

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

220

**CWP-17677-2018
Date of Decision: 11.09.2023**

RAJINDER & CO.

... Petitioner

VERSUS

UNION OF INDIA & ORS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Shailendra Sharma, Advocate
for the petitioner.

Ms. Gehna Vaishnavi, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

The prayer in the present petition was for restoration of the status of the petitioner as an approved Class-A Contractor of the respondents.

Learned counsel for the petitioner contends that the petitioner was working as contractor in Military Engineering Services and executed various contracts since 1991. He was enlisted as approved Class-A contractor in the year 1993 under Index No.A-77/WC in the Office of Chief Engineer, Western Command, Chandi Mandir. The petitioner deposited the standing security of Rs.1,00,000/- in the shape of an FDR in favour of PCDA Western Command, Chandigarh. The petitioner, thereafter, secured a contract from the Chief Engineer, Chandigarh Zone, Chandigarh in the year 1995 and completed 90% work at his own cost without release of the running payments from the department. The respondent No.4 i.e. Chief Engineer, Chandigarh Zone, Chandigarh is alleged to have raised certain disputes and got the work

completed at the risk and cost of the contractor- the petitioner herein. The dispute was thereafter referred to arbitration, under the intervention of this Court, and an Award was passed in favour of the petitioner in the year 2009. The abovesaid aspect gave rise to a grudge in the minds of the officials of respondent No.4 and they did not issue any other tender form to the petitioner and rather imposed a ban on the petitioner firm so that it could not get any other tender from the office of Chief Engineer/Commander Works Engineer/Garrison Engineer all over the country. It was alleged that the removal of the name of the petitioner from the approved list of contractors was without affording any opportunity of hearing or following principles of natural justice and on the ground that the petitioner failed to submit the Income Tax Clearance Certificate from the Income Tax Department even though no such demand was ever raised or conveyed to the petitioner. He submits that the FDR submitted by the petitioner is still in possession of the respondents department and that he would be satisfied at this stage in case the respondent-Authorities reconsider the claim of the petitioner for enlistment /renewal of his status as a Class-A contractor.

Reply on behalf of the respondents through Brigadier Praveen Deswal, Chief Engineer, Chandigarh Zone has been filed, wherein it has been averred that the petitioner was enlisted as a Class-A Contractor in the Western Command on 16.06.1993. The enlistment was to be accompanied by an Income Tax Clearance Certificate. The petitioner firm was suspended from tendering on 10.07.1998 and the petitioner was informed that the grace period of three months, after the expiry of the Income Tax Clearance Certificate on 10.03.1998, was over. It is contended that the information was also sent that the name of the petitioner would be removed from the approved list of contractors for non-submission of a fresh and valid Income Tax Clearance Certificate. It is further

submitted that vide order dated 22.09.1998, the name of the petitioner firm was removed from the list of approved/enlisted contractors of the Western Command on account of failure to submit fresh and valid Income Tax Clearance Certificate. It is further averred that a fresh Income tax Clearance Certificate was submitted by the petitioner on 14.03.2001, however, the same was stated to be valid upto 11.03.2001. It was further submitted that the respondents had received the last correspondence from the petitioner on 31.05.2002, wherein he sought the release of the FDR for renewal and for release of interest to his banker. Thereafter, the petitioner remained silent for a period of 14 years and did not take any action for the enlistment as Class-A contractor and it is only on 14.08.2016, that a letter was issued by the petitioner to the respondents complaining about non-allotment of any tender. The previous exchange of communication was concealed and withheld.

No serious objection was, however, raised by the respondent against the prayer of the petitioner to reconsider his claim for enlistment afresh or seek renewal thereof.

Replication to the written statement filed by the respondents had been filed by the petitioner, wherein he has denied the receipt of any communication from the respondents. Further, while referring to (Annexure R-4) i.e. the letter dated 22.09.1998, whereby the removal of the petitioner's firm from the list of approved contractors is stated to have been ordered, it is averred that the said letter is an intra-department communication from the Head Quarter of the Western Command to all Chief Engineers under the Western Command and the same was never conveyed to the petitioner. Receipt of letters and communication of 1998 as well as 2001 is denied by the petitioner.

I have heard the learned counsel for the respective parties and have also gone through the documents appended alongwith the present petition with their able assistance.

The undisputed facts which emerge from the consideration of the documents are as under:

- (i) That the petitioner was enlisted as Contractor with the respondents since 1991.
- (ii) The petitioner was enlisted as a Class-A contractor in the year 1993.
- (iii) That the FDR of the petitioner has still not been released in his favour by the respondent.
- (iv) That the non-renewal of the enlistment of the petitioner was not on account of any misconduct and/or order of blacklisting; but was only on account of non-furnishing of the Income Tax Clearance Certificate.

It is also noticed that even though the petitioner contends that the communication dated 22.09.1998 had not be received by him, however, it is evident from a perusal of the same that the same was sent by registered post to the address of the petitioner. The said address is not disputed by the petitioner at this stage. There would thus be a presumption of valid service of the aforesaid communication to the petitioner under the General Clauses Act, 1977.

Be that as it may, taking into consideration that non-renewal of the enlistment of the petitioner was not on account of any misconduct/blacklisting or any punitive order imposed on the petitioner and was rather on account of the failure on the part of the petitioner to submit the fresh and valid Income Tax Clearance Certificate, which at best is an irregularity and would not create an

absolute bar against reconsideration of the petitioner for enlistment/renewal of his enlistment made earlier.

I thus deem it appropriate to dispose of the present petition without commenting on merits of the case, with liberty to the petitioner to approach respondent No.3-Chief Engineer, Western Command, Chandi Mandir, Panchkula alongwith all requisite documents for seeking redressal of his grievance i.e. renewal/reenlistment as contractor with respondents.

Upon receipt of any such representation duly supported with all necessary documents required as per law, the respondent-Authorities shall take a fresh decision thereupon with regard to the enlistment/renewal of enlistment of the petitioner as Class-A contractor within a period of four months from the date of submission of such representation, after affording an opportunity of hearing to the respective parties.

Disposed of accordingly.

SEPTEMBER 11, 2023
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No