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

Reserved on: 11.08.2020
Date of Decision : 09.09.2020

\+ **W.P.(C) 2662/2020 & CMs 9246/2020, 11158/2020**

ALANKIT ASSIGNMENTS LIMITED ..... Petitioner
Through: Mr.Rakesh Tiku, Sr. Adv. with Mr.Rohan Sharma, Adv.

versus

UNION OF INDIA ..... Respondent
Through: Mr.Chetan Sharma, ASG & Mr.Ripudaman Bhardwaj, CGSC for UOI with Mr.Sahaj Garg, Adv. and Mr.Pramil Gupta, Director MEA.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition, was filed by the petitioner originally on 05.03.2020, praying for the following reliefs:

> *"(a) this Hon'ble Court further be pleased to issue any writ, order or direction in the nature of Certiorari or any other appropriate writ, order or direction in the nature thereof for quashing letter dated 04.04.2019 bearing No. Abu/CW/386/7/2017* ***(ANNEXURE P-12)*** *and communication dated 29.01.2020* ***(ANNEXURE P-15)*** *issued by Respondent for reducing the term of the Contract granted to the Petitioner in terms of the Request for Proposal Document and the Letter of Intent dated 29.10.2018.*
>
> *(b) this Hon'ble Court further be pleased to issue any writ, order or direction in the nature of Certiorari or any other*

appropriate writ, order or direction in the nature thereof for quashing Advance Notice for floating tender for Pravasi Bhartiya Sahayata Kendra dated 02.02.2020 ***(ANNEXURE P-17)*** *and Request for Proposal document issued by Embassy of India Abu Dhabi dated 25.02.2020 inviting bids for establishing and managing the Pravasi Bhartiya Sahayata Kendra at Dubai* ***(ANNEXURE P-18)****."*

2. In the hearing held on 11.03.2020, the learned senior counsel for the petitioner made a submission that without prejudice to the rights and contentions of the petitioner in the present petition, the petitioner would participate in the new Request for Proposal (hereinafter referred to as "*RFP*") that had been floated by the respondent on 25.02.2020. This court by its order dated 11.03.2020 directed that any decision taken by the respondent on the new RFP shall be subject to the outcome of the present petition.

3. Unfortunately, before the petition could be taken up for further consideration, due to outbreak of Covid-19 pandemic, the proceedings in the petition were adjourned.

4. The petitioner thereafter filed an Application, being CM No. 11158/2020 (hereinafter referred to as the "*application*"), praying for the following reliefs:-

"a) Pass ex-parte ad interim order to direct the Respondent to continue to make payment of AED 1,00889.00 + Taxes to the Applicant as per the terms of the Letter of Intent dated 29.10.2018, till pendency of the present petition or expiry of terms of the contract/Letter of Intent dated 29.10.2018, whichever is later;

b) Direct the Respondent to clear, the pending payments of the Applicants for rendering their services upto April 2020 @ AED

1,00889.00 + Taxes per month for Dubai and Sharjah PBSK Centres."

5. In the application it was asserted by the petitioner that the respondent has cancelled the fresh RFP wherein the petitioner emerged as an L-1 bidder and the respondent had extended the existing arrangement with the petitioner for three more months till July, 2020 as per the rates prevailing prior to November, 2018. The petitioner had also been called upon to close the Sharjah Centre with effect from 01.05.2020. The respondent, by an e-mail dated 06.05.2020, reiterated that the extension shall be only for the Dubai Centre on a monthly remuneration of AED 67,700/- (Emirati Dirhams Sixty Seven Thousand and Seven Hundred Only).

6. The above factual matrix has been narrated as a brief background as to what has transpired in this petition since its filing.

