

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

CWP No. 20826 of 2017 (O&M)

DATE OF DECISION : 17.04.2018

R.K. Launder, Village and Post Office Kasanda, Sub Tehsil Khanpur
Kalan, Tehsil Gohana, District Sonapat

.... PETITIONER

Versus

State of Haryana and others

.... RESPONDENTS

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

Present : Mr. Puneet Gupta, Advocate,
for the petitioner.

Mr. Deepak Balyan, Addl. A.G., Haryana.

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AVNEESH JHINGAN, J.

The petitioner has challenged the issuance of an e-tender notice dated 05.09.2017 on the ground that he is entitled to an extension of two years of his existing contract for the same work with the respondents. The petitioner seeks an order directing the respondents to grant a two years extension of the contract already awarded to him.

2. The respondents are the State; the Director, Medical Education and Research, Haryana; and the Director, B.P.S. Government Medical College for Women, Khanpur Kalan, District Sonapat.

3. On 26.11.2014, the respondents issued a tender for outsourcing of laundry services at B.P.S. Government Medical College for Women,

Khanpur Kalan (for short, 'the Medical College') for two years. Clause (i) of General Terms and Conditions of the Notice Inviting Tender (for short, 'NIT') is re-produced below :-

General Terms & Conditions

(i) The Selected Bidder shall provide the Services to the Hospital for a period of two years at the price quoted by it and extendable for another two years subject to the satisfactory performance of the Services.

4. The petitioner's bid was accepted vide letter dated 21.07.2015. The petitioner was allotted the work for two years with effect from 21.08.2015. Conditions No.2 and 3 of the tender allotment letter are quoted below :-

“2. That the contract shall be initially for the period of two year. However, contract shall be further extended for another two years subject to satisfactory performance of the Services.

3. The contractor shall be allowed to increase the price for the services by an inflation of 10% (Ten Percent) per year after the completion of two year of award the contract.”

The date of starting the work was changed to 01.09.2015 vide letter dated 07.08.2015. Clause 2 was different from the corresponding provision for extension in the NIT. We will deal with the effect thereof shortly.

5. Ultimately, an agreement dated 14.08.2015 was entered into between the petitioner and the Director of the Medical College. Clause (i) of the terms and conditions regarding the period of the contract in the agreement was similar to clause (i) of General Terms and Conditions of the NIT. Clause (i) of the terms and conditions of the agreement is re-produced below :-

Terms & Conditions

(i) M/s R.K. Launderers shall provide the Services to the Institute (which includes Hospital, College etc.) for a period of two years at the price quoted by it and extendable for another two years subject to the satisfactory performance of the Services. (emphasis supplied).

6. The contract was to end on 31.08.2017. On 30.08.2017, the petitioner applied for extension. Vide letter dated 04.09.2017, the time was extended by one month.

7. The respondents issued the impugned fresh e-tender notice on 05.09.2017 inviting bids for outsourcing the same work viz. laundry services at the Medical College.

8. The petitioner's case is that his work was satisfactory and that he was accordingly entitled to an extension of the contract for another two years. The respondents have declined the extension for two years and issued a fresh e-tender notice. We have not accepted the petitioner's case.

It is necessary to analyse the above clauses in the NIT, the letter of acceptance and the agreement with regard to the period of the contract.

9. The contract was initially for two years. As per the NIT, it was 'extendable' for another two years subject to satisfactory performance of the Services. The letter dated 21.07.2015 informed the petitioner that his bid had been accepted inter-alia on the condition that the contract shall further be extended for another two years subject to satisfactory performance of Services. We will at this stage presume that there is a conflict between the clause (i) of the General Terms and Conditions of the NIT and clause (i) in the letter dated 21.07.2015 as whereas the former states that the contract is “extendable for another two years subject to the satisfactory performance of the Services”, the latter states that the “contract shall be further extended for another two years subject to the satisfactory performance of the Services.”. Clause 2 of the letter of acceptance entitles the parties to an extension as a matter of right for it states that the contract “shall be further extended” subject to the satisfactory performance of the services. The words “shall be extended” establishes this. If we were to presume that clause (i) of the NIT however is not necessarily mandatory, there would be a conflict between the two clauses. In that event, the terms and conditions mentioned in the NIT must prevail as the bidders would certainly have structured their financial bids on the basis that they are not entitled to an extension as a matter of right. Further, other parties may not have submitted bids on account of the

duration of the contract being only two years. In commercial transactions, the duration of a contract has a direct effect on the financial bid. The essential terms and conditions mentioned in the NIT must be adhered to. They cannot be changed while awarding the work as that would be unfair to the public at large. Others who may well have submitted bids, if the words “shall be extended” had been there in the NIT. A post tender variation of an essential term is not permissible. It would defect the tender process.

10. Clause (i) of the Terms and Conditions of the contract ultimately entered into was in consonance with clause (i) of the General Terms and Conditions of the NIT. Thus in any event, clause (i) of the Terms and Conditions of the contract would prevail.

11. The question then is the effect of clause (i) of the General Terms and Conditions of the NIT and clause (i) of the Terms and Conditions of the contract.

12. Considering the facts of this case prima-facie at least the word “extendable” points the volition of both sides to the extension. In other words, it is not mandatory for a party to agree to the extension if sought by the other. The words subject to the satisfactory performance of the services may well support the petitioner's case of the respondents being bound to extend the contract. However, they may also be construed as an essential factor in the respondents' decision whether or not to agree to an extension. That the clauses in the NIT and in the contract are worded differently is an indicator in the respondents' favour that there was no obligation on either

party to agree to an extension. The clause in the letter dated 21.07.2015 indeed made it mandatory for an extension of the contract. There was however a departure in the contract finally entered into. This is, to say the least, an indicator that the parties were not bound to agree to an extension of the contract.

13. As per the Cambridge English Dictionary, the word “extendable” means “something that is extendable; can be made longer”. As per the Oxford Dictionary, the meaning of word “extendable” is “Able to be made longer or larger.” The word “extendable” does not mean that the initial period of two years of the contract has to be extended. There is always a discretion with the party inviting tenders either to extend it or not. It is not bound to extend. In cases where the intention is for compulsory extension, the agreement is worded differently.

14. Our judgment dated 23.03.2018 in **Surinderpal Singh Vs. State of Punjab and others**, CWP No. 17891 of 2017, is of no assistance to the petitioner as it is clearly distinguishable. The clause in that case was as follows :-

“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 complaint 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.”

In the said clause, the wording was “will be increased”. We therefore held as under :-

“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.”

15. The least that must be said in the respondents' favour is that the clause is capable of more than one interpretation. In that event the petitioner would have to lead evidence in support of his interpretation of the clause. A petition under Article 226 of the Constitution of India is not an appropriate remedy for the adjudication of such a contractual dispute.

16. There is yet another difficulty in the petitioner's way. The respondents have in the reply demonstrated that the scope of work allotted to the petitioner as per the tender document dated 19.11.2014 has been substantially changed as per the new policy. As per the earlier tender, the service provider was required to provide linen and laundry services to the hospital. As per the new policy, the supply of linen by the service provider has been done away with. As per the changed policy, the respondents expect a reduction of price of laundry services. In such circumstances, it is neither logical nor possible for the respondents to agree to an extension of the contract. With the change of policy, it is not possible for the respondents to

extend the contract. The contract is therefore not extendable. The respondents' rejection of the application for extension is entirely justified.

17. The petition is, therefore, dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

April 17, 2018
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes