

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

Date of decision: 31st January, 2012.

+ **LPA 495/2009**

% **MUNICIPAL CORPORATION OF DELHI** **...Appellant**

Through: Ms. Shyel Trehan with Mr. Nikhil Pillai, Advs.

Versus

NARENDER H. CHANDWANI **..... Respondent**

Through: Mr. Rahul Gupta and Mr. Raghav Tandon, Advs.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. The appeal impugns the judgment dated 30th March, 2009 of the Single Judge of this Court allowing the review of the judgment dated 4th July, 2008 (dismissing W.P.(C) No. 4684/2008 preferred by the respondent) and thereafter proceeding to allow the writ petition by setting aside/quashing the decision of MCD contained in Circular dated 19th May, 2008 impugned in the said writ petition. Notice of this appeal was issued. On 10th November, 2009 the appeal was admitted for hearing though the application of the appellant MCD for stay of the judgment of the Learned Single Judge dismissed. The counsels have been heard.

2. The respondent as the sole proprietor of M/s Sona Consultant & Contractors was an approved contractor of the appellant MCD for over 20 years prior to the filing of the writ petition in the year 2008. The appellant MCD however vide its Circular dated 19th May, 2008 (supra) removed the respondent from the approved panel of contractors "on account of non

execution of work awarded against two work orders both dated 25th January, 2007”. The writ petition impugning the same was earlier dismissed vide judgment dated 4th July, 2008 (supra) finding that the respondent had been negligent in undertaking the works under the aforesaid work orders and the Circular dated 19th May, 2008 had been issued in accordance with the principles of natural justice. However, it was also observed that the effect of the Circular dated 19th May, 2008 was only to remove the name of the respondent from the current enlistment and the same did not debar the respondent from applying afresh for enlistment with the appellant MCD and if the respondent so applied his application was to be considered in accordance with the enlistment rules/instructions.

3. The respondent applied for review contending that as per the “Instructions for Enlistment/Revalidation of Contractors in MCD” issued vide circular letter dated 11th March, 2008 (hereinafter called Enlistment Rules 2008) removal from the approved list of contractors disentitled from enlistment action. It was thus contended that the respondent was not eligible to re-apply for enlistment and on which premise the writ petition had been dismissed. It was further contended that the Circular dated 19th May, 2008 had the effect of permanently debarring the respondent from enlisting himself with the appellant MCD and consequently from taking any work from the appellant MCD. On acknowledgment of the said position by the counsel for the appellant MCD also, the review application was allowed and the writ petition heard afresh.

4. The Learned Single Judge in the judgment dated 30th March, 2009 (supra) has observed/held:-

- A. that the registration/enlistment of the respondent as a Class II (Civil Contractor) enabled the respondent to take up contracts having tendering limit of ₹1 crore;
- B. that the two work orders both dated 25th January, 2007 for the reason of default whereunder the respondent had been so debarred were issued by the MCD on the respondent under the Unit Rate Method (URM) system and for which a separate registration under the URM scheme had been granted to the respondent and whereunder the limit of each single work was ₹5 lacs only;
- C. that the empanelment of contractors under the URM system is distinct from enlistment of contractors under the Enlistment Rules 2008; while under the URM system registration is done zone wise, enlistment under the Enlistment Rules is valid for all areas/zone in MCD;
- D. though for registration as a URM contractor, enlistment as a contractor is a precondition but nevertheless URM registration was distinct from enlistment;
- E. failure to perform the URM contracts could not have invited disciplinary action under the Enlistment Rules 2008; though a enlistment contractor also registered as a URM contractor, upon being blacklisted/banned for future tendering under the Enlistment Rules was to lose registration as a URM contractor also – however the converse was not possible;

F. that the action taken by the appellant MCD was highly disproportionate to the gravity of the default committed by the respondent.

Accordingly the Circular dated 19th May, 2008 of the appellant MCD removing the name of the respondent from approved panel of contractors was set aside/quashed giving liberty to the appellant MCD to take appropriate action on account of the respondent's default in performing the two URM contracts.

5. The counsel for the respondent has contended that enlistment/empanelment with the appellant MCD as a contractor merely enables participation in the tenders floated by the appellant MCD from time to time of the value depending on the category of empanelment/enlistment; that URM contracts are the petty contracts of the maximum value of ₹5 lacs for which no tenders are floated; only the enlisted/empanelled contractors are entitled to be registered as a URM contractor also; that URM contracts are awarded on the basis of draw of lots on rotation; that in fact the contractor does not earn anything in a URM contract; that the URM rules do not provide for any disciplinary action for default therein; that empanelment/enlistment is the parent registration and for default in URM contracts the parent registration cannot be cancelled.

6. We have enquired from the counsel for the respondent whether a default in a URM contract is to go scot free. The counsel has fairly admitted that he has also struggled with the said question and the only answer with which he can come up is that default of URM contract can lead only to forfeiture of the registration amount/security deposit therefor.

7. We are unable to agree. The very fact that enlistment/empanelment under the Enlistment Rules 2008 is essential for registration as a URM contractor also is indicative of the URM contracts being also governed by the Enlistment Rules 2008. Clause 4.1 of the said Rules prescribes that the appellant MCD enlists contractors who intend to work with it so as to have a ready list of suitable and competent contractors for the appellant MCD's works so as to minimize requirement of verification of credentials of contractors each time. The Enlistment Rules lay down the eligibility criteria for enlistment and the procedure for enlistment. Similarly the URM Rules 2008 prescribe the eligibility for being empanelled/enlisted contractors for registration thereunder. Rule 9 of the URM Rules provides that the general conditions of contracts, special conditions and other conditions as provided in the forms prescribed for contracts awarded on tender shall be applicable to URM system also save that the payment of bills thereunder will depend upon availability of funds and the arbitration clause is deleted.

8. The aforesaid rules leave no doubt whatsoever that URM is merely a system under the umbrella of empanelment and else is to be governed by the Empanelment Rules. It would even otherwise be incongruent that defaults/breaches under URM are to go unpunished. The situation that notwithstanding repeated defaults/breaches in URM a contractor shall remain empanelled and entitled to participate in the tenders for contracts of much higher value cannot be accepted or upheld.

9. We thus set aside the judgment of the Learned Single Judge in so far as holding the Enlistment Rules to be not applicable to URM contracts.

10. We however are in tandem with the Learned Single Judge that the harsh penalty of debarring the respondent from dealing with the appellant

MCD for all times in future is disproportionate to the default in two URM contracts especially when there is no case of any default/breach on the part of the respondent. The counsel for the appellant MCD however informs and it is not disputed by the counsel for the respondent also that upon restoration of empanelment of the respondent pursuant to the judgment of the Learned Single Judge (and of which no stay was granted) the respondent has defaulted in another URM contract and for which he has again been debarred, this time for a period of five years and which is the subject matter of another writ petition pending before the Learned Single Judge. It is also informed that there is no stay of the said debarment for five years.

11. After having considered all the facts we are of the view that for the defaults on account whereof the respondent was permanently debarred, the punishment of debarment for a period of three years will be appropriate; out of the said period of three years, the respondent has already remained debarred from 19th May, 2008 (supra) till the judgment dated 30th March, 2009 i.e. approximately for a period of one year. The respondent shall remain debarred for the balance two years w.e.f. 31st January, 2012 and which period is to run concurrently with the debarment aforesaid for five years if continues; else the said period will exhaust on 30th January, 2014.

12. The appeal is partly allowed on the aforesaid terms. No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JANUARY 31, 2012
‘PP’