7. As far as the Writ Petition is concerned, the petitioner asserted that:-

(a) Sometime in the end of 2013, the respondent, through its Community Affairs Wing, Embassy of India, Abu Dhabi had issued a RFP document for selection of a Service Provider to establish and manage an Indian Workers Resource Centre (IWRC) at Dubai, United Arab Emirates. The petitioner participated in the said tender and was issued a Letter of Intent dated 17.02.2014, informing the petitioner that it had been selected as a Service Provider for a term of three years starting from 01.03.2014, at a monthly retainer fee of AED 68,000/-. The parties thereafter executed an Agreement on 21.05.2014.

(b) By the letter dated 29.03.2017, the Agreement was extended till 28.02.2018 on the same terms and conditions.

(c) By a separate letter dated 29.03.2017, the respondent awarded the work of setting up and management of IWRC, Sharjah to the petitioner for the period from 01.04.2017 to 28.02.2018 on the terms and conditions that were mentioned in the Agreement for Dubai Centre and certain other conditions as mentioned in the said letter. The consideration of the services was AED 49,000/-, being the additional monthly retainer fee.

(d) By the extension letter dated 02.04.2018 and e-mail dated 30.08.2018, the Agreement with the petitioner was extended firstly from 28.02.2018 till 31.08.2018, and thereafter from 01.09.2018 till further notice.

(e) In September 2018, the respondent issued a fresh RFP for selection of a Service Provider to establish and manage the Pravasi Bhartiya Sahayata Kendra (PBSK) at Dubai and Sharjah through the Community Affairs Wing, Embassy of India, Abu Dhabi. Clause 5 of the RFP document provided that the Contract would be valid for three years and could get extended for another year.

(f) The petitioner participated in the tender and was issued a Letter of Intent dated 29.10.2018, informing the petitioner of its selection as a Service Provider as per the terms and conditions mentioned in the RFP. The monthly retainer fee was agreed as AED 1,00,889/-.

(g) The petitioner accepted the terms of the Letter of Intent by e-mail dated 30.10.2018. In turn, the respondent vide e-mail dated 31.10.2018, directed the petitioner to start the operations of the PBSK at Dubai and Sharjah from 01.11.2018 and sought clarification as to how the petitioner would submit the Performance Bank Guarantee as required in the Letter of Intent.

(h) The petitioner by its e-mail dated 01.11.2018, confirmed the start of the operation of the PBSK at Dubai and Sharjah.

(i) By the Impugned Communication dated 04.04.2019, however, the petitioner was informed by the respondents that the Competent Authority has given its approval for the selection of the petitioner as the Service Provider for a period of one year only, that is from 01.11.2018 to 31.10.2019, at a monthly retainer fee of AED 1,00,889/-. The petitioner protested against the same vide its letter dated 12.04.2019.

(j) On expiry of the period of the offer contained in the Communication dated 04.04.2019, the petitioner by an e-mail dated 30.10.2019 and 14.11.2019, requested the respondent for further extension. The respondent, by e-mail/letter dated 29.01.2020, extended the period of arrangement till 30.04.2020.

(k) On 02.02.2020, the respondent issued an “Advance Notice For Floating Tender For establishing and managing Pravasi Bharatiya Sahayata Kendra” and thereafter issued a fresh RFP document.

8. As noted hereinabove, the petitioner filed the present petition challenging the Communication dated 04.04.2019 curtailing the period of the Contract from three years to one year; Communication dated 29.01.2020 that extended the period of the Contract till 30.04.2020; and the decision of the respondent to issue the fresh RFP dated 25.02.2020.

9. The learned senior counsel for the petitioner submits that the respondent has issued the RFP for award of contract for a period of three years. The Letter of Intent dated 29.10.2018 issued to the petitioner, therefore, awarded the Contract for a period of three years. The respondent has acted arbitrarily by issuing the Impugned Communication dated 04.04.2019 and thereby taking a unilateral decision to curtail the period of the contract to only one year. He submits that pursuant to the RFP and the Letter of Intent, the petitioner had made investments and it is only after a gap of almost six months that the respondent sought to curtail the period of the contract thereby acting in an arbitrary and a whimsical manner.

