

MANYATA DEVI

v.

STATE OF U.P. & ORS.

(Civil Appeal No. 4475 of 2015)

MAY 15, 2015

[T. S. THAKUR, R. F. NARIMAN AND
PRAFULLA C. PANT, JJ.]

Administrative Law:

Administrative order – Reasonableness of – Application for grant of character certificate – For the purpose of renewal of registration as a contractor under a department of State Government – Initially grant of certificate denied on the ground that her husband was involved in criminal cases – In appeal, the Commissioner remitted the matter to consider the application on the basis of personal character of the applicant – The Magistrate again refused to grant the certificate on the ground that the applicant did not have experience in contract work – Writ petition against the order of Magistrate dismissed – On appeal, held: the jurisdiction of the Magistrate was limited to considering the request for issuance of character certificate – The Magistrate, by bringing in the question of appellant's capability and experience as a contractor to bear upon her moral character, went beyond the legitimate sphere of the jurisdiction vested in him. The Magistrate directed to reconsider the application for grant of character certificate.

Allowing the appeal, the Court

HELD: The District Magistrate has been swayed by considerations wholly extraneous to the question whether the appellant had a good moral character. In

A the first order of refusal passed by him, he opined that
since the appellant's husband had criminal cases
registered against him, she was disentitled from claiming
a certificate of good moral character. The Commissioner,
was, therefore, perfectly justified in setting aside the
B order passed by the District Magistrate and directing him
to consider the request for the issue of a certificate
based on the character of the applicant and not her
relative or member of the family. Since there was nothing
adverse about the appellant, one would have expected
C the District Magistrate to issue the requisite certificate in
favour of the appellant. Instead of doing so, the District
Magistrate invented fresh reasons for denial of a
certificate. This time, the certificate was denied on the
ground that she had no experience in getting the contract
D works executed. The District Magistrate could not have
brought in the question of the appellant's capability as a
contractor or her experience in executing works to bear
upon her good moral character. The reasoning given
E by the District Magistrate was wholly irrelevant.
Inasmuch as the District Magistrate ignored the order
passed by the Commissioner and the considerations that
would go into grant or refusal of the character certificate,
he committed a mistake that is palpable on the face of
F record. [Para 6] [188-F; 189-A-E]

2. Registration can be insisted upon by the State
Government or its departments for purposes of allotment
of works and participation in auctions relating thereto.
G There is also no difficulty in the State providing for
production of a character certificate as one of the
conditions of eligibility. Experience of the Contractor, if
considered relevant for the purposes of such
registration, could also be stipulated as one of the
H requirements to be satisfied by the applicants under the

Rules or Regulations. That such regulation ought to ensure participation of only genuine contractors and prevent the mafia from hijacking the system cannot also be faulted. However, that purpose cannot be achieved by a side wind viz. by the District Magistrate denying a character certificate to an applicant. This is because the very fact that a character certificate is issued does not mean that everyone who has such a certificate gets a vested right to be registered as a contractor. The District Magistrate did not have any authority under the rules stipulating registration of contractors to consider such requests for registration or to grant or refuse the same. It is the competent authority in the Irrigation Department concerned who has to take a call. Inasmuch as the District Magistrate took upon himself the duty of examining whether the appellant was suitable for registration, he went beyond the legitimate sphere of the jurisdiction vested in him which was limited to considering the request for issuance of a character certificate. The District Magistrate is directed to reconsider the matter and dispose of the application for grant of a character certificate. [Paras 8 and 10] [190-C-H; 191-D-E]

3. If the ground situation in the State of Uttar Pradesh so requires, the department concerned can and indeed ought to strengthen the registration procedure by framing new rules or amending the existing rules on the subject making registration possible only upon satisfaction of such conditions as may be prescribed by such rules including experience in executing contracts as one such condition. [Para 9] [191-B-C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4475 of 2015.

A From the Judgment and Order dated 02.04.2013 of the High Court of Judicature at Allahabad in Writ Petition No. 17398 of 2013.

Prashant Kumar, Vaibhav Srivasatava, Joseph
B Pookkatt for the Appellant.

