

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice Om Narayan Rai

WPA 28052 of 2024

M/s. Sai Construction
-Vs-
Union of India and others

For the Petitioner :

Mr. Sattwik Bhattacharyya,
Mr. Aasutosh Bhattacharyya,
Mr. Titas Niyogi,
Mr. Aritra Roy
...Advocates

For the Respondents:

Mr. Kausik Dey,
Ms. Ashima Roy Choudhury
...Advocates

Heard on : 10.04.2025.

Judgment on : 10.04.2025.

OM NARAYAN RAI, J. : –

Affidavit-of-service filed today be kept with the record.

The writ petitioner is aggrieved by the order/letters dated April 25, 2022 and August 01, 2024 issued by the Chief Engineer, Eastern Command Headquarters.

The case run in the writ petition is that while the petitioner's name was in the approved list of contractors of the respondents, the petitioner had been indicted for having submitted two fake fixed deposit receipts (hereafter "FDs") towards performance guarantees in respect of certain works that had been awarded to the petitioner by the answering respondents. A show cause notice dated February 05, 2022 had been issued to the petitioner thereby calling for the petitioner's explanation

for such submission fake FDs. The petitioner replied to the same by a letter dated March 26, 2022. Upon considering the same, the answering respondent authorities issued the order/letter dated April 25, 2022 which is one of the two orders that have been impugned in the writ petition. At about the same time when the enquiry as regards the aforesaid incident of submission of fake FDs was undergoing, the answering respondents had invited applications for renewal of enlistment of enlisted contractors for the cyclic period 2021-25. The petitioner applied therefor. By an order/letter dated August 01, 2024 the petitioner's request for renewal of the petitioner's enlistment as a contractor for the cyclic period 2021-2025 has been declined. This is the second document under challenge in this writ petition.

Mr. Bhattacharyya, learned Advocate appearing for the petitioner submits that the petitioner is a contractor whose name figured in the approved list of contractors of the Eastern Command. It is submitted that the petitioner's name was removed from the approved list of contractors on the basis of the order/letter dated April 25, 2022.

Insofar as the order/letter dated August 01, 2024 is concerned, it is submitted that by the said letter the petitioner's request for renewal of the petitioner's enlistment as a contractor for the cyclic period 2021-2025 has been unreasonably declined.

It is further submitted that the order/letter dated April 25, 2022 whereby the petitioner was removed from the approved list of contractors was communicated to the petitioner belatedly. The petitioner assails the two

orders/letters on the ground of the same being wholly unreasonable and unreasoned.

Mr. Dey, learned advocate for the respondents submits that the removal of the petitioner was a consequence of a detailed process which involved issuance of a notice to show cause dated February 05, 2022 and consideration of the petitioner's reply thereto dated March 26, 2022.

Inviting the attention of this Court to the petitioner's reply dated March 26, 2022 to the said notice show cause, Mr. Dey seeks to demonstrate that it stood admitted by the petitioner that fake fixed deposit receipts had been submitted by the petitioner.

Mr. Dey further submits that the order dated August 01, 2024 whereby the petitioner's request for enlistment in the list of contractors has been turned down contains reasons that are good enough to sustain such order. He relies on the observation "*it was informed that your firm was removed on account of submission of fake FDs on two occasions*" contained in the said order and submits that the same forms sufficient reason for the respondent authority to not renew the petitioner's enlistment.

It has been further submitted by Mr. Dey that the respondents deal with the defence mechanism of the country and that they cannot risk entering into business with any person with whom there are serious trust issues.

Mr. Bhattacharyya, the learned advocate appearing for the petitioner submits, in reply that the explanation furnished by the petitioner in reply to the show cause cannot be treated as the petitioner's admission inasmuch as fault was committed by the petitioner's employee and not by the petitioner. It is submitted that the petitioner's name should not be removed for the fault of the petitioner's employee. He reiterates that there is no reason given in the order dated August 01, 2024 whereby the petitioner's prayer for renewal of enlistment as approved contractor, has been declined.

The Court has perused both the orders i.e. the order dated April 25, 2022 as well as the order dated August 01, 2024. The letter/order dated April 25, 2022 refers to all the correspondences between the parties and records that the reasons given by the petitioner in its reply to the show cause were not acceptable to the answering respondents. It has been recorded that the act of submission of fake FDs on two occasions could not be let off lightly by calling it to be a mistake. While on this, it would be important to refer to the petitioner's reply dated March 26, 2022 to the show cause notice dated February 06, 2022 issued by the Respondents. In the said reply the petitioner has in fact admitted that one of its employees had indeed submitted fake FDs. However feigning innocence in the matter, the petitioner has sought to shift the blame wholly on its employee by stating that the petitioner had taken action against the said employee by removing him from office and by lodging FIR against him.