10. Placing reliance on the judgments of the Supreme Court in ***ABL International Ltd. & Anr. vs. Export Credit Guarantee Corporation of India Ltd. & Ors***. 2004 (3) SCC 553 and ***Union of India & Ors. vs. Tantia Construction Pvt. Ltd.*** 2011 (5) SCC 697, the learned senior counsel for the petitioner submits that even in the matters of contract, the respondent has to act fairly and reasonably. It cannot unilaterally alter the terms of the Contract. He submits that even in the matters of Contract and monetary claims, a Writ is maintainable where the respondent has acted in an arbitrary manner.

11. On the other hand, the learned ASG submits that in the present case only a Letter of Intent has been issued to the petitioner. This does not result in a binding Contract between the parties. Placing reliance on the judgment of the Supreme Court in ***Dresser Rand S.A vs. Bindal Agro Chem Ltd. and K.G. Khosla Compressor Ltd.*** 2006 (1) SCC 751, he submits that until a regular Contract was executed between the parties, the same cannot bind either party. A Letter of Intent merely indicates a party's intention to enter into a Contract with the other in future.

12. He also places reliance on the judgment of the Supreme Court in ***Rajasthan Cooperative Dairy Federation Ltd. vs. Maha Laxmi Mingrate Marketing Service Pvt. Ltd. & Ors.*** 1996 (10) SCC 405, to submit that a Letter of Intent can be withdrawn at any stage.

13. Placing reliance on the judgment of the Supreme Court in ***Joshi Technologies International Inc vs. UOI & Ors.*** 2015 7 SCC 728, the learned ASG submitted that this Court should refuse to entertain the petition as it relates to contractual matters and raises a monetary claim. He submits that the remedy of the petitioner, if any, would lie in a Suit for specific performance or damages.

14. The learned ASG further submits that in the present case, the bid of the petitioner pursuant to the RFP of 2018 was examined for approval. The expenditure related to the PBSK at Dubai and Sharjah is met from Indian Community Welfare Fund (ICWF). It came to notice of the Competent Authority that the indicated running expenses for the PBSK were more than 40% of the funds collected under the ICWF in the last year. As per the Government Guidelines on the expenses, the expenses

should not exceed more than 15% of total ICWF collection of the previous financial year. This has been done to ensure that adequate funds are available for welfare of the Indian Community Workers and to extend financial help at the time of distress, problems faced by the workers and community members. The petitioner was further found charging additionally for service of experts (legal, financial and physiological) despite the fact that these experts were providing their services on a *pro-bono* basis. It was for this reason that the competent authority granted its approval for the appointment of the petitioner as a Service Provider only for a period of one year. The petitioner was accordingly informed by the Communication dated 04.04.2019. He submits that therefore, the respondents have not acted arbitrarily.

15. As far as the new RFP is concerned, the learned ASG submitted that the rate quoted by the petitioner again exceeded the cap put by the guidelines. He places reliance on paragraph 6 of the reply submitted to the application, which reads as under:

> *"6. That the averments made in para 6 of the application under reply are wrong and hence denied, except for what is matter of record. It is submitted that as per Ministry's guidelines the expenditure from the Indian Community Welfare Fund (ICWF) for permissible items cannot be more than 15% of the ICWF collections in the previous financial year. The ICWF collections for 2018-19 were Rs.7,54,64,088/-. The expenditure for permissible items including PBSKs in Dubai and Sharjah for 2019-20 comes to Rs.3,51,22,236/- which is approx. 46.54% of the ICWF collections of 2018-19 and hence hugely exceeds the permissible guidelines. This has been done to ensure that adequate funds are available for welfare of Indian community workers and extend financial help in time of distress, problems*

faced by workers and community members. M/s Alankit's quote in the New Request for Proposal was approx. Rs.2,72,16,000/- (this exceeds the permissible guidelines by 21% which is meant for many other services other than PBSK). Hence it was decided to cancel the RFP. Ministry is reviewing the whole process of PBSKs as per guidelines."

