

HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.7453 of 2015

ORDER :

The petitioner herein seeks a *Mandamus* against the action of the respondent-Indian Oil Corporation Limited in not extending the petitioner's contract for a period of three years for a Company Owned and Operated Retail Outlet at Madhapur, Ranga Reddy District, and seeks further extension of the period for three years i.e., upto 16.10.2015 in terms of the Letter dated 28.06.2012 of the respondent-Corporation.

2. The petitioner states in the affidavit filed in support of the writ petition that he retired as a Commander in the Indian Navy and as per the policy of the Government of India, he is entitled to be given post-retirement engagement in any of three categories viz., (1) to nominate him as a Service Provider for operation of COCOs (Corporation Owned and Corporation Operated) Retail Outlets; (ii) to offer him for operating Security Agency; and (iii) to give him Coal Transportation Contract, in terms of the letter dated 28.06.2012 of the respondent-Corporation, whereunder the Director General - Resettlement (DGR) was requested to nominate a suitable retired Defence Official for operation of their Permanent COCO at (i) Madhapur, Serilingampally Mandal, Ranga Reddy District; (ii) Petbhashirabad, NH-7, Ranga Reddy District; and (iii) Kompally, NH-7, Ranga Reddy District. The petitioner was informed that he was one of the nominees for the above locations and requested to submit an application as an Operator for any of

the three locations. The petitioner stated to have applied in response to the above on 12.07.2012, interviewed on 27.07.2012 and was approved for appointment as a Service Provider of the respondent-Corporation at Madhapur Retail Outlet. The letter of appointment states that it was initially for one year extendable by one more year upto a maximum of two years. The petitioner complied with the conditions for such appointment and started operating the Retail Outlet from 17.10.2012. The petitioner also represented to the respondent-Corporation on 28.06.2012 to continue him as a permanent operator for the said Outlet and after completion of the initial one year, the petitioner's contract was extended upto 16.10.2014 under the letter dated 09.10.2013 of the respondent-Corporation. The petitioner once again made a representation dated 14.05.2014 requesting for extension of the contract from two years to three years, however, the respondent-Corporation has granted extension upto 31.12.2014 viz., for a period of 2 ½ months vide their letter dated 15.10.2014. Again, the petitioner made a further representation dated 16.10.2014 seeking further extension of 9 ½ months so as to fulfil three years period. However, on the ground that no such extension is being considered by the respondent-Corporation, the present writ petition is filed.

3. By order dated 23.03.2015, notice was ordered and on 27.03.2015 when the respondent-Corporation was represented by a Standing Counsel, on his request, the matter was posted to 31.03.2015 and, in the meanwhile, *status quo* was directed to be maintained. By a further order dated 09.04.2015, the order of

status quo was extended and by further orders, the order of *status quo* was extended from time to time. In the meanwhile, the respondent-Corporation filed a counter affidavit as well as additional documents vide W.P.M.P.No.16038 of 2015. The petitioner has also filed a reply affidavit and also additional documents vide W.P.M.P.No.11501 of 2015. Accordingly, both the miscellaneous petitions are ordered and the said additional documents are taken on record.

4. I have heard the learned counsel on either side on 02.09.2015 and the orders were reserved. The writ petition is now being disposed of by the present order.

5. Sri M. Panduranga Rao, learned counsel for the petitioner, placed strong reliance upon the letter of appointment dated 13.09.2012, wherein it was specifically stated that the appointment being for a period of one year from the date of handing over of the Outlet with a provision of extending the contract by one more year. The said letter, however, makes it clear that “*extension of contract would be subject to satisfactory performance.*”

6. Learned counsel for the petitioner placed reliance upon the initial letter of the respondent-Corporation addressed to the petitioner on 28.06.2012, wherein choices of three locations were given to the petitioner and in that letter, it was specifically mentioned that “*Indian Oil Corporation has requested DGR to nominate suitable Retired Defence officials for operation of our Permanent COCO's at location listed below*”. Learned counsel for the petitioner places reliance upon the word “*permanent*” used in

the said letter.

