

अंडमान तथा निकोबार प्रशासन
मुख्य अभियन्ता का कार्यालय
अंडमान लोक निर्माण विभाग
निर्माण भवन पोर्टब्लेयर



ANDAMAN AND NICOBAR ADMINISTRATION
OFFICE OF THE CHIEF ENGINEER
ANDAMAN PUBLIC WORKS DEPARTMENT
NIRMAN BHAWAN PORT BLAIR.

OFFICE ORDER No. 296

Dated 28th March 2017

Whereas Shri Pran Gopal Das, was enlisted in Class-III (Civil) in APWD vide order no. 367 dt. 04/04/2007 valid for a period of 05 years from the date of issue of the order.

Whereas the CBI has registered a case RC 121 2010 A 004 dt. 29/12/2010 against Shri. K. Murthy and others. The CBI in its report stated that during the period between 02/2007 and 03/2008, the then EE, viz. Shri. K. Murthy, MID, APWD, Hut bay in conspiracy with Shri Pran Gopal Das, contractor and other official procured excess quantity of cement through local market and freight charges were paid to the contractor at an exorbitant rate for the supply of cement without any supporting documents, causing a loss to the Govt. ex-chequer to the tune of Rs.53,19,619/-. The CBI in its report to the Administration on the above case had recommended to black list Shri Pran Gopal Das from the approved list of contractor from APWD which has been accepted by the Hon'ble Lt. Governor who is also the Enlistment Authority for Class-IV to class-I contractor in APWD an order to this effect was issued vide order No. 915 dt. 16/07/2012.

Whereas the petitioner had filed an memorandum of appeal and connected application (CAN No. 10525 of 2012 and MAT No. 1788 of 2012) for stay of operation of the order dated 20/06/2012 and 16/07/2012 passed by respondent authority.

The Division bench of Hon'ble High Court of Kolkata at Port Blair vide order dated 16/02/2015 had consider the prayer of stay and in consideration for such prayer, the order dated 16/07/2012 is stayed till 27/03/2015.

Whereas finally the court in its order dated 12/06/2015 had disposed off the MAT No. 1788 of 2012 by issuing order as reproduce below-

"We also do not think it would be proper on our part to decide what would be the length of time for which the appellant/writ petitioner ought to be remain blacklisted. That aspect will have to be addressed to by the competent authority. We accordingly modify the penalty imposed and direct the concerned authority to determine the period during which the appellant/writ petitioner would be subjected to blacklisting which would make him ineligible for undertaking works of the department. Decision in this regard shall be taken by the competent authority within a period of eight weeks from the date of communication of this order. The concerned authority shall also consider the fact that the appellant/writ petitioner has remained blacklisted approximately for about three years".

As per court directives the case was considered by Hon' ble Lt. Governor being enlistment authority but considering the gravity of the case which is serious in nature and in terms of Enlistment Rules of Contractor in APWD, 2009 clause 23.3 (k) which stipulates that the name of the contractor may be removed from the approved list of contractor, by the enlisting authority, if he is involved in complaints of serious nature received from other department which prima facie appear to be true and he was permanently removed from the approved list of contractor of APWD vide order dated 6.1.2016.

Aggrieved by the order dated 6.1.2016 passed by Competent authority Shri. Pran Gopal Das Challenged the order in Hon'ble High Court at Calcutta Circuit Bench at Port Blair by filing W.P. No. 085 of 2016 and the Hon'ble High Court have passed an order in W.P. No. 085 of 2016 dated 5.2.2016 wherein Hon'ble Division Bench held that "The order of Division Bench is binding on the authority. They are free to fix any reasonable time period during which the petitioner shall remain blacklisting but permanent blacklisting is not permitted in view of the aforesaid Division Bench order.

In view of the aforesaid, the order impugned cannot be sustained. The order dated 6th January, 2016 is set aside. The matter is remanded back to the authority for consideration afresh and pass a reasoned order after giving an opportunity of hearing to the petitioner strictly in accordance with law within a period of six weeks from the date of communication of this order".

As per Hon'ble High Court direction a hearing was held on 07.04.2016 and the matter was placed before the Enlistment Board and it was decided to fix period of 5 years, and the proposal was submitted to Hon'ble Lt. Governor being the Enlistment authority and the proposal of Enlistment Board was agreed by the Enlistment authority and approved the proposal.

Accordingly five years period was fixed from the date of initial blacklisting i.e 16.7.2012 to 15.7.2017 vide this office order dated 994 dated 09th August 2016 in compliance with Hon'ble High Court order dated 05.02.2016 passed in WP. 085 of 2016.