16. As far as the decision to continue the services only for Dubai Centre and discontinue the same for Sharjah, as also the fixation of charges for the same, the learned ASG submitted that though PBSK Sharjah was set up in August, 2017, even after more than two and a half years of its existence, it was found that the same had not taken off. Accordingly, the petitioner was asked to close the PBSK Sharjah with effect from 01.05.2020. He submitted that even the Letter of Intent dated 29.10.2018 empowered the Embassy to conduct Quarterly Review meetings to oversee the functioning of the two PBSKs and therefore, the respondent was entitled to take such a decision. As PBSK Sharjah was directed to be closed, it was decided that the petitioner shall be paid AED 67,700 for PBSK Dubai for the period May - July, 2020, in the same ratio that was paid for PBSK Dubai and PBSK Sharjah prior to November, 2018 (ratio was 8/13) when two separate bills for PBSK Dubai and Sharjah were being submitted by the petitioner.

17. I have considered the submissions made by the learned counsels for the parties.

18. The Supreme Court in ***Joshi Technologies*** (supra), summarized the law in relation to the jurisdiction of this Court in contractual matters entered by the State or State authorities as under:

"69. The position thus summarized in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. It also follows that under the following circumstances, "normally", the Court would not exercise such a discretion:

69.1 the Court may not examine the issue unless the action has some public law character attached to it.

69.2 Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

69.3 If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

69.4 Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

70. Further, the legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to contracts entered into by the State/public Authority with private parties, can be summarized as under:

70.1 At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

70.2 State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practice some discriminations.

70.3 Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 of the Constitution could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the court can direct the aggrieved party to resort to alternate remedy of civil suit etc.

70.4 Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilitate avoidance of obligation voluntarily incurred.

70.5 Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the license if he finds it profitable to do so: and he can challenge the conditions under which he agreed to take the license, if he finds it commercially inexpedient to conduct his business.

70.6 Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

70.7 Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

70.8 If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.

70.9 The distinction between public law and private law element in the contract with State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.

70.10 Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

70.11 The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes."

19. Therefore, there is no complete embargo on the court, in exercise of its Writ jurisdiction, to entertain a petition that relate to a contract entered into by the State or Statutory Authority. It is a matter of discretion that is primarily guided by as to the nature of the contract and as to whether there are highly disputed questions of facts that need to be determined. The nature of violation alleged also determines the discretion.

20. Applying the above tests to the facts of the present case, as far as the effect of the Letter of Intent dated 29.10.2018 is concerned, the same informed the petitioner as under:

> *"With reference to your technical and financial bid to establish and manage the Pravasi Bharatiya Sahayata Kendra (PBSK) at Dubai and Sharjah <u>for a period of three years</u>, we are pleased to select you as the Service Provider as per the terms and conditions as mentioned in the RFP which have already been accepted by you. More specifically it is pertinent to mention the following important conditions, though they are already in the RFP.*
>
> *(Emphasis supplied)*

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21. The above letter further informed the petitioner that the said letter was issued with the approval of the Ambassador and required the petitioner to convey its Acceptance by 30.10.2018. Therefore, unlike in the case of ***Dresser Rand S.A*** (supra), the Letter of Intent did not make itself subject to a formal contract being entered into between the parties.

22. In ***Dresser Rand S.A*** *(Supra),* the Supreme Court held as under:

"39. It is now well settled that a Letter of Intent merely indicates a party's intention to enter into a contract with the other party in future. A Letter of Intent is not intended to bind either party ultimately to enter into any contract. This Court while considering the nature of a Letter of Intent, observed thus in Rajasthan Co-operative Dairy Federation Ltd. V. Maha Laxmi Mingrate Marketing Service Pvt. Ltd. [1996 (10) SCC 405]:

> *" The Letter of Intent merely expressed an intention to enter into a contract…There was no binding legal relationship between the appellant and Respondent 1 at this stage and the appellant was entitled to look at the totality of circumstances in deciding whether to enter into a binding contract with Respondent 1 or not."*

40. <u>It is no doubt true that a Letter of Intent may be construed as a letter of acceptance if such intention is evident from its terms. It is not uncommon in contracts involving detailed procedure, in order to save time, to issue a letter of intent communicating the acceptance of the offer and asking the contractor to start the work with a stipulation that the detailed contract would be drawn up later. If such a letter is issued to the contractor, though it may be termed as a Letter of Intent, it may amount to acceptance of the offer resulting in a concluded contract between the parties.</u> But the question whether the letter of intent is merely an expression of an intention to place an order in future or whether is a final acceptance of the offer thereby leading to a contract, is a matter that has to be decided with reference to the terms of the letter. Chitty on Contracts (Para 2.115 in Volume 1- 28th Edition) observes that where parties to a transaction exchanged letters of intent, the terms of such letters may, of course, negative contractual intention; but, on the other hand, where the language does not negative contractual intention, it is open to the courts to hold that the parties are bound by the document; and the courts will, in particular, be inclined to do so where the parties have acted on the document for a long period of time or have expended considerable sums of money in reliance on it. Be that as it may."

(Emphasis supplied)

23. From the reading of the above, it is clear that the Letter of Intent has to be read for its true meaning and intent ; though termed only as a Letter of Intent, it may in certain cases amount to acceptance of the Offer resulting in a concluded contract between the parties. The question whether the Letter of Intent is merely an expression of an intention to place an order in future or whether is a final acceptance of the Offer thereby leading to a contract, are matters that have to be decided with reference to the terms of the Letter of Intent.

24. In the present case, the terms of the Letter of Intent clearly reflect that it was in the nature of an Offer made to the petitioner for its acceptance. The petitioner claims to have accepted the same by its communication dated 30.10.2018, which reads as under:

> *" In response to your 'Letter of Intent' for Setting up Letter "Pravasi Bhartiya Sahayata Kendra (PBSK)" vide your letter no. Abu/CW/386/7/2017 dated 29th October 2018. We Sincerely thank you for giving us another chance to continue our services to the Indian Community in UAE; your continued trust, is the testimony that our efforts are in the right direction in making PBSK as a hallmark of 'grievance redressal' for Indian community in UAE.*
>
> *We humbly accept the terms stated in the "Pravasi Bhartiya Sahayata Kendra (PBSK)" bid and assure the embassy that, we will continue to create higher benchmarks of services to the Indian Community in UAE.*
>
> *Regarding the 'point xiii' of your letter of intent for appointment of CPIO, in our communication dated 2nd August 2018 by Mr. Anish Chaudhary, we had submitted that;*
>
> *"Alankit Assignment limited, is a retainer contractor as a private company to run the IWRC, UAE and works under the direct control and supervision of Indian Embassy/Counsellor at UAE. It*

does not act as independent Public Authority. We, therefore, submit that, Alankit Assignment Ltd / IWRC, UAE is not covered under the ambit of RTI Act 2005. In view of this, the appointment of a Senior Official of Alankit at UAE, as CPIO under the RTI act does not seems to be correct".

The appointment of a CPIO was not part of the scope of this RFP as well.

Hence, through this letter we submit our acceptance to your LOI and also request the embassy to consider excluding the 'point xiii' of the 'letter of intent' from the contract."

(Emphasis supplied)

25. A reading of the above would clearly show that this was not an unconditional Acceptance of the petitioner to the Letter of Intent. The petitioner sought exclusion of Clause xiii of the Letter of Intent "from the contract".

26. A formal decision on the above request of the petitioner was never taken by the respondent, though the petitioner was called upon to start the operation of the PBSK at Dubai and Sharjah from 01.11.2018. Was this therefore, an acceptance by the respondent of the request of the petitioner for deletion of the above condition or was the communication dated 30.10.2018 of the petitioner treated as its unconditional acceptance to the Letter of Intent, etc., are the questions that would arise and would require the parties to lead evidence. These cannot appropriately be considered in writ jurisdiction.

