THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 23046 OF 2019

O R D E R :

This Writ Petition is filed seeking a *mandamus* to declare the action of the respondents in terminating the contract of the petitioner awarded under Letter No. C-1120/17-Y-F/IISM, dated 19.06.2018 and renewed up to 28.02.2020 under Letter dated 05.03.2019, through letter issued by the 3rd respondent dated 03.10.2019, with effect from 01.11.2019, as illegal and arbitrary.

The brief averments in the writ affidavit are that:

The petitioner, an ISO 9001:2015 certified company, is engaged in man-power supply and services incidental thereto to various government departments and organizations like NMDC, IICT, NGRI, Survey of India, etcetera.

Pursuant to the tenders called for supply of man power, the petitioner submitted quotation on 30.01.2018 and it emerged as the successful bidder for supply of 21 Security Guards, 4 Fireman, 1 Dresser, 6 Safaiwala, 4 Mali and 22 Mazdoor and a letter to that effect was issued on 19.06.2018. The contract is for a period from 01.07.2018 to 31.10.2018 in respect of the security guards and in respect of other categories from 01.06.2018 to 31.10.2018. Agreements have been entered into to the same effect. Thereafter, contract was extended up to 28.02.2020 and the petitioner has been discharging the functions entrusted to it without any complaint to the satisfaction of the respondents. While things stood thus, under the guise of implementing Government e-Market (GeM) hosted by the Director General of Supplies & Disposals, Government of India, the 1st respondent issued fresh tender on 22.08.2019, however, the same came to be cancelled. Subsequently, once again, the respondents invited bids through GeM for awarding the works. It was objected to by the petitioner on 03.10.2019 on the ground that they are discharging their functions with all due diligence and that their contract is valid up to February 2020. However, the petitioner also without prejudice participated in the said tender process and emerged as L1. It is the assertion of the petitioner that they had engaged the services of persons, keeping in view the term of the contract, hence, the impugned proceedings, dated 03.10.2019 terminating the contract with effect from 01.11.2019 is arbitrary, illegal and violative of their right guaranteed under Article 19(1)(g) of the Constitution.

When the Writ Petition came up for admission on 28.10.2019, interim direction as prayed for was granted. Thereafter, I.A. No. 2 of 2019 was filed seeking to vacate the said interim order.

In the counter-affidavit filed on behalf of the respondents, it is stated that the Ministry of Finance, Department of Expenditure, *vide* official Memorandum dated 03.04.2019, had made changes to General Financial Rules, 2017 and as per Rule 149, procurement of goods and services through GeM had been made mandatory in all the Ministries / Departments and the head office of the local unit had been directed to adhere to the instructions issued by the Government of India. It is stated, the respondents had initiated implementation of GeM process in the month of August, 2019 and as a matter of fact, the petitioner was informed about the same through letter dated 27.08.2019, however, the GeM process could not be implemented on account of non-receipt of financial sanction. Now, they are ready to implement with effect from 01.11.2019 and accordingly, the petitioner was informed *vide* letter dated 03.10.2019 that their services would not be required with effect from 01.11.2019 and the said notice is in conformity with Clause F-3(c) of the agreement, which empowers the respondents to terminate the contract any time with one month notice. As the petitioner has already been intimated, in advance, in August itself and as the respondents had strictly adhered to the contractual terms, the petitioner cannot have any grievance and the action taken by the respondents is legal and valid. It is further asserted that the petitioner participated in the bids floated in October 2019 and it was selected to provide man power of 01 Pharmacist and that as there are more L1 bidders, the successful bidder has been selected by the system using "Run for L1 selection" option. Following the same, Run for L1 selection was conducted with respect to other categories and the petitioner was eliminated in the said process. In those circumstances, the respondents pray to vacate the interim order and dismiss the Writ Petition.

Heard learned counsel for the petitioner as well as learned Assistant Solicitor General for the respondents.

As the counter-affidavits have already been filed, though I.A.No. 2 of 2019 has come up for hearing, at the request and consent of learned counsel for both the parties, the Writ Petition itself is taken up for hearing and disposal.

