



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

% Date of Decision: 29.04.2025.

+ **W.P.(C) 3540/2018**

M/S DIPLOMA ENGINEERSPetitioner
Through: Mr. Dinesh Jotwani, Advocate.

versus

UNION OF INDIA AND ORS.Respondents
Through: Mr. Rakesh Kumar, CGSC with
Mr.Sunil, Advocate for UOI along
with Mr. Vinod Kumar Yadav,
ACWE(C)

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. Present petition is instituted under Articles 226 and 227 of the Constitution of India by the petitioner seeking appropriate directions against the respondents for renewal of the petitioner's enlistment as a C-Class Contractor. Insofar as prayers (b) and (c) are concerned, the same are not pressed for seeking appropriate remedy in accordance with law.

2. In the petition, the petitioner has claimed that initially, it was enlisted with the respondents as E-Class Contractor vide communication dated 24.09.1983, however, subsequently, it was upgraded as a C-Class Contractor, as reflected in the communication dated 29.12.2010. It is further claimed that from the year 1983 to 2015, the petitioner was awarded multiple contract works which were successfully completed, to the



satisfaction of the respondents. It is the case of the petitioner that the petitioner firm was due for renewal of its enlistment as a C-Class contractor for the cyclic period from 01.01.2016 to 31.12.2020, and for which it forwarded its application to respondent No.3 through a letter dated 18.06.2015 and reminder dated 05.11.2015. The respondent No.3 instead issued a Show Cause Notice dated 09.02.2016 alleging that the petitioner had not rectified defects in the project awarded to it for air conditioning of *Auditorium-cum-Lecture Hall at Brichgunj Village in Port Blair*. The petitioner responded vide its letter dated 27.02.2016 explaining the facts however, the petitioner's application for renewal of its enlistment was came to be rejected vide letter dated 08.04.2019 (hereinafter, '*impugned order*').

3. Mr. Jotwani, Ld. Counsel for the petitioner contends that the petitioner was show caused to explain against non-renewal of its enlistment and as to the non-rectification of the defects pointed out in terms of the project at Port Blair. In regards to this, it is contended that the said defects were rectified and no dispute is pending qua the aforesaid project. However, he points out that the impugned order was passed in respect of the project undertaken by the petitioner in Srinagar and for which, no separate show cause notice was ever issued till date. He thus, submits that great prejudice has been caused to the petitioner as no opportunity was given to it to explain by way of a Show Cause Notice in the context of the Srinagar project and the same has resulted not only in violation of principles of natural justice but also has caused the petitioner's 'civil death'. Consequently, the petitioner has not been able to participate in any tenders floated by the respondents. In support of his submissions, Ld. counsel has relied on the decision in Gorkha



Security Services v. Govt. (NCT of Delhi), reported as (2014) 9 SCC 105 and order passed in S.K. Sehgal v. Union of India in W.P.(C) 23039/2005 dated 20.03.2006.

4. *Per contra*, Mr. Rakesh, Ld. Standing Counsel for the respondents defends the impugned order and further relies on the Clause 7 (a) of the 'Criteria for Renewal' contained in letter titled 'Renewal of Enlistment of Enlisted Contractors Cyclic Period ending 31 Dec 2020 and Fresh Enlistment of Contractors' dated 10.04.2015. It is contended that the petitioner in response to the Show Cause Notice issued on 09.02.2016, forwarded replies in which it informed about the pendency of the arbitration with respect to disputes that arose in the context of another project that was awarded to it. The project was located in Srinagar. The dispute led to cancellation of the contract and resultant arbitration.

5. The two primary issues involved in the present case are, *firstly*, whether the impugned order whereby the petitioner's request for renewal of enlistment was rejected, was passed after following the principles of natural justice, inasmuch as, whether it was preceded by a separate Show Cause Notice which entailed the proposed action or in other words, gave the petitioner an opportunity to explain why the proposed action should not be taken against it. *Secondly*, whether the petitioner's case falls under the aforementioned Clause 7(a) pertaining to Criteria for Renewal.

6. A perusal of the Show Cause Notice dated 09.02.2016 would show that the same was issued with respect to the project at Port Blair. Concededly, no separate Show Cause Notice was issued in the context of the project at Srinagar. The only Show Cause Notice which was issued was in



the context of project located in Port Blair and referred to proposed action under Clause 7(b) of the 'Renewal of Enlistment of Enlisted Contractors Cyclic Period ending 31 Dec 2020 and Fresh Enlistment of Contractors' qua the defects notified in it. After the defects were removed, the cause in the aforesaid Show Cause Notice didn't survive.

The impugned action concededly, has been taken with respect to another project awarded to the petitioner at Srinagar. Further, the said action has been taken under Clause 7(a) of the 'Renewal of Enlistment of Enlisted Contractors Cyclic Period ending 31 Dec 2020 and Fresh Enlistment of Contractors' The relevant portions of Clause 7 is reproduced hereinunder:

"7. All contractors who apply for renewal will be re-enlisted in same class/categories of enlistment except those falling under para 14 here-in-after and those falling under the following categories for which the approval of this HQ will be obtained:-

(a) Contractors whose contracts have been cancelled and unrealized recoveries exist thereto and cases, where cancellation of contract has been declared invalid/illegal in arbitration/court of law.

(b) Contractors in whose completed works during the last 5 years, serious defects were noticed which are substantially attributed to the performance of Contractors, established through Court of Inquiry or Tech Boards and disciplinary action is pending...."

7. At this stage, learned counsel for the respondent also admits that the Clause 7(a) in its present form is not meaningful, inasmuch as, the word 'not' is missing before the expression, '*been declared invalid/illegal in arbitration/court of law*'. He further submits that for the said clause to be applicable, the cancellation of contract has to be declared not illegal by some



Court/Tribunal, which is not the present case as the dispute pertaining to the project at Srinagar is still pending before the Arbitral Tribunal in which no Award has been pronounced till date. Indisputably, no show cause has been issued for proposed action under Clause 7 (a).

8. Considering the aforesaid, the impugned order is set aside and it is directed that the respondents shall consider the petitioner's application for renewal of its enlistment within four weeks from today. In case the petitioner still remains aggrieved, it shall be at liberty to approach this Court. It is further directed that in case the arbitral proceedings reach a conclusion and an Award is passed against the petitioner, the respondent shall also be at liberty to proceed as it may be advised.

MANOJ KUMAR OHRI
(JUDGE)

APRIL 29, 2025

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