

\$~72

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

+ W.P.(C) 9687/2018

MADHAV GOEL

..... Petitioner

Through: Mr Sudhir Naagar with Mr Bhanu
Sanariya, Advocates.

versus

DELHI JAL BOARD AND ANR.

..... Respondents

Through: Mr Sumeet Pushkarna, Standing
Counsel with Mr Devanshu Jaitley,
Advocate for Delhi Jal Board.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

14.09.2018

C.M. No.37740/2018

1. Allowed, subject to all just exceptions.

W.P.(C) 9687/2018 & C.M. No.37739/2018

2. The petitioner has filed the present petition, *inter alia*, impugning the Clause 17.1 of 'The Rules of Enlistment of Contractor in Delhi Jal Board' as amended by the circular dated 05.03.2015. The said Clause reads as under:-

“ 17.1 **Restrictions for close relatives:** CEO, All Members, All Directors, Jt. Directors, Secretary (DJB), All Assistant Commissioners, Dy. Directors, CWAs, ACWAs, Entire engineering cadre from JE to CE (both inclusive) and Entire Finance Cadre from Divisional Accountant and above, themselves and their close family members will not be allowed to be enlisted as

DJB contractor in any class and will not be allowed to participate in the tenders of Delhi Jal Board during their tenure of service in DJB. For this purpose, definition of 'Close family member' shall include respective spouses, parents, children and children's spouses."

3. The petitioner's father is employed as an Assistant Engineer with Delhi Jal Board. Therefore, in terms of Clause 17.1 of the said Rules (as amended) he is disabled from participating in any contracts with the Delhi Jal Board. The petitioner claims that the same violates his fundamental rights under Article 19(1)(g) of the Constitution of India.

4. It is seen that the said issue is squarely covered against the petitioner by a decision of the Division Bench of this Court in **Ashwani Garg v. NDMC: AIR 2008 Del 145**. The relevant extract of the said decision is set out below:-

"1. The petitioner is a contractor by profession. He has, in this petition, assailed the validity of Clause 17 of the Notice Inviting Tender (NIT), issued by the respondent-New Delhi Municipal Council (NDMC), according to which any contractor who has a near relative posted as a Divisional Accountant or as an officer in any capacity between the grades of Engineer in Chief and Junior Engineer in the NDMC is not eligible.

2. The petitioner argues that the condition aforementioned offends his fundamental right to carry on his trade and profession guaranteed under Article 19(1)(g) of the Constitution of India. A similar question arose for consideration before a Division Bench of this Court in **S.N. Engineering Works v. Mahanagar Telephone Nigam Ltd, 1996 (37) DRJ 446**. The Court was in that case examining a similar disability arising in terms of a tender condition stipulated by the MTNL. As in the present case, the tender condition stipulated by the MTNL also stated that a

contractor would be ineligible for submitting a tender in case any of his near relative was posted as JAO/AAO/AO or an officer in any capacity between the grades of SE and AE, both inclusive. The question, therefore, was whether the said condition was violative of the fundamental right guaranteed to the petitioner/contractor to carry on his profession as a contractor. Relying upon the decisions of the Supreme Court in C.K. Achuten v. State of Kerala, AIR 1959 SC 490, Raamana Daya Rama Shetty v. IAAI, AIR 1979 SC 1628, Kasturi Lal Lakshmi Reddy v. The State of Jammu & Kashmir, AIR 1980 SC 1992, Rai Sahib Ram Jawaya Kapur and Ors. v. State of Punjab, AIR 1955 SC 549, State of Madras v. V.G. Row, AIR 1952 SC 196, and Narayan Dass v. State of M.P., AIR 1974 SC 1232, the Division Bench held that the condition under challenge was not offensive to Article 19(1)(g) of the Constitution of India. The Court observed:

“It follows that the petitioners were not entitled to bid tenders with the MTNL. Even at the risk of repetition we may state and sum up that the petitioners have not been totally prohibited from carrying on the activity of digging ducts, trenching, laying cable lines and pulling cables through ducts and allied works. All that the respondent has done is to restrain itself from entering into the contract with such contractors as have their relations of defined category serving in the MTNL. As the test of eligibility is to be applied on the date of bidding the tenders and maintained throughout the execution of the work under the contract, the question whether such relation in the MTNL has actually influenced the tender or the work is immaterial. What is sought to be achieved is avoiding the possibility of such influence being exercised and maintaining fairness and neatness in the dealings of MTNL. The restriction can be imposed by an executive fiat and is neither arbitrary nor unreasonable. It does not offend Art. 14 of the Constitution. It satisfies the test laid down by the Supreme Court in the State of Madras v. V.G. Rao (Supra).”

5. In view of the aforesaid decision, the present petition is dismissed. The pending application is, accordingly, disposed of.
6. Order *dasti* under signatures of the Court Master.

SEPTEMBER 14, 2018
MK

VIBHU BAKHRU, J