

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

CWP-3015 of 2018 (O&M)
Date of Decision: 19.03.2018

Tara Chand Logistic Solutions Limited

..... Petitioner

versus

State of Haryana and others

.....Respondents

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

Present:- Mr.Sanjay Kaushal, Sr. Advocate with
Mr. Aditya Grover, Advocate for the petitioner.

Ms.Shifali Goyal, Advocate for
Mr. Varun Issar, Advocate for respondent No.3.

Mr. Vikas Kakkar, Advocate,
Mr. Amit Dubey, Advocate and
Mr. Vaibhav Goel, Advocate for respondent No.4.

Mr. R.Kartikey, Advocate for respondents No.5 and 6.

Mr. Deepak Balyan, Additional Advocate General, Haryana.

S.J.VAZIFDAR, CHIEF JUSTICE (oral)

The petitioner seeks a writ of mandamus directing respondent No.4 to reconsider a decision dated 24.11.2017 in the light of subsequent developments and in terms of a letter of acceptance (LOA) dated 10.08.2017 issued by respondent No.4 in favour of the petitioner. The petitioner also seeks an order directing respondent No.2-The Director, Town & Country Planning, Haryana, to consider its application for the grant of change of land user (CLU) permission expeditiously.

2. The case in a nut-shell is this. A contract was entered into between the petitioner and respondent No.4 under which the petitioner was appointed as a consignment agency contractor on behalf of respondent No.4 for storage and transportation of material of respondent No.4. Clause-7 required the petitioner *inter-alia* to furnish a change of land user within 90 days. The petitioner failed to do so. There is no certainty as to whether and if so when the CLU would be granted. Respondent No.2-Director Town and Country Planning has rejected the application for the CLU and the petitioners/lessors have challenged the same by filing a petition in this Court.

3. Respondent No.4 has therefore terminated the contract as it was entitled to under clause 7. The petitioner seeks an order directing respondent No.4 to keep the contract alive till such date as the petitioners obtains a CLU. We have rejected the petition on several grounds including on the ground that respondent No.4 is not concerned with the petitioner's difficulty in obtaining the CLU.

It is not open to this Court to re-write the contract. The CLU was to be produced within 90 days of the contract and the application was made only after 47 days. There is no certainty as to when the CLU would be obtained. More important there is no certainty as to whether the petitioner would be granted the CLU. Respondent No.4 cannot be made to wait indefinitely.

4. Respondent No.4-Rashtriya Ispat Nigam Limited, a Government of India Undertaking, by a notice dated 27.02.2017 invited tenders from experienced/established agencies for appointment of a Consignment Agency Contractor at Faridabad for handling and storage of

pig iron and steel material from its plant in Visakhapatnam and transportation of steel consignments from its stockyard to the customers premises/other stock yards.

5. The petitioner's bid was accepted and a letter of acceptance (LOA) dated 10.08.2017 was issued by respondent No.4 in favour of the petitioner. Clause 7 of the LOA reads as under :-

“Land Utilization Certificate : *As per clause No.24 of Instructions to Tenderers (ITT) and Affidavit (as per Annexure-3 of ITT) submitted by you, you are required to furnish copy of land utilization certificate/land conversion certificate/No objection certificate/any Govt. notification issued by competent authority of State Government (Director General of Directorate of Town and Country Planning, Haryana for land situated under the scheme of Master Plan or Out of Municipal Area/Director General of Directorate of Urban local bodies, Haryana for land situated within the limit of Municipal Area) based on which the land proposed can be used for storage of Iron and Steel materials within 90 days from the date of LOA failing which LOA shall stand withdrawn and EMD plus SD both will be forfeited along with all penal actions stipulated in the above clause.”*

6. The petitioner entered into a lease agreement dated 12.09.2017 with one Anil Kumar, HUF-respondent Nos. 5 and 6. Respondent No.6 Satish Kumar HUF also appears to have an interest in the land. The petitioner along with respondent Nos. 5 and 6 approached respondent No.2- the Director Town and Country Planning, Haryana for the grant of Change of Land User Certificate (CLU).

