



HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 12531 of 2012

M/s Narendra Roadlines Pvt. Ltd. and another

.....Petitioner(s)

Versus

Union of India Thru Secy. and others

.....Respondent(s)

Counsel for Petitioner(s)	: Anil Kumar Pandey, Rishabh Agarwal, Smt. Anita Tripathi
Counsel for Respondent(s)	: A.S.G.I., Devendra Kumar, Murtuza Ali, Pramod Kumar Singh, S.C.

A.F.R.

Court No. - 4

Reserved on 05.02.2026

Delivered on 19.03.2026

**HON'BLE NEERAJ TIWARI, J.
HON'BLE GARIMA PRASHAD, J.**

(Per: Garima Prashad, J.)

1. Heard Sri Rishab Agarwal, learned counsel for the petitioners and Sri Pramod Kumar Singh, learned counsel for the respondents.
2. The present writ petition concerns the interpretation of the term “default” in the context of whether failure to secure a contract for three consecutive years justifies forfeiture of the refundable registration fee under the applicable terms and conditions.
3. The undisputed facts are that the petitioner-firm had deposited a sum of Rs. 1,51,000/- on 25.10.2007 in the form of a Fixed Deposit Receipt (FDR) as a refundable registration fee for registration as a Clause ‘A’

category contractor for the Army Service Corps (ASC). It is further not in dispute that although the petitioner had participated in tendering processes, it did not secure any contract for three consecutive years. Consequently, in terms of Section B, Para 19(c)(iv) read with Para 6 of the Government of India, Ministry of Defence Office Memorandum dated 26.09.2006, the name of the petitioner-firm was removed from the list of approved ASC contractors.

4. By the impugned order dated 13.09.2010, the respondent no. 4 authority not only removed the petitioner from the approved List but also directed forfeiture of the refundable registration fee. The petitioner's statutory appeal was dismissed on 24.05.2011. Aggrieved, the petitioner has approached this Court, challenging both the orders but limiting its challenge to the forfeiture of the refundable registration fee and seeking refund thereof with interest.

5. Learned counsel for the petitioner submits that Para 6 of the Office Memorandum provides forfeiture only "in case of removal/suspension/banning of the applicant due to his default." It is contended that "default" must be understood as failure to discharge an obligation or clear outstanding dues to the Government, and cannot be equated with mere non-selection in competitive tendering. The linkage sought to be drawn between removal under Para 19(c)(iv) and the term "default" in Para 6 is therefore misconceived.

6. Per contra, learned counsel for the respondent raises a preliminary objection to the maintainability of the writ petition, submitting that the dispute is contractual and an efficacious alternative remedy by way of a civil suit is available, reliance being placed on ***PHR Invent Educational Society v. UCO Bank*, (2024) 6 SCC 579**. It is urged that the petitioner had already issued notice under Section 80 C.P.C. seeking recovery of money and ought to have pursued a civil suit.

7. It is further submitted that the petitioner had executed a written undertaking stipulating that failure to secure a contract for three consecutive years would result in removal from the list. In terms thereof, fourteen firms, including the petitioner, were removed from the ASC Contractors list and their FDR amounts forfeited, without discrimination. Lastly, relying on *Kamal Kishore Sehgal v. Murti Devi*, 2024 SCC OnLine SC 2582, it is contended that the contractual terms are clear and unambiguous and must be accorded their plain and literal meaning.

8. We have considered the rival submissions and perused the record.

9. For ease of reference, the relevant extracts of the Office Memorandum dated 26.09.2006 issued by the Government of India, Ministry of Defence (Letter No. PC/RAKSHA/ 63060/ Q/ST5/ 3633/ D(QS)) are reproduced below:

“Section A - REGISTRATION

6. Requisites for Registration - All applicants desirous of being registered as ASC Contractors will be required to pledge an FDR in favour of the concerned MGASC Command as a refundable fee for the purpose of registration. The value of such FDR will be 0.2 percent of the contract carrying capacity for which the applicant wishes to be registered as ASC Contractor and must be valid for minimum 06 years from the date of application. The said FDR will be renewed again at the time of re-verification of the Contractor. This FDR can be utilized by the MGASC for recovery of any dues outstanding against the Contractor on behalf of the Government, in case the Contractor continually refuses to pay those dues despite intimations. This FDR will be returned to the Contractor in case he wishes to get de-registered from the list of ASC Contractors, after clearing all his dues towards the Government. **However, in case of removal/ suspension/ banning of the applicant due to his default, this amount will be forfeited to the Government.** As regards existing contractors on the approved list, the Contractors will be asked to deposit such FDR

within six months, of the intimation to them after issue of this letter, failing which, re-verification of their firms will be ordered, irrespective of the date of their initial registration...”

Section B - REMOVAL FROM THE APPROVED LIST OF ASC CONTRACTORS

19. (a)..

(b) ...

(c) A firm, after due investigation wherever necessary, may be removed by the competent authority from the list of approved ASC Contractors on any of the following grounds:-

(i) On account of its poor performance based on the performance reports forwarded by the Contract Operating Officer/Executive Officer or other disabilities.

(ii) If the firm, 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.

(iii) Does not participate in any tendering activity for two consecutive years.

(iv) Fails to secure a contract during a period of three consecutive years.

(v) Obtains tender forms for a contract but does not participate in the tender.

(vi) In four consecutive invitations to tenders, quotes obviously fictitious rates, which are twenty percent or more below the reasonable rates fixed by the Panel of Officers.

