IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 23667 of 2024

With

WPA 23687 of 2024

Shravan Kumar
Vs.
Union of India & Ors.

For the Petitioner : Mr. Saptarshi Roy
: Ms. Kakali Das Chakraborty

For the Union of India : Mr. Ashok Kumar Bhowmick
: Mr. Amal Kumar Dutta

Heard on : **26/02/2025**

Judgment on : **26/02/2025**

Rai Chattopadhyay, J. :-

In re: **WPA 23667 of 2024**

1. Mr. Roy appearing for the writ petitioner has submitted that the present matter has become infructuous.
2. Mr. Bhowmick is appearing for the respondent Railways.

3. Upon consideration of the submissions made on behalf of the petitioner as above, the present writ petition is disposed of being infructuous.

<u>In re: **WPA 23687 of 2024**</u>

1. The only point determinable in the present writ petition is, whether the petitioner being the sole proprietor of the sole proprietorship firm namely, M/s. Maa Netula Cargo Service, shall be an inseparable legal "entity" with the said proprietorship firm particularly, with respect to the financial status and stability of the said firm or not.

2. The petitioner is the sole proprietor of the sole proprietorship firm namely, M/s. Maa Netula Cargo Service. He has challenged an order of the respondent Senior Divisional Commercial Manager, Kharagpur, South Eastern Railway dated September 11, 2024. By dint of the said order, the said respondent/Senior Divisional Commercial Manager, Eastern Railways, Kharagpur Division has declined to enter into a contract with the present petitioner being the proprietor with the proprietorship firm as named above, in spite of the said proprietorship firm of the petitioner, having emerged to be the successful bidder in the tender process. The reason as enumerated in the said order dated September 11, 2024 for the said respondent authority to decline to enter into a contract with the sole

proprietorship firm of the petitioner is inter alia that the documents as regards the financial health and stability of the firm as uploaded at the time of participation in the bid, has been in the name of the petitioner, that is, the sole proprietor of the said firm and not allegedly depicting the financial health and stability of the sole proprietorship firm itself. The respondent authority had stated that financial turnover of the proprietorship firm cannot be considered to be interchangeable with that of its proprietor, whereas the proprietor may have other sources of income. Therefore, so far as the bid put forth by the firm in response to the tender notice, should contain and bear, relevant documents as to the financial position of the firm only, which is the bidder and not of any other individual or "entity" even the proprietor himself. Since in the petitioner's case the facts have been otherwise, therefore, successful bid of the firm has been declined by the respondent authorities, to be acted upon any further. Being aggrieved, the petitioner has filed the present writ petition.

3. Mr. Bhowmick has represented the respondent Railways. Mr. Bhowmick has categorically and elaborately submitted that Clauses 1.0 to 1.4 of Freight Marketing Circular No. 11 of 2022 reflects the eligibility criteria for an "entity" to participate in a tender/e-Auction. He specifically refers to Point 1.1 and 1.2 of the said circular No. 11 of 2022 which speaks as follows:

> ***"1.1. The minimum annual financial turnover, in 'any one' of the just preceding three financial years, of the entity, for participation in the e-Auction, shall be as below:***
>
> * *   * *   * *
>
> ***1.2 The entity shall be required to upload the Audited Balance Sheets and P&L Account Statements of the last three Financial Years in their profile in IREPS before start of bidding in the auction in which they want to participate. ..."***

4. According to Mr. Bhowmick, the "entity" as referred to in the F.M. Circular No. 11 of 2022, is the individual or the company or a partnership or proprietorship firm, who/which actually takes part in the e-Auction process. In this case, Mr. Bhowmick accepts that the petitioner is the sole proprietor of the bidder that is the proprietorship firm. However, Mr. Bhowmick has expressed objection in awarding the contract to the said successful bidder that is the proprietorship firm, in spite of the same having emerged as the highest bidder, for the reason that the supporting documents as regards the financial condition of the proprietorship firm has not been uploaded for due consideration of the prospective lessor/Railways. Instead, financial documents of proprietor/petitioner, have been uploaded. Therefore, he says that since in terms of the circular No. 11 of 2022, the Railways is not in a position, so far as the proprietorship firm of the petitioner is concerned, to ascertain its financial stability on the basis of any viable documents submitted in that regard, the Railway is not

enabled, competent or authorized to enter into a contract with such an “entity” as per law. So far as, prayer of the petitioner in this writ petition that is, to set aside the impugned order dated September 11, 2024 and issue mandate that a contract be entered into with the petitioner, Mr. Bhowmick insists that those are not maintainable and the writ petition may be dismissed.

