



2024:DHC:5011



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

+ **LPA 445/2024 & C.M. APPL. 32815-32816/2024**

**GURUJI ELEVATOR**

..... Appellant

Through: Mr. R.N. Singh and Ms. Mukti Bodh, Advocates.

versus

**UNION OF INDIA & ORS.**

..... Respondents

Through: Ms. Monika Arora, CGSC with Mr. Subhrodeep Saha, Advocate for UOI.

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Date of Decision: 3<sup>rd</sup> July, 2024.

**CORAM:**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

### **J U D G M E N T**

**MANMOHAN, ACJ : (ORAL)**

1. The present appeal has been preferred under Clause X of the Letters Patent Act, 1866 assailing the judgment dated 08<sup>th</sup> February, 2024 passed by the learned Single Judge of this Court dismissing the W.P.(C) 9357/2023 titled *Guruji Elevators vs. Union of India & Ors.* filed by the appellant.



2024:DHC:5011



2. The facts germane to the present appeal, shorn of unnecessary details and culled out from the appeal, are as under:-

2.1 The appellant is a Government contractor carrying out Mechanical Civil works as well, for the Electrical and various Government Departments viz. CPWD, PWD, Railways, Postal Department and MTNL etc.

2.2 The respondent no.2 is the Director General of the Central Public Works Department (hereinafter referred to as “CPWD”). Respondent no.3 is the Additional Director General, Projects Delhi, Central, CPWD, who is the designated Enlistment Authority for the Delhi Region as per the Rules for Enlistment of Contractors in CPWD, 2021 (hereinafter referred to as “*Enlisting Rules, 2021*”).

2.3 The appellant, on 14<sup>th</sup> February, 2022, through the Contractors’ Enlistment Management System, applied online for enlistment in Class-I, Building & Roads Category in CPWD, as per the Enlisting Rules, 2021.

2.4 The respondent no. 3 *vide* its letter dated 02<sup>nd</sup> March, 2022 sought some clarification and documents from the appellant, which were provided by the appellant. Thereafter, the respondent no. 3 *vide* its letter dated 01<sup>st</sup> June, 2022 directed the concerned Superintending Engineer to inspect the two works of the appellant.



2024:DHC:5011



2.5 The Advisory Committee constituted to assist the respondent no. 3, after receipt of the Inspection Reports of the two works referred by the respondent no. 3 to the Superintending Engineer, scrutinized the Inspection Reports and other documents of the appellant, evaluated the Performance Reports of the appellant and found the appellant eligible for enlistment in Class-I Building and Roads Category in CPWD.

2.6 The Advisory Committee on 20<sup>th</sup> July, 2022 filed its Report before the respondent no.3, recommending the appellant for Enlistment in Class-1 Building and Roads Category in CPWD.

2.7 It is the case of the appellant that the respondent no.3 by ignoring the categorical recommendations of the duly constituted Advisory Committee, *vide* its office order no. 24(471)/ADG(PRD)/B&R/C-1/2022/279 dated 30<sup>th</sup> January, 2023, uploaded on the CEMS Portal sometime in the first week of February, 2023, rejected the application of the appellant on the ground that the appellant did not meet the criteria under Rule 2.0 of the Enlisting Rules, 2021.

2.8 Subsequently, the appellant *vide* his letter dated 25<sup>th</sup> March, 2023 sent a request to the respondent no. 3 for review in terms of the provisions of Rule 7.8 of the Enlisting Rules, 2021.

2.9 It is the case of the appellant that the respondent no.3 *vide* its office order no. 24(471)/ADG(PRD)/B&R/C-1/2022/1127 dated



2024:DHC:5011



28.04.2023, rejected the review application of the appellant without assigning any reason thereof.

2.10 Aggrieved, the appellant filed W.P.(C) 9357/2023 challenging the impugned orders dated 30<sup>th</sup> January, 2023 and 28<sup>th</sup> April, 2023 issued by the respondent no.3, whereby the request of the appellant made *vide* his applications dated 14<sup>th</sup> February, 2022 and 25<sup>th</sup> March, 2023 respectively was rejected. The writ petition filed by the appellant was dismissed by the learned Single Judge *vide* the impugned judgement dated 08<sup>th</sup> February, 2024. Being aggrieved from the same, the appellant has preferred the present appeal.

