

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13424 OF 2022**

M/s.Gaurimal Mahajan & Sons Petitioner

V/S

Military Engineer Services & Anr. Respondents

Mr.Rushab Sheth a/w Mr.Akshay Zantye and Sanath Warkar for
the Petitioner.

Mr.Vijay Killedar for the Respondents.

**CORAM : BHARATI DANGRE &
ASHISH S. CHAVAN, JJ**

DATE : 27th AUGUST 2026

JUDGMENT (PER BHARATI DANGRE, J) :

1. The Petitioner, a partnership firm, through one of its partners, has approached this Court, being aggrieved by the impugned communication dated 09/07/2021 addressed by the Director (Contracts) for Chief Engineer of HQ Chief Engineers, Southern Command, Pune, thereby removing the name of the Proprietorship Firm from the approved list of Contractors.

2. We have heard Mr.Sheth, the learned counsel for the Petitioner and the learned counsel Mr.Killedar representing Respondent Nos.1 and 2.

By consent of parties, we deem it appropriate to issue Rule, which is made returnable forthwith. Petition is taken up for hearing by consent of the parties.

3. The Petitioner is an erstwhile Proprietorship Firm incorporated in the year 1952 and it is the pleaded case of the Petitioner that after demise of their father, late Baldevraj Gaurimal Mahajan on 11/02/2018, it devolved upon his daughters and was subsequently converted into a Partnership Firm with two partners.

By a registered Will, their late father bequeathed his right in the firm in favour of the two daughters and in fact, during his lifetime also, based on the general Power of Attorney, the daughters continued to manage the business of the Petitioner Firm and the copy of the general Power of Attorney as well as the copy of the registered Will are annexed alongwith the Petition. Upon the demise of their father, the Petitioner Firm was reconstituted on the basis of the last Will and the Succession Certificate as well as the general Power of Attorney and Ms.Khiya Randhir Shinde and Ms.Tania Baldevraj Mahajan, become partners in the share of 51% and 49% respectively, though they chose to continue the name of the firm as M/s. Gaurimal Mahajan & Sons.

4. Upon the demise of their father, the firm was informed on 26/10/2020 that the action of re-enlistment of the firm has been taken on the basis of the news published in Maharashtra Times paper dated 13/02/2018. However, to consider the request for

change in the constitution of the firm, subject to fulfilling the criteria as mentioned in para 1.2 of the Manual on Contracts 2007, it was intimated that if the legal heirs had executed works in the original firm as a Power of Attorney holder of the original proprietorship of the firm to the satisfaction of the Department, the same shall be forwarded alongwith the Power of Attorney.

The directions were complied with as the relevant documents were forwarded and this included the copy of the works executed satisfactorily and even the Succession Certificate was forwarded to the HQ Chief Engineer, Southern Command, Pune on 31/12/2020. The list of works compile 16 works with reference to the details offered, including the date of commencement and completion as well as the amount of the contract.

5. Repeated correspondence followed this, when specific details and particulars duly supported with the documentary evidence of contracts by one of the legal heir in the capacity of Power of Attorney was sought and this request was reiterated on 26/03/2021. On 31/03/2021, a list of works executed satisfactorily by the Power of Attorney i.e. the legal heir and partner for M/s.Gaurimal Mahajan & Sons, Ms.Tania Baldevraj Mahajan was furnished.

However, this resulted in passing of impugned order on 09/07/2021, when it is directed that the name of the Petitioner Firm shall be removed from the approved list of Contractors and the aforesaid direction is preceded by the following reasoning.

“2. Legal heir of the firm, were not been able to provide any evidence of having executed work in MES as power of Attorney Holder in spite of reminders. Secondly MES formations have confirmed that legal heir of the firm have not executed any work in MES as power of Attorney Holder of the firm.

3. It is thus evident that the legal heirs do not fulfill requirement of enlistment, the Enlisting authority has therefore not agreed to your request of enlistment with revised constitution.

4 The name of your firm is therefore removed from the approved list of contractor of this HQ.

5. It is requested to submit 'No Demand Certificate (IAFW-451)' enclosed herewith in triplicate duly signed by the GE/AAO GE, where firm executed last work alongwith original SDR issued against the SSD.

6. Please also ensure that 'No Demand Certificate' (IAFW-451) has to be signed by each of the legal heir of the deceased proprietor. The name of signatory shall be mentioned in Block letters below the signature(s).”