Ardhendumauli Kumar Prasad, Ram Kishore Singh
Yadav for the Respondents.

C The Judgment of the Court was delivered by

T. S. THAKUR, J. 1. Leave granted.

2. This appeal arises out of an order dated 2nd April, 2013, passed by the High Court of Judicature at Allahabad
D whereby Writ Petition No. 17398 of 2013 filed by the appellant has been dismissed and the order passed by the District Magistrate, Basti, refusing to issue a character certificate in favour of the appellant upheld.

3. The appellant appears to have applied to the District
E Collector, Basti, for a character/enlistment certificate in her favour, which it appears is one of the requirements prescribed for registration as a contractor under the Irrigation Department of the State of Uttar Pradesh. The appellant, as proprietor of
F M/s Krishna Construction was already registered as a contractor but since the said registration was valid only for a period three years ending 31st June, 2009, a fresh character/solvency certificate was necessary for renewal of her registration.

G 4. The application made by the petitioner appears to have remained unattended for some time forcing her to file Writ Petition No. 17945 of 2010 which was disposed of by the High Court by its order dated 5th April, 2010 directing the
H District Magistrate, Basti, to consider and decide the

application of the appellant within a period of six weeks. The District Magistrate in compliance with the said order issued a solvency certificate in favour of the appellant on 24th May, 2010 but deferred the grant of character certificate till such time the Superintendent of Police inquired into the matter and submitted a report. On receipt of the report from the Superintendent of Police, the District Magistrate passed an order dated 15th June, 2010 declining to issue the character certificate to the appellant on the solitary ground that her husband was involved in four criminal cases during the past.

5. Aggrieved by the refusal of the character certificate in her favour, the appellant filed Writ Petition No.9875 of 2011 before the High Court which was disposed of by the High Court on 14th February, 2012 with a direction that the appellant should approach the Commissioner in appeal against the order passed by the District Magistrate. The appellant accordingly preferred an appeal before the Commissioner, Basti, who set aside the order passed by the District Magistrate and remitted the matter back to him for appropriate orders with the observation that the request for grant of a character certificate must be considered on the basis of the personal character of the person applying for the same and not of her family members. Notwithstanding that direction, the District Magistrate once again passed an order dated 12th December, 2012 rejecting the prayer for the issuance of a character certificate on the ground that the appellant did not have any knowledge of contract works which works were being got executed by her through her son and other persons. The appellant challenged the said order before the High Court in Writ Petition No.17398 of 2013 which came to be dismissed by the High Court by its order dated 2nd April, 2013. Hence the present appeal.

6. We have heard learned counsel for the parties at length and perused the orders passed by the District

- A Magistrate and the Commissioner and those passed by the High Court. The material facts are not in dispute. It is not in dispute that the appellant is the sole proprietor of M/s Krishna Construction. It is also not in dispute that the appellant was a registered contractor with the Irrigation Department of the
- B Government of U.P. for executing civil works. It is also not disputed that the registration was earlier granted in favour of the appellant pursuant to a solvency and character certificate issued in her favour by the District Magistrate, Basti. It is common ground that the registration of the appellant remained
- C valid upto 31st June, 2009, whereafter the same required a renewal based on a fresh solvency certificate and a character certificate according to the applicable norms prescribed by the Irrigation Department. That a solvency certificate was
- D issued in favour of the appellant is also not in dispute. So also there is no dispute that the appellant is not involved in any criminal case or activity of any objectionable kind. That being the position, the District Magistrate should have simply certified her character because that was the only question which the
- E former was called upon to examine while dealing with the request made by the appellant. The District Magistrate, however, appears to have been swayed by considerations wholly extraneous to the question whether the appellant had a good moral character. In the first order of refusal passed by
- F him, he opined that since the appellant's husband had criminal cases registered against him, she was disentitled from claiming a certificate of good moral character. Apart from the fact that the cases against the appellant's husband to which the District Magistrate appears to be referring had ended in
- G his acquittal, it is difficult to appreciate how criminal cases registered against the husband of the appellant could possibly deny her a certificate of good moral character. The Commissioner, Basti was, therefore, perfectly justified in setting
- H aside the order passed by the District Magistrate and directing him to consider the request for the issue of a certificate based

