

211 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-8269-2020

Date of Decision: 15.03.2021

MOHAN

... PETITIONER

V/S

STATE OF HARYANA AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Atul Lakhanpal, Sr. Advocate with
Mr. Arjun Lakhanpal, Advocate for the petitioner.

Mr. Raman K. Sharma, Addl. A.G., Haryana.

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VIVEK PURI, J. (ORAL)

The matter has been taken up through video conferencing in the light of the Covid-19 pandemic situation and as per instructions.

The petitioner has assailed the order dated 8.6.2020 (Annexure P-9) passed by the respondent cancelling the extension of tender awarded in his favour on 3.6.2020.

Learned counsel for the petitioner submits that the petitioner was allotted the tender for house keeping and other sourcing services for MCH/CHC/PHC for Dadri District invited by

bidder, who was awarded work and an agreement was entered into between the parties. As per the terms of the agreement dated 6.7.2019 (Annexure P-3), the agreement was extendable by another year subject to the performance of satisfactory work. The period of work was to expire in July 2020 and the process for extension was initiated by respondent No.3. The concerned authorities under whom the petitioner had provided about 170 skilled and unskilled persons reported the performance of the petitioner's agency as satisfactory. Accordingly, the contract was extended for further one year vide letter dated 3.6.2020 (Annexure P-8). However, the extension for one year has been arbitrarily and unilaterally cancelled in terms of letter dated 8.6.2020 (Annexure P-9). No reason was assigned while unceremoniously terminating the contract ending on 5.7.2020. Even no opportunity of hearing was afforded to the petitioner.

Per contra, learned State counsel submits that in terms of Clause 2.4 of the Detailed Notice Inviting Tender (DNIT) the contract was subject to approval by the Competent Authority. Since the approval was declined by the Competent Authority, the contract was automatically cancelled. In view of the change in the policy of the Government for deployment of Home Guards instead of Security Guards. The change was incorporated. Considering the fact that the Home Guards Security Personnel were better trained in mob control, riot management, vehicular management, human traffic

management etc. as compared to the outsourced staff. The Home Guard recruits are better trained to deal untoward incidents, mishappenings in emergent situations. The financial implications are also on lesser side on account of employment of Home Guards was also considered by the Government. Furthermore, the petitioner was expected to start work from 1.7.2020 and the extension was cancelled in terms of letter dated 8.6.2020 in view of the non-approval by the Competent Authority. Even the Clause 9 of DNIT empowers the respondent to cancel the bid at any stage.

Heard.

There is no controversy between the parties to the effect that at the first instance the petitioner was awarded the work for providing manpower by way of outsourcing for CHC, PHC, MCH from 6.7.2019 to 5.7.2020. As per the terms and conditions of DNIT, the contract was liable to be extended by one year subject to review and satisfactory performance of services/activities. Accordingly, respondent No.3 had issued the letter dated 3.6.2020 extending the contract from 1.7.2020 to 30.6.2021 for a further period of one year. Subsequently, on account of non-approval by the Director, Health Services, the extension was cancelled in terms of the notice dated 8.6.2020 (Annexure P-9). The extension of tender of outsourcing services was cancelled in response to the letter from respondent No.2 i.e. Director, Health Services, Haryana dated

4.6.2020. Clause 2.4 of DNIT reads as follows:

“The work contract shall be awarded initially for a period of one year, subject to review and the satisfactory performance of Services/Activities and compliance of all terms and conditions of the service Agreement, which is further, subject to the approval of Competent Authority. The Contract shall stand automatically cancelled if the Competent Authority declines to grant such approval it will be responsibility of contractor to apply for extension beyond one year at least 3 months before the expiry of contract.”

The poser for consideration is as to whether any vested right had accrued in favour of the petitioner on account of issuance of the letter dated 3.6.2020 (Annexure P-8) vide which the tender was extended for a period of one year by respondent No.3. A perusal of Clause 2.4 makes it amply clear that the contract was subject to approval by the Competent Authority and since the Competent Authority declined to grant such approval, the contract automatically stood cancelled. The case of the respondent is to the effect that on account of change in policy for recruitment of Home Guards instead of Security Guards, the approval was declined by the Competent Authority i.e. Respondent No.2 and consequently the extension granted to the petitioner was cancelled in terms of the letter dated 8.6.2020 (Annexure P-9).

The petitioner has sought to putforth a case to the effect that the action of the respondents is biased and malafide. The contract has been cancelled as the earlier Civil Surgeon was transferred and new incumbent had cancelled the contract. The contention of the learned counsel for the petitioner is liable to be rejected in the wake of the fact that no reason has been assigned which might have actuated respondent No.3 to act with malice or bias. Furthermore, the action for cancellation of extension of contract has not been initiated at the instance of respondent No.3 but on account of non-grant of approval by the Competent Authority i.e. respondent No.2.

The petitioner has also sought to putforth a case to the effect that no approval is required for extension of work. We find no merit in the contention of the learned counsel for the petitioner since Clause 2.4 of DNIT is not to be read in isolation or separation for awarding the contract at the first instance and extension for one year. In the event, the approval is declined by the Competent Authority, the contract automatically stands cancelled. In these set of circumstances, it cannot be said that any vested right has been created in favour of the petitioner on account of issuance of letter dated 3.6.2020 (Annexure P-8) vide which the tender was extended for a period of one year by respondent No.3 as the extension was subject to the approval by the Competent Authority. The Competent

Authority has declined the approval and moreover, the cancellation has been done even prior to the commencement of the work. As such, we feel that no illegality or irregularity is made out in the action of the respondents in cancellation of the extension granted to the petitioner which may warrant any interference by this Court.

For the aforesaid reasons, the petition being devoid of merit is dismissed.

[JITENDRA CHAUHAN]
JUDGE

[VIVEK PURI]
JUDGE

15.03.2021

Janki

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No