above quoted

letter under reference as the same has erroneously been typed by mistake –

(a) FOR

Para 2 (a) (ii) - M/s. Sangwan Enterprise (Proprietor Deepak Sangwan son of Smt. Roshni Devi.

(b) READ

Para 2 (a) (ii) – M/s. DPS Sangwan (Proprietor DPS Sangwan husband of Smt. Roshni Devi).”

11. When the letters dated 26th October 2009 and 31st October 2009 are read together, the grounds for rejecting the Petitioner’s request for re-verification can be summarized as under:

(a) The address of the Petitioner and the addresses of two other concerns, which had been suspended earlier by Army authorities, were found to be same;

(i) M/s. Sangwan Enterprises (proprietor DPS Sangwan, husband of Mrs. Roshni Devi);

(ii) M/s. Sangwan Trading (proprietor Jai Prakash brother of Mrs. Roshni Devi).

(b) the new address WZ-169A/5, Lajwanti Garden, New Delhi has not been verified by civil authorities;

(c) Mrs. Roshni Devi has blood relations with Mr. Jai Prakash, proprietor of M/s. Sangwan Trading and Mr. DPS Sangwan, proprietor of M/s. Sangwan Enterprises. Consequently, Roshni Enterprise is an allied firm of M/s. Sangwan Trading and M/s. Sangwan Enterprise, both these firms have been suspended by the army authorities.

12. The clarification as regards para (a) by the subsequent amendment issued on 31st October 2009 ought to hold good for para (c) as well. The reference to M/s. Sangwan Enterprises ought to be read as a reference to M/s. DPS Sangwan of which Mr. DPS Sangwan was the sole proprietor.

13. The present petition was filed, *inter alia*, on the ground that the same reason has been given by Respondent No. 3 for rejecting the Petitioner's request for re-verification without any application of mind. Numerous documents had been submitted by the Petitioner including the bank documents, PAN Card, income tax returns and vehicle details which showed that the Petitioner had no relation with any other concern. It was asserted that the Petitioner's concern has no nexus with the management of other concerns. It was pointed out that pursuant to a reference made in this behalf by the Head Quarters (HQ) Delhi Area, Col. R.N. Raina, 505 Army Base Workshop had sent a letter on 29th September 2007 verifying the correctness of the Petitioner's changed address at WZ-169A/5 Lajwanti Garden. Further, in para 13 of the writ petition the Petitioner has reproduced an order passed by the BOO presided by Col. Raina as under:

“The following have been checked and verified for correctness by the Board of Officers in terms of GOI, MOD letter quoted above:

- (a) Application for registration and other connection documents produced by firm.
- (b) Verification obtained from civil authorities.
- (c) Physically verified immovable property and visited business premises of the applicant. The residential address of the firm is same as the address for business.”

14. Significantly, the above position is not disputed in the counter affidavit of the Respondents. On 10th January 2008 the Deputy Commissioner of Police (DCP), Special Branch, Delhi confirmed in writing to Col. Raina that the Petitioner “has been functioning at WZ-169-A/5 Lajwanti Garden, New Delhi-46 since November 2006. Nothing adverse has been found against the aforesaid firm and proprietor Smt. Roshni Devi as per the record of concerned police station as well as this office.” It is on this basis that on 17th January 2008 the HQ Delhi Area wrote to the HQ Western Command confirming the status of the Petitioner in the same terms.

15. The Petitioner submitted that re-verification was being denied only to deprive it of participation in the tenders for the financial year 2010-11. In particular, a reference is made to the clarification issued by the Quarter Master General, **W.P. (C) No. 459 of 2010**

Integrated Headquarters of MOD (Army), Delhi in November 2009 on the definition of 'allied firm'. It is submitted that the view taken in the impugned order is contrary to the said clarification in terms of which the Petitioner cannot be said to be an allied firm of M/s. DPS Sangwan or M/s. Sangwan Trading.