The facts are not in dispute. There is also no complaint on the services being rendered by the petitioner. The contract of the petitioner is admittedly to come to an end only on 28.02.2020. In this backdrop, the only question which requires to be considered is 'whether on account of implementation of GeM instructions, the petitioner's contract is liable to be terminated and if so, whether such termination is valid'.

It may be noted that GeM Office Memorandum of Ministry of Finance was dated 02.04.2019, perusal of which does not indicate any time-frame having been indicated nor is there any clause that brings the existing contracts to an end and to enter new contracts. A further perusal of the Office Memorandum discloses that the said memo is replacement of certain rules with amended rules. In other words, in future, the procedure prescribed in the amended rules is required to be followed. In the case on hand, there is no dispute that the original contract entered into between the petitioner and the respondents had, in fact, commenced in 2018 and on the same terms and conditions, the said contract is being extended periodically, last of such extension being, under the agreement entered into on 03.09.2019, up to 28.02.2020 with effect from 01.03.2019. In the said agreement dated 03.09.2019, it is specifically stated

> " WHEREAS the IIS&M (SOI) is desirous of giving a job contract for providing of 25 Security Guards from 01.03.2019 to 28.02.2020 at SOI Campus, Hyderabad (INCLUDING ALL ESTABLISHMENTS ENCOMPOUNDED WITHIN THE BOUNDARY WALL AND OPEN LANDS AT KONDAPUR & BHONGIR and CDFD Building, Gandipet), and whereas the Contractor has offered to provide the 25 Security Guards from 01.03.2019 to 29.02.2020 on the terms and conditions hereinafter stated.

> WHEREAS the contractor has represented that he is a registered contractor under the provisions of Contract Labour (Regulation and Abolition) Act, 1970 and has further represented that he is eligible to get the contract and there is no legal or any other bar for him in this respect. Any obligation and / or formalities which are required to be fulfilled under the said Act or any amendment thereto for the purpose of entering into and / or execution of this contract shall be carried out by the contractor at his own expenses etc. and the contractor shall report the compliance thereof to the IIS&M (SOI). The contractor shall be solely liable for any violation of the provisions of the said Act or any other Act.
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> WHEREAS , IIS&M (SOI) has agreed to award the contract of work of security arrangement and to keep a strict watch and ward of the land and properties, as mentioned in ANNEXURE "A".
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> AND WHEREAS the contractor has agreed to furnish to the IIS&M (SOI) A Security Deposit of Rs.4,27,695/- (Rupees Four Lakh Twenty Seven thousand six hundred and ninety five only) as contract performance guarantee by way of Fixed Deposit mortgaged to IIS&M.

Similar agreements are also executed with respect to other categories. Since the office memorandum, admittedly, came to be issued on 02.04.2019, the same does not have any retrospective effect and it does not affect the contract already executed and thus, the GeM dated 02.04.2019 cannot be a reason for terminating the existing contract under which certain rights accrued to the petitioner.

Further, it is contended by the learned counsel for the respondents that the contract itself has provided for termination by giving one month notice and the petitioner was given such notice. In this context, it is apt to peruse Clause F under the heading 'commencement and termination'. Sub-clause (2) thereof provides that 'this agreement may be terminated on any of the following contingencies:

(a) on the expiry of the contract period as stated above.

(b) By giving one month's notice by IIS&M(SOI), on account of

(a) losses suffered by IIS&M (SOI), due to lapse on the part of the personnel on so deployed by the contractor.

(b) Violation of any labour law as per Contract Labour (Regulations land Abolition) Act, 1970.

(c) The Competent Authority can terminate the contract at any time.

(d) Committing breach of by the contractor of any of the terms and conditions of this agreement.

(e) On contractor being declared insolvent by competent Court of Law.

(f) Due to any change in Govt. Policy or non-receipt of sufficient funds."

Clause F-2(bc) would have to be read along with sub-clause (a) and (b) and the same cannot be read as an independent clause. It is not the case of the respondents that Clause 2(ba) or 2(bb) is attracted in the present case. In those circumstances, the contention of the respondents is liable to be rejected and the termination of contract of the petitioner not being for valid reasons, the same cannot be sustained.

The Writ Petition is therefore, allowed declaring that the petitioner shall be entitled to discharge their functions under the contract, till the expiry of period specified therein. No costs.

The miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

11th December 2019

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