5. The petitioner’s grounds are based on the legal fiction that the sole proprietorship firm and the proprietor thereof share an inseparable legal “entity”. Mr. Roy, learned counsel for the petitioner submits that the impugned decision of the respondents communicated vide the said letter dated September 11, 2024 is based on not only wrong notion but also sheer non-application of mind as well as erroneous or no application of the settled law.

6. Mr. Roy says that the petitioner being the sole proprietor of the firm is authorized to upload his financial documents like the profit and loss statement or the balance sheet, for his sole proprietorship firm, as the present petitioner has done while participating in the bid, to be considered as the financial documents of the proprietorship firm itself. He says that these are the acceptable documents or otherwise the system would have by itself rejected to accept the documents so submitted by the present petitioner. Mr. Roy says that the petitioner in the similar manner and on behalf of

the sole proprietorship firm owned by him, as named above, has entered into agreements with the other divisions of Railway. Thus, he says that the Railway authorities, has aprobated and reprobated at the same time by issuing a letter as above, thereby declining to enter into a contract with the proprietorship firm. He does not fail to indicate that the same is an act by the respondents, not permissible under the law.

7. Mr. Roy has submitted further that the respondent Railways in the impugned letter dated September 11, 2024 has not contemplated filing of any false or invalid document by the petitioner.

8. Therefore, according to him, there is hardly any ground available in terms of the rules particularly, the Freight Marketing Circular No. 11 of 2022 to the respondent railways, not to consider the documents submitted by him in support of the bid of the sole proprietorship firm owned by him.

9. Mr. Roy has referred to the judgments as follows:-

i) ***Tyagi and Brothers Vs. Food Corporation of India and Others*** *in* ***CWP No. 19431 of 2020*** *order dated* ***16.11.2020.***

ii) ***Vinayak Purushottam Dube (Deceased), Through LRs Vs. Jayashree Padamkar Bhat & Others*** *in* ***Civil Appeal Nos. 776-7769 of 2023*** *order dated* ***01.03.2024.***

iii) ***Raghu Lakshminarayanan Vs. M/s. Fine Tubes*** *in* ***Appeal (crl.) 485 of 2007*** *order dated* ***05.04.2007.***

10. All these judgments have been referred to by Mr. Roy to substantiate his argument that a sole proprietorship concern cannot be said to be a separate "entity" from that of its proprietor.

11. Therefore, pursuant to the legal fiction as above, he says that the income of the two inseparable entities that is the proprietorship firm and its sole owner can also not be separated or considered individually by an authority.

12. In response to the question of the Court, Mr. Roy has relied on another judgment of **Ashok Transport Agency Vs. Awadhesh Kumar and Another** to submit that the Court has held there as follows:-

> ***A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business.***

13. Thus, according to the petitioner, he may immediately be allowed to enter into a lease agreement with the respondent Railways, being the highest bidder in the e-Auction process and start functioning in terms of the said agreements. Admittedly, in this case, the e-Auction process has been participated by the sole proprietorship firm namely, M/s. Maa Netula Cargo Service, of which the present petitioner is the sole proprietor. In spite of the said firm being emerged as the highest bidder in the process, the respondent Railways have denied to enter into a contract with the said firm, on the basis of the reasons as enumerated by them in the impugned letter dated September 11, 2024. As discussed earlier, the reasons shown by the said respondent Railways and also submitted before this Court today, are with regard to the non-compliance by the sole proprietorship firm with the specific stipulations in the Circular, regarding participating in the e-Auction process by filing the financial statements of the said "entity" showing the financial health and stability of the said "entity". According to the respondents, the financial position of the sole proprietorship firm may not be equated with or tallied with financial position of its sole proprietor in so far as the sole proprietor in his own capacity may have been engaged in certain other avocations providing him with additional income, which are not at all pertaining to the proprietorship firm of which he is the sole responsible person. Therefore, according to the respondents

Railways, to award a contract to an "entity" the Railways has to be satisfied with the financial health and stability of the concern or "entity" which has actually taken part in the e-Auction process.

14. The Court, however, finds that in doing so, the Railways have failed to apply mind to the settled legal position as regards the inseparable status of the sole proprietorship firm and its sole proprietor. The profit and loss or the assets and liabilities of the sole proprietorship firm is pertaining to the sole proprietor thereof only and to none other.

