

Dated 02 Feb 2018

**ORDER No. 134**

**Whereas** M/s Surendra Infrastructure Pvt. Ltd is enlisted as Class-I contractor in APWD. The firm submitted his case of Revalidation but his case was not considered by the Enlistment Board as the firm did not fulfil the criteria of work experience. In terms of Enlistment Rule of contractors in APWD 2009 Rule 19 the contractor have to secure two work of appropriate magnitude in this case the contractor have to secure two works Rs 1.5 crore each. But the contractor could secure only one work of Rs 20.15 crore. Hence his revalidation case was not considered by the Enlistment Board.

Aggrieved by this the contractor approached Hon'ble High Court of Calcutta filed a writ petition WP No. 147 of 2014 wherein an order dated 15.7.2014 was passed by the Hon'ble High Court of Calcutta at Port Blair stating that "Although it is true that the petitioner has secured a work of 'appropriate magnitude'(as applicable for enlistment in relevant class)-which is more than Rs 20 crores in value-the fact remains that under Rule 19, the contractor has to secure two such works of 'appropriate magnitude'. Admittedly the petitioner could not secure two works of 'appropriate magnitude'. There is no scope under Rule 19 for revalidation of enlistment, in the event the contractor secures one work, even if such a work is substantially higher in value relating to 'appropriate magnitude' (of two or more works). As such, the rejection for revalidation of enlistment of the petitioner by the concerned authority of Andaman Public works Department cannot be held to be bad in law. The writ petition is therefore liable to be dismissed and is accordingly dismissed".

**Whereas** the Contractor again filed an MA 37 of 2014 in Hon'ble High Court of Calcutta at Port Blair challenging the order dated 15.7.2014 passed in WP No 147 of 2014, thereafter Hon'ble High Court of Calcutta passed an order dated 27.08.2014 wherein the Hon'ble High Court had set aside the order of the learned Single Judge of High Court and disposed of the appeal by requesting the Hon'ble Lt.Governor, A&N Islands, Port Blair, to pass a reasoned order after giving an opportunity of hearing to the appellant within a period of six weeks from the date of receipt of a copy of this order.

**Whereas,** Shri. Surendra Kumar Prahladka, Director, M/s Surendra Infrastructure Pvt. Ltd, had attended the hearing on 17/10/2014. The matter was discussed with reference to the existing APWD Enlistment Rule -2009 and it was observed that the rule provision for enlistment and revalidation of enlistment are different and the petitioner had submitted the proposal for revalidation of enlistment.

**Whereas** the proposal of the petitioner for revalidation of enlistment was checked with regard to the Rule -19 of APWD Enlistment Rule 2009 which states 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.

Further as per amendments in Table -1 of APWD Enlistment Rule 2009 the appropriate magnitude in respect of class-I (civil) is Rs.1.5 crores". From the above provisions it is very clear that a firm/contractor enlisted in Class-I (Civil) in APWD has to secure atleast two works of Rs.1.5 crores each, apart from other criteria for the purpose of getting revalidation of his enlistment.

**Whereas** after personal hearing, Hon'ble Lt. Governor issued an Speaking order dated 15.4.2015 wherein it was stated that "I am inclined to accept the contentions of the petitioner to the effect that Rule 19 needs to be reviewed as it appears unfair and unjust to debar or hold an applicant ineligible for enlistment as class I contractor on grounds that he did not secure two orders of Rs.1.5 crores rupees whereas he had secured a single order worth 20.00 crores rupees which is much more than stipulated requirement. In my view, Rule 19 in its present form cannot be sustained and needs to be revisited. I therefore, direct the APWD to review the provision of Rule 19 in consultations with the Law Department within a month of this order. In the meantime the petitioner firm be taken up for enlistment provisionally".

**Whereas**, the contractor was given provisional revalidation of enlistment for 12 months w.e.f. 26 May 2015 to 25 May 2016 giving another opportunity to fulfil the requirement of work as per APWD Enlistment Rule 2009 within the period.

**Whereas**, the matter was submitted to Hon'ble Lt. Governor to consider the case of Revalidation as special case. The Hon'ble Lt. Governor didnot consider the proposal and returned the file stating that "it is for the APWD to see whether there is good reason to consider any change in the provisions of Rule 19 so as to provide for such cases as is the case of the petitioner and directed to review the matter."