Aggrieved by the order dated 09th August 2016 passed by Competent authority Shri. Pran Gopal Das Challenged the order in Hon'ble High Court of Calcutta, Circuit Bench at Port Blair by filing W.P. No. 281 of 2016 and the Hon'ble High Court of Calcutta passed an order 18th August 2016 wherein the impugned order 09th August 2016 is set aside and the matter is remanded to the competent authority once again for the competent authority to consider the rival contentions afresh and to pass a reasoned order thereon. The authorities were directed to pass a reasoned order by the earlier judgement and order dated 5th Feb. 2016. The authority who is competent to hear the matter will pass reasoned order, after affording a reasonable opportunity of hearing to the petitioner prior to passing of such order.

Whereas in compliance to Hon'ble High Court of Calcutta order passed in WP 281 of 2016 a hearing was held on 21.10.2016 wherein the Petitioner stated that no action have been taken for others involved in the case in reply Chief Engineer stated that it is for the Court to decide for any action and accordingly an order dated 18th August 2016 was issued by this office.

Aggreived by the order dated 18th Aug. 2016 Shri. Pran Gopal Das Challenged the order in Hon'ble High Court at Calcutta Circuit Bench at Port Blair by filing W.P. No. 024 of 2017 wherein the Hon'ble High Court have passed an order dated 19.01.2017 wherein the impugned order is quashed and set aside with a direction upon the respondent authorities to pass an order in the light of the previous orders passed in the writ application as also taking into consideration the observations made hereinabove within a period of one month after giving reasonable opportunity of hearing to the petitioner.

I make it clear that this opportunity is given to them as a last chance since this court does not want to encroach upon the domain of the executive in course of judicial review. But at the same time it is made clear that in the event of repetition of similar conduct in future while passing the order in compliance of this order, if no decision is arrived at assigning reason thereto, there will be a presumption that the respondent authority is not inclined insist upon black-listing the name of the petitioner from the list as class-III (Civil) contractor in the APWD.

Now therefore in compliance to order dated 19.01.2017 passed in WP 024 of 2017 a hearing was held on 17.02.2017 the issue was once again examined and it has been noted from the records available that Shri Pran Gopal Das has been charge sheeted by the CBI on the ground of allegedly conspiring with the Government officials of MID, APWD, Hut bay with respect to supply of huge quantity of cement and has caused huge financial loss to the government. The aforesaid fact has also been confirmed by the CBI. In this regard reference is carved to the enlistments rule applicable to the enlisted contractors of APWD 2009 wherein Rule 23.3 provides the grounds for removal from the approved list. That rule 23.3(k) Provides as under:-

"The name of the contractor may be removed from the approved list of contractors, by the enlisting authority, if he-

(k) Is involved in complaints of serious nature received from other departments which prima facie appears to be true."

" In the instant case of Shri Pran Gopal Das has been examined in view of the above mentioned rule position and there does not appear any doubt for non application of rule 23.3(k) of the enlistment rule.

That Shri Pran Gopal Das had earlier moved a writ application bearing WP No.085 of 2016 which was disposed by the Hon'ble High Court of Calcutta, Circuit Bench at Port Blair vide judgement and order dated 05.02.2016. The Hon'ble high Court while disposing the Writ Application observed inter alia as under:

"The order of the division bench is binding on the authority. They are free to fix any reasonable time period during which the petitioner shall remain blacklisted but permanent blacklisting is not permitted in view of the aforesaid division bench order."

The aforesaid order was accepted by the parties including the Writ Petitioner. Thus in view of the discussions made herein above the only issue that needs further decision is the tenure of blacklisting and or removal from the approved list of contractors. That since the allegations is serious in nature and there has been huge financial loss to the government as such Shri Pran Gopal Das is blacklisted and or removed from the approved list of contractors for a period of 5years w.e.f 16.07.2012 to 15.07.2017.

This issues with the approval of the Chief Engineer.

Finance Officer to Chief Engineer,
(F. No. 63(10)/CE/APWD/Class-II- IV/2013-14/FIN)

OFFICE ORDER BOOK

✓ Copy to:

1. The party concerned by Regd.post.
2. All the Superintending Engineers under APWD, Port Blair.
3. The Superintending Engineer, Electricity Department, Port Blair.
4. The Superintending Engineer, Zilla Parishad, Port Blair.
5. The Superintending Engineer, PBMC, Port Blair.
6. The Chief Engineer, Project Yatrict c/o 99 APO.
7. The Chief Engineer, MES, Port Blair.
8. The Chief Engineer and Administrator, ALHW, Port Blair.
9. The Assistant Commissioner of Income Tax, A & N Islands, Port Blair.
10. All the Executive Engineers under divisions of APWD.
11. AE, ISSD, APWD Kolkata.
- ✓ 12. The Executive Engineer, E&M (Plg), O/o CE, APWD with the request to upload the order in APWD website
13. The Deputy Secretary (PW), A & N Administration, Port Blair.

Amf
20/3/17
Finance Officer to Chief Engineer,
(F. No. 63(10)/CE/APWD/Class-II- IV/2013-14/FIN)

g
17/3/17