16. Notice was issued in this writ petition on 22nd January 2010. It is only after imposition of costs by the order dated 29th April 2010 that a counter affidavit was filed on 17th May 2010. The stand taken in the counter affidavit is as under:

“(i) Mrs. Roshni Devi was only a front and it was actually Mr. DPS Sangwan and Mr. Jai Prakash Sangwan who were operating the Petitioner concern. Those concerns earlier were operating from the same address as the Petitioner, i.e. WZ-156, Lajwanti Garden, New Delhi – 110046.

(ii) The Petitioner is an allied concern of M/s. DPS Sangwan and M/s. Sangwan Trading which has been suspended/blacklisted by Respondent. Since the suspension was extendable to allied firms, the re-verification of the Petitioner concern was not carried out. In particular, it is pointed out that the definition of 'allied firm' is given in the clarification issued by the Quartermaster General, Integrated Headquarter of MOD (Army) in November 2009. Since the Petitioner concern was operated by the husband and brother of Mrs. Roshni Devi, the Petitioner concern has the same management and is working in tandem with the said two banned firms.

(iii) The affidavit given by the Petitioner regarding the sole proprietorship of M/s. Roshni Enterprises did not match with the report dated 6th September 2007 wherein it was stated that Mr. DPS Sangwan and Mrs. Roshni Devi are directors of M/s. Roshni Enterprises.

(iv) The documents were submitted by the Petitioner by a letter dated 6th June 2009 whereas the affidavit tendered along with the documents was notarized on 8th June 2009. This was “sufficient proof of the dishonest conduct of the Petitioner”.

(v) Three of the CNG buses in the list of buses given in the affidavit of M/s.

Roshni Enterprises were also mentioned in the affidavit of M/s. Sangwan Enterprises forwarded by a letter dated 7th March 2009.

(vi) The address mentioned by Petitioner on the PAN card as well as the various communications from the SBI tendered by the Petitioner for verification, was WZ-156, Lajwanti Garden, New Delhi whereas the Petitioner is now operating from WZ-169A/5, Lajwanti Garden.

(vii) The Petitioner despite reminder did not apply for its re-verification within time, i.e. six months prior to the expiry of its registration.

(viii) The bank statement of the Petitioner for the period of 1st January 2008 to 24th February 2010 unmistakably pointed towards the fact that the Petitioner's firm as well as M/s. Sangwan Enterprises are allied firms as "there are a great number of transfer of funds between the two firms regularly".

17. This Court has heard the submissions of Mr. A. Mariarputham, learned Senior counsel appearing for the Petitioner, Mr. Saqib and Mr. Ankur Chhibber, learned counsel for Respondents 1 to 3.

18. During the course of hearing, learned counsel for Respondents referred to a large number of documents some of which were not enclosed with the counter affidavit. Consequently, on 3rd May 2011 this Court passed the following order:

"1. During the course of arguments, counsel for the Respondents referred to a large number of documents, which do not form part of the pleadings as of today.

2. It is also not known whether the submissions now urged by way of reply to the arguments of the learned Senior Counsel for the Petitioner were the very reasons that weighed with the decision-making authority when the impugned decision to deregister as an ASC Contractor was taken.

3. For this purpose, the note sheet on file in which such decision was taken becomes important.

4. It is, accordingly, directed that a responsible officer of the Respondents will file a proper affidavit enclosing each of the documents now sought to be relied upon in reply. The affidavit

should also enclose the photocopies of the relevant note sheets in the file which would reflect what weighed with the decision-making authority. The originals of the file will also be kept ready for perusal by Court on the next date.

5. The affidavit be filed within one week from today with an advance copy to the counsel for the Petitioner.

6. List on 13th May, 2011.

7. Matter will be treated as part-heard.”

19. Pursuant to the above order, the Respondents tendered a supplementary affidavit bringing on record certain additional documents. It is now stated in the supplementary affidavit that the verification documents in respect of the Petitioner that were received from various departments were scrutinized by the BOO and the Brigadier ASC HQ. The minute sheet regarding refusal of recommendation for re-verification of M/s. Roshni Enterprises has been enclosed with the supplementary affidavit.

