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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 15.10.2012

Judgment Delivered on: 30.11.2012

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WP(C) 6025/2012 & CM No. 16299/2012

GROUP CAPTAIN (RETD) RAJ SINGH KATARIA Petitioners

Vs

UNION OF INDIA & ORS. Respondents

Advocates who appeared in this case:

For the Petitioners: Mr Vinod Kumar & Mr Suresh C. Sati, Advocates.

For the Respondents: Mr Anil Gautam, Advocate for Respondent Nos. 1 and 2.

Mr Rajat Navet, Advocate for Respondent No. 3.

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. The petitioner before me is the proprietor of a concern by the name of AVR Security and Placement Services. The petitioner is in the business of providing security services. Being an ex-serviceman, having retired from the Indian Air Force, in June, 2007 in the rank of group captain, the petitioner sought empanelment with respondent no. 2., i.e., the Directorate General of Resettlement (in short DGR). The petitioner obtained empanelment with the DGR, i.e., respondent no. 2, on 02.11.2007.

2. The empanelment with DGR fructified in a sponsorship being made in favour of the petitioner, on 09.10.2009, qua the Polymer Terminal of Panipat Petrochemicals Marketing Complex (in short PPCM Complex) of the Indian Oil Corporation Limited (in short IOCL), situate at Panipat, in the State of

Haryana. Consequent thereto, against a tender floated by respondent no. 3, the petitioner, was declared successful and awarded a work order on 31.12.2009. The said work order constituted a contract between the petitioner and respondent no. 3, which was granted initially for a period of 12 month, i.e., from 02.01.2010 to 03.01.2011.

3. Importantly, the contract contained, inter alia, two pertinent clauses, i.e., clause nos. 8 and 9. Clause no. 8, empowered respondent no. 3, to terminate the contract with the petitioner by giving fifteen (15) days notice, while clause no. 9, invested respondent no. 3, with the power to terminate the contract with immediate effect, in case the services of the petitioner were found not satisfactory; with of course, information being sent to DGR in that regard. There is no dispute that, after the expiry of the initial period of twelve (12) months, the contract between the petitioner and respondent no. 3 was extended from time to time. The first extension was granted in January, 2011 whereby, the contract was extended for another period of twelve (12) months, which expired, on 02.01.2012.

3.1 Thereafter, two more extensions of three (3) months each, were granted to the petitioner based on his request. The first extension was granted by respondent no. 3 vide letter dated 03.12.2011, based on, the petitioner's letter of request dated 19.11.2011. The second extension, was granted vide letter dated 21.03.2012, once again, based on, the petitioner's letter of request dated 21.03.2012. The net result was that the tenure of the petitioner's contract stood extended till 02.07.2012. What is also not in dispute that both letter dated 03.12.2011 and 21.03.2012 made a specific reference to the fact that, in case respondent no. 3, were to receive fresh sponsorships from respondent no. 2/DGR, during the subsistence of the contract, the subject contract would be terminated with an advance notice of one month.

4. It is pertinent to note, a fact which the petitioner cannot deny, that none of these letters, i.e., letter dated 03.12.2011 and 21.3.2012 were placed on record by the petitioner.

4.1 What the petitioner placed on record was a letter dated 30.06.2012, issued by respondent no. 3, which sought to extend the tenure of contract by a further twelve (12) months, which would expire on 02.07.2013. This communication of respondent no. 3, like the other two communications referred to above, made a reference to the fact that, the extended contract would contain an additional clause to the effect that, if revised sponsorships were received from respondent no. 2/DGR or, in the event of respondent no. 3 being able to finalize a new contract then, the subject contract will be foreclosed, with an advance notice of one month. The petitioner was required to acknowledge the receipt of the said letter as his token of acceptance of the terms contained therein.

5. It appears that the aforementioned letters had a background, in view of the fact that, there were several complaints qua the services provided by the petitioner beginning with 23.01.2010 till 15.02.2012. There may have been other complaints, but the correspondence placed on record by respondent no.3, for the moment, seems to suggest that the complaints made covered, at least the aforementioned time span.

6. It is because of, perhaps the deficiency in services provided by the petitioner, that respondent no. 3 had on 10.10.2011 indicated to respondent no. 2/DGR, that the services of petitioner were not found satisfactory, and that, a show cause notice had been issued in that behalf; a copy of which had been forwarded to respondent no. 2/DGR. Having regard to the fact that, at that particular point of time, the tenure of the contract was coming to an end on 02.01.2012; by the very same communication, respondent no.3 indicated to respondent no.2/DGR that, they needed to float a fresh tender, in order to

select a security agency, from a fresh panel, which was required to be sponsored by respondent no.2/DGR. Respondent no.3, in fact made a requisition for a minimum of six (6) sponsorships.

7. Since, respondent no.3 did not receive any response from respondent no.2/DGR qua its letter of 10.10.2011, a reminder was sent on 21.12.2011. It is because there was no response received from respondent no.2/DGR that, the contract was extended for a period of three (3) months, as indicated above, i.e., till 01.04.2012. It may be relevant to note here that, at this particular point in time, the contract was valid only till 02.01.2012.

8. Keeping in mind the fact that, the contract was extended for a short duration of three (3) months, once again, a reminder was sent to respondent no.2/DGR by respondent no. 3 vide letter dated 01.03.2012. The respondent no. 3, in the said communication specifically adverted to the earlier letters issued in that behalf, i.e., their request for sponsorship.

8.1 I may only note that both the letters dated 21.12.2011 and 01.03.2012 make reference to letters issued in that regard which, in fact date back to August, 2011; however, the number of request would not matter. What is important is that there was a request made in that behalf by respondent no. 3, which having not been complied with by respondent no.2/DGR, resulted in grant of extensions to the petitioner till 02.07.2012.

9. It appears, for the first time, respondent no.2/DGR responded on 23.06.2012 whereby, names of new security agencies were communicated. By this communication, names of newly sponsored security agencies were forwarded to respondent no.3.

10. It was on account of this development that, respondent no. 3 took two steps: the first being, to which I have already made a reference, that a letter dated 30.06.2012 was issued for extending the tenure of the contract till 02.07.2013, with a caveat that the subject contract could be fore-closed with

an advance notice of one (i) month, in case, respondent no. 3 were to receive a new sponsorship and/or based on the ability of respondent no. 3, to consummate a new security contract. The other step which respondent no. 3 took, and which was, in consonance with, its request for new sponsorships made to respondent no.2/DGR; was to float a fresh tender. Accordingly, a tender was floated on 22.08.2012. A security agency by the name of Ajuna Security Agency, whose proprietor Lt. Col. Virendra Singh, was declared successful. This communication was sent to the said security agency, on 19.09.2012, by respondent no.3.

10.1 In the meanwhile, on 15.09.2012, respondent no. 3 informed the petitioner that, they had concluded the enlistment of a new security agency, and that, in consonance with the terms agreed, they were, issuing a notice for withdrawal of security services provided by him with the completion of "C Shift", on 15.10.2012.

11. It is in the background of the aforesaid facts that the petitioner has come to this court by way of the captioned writ petition seeking a writ order or direction qua respondent no.2/DGR for re-sponsoring the petitioner for a further period of two years, i.e., w.e.f. 02.01.2012 till 02.01.2014, in respect of the contract dated 01 31.12.2009. The other prayer is sought qua respondent no. 3 whereby a direction is sought vis-a-vis the said respondent restraining it from terminating the contract dated 31.12.2009 till 02.01.2014, which as acknowledged in the prayer clause itself, stands extended till 02.07.2013.

12. The captioned writ petition was moved before this court on 24.09.2012, when notice was issued in the writ petition as also the interlocutory application. The notice was made returnable on 11.10.2012. On the said date the counsel for the petitioner indicated that he did not wish to file a rejoinder to the counter affidavit filed by respondent no. 3. The

matter was posted for arguments on 15.10.2012. Arguments in the matter were heard on the said date and the judgment was reserved.

SUBMISSION OF COUNSELS

13. Before me, the arguments on behalf of the petitioner were advanced by Mr Vinod Kumar, Advocate, while respondent nos. 1 and 2 were represented by Mr Anil Gautam, Advocate. Submissions on behalf of Respondent no. 3 were advanced by Mr Rajat Navet.

14. Mr Vinod Kumar submitted that, in terms of paragraph 20(e) & (f) of the instructions issued by respondent no.2/DGR dated 23.02.2006, and clause 26 of the DGR Guidelines; ordinarily the tenure of the sponsorship was four (4) years. Reliance, was also placed on paragraph 19 of the latest guidelines issued by the Government of India, Ministry of Defence dated 09.07.2010. He conceded, however, that the initial tenure of sponsorship was for a period of two (2) years was extendable by a further period of two (2) years only on receipt of satisfactory performance certificate from the principal employer. Mr Vinod Kumar contended that in view of the fact that on 30.06.2012 the respondent no. 3 had extended the tenure of the contract till 02.07.2013, implicit in the said extension, was the fact that the petitioner's services were satisfactory. In view of such a situation obtaining, it was incumbent on the respondents to ensure that both the sponsorship and the contract ran its full course, i.e., till 02.01.2014.

14.1 It was further contended that, the provision for tenure of sponsorship of two (2) years was too short. The petitioner being an ex-servicemen, it would take him at least four (4) years to re-integrate himself with the civilian society and hence there is a legitimate expectation that, a contract awarded would run for a period of four (4) years. Reference was also made to an interim order dated 31.01.2011 passed by a single judge of this court in WP(C) No. 6611/2011. It was also sought to be contended that, the defences

taken by respondent no. 3 in the present counter affidavit is not the ones taken in WP(C) 6611/2011.

15. On the other hand, the counsel for respondent no.3 raised several objections to the relief sought in the writ petition, which were in the nature of both preliminary objections as well as objection on merits. The objections raised were briefly as follows:

(i) This court had no territorial jurisdiction to entertain and adjudicate upon the present writ petition as the subject contract had been signed at Panipat in Haryana and the services pursuant to the said contract, admittedly, had been provided by the petitioner in respondent no. 3's refinery at Panipat in the State of Haryana.

(ii) The subject contract is a determinable contract. Under clause 8 of the contract dated 31.12.2009, the contract can be terminated upon serving a fifteen (15) days notice on the petitioner. Therefore, reliefs sought for by the petitioner cannot be granted by this court in exercise of the power under Article 226 of the Constitution of India. In the written submissions reference is also made in this regard to Section 14 of the Specific Relief Act 1963, as also, to the judgment in the case of *Amritsar Gas Services vs IOCL (1990) Supp. 3 SCR 196*. In the written submission, reference was also made to the following judgment: *Mittal Services vs Escotel Mobile, AIR 2003 Del 410*; which was however cited in court.

(iii) The petitioner is guilty of concealing material facts, in as much as, he has made no reference to series of complaints made by respondent no. 3, who is the principal employer of the petitioner. A specific reference was made not only to the letters, to which I have made a reference above, but also to the extension letters dated 03.12.2011 and 21.03.2012.

(iv) There is no right vested in the petitioner to seek an extension of

contract entered into with respondent no. 3. The sponsorship of the petitioner to respondent no. 3, is based on the request of the principal employer, in this case the principal employer being respondent no. 3. Respondent no. 3, having already conveyed vide letter dated 10.10.2011 intimated that it was not satisfied with the performance of the petitioner, there can be no question of extending the tenure of the contract till 02.01.2014.

(v) The subject contract not being a statutory contract; rights and obligations flowing therefrom cannot be a subject matter of a writ petition filed under Article 226 of the Constitution of India. Reliance, in this regard, was placed on the following judgments: *Kerala State Electricity Board vs Kurian E. Kalathul & Ors. (2000) 6 SCC 293*; *Bareilly Development Authority vs Ajai Pal Singh (1989) 2 SCC 116* and *State of Gujarat & Ors. vs Meghaji Pettiraj Charitable Trust (1994) 3 SCC 552*.

16. In rebuttal, the learned counsel for the petitioner sought to repel the objection taken by the counsel for respondent no. 3 to the territorial jurisdiction of this court by adverting to the fact that, offices of respondent nos.1, 2 and 3 were located within the territorial jurisdiction of this court and, no such objection has been taken in WP(C) 6611/2011.

REASONS

17. I have heard the learned counsel for the parties and also perused the record. On a consideration of the matter, briefly, what clearly emerges from the record, to which I have made a reference above, while culling out facts is as follows:

(i) Initial sponsorship in favour of the petitioner was made by respondent no.2/DGR for a period of two (2) years, which was communicated to him vide letter dated 09.10.2009.

(ii) The petitioner was issued a work order/ a contract dated 31.12.2009.

The contract was, however, valid for a period of twelve (12) months, i.e., WP(C) 6025/2012

between 02.01.2010 till 03.01.2011.

(iv) There is no dispute that the contract was extended for another twelve (12) months, which expired, on 02.01.2012.

17.1 A perusal of the correspondence placed on record by respondent no. 3 shows that there were litany of complaints made by respondent no. 3 between 23.01.2010 and 15.02.2012 regarding services offered by the petitioner. The complaints lodged by respondent no. 3 with the petitioner, inter alia, adverted to aspects, such as, loss of office equipment like CPU and monitor; loss of material from scrap yard; overloading of trucks causing financial loss in one instance to the tune of 68,574.61/-; lack of proper frisking and sanitization of vehicles entering in the secured premises, break-ins etc. The contents of none of the correspondence placed on record has been refuted by the petitioner, though an opportunity was given to the petitioner to file a rejoinder in the matter.

