

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 20705 of 2015

Date of Decision: 15.01.2016

Suz-Dent (India) Pvt. Ltd. through Shri Arvind Kumar ..Petitioner

versus

State of Haryana and others ..Respondents

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.**

Present : Mr. Sanjiv Bansal, Advocate, for the petitioner.
Mr. Deepak Balyan, Addl. Advocate General, Haryana,
for the respondents.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioner seeks an order quashing a memo dated 07.09.2015 cancelling two purchase orders dated 13.10.2004 for the supply of 40 dental chairs/units with accessories issued under a rate contract dated 07.02.2014.

2. This is a purely contractual matter. The dispute is a purely contractual one. Allowing this petition would amount to granting a relief of specific performance of a contract to sell moveable property in a case which raises disputed questions of fact. The purchase orders have been cancelled on two grounds neither of which can be adjudicated conclusively and satisfactorily in this petition under Article 226 of the Constitution of India. Firstly, the supply was admittedly offered after the stipulated period. Secondly, the respondents have an apprehension regarding the quality of the products. Whether the respondents had waived the condition regarding the time for supplying the dental units and whether the dental units are of the requisite quality are questions which must be answered in appropriate

proceedings. The petitioner must, therefore, be relegated to a suit or any other appropriate proceedings.

3. The respondents issued a notice inviting tenders for supply of complete dental unit with dental chairs alongwith accessories as per the specifications stipulated therein.

4. The respondents by a letter dated 20.01.2014 informed the petitioner that they had accepted the rates offered by the petitioner on the terms and conditions mentioned therein. The dental chairs/units with accessories were to be supplied at the rate of Rs. 2,23,000/- per unit for a period of two years on a rate contract basis. Pursuant thereto an agreement dated 28.06.2014 was executed between the parties for the supply of said goods which recorded that the petitioner had undertaken to supply the goods on a rate contract for two years. The quantity to be supplied was not specified.

5. Two separate orders both dated 13.10.2014 were issued by the respondents to the petitioner for supply of 40 dental chairs/units with accessories at the stipulated rate of Rs. 2,23,000/- per unit. As per clause-F(3) of the terms and conditions stipulated in the notice inviting tenders, the delivery was to be made within 30-45 days. The purchase order was placed on 13.10.2014. The period of 45 days expired latest on 28.11.2014. The dental chairs were admittedly not supplied within this period.

6. Mr. Bansal, learned counsel appearing on behalf of the petitioner relied upon the respondents' letter dated 30.12.2014 to contend that the respondents had waived the conditions regarding the time for supply of the dental chairs. An article was published in a local newspaper on 23.12.2014 alleging that the petitioner had been black-listed in respect of another contract in Jammu & Kashmir. By a letter dated 30.12.2014, the

respondents requested the petitioner to provide the documents “in support of the allegations published.....”. We presume that what the respondents actually requested for were the documents in relation to the allegations to enable them to examine the same. Mr. Bansal relied upon the further statement in the letter to the effect that the supply orders may be kept on hold till further orders.

7. Ultimately by the impugned communication dated 07.09.2015, the respondents cancelled the purchase order.

8. The Government Dental College/Hospital, Sri Nagar, had also by an order dated 23.06.2014 debarred the petitioner who was participating in the tenders for the years 2014-15. The order, however, stated that the petitioner was at liberty to participate in the tenders subject to production of fresh registration certificate from the Health and Medical Education Department after it proved its credibility. The amounts deposited by the petitioner were forfeited. Mr. Bansal, however, states that this order was stayed on 28.07.2014. Mr. Bansal, however, submits that in view of the stay order, the Government of Jammu & Kashmir had itself placed orders for the same goods upon the petitioner on 03.12.2014. He submitted, therefore, that the basis of the impugned action terminating the contract no longer subsists.

9. We are not inclined to grant the relief prayed. The relief prayed, if granted, would amount to decreeing a claim for specific performance of a contract for the sale of movable properties. Even assuming that in an exceptional case a Court exercising jurisdiction under Article 226 of the Constitution of India would be entitled to grant such relief, this is not such a case. As we mentioned earlier each of the documents entered into between the parties required the dental chairs/units to be supplied within 30-45 days.

The petitioner admittedly failed to deliver the same within 45 days of the

purchase order dated 13.10.2014. In this petition under Article 226 of the Constitution of India we are not inclined to hold conclusively that the said letter dated 30.12.2014 by which the respondents kept the supply orders on hold till further orders amounted to a waiver of the condition stipulating the time and period for delivery. That letter was written in the context of the article published in the newspaper on 23.12.2014 which referred to the order of black-listing passed by the Jammu & Kashmir Government. Prima-facie the respondents did not waive their right to terminate the contract on the ground that the material had not been supplied within the period stipulated. Issues such as whether time was of the essence of the contract or whether assuming that time was of the essence it ceased to be the essence of the contract and whether the respondents had waived the condition regarding the supply of the material within the stipulated period would require further consideration in appropriate proceedings.

10. The respondents also have an apprehension regarding the quality of the dental chairs/units. It is not possible to test the validity of this apprehension in this petition. In fairness to the petitioner we must record that the petitioner repeatedly invited the respondents to inspect the dental chairs/units. In fact by our order dated 23.12.2015 we recorded that the matter was adjourned at the request of the respondents to enable them to seek instructions as to whether they wish to take delivery by waiving the delay but subject to satisfying themselves regarding the quality of the dental chairs. They are at liberty to do so even hereafter. The respondents have not availed the opportunity of inspecting the chairs.

11. In the facts of this case, the petitioner must be relegated to a suit or any other appropriate proceedings as it is not possible to adjudicate upon these disputes in a writ petition. It is clear from this order and judgment that

we have expressed no opinion whatsoever regarding the merits of the rival contentions in respect of the disputes.

12. The writ petition is accordingly dismissed keeping open the contentions of the parties on-merits.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

15.01.2016
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(TEJINDER SINGH DHINDSA)
JUDGE