The second document impugned in the writ petition, being the letter dated August 01, 2024, records that the petitioner's name had been removed on account of submission of fake fixed deposits on two occasions. It appears from the said letter dated August 01, 2024 that the same had been issued in reply to the petitioner's letter dated July 21, 2024 whereby the petitioner had made a prayer for consideration of the petitioner's application for renewal for enlistment.

Having heard the learned advocates appearing for the respective parties and having considered the material on record this Court is of the view that reliefs prayed for by the petitioner cannot be granted for the following reasons:

- a) The first order that has been assailed by the petitioner is one dated April 25, 2022. Challenge thereto has been carried to this Court by way of a writ petition which has been filed on November 20, 2024 i.e. almost 2 ½ years after passing of the said order. On the strength of the law laid down by the Hon'ble Supreme Court in the case of *State of Madhya Pradesh vs. Bhai Lal Bhai*¹ a writ Court should ordinarily not interfere with any order or entertain a challenge thrown to any action of a person under Article 226 of the Constitution of India, if a suit on the same cause of action would have been barred on the date on which the writ petition was instituted. In the instant case, challenge has been thrown to an order dated April 25, 2022 passed by a Government Authority. In

¹ AIR 1964 SC 1006

terms of Article 100 of the Limitation Act, 1963, an order passed by an officer of Government in his official capacity would be assailable by a suit if such suit is instituted within one year from the date of passing of such order. A suit would therefore have been barred against the order dated April 25, 2022, on the date the instant writ petition was filed.

The writ petition is therefore delayed insofar as the challenge thrown to the order dated April 25, 2022 is concerned. There is no explanation for the delay occasioned by the petitioner in filing the writ petition laying the challenge to such order in the fag end of the year 2024. The writ petitioner's prayer to set aside the said order dated April 25, 2022 therefore cannot be entertained on the ground of unexplained enormous delay.

- b) Even on merits, this Court has not been able to find any procedural irregularity or illegality in the said order dated April 25, 2022. It has been passed upon giving the petitioner an opportunity to represent its case by issuance of a show cause notice to which the petitioner has replied. The reply has been considered and a decision has been reached. It is settled law that the power of judicial review is exercised to scrutinize the decision making process and not the decision itself inasmuch as such power is meant to ensure that the individual receives fair treatment. The decision need not necessarily be correct in the eye of the court. (See *B.C. Chaturvedi vs. Union of India and*

Others)². In such view of the matter also, there is no reason to interfere with the order dated April 25, 2022.

- c) It further appears that the writ petitioner thought fit to challenge the order dated April 25, 2022 only after the petitioner's prayer for renewal of the petitioner's enlistment was turned down by the respondents on the basis of the respondent's conclusion that it had reached vide order dated April 25, 2022. Even on such score the writ petition appears to be an afterthought insofar as the challenge thrown to the order dated April 25, 2022 is concerned. On such score too, the writ petition should not be entertained.
- d) Insofar as the order dated August 01, 2024 is concerned, whereby the petitioner's prayer for renewal of the petitioner's enlistment has been turned down, I find substance in the submission of Mr. Dey that the respondents dealing with the defence mechanism of the country should not indulge in business with any person with whom there are trust issues;
- e) Secondly, the writ petitioner's own rendition of the case reveals that the writ petitioner had applied for renewal of its enlistment for the cyclic period 2021-2025. In the sense relevant to the context, renewal would mean the act of extending the period of validity of the enlistment. That being so, in order that there is a renewal of enlistment, the enlistment must be there in place. In the instant case the enlistment itself had been scotched off by

2 (1995) 6 SCC 749

the answering respondents on the charge of submission of fake FDs. That being so the enlistment lost existence. There could not have been a renewal of a non-existent enlistment. In that view of the matter too the letter dated August 01, 2024 cannot be interfered with.

- f) Even otherwise it is always in the domain of the contracting party to either enter into or not to enter into a contractual relation with other person. No writ of mandamus can be issued to any person to enter into a contract with another.
- g) Denial of the petitioner's request for renewal of its enlistment by the order dated August 01, 2024 on the ground that the petitioner had been found guilty of submission of fake FDs cannot be said to be arbitrary.
- h) Insofar as the assertion of the writ petitioner that the order dated August 01, 2024 is devoid of reason is concerned this Court is of the view that the very fact that the order mentions that the petitioner's name had been removed from the list of contractors on account of submission of fake FDs on two occasions provides sufficient basis for the authority to not renew the enlistment of such persons. Even otherwise, in the domain of contracting parties, it cannot be expected that order of refusal of renewal of enlistment should be as detailed as a judicial order.
- i) In any case a writ of mandamus can only be granted if it has been demonstrated that the person applying for issuance of such writ has a right to the performance of a specific duty by the

person against whom such issuance of writ has been sought. No such right justifying issuance of writ of mandamus has been demonstrated to be inhering in the writ petitioner.

In view of the aforesaid, the writ petition being WPA 28052 of 2024 is dismissed. No Costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(OM NARAYAN RAI, J.)