

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2021

C O R A M

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.15017 of 2018 &
WMP.No.17787 of 2018

M. Ramanna

... Petitioner

Vs.

1.Engineer-in-Chief,
IHQ of Ministry of Defence (Army) Kashmir House,
Rajaji Marg, DHQ PO,
New Delhi - 110011..

2.HQ Chief Engineer,
Southern Command,
Pune - 411 001.

3.Chief Engineer,
Chennai Zone,
Island Grounds,
Chennai - 600 009.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to consider the application dated 22.12.2015 of the petitioner as reiterated by letter dated 08.03.2018 for renewal of enlistment as B Class contractor (Index No.B-224) for the cyclic period 2016-20 and grant renewal.

For Petitioner : Mr.T.V.Lakshmanan

For Respondent : Mr.K.Raju,
Central Government Standing Counsel

O R D E R

This writ petition has been filed for a mandamus seeking for a direction to the respondents to consider the petitioner's application dated 22.12.2015 as reiterated by his letter dated 08.03.2018 seeking for renewal of enlistment as B Class Contractor (Index No.B-224) for the cyclic period 2016-20 and grant renewal.

2. It is the case of the petitioner that he is enlisted with the respondents since 1988. According to him, his contract has been renewed periodically by the respondents and he has entered into various contracts with the respondents for the purpose of doing several works on their behalf. However, according to him, the respondents rejected the petitioner's application seeking for renewal of enlistment of the petitioner as B Class Contractor (Index B-224) for the cyclic period 2016-20 on the ground that one of the contracts where the petitioner had entered into with the respondents was cancelled by the respondents on account of alleged breach of contract committed by the petitioner. The cancellation of the contract was challenged by the petitioner through Arbitration and an Arbitral Award was passed on 27.02.2018 in favour of the petitioner declaring that the cancellation of the contract against the petitioner is illegal. According to the petitioner, despite the Arbitral Award dated 27.02.2018 passed in favour of the petitioner, the respondents have failed to renew the enlistment of the petitioner as B Class Contractor for the cyclic period 2016-20. The petitioner has given a representation dated 26.12.2015 as well as on 08.03.2018 to the respondents requesting them to renew his enlistment as B Class contractor for the cyclic period 2016-20. According to the petitioner, till date, the said representations have not been considered by the respondents. In such circumstances, this writ petition has been filed.

3. A Counter affidavit has also been filed by the respondents wherein they have stated that the respondents are not in a position to consider the petitioner's application for renewal of his enlistment as B Class contractor because of his unsatisfactory performance in execution of work in the past which led to cancellation of one of his contracts. It is also stated that since Arbitral Award passed in favour of the petitioner has been challenged before this Court, the petitioner's application seeking for renewal of his enlistment as B Class Contractor cannot be considered by the respondents.

4. Heard Mr T.V. Lakshmanan, learned counsel for the petitioner and Mr. K. Raju, learned Central Government Standing Counsel for the respondents.

5. Learned counsel for the petitioner would submit that right from 1988 onwards, the petitioner has been a contractor with the respondents and his enlistment as B Class Contractor has been renewed periodically by the respondents. According to him, excepting for one of the contracts, there is no dispute with the respondents in so far other contracts are concerned. He also drew the attention of this Court to the Arbitral Award

dated 27.02.2018 passed in favour of the petitioner with regard to the cancellation of the contract made by the respondents wherein the Arbitral Tribunal has held that the said cancellation is illegal. Further it is contended by the learned counsel for the petitioner that the respondents have challenged the Arbitral Award by filing an application under section 34 of the Arbitration and Conciliation Act which is pending on the file of this Court and it is numbered as O.P.No.957 of 2019. According to the learned counsel for the petitioner, the fundamental right of the petitioner to carry on business as a contractor with the respondents has been defeated, despite the fact that Arbitral Tribunal has held that the cancellation of contract made by the respondents is illegal.

6. Per contra, learned Central Government Standing Counsel for the respondents would submit that since the matter is subjudice in O.P.No.957 of 2019 filed by the respondents challenging the Arbitral Award dated 27.02.2018 passed in favour of the petitioner, the application of the petitioner seeking for renewal of his enlistment as B Class Contractor cannot be considered by the respondents. According to him, the petitioner has committed breach of contract and his performance has been unsatisfactory as a contractor and therefore, the renewal cannot be granted to the petitioner. Learned standing counsel for the respondents also drew the attention of this Court to the contentions raised in the counter affidavit filed by the respondents in support of his case.

7. Admittedly, the termination of the contract made by the respondents earlier against the petitioner has been declared to be illegal by the Arbitral Tribunal in its Award dated 27.02.2018. Though the said Award is under challenge before this court filed under section 34 of the Arbitration and Conciliation Act in O.P.No.957 of 2019, the petitioner should not be made to suffer just because of pendency of the said O.P.

8. As seen from the affidavit filed in support of this writ petition, the petitioner has been a contractor with the respondents ever since 1988. He claims that excepting for one of the contracts which is the subject matter of O.P.No.957 of 2019, he is having a good track record with the respondents. The petitioner has given representations on 22.12.2015 as well as on 08.03.2018 seeking for renewal of his enlistment as B class contractor with the respondents.

9. Admittedly, the said representations have not been considered by the respondents till date for the aforesaid reasons. When the petitioner has obtained a declaration from the Arbitral Tribunal that the cancellation of contract made by the respondents is illegal, there is no bar for the respondents to

consider the petitioner's application seeking for renewal of his enlistment as B Class Contractor. The petitioner also claims that he is a contractor with the respondents ever since 1988 and also claims that he is having a good track record with the respondents. It is for the respondents to consider the petitioner's application seeking for enlistment of B class contractor on merits and in accordance with law. No prejudice will be caused to the respondents, if the petitioner's representations dated 22.12.2015 and 08.03.2018 are considered by them on merits and in accordance with law and pass final orders with regard to the petitioner's request for renewal of his enlistment as B Class contractor. Even though the prayer sought for in this writ petition is for renewal of petitioner's enlistment as B Class Contractor for the period 2016-20, no prejudice will be caused to the respondents if the petitioner's request for renewal for the period from 2021 onwards is considered on merits and in accordance with law.

10. For the foregoing reason, this Court directs the petitioner to submit a fresh application with the respondents seeking for renewal of his enlistment as B Class Contractor (Index B-224) within a period of one week from the date of receipt of a copy of this order. On receipt of the same, the respondents shall consider the petitioner's application seeking for renewal and pass final orders on merits and in accordance with law within a period of six weeks thereafter.

11. With the aforesaid directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1.The Engineer-in-Chief,
IHQ of Ministry of Defence (Army) Kashmir House,
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New Delhi - 110011..

2.The HQ Chief Engineer,
Southern Command,
Pune - 411 001.

3.The Chief Engineer,
Chennai Zone,
Island Grounds,
Chennai - 600 009.

+1cc to Mr.T.V.Lakshmanan, Advocate Sr.3114
+1cc to Mr.K.Raju, Advocate Sr.3636

W.P.No.15017 of 2018

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srg 16/02/2021



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