(vii) Fails to execute a contract or a short-term agreement secured by him.

(viii) No longer has the technical staff or equipment considered necessary for execution of the contracts secured by him.

(ix) Violates any terms and conditions of the contract deed or is found to have made false declarations in his registration documents.

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

.....

21. Procedure for Removal of a Contractor Before a decision is taken to remove the name of a firm from the list of approved Contractors for any one of the reasons contained in Para 19 (c) 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. Order removing firm from the list of approved Contractors will be communicated to the firm together with reasons thereof, 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 for local purchase only.

22. Implication of Removal

1. Removal does not carry much of a stigma with it and
2. is for minor offences as given in Para 19 (c). Removal of firm/Contractor from on list of approved Contractors of a Command does not necessarily mean that he/she/they should be removed from the list of other Commands, where he/she/they may be rendering useful services.

3. A firm with whom business dealings have been suspended or banned shall be automatically removed from the list of approved Contractors. The fact of such removal will be communicated to the firm along with the reasons..”

10. The instant matter is a case wherein the petitioner-firm was unable to obtain any tender on account of better competitive bidding by other contractor-firms and by no stretch of imagination, the inability of the petitioner-firm to obtain a contract will give any inherent right to the respondents to forfeit the amount of refundable registration fee.

11. The controversy centres on the meaning of the term “default” in Para 6 of the Office Memorandum dated 26.09.2006. The expression has not been defined in the policy and must therefore be understood in its ordinary legal sense. Webster’s Dictionary defines default as ‘*failure to do something that is legally required or expected.*’ The expression inherently presupposes a conscious omission or neglect on the part of the person concerned in respect of an act which was within his control to perform. Default necessarily involves a positive failure to discharge a bounden responsibility. It cannot be stretched to encompass situations where the alleged act of default is dependent upon external factors beyond the control of the party. Securing a contract in a competitive tendering process is not an act that lies within the unilateral control of the contractor. Where a party participates in tenders but is unsuccessful due to competitive bidding, such outcome cannot be attributed to any omission or fault on its part. To construe such inability as “default” would amount to equating commercial misfortune with culpable conduct, which is impermissible in law.

12. A reading of Para 6 further indicates that forfeiture is contemplated where removal/suspension/banning is “due to his default,” and that the FDR may be utilised for recovery of dues outstanding to the Government. The clause thus links forfeiture to culpable conduct resulting in Government dues, not to every ground of removal enumerated in Para

19(c). Removal under Para 19(c)(iv) for failure to secure a contract does not, by itself, amount to default attracting forfeiture.

13. The undertaking relied upon by the respondent cannot be read in isolation. A bare reading of the document shows that while it provides for removal and forfeiture, it does not extend forfeiture to every ground of removal under paragraph 19(c). Forfeiture, being penal in nature, must strictly arise from the specific contingency envisaged. Failure to secure a contract for three consecutive years cannot automatically be equated with a “default” attracting forfeiture unless the contractual language clearly so provides. Any broader construction would impermissibly enlarge the scope of the undertaking beyond its express terms.

14. The reliance by the respondent on *Kamal Kishore Sehgal v. Murti Devi*, **2024 SCC OnLine SC 2582** is misplaced. While the said judgment reiterates that clear and unambiguous contractual terms must ordinarily be given their literal meaning, it equally presupposes the absence of competing plausible interpretations. In the present case, the term “default” itself is open to more than one reasonable interpretation, particularly since failure to secure a contract does not necessarily imply fault or breach by the contractor. Where contractual language admits of more than one reasonable construction, the Court is required to adopt a purposive and contextual interpretation rather than a mechanical literal reading, especially where forfeiture by a State authority is in issue.

15. The submission of the respondent that fourteen other firms were similarly removed and subjected to forfeiture does not advance the respondent’s case. Illegality cannot be validated on grounds of parity. The doctrine of negative equality has no application in law, and Article 14 cannot be invoked to perpetuate an unlawful action. If forfeiture is not contractually supported on the present ground of removal, its application to multiple parties does not cure the defect nor confer legality.

16. As regards the objection of maintainability, it is settled that the rule of exhaustion of remedies is one of discretion and not an absolute bar. As held by the Supreme Court in *Whirlpool Corporation v. Registrar of Trade Marks* (1998) 8 SCC 1, writ jurisdiction may be exercised despite an alternate remedy where the action is arbitrary or without jurisdiction. The reliance on *PHR Invent Educational Society v. UCO Bank*, (2024) 6 SCC 579 is misplaced, as that case concerned a purely private contractual dispute for recovery of dues, without any public law element. The present matter involves interpretation of the term “default” and forfeiture of a refundable registration amount by a State authority, raising issues of arbitrariness in administrative action and thereby attracting writ jurisdiction.

17. This Court is therefore satisfied that the impugned order dated 13.09.2010 proceeds on an erroneous assumption that every ground of removal constitutes “default.” Such an interpretation cannot be sustained. The appellate authority also dismissed the appeal summarily, without examining the correct interpretation of the term “default” in the context of forfeiture.

18. Accordingly, the impugned orders dated 13.09.2010 and 24.05.2011 are set aside. The respondent is directed to refund Rs. 1,51,000/- to the petitioner within four weeks from the date of production of a certified copy of this order, along with interest at the rate of 6% per annum from the date the amount became due till actual payment.

19. The writ petition is allowed. No order as to costs.

(Garima Prashad,J.) (Neeraj Tiwari,J.)

March 19, 2026
Sachin Mishra