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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.19149 of 2021
and
W.M.P.Nos.20451 and 21874 of 2021

M/s.G.S.Naidu Constructions
Rep by its Manager, A.D.Ramesh Babu,
No.14/840, Bobbili Raja Salai,
K.K.Nagar, Chennai - 600 078.

...Petitioner

-Vs-

Chennai Metropolitan Water Supply and Sewerage Board,
Rep. By its Superintending Engineer (C&M)
No.1, Pumping Station Road,
Chintadripet, Chennai - 600 002.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the respondent relating to letter No. CMWSSB/C&M/CNT/C2/ Registration/ Intimation/2021-22 dated 27.08.2021 and quash the same.

For Petitioner : Mr.K.Elangoo

For Respondents: Mr.C.Vigneswaran
Standing counsel

O R D E R

The prayer sought for herein is for a writ of certiorari, to call for records of the respondent relating to letter No. CMWSSB/C&M/CNT/C2/Registration/Intimation/2021-22 dated 27.08.2021 and quash the same.

2.The petitioner was a partnership firm and as a contractor, he got registered with the respondent i.e., Chennai Metropolitan Water Supply and Sewerage Board (in short, 'metro water').

3.Under the capacity of a registered contractor, the petitioner had undertaken the works entrusted to it.



4. When that being so, the petitioner firm was consisting of only two partners, out of whom, all of a sudden one partner died, therefore, the moment one partner in the two member partnership firm dies, it will lose the status of partnership firm within the meaning of Section 42 of the Indian Partnership Act, 1932 (in short, 'the Act').

5. Based on this legal position, the respondent having taken note of the fact that, one of the partners of the firm died, had cancelled the work contractor status of the petitioner and intimated the same to the petitioner on 27.08.2021 through the impugned order.

6. Heard Mr.K.Elangoo, the learned counsel appearing for the petitioner, who would submit that, though one partner of the petitioner firm died, there can be no impediment for the existing or surviving partner to reconstitute the partnership firm by inducting any third parties and in that case, without waiting for such reconstitution to be taken place in this regard, since the respondent has passed the impugned order without giving any notice to the petitioner by cancelling the contractor status of the petitioner firm, thereby, the petitioner is chances of getting contractor work from the respondent have been completely prejudiced. Therefore, the impugned communication is untenable, he contended.

7. Per contra, Mr.C.Vigneswaran, learned Standing Counsel appearing for the respondent would contend that, as per Section 42(c) of the Act, the partnership firm is dissolved by the death of a partner.

8. Especially in case of two partners of partnership firm, if one partner dies, automatically, the status of the partnership firm will be lost and the remaining partner or surviving partner will become individual. In this regard, what is the consequence of one partner of a two partners partnership firm dies within the meaning of Section 42(c) of the Act, has been dealt with by the Hon'ble Supreme Court in the case of Commissioner of Income Tax Madhya Pradesh Nagpur and Bhandara Vs Seth Govindram Sugar Mills [(1965) 3 SCR 488 equivalent to AIR 1966 SC 24], where the learned counsel relied upon the following:

"6. The question is whether on the death of Nandlal his heirs i.e., the members of his branch of the family, automatically became the partners of the said firm. The answer to the question turns upon Section 42 of the Indian Partnership Act, 1932 (Act 9 of 1932), the material part of which reads:

"Subject to contract between the partners a firm is dissolved by the death



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doing violence either to the language used or to the said basic principle. Section 42(c) of the Partnership Act can appropriately be applied to a partnership where there are more than two partners. If one of them dies, the firm is dissolved; but if there is a contract to the contrary, the surviving partners will continue the firm. On the other hand, if one of the two partners of a firm dies, the firm automatically comes to an end and, thereafter, there is no partnership for a third party to be introduced therein and therefore, there is no scope for applying clause (c) of Section 42 to such a situation. It may be that pursuant to the wishes or the directions of the deceased partner the surviving partner may enter into a new partnership with the heir of the deceased partner, but that would constitute a new partnership. In this light Section 31 of the Partnership Act falls in line with Section 42 thereof. That Section only recognizes the validity of a contract between the partners to introduce a third party without the consent of all the existing partners: it presupposes the subsistence of a partnership: it does not apply to a partnership of two partners which is dissolved by the death of one of them, for in that event there is no partnership at all for any new partner to be inducted into it without the consent of others."

9. By relying upon this decision as well as Section 42(c) of the Act, the learned Standing Counsel would contend that, the moment one partner out of two partners of the partnership firm dies, the partnership firm gets dissolved and since the partnership firm was the registered contractor with the respondent that status of the petitioner will be lost. Therefore, it become necessity for the respondent to cancel such registration and that has been done and communicated through the impugned order. Therefore, it does not require any interference from this court, he contended.

10. I have considered the rival submissions made by the parties and perused the materials placed before this Court.

11. In so far as the legal position is concerned, as has been rightly pointed out by the learned counsel appearing for the respondent that in the teeth of Section 42(c) of the Act, which has been interpreted by the Hon'ble Supreme court in the case of Commissioner of Income Tax Madhya Pradesh Nagpur and Bhandara, once the partner of the two members partnership firm dies, the



consequence upon the same would be as per Section 42(c) of the Act, therefore, the partnership firm gets dissolved.

12. Since the partnership firm alone was a registered contractor at the respondent, naturally the petitioner would lose the status of the registered contractor, therefore, a formality of cancellation of registration has to be undertaken by the respondent, which they have done and communicated through the impugned communication.

13. In this context, a point has been raised by the learned counsel appearing for the petitioner that, had he been given an opportunity of being heard and thereafter, if such a decision is taken, it cannot be said that it is infirm because of violation of principles of natural justice, however in this case, such an opportunity is not given and no notice has been given, on that ground, the impugned order can be interfered with.

14. However in respect of the said submission made by the learned counsel for the petitioner, this Court feels that, even if such notice is given or an opportunity is given to the petitioner, he cannot improve the case because it is a natural corollary by the provisions of the Act as referred to above. When the moment one partner out of two partners in a partnership firm dies, the surviving partner cannot hold the partnership firm without it being reconstituted by any third party.

15. When that being so, the said reasons cited by the learned counsel appearing for the petitioner that, no opportunity was given, cannot have much weightage in the present circumstances of the case and therefore, on that ground, the impugned order cannot be interfered with.

16. Moreover, it is the further contention of the learned counsel for the petitioner that steps have already been taken to reconstitute the firm with some third parties by the surviving partner and once it is reconstituted, if the petitioner approaches the respondent, they shall not say any reason for rejecting the claim of the petitioner on the ground that already the partnership firm was de-registered from the role of the respondent.

17. In this context, this Court feels that, it is open to the petitioner to reconstitute the firm and once it is reconstituted in the manner known to law, the petitioner firm can very well approach the respondent by making an application afresh to seek for registration as a registered contractor at the respondent Board and in that case, the plea of the petitioner can very well be considered by the respondent.



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18. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

(i) That the impugned order is sustained, no interference is called for.

(ii) However, it is open to the petitioner that, he can make an application afresh to the respondent after reconstituting the partnership firm seeking for registration and once such application is made by the petitioner after reconstitution, the respondent shall process such application and decide the same with regard to the plea of the petitioner for registration and in such case, the earlier cancellation of registration due to the aforesaid reason, which is culminated in the impugned order, shall not stand in the way.

With these directions and observations, this writ petition is disposed of. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

mp/rap

To

1. The Superintending Engineer (C & M),
Chennai Metropolitan Water Supply
and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai - 600 002.

W.P.No. 19149 of 2021

KSM(CO)
RGA(15/02/2022)