

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 17891 of 2017 (O&M)

Date of Decision: 23.03.2018

Surinderpal Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE AVNEESH JHINGAN, JUDGE

Present: Mr. Pawan Kumar Bansal, Advocate
for the petitioner.

Mr. Avinit Avasthi, Assistant Advocate General
Punjab for respondents No. 1 to 3.

Mr. K.S. Brar, Advocate
for respondent No.4.

AVNEESH JHINGAN, J.

The grievance raised in the present petition is that respondent No.3 has issued a fresh advertisement for allotment of parking stand without deciding the application for extension of the contract made by the petitioner.

Respondent No.1 is the State of Punjab, respondent No.2 is the Civil Surgeon, Civil Hospital, Ferozepur, respondent No.3 is the Senior Medical Officer, Civil Hospital, Ferozepur and respondent No.4 is a private respondent who submitted a bid in the fresh tender process.

In the year 2016, an advertisement was given by the Senior Medical Officer, Civil Hospital, Ferozepur, (hereinafter referred to as 'SMO') for allotment of parking stand. The petitioner applied pursuant to the advertisement and was allotted the parking stand on 28.07.2016. The period of allotment was from 01.08.2016 to 31.07.2017. As per conditions No.1 and 11, allotment of the parking was for a duration of one year and if there was no complaint against the contractor and if his work was found

satisfactory, the duration will be extended by one year with increase of 10%. The extension could be for a maximum three years. The contractor had to ensure compliance of general guidelines as issued by Punjab Health System Corporation, vide letter No. 170 dated 07.12.2015.

For ready reference, the Condition Nos.1 and 11 are reproduced:

"1. The tenders in connection with parking stand will be opened at 2 PM on 15/07/2016. If due to any reason there is holiday on that day, then the tenders will be opened on the next working day. The duration of contract will be one year. If there is no compliant against the contractor and his work and conduct is satisfactory then after one year the duration will be increased by one year with the increase of 10%. This increase can be maximum for 3 years.

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11. Besides the Contractor will have to ensure the compliance of the general guidelines with regard to cycle stand issued by Punjab Health System Corporation issued vide letter No.170 dated 07-12-2015. A copy of the general guidelines will be provided at the time of purchasing the tender."

In accordance with the terms and conditions, the petitioner in June 2017 moved an application for extension of one year. The application was made well before the period of allotment had ended.

The SMO gave an advertisement in a newspaper on 03.08.2017 for allotment of parking stand at Civil Hospital, Ferozepur, for the year 2017-18. The said advertisement was given without taking a decision on the application moved by the petitioner.

The petitioner was issued a certificate dated 07.08.2017 by SMO stating that his work was good during the period of allotment. The petitioner vide letter dated 28.07.2017 was directed to vacate the cycle stand on 31.07.2017 as the duration of his contract was coming to an end on

On 09.08.2017 the present writ petition was filed. Notice of motion was issued on 11.08.2017. Vide order dated 16.08.2017 it was clarified that in case, any allotment is made, the same shall be subject to further orders of this Court. The grievance of the petitioner is that as per the condition No.1, the allotment of the parking stand should have been extended for one year with a 10% increase in the lease rent.

It is an admitted fact that the petitioner conducted the work satisfactorily and there were no complaints against him. The said fact is fortified by the SMO's certificate in his favour stating that his work was good.

From the plain reading of Clause-I, it is evident that the duration of the contract was one year, but the same was to be extended by one year for maximum three years with an increase of 10% every year.

In the present case, the petitioner was willing to work for another one year with an increase of 10%. The said application though was not decided but it was as good as rejected as the advertisement for fresh allotment of the parking stand was issued on 03.08.2017. The respondents defended their action relying upon Clause-11 of the terms and conditions read with the Revised Guidelines dated 02.05.2016. Clause-5 of the Revised Guidelines is reproduced as below:

"5. The licence would be extendable on yearly basis with mutual consent of both the parties on the same terms and conditions with at least 10% increase in monthly licence fees for each extended term subject to the satisfactory services of the licensees."

In a petition under Article 226 of the Constitution of India, the scope of interference in contractual matters is limited. But in the present case as the issue raised is based on admitted facts, the same is being dealt

with.

The judgment in this case was reserved on 12.02.2018. Before pronouncing the judgment, an opportunity was provided to the respondents to show that the revised guidelines dated 02.05.2006 were either published or brought to the notice of the bidders at the time of allotment of tender for the period from 01.08.2016 to 31.07.2017. Apart from filing an affidavit, the respondents could not produce any evidence to establish that the revised guidelines of May 2016 were brought to the notice of the petitioner. The petitioner filed a counter affidavit stating therein that his signatures were appended on all documents which were submitted or shown to him. The record was produced by the respondents and it was evident that the signatures of the petitioner was appended only on tender conditions annexed as Annexure P-1 with the writ petition. The said terms and conditions in Clause No.11 only referred to general guidelines issued by Punjab Health System Corporation vide letter No. 170 dated 07.12.2015. It was stated that a copy of these general guidelines will be provided at the time of purchasing of the tender. Hence the petitioner was never made aware of the revised guidelines of May 2016.

The entire endeavour of the respondents to defend the petition is based upon Clause-V of the revised guidelines to state that the extension would be on the basis of mutual consent of both the parties. Such revised guidelines are internal communication which was neither published nor brought to the notice of the petitioner. The same cannot be relied upon for refusing an extension of the contract.

The contentions raised by the learned counsel for respondents cannot be accepted as clause-1 of the basic document fixing the terms and

conditions between the parties specifically lays down that the duration of the contract allotted will be one year and that the duration will be extended by one year with increase of 10%. The said extension can be maximum for three years. The only rider to the said extension is that the work and conduct of the contractor was satisfactory and there was no complaint against him. On fulfillment of these conditions no discretion was left.

Clause-11 has no conflict with Clause-1. It only ensures the compliance of General Guidelines by the contractor. From the reading of the terms and conditions, it would be evident that general guidelines issued in May 2016 have not been incorporated for the purpose of determining the duration of a contract or its extension.

The fact that the petitioner in compliance with the letter dated 28.07.2017 vacated the parking stand cannot be taken against him. The contention of learned counsel for the petitioner that in absence of any extension, his period of allotment was expiring on 31.07.2017 and he had no option except to vacate the same is well founded. Viewing the matter from another angle had the petitioner continued to occupy the parking stand after 31.07.2017, he would have been termed an 'illegal occupant.'

It is possible that if fresh bids are invited a higher offer may be made. This is not a fact to be considered in the present case, as the bargain was entered into between the petitioner and respondent No.3 way back in the year 2016 and the terms and conditions were settled. As per the said terms and conditions, extension was to be granted. The sanctity of the contract must be maintained.

The words 'then after one year the duration 'will be' increased by one year with the increase of 10%' in Clause-1 are important. The words

'will be' leave no discretion with the respondent. Yet without deciding the application made by the petitioner in June 2017, a fresh advertisement was issued which amounted to rejection of the application for extension. It has been brought to our notice that till date the work has not been allotted to anybody. Even otherwise, as per the order dated 16.08.2017, the allotment would have been made subject to further orders passed by this Court.

The petition is therefore disposed of by directing the respondents to re-consider the petitioner's application for extension before proceeding with fresh allotment of parking stand. The said application cannot be rejected on the basis of the defences taken in the written statement.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

23.03.2018

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Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No