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

+ W.P.(C) 7269/2019 and CM Nos. 30257-30258/2019

MILITARY ENGINEER SERVICES BUILDERS OF
ASSOCIATION Petitioner

Through: Ms Seema Singh, Advocate.

versus

UNION OF INDIA & ORS Respondents

Through: Mr Vikas Mahajan, CGSC with Mr
Aakash Varma and Mr Prajesh,
Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **08.07.2019**

1. The petitioner is an association of contractors engaged in performing contracts awarded by Military Engineering Services (MES).
2. The petitioner has filed the present petition, *inter alia*, impugning policy letters dated 16.10.2018 and 18.02.2019 issued by respondent no.1. By the letter dated 16.10.2018 respondent no. 1 had informed various offices of MES that the Government of India had approved (i) inclusion of a provision for providing performance security at the rate of 5% of the contract sum and (ii) increase in the defect liability period, in all contracts.
3. By the impugned letter dated 18.02.2019, respondent had communicated the amendments to the General Conditions of Contract (GCC) incorporating the above provisions. The petitioner states that in terms of the policy, the defect liability period has been increased uniformly from

one years to two years.

4. It is contended on behalf of the petitioner that the demand of performance security at the rate of 5% of the contract sum, is in addition to the performance security, otherwise required to be submitted by a contractor. Ms Singh, the learned counsel appearing for the petitioner submits that the same is burdensome, harsh and onerous on the contractors and, therefore, the policy be set aside as arbitrary and irrational. Insofar, as the increase in the defect liability period is concerned, Ms Singh submits that there are contracts for cleaning and providing manual services where increase in the defect liability period would be meaningless.

5. This Court is of the view that the present petition is unmerited. The inclusion of a condition of providing for performance security is a matter of policy and, therefore, no interference by this Court is called for in these proceedings. The terms and conditions on which contracts are to be entered into are a matter of commercial discretion of the respondents, and this Court is unable to accept that the inclusion of a condition to provide performance security is arbitrary or unreasonable or otherwise falls foul of the Constitution of India.

6. The contention that it would be harsh and burdensome on the members of the petitioner association is also unpersuasive. Undoubtedly, the insistence on the part of MES to provide additional performance security would increase the cost to be incurred by the Contractor. However, since this condition is uniformly applicable to the contractors bidding for a contract, the Contractors are also required to factor in the additional cost in

their bids.

7. This Court is also of the view that no interference in the policy to increase the defect liability period is called for. MES is entitled to specify the scope of the contract and if in its wisdom, the Contractor must accept responsibility and cure defects for an increased period, there is no reason which precludes it from incorporating such stipulation in the contracts.

8. The contention that the increase in the defect liability period would be meaningless in certain contracts, is a matter, that is, required to be considered by MES. It is possible that in a particular contract, some clauses of the GCC may be inapplicable. The same are required to be examined in the context of the specific contract. It is expected that MES will include the GCC in a meaningful manner.

9. The petition is, accordingly, dismissed. The pending applications are also disposed of.

10. Order *dasti* under signature of Court Master.

JULY 08, 2019
RK

VIBHU BAKHRU, J