20. One of the central concerns in the present matter in the third round of litigation is whether there was material on record to justify the making of the impugned order dated 26th October 2009 as clarified by the order dated 31st October 2009 by Respondent No. 3.

21. At the outset, this Court would like to observe that while exercising its writ jurisdiction under Article 226 of the Constitution, particularly when the writ sought is of certiorari, this Court has to be satisfied that the decision under challenge is based on the records of the case. Further, that relevant material was considered and material not relevant was kept out of consideration while arriving at the decision. Next, the reasons for the decision have to be spelt out in the decision itself. The material referred to in the order must form part of the record. The decision under challenge cannot be justified on the basis of material which was not considered at the time the decision was taken. As a corollary, the reasons for the decision cannot be supplied by means of an affidavit filed subsequently in proceedings challenging the decision. The legal position is well settled, and was explained by the Supreme Court in *Mohinder Singh Gill v. Chief Election Commissioner (1978) 1 SCC 405*.

22. The impugned order dated 26th October 2009 as clarified by the subsequent order dated 31st October 2009 require to be examined keeping in view the above legal position and the background facts as narrated. The reasons for refusing the Petitioner's request for re-verification as an approved ASC contractor, as contained in the impugned orders can be summarized as under:

- (a) That the Petitioner is an allied firm of M/s. Sangwan Trading (proprietor of which Mr. Jai Prakash brother of Smt. Roshni Devi, proprietor of the Petitioner concern) and M/s. Sangwan Enterprises (proprietor of which is Mr. DPS Sangwan, husband of Mrs. Roshni Devi);
- (b) Both M/s. Sangwan Trading and M/s. DPS Sangwan are blacklisted firms; and
- (c) The address at WZ-169A/5, Lajwanti Garden, New Delhi was not verified by the civil authorities.

23. As regards the non-verification of the address, the Petitioner has relied upon the letters dated 30th August 2007 written by DDST to Col. R.N. Raina, the letter dated 29th September 2007 by the latter to the HQ verifying the address of the Petitioner as WZ-169A/5, Lajwanti Garden and the letter dated 10th January 2008 from the DCP, Special Branch, Delhi to the Col. R.N. Raina which stated that on enquiries it was revealed that M/s. Roshni Enterprises has been functioning at WZ-169-A/5, Lajwanti Garden, New Delhi – 46 since November 2006 and that “nothing has been found adverse against the above said firm & proprietor Smt. Roshni Devi as per the record of concerned police station as well as this office”. In the light of the above documents, which have not been disputed by the Respondents, and in the absence of any material to the contrary, the Respondents were not justified in again citing the absence of verification of the changed address by civil authorities as a reason for rejecting the Petitioner's request for re-verification.

24. The counter affidavit refers to the fact that three CNG buses were common to the list submitted by the Petitioner and M/s. Sangwan Enterprises. Firstly, this is not one of the grounds cited in the show cause notice preceding the impugned order. Consequently, the Petitioner had no opportunity of explaining the position. Secondly, this is not one of the reasons given in the impugned order. Thirdly, the

record however shows that this is no longer a live issue. The notings on the file, copies of which have been enclosed with the supplementary affidavit filed by the Respondents would show that this was one of the queries raised by the officers of the Respondents processing the case. The supplementary affidavit itself refers to the fact that the RC submitted by M/s. Sangwan Enterprises for vehicle No. DL-IP 2132 was transferred on 21st October 2009, for vehicle No. DL-1P A 3183 on 11th February 2009 and for vehicle No. DL-1P A 2692 on 22nd October 2008. It has been confirmed by learned Senior counsel for the Petitioner that the above three vehicles are not being claimed as belonging to M/s. Roshni Enterprises any longer. The Respondents have themselves confirmed the ownership of the other vehicles in the list submitted by the Petitioner. It is not the case of the Respondents that the said vehicles were insufficient for the purposes of the Petitioner being able to perform its obligations as an ASC contractor.

