

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-23083-2014 (O&M)
Date of decision : 13.05.2015

M/s Outdoor Communication Pvt. Ltd.

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Chetan Mittal, Sr. Advocate,
with Mr. Mohinder Nain, Advocate,
for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

Mr. Vinod Bhardwaj, Advocate,
for respondent Nos.3 to 6.

None for respondents Nos.7 to 11.

JITENDRA CHAUHAN, J.

1. This is a petition under Articles 226/227 of the Constitution of India, filed by the petitioner for quashing order dated 21.10.2014 passed by the Additional Chief Secretary, Government of Haryana, Urban Local Bodies Department, Chandigarh and order dated 6.11.2013 (Annexure P 11).

2. The gist: The petitioner was granted a contract through a tender process for display of advertisement of various types at Panchkula under the Haryana Municipal (Control on Advertisement) Byelaws, 2008. The said agreement dated 31.08.2009 (Annexure P.1) was for sixty months on BOT basis on deposit of licence fee on the

sites identified by the Corporation. The Commissioner, Municipal Corporation, Panchkula issued memo no.7197 dated 5.2.2013 informing that the commissioner cancelled the contract forfeiting the security amount deposited by the petitioner vide order dated 29.01.2013 on the ground that the petitioner company committed violation of condition no.5 of the contract agreement (Annexure P.1). This order was challenged by the petitioner in the Civil Writ Petition No.4833 of 2013 in this Court. On 05.03.2013, this court relegated the petitioner to the remedy of an appeal, which had already been filed and pending decision before the Appellate Authority.

3. This Court vide its order dated 25.10.2013 in COCP No.1057 of 2011 directed the petitioner to deposit the amount due to the Municipal Corporation, Panchkula by 31.10.2013. As the petitioner had already deposited the amount, this court directed the Principal Secretary to Government of Haryana, Urban Local Bodies Department to pass a formal order as per clause 30 of the Haryana Municipal (Control on Advertisement) Byelaws, 2008 (herein after referred to as 'the Byelaws') before 08.11.2013.

4. The appellate authority restored the contract on 06.11.2013 vide Annexure P 11 subject to the following conditions:

- a) That advertisement displayed on Unipoles, Gantries and Bus que shelters shall be strictly in compliance of the Hon'ble High Court orders issued from time to time and Haryana Municipality Outdoor

Advertisement Policy, 2010 apart from the conditions of agreement;

b) The appellant would be granted maximum of 30 days grace period for relocation, maintenance and set up the displays/infrastructure to the satisfaction of the Municipal Corporation;

c) The appellant has to undertake maintenance work of all the units including painting, repairing etc, at own costs;

d) The arrears of interest, as prescribed in the agreement, from 28.06.2013 to 06.11.2013 shall be deposited in the Municipal Corporation fund by the appellant within a period of 30 days;

e) In future, all the instalments shall be deposited by the appellant with the Municipal Corporation, as prescribed in the agreement.

On 09.11.2013, the petitioner company moved a detailed representation, deposited the entire amount in the compliance with the aforesaid order passed by the Appellate Authority. The Municipal Corporation accepted the tendered amount and restored the contract on 21.11.2013 for further period of twenty-one months.

5. When the company was smoothly doing its business, the private respondents moved an application for clarification of the order

dated 06.11.2013 passed by the appellate authority. Vide order dated 21.10.2014 (Annexure P.19), while allowing the application filed by the private respondents, the appellate Authority respondent no.2 clarified the order dated 06.11.2013 as under:

"8. In view of the above discussion, it is clarified that while allowing the appeal of the appellant vide order dated 06.11.2013 by setting aside the impugned order/letter dated 05.02.2013, the contract was restored only for the remaining period of contract. However, while allowing their appeal, grace period of 30 days was granted to the appellant for relocation, maintenance and setting up the displays/infrastructure to the satisfaction of the Municipal Corporation. Therefore, the grace period of 30 days would be over and above the agreed period of contract (01.09.2009 to 30.11.2014, including the three months of original grace period). Further, the appellant would be liable to pay the license fee for the period from 01.03.2013 to 21.11.2013 on proportionate basis, if he has utilized the land/infrastructure during this period for earning advertisement revenues in pursuance of the contract."

Aggrieved against the impugned order dated 21.10.2014, the petitioner company filed this writ petition.

6. The respondents Nos.3 to 6 contested the writ petition on the ground that the petitioner company is in arrears of more than Rs.1.50 crores, including service tax and interest and that the petitioner cannot be given contract afresh beyond the period of twenty-one months from the date of order dated 06.11.2013. It is further pleaded that the petitioner company has violated the terms and conditions of the agreement, so the petitioner is not entitled to any relief. The answering respondents supported the impugned order dated 21.10.2014 (Annexure P.19) pleading that the impugned order was rightly passed.

7. Similarly, the private respondents Nos.7 to 11 contested the writ petition pleading that while restoring the contract vide impugned order dated 06.11.2013, the contract of the petitioner was never extended beyond the terms specified in the agreement dated 31.08.2009 (Annexure P.1) i.e. upto 30.11.2014 and requested for dismissal of the writ petition.