15. As stated earlier, in the case of ***Ashok Transport Agency (Supra)***, the Court has held categorically that the proprietorship concern is not a separable "entity" but a business name for the proprietor to carry on his business. Therefore, a proprietorship concern can sue and be sued in the name of the proprietor only and not in its individual name.

16. The law is well-settled in this regard as enumerated by the Courts in the judgments of ***Tyagi and Brothers (Supra)***. The Hon'ble Division Bench of Punjab and Haryana High Court at Chandigarh has held in the judgment of ***Tyagi and Brothers***

(Supra) that a sole proprietorship concern cannot be said to be a separate "entity" from that of its proprietor.

17. Similar proposition has been propounded by the Hon'ble Supreme Court in the latest judgment of ***Vinayak Purushottam Dube (Supra)*** in the following words:

> ***13. The requirements of natural justice depend on the circumstances of each case, the nature of the enquiry, the rules under which the official respondents are acting, the subject matter being dealt with and so forth. In the present case, the official respondents passed two detailed orders which are Annexures P-6 and P-15 and have fully acted in accordance with the provisions of the NIT/MTF. Further more, the petitioner has not challenged the vires of the provisions of the NIT/MTF. In our considered view, in the present case, not only justice has been done but has manifestly been seen to have been done.***

18. Therefore, the unlimited liability of the sole proprietor co-extensive with the sole proprietorship firm, is an accepted principle, in the eye of law. This supports the contention of the petitioner that as an "entity", both are same.

19. On behalf of the respondent Railways, the proposition as above, though accepted, but excepting the financial position of the two. The "entity" is comprised with all the assets and liabilities. Therefore, the interpretation as regards the co-extensive "entity" of the petitioner and his proprietorship firm but excepting the

financial position, is not acceptable particularly, in view of the law settled as mentioned above that the sole proprietorship firm is inseparable as an “entity” from its proprietor.

20. A single proprietorship cannot be distinguished from its owner. A single proprietorship’s income is the money made by its owner. For taxation purposes also, a sole owner reports single proprietorship income, losses and costs. The identification of the owner or single proprietor, in this most fundamental legal structure for a company entity, is the same as the identity of the company entity. As a result, the entity’s owner is entirely responsible for all obligations the firm may incur. There is no legal separation between the business owner and the business itself; the owner is personally liable for all business debts and obligations. The owner and the business are legally considered one and the same. As a result of this single entity status, the proprietor bears unlimited liability for all business debts and losses.

21. For the reasons as above, the Court finds that the interpretation of the “entity” as enumerated in the Freight Marketing Circular No. 11 of 2022, by the respondent Railways thereby not to include the proprietorship firm and its sole proprietor within a singular bracket as regards the financial part of both, is an unacceptable proposition. Instead the Court is firmly of opinion on the basis of the law settled in this regard as discussed above

that the petitioner being the sole proprietor of the bidder firm namely, M/s. Maa Netula Cargo Service is the same “entity” and bear a status co-extensive with the said sole proprietorship firm including the financial assets and liabilities of both. In such circumstances, the impugned order dated September 11, 2024 appears to be based on wrong notion and in contravention of the law settled as discussed above. If the petitioner being the proprietor of the highest bidder, would be duty bound to bear the unlimited liability for all the business debts and losses of the firm and should also be subjected to be sued for the said firm, there would not be any reasonable context for the respondent to insist for separate declaration of financial condition of the said proprietorship firm.

22. Also it is worth noting that the petitioner has already been allowed to enter into contracts with the Railways in different division, in the name of his sole proprietorship firm. Therefore, in case of the South-Eastern Railway Division, the petitioner cannot be treated exceptionally rather discriminately which would also otherwise be in contravention of the settled position of law as well as the Constitutional guarantees.

23. On the discussion as above, the Court finds that the impugned order dated September 11, 2024 should not be maintainable any further and is liable to be set aside, being illegal.

24. Hence, this writ petition being No. WPA 23687 of 2024 is allowed thereby, setting aside the impugned order of the Senior Divisional Commercial Manager, South Eastern Railway, Kharagpur Division dated September 11, 2024.

25. Directions are being made as against the said respondent to immediately conclude execution of the lease agreement in favour of the petitioner, pursuant to the results of e-Auction (Lot No. 18005-18006 – VP-2-HWH-JDB-24-1, Auction dated September, 2024)

26. The writ petition is allowed and disposed of.

27. Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)