25. The other reason given in the counter affidavit, which again is not to be found either in the show cause notice issued to the Petitioner nor in the impugned order, is that an affidavit dated 8th June 2009 was submitted by the Petitioner alongwith its application dated 6th June 2009. The Petitioner was never confronted with this fact and given an opportunity to explain. The Respondents on their part have not explained how this by itself could lead to the conclusion that the Petitioner was dishonest. There is nothing on record to show that the Petitioner acted in connivance with any official in the Army HQ or in the office of Respondent No. 3 to add this affidavit to the record at a later point in time. How the submission of such an affidavit dated 8th June 2009 could give any unfair advantage to the Petitioner is not clear. No enquiry appears to have undertaken to fix responsibility on any official in the office of Respondent No. 3 for accepting the affidavit. This is also not shown to be a case of tampering of records by the Petitioner or anyone else. Consequently, refusing the Petitioner's request for re-verification on this ground is also not justified.

26. The other issue, which appears to be the principal one, is whether the Petitioner is an allied concern of M/s. Sangwan Trading and M/s. DPS Sangwan and is on that ground liable to be denied re-verification. It must be noticed at the outset Mr. DPS Sangwan, the husband of Mrs. Roshni Devi expired on 10th December, 2008. The

question of the Petitioner being an allied 'firm' of M/s. DPS Sangwan, of which her late husband was the sole proprietor did not survive thereafter. What remained to be examined was whether the Petitioner was an allied concern of M/s. Sangwan Trading, the sole proprietor of which was the brother of Mrs. Roshni Devi.

27. Para 29 of the Revised Procedure sets out the criteria for treating two firms to be allied firms as under:

“(d) All firms/companies, which come within the sphere of effective influence of the banned/suspended firms/proprietorship/companies, shall be treated as allied firms. In determining this, the following factors may be taken into consideration:

- (i) Whether the management is common.
- (ii) Majority interest in the Management is held by the partners or directors of banned/suspended firms/companies.
- (iii) Substantial or majority shares are owned by the banned/suspended firms, their directors/shareholders and by virtue of this it has a controlling voice.”

28. The Respondents have failed to show how the above criteria stands satisfied in the instant case. The notes on the file also do not show that the Respondents made any effort to determine the existence of the above factors. They only show that a legal opinion was obtained by the Respondents to the effect that “if Mrs. Roshni Devi is a near relative of the proprietors of any of the banned/suspended firms, then her firm (M/s. Roshni Enterprises) will qualify as an ‘allied firm.’” This is not consistent with the requirement of Para 29 of the Revised Procedure as extracted above. The mere fact that Mrs. Roshni Devi is a close relative of the proprietor of M/s. Sangwan Trading by itself is not sufficient to treat the two firms/concerns to be ‘allied’ in terms of para 29 above.

29. The Respondents have relied upon the legal opinion obtained from the Ministry of Law and Justice (‘MOLJ’) as conveyed by a communication dated Nil November 2009 of the Office of the Quartermaster General (‘QMG’). It requires to be noted that this opinion was not available at the time the impugned decision was taken. Nevertheless, to clarify Para 29 of the Revised Procedure, the relevant

portion of the communication of the QMG reads as under:

“3. Since the definition of ‘allied firms’ as given in para 29 (d) of ibid Mod letter was quite open and could be interpreted as per the convenience of the person(s), thus leading to different interferences/interpretation at times leading to avoidable legal wrangles, the matter was referred to Ministry of Law & Justice, Department of Legal Affairs, Government of India. The opinion of Ministry of Law and Justice, Department of Legal Affairs, Government of India is appended overleaf:

A firm can be assigned as an allied firm only when the following three factors are present:-

- (a) whether management is common;
- (b) Majority interest in the management of the new firm is held by partners or directors of banned/suspended firms;
- (c) substantial or majority shares of new firm is owned by the banned/suspended firms.