27. As far as the decision to curtail the period of the contract to one year, the learned ASG has also submitted before this Court the relevant File Notings leading up to the decision of 04.04.2019. The same shows

that the file had been forwarded by the Embassy of India, Abu Dhabi, UAE seeking approval of the Competent Authority in India for the selection of the petitioner as the new Service Provider for PBSK Dubai and PBSK Sharjah. Taking note of the fact that the running expense of the two Centres was almost 40% of the funds collected under ICWF in the last year, the Competent Authority recommended the approval for only one year. The file was thereafter forwarded for seeking approval of the Competent Authority being AS(OE)&PGE and JS(OIA-I). The file was thereafter sent to the Finance Department for approval of one year tenure. The Finance Department in the Ministry of External Affairs gave its concurrence to the proposal for a one year extension observing that the mission had not followed the prescribed guidelines for tendering.

28. The learned senior counsel for the petitioner had contended that the decision to curtail period of the Contract to one year was arbitrary. The above Notings, however, do not sustain such argument and, in fact, shows that a considered decision based on germane considerations was taken by the respondent for curtailing the period of the Contract of the petitioner to only one year. Once the decision is not found to be actuated by malice or found to be arbitrary or unreasonable, it is not for this court to sit in appeal over the same in exercise of its Writ jurisdiction or find fault in the same on the ground that adoption of some other course could have been better.

29. The effect and consequence of such decision of the respondent on the contract and the contractual claims, if any, in form of damages or specific performance, by the petitioner, can again be best determined by

resorting to contractual remedies in form of arbitration, if available, or in form of a civil suit. Writ Court would not be a proper forum to adjudicate on such claims and they would necessarily involve highly contentious and disputed questions requiring assessment of evidence, the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses.

30. As far as the cancellation of the subsequent RFP, as noted hereinabove, there is no specific challenge to the same in the present petition barring there being made a reference of the same in the application filed by the petitioner, being CM no.11158/2020. The grounds for cancellation of the new RFP therefore, do not arise for consideration of this Court in the present petition. However, taking note of the contents of paragraph 6 of the reply to the application filed by the respondents and quoted herein above, the same again does not appear to be suffering from vice of arbitrariness or unreasonableness. In any case, no right is created in favour of the petitioner merely because it was the lowest tenderer.

31. As far as the decision of the respondent to order closure of PBSK Sharjah, it is to be noted that even in the RFP dated 25.02.2020 issued by the respondent, which was made the cause of action for filing of the present petition, proposals were invited only for PBSK at Dubai and not for PBSK at Sharjah. The File Notings that have been produced before this Court, clearly show that the proposal to shut down the PBSK at Sharjah was taken much prior to the issuance of the new RFP and based on the following observations:

"7. The Mission in its latest communication dated 16th October, 2019 at FR, has recommended for fresh tendering upon one year of completion. In the new RFP they intend to have services through one centre only, namely, Dubai <u>because PBSK Sharjah has not taken off after more than one year of its existence as expected with a small number of daily footfall</u>. They intend to go for fresh tendering process of PBSK after receipt of revised RFP duly vetted. <u>Also the PBSK Sharjah is offering limited services compared to PBSK Dubai (only walk-ins)</u>.

8. But the period of approval for hiring services for the PBSKs has been completed on 31.10.2019. The Mission will send more detailed justifications for closing PBSK Sharjah."

(Emphasis supplied)

32. In a subsequent Note, further justification given by the Ambassador in UAE, was noted as under:

"4. A message from our Ambassador in UAE at FR has brought out the reasons why the centre at Sharjah should be closed down, after more than an year of experience by our mission there, and how a one robust centre in Dubai, close to the consulate would serve the requirements of Indian community better, both in Dubai and Sharjah. Reasons for closure of Sharjah Centre are as follows:

(a) PBSK Dubai has facility of walkins from 3 pm to 7 pm on all weekdays while PBSK Sharjah has walkins from 8 am to 8 pm on all weekdays.

