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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 8067/2018 & CM Nos.30906-30907/2018**

M/S ALFA PACKERS AND MOVERS

..... Petitioner

Through **Mr. Abhijat and Mr. Shashwat Jindal,**
Advocates.

versus

UNION OF INDIA

..... Respondent

Through **Mr. Vivek Goyal, CGSC with**
Bibhash Kumar, Advocate for UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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02.08.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition praying as under:-

“(a) By the issuance of an appropriate Writ, Order or direction, direct the Respondent to grant to the Petitioner, the extension of the Agreement dated 28.09.2017 by another 1 (One) Year as provided in Clause 1 of the said Agreement.”

2. The petitioner is aggrieved by the action of the respondent denying the extension of the contract awarded to the petitioner for lifting,

transporting, packing, forwarding and dispatching/delivery of Weekly News Journals 'Employment News' and 'Rozgar Samachar' in English, Hindi and Urdu all over India.

Factual Background

3. The petitioner is a proprietorship firm and is, *inter alia*, engaged in providing packing, transportation and dispatching services over various locations in India.

4. The respondent (Ministry of Information and Broadcasting) publishes Weekly Journals/ newspapers, namely, 'Employment News' in English and 'Rozgar Samachar' in Hindi and Urdu. The 'Employment News' is a weekly journal containing information relating to vacancies.

5. On 04.05.2017, the respondent invited tenders for "*transportation, packing, forwarding, dispatch, delivery of the weekly journal newspaper 'Employment News' and 'Rozgar Samachar' in English, Hindi and Urdu to various locations all over India*" (hereafter 'the work').

6. The petitioner submitted its bids pursuant to the above invitation. The petitioner's bid was accepted and was awarded the contract. Thereafter, on 28.09.2017, the petitioner and the respondent entered into an agreement (hereafter 'the Agreement'), whereby the petitioner was appointed as the Despatch Contractor for a period of one year from 02.08.2017 to 02.08.2018.

7. In July, 2018, the petitioner learnt that the respondent has started dispatching their books and journals through the Indian Postal Department and would discontinue the contract with the petitioner for the work.

Submissions

8. Mr Abhijat, the learned counsel appearing for the petitioner referred to Clause I of the Agreement entered into between the parties and contended that in terms of the said clause, the petitioner was entitled for a further extension of one more year on account of having rendered satisfactory performance. He contended that there was no allegation that the petitioner's performance was not satisfactory and, therefore, the General Manager and the Chief Editor of the 'Employment News' Journal were obliged to exercise their discretion and extend the contract for a further period of one year.

9. He submitted that the decision of the respondent not extending the contract was arbitrary and unreasonable and was thus violate of Article 14 of the Constitution of India.

Reasons and conclusion

10. At the outset, it would be necessary to refer to Clause 1 of the Agreement, which reads as under:-

“1. The contract with all its Terms and Conditions shall remain in force for one Year from the 02.08.2017 and shall be renewable on the same Terms & Conditions for one more Year at the discretion of the General Manager and Chief Editor, Employment News, Publications

Division, Ministry of Information & Broadcasting, New Delhi for having rendered satisfactory performance etc.”

11. It is at once clear from the plain reading of the aforesaid clause that the extension of the contract is solely at the discretion of the concerned officers – the General Manager and Chief Editor, Employment News, Publications Division, Ministry of Information and Broadcasting. Plainly, the petitioner has no right to insist that such discretion be exercised in its favour.

12. The petitioner had prior to filing the present petition filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 (which was withdrawn). Mr Abhijat was pointedly asked that since the petitioner was basing his claim on breach of Clause 1 of the Agreement why would arbitration not present an equally efficacious remedy. He responded by stating that the petitioner was basing its claim not only the provisions of Clause 1 of the Agreement but also on the ground that the action of the respondent in not extending the term of the Agreement was arbitrary and unreasonable and, thus, offended Article 14 of the Constitution of India.

13. This Court was not impressed by the aforesaid contention. It is trite law that the scope of judicial review in contractual matters is limited, essentially, on four grounds. First, whether the Government has not followed its own procurement process. Second, whether the decision is unreasonable and arbitrary so as to fail the *Wednesbury* test (it is so unreasonable that no sensible persons could arrive at this decision). Third, whether the decision is vitiated by bias and malafides. And fourth, that there

should be a public element in it (See: *Joshi Technologies International Inc v. Union of India & Ors: (2015) 7 SCC 728*).

14. In the present case, none of the four grounds are established. It is stated that the respondent had decided to avail services of the postal department. Plainly, this decision is within the discretion of the concerned authority and cannot, by any stretch, be assailed as failing the *Wednesbury* test. The respondent, being a part of the State, has decided to use internal resources of the State in carrying out the contract. This decision warrants no interference by this Court. This Court is also not persuaded to accept that there is any dishonesty or malafides that could be attributed to such a decision.

15. As noticed above, the provision of Clause 1 of the Agreement is clear and does not vests any right in favour of the petitioner. On the contrary, a plain reading of the said Clause indicates that the right of renewal rests with the concerned authorities. The contention that satisfactory performance entitles the petitioner to renewal is flawed. The right to renew the contract vests with the concerned authorities, which could be exercised on several grounds including satisfactory performance as is indicated by the abbreviation 'etc.' at the end of the Clause.

16. Since the petitioner has no right for renewal of the Agreement, the present petition seeking relief to the aforesaid effect, is not maintainable. It is settled law that the petition under Article 226 of the Constitution of India would be maintainable only for enforcing a legal right. (See: *The Calcutta*

Gas Company (Proprietary) Ltd. v. The State of West Bengal & Ors: AIR 1962 SC 1044).

17. In view of the above, the present petition is unmerited and is, accordingly, dismissed. All the pending applications are also disposed of.

VIBHU BAKHRU, J

**AUGUST 02, 2018
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