

(2006) 11 PAT CK 0149
In the Patna High Court
Case No : CWJC No. 9549 of 2006

M/s Oscar Security and Fire Services	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 23-11-2006

Acts Referred:

Citation : (2006) 4 PLJR 573

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Asghar Hussain and Khatim Raza, K.N. Gupta and Satyendra Krishna Prasad, for the Appellant; Barun Kumar Choudhary, for the Respondent

Judgement

Navaniti Pd. Singh, J.—The present writ application was filed by the petitioner for issuance of an appropriate direction to the respondent Indian Oil Corporation, Barauni (hereinafter referred to as the "Corporation") to issue tender documents to the petitioner for providing security and allied services to the said Corporation for its Barauni Refinery. In substance, the relief has been sought for against unfair exclusion from participation in the tender for the said services. The writ application was filed on 7.8.2006 but no Advocate in the High Court accepted notice on behalf of the Corporation, as such, when the matter was mentioned for earlier hearing on 14.8.2006 this Court, on mentioning slip, directed that notices should be sent by registered post to respondent No. 3 and also serve personally at the local office of the Corporation which was immediately done. The matter was then directed to be listed on 28.8.2006 and was taken up on 29.8.2006 when Mr. K.N. Gupta appeared for the Corporation and sought time to file counter affidavit. A counter affidavit was then filed disclosing that on 26.8.2006, the Corporation had made fresh appointment for the said services for a period of two years. The Organization so appointed was then added as respondent No. 4 and notices issued to him by order dated 11.9. 2006. Respondent No. 4 has also appeared and filed counter affidavit. Replies have been filed by the petitioner. All parties have been heard at the stage of admission itself for final disposal of this

writ application with their consent.

2. Respondent-Corporation has its refinery at Barauni in the district of Begusarai. For the purposes of security and allied services, it outsources the job instead of undertaking it by itself. Being a Public Undertaking, it is required to seek sponsorship for the same from the Director General (Resettlement) in the Ministry of Defence, Government of India in favour of retired military officers who have set up different such organizations providing security and allied services. The Director General of Resettlement in the Ministry of Defence, Government of India is to sponsor/responsor an agency to a particular employer/organization at a particular location but the total period for the sponsorship including re-sponsorship is limited to four years with a view to give opportunity to other retiring service personnels undertaking such jobs. This guideline is important for the present case as it is alleged by the petitioner that first notwithstanding this guideline, the Corporation sought for re-sponsorship for a shorter period and then using this guideline, denied the petitioner further contract for two years, the correctness of which action of the Corporation is the question here.

3. The petitioner, a retired Lieutenant Colonel S.K. Oberoi has set up a Security and Allied Services Organization being the proprietor thereof in the name of M/s Oscar and Fire Services who is the petitioner in the present case. The petitioner is registered and empanelled by the Director General (Resettlement), Ministry of Defence, Government of India with effect from 12th March, 2001. It seems pursuant to tender issued in the year 2003, the petitioner was sponsored by the Director General (Resettlement) and was ultimately selected by the Corporation for providing security and allied services and letter of intent was issued on 18.9.2003 and petitioner started to work pursuant to work order issued with effect from 26.9.2003. The initial contract appears to have been granted for a period of one year extendable by another year on satisfactory performance and, as such, the contract was amended on or about 30.11.2004 making the contract period twenty four months. The petitioner, as such, worked for two years from 26.9.2003 to 25.9.2005. It would be seen, as pointed out above, that the total period for sponsorship being four years, the petitioner was now left with full two years" term for which such contracts are normally given to which fact the Corporation was also fully aware.

4. Notwithstanding the aforesaid, the Corporation even though it was fully satisfied with the performance of the petitioner by its letter dated 7th July, 2005 (Annexure-3 which is also Annexure-C to the supplementary counter affidavit of the Corporation) requested the Director General (Resettlement) stating that the petitioner had worked for two years and his services were satisfactory but as the Corporation was to line up a fresh contract, they requested the Director General (Resettlement) to responsor the petitioner agency for a fresh period of one year knowing fully well that the period for which the contract was to be given ought to have been for two years. In response thereto immediately the Director General (Resettlement) by its letter dated 13.7.2005 (Annexure-6) responsored the

petitioner for a period of two years as was required, in view of contract being two years at a time. In the said letter, it was clearly stated that further sponsorship of petitioner was not possible (because petitioner had already worked for two years and was being sponsored for two years making it a total of four years). The Corporation, however, gave the contract to the petitioner first by work order dated 29.11.2005 for a period of six months that is 26.9.2005 to 25.3.2006 and then extended it by work order dated 19.5.2006 for a further period of five months that is 26.3.2006 to 25.8.2006. In the meantime, by letter dated 3.2.2006, the Corporation intimated to the Director General once again that they were to line up a fresh contract for a period of two years and they had reemployed the petitioner for six months from 26.9.2005 to 25.3.2006, as such, the Corporation required several other sponsored agencies. To this, the Director General (Resettlement) responded that they had already sponsored the petitioner by their letter dated 13th July, 2005 for a period of two years (Annexure-6) then why fresh sponsorship was sought for (Annexure-C/4 to the supplementary counter affidavit of Corporation). To this, the Corporation replied by their letters dated 8th March, 2006 and 13th March, 2006 (Annexures-C/5 and C/6 to the supplementary counter affidavit of Corporation) stating that the contract was expiring on 25.3.2006 which contract had been approved for two years and they wish to line up fresh contract. Awarding contract on single tender basis would attract many queries and it was beyond the financial approving limit of the Corporation's Unit Head.