(b) PBSK Dubai walkins data shows that around 2 walkins are served per hour per day by the centre whereas PBSK Sharjah walkins data shows that around 1 walkin is served per hour per day by the centre.

(c) PBSK Dubai and PBSK Sharjah both provide legal, financial and personal counselling by experts.

(d) PBSK Dubai manages 24X7 toll free helpline providing assistance in five languages, verifies the UAE work visa and genuineness of job offers, conducts 4-5 awareness campaigns in labour camps on monthly basis, handles website, twitter handle and facebook of PBSK, emails and SMSs of Indian Nationals in distress, liaison with Embassy and consulate on various issues related to Indian nationals in distress. PBSK Sharjah does not provide these services.

(e) The time taken to reach CGI Dubai from PBSK Dubai and PBSK Sharjah is same (25 mins.). The Mission has suggested to divert traffic of PBSK Sharjah to PBSK Dubai to ensure more optimal utilization of resources mainly funding through ICWF. "

33. The above File Notings shows that the decision to discontinue the operations of PBSK at Sharjah has been taken after due deliberation and for reasons which cannot be termed as arbitrary or whimsical. In any case, these would be matters of Policy and unless found to be perverse, this Court would not interfere in such matters. In ***Villianur Iyarkkai Padukappu Maiyam v. Union of India and ors.***, (2009) 7 SCC 561, the Supreme Court held that:

"167. In the matter of policy decision and economic tests the scope of judicial review is very limited. Unless the decision is shown to be contrary to any statutory provision or the Constitution, the Court would not interfere with an economic decision taken by the State. The court cannot examine the relative merits of different economic policies and cannot strike down the same merely on ground that another policy would have been fairer and better.

168. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or malafide, a decision bringing about change cannot per se be interfered with by the court.

169. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. In matters relating to economic issues the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts.

170. Normally, there is always a presumption that the Governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the Government is unreasonable or against public interest because there are large number of considerations, which necessarily weigh with the Government in taking an action."

34. As far as the payment for the extended period is concerned, the respondent by its e-mail dated 06.05.2020 had informed the petitioner as under:

> *"As conveyed in the said email at point b. With regard to PBSK Dubai, we will be able to pay for its running from May-July 2020 in the same proportion as your running cost of PBSK Dubai to your overall cost of running PBSK Dubai and Sharjah prior to November 2018 i.e. 8:5. The figure in this regard will be approx. AED 67,700(110,000*8/13) in the 8:5 ratio of the monthly average bill of PBSK since November 2018 of approx. AED 1,10,000."*

35. Clearly, it was an Offer made by the respondent to the petitioner for continuation of the PBSK at Dubai at the given rates. The petitioner has challenged the same by way of an application before this Court.

36. In ***BSNL And Anr. v. BPL Mobile Cellular Limited And Others*** (2008) 13 SCC 597, the Supreme Court has held that the Government or Governmental Authority cannot vary the terms of Contract unilaterally. Even if the respondent had decided to shut down PBSK at Sharjah, the rate payable to the petitioner were matters of negotiation between the parties. The respondent could not have unilaterally thrust a rate on the petitioner without any negotiations. As noted hereinabove, the petitioner by filing the application, has not accepted the said rate.

37. In view thereof, the services provided by the petitioner during the pendency of the present application would be covered by Section 70 of the Indian Contract Act, 1872. The fair compensation for the same, however, cannot be determined by this Court in the present proceedings

inasmuch as it would again involve recording of evidence, with examination and cross examination of witnesses.

38. In view of the above, I find no merit in the present petition. The same is dismissed, however, granting liberty to the petitioner to pursue its claims, in accordance with law. There shall be no order as to costs.

NAVIN CHAWLA, J

September 09, 2020
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HIGH COURT OF DELHI
सत्यमेव जयते