3. Before us, Mr. R.N. Singh, learned counsel for the appellant urged the same grounds and contentions as were urged before the learned Single Judge. The primary contention of learned counsel for the appellant centered around the submission that despite the fact that the Advisory Committee in the first instance had given a positive recommendation in favour of the enlistment of the appellant as Class-I contractor, there was no reason, much less a cogent reason as to why the appellant was not granted such status. That apart, he submits that apparently, there was no reason why the respondent no.3 did not agree with the recommendations of the Advisory Committee and had rejected such recommendations without any plausible reasons.



2024:DHC:5011



4. The other contention urged by the learned counsel is that while reviewing the recommendations of the Advisory Committee on the request for reconsideration by the appellant, the respondent no.3 did not appreciate the fact that the appellant had to its credit, two completed projects of value more than Rs.700 Lakhs each, which was more than the stipulation as mentioned in Table 2 under Rule 6.2.7 regarding Magnitude of work experience for Buildings & Roads category under the Enlisting Rules, 2021. He submitted that according to Table 2, for the purpose of enlistment as a contractor in Class-I Building & Road category, a person ought to show two completed works of value not less than Rs.600 Lakhs each. The appellant, having two completed contracts of value more than Rs.700 Lakhs each to its credit, could not have been denied the enlistment as a Class-I contractor. Learned counsel asserts that the experience and other relevant documents brought on record were fully in consonance with the requirements of Clause 6.2.1 of the Enlisting Rules, 2021. He thus, submits that the review of the recommendations of the Advisory Committee and withdrawal of such recommendations is arbitrary, capricious, unjust, unconstitutional and wholly unwarranted.

5. Learned counsel draws our attention to various documents on record, particularly the documents relating to 1<sup>st</sup> and 2<sup>nd</sup> eligible work to buttress that the said documents indicate that the gross value of completed works in the first instance including the enhanced value of works was pegged at Rs.7,69,97,984/- and Rs.8,12,90,767/- respectively.



2024:DHC:5011



6. In that view of the matter, learned counsel submits that the figures aforesaid speak for themselves and there was neither any reason nor any requirement for the respondent no.3 to disagree with the recommendations of the Advisory Committee which had *vide* its Report dated 20<sup>th</sup> July, 2022 already declared the appellant eligible for enlistment in the Class-I Building & Road category. According to the learned counsel, such rejection ought to be set aside and a direction be passed to the respondent to enlist the appellant as a Class-I contractor.

7. *Per Contra*, Ms. Arora, learned CGSC appearing for the respondents submits that though the Advisory Committee had recommended the appellant for enlistment as Class-I contractor, however, the recommendations, which were advisory in nature, were considered by the respondent no. 3 and after such evaluation, the appellant was not found eligible for enlistment as a Class-I contractor under the Enlisting Rules, 2021. She submits that though the appellant had sought to establish himself as eligible/suitable for enlistment in Class-I Building & Road category, however, the documents showing its eligibility were in respect of the works executed in a labour intensive contract. In order to buttress her argument, Ms. Arora, learned CGSC draws attention of this Court to the 1<sup>st</sup> and 2<sup>nd</sup> eligible work of the appellant to submit that the said documents pertain to running and operation of lifts in two different hospital complexes in Delhi. She submits that it is apparent from the said documents that the appellant



2024:DHC:5011



has not demonstrated any expertise or prior experience in completion of civil works worth the value of more than Rs.600 Lakhs.

8. Learned CGSC further submits that it is apparent from the said documents that the appellant has only supplied labour and may have incidentally done small ancillary works, which would not fulfill the criteria stipulated in the Enlistment Rules, 2021. That apart, she strenuously argued that the decision taken by the respondent no.3 is in consonance with the rule position and as such, cannot be questioned by the appellant.

9. She further submits that the review of the rejection of the recommendations of the Advisory Committee by the respondent no.3 was also done upon the request of the appellant for reconsideration. She submits that upon such reconsideration too, the respondent no. 3 categorically found that the appellant was not eligible/suitable for such enlistment.