17.2 Even if one were to exclude the correspondence placed on record till January, 2011, there are several complaints lodged by respondent no. 3, even thereafter. As a matter of fact there is a complaint made even on 15.02.2012 post the completion of the two (2) years tenure. This complaint adverts to a break-ins made by some miscreants, in the secured premises, which evidently resulted in six (6) bags of HDPE being stolen, and resultantly, a loss of Rs.12561/- having been caused to respondent no. 3. A complaint of even date made to the Station House Officer of the concerned police station, has also been placed on record by respondent no. 3.

18. The respondent no. 3 was clearly grappling with the issue of change of its security agency, which is why it shot of three letters, in relatively quick succession, to respondent no. 2/DGR dated 10.10.2011, 21.12.2011 and 01.03.2012. As indicated by me above, these are three letters which are on record. In the last two letters referred to above, there is a reference to letters

having been issued by respondent no. 3 to respondent no.2/DGR which date to 25.08.2011 qua the issue of fresh sponsorships. It is because fresh sponsorships were not forthcoming and perhaps the reason for the same was that the initial period of two (2) years had to come to an end, that respondent no.2/DGR did not send its return communication with requisite alacrity.

19. From the record, it appears that, respondent no. 3 for the first time gave names of new agencies sponsored by it vide letter dated 23.06.2012. A careful perusal of the said letter would show that, it refers to the respondent no. 3's letter of 25.08.2011. It is because of the fresh recruitment process having been triggered, pursuant to the tender floated that, a security agency, by the name of Ajuna Security Agency was selected, whose proprietor, I am told is Lt. Col. Virendra Singh. The terms and conditions of the sponsorship, I am told, are also identical to those which were offered to the petitioner.

20. Having regard to the above, I have no doubt that there is no violation of the terms of contract notwithstanding the dissatisfaction experienced by the respondent no. 3 vis-a-vis the services offered by the petitioner. The argument of the learned counsel for the petitioner that, in terms of paragraphs 19 of the instructions dated 23.02.2006 the petitioner was entitled, as a right, to seek a further extension of two (2) years; in other words, the tenure should run for a total period of four (4) years is completely misconceived and untenable.

20.1 I may also notice that in the passing the learned counsel for the petitioner had also referred to the new guidelines issued, by the Government of India, Ministry of Defence, on 09.07.2012, in support of the same contention. In this regard, a specific reference was made to clause 19 of the said policy. In my view, in pith and substance there is no difference between paragraph 20 of the old guidelines and clause 19 of the new guidelines.

21. A perusal of the two guidelines would show that the initially

respondent no.2/DGR sponsors a security agency for a contract to be executed with a central public service undertaking for a period of two (2) years, which is extendable by a further period of two (2) years only upon receipt of “*satisfactory performance report*” from the principal employer. The maximum period under both guidelines for which a sponsorship can run is four (4) years. Undoubtedly in the present case the petitioner has had a run of nearly two (2) years and ten (10) months, on account of the fact that respondent no.2/DGR was not able to forward fresh names for sponsorship to respondent no. 3.

21.1 The fact that any sponsorship beyond January, 2012 could only be made on receipt of a satisfactory performance certificate, is clearly discernable, from the provisions of the guidelines which I will extract hereinafter. Suffice it to say, the extensions given on the anvil of the expiry of the initial two (2) years of sponsorship, in January, 2012, was triggered on account of lack of sponsorships. Since, respondent no. 3 is a central public sector undertaking and is governed by the DGR guidelines issued by the Government of India, it could not have secured the services of an agency other than the one which is empanelled with respondent no.2/DGR. Which is why respondent no. 3 dispatched letters dated 10.10.2011, 21.12.2011 and 01.03.2012 to respondent no. 3.

21.2 There is another aspect of the matter, which is that, all extensions post 02.01.2012 were accepted by the petitioner upon the condition that, in case, respondent no. 3 was able to finalize a contract with a newly sponsored security agency, the subject contract would stand terminated with one month's advance notice. The petitioner, as correctly argued by Mr Rajat Navet, learned counsel appearing for respondent no.3, kept back from the court letters dated 03.12.2011 and 21.03.2012. In this regard the only letter which the petitioner brought on record is letter dated 30.06.2012 which, in

sum and substance made the same provision, which is that, the subject contract would stand foreclosed by an advance notice of one month on respondent no. 3 either receiving a new sponsorship from respondent no.2/DGR and/or being able to finalize a new security contract. Therefore, the aforementioned submission of the petitioner is completely untenable.