**Whereas**, in the meantime the 12 months provisional revalidation expired and the contractor was unable to secure any work, the contractor filed an WP No. 11554(W) of 2016 in Hon'ble High Court of Calcutta thereafter an order dated 30.6.2016 was passed in WP No. 11554(W) of 2016 wherein it was directed that the petitioner be allowed to participate in tenders till such time the APWD passes an appropriate order upon revisiting Rule 19 in compliance with the order of the Hon'ble Lt. Governor.

**Whereas**, in compliance to the Hon'ble High Court of Calcutta order dated 30.6.2016 passed in WP No. 11554(W) of 2016 a speaking order issued vide O/o 863 dt 17.07.2017 wherein it was stated that "the new enlistment rule of contractor in APWD has already been notified vide notification dated 19.06.2017 and therefore the revalidation of the petitioner in the present form cannot be acceded to. The petitioner may apply as new enlistment in the appropriate class as per the new Enlistment Rule of Contractors in APWD, 2017."

**Whereas**, aggrieved by this, the contractor approached Hon'ble High Court of Calcutta filed a writ petition WP No. 469 of 2017 wherein an order dated 18.12.2017 was passed by the Hon'ble High Court of Calcutta Circuit bench at Port Blair stating that "the authorities concerned is required to decide the application for revalidation of enlistment under the relevant Rules provided the petitioner makes an application within a period of ten days from date with requisite fees. In the event, said application is made within the aforesaid period, the respondent authorities shall decide the application on merits and in the event the authorities refused to enlist the petitioner under the amended Rules of 2017 the authorities shall give an opportunity of hearing to the petitioner and decide the matter impartially and in accordance with law, by a reasoned order within a period of four weeks from the date of submission of the forms with requisite fees. It is made it clear that this Court has not gone into the merits of the matter. The authorities shall consider and dispose of the application for enlistment in accordance with law".

**Whereas**, the proposal for revalidation of enlistment was placed before the Enlistment Board on 03.01.2018, wherein the petitioner was given opportunity of hearing on 05.01.2018. The Enlistment Board was of the considered view that revalidation of the Contractor expired on 24.05.2013 vide Order No.816 dt 24.06.2013 and there was break of 4 years and 6 months as the contractor was not enlisted due to non-revalidation as the contractor was not meeting the revalidation criteria in terms of Enlistment rule of Contractors in APWD 2009 which were in force till 18.06.2017. However the Contractor was participating in tenders only on the basis of Hon'ble High Court order. Hence, in the instant case revalidation could not be considered in terms of Enlistment Rule of Contractors in APWD, 2017 and he may apply for fresh enlistment in Class-I contractor if eligible as per Enlistment Rule of Contractor in APWD 2017.

**Now therefore**, the revalidation of the firm could not be considered in terms of Enlistment Rule of Contractors in APWD, 2017 and he may apply for fresh enlistment in Class-I (Civil) contractor if otherwise eligible. This order is issued in compliance to the Hon'ble High Court of Calcutta order dated 18.12.2017 passed in WP No. 469 of 2017 and with the approval of Hon'ble Lt. Governor being the Competent for Enlistment.

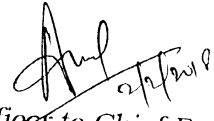
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Finance Officer to Chief Engineer,  
(F.No.63 (10)/2014-15/CE/APWD/FIN/)

**OFFICE ORDER BOOK**

Copy to:

1. M/s Surendra Infrastructure(Pvt) Ltd. 19/1, V.I.P. Road, Junglighat, Port Blair 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 Yatriet 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.
14. Shri N A Khan, Govt. Panel Advocate, District and Session Court Complex, Port Blair for information.
15. Shri. Bhaskar Prosad Banerjee, Govt. Pleader, Kolkata through Deputy Residence Commissioner, Office of A & N Administration, At Kolkata Andaman Bhavan, No.7, D.P. Block Sector 5, Salt Lake, Kolkata-91 for information.
16. Shri Tapan Kr.Das, Advocate, Prem Nagar, Port Blair.

  
Finance Officer to Chief Engineer,  
APWD, Port Blair  