10. On the aforesaid basis, Ms. Arora, learned CGSC submits that the present appeal ought to be dismissed with costs.

11. We have heard Mr. R.N. Singh, learned counsel for the appellant and Ms. Monika Arora, learned CGSC, perused the impugned order passed by the learned Single Judge and considered the documents placed on record.

12. Before we advert to the arguments addressed on behalf of the parties, it appears apposite to refer to certain relevant rules in the Enlistment Rules, 2021. Rules 2.2, 6.1, 6.2.1 and 6.2.7 are extracted hereunder:

*"2.2 "building work" means construction of a residential or non-residential structure, consisting of foundation, walls, floors, roofs,*



2024:DHC:5011



*finishing, civil and electrical services, complete, executed under a single contract with E&M component. In addition, building work shall also include boundary wall, repair and maintenance, additions, alterations, renovations, upgradations, electrical installations, electrical and mechanical services of buildings but excluding standalone works of supply of materials, housekeeping, sweeping, care taking, watch & ward, operation and maintenance of electrical and mechanical services through original equipment manufacturers and any other works involving labour component only.*

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**6.1** *The status of an applicant for enlistment as a contractor in CPWD may be one of the following:*

- (a) An individual, who is a citizen of India.*
- (b) Sole proprietorship*
- (c) Partnership firm*
- (d) Limited liability partnership*
- (e) Private limited company*
- (f) Public limited company*

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**6.2.1** *The criterion for work experience shall be of completed works, as given in Rule 6.2.1 and 6.2.7 of these rules, of the prescribed nature and magnitude executed on independent contract basis during the last seven years (works executed on labour rate contracts will not be considered). The value of works executed during the last 7 years shall be brought to current value by enhancing the actual cost of work at simple rate of 7% per annum, calculated from the date of completion of work to the date of submission of application. The works should have been executed in the same name and style in which the enlistment is sought by the applicant, except under special circumstances as stated in these rules separately.*

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**6.2.7** *The magnitude of work experience required for Buildings & Roads category for various classes is given in Table 2.*

*Table 2: Magnitude of work experience for Building & Roads category*



2024:DHC:5011



| Number of completed<br>work | Magnitude of each completed work |          |          |        |      | Rs. In lac |     |     |    |   |
|-----------------------------|----------------------------------|----------|----------|--------|------|------------|-----|-----|----|---|
|                             | Class                            |          |          |        |      |            |     |     |    |   |
|                             | I (Super)                        | II (AAA) | III (AA) | IV (A) | V    | I          | II  | III | IV | V |
| Three                       | 7000                             | 3500     | 1750     | 1100   | 400  | 110        | 35  | 10  | 3  |   |
| Or                          |                                  |          |          |        |      |            |     |     |    |   |
| Two                         | 10500                            | 5250     | 2600     | 1600   | 600  | 160        | 50  | 15  | 4  |   |
| Or                          |                                  |          |          |        |      |            |     |     |    |   |
| One                         | 21000                            | 10500    | 5300     | 3200   | 1250 | 320        | 100 | 30  | 8  |   |

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The definition of “*building work*” contained in Rule 2.2 clearly indicates that a person seeking enlistment as Class-I contractor mandatorily needs to demonstrate that he is, as on the date of his application, having the requisite experience of having completed works of the nature contained in Rule 2.2. In other words, the person should have commenced and successfully completed construction of a residential or non-residential structure, consisting of foundation, walls, floors, roofs, finishing, civil and electrical services, complete, executed under a single contract with E&M component. It brooks no ambiguity that a person seeking enlistment as Class-I contractor must necessarily have commenced and completed the aforesaid works mandatorily to be entitled to apply for such enlistment. Additionally, Rule 2.2 also contains specifications in regard to works which fall within the definition of “*building works*” apart from the above civil works, which may include electrical installations, electrical and mechanical services of buildings etc. To us, it is clear that the second part of the Rule 2.2 is secondary whereas, the first part regarding civil construction work is primary in nature. Thus, to be eligible, a person must



2024:DHC:5011



necessarily fulfill the first criteria before demonstrating fulfillment of the second criteria under the Rule 2.2 of the Enlistment Rules, 2021.

