

# **SUPREME COURT OF INDIA**

Haji Abdul Shakoor and Co.

Vs.

Union of India

C.A.No.7138 of 2001

(S. S. M. Quadri and S. N. Phukan JJ.)

12.10.2001

## **ORDER**

1. Leave is granted.

2. This appeal by special leave is directed against the order of the High Court of Judicature at Allahabad passed on March 13, 2001 dismissing Writ Petition No. 1041 of 2001, filed by the appellant challenging the validity of the order passed by the 3rd respondent on December 21, 2000.

3. The appellant was registered as a Class 'B' Contractor for supplying meat group items to headquarter Central Command, respondent No. 2. The contractor carrying capacity of the appellant was then limited to Rs. 1.80 crores. On September 4, 2000 its contract carrying capacity was enhanced to Rs. 7.20 crores by the Central Command, Lucknow by letter dated September 4, 2000. Thus, it became Class 'A' Contractor. On the request of the appellant, to enable it to compete in securing contract in Western Command, respondent No. 3, its contract carrying capacity limited to Rs. 6.50 crores was transferred by respondent No. 2 to respondent No. 3, which was acknowledged by letter dated December 14, 2000. The second respondent by its letter dated December 21, 2000 informed the appellant that its contract carrying capacity for Rs. 6.50 crores was accepted by the third respondent. However, by the impugned order of the third respondent the contract carrying capacity of the appellant was reduced to Rs.3.50 crores and the same was intimated to it on December 21, 2000. The validity of that letter was assailed by the appellant before the High Court at Allahabad in Writ Petition No. 1041 of 2001. On March 13, 2001, the Division Bench of the High Court dismissed the writ petition taking the view that the matter related to non-statutory contract. It is the correctness of that order of the High Court that is under challenge in this appeal.

4. Mrs. Shobha Dixit, the learned senior counsel for the appellant contends that by arbitrarily reducing the contract carrying capacity of the appellant, the third respondent rendered it ineligible to compete for securing contracts as a Class 'A' Contractor and in fact the appellant is eliminated from the competition. The impugned order of the third respondent was passed without any notice to the appellant. The High Court has not correctly appreciated the point

raised before it and dismissed the Writ Petition therefore, the order of the High Court deserves to be set aside.

5. Mr. G. Venkatesh, the learned counsel appearing for the respondents on the other hand contends that having regard to the policy contained in letter dated December 21, 2000, the contract carrying capacity of the appellant was correctly determined and he was accordingly intimated. The High Court declined to interfere with the order of the third respondent, therefore, no interference is called for by this Court.

6. The short point that arises for our consideration is whether the order of the High Court under challenge, declining to interfere with the impugned order issued by the third respondent on December 21, 2000 is sustainable in law.

7. It is not in dispute that the appellant is a Class 'A' Contractor with the second respondent who transferred the contract carrying capacity of the appellant limited to 6.50 crores to the Headquarter, Western Command respondent No. 3. This was accepted by the third respondent as evidenced by letter dated December 14, 2000. This fact was re-affirmed by the letter of the second respondent issued on December 21, 2000. The net result of the exercise is that the appellant became eligible to compete as a Class 'A' Contractor up to the limit of Rs. 6.50 crores. This is a civil right of the appellant which cannot be taken away or even curtailed except in accordance with law. Admittedly before passing the impugned order no opportunity of being heard was afforded to the appellant by the third respondent as such the impugned order suffers from the view of violation of the principles of natural justice and such an order cannot but be an arbitrary order. This is evident from the impugned order which reads as follows :

"REGISTERED BY POST/UPC  
Tele No. 2761

Mukhyatalaya Paschim  
Kaman Headquarters  
Western Command  
Chandimandir-134 107.  
21st December, 2000

M/s. Haji Abdul Shakoor and Co.  
485/2 Outside Sainyer Gate,  
Jhansi (U. P.)

#### TRANSFER OF CONTRACT CARRYING CAPACITY

Dear Sir,

1. Reference THIS HQ letter No. 58817/HAS/8/ST-5 dated 14th December, 2000.
2. Contract carrying capacity accepted by this HQ has been amended as under :  
For : 6.50 crores

Read : 3.50 crores

3. You are requested to obtain any further clarification on above change from your parent command.

Yours faithfully,  
Sd/-

(V. K. Handu)  
Col  
Col ST  
For Offg MGASC"

8. From a persual of this letter it is apparent that before reducing the capacity no notice was issued to the appelland and he was not given an opportunity to represent its case in regard to reduction of contract carrying capacity which indeed converts the status of the appelland as Class 'B' Contractor. Whether the policy which is called in aid to support the impugned order, is valid in law and if so, it applies to the appelland, are factors which need to be determined after giving an opportunity of being heard to the appelland. Further, it is also evident that the impugned order is a non-speaking order. Unfortunately, the High Court missed these germane aspects, therefore, the order of the High Court under challenge, cannot be sustained.

9. For all these reasons, the order of the High Court under challenge is set aside, the impugned order passed by the third respondent is quashed. The appelland shall therefore be treated by the respondents as having the contract carrying capacity of Rs. 6.50 crores. However, we leave it open to the Director General, Supply and Transport, Army Headquarter, New Delhi if he is of the opinion that the contract carrying capacity of the appelland as accepted by the third respondent in his letter 58817/HAS/8/ST-5 dated December 14, 2000 needs to be reviewed, to consider that question and pass appropriate order in accordance with law after issuing notice to the appelland and giving an opportunity of being heard. It is needless to mention that the order shall be a speaking one.

10. The appeal is accordingly allowed. In the circumstances of the case, there will be no order as to costs.

Appeal allowed.