
(2018) 03 P&H CK 0182

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4896 Of 2018 (O&M)

Om Parkash

APPELLANT

Vs

Indian Oil Corporation Ltd And Ors

RESPONDENT

Date of Decision : 27-03-2018

Acts Referred:

Citation : (2018) 03 P&H CK 0182

Hon'ble Judges : S. J. Vazifdar, CJ; Avneesh Jhingan, J

Bench : Division Bench

Advocate : Shobit Phutela, Ashish Kapoor, Brijeshwar Kanwar

Final Decision : Allowed

Judgement

1. The petitioner seeks a writ of mandamus directing the respondent to extend the contract entered into by him with the first respondent for providing security services for a period of two years with effect from 01.12.2017.

2. Respondent No.2 is the Directorate General of Resettlement, Government of India, Ministry of Defence and respondent No.3 is the Union of India through Secretary, Department of Ex-Servicemen, Ministry of Defence.

3. The petitioner was empanelled by respondent No.2-DGR-Ministry of Defence entitling him to participate in the tender issued by respondent No.1.

A sponsorship for security and allied services was issued by respondent No.2/ respondent No.3 which included the petitioner. It provided that the DGR

guidelines for functioning of security agencies and wage structure could be accessed at a website. It further requested the Public Sector Undertaking

to check the empanelment certificate issued by respondent No.2/respondent No.3. Enclosed thereto was a circular titled "Advice to the Principal

Employer, Proprietors/Directors".

4. Respondent No.1 issued a tender for engaging DGR sponsored Security Agency at PTA Terminal, Panipat, Haryana. The petitioner's bid was accepted. Respondent No.1 issued a Letter of Intent (LoI) dated 05.11.2015 which INTER-ALIA stated as follows:-

Contract value: The total contract value for the subject work as mentioned above shall be Rs.1,67,90,772/- (Rupees One Crore Sixty Seven Lacs Ninety Thousand Seven Hundred Seventy Two only) including applicable taxes for a period of 02(Two) years w.e.f. 01.12.2015 to 30.11.2017 with a provision of extension by two (02) more years at the same terms and conditions on decision of IOCL as per provision in DGR guidelines. The payment will be as per the guidelines issued by DGR and revision of wage from time to time.

5. Clause 26 of the DGR guideline insofar as it is relevant reads as under:-

Dis-empanelment Security Agencies/Companies will be removed from the active panel of DGR under the following conditions:-

a) When an individual ESM has attained the age of 60 years. The validity of empanelment of the ESM will cease once the ESM attains 60 years of age. However, existing contracts will be allowed to run to completion. The list of such ESM will be updated regularly by DGR on their website.

(emphasis supplied).

6. Respondent No.1 by a letter dated 07.11.2015 offered the petitioner a work order on the terms and conditions mentioned therein. The term relating to the contract period reads as under:-

CONTRACT PERIOD

The period of contract shall be for 02 (Two) years w.e.f. 01.12.2015 with a provision of extension by Two (02) more years at the same terms and conditions on sole discretion of IOCL as per provision in DGR guidelines. In case of non-extension of the contract by IOCL beyond the validity period of initial Two (02) years from 01.12.2015, the Vendor should be agreeable for extension of 3 more months at the same terms and conditions of contract after the expiry of contract on 30.11.2017, if required.

7. Ultimately, the first respondent issued a Letter of Acceptance. The relevant provisions whereof read as under:-

We are pleased to place work order for providing security services at PPMC in Haryana for a period of Two (02) years, w.e.f. 01.12.2015 to

30.11.2017.

This contract may be extended for Two (02) more years at the same terms and conditions on sole discretion of IOCL as per provision of DGR

guidelines.â??

We have already referred to the relevant provisions of the DGR guidelines viz. clause 26 thereof.

8. The question is whether the petitioner is entitled to be considered for an extension of time for two more years with effect from 01.12.2017. The first respondent is willing to extend the contract in accordance with the above provisions. Respondent Nos.2 and 3, however, contend that the petitioner is not entitled to have the contract extended as he attained the age of 60 years prior to the expiry of the original period of the contract on 30.11.2017.

We are unable to agree with this contention.

9. The petitionerâ??s contention, supported by the first respondent, that he is entitled to be considered for an extension of the contract for a period of two years is well founded. Clause 26 of the DGR guidelines would undoubtedly justify the petitionerâ??s removal from the active panel of the DGR

on his attaining the age of 60 years. That, however, does not affect the term regarding the extension of the contract. Upon attaining the age of 60

years and upon the petitioner being removed from the active panel of the DGR, he would not be entitled to the issuance of a fresh contract in his

favour as only the empanelled agencies/companies are entitled to be considered for such contracts. When the contract was entered into between the

petitioner and the first respondent, the petitioner had not attained the age of 60 years and he was on the active panel of the DGR. He was, therefore,

entitled to participate in the tender process and was rightly awarded the contract in his favour.

10. The validity of the empanelment coming to an end does not extinguish the contractual rights of the parties. In fact clause 26 expressly saves them.

It states that the existing contracts will be allowed to run to completion. An extension in the present case is part of the existing contract. The petitioner

seeks an extension of the contract in enforcement of a term of the contract and not as a fresh contract. If the clause provided for extension of

contract by mutual consent, it may have been a different matter. The mutual consent may in a given case constitute a fresh agreement. It is not

necessary to express a view in that regard. In the present case, the extension is not dependent upon the mutual consent of the parties. The extension is a part of the contractual term operative by its own force albeit on the decision of IOCL. The decision of IOCL is to be as per the provisions in the DGR guidelines. Even if it was purely discretionary the discretion would have to be exercised in accordance with law. Further, if the extension was discretionary, the petitioner would in any event be entitled to be considered for extension as a right under the existing contract. An extension if granted would not result in the formation of a fresh contract.

11. If the intention was to deprive the bidder of an extension upon his attaining the age of 60 years during the original period of the contract, a term to that effect would undoubtedly have been provided.

12. A view to the contrary would also be unfair to the petitioner. A financial bid takes into consideration various factors. A vital factor would be the duration of the contract. The longer the duration of the contract the more likely is the financial bid to be more competitive. The petitioner would obviously have taken the duration of the contract into consideration while submitting his financial bid. To deprive him of the same would be not only illegal but also unfair.

13. By an interim order dated 28.02.2018, we observed that it was necessary at that stage to consider any application for interim reliefs as the petitioner's contract had been extended upto 31.03.2018. By a further interim order dated 14.03.2018 we directed that any steps hereafter shall be subject to further orders in the writ petition. Accordingly, even if a contract has been entered into between the first respondent and any other party, it would be subject to the result of this petition.

14. In the circumstances, the petition is allowed. The petitioner shall be considered for extension for a period of two years. The first respondent shall decide the application in accordance with law. The application shall not be rejected on the ground that the petitioner had attained the age of 60 years during the pendency of the contract. In view of what is stated earlier, the extension shall not be rejected on the basis of any steps taken on or after 14.03.2018.