

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-8064-2024

Date of decision: 10.04.2024

M/s Raghunath Goyal Contractor and another

....Petitioners

Versus

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Aditya Grover, Advocate,
for the petitioner(s).

Mr. Jastej Singh, Deputy Advocate General, Punjab.

ARUN PALLI, J. (Oral)

The petitioner (M/s Raghunath Goyal Contractor) is the operation and management operator, who was awarded tender for **“Operation & Maintenance of Bus Terminal at Sri Muktsar Sahib”** on 30.08.2023 (P-1), for a period of five years (20.09.2023 to 19.09.2028). And, annual contract fee that the petitioner is required to deposit is Rs.1,28,23,076/- plus GST.

The petitioner is aggrieved by a communication dated 19.02.2024 (P-4), issued by respondent No.2, vide which, it was conveyed that since the expression **“advertisement”** reflected in the **scope of work, under clause 2(a)** of the contract (P-2), is a typographical error, it cannot erect any advertisement boards or hoardings at the bus terminal. Likewise, vide impugned communication dated 27.03.2024 (P-6), the petitioner was informed, for per the contract

the petitioner did not have the rights to put out the advertisements at the bus stand, the display boards/advertisements be removed, failing which, suitable action, in terms of clause 4.11 and 11.6 of the contract, would be taken.

Learned counsel for the petitioner submits that, *ex facie*, scope of work, per **clause 2 (a)** of the Request for Proposal (RFP), includes “**advertisement**”:-

“Collection of Adda Fees from buses, rentals from commercial leases, advertisements and parking of private vehicles”

It is submitted that albeit, **per clause 3 Note (iii) of RFP**, the respondents have floated a separate tender for assigning the advertising rights, but those were confined only to advertisements through multimedia (LCD’s, LED’s, Electronic display boards, Audio Announcement system, audio-visual media or other electronic media):-

“PUNBUS has given separate advertisement rights for the display of advertisement through multimedia, LCD’s LED’s, Electronic display boards, Audio Announcement system, audio-visual media or other electronic media on which time tables of buses, social messages and advertisements may be displayed by that bidder to whom the contract is granted separately for this purpose and that O&M operator (of this Management Contract) shall provide all the necessary assistance to that

successful bidder for the multimedia advertisements for installation of such infrastructure like TV's, LCD's, LED's, Speakers, wiring etc. (Infrastructure to be provided by the multimedia advertisement contractor to whom the work is allotted at any stage during the period of this Management Contract of Operation and maintenance)."

Whereas, the petitioner has lent certain spots/spaces at the bus stand only to set up the advertisement boards and hoardings, which is a part of print and not the electronic media. It is urged that advertising rights and collection therefrom, was/is a part of the contract entered into between the parties. Therefore, the impugned communications, as also the action of the respondent authorities, are palpably erroneous and arbitrary.

At the outset, learned Deputy Advocate General, Punjab, on instructions from Mr. Nareshinder Singh Walia, Executive Engineer, and Mr. Aman Priya, OSD, PUNBUS, fairly concedes that expression, **"advertisement"** is one of the elements that formed part of the scope of work under clause 2 (a) of the RFP. However, what is sought to be submitted is that it was owing to an accidental error/omission, the expression **"advertisement"** was mentioned in the scope of work. Although, he, with reference to clause 3, which explains the **revenue streams**, from operations of bus terminal, submits that it only referred to the three elements that formed part of the scope of work: **"(a) Income from Adda Fees (Terminal Toll); (b), Annual lease of parking areas; (c) Revenue from the lease of shops/kiosks at the bus terminal."**

Therefore, he asserts that since **advertisement** is not one of the revenue streams, neither there was any intent, nor the rights to advertise were actually assigned to the petitioner. He submits that though, for the last several years, advertisement always formed part of the scope of work, as one of the revenue streams, but since under the Municipal Laws, advertising through hoardings at the bus terminal was impermissible, the authorities, by a conscious decision, while inviting tenders, had narrowed the scope of work this year. However, as indicated above, as a result of an accidental mistake, the expression “**advertisement**” was not removed/deleted from **clause 2(a)** of the contract. Therefore, he submits that if there has been a fundamental mistake that was apparent, the authorities were/are empowered to rectify the same. But, at this stage, he refers to **clause 20.1 and 20.2** of the RFP, which envisages a dispute resolution mechanism and the procedure that is to be followed, in the event of any dispute between the parties. He submits that in the given circumstances, the respondent authorities are willing to invoke the said clause, and intend, in the right earnest, to sort out their differences amicably. Further, he submits that till any formal decision, in terms of the clause (*ibid*), is reached, the authorities shall maintain *status quo* at the site as regards display boards and the advertisement hoardings. And even those advertisements that had been removed, would be restored to their original position, forthwith. Therefore, it is urged that let the petition be disposed of, to enable the authorities to explore the possibility of an amicable resolution of the dispute, in terms of **clause 20.1 and 20.2**.

Learned counsel for the petitioner vehemently controverts the explanation that is sought to be tendered by learned State counsel. He submits that for the past several years, rights to advertise formed part of

the scope of work under clause 2(a). Whereas, for advertisements through multimedia (LCD's, LED's, Electronic display boards, Audio Announcement system, audio-visual media or other electronic media), separate tenders were invited. Therefore, he asserts that even this time, **advertisement**, besides the other three elements, such as, **(i)** collection of adda fees from buses, **(ii)** rental from commercial leases, and **(iii)** parking of private vehicles, formed part of the scope of work. Rather, it is urged that exclusion of expression "**advertisement**" under clause 3 (revenue streams) of the RFP could well be an accidental omission or error at the end of the respondent authorities. Be that as it may, he asserts that all the relevant aspects, germane to the business interest of the petitioner/profit margins, were duly factored in before submitting the highest bid (Rs.1,28,23,076/- plus GST). Therefore, if, at this stage, the petitioner is deprived of the advertisement rights, that would not only be a gross and apparent violation of the contract, but also vitiate the economic/financial equation, based upon which, it had submitted its price bid. He, however, fairly submits that if the respondent authorities truly intend to re-visit the issue and resolve the dispute amicably, in terms of **clause 20.1 and 20.2 (ibid)**, the petitioner, upon receipt of a formal communication in this regard, would report to the competent authority on the designated date, time and venue and extend every possible cooperation. Accordingly, he submits that let the petition be disposed of, in terms of the statement made by learned State counsel.

In the wake of the position sketched out above, and in terms of the statements made by learned counsel for the parties, the petition is disposed of.

Needless to assert that this order shall not constitute any expression of opinion on the merits of the case of either party, for, as indicated above, the competent authority shall examine the concerns/grievances of the petitioner, strictly in accordance with law.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

10.04.2024
Ak Sharma

Whether speaking/reasoned	Yes
Whether reportable	Yes/No