21.3 However, for the sake of convenience the relevant clauses, to which reference has been made in the writ petition, are extracted hereinafter:

“..... para 20(e) & (f) of the instruction issued on 23.02.2006, which were applicable at the time of initial contract in January, 2010 provides as under:

20. **SPONSORSHIP NORMS (OLD GUIDELINES)**

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(e) Sponsorship will be initially for a period of two years further extendable by another two years, on receipt of satisfactory performance certificate from principal employer. In case the employer makes an agreement for one year the sponsorship will be considered for extension to the second year unless specifically requested otherwise by the principal employer.

(f) Maximum period of sponsorship including re-sponsorship of an agency to a particular employer at a particular location will be limited to 4 years. This is to provide equal opportunity to service personnel retiring each year...

RE-SPONSORSHIP

26. An agency is initially sponsored to the Principal Employer for a period of one or two years. On the recommendation of the Principal Employer the same agency may be re-sponsored as per norms laid down of quota of guards and age limit. It is also mandatory that there is no complaint outstanding against the agency and that it has been sending reports and returns as specified in these instructions. However, no agency will be sponsored for at a location beyond four years. It is

expected that within this period the ESM Security Agency would have established itself and expanded its operation as a security service provider into the civil business and industry. This is also to provide an opportunity to newly retired ESM to avail of such opportunities....

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(emphasis supplied)

No. 28(3)/2012-D(Res-i)
Government of India
Ministry of Defence
(Department of Ex-Servicemen Welfare)

New Delhi, dated 09 July 2012

OFFICE MEMORANDUM

Sub: GUIDELINES FOR FUNCTIONING OF DGR
EMPANELLED EX-SERVICEMEN FOR SECURITY
SERVICES

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XXXX

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19. SPONSORSHIP/RE-SPONSORSHIP

All sponsorships/re-sponsorships will be done in cyclic order of seniority of registration for a period of two years extendable by two years at a time, available quota of guards and subject to satisfactory performance report received from the concerned Principal Employer. All sponsorships/ re-sponsorships will be done by duly constituted Board of Officers (BOD) in accordance with the guidelines. All new sponsorship/ re-sponsorship will be in individual names of ESMs/ESM Corporations...”

21.4 The emphasised portion of the old and new guidelines bear the rationale given above.

22. For the foregoing reasons, I find no merit in the petition, and therefore,

the reliefs prayed for cannot be granted.

23. Before I conclude, I must deal also with the arguments raised by the petitioner of the interim order passed on 31.01.2011 in WP(C) 6611/2011. Even though the interim order has not been placed on record, I may only note that an interim order by itself, assuming that it is in favour of the petitioner, cannot form a binding precedent as the court at that stage has not deliberated upon the entirety of the matter. It is only a prima facie view of the court which can get varied on a matter being finally heard by the court. This argument has no merit and, is therefore, rejected.

23.1 Similarly, the argument of the counsel for the petitioner that objections taken by respondent no. 3 to the present writ petition were not those which were taken in WP(C) 6611/2011, is also misconceived. There can be no bar in respondent no.3 taking additional grounds for seeking dismissal of a fresh writ petition as institution of each writ petition would be based on a fresh cause of action giving rise to a right in favour of the respondents to defend the same on additional grounds, which may not have been taken while defending an earlier action.

24. The last objection that reintegration by an ex-serviceman would require a larger time span, is an aspect, which respondent no. 2/DGR, is in my opinion, well suited to consider as it would have the necessary empirical data available with it. The court's function is only to interpret the provisions of the guidelines, there being no challenge to them. So, therefore, to raise an argument of legitimate expectation, contrary to the provisions of the guidelines, is completely misconceived. As noticed above, the new sponsorship has also been extended to an ex-serviceman. The objective of the guidelines appears to be that rehabilitation should happen, in the quickest time possible, qua a maximum number of service personnel. Given the scarce resources, State cannot obviously issue a diktat of such kind to private

enterprises. It is perhaps in this context that the period of hand holding is kept at, what the State thinks, is the optimum level. What perhaps the State could do is to persuade the private enterprises to attempt to re-employ ex-serviceman in larger numbers as a part of their corporate social responsibility ethos.

25. In view of the conclusion arrived at by me on merits, I do not think it is necessary for me to deal with the preliminary objection raised by respondent no. 3 qua the territorial jurisdiction of this court as also the objection taken to the relief prayed in the writ petition on the ground that the subject contract is determinable.

26. The writ petition is, accordingly, dismissed. However, in the circumstances given above, parties will bear their own costs.

RAJIV SHAKDHER, J

NOVEMBER 30, 2012

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