8. I have heard the rival contentions of the learned counsel for the parties and carefully gone through the paper book with their able assistance.

9. The point to be determined in this writ petition is as to whether the appellate Authority has the right to review or modify its order at the asking of the entity not party to the order under review.

10. The following provisions of the Haryana Municipal

(Control on Advertisement) Bye-laws, 2008 are necessary to be reproduced:

"29. Any breach committed by the agency of these bye-laws shall result in the cancellation of the permission granted or termination of the contract and shall hold the agency liable to face prosecution in the competent court.

30. Any person dissatisfied with an order of assessment under these bye-laws or any other order passed under these bye-laws may appeal to the Secretary to Government, Haryana, Urban Local Bodies Department and his decision shall be final; provided that no appeal shall be valid unless the amount of the fee payable as assessed has been deposited."

11. The learned counsel for the parties could not point out any provision or law under the above bye-laws under which the appellate authority has the power of review or alter its own order. The order assailed was reviewed/modified under the guise of 'clarification' that too at the instance of a third party, who had no right to intervene. The petitioner company had a concluded contract in its favour while the respondents no.7 to 11, claimed themselves to be the prospective bidders in the future bids. The private respondents claiming to be in

the same business as that of the petitioner company and are trying to circumvent the right of the petitioner created under the contract reached between the petitioner and the respondent No.6 in open competition to secure business. The petitioner company has submitted a cheque bearing no.720615 dated 28.10.2013 in the sum of Rs.61,74,190/- along with the representation cum appeal. This fact has not been denied by the official respondents. The petitioner company has not been allowed to resume work. The Corporation has also wrote letter no.6254 dated 26.09.2014 to the appellate Authority for clarification instead of implementing the order of the appellate authority. There was no necessity to write this letter but it was only to delay the implementation of the appellate order. In contractual matters, a third party has no right to intervene except a serious prejudice, irreparable loss or injury is caused. The contract was to commence from 1st December, 2009 to 30th November, 2014. In terms of the contract agreement dated 31.08.2009, the petitioner company had deposited an amount of Rupees twenty lacs as a security for the satisfactory fulfillment of the terms and conditions of the contract and the remaining amount was to be paid in equal quarterly instalments in advance. The petitioner had also been depositing requisite licence fee from time to time with the respondents corporation. The impugned order dated 06.11.2013 passed by the appellate authority respondent no.2 is self explanatory and there was no ambiguity in the appellate order. The earlier appellate order clearly shows that the contract agreement was restored for the remaining

twenty one months. The contract was cancelled on 05.02.2013 which was for a period of five years i.e. sixty months. It was reinstated on 21.11.2013. Meaning thereby, the business activities of the petitioner company were discontinued from 05.02.2013 to 21.11.2013. There is no explanation by the official respondents as to why the clarification was sought only on 26.09.2014 after nine months of the restoration of the contract. Had the authorities not read the earlier order of the appellate Authority before 26.09.2014? There was no justifiable ground with the Corporation to get clarification of the appellate court order, which in itself was clear. The Municipal Corporation is estopped by its acts and conduct to move such an application before the appellate authority, as it is reflected in the order that the Municipal Corporation, Panchkula vide its letter dated 05.11.2013 had informed that they have no objection in reinstating the contract subject to the condition that if there are any arrears left with the M/s Outdoor Communication Pvt. Ltd., then it should be deposited, in the account of the Municipal Corporation, Panchkula, and the instalments shall be deposited as per the agreement. The intention of the Corporation was to stick to the contract or agreement (Annexure P.1). The private respondents were never a party to the contract or in the appeal. The appellate order passed under the bye-laws cannot be amended or altered at the instance of a third party. Even the private respondents have not participated in the bid. The private respondents did not challenge the order dated 06.11.2013 before any competent court of law. A third party has no

right to object to the concluded contract after completing the process under the bye-laws except there is illegality, irregularity, undue favour, mala fide or on any other justified ground, by which some loss is caused to the State Exchequer in allotting tender. It can be agitated at the very initial stage as possible. It is being contended that the petitioner company has deposited the entire dues of the Municipal Corporation along with interest amount even for the suspended period of contract.

12. Keeping in view the above facts and circumstances, it is held that the private respondents had no locus standi to file an application for clarification before the appellate authority under the bye-laws; the application so filed by private respondents no.7 to 11 was not maintainable before the appellate Authority under the bye-laws and the impugned order dated 21.10.2014 (Annexure P.19) is illegal, without jurisdiction and is not sustainable, which is hereby, set aside. It is further held that the petitioner company is entitled to carry on the work for the remaining unutilized contractual period out of sixty months, for which the petitioner could not carry on work due to the acts and conducts of the respondents as has been held by the appellate authority in its order dated 06.11.2013 (Annexure P.11) on the same terms and conditions agreed in the agreement/contract dated 31.08.2009 (Annexure P.1).

However, in case of any breach of terms and conditions of the agreement or any other violation/non-payment, the respondents are at liberty to initiate appropriate action against the petitioner.

Allowed.

13.05.2015
SK/atulsethi

(JITENDRA CHAUHAN)
JUDGE

Note : Whether to be referred to Reporter : Yes