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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 7900/2014 and CM No.18508/2014 (stay)

M/S JIA LAL MALHOTRA & CO Petitioner
Through: Ms. Anusuya Salwan and Mr. Kunal
Kohli, Advocates

versus

UNION OF INDIA Respondent
Through: Ms. Suparna Srivastava, CGSC with Mr.
Kumar Harsh and Ms. Nishtha Sikroria, Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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10.02.2015

1. Briefly, the grievance of the petitioner is that its request for revalidation of enlistment as a Class-II contractor has not been considered fairly.

2. I must only note that this is a second round of litigation initiated by the petitioner, which had in the earlier round, come to the court assailing, broadly, the provisions of Rule 19 of the Rules of Enlistment of Contractors in Central Public Works Department, 2005 (in short 2005 Rules).

2.1 This challenge was laid by the petitioner via a writ petition, filed under Article 226 of the Constitution; which was numbered as : WP(C) 5028/2012.

2.2 Fortunately, for the petitioner, during the pendency of the aforementioned writ petition, the said rule was amended by the respondent, which, in a sense assuaged substantially the petitioner's grievance. This aspect of the matter is reflected in this court's order dated 02.04.2013,

passed in WP(C) 5028/2012.

2.3 As a matter of fact, a perusal of the said order would show that an order had been issued on 11.12.2012 by the respondent, whereby the petitioner's enlistment had been revalidated for a period of one year; albeit with effect from 05.06.2012.

2.4 As noticed in this court order dated 02.04.2013, by the time things got sorted out, the petitioner had merely two (2) months left of the revalidation period. The office order dated 11.12.2012 of the respondent also indicates that the revalidation was made qua the petitioner in the lower class, i.e., class-II.

2.5 The aforementioned writ came to be disposed of on 09.01.2014, whereby, while disposing of the writ petition, the petitioner was given an opportunity to move an application with the Special Director General (Delhi Region), CPWD for grant of an appropriate relief in the matter.

2.6 The concerned officer was thus, directed to dispose of the application, if made, within a period of six months. There is no dispute that an application was made by the petitioner pursuant to order dated 09.01.2014, on 21.01.2014. This application came to be disposed of on 27.10.2014. The operative directions contained in the said communication of the respondent are as follows :-

“..Your application has been placed before the Advisory Committee Meeting held on 26.09.2014 and the Advisory Committee has gone through your case and decided that “you have not fulfilled criteria as per the clause 19 of the Enlistment Rules 2005”; i.e., “only the contractors who have secured some work (s) of appropriate magnitude in CPWD, PWD (NCTD) or CCU of Ministry of Environment and Forest as well as Central Government Department / State

Government Department / Central Autonomous body / State Autonomous Body / Central Public Sector Undertaking / State Public Sector Undertaking provided the agency must have participated in tendering process for at least 3 works in CPWD, PWD or CCU of Ministry of Environment of forest (with documentary proof) during the last period of enlistment or revalidation period as case may be”.

As such you have not fulfilled the above criteria / condition and the same is evident from your letter dated 28.07.2014. The Enlistment Authority has decided that as you are not fulfilling the Clause 19 of Enlistment Rules 2005, the application dated 21.01.2014 submitted for revalidation in Class-II (Civil) category is rejected..”

(emphasis is mine)

3. The learned counsel for the petitioner says that the order is clearly unfair for the following reasons :-

(i). That the petitioner was enlisted as a class-1 contractor by the CPWD for the first time in 1971 and, continued as such till 2008.

(ii) During its enlistment, the petitioner, has executed several important works of high value; the details of which are provided in paragraph 2 of the rejoinder filed in the matter.

(iii). The revalidation order dated 11.12.2012, while providing for a tenure one year, had excised six (6) months, as it was made effective from 05.06.2012.

3.1 In sum, the learned counsel for the petitioner says that, the petitioner, cannot fulfil the condition of having participated in at least three (3) tenders of the CPWD, which is the prime reason given in the communication dated 27.10.2014, for rejecting its application, till such time its enlistment is revalidated for a reasonable period of time.

4. Ms. Srivastava, who appears for the respondent has brought to fore the perspective of the Department. It is her contention that the contractors, such as the petitioner, use the enlistment ladder (in a manner of speech) of the CPWD to obtain other lucrative works, without bothering to participate in the tenders floated by the respondent. She says that the respondent is wanting to put a stop to such a practice.

4.1 According to Ms. Srivastava, it is in this context, that the eligibility condition put in place, which requires of the contractor desirous of enlistment to have participated in at least three (3) works of CPWD, PWD or CCU of the Ministry of Environment and Forest – needs to be looked at.

5. I have considered the contentions of both sides. I must confess that Ms. Srivastava's contention has much weight. The contractors, cannot use, the device of enlistment with CPWD, to obtain other lucrative contracts and, not, participate, in bidding for public works of such like departments. There can be no doubt that the contractors wishing to avail of the benefits, that get generated by enlistment with CPWD, should also participate in the tenders floated by such departments.

5.1 The petitioner, apparently, has been remiss in participating in the tenders of the CPWD even while its enlistment was valid. According to Ms. Srivastava, the petitioner's enlistment was valid between 2008 and August, 2012.

5.2 Having said so, I am also of the view that, if nothing less, at least, the order dated 11.12.2012, was clearly unfair, whereby respondent for whatever reasons decided to revalidate the petitioner's enlistment for a period of one (1) year even while lopping off six (6) months of the revalidation period.

5.3 Ms. Salwan's submission that the petitioner cannot correct course unless it is given an opportunity to participate in the tenders by extending the period of validation by a reasonable period of time, has merit.

6. In these circumstances, I am of the opinion that the respondent should extend the revalidation period for enlistment for one (1) year.

6.1 An order to that effect will be communicated to the petitioner, within four weeks. The period of one (1) year will commence from the date of the communication of the order. The respondent, will be at liberty to review the performance of the petitioner during the revalidation period so as to assess for itself whether or not the petitioner participated in the tenders floated by it.

7. With the aforesaid directions in place, the captioned petition and the pending application are disposed of.

RAJIV SHAKDHER, J

FEBRUARY 10, 2015

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