on the character of the applicant and not her relative or member of the family. Since there was nothing adverse about the appellant, one would have expected the District Magistrate to issue the requisite certificate in favour of the appellant. Instead of doing so, the District Magistrate appears to have invented fresh reasons for denial of a certificate. This time, the certificate was denied not because the appellant or anyone in her family was implicated in any criminal case but on the ground that she had no experience in getting the contract works executed. We have not been able to appreciate as to how the District Magistrate could have brought in the question of the appellant's capability as a contractor or her experience in executing works to bear upon her good moral character. Even when the appellant may have had no experience in getting government works executed she could still claim that she bore a good moral character. The reasoning given by the District Magistrate was wholly irrelevant to say the least. Inasmuch as the District Magistrate ignored the order passed by the Commissioner and the considerations that would go into grant or refusal of the character certificate, he committed a mistake that is palpable on the face of record.

7. It was argued on behalf of the respondent-State that since the appellant had no experience of executing contracted works, the refusal of a character certificate was only meant to prevent her from getting registered as a contractor with the department. It was also argued that the registration of a contractor was necessary and unless such registration was granted only in deserving cases, the very purpose of the registration would stand defeated. There was, according to learned counsel for the respondent, a "contractors mafia" operating in the State of Uttar Pradesh which demanded that registration is granted only to people who have no criminal background so that genuine contractors are not prevented from winning contracts from the Government and competing for

- A allotment of works. It was argued that since the husband of the appellant could not himself be registered on account of his criminal background, the appellant was being projected for such a registration only to make it possible for the husband to carry out the works in the name of his wife. Registration of the
- B appellant, in such a situation, would defeat the very purpose behind such registrations, argued the learned counsel.

8. There is no quarrel with the proposition that registration can be insisted upon by the State Government or
- C its departments for purposes of allotment of works and participation in auctions relating thereto. There is also no difficulty in the State providing for production of a character certificate as one of the conditions of eligibility. Experience of the Contractor, if considered relevant for the purposes of such
- D registration, could also be stipulated as one of the requirements to be satisfied by the applicants under the Rules or Regulations. That such regulation ought to ensure participation of only genuine contractors and prevent the mafia from hijacking the system cannot also be faulted. The question, however, is
- E whether that purpose which is indeed laudable could be achieved by a side wind viz. by the District Magistrate denying a character certificate to an applicant. Our answer is in the negative. We say so because the very fact that a character
- F certificate is issued does not mean that everyone who has such a certificate gets a vested right to be registered as a contractor. The District Magistrate did not have any authority under the rules stipulating registration of contractors to consider such requests for registration or to grant or refuse the same. It
- G is the competent authority in the Irrigation Department concerned who has to take a call. Inasmuch as the District Magistrate took upon himself the duty of examining whether the appellant was suitable for registration, he went beyond the legitimate sphere of the jurisdiction vested in him which was
- H limited to considering the request for issuance of a character certificate.

9. Having said so, we must add that copy of the rules A
regulating the registration of contractors has not been
produced by the State. It is, therefore, difficult for us to say
whether the rules are comprehensive enough to disentitle
persons who do not have any experience in execution of the
contract works from claiming registration. But there is no B
manner of doubt that, if the ground situation in the State of
Uttar Pradesh so requires, the department concerned can and
indeed ought to strengthen the registration procedure by
framing new rules or amending the existing rules on the subject C
making registration possible only upon satisfaction of such
conditions as may be prescribed by such rules including
experience in executing contracts as one such condition.

10. In the result we allow this appeal, set aside the D
order passed by the High Court and direct the District
Magistrate to reconsider the matter and dispose of the
application for grant of a character certificate keeping in view
the observations made herein. We make it clear that even when
the character certificate is issued by the District Magistrate in E
favour of the appellant, the Competent Authority shall be free
to examine the prayer for registration or renewal in accordance
with law having regard to the requirements that already exist
or may be prescribed on the subject by the authority competent
to do so. No costs.

F

Kalpana K. Tripathy

Appeal allowed.