

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 834 OF 2016

B.P. Motor Lunch Service .. Petitioner

Vs.

Jawaharlal Nehru Port Trust .. Respondent

Mr. Nitin P. Deshpande, for the Petitioner.

Mr. Hemant Prabhulkar a/w Ms. Sonali Jain i/b Juris, for Respondent.

**CORAM : V. M. KANADE &
M.S. KARNIK, JJ.
DATE : 31st MARCH, 2016**

P.C. :

. Heard learned Counsel appearing on behalf of the petitioner and learned Counsel appearing on behalf of the respondent.

2. By this Petition which is filed under Article 226 of the Constitution of India, the petitioner is seeking an appropriate writ order or direction for setting aside communication dated 02nd February 2016 sent by the respondent and for the purpose of reviving order dated 17th November 2015 passed by the respondent.

The brief facts that are necessary for the purpose of deciding this Petition are as under :

3. The petitioner is carrying on business of providing launch service to the passengers travelling from Mumbai to

Jawaharlal Nehru Port Trust (for short 'JNPT'). The tender notice was published by the respondent - JNPT in January 2015. The petitioner was declared to be a successful bidder and on 05th February 2015, the work order was issued in favour of the petitioner. As per the said work order, the period of contract was for one year. However, JNPT can extend the said contract for a further period of one year.

4. The petitioner accepted the proposal. Thereafter, the letter was sent by the respondent- JNPT dated 17th November 2015 informing the petitioner that the respondent- JNPT wanted to extend the contract for a further period of one year. The petitioner, accordingly, conveyed its acceptance to the said proposal by its letter dated 19th November 2015. The grievance of the petitioner is that after having extended the contract for a further period of one year, the petitioner received a letter dated 02nd February 2016 from the respondent- JNPT informing it that period of contract was extended for three months only. Learned Counsel appearing on behalf of the petitioner submitted that after extending the contract for a further period of one year, it was not open for the respondent- JNPT to unilaterally cancel the said extension and issue a fresh work order for a period of three months only. He submitted that the respondent - JNPT has issued a fresh tender notice inviting the tenders. He submitted that the said action of the respondent- JNPT is arbitrary

and therefore, liable to be quashed and set aside. He has invited our attention to the work order and subsequent correspondence between the parties. He submitted that in fact the letter dated 17th November 2015 was a letter extending the contract for a further period of one year. He submitted that as the petitioner had accepted the said work order, there was no occasion to again issue a fresh letter dated 02nd February 2016 curtailing the period to three months only.

5. On the other hand, learned Counsel appearing on behalf of the respondent submitted that JNPT has a sole discretion to curtail the contract. He submitted that it is open for the petitioner to submit its tender bid on 04th April 2016.

6. The submissions made by the learned Counsel appearing on behalf of the petitioner cannot be accepted. The work order dated 05th February 2015 clearly mentions as under:

“JNPT is pleased to award the contract for providing “Passenger launch service between JN Port and Mumbai” for a period of one year extendible by one more year at the sole discretion of JNPT on the following terms and conditions:”

Clauses 13, 14 & 15 of the said work order read as under :

“13. JNPT reserves the right to terminate the contract by giving 30 day's notice without assigning any reason whatsoever and as per Clause-21 of the General Conditions of the Contract.

14. JNPT also reserves the right to foreclose the contract with the contractor in part or full by giving one month's notice as per Clause -21(c) of the General Conditions of the Contract.

15. Any dispute arising out of this contract shall be resolved as per Clause 20 of the General Conditions of the Contract.”

7. From the said work order, it is apparent that after completion of period of one year, sole discretion vested in the respondent either to extend the contract for one year subject to clauses 13, 14 and 15.

8. The respondent– JNPT thereafter sent a letter dated 17th November 2015. The respondent– JNPT informed the petitioner that they would like to extend this contract for a further period of one year. Paragraph 1 of the said letter reads as under :

“With reference to the subject Work Order for Providing Passenger Launch Services between Mumbai and JNPT, we would like to extend this contract for a further period of one year as per the General Conditions of Contract Clause No. 2 (Period of Contract) of the tender document, there is a provision for extension of the contract for further period upto one year on the same rates, terms and conditions.

Hence, you are requested to confirm acceptance of the same at the earliest to enable us to process the extension.”

9. From the said letter, it is apparent that final order of the extension was not granted, on the other hand, only approval was sought from the petitioner.

10. After the petitioner by his letter dated 19th November 2015 conveyed his acceptance to respondent – JNPT thereafter, processed the said offer and informed the petitioner by letter dated 02nd February 2016 that respondent – JNPT was pleased to extend the contract for three months. The letter dated 02nd February 2016 reads as under:

“With reference to captioned subject, JNPT is pleased to extend the present contract awarded for providing Passenger launch service between Mumbai & JNPT with effect from 05th February, 2016 for a further period of three months or till placement of fresh work order, whichever is earlier on the same rates, terms and conditions as per present contract.”

11. It is, therefore, abundantly clear from the conjoint reading of letters dated 17th November 2015 and 02nd February 2016 that respondent – JNPT had only sought acceptance to the offer which was given by respondent – JNPT and thereafter respondent – JNPT was to process the period of extension. Respondent– JNPT thereafter took a decision to extend the period for three months only.

12. We are of the view that respondent– JNPT, therefore, has not acted in an arbitrary manner. The period of contract was over on 05th February 2016. The respondent– JNPT after processing the application for extension, took a decision to extend it only for three months and has now issued a fresh tender.

13. It is always open to the petitioner to give its bid to the said tender process. The petitioner cannot claim extension of one year as a matter of right and in fact no order of extension of one year was granted as canvassed by the learned Counsel appearing on behalf of the petitioner. There is no merit in the submissions of the learned Counsel appearing on behalf of the petitioner. Hence, Petition is dismissed.

14. It is clarified that it is open for the petitioner to submit

its tender bid on or before 04th April 2016. If the said bid is given, it may be considered in accordance with law. Secondly, even if a fresh tender is awarded to the successful bidder, that tender would come into operation only after three months from 05th February 2016.

(M.S.KARNIK, J.)

(V. M. KANADE, J.)