to be just and fair, the authority in whom powers vests has to consider presence of any of the three factors mentioned above to assign a firm as allied firm. The other extraneous consideration like applicant having relatives with persons whose firms have been banned/suspended, the applicant having legally transfer the property of the individual/relations whose firms have been banned/suspended or having common address cannot form legal reasons to assign a firm as allied firm because it does not include the three factors mentioned above. **The competent authority, if however, still feels that effect to influence exists in spite of the above mentioned three factors not being present, then reasons thereof will have to be clearly mentioned before declaring the firm as allied firm. It would also be appropriate that such persons be assigned during the course of operation of business based on any action which is detrimental to the interest of the organization rather than based on perception.**” (emphasis supplied)

30. In para 8 of the counter affidavit reference is made to the bank statement of the Petitioner for the period 1st January 2008 to 24th February 2010 which according to the Respondents “unmistakably point towards the fact that the Petitioner firm as well as M/s. Sangwan Enterprises are allied firms as there are a great number of transfer of funds between the two firms regularly.” It must be observed that this is

not a factor that was put to the Petitioner at any point in time and an explanation sought. Secondly, the impugned order dated 26th October 2009 as clarified on 31st October 2009 does not state that the bank statement of the Petitioner supports the conclusion that the Petitioner and M/s. Sangwan Enterprises are allied firms. In fact after the clarification dated 31st October 2009, any reference to the Petitioner being an ‘allied firm’ of M/s. Sangwan Enterprises stands deleted. Thirdly, the notes on file, copies of which have been enclosed with the Respondent’s supplementary affidavit, do not show that the bank statement of the Petitioner was at any time considered by the authorities to arrive at the conclusion that the Petitioner and M/s. Sangwan Enterprises are ‘allied’. Also, what is important is that the legal opinion of the MOLJ as set out in the QMG’s communication of November 2009 sets a high threshold for determining if two firms are allied. It cautions that: “other extraneous consideration like applicant having relatives with persons whose firms have been banned/suspended, the applicant having legally transfer the property of the individual/relations whose firms have been banned/suspended or having common address **cannot form legal reasons to assign a firm as allied firm because it does not include the three factors mentioned above.**” (emphasis supplied) Further it requires the competent authority to be satisfied that the “effect to influence exists” and to clearly state those reasons. It goes on to say that “it would also be appropriate that such reasons be assigned during the course of operation of business based on any action which is detrimental to the interest of the organization rather than based on perception.” The notes on file in the instant case reflect no such determination by the competent authority before coming to the conclusion that M/s. Roshni Enterprises and M/s. Sangwan Enterprises are allied firms. Therefore whether viewed in the context of Para 29 of the Revised Procedure or in light of the opinion of the MOLJ of November 2009, there was no legal basis for the conclusion of the Respondents that the Petitioner was an allied firm of either M/s. Sangwan Trading or M/s. Sangwan Enterprises.

31. The upshot of the above discussion is that despite two rounds of litigation prior to this one, the Respondents were not able to justify their decision on materials available on record. Reasons not found in the impugned decision were offered as a justification and that too in the form of an affidavit filed subsequently. Thirdly, the material sought to be used against it was not put to the Petitioner. Documents not

forming part of the record and not enclosed with the counter affidavit were sought to be relied upon during arguments. Although these factors were by themselves sufficient to set aside the impugned decision, the grounds cited in the counter affidavit and supplementary affidavit of the Respondents were nevertheless examined by this Court and found to be without merit.

32. This Court, therefore, holds that the impugned decision dated 26th October 2009 as clarified by the order dated 31st October 2009 of the Respondents declining the Petitioner's request for re-verification is not legally sustainable. It does not pass the test of reasonableness and non-arbitrariness as mandated by Article 14 of the Constitution.

33. The impugned order dated 26th October 2009 as clarified by the subsequent order dated 31st October 2009 is hereby set aside. Respondent No. 3 is directed to pass an appropriate order allowing the Petitioner's request for re-verification as an ASC contractor within a period of three weeks from today.

34. The writ petition is allowed in the above terms with costs of Rs. 5,000/- which will be paid by the Respondents to the Petitioner within a period of three weeks. The pending application is disposed of.

S. MURALIDHAR, J

JUNE 1, 2011
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