Rule 6.2.1 read with Rule 6.2.7 prescribe the nature and magnitude of work executed on an independent contract basis during the last seven years. The magnitude of work experience has been indicated in Table 2 under the Rule 6.2.7. The said Table would indicate that the person who seeks to be enlisted as a contractor in Class-I Building and Roads category must have three completed works of value not less than Rs.400 Lakhs each or two completed works of value not less than Rs.600 Lakhs each or one completed work of value not less than Rs.1200 Lakhs. It is clear from the aforesaid Rule that a person has to necessarily demonstrate the required magnitude of work experience. In case a person fails to do so, he would be ineligible or unsuitable for enlistment as Class-I contractor. Having analysed the various relevant rules as aforesaid, we would now advert to the submissions urged by the learned counsel for the parties.

13. We have perused the documents pertaining to the two eligible works as submitted by the appellant with the respondent on the basis whereof the appellant sought enlistment as Class-I contractor. A perusal of the said documents indicate that the name of work/project has been categorically indicated as *“Running & Maintenance of Lifts installed in residential and non-residential buildings at GTB Hospital Complex, Shahdara, Delhi (SH-Running Operation of lift)”* in the first instance and *“Running and*



2024:DHC:5011



*Maintenance of lifts installed at various buildings at LN Hospital, New Delhi (SH- Running and operation of lift)” in the second instance. It is apparent that the same is in respect of only running and operation of lifts which would require labour and not any civil construction or civil works. There is nothing to indicate that the appellant in these two instances was awarded with the contract pertaining to the definition of “building works” as per Rule 2.2 of the Enlisting Rules, 2021. This was also noted by the learned Single Judge in the impugned order. We have no reason, nor has any such demonstrable submission been urged to differ with the aforesaid conclusion. On this point, we uphold the view of the learned Single Judge.*

14. So far as the argument regarding the quantum/magnitude of work experience as submitted by the learned counsel for the appellant is concerned, we are unable to agree with such contentions. This is for the reason that though the appellant has attempted to show that the appellant has two completed works of value more than Rs.700 Lakhs each, yet , the said works pertain only to labour intensive contract and not to the civil construction as stipulated in Rule 2.2. Even if it is assumed that the appellant has executed works beyond Rs.700 Lakhs each, the same would not enure to the benefit of the appellant. This too has been clearly concluded by the learned Single Judge in the impugned judgment. We have no reason to disagree with such findings and thus, affirm the said aspect.

15. With respect to the issue raised regarding alleged arbitrariness in rejecting the recommendations of the Advisory Committee by the



2024:DHC:5011



respondent no.3 is concerned, we find the same to be untenable. The respondent no.3 being the Competent Authority to accept or reject the recommendations of the Advisory Committee, this Court would not interfere ordinarily unless it is shown to be arbitrary, unconstitutional or contrary to any rule or regulation. A plain reading of the conclusions of the Competent Authority indicates that the said Authority had applied its mind to the documents placed before it and had correctly concluded that the work experience of the appellant is only in respect of labour component and not for the eligible building works. Though the said Authority found that there are extra items with material components, yet, found that the quantum in respect thereto, was lesser than the prescribed experience. We too have found from the said documents that the appellant has executed only labour intensive contracts which would not fulfill the conditions stipulated in Rule 2.2 read with Rules 6.2.1 and 6.2.7 of the Enlisting Rules, 2021. In fact, the documents placed on record fall short of the requirements stipulated in the afore referred rules. Thus, the submission on the aforesaid aspect too is rejected.

16. Learned Single Judge had also referred to many judgments in respect of the scope of interference in administrative orders under Article 226 of the Constitution of India, 1950 which are not reiterated herein for the sake of brevity. However, the law in respect thereto is well settled inasmuch as the Courts are to examine the decision making process and not the decision itself. We find that the respondents have considered relevant material and



2024:DHC:5011



not violated the Wednesbury principles and as such, not warranting any interference.

17. In view of the aforesaid analysis and findings, we find no reason, much less any cogent reason to interfere with the impugned judgment passed by the learned Single Judge. Resultantly, the present appeal is dismissed without any order as to costs.

18. Pending applications also stand disposed of.

**ACTING CHIEF JUSTICE**

**TUSHAR RAO GEDELA, J.**

**JULY 03, 2024/kct/rl**