6 It is this order, which is subject matter of challenge in the Writ Petition and we find that the reason for removal of the name of the Petitioner Firm is that the legal heir of the Firm was not able to provide any evidence of having executed work in MES as Power of Attorney holder in-spite of reminders, and secondly that MES formations have confirmed that the legal heirs of the firm have not executed work in MES as Power of Attorney holder.

The specific stand of the Petitioner is, the list which is furnished by the Petitioners alongwith their communication dated 31/12/2020 include various types of works and this include the work of the Chief Engineer, Pune as well as GE Central, Kirkee and CWE Kirkee. The ground for rejection of the claim of the Petitioner is not that the work is not to the satisfaction of the Respondent, but the ground is that no such list has been furnished and no such work has been carried out.

7. The learned counsel Mr.Killedar would place reliance upon the guidelines contained in the Contract Manual and his emphasis

is on clause 1.20 which deals with re-enlistment of the proprietorship firm with revised constitution in favour of legal heirs of Contractors in case of death of Proprietor.

Clause 1.20 reads thus.

“1.20 Re-enlistment of Proprietorship Firm with Revised Constitution in Favour of Legal heirs of Contractors in case of death of the Proprietor.

The Government has accorded sanctions to enlist one of the legal heir of a proprietorship firm with revised constitution in case of death of the proprietor provided they meet the following conditions :

(a) A newly constituted firm shall meet all the criteria as laid down for fresh enlistment of Contractors.

(b) One of the partners (in case the newly re-constituted firm seeking re-enlistment as partnership firm) or the legal heir seeking re-enlistment as a proprietorship firm was the power of attorney holder of the original proprietorship firm and had executed work in the original firm in such capacity to the satisfaction of the department.

(c) Only one firm will be enlisted as reconstituted firm of the original proprietary concern and all the legal heirs other than those who are part of the reconstituted firm shall render irrevocable under taking in the form of affidavit to the newly constituted firm in this regard.

(d) Reconstituted firm shall take over all liabilities and assets of the original proprietary concern.”

We must also make reference to Clause 1.21, which pertain to the change in the constitution of enlisted contractors, which reads thus :-

“1.21 Change in Constitution of Enlisted Contractors.

Reconstitution of enlisted Contractors/Firms should be approved by the enlisting authorities after proper scrutiny and verification that newly constituted firm meets the enlistment criteria and is considered capable of executing the works. Due inquiry shall be conducted about the bonafides of newly inducted partners to avoid any proxy enlistment/transfer of enlistment.”

8 Reading of the two clauses together, lead us to an inference, that it is open for the Respondents to enlist one of the legal heir of the proprietorship firm with revised constitution in case of death

of the proprietor, provided that the newly constituted firm meet the criteria laid down for fresh enlistment of the Contractors and one of the partners or the legal heir seeking re-enlistment as a proprietorship firm was the Power of Attorney holder of the original proprietorship firm and had executed work on behalf of the original firm in such capacity to the satisfaction of the department.

Since Clause 1.21 also permit change in the constitution of the enlisted Contractors/firms, it can be easily presumed that it is permissible to convert a Proprietorship Firm into a Partnership Firm, subject to ascertaining that the work that is carried out by one of the heir of Proprietorship Firm is upto the satisfaction of the department.

9. With all the above provisions in place, we expect the department to apply its mind to the list of works that has been furnished by the Petitioner and whether it fit into the criteria of enlisting the proprietor/partnership firm and prima facie we are satisfied that the list of works alongwith the Power of Attorney clearly fit into the criteria of enlistment and we see no difficulty as to why, the Respondent should insist that there should be a fresh enlistment as it is the department who only indicated to the Petitioner, that it is open for them to file a list of works undertaken on behalf of the proprietary firm and it was imperative for the department to scrutinize the list of work that has been submitted and ascertain whether it fit into the criteria of enlistment for the Military Engineer Services.

The Petition is, therefore, allowed by directing the Respondent to consider the claim of the Petitioner afresh and if the works are being found to be satisfactory, enlistment of the Petitioners in a change format shall be restored.

We make it clear that if the Respondent intend to afford an opportunity of hearing to the Petitioner, it may do so.

Writ Petition is made absolute.

[ASHISH S. CHAVAN, J.]

[BHARATI DANGRE, J.]