5. Here, I would pose to point out certain things. As shown above, the contract for two years was not expiring on 25.3.2006 even to the knowledge of Corporation. The contract of two years stood expired on 25.9.2005 and further six months' contract had only been given to the petitioner which was to expire on 25.3.2006. Secondly, though Corporation in their letter dated 03.2.2006 maintained that the contract period would be two years. they had sought sponsorship of petitioner alone and that too for a period of one year only vide their letter dated 7th July, 2005 (Annexures-3 and C) as against normal two years. Thirdly they had themselves asked for sponsorship of the petitioner alone. If these three things are kept in mind, it would be clear that when petitioner's initial contract for two years was to expire and the Corporation wanted to line up fresh contracts for two years, it was open to them for requesting the Director General (Resettlement) for multiple sponsorships for a period of two years itself at the initial stage which they did not do rather by their confused stand, they made ad hoc arrangements with petitioner alone even though he had been sponsored for two years. This ad hoc period was six months and five months which I will presently show turns out to be not only arbitrary but fanciful and to the gross detriment to the interest of the petitioner, as subsequently the Corporation turns round and takes a stand that the contract would be for a period of two years and as petitioner had already put in eleven months in the extended period, it could not be given the contract for full two years and, thus, deprived the petitioner of tender papers itself for fresh contract.

The Corporation did not consider it fit now to extend the contract for the responsored period of two years that is for the balance one year and one month but chose to totally deprive the petitioner of the balance period for which the petitioner is not to be blamed. The blame squarely is because of inaction and indecisive behaviour of the Corporation.

6. Pursuant to the aforesaid request by letter dated 8th and 13th of March, 2006, of the Corporation, the Director Gen-oral (Resettlement) sponsored three other such security agencies by their letter dated 12th April, 2006 in which letter, it was clearly stated that this sponsorships were in addition to the petitioner who had earlier been sponsored for a period of two years. This fresh sponsorship was also for a period of two years only (Annexure-8 and Annexure-C/7 of the supplementary counter affidavit). From this, it would be seen that even the Director General (Resettlement) did not deem it proper to exclude the petitioner yet in spite of sponsorship, the petitioner was excluded from consideration by reasons of not being given the tender paper at all by the respondent-Corporation and ultimately respondent No. 4 was selected and letter of intent issued in his favour. Respondent No. 4 was then handed over charge of security and allied services with effect from 26.8.2006 in spite of protest by the petitioner and in spite of this writ application having already been filed and in spite of notices having received by the-Corporation prior to the said date. Respondent No. 4 has filed his counter affidavit stating that it is not at fault at any stage. He has taken charge and set up his establishment commensurate to the two years" term for which the settlement was made in his favour. He prays that in such a situation, he should not be disturbed now whatever the Court may decide to do as against the Corporation.

7. The facts aforesaid, which are not disputed either in the pleadings or at the Bar, clearly brings out the fact that a retired defence personnel could be sponsored by their Director General (Resettlement) for a maximum period of four years only. The sponsorship was essential for any public sector undertaking to make settlement. Petitioner was, accordingly, recruited for two years as against his initial sponsorship. When his sponsorship of two years was to end as also his contract which Corporation was fully aware instead of asking for fresh sponsorship for two years, it sought petitioner"s responsorship for one year only, the result of which would have been that petitioner would be deprived of full term of two years though would continue for one year as against his legitimate expectation for two years. Then in spite of responsorship being for two years, he was allotted work for truncated periods of six months and five months respectively and then left high and dry by the Corporation. The justification for not giving further extension to petitioner, as given by the Corporation, is that they had to settle the contract for two years but they wrongly asked for responsorship of petitioner for one year. They wrongly gave petitioner six months and then five months but now as the contract had to be for two years which could not be given for full two years to petitioner as that would have exceeded the total sponsororeship period of four years, all their mistakes were

corrected by them by depriving the petitioner of the tender paper itself. To my mind, this is a very specious plea taken by the Corporation to deprive someone of his legitimate expectation and legitimate right. It is indeed extremely fanciful and arbitrary. It is like saying that I have defaulted and because of my default, the petitioner should now suffer. This cannot be permitted by this Court and I can only quote what Chief Justice Chagla had to say in the case of All India Groundnut Syndicate Ltd. Vs. Commissioner of Income Tax, Bombay City, :

"But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-section (2) of Section 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person—we take it that the income tax Department is included in that definition—can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because "I have committed a default and the right is lost because of that default."

8. It would, thus, be seen that on all four squares, the actions of the respondent-Corporation is found to be unjust, arbitrary and capricious depriving the petitioner of his legitimate right to continue for full term of two years. It was open to the Corporation to extend the working of petitioner by the balance period of two years because petitioner was deprived of the full two years term not because of any action on his part but because of inaction on the part of the Corporation. The Corporation is now penalising the petitioner for their own inaction. Thus, the action of the Corporation in depriving the petitioner of the tender paper or not extending the contract or not giving the contract to the petitioner for balance period is found to be wholly arbitrary and liable to be set aside but the question is if this Court does that which it should do, then for no fault of respondent No. 4, he would be penalised for he has already set up his establishment and is working.

9. Having given my anxious consideration now with regard to the relief to be granted to the petitioner, I do not think it would be equitable to cancel the settlement made in favour of respondent No. 4. At the same time, the petitioner in spite of being unreasonably treated cannot be left without any remedy. Someone has to be accountable and answerable to the petitioner. I, accordingly, quantify damages/compensation for unreasonable denial of profits to petitioner by respondent-Corporation at Rs. 1,00,000/- which shall be payable by the Corporation within a period of one month from today to the petitioner. With this observation, this writ application stands disposed of.