7. The petitioner, however, admittedly failed to obtain and furnish the land conversion certificate (CLU) within the period of 90 days stipulated in the LOA. The LOA was, therefore, liable to stand withdrawn and the EMD and SD were liable to be forfeited along with all penal actions

stipulated in the above clause.

8. Respondent No.4 ultimately by a letter dated 29.11.2017 withdrew the LOA thereby terminating the contract with effect from 08.11.2017. It was further stated that other action as per the term of the contract for which the petitioner was liable were being contemplated and the petitioner would be intimated in due course.

9. The petitioner contends that it made an application for CLU on 27.09.2017 and that it is respondent No.2 who caused the delay in granting the same. The petitioner contends that the respondent ought to have condoned the delay and granted the petitioner an extension of time for obtaining the CLU. The petitioner seeks an extension upto the date of the grant of the CLU by respondent No.2. If we were to accept the petitioner's contention and grant an extension of time it would be erroneous for more than one reason.

10. Respondent No.4 is not concerned with the difficulties faced by the petitioner in obtaining the CLU. Respondent No.4 is concerned with having its work performed as per its requirements. It is not open to the court to alter the terms and conditions of the contract between the parties.

11. If we were to accept the petitioner's case, it would be grossly unfair to respondent No.4. The extent of extension is uncertain. As the petitioner itself admits, it depends upon the time taken by respondent No.2 to grant the same. The petitioner has had difficulty in obtaining the CLU. The petitioner had filed CWP No.28384 of 2017 which was disposed of by an order and judgment dated 16.01.2018. The order noted the statement of the competent authority i.e. respondent No.2 that by its order dated 12.01.2018 it decided not to accept the application for CLU and the petitioner had been

advised to submit a fresh application in accordance with the new policy and guidelines.

12. Mr. Balyan, the learned counsel appearing on behalf of respondent No.2 tendered an order dated 16.02.2018 of respondent No.2 rejecting the petitioner's application for CLU. Respondents No.5 and 6, who are the owners of land from whom the petitioner has taken the land proposed to be used for the purpose for the LOA on lease, have challenged this order by filing CWP No.4201 of 2018. There is no certainty as to whether respondents No.5 and 6 would succeed. Nor is there any certainty as to when the petition would be decided. Surely, respondent No.4 cannot be expected to await the outcome of the application for the CLU indefinitely.

Even assuming that respondent No.2 has delayed the grant of the CLU respondent No.4 is not concerned with the same.

13. If the stipulated period is extended it would be unfair to the other parties who did not submit their bids in view of the said clause. Had the clause been open ended as to time for obtaining the CLU various other parties may also have participated in the tender.

14. The contention that the petitioner was faced with an impossible situation is also unfound. The LOA did not stipulate that only a party who obtains a CLU after the LOA is issued would be considered. Parties with an existing CLU were also entitled to participate in the tender process. Respondent No.4 is concerned with having its work performed within time. The material involved is important for its manufacturing activities. There is no reason why we ought to exercise our jurisdiction under Article 226 to compel respondent No.4 to alter an important term in the contract which will have ramifications on its manufacturing and commercial activities.

15. Moreover, although the CLU was to be obtained in 90 days the petitioners/petitioners' lessors made an application for the same after 47 days.

16. The termination of the contract was, therefore, valid. The reliefs sought cannot be granted. The question whether the amounts paid and/or deposited by the petitioner thus far are liable to be refunded or not is kept open. There are cases where the mere termination of a contract may not justify the forfeiture of the entire amount. We express no opinion in this regard.

17. In the circumstances, we did not consider it necessary to call upon the learned counsel appearing on behalf of the respondents to address us on the effect of the petitioner having invoked the arbitration clause and having also moved an application under Section 9 of the Arbitration and Conciliation Act, 1996.

18. The petition is accordingly dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

19.03.2018
Anju/ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	Yes/No√