



अण्डमान तथा निकोबार प्रशासन
Andaman and Nicobar Administration
सचिवालय/Secretariat

Port Blair, dated the 26 October, 2016

ORDER NO 3472

Whereas Shri Upen Kundu is enlisted as Class IV contractor in APWD his last revalidation period was for the period from 29/10/2012 to 28/10/2015 Vide CE, APWD order No. 79 dated 21st Jan 2013.

Whereas the contractor submitted an application for revalidation wherein the Contactor secured two works of APWD of magnitude ₹ 4, 89,287/-, ₹ 4,95,260/- and one work of Panchayat Raj Institution ₹ 21, 69,321/- .

Whereas per Enlistment Rule of APWD 2009 Rule 19 that "Only the contractor who has secured at least two works (see Para 24.0 also) of appropriate magnitude (as applicable for enlistment in relevant class) in APWD, during the period of enlistment or last revalidation period of enlistment as the case may be shall be considered for revalidation. Appropriate magnitude shall mean the minimum amount mentioned in the column 5 of Table-1 against relevant class/category. Hence the work secured in Panchayat Samiti was not considered. Further as per amendments in Table -1 of APWD Enlistment Rule 2009 the appropriate magnitude in respect of class-IV (civil) is ₹ 6 lakhs for each work. Hence his case for revalidation was not considered.

Whereas the contractor submitted a representation dated 19.10.2015 addressed to the Principal Secretary(PWD) wherein he stated that he participated in so many tenders but he could secure only three works of estimated cost ₹ 4,89,287/-, 4,95,260/- and 21,69,321/- and further stated that as per enlistment Rule 19, he has to secure two works of appropriate magnitude in the Column V of Table I i.e "three works of ₹ 6.00 lakh each" which he could not secure and requested to consider his case sympathetically and a provisional revalidation for one year period may be given to secure the requirement as per the revalidation of enlistment rules.

Whereas the contractor then filed a WP No 168 of 2016 wherein an order dated 05th April, 2016 was passed by Hon'ble High Court of Calcutta circuit bench at Port Blair wherein it was directed to dispose of the said representation addressed to the Principal Secretary(PWD) dated 19.10.2015. Thereafter, the Chief Engineer issued a letter dated 16.05.2016 stating that as the contractor did not secure two work of appropriate magnitude of ₹ 6.00 lakh each for Class IV(civil) Contractor, hence in terms of Rule 19 of enlistment rule of APWD, the proposal of revalidation could not be considered.

Aggrieved by this the contractor filed another WP No. 276 of 2016 and Hon'ble High Court at Calcutta circuit bench in Port Blair passed an order dated 17th August 2016 wherein it was directed to Commissioner(PWD), A & N Admn to act in terms of the judgement and order dated 5th April 2016 passed in WP 168 of 2016 after giving reasonable opportunity of hearing and pass a reasoned order after taking into consideration the judgement and order dated 19th July 2016 passed in WP No. 12494(W) of 2016 as well as judgement order dated 26th August 2014 passed in WP No. 037 of 2014 while disposing the representation.

Cont.2/

Accordingly hearing was held on 29.09.2016 wherein a written Note was submitted by Advocate appearing on behalf of the Petitioner the contractor submitted to allow him to participate in tender process till Rule 19 is amended and revalidation case be considered in terms of various orders passed by Hon'ble High Court.

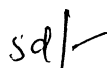
It is to mention that APWD has framed Enlistment rules of APWD manual based on CPWD Enlistment Rule 2005 incorporated in CPWD manual 2007. The CPWD manual, 2007 stipulates that only the contractor in CPWD, PWD(NCTD) or CCU of Ministry of Environment & Forest during the period of enlistment or last revalidation period of enlistment, as the case may be and at least one of them must have been completed 100%, shall be considered for revalidation. If second work is not completed by more than 50% the department will select one non CPWD work out of the list furnished by the applicant for inspection and consideration of revalidation. The Enlistment Rule of APWD 2009 considers works of only APWD for revalidation purpose i.e. securing of two works of APWD. APWD works are considered only to have more competition among the enlisted contractors of APWD. Moreover if Rule 19 is amended, it will have prospective effect and not retrospective as similarly placed contractor may have not been enlisted. Any order contrary to present rule provision will create inequities. Also each contractor making an application for enlistment or revalidation is aware of the benchmark applicable for such enlistment. Ex-post change in the eligibility criteria as sought by such contractor would vitiate the whole process. The process will lose its objectivity and a transparent and open system, whose parameters can probably be questioned, would lead way to creation of an uncertain regulatory environment. Such benchmark and parameter are fixed in all processes and tinkering with them ex-post may lead to injustice to contractors whose cases have been rejected on not meeting suitable benchmark and who have probably been enlisted in a lower category or are not enlisted at all.

Whereas, the contractor contended that he secured three works, two work of APWD ₹ 4,89,287/- ₹ 4,95,260/- and one work of Panchayat Raj Institution ₹ 21,69,321/- . As per Enlistment Rule of APWD 2009 Rule 19 that *"Only the contractor who has secured at least two works (see Para 24.0 also) of appropriate magnitude (as applicable for enlistment in relevant class) in APWD, during the period of enlistment or last revalidation period of enlistment as the case may be shall be considered for revalidation. Appropriate magnitude shall mean the minimum amount mentioned in the column 5 of Table-1 against relevant class/category.* Hence the work secured in Panchayat Samiti could not be considered for revalidation.



Further as per amendments in Table -1 of APWD Enlistment Rule 2009 the appropriate magnitude in respect of class-IV (civil) is ₹ 6 lakhs for each work. Hence two work of ₹ 4,89,287/-, ₹ 4,95,260/- also could not be considered of revalidation as the work secured are below the magnitude of ₹ 6.00 lakh. The request for provisional revalidation vide his representation dated 19.10.2015 for one year to secure works to fulfil the eligibility criteria of revalidation could not be considered, as in terms of Rule 19 the works are to be secured during the last revalidation period i.e. between 29/10/2012 to 28/10/2015.


This order is issued in compliance with order dated 17th August 2016 passed in WP No.276 of 2016 by Hon'ble High Court at Calcutta, circuit Bench at Port Blair.


Commissioner -cum- Secretary, (PWD)
[F. No. 6-376/2016-PWD]

OFFICE ORDER BOOK

Copy to:

1. Shri Upen Kundu, Govt. Contractor, 10 MG Road, Middle Point, Port Blair.
2. The Chief Engineer, APWD, Nirman Bhawan, Port Blair.
3. All the Superintending Engineers under APWD, Port Blair.
4. The Superintending Engineer, Electricity Department, Port Blair.
5. The Finance Officer to Chief Engineer for information.
6. The Superintending Engineer, Zilla Parishad, Port Blair.
7. The Superintending Engineer, PBMC, Port Blair.
8. The Chief Engineer, Project Yatri c/o 99 APD.
9. The Chief Engineer, MES, Port Blair.
10. The Chief Engineer and Administrator, ALHW, Port Blair.
11. The Assistant Commissioner of Income Tax, A & N Islands, Port Blair.
12. All the Executive Engineers under divisions of APWD.
13. AE, ISSD, APWD Kolkata.
14. The Executive Engineer, E&M (Plg), O/o CE, APWD with the request to upload the order in APWD website
15. The Deputy Secretary (PW), A & N Administration, Port Blair.
16. Shri. Mohd. Tabraiz, Govt. Panel Advocate, District and Session Court Complex, Port Blair for information.
17. Shri. Tapan Kr. Modal, Advocate, Prem Nagar Port Blair


Commissioner -cum- Secretary, (PWD)