7. However, Sri A.P. Suresh Rao, learned Standing Counsel for the respondent-Corporation, points out to para-5 of the counter affidavit filed by the respondent-Corporation, wherein it was stated that the error in using the word "*permanent*" in the aforesaid letter was rectified by the letter of the respondent dated 10.05.2012, while communicating the guidelines for operation of temporary COCO's under Policy No.164, dated 05.01.2010 of the respondent-Corporation, which makes it clear that initial appointment of a Service Provider is one year with a provision for extension of contract by one more year i.e., a maximum of two years, subject to satisfactory performance of the Service Provider. Based on the above, the learned Standing Counsel for the respondent-Corporation points out that the very appointment letter dated 13.09.2012 of the petitioner makes it clear that the contract is only for one year extendable by one more year maximum. It is also contended that the recommendations of DGR does not specify regarding the allotment of permanent COCO's to the identified nominees. In these circumstances, it was stated that though the petitioner was granted one year extension and further extension till 31.03.2015, he continued as an Operator of the Outlet by virtue of interim orders passed by this Court. Hence, vacation of the interim orders is sought by the respondent-Corporation.

8. It is also pointed out that Clause-22 of the contract between the petitioner and the respondent-Corporation clearly shows that it is a contract only for one year extendable by one

more year. Hence, it is contended that the petitioner is not entitled to seek further extension. It is further stated that additional extension of 5 ½ months given to the petitioner was only as a stop-gap arrangement, since the appointment of adhoc dealer would take some time and it is stated that one M/s. Shivam Auto is already identified vide respondent's letter dated 12.03.2015 and, as such, the petitioner is not entitled to continue as an Operator.

9. Though counter affidavit refers to similar arrangements made by the respondent-Corporation with regard to the other locations, the petitioner denied appointment of such operators by filing a reply affidavit. The petitioner, however, states that he has never been informed that he is a temporary Retail COCO Operator and not a permanent Operator and, as such, denied the same. He also states that his continuation as an Operator does not cause any damage or prejudice to the respondent-Corporation. Along with the additional documents, the petitioner has produced a copy of the policy of the Government of India, as communicated by the Ministry of Petroleum and Natural Gas Communications, dated 06.09.2006, which, *inter alia*, provides that the Oil Marketing Companies should stop job contractorship or adhoc Dealership for operating the temporary COCO Retail Outlets etc. The petitioner has also produced a copy of the letter of the respondent-Corporation appointing M/s. Shivam Auto for the same Retail Outlet, which is being operated by him.

10. The respondent-Corporation, on the contrary, has produced additional documents, wherein the respondent-Corporation had addressed DGR for nomination of retired Defence

Officials as Service Providers, specifically stating that it is to be awarded for one year. A copy of the said letter dated 02.05.2012 is produced. The learned Standing Counsel for the respondent-Corporation, therefore, submits that in terms of the policy of the respondent-Corporation and Clause-22 of the contract, which is extracted hereunder, the petitioner is not entitled to overstay on the contract for grant of more than one year extension.

“22. This Contract shall remain in force for the period of ONE YEAR extendable by one more year subject to satisfactory performance, unless terminated as provided in the agreement.

The corporation reserves the right to terminate the contract at any time before the expiry of the contract by giving the Service Provider 30 days notice or upon severe breach of agreement without any notice in writing without assigning any reason whatsoever and without being liable to pay any damages / compensation for such termination. The Service Provider also can terminate this contract at any time before the expiry of the contract by giving to the Corporation 90 days notice in writing without assigning any reason whatsoever.”

11. It is stated that the respondent-Corporation, being considerate, has already granted further extension of 5 ½ months. Hence, the petitioner is liable to be vacated, so that the new Operator appointed by the respondent-Corporation could take over the Outlet.

12. Looking at the policy of the respondent-Corporation and the letter of appointment of the petitioner dated 13.09.2012, it is difficult to accept the petitioner's contention that he was appointed on a permanent basis as an Operator/Service Provider for the Retail Outlet of the respondent-Corporation. The letter of

appointment and Clause-22 of the Agreement between the petitioner and the respondent-Corporation clearly stipulate that the contract will be in force for a period of one year extendable by one more year and, as such, a *Mandamus* as sought for by the petitioner would directly violate the terms of the contract and this Court cannot issue a *Mandamus* permitting such violation.

13. *Secondly*, the petitioner being neither a Lessee nor a Licensee, has limited right as a contractor, which cannot be enlarged into a permanent contractor, as it would be not only contrary to the policy of the respondent-Corporation, but also contrary to the terms of appointment of the petitioner. The agreement further contains an Arbitration clause, under Clause-32, which is also an additional reason, why this Court, under Article 226 of the Constitution of India, would not exercise its discretion when a dispute of this nature has arisen out of a contract.

14. The writ petition, therefore, has no merits and accordingly, dismissed. However, there shall be no order as to costs.

AFZULPURKAR

Date: .09.2015.

Msr

JUSTICE VILAS V.

HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.7453 of 2015

.09.2015
Msr

HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.7453 of 2015
(P.D. Judgment)