
(2014) 11 RAJ CK 0119
In the Rajasthan High Court
Case No : Civil Writ Petition No. 9843/2014

Sunil Kumar Pareek

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Citation : (2014) 11 RAJ CK 0119

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : Shailesh Prakash Sharma, Advocate for the Appellant; R.B. Mathur, Advocate for the Respondent

Judgement

Bela M. Trivedi, J.—The petitioners who were engaged as the experts specialists consultants on contractual basis by the respondents for the implementation of the Rajiv Awas Yojna, pursuant to the execution of separate agreements of different dates for working at different places, have approached this Court by way of this common petition under the apprehension that the respondents would not extend the period of their respective agreements further, after the date 30.09.2014, seeking following prayers:-

(i) by an appropriate writ, order or direction, the respondents be directed to place before the Hon"ble Court entire record relevant and pertinent for adjudication of the petitioner"s case.

(ii) by an appropriate writ, order or direction the respondents be directed to issue orders of extension of the petitioners, till further orders, without having any fixed date though subject to availability of regularly selected candidates.

(iii) by an appropriate writ, order or direction, the services of the petitioners be continued till the Scheme of Making the Country Slum Free and Housing Facilities to be provided to Slum Dwellers/Urban poor exist framed by Ministry of Housing and Urban Poverty Alleviation Government of India.

(iv) by an appropriate writ, order or direction, if during the pendency of the writ petition any order adversely affecting the petitioner's right or prejudicial to their interest is issued by Rajasthan Urban Infrastructure Finance and Development Corporation Ltd. (A Government of Rajasthan Undertaking), may kindly be allowed to be taken on record and the same may kindly be quashed and set aside.

(v) by an appropriate writ, order or direction, the respondents be directed not to make any arrangement of replacing the petitioners through placement agency/ any other mode."

2. The Court vide the order dated 29.09.2014, had passed the ex parte order, directing the respondents not to discontinue the services of the petitioners till the returnable date, which order was extended from time to time till this date.

3. As per the case of the petitioners, pursuant to the advertisements dated 21.09.2010 (Annexure-1) and 10.04.2013 (Annexure-2), inviting applications for the appointment of experts in various categories on contract basis, for a period of one year for preparation of slum free State/City Plans Scheme for different cities of Rajasthan, in terms of the Rajiv Awas Yojna, of Ministry of Housing and Urban Poverty Alleviation, Government of India, the petitioners had applied for their respective posts. The respondents considering the qualifications and experiences of the petitioners had offered the posts of Social Development Specialist or GIS Specialist, etc. as per the letters dated 10.05.2011 (Annexure-3) and 31.07.2013 (Annexure-4), on contractual basis for a maximum period of one year and on the consolidated package. The petitioners on joining their respective duties were required to execute their respective agreements on non judicial stamp papers of Rs. 100/- at the Jul earliest in the State Level Nodal Agency (SLNA) Office, Rajasthan Urban Infrastructure Finance and Development Corporation Ltd. (RUIFDCO). Accordingly, such agreements were executed by the petitioners with the respondents, two copies of which have been annexed at Annexure-5 which is dated 25.11.2011 executed by the petitioner No. 1 and at Annexure-6 which is dated 02.09.2013 executed by the petitioner No. 10. It is the further case of the petitioners that in case of some of the petitioners, whose term of agreement had come to an end earlier were granted extension from time to time till 30.09.2014 and in case of the other petitioners whose term of agreement had elapsed as per the agreement, were also granted extension upto 30.09.2014, as per the Annexures-12 & 13, respectively. However, the petitioners apprehended that the respondents would not further extend the duration of their agreement after 30.09.2014 and therefore had approached the Court by way of this common petition.

4. The petition has been resisted by the respondents by filing the reply contending inter alia that the petition in the present form is not maintainable in the eye of law, more particularly when the petitioners having been engaged as the consultants/experts purely on contractual basis had no legal right to be continued. It is also contended that earlier the scheme in question, was fully

funded by the Central Government, however the Government of India by the order dated 16.09.2013 had decided not to reimburse the remuneration fully w.e.f. 01.01.2014 and had ordered that the expenses toward remuneration shall be borne by the centre in the proportion of 50% for large towns and 75% for small towns only and therefore the State Government had decided to implement the scheme through engineers/staff working in the local bodies and Urban Improvement Trusts. It has also been contended that in view of the terms of the agreement, further extension on the expiry of term of agreement was to be done only on mutual agreement between the RUIFDCO and the Experts, and that the respondents having taken the decision not to extend the term of the agreements in question, the respondents had acted as per the terms of the agreements. Even otherwise, according to the respondents, there being arbitration clause in the agreement, the petition was not maintainable. The petitioners V have filed the rejoinder to the reply filed by the respondents.

5. It has been vehemently submitted by the learned counsel Mr. Shailesh Prakash Sharma for the petitioners that the services of the petitioners were continued by the respondents by issuing extension letters from time to time, and the respondents abruptly could not take the decision not to extend the period of their agreement as per their wishes and whims. According to him, the petitioners had rendered their valuable services for the implementation of the scheme in question and as per scheme also their services are required to be continued if there was nothing adverse found against them in respect of their performance. Taking the Court to the terms of the agreement, more particularly the clause pertaining to the termination and duration of the contract, Mr. Sharma submitted that the respondents could not have terminated the contract, if there was nothing significant found as regards the incompatibility of the experts with the local personnel's, and that too without serving any notice prior to termination of the contract. He also submitted that the expenses towards the remuneration of the experts were very negligible to be borne by the respondents, and that it was in the interest of the public at large that the scheme should be implemented in the letter and spirit with which it was initiated. He further submitted that the respondents have hired the services of other two experts as named in the petition, and therefore it could not be said that the respondents are going to implement the scheme only through the engineers/other staff of the local bodies and UIT's.

6. However, the learned counsel Mr. R.B. Mathur for the respondents submitted that the petition in the present form is not maintainable inasmuch as different agreements were executed by different petitioners for different designations/positions on different dates. He further submitted that the petitioners were engaged as the experts/specialists purely on contractual basis, and their services were governed by the terms of the contract only. Relying upon various clauses of the agreement, Mr. Mathur submitted that the extension of period of agreement was to take place only on mutual agreement, and the question of serving the notice would arise only in case of extension, and not otherwise as per Schedule-

B annexed to the agreements in question. He also submitted that as per the Clause-F of the agreement, the petitioners could take recourse to the arbitration proceedings under the Arbitration Act, and therefore also the present petition is not maintainable. He further submitted that after the expiry of the term of the agreement and the expiry of the extended period, the petitioners had no right to be continued as the experts, more particularly when the respondents had taken the decision not to extend the term of the petitioners, and get the work done through the existing engineers and staff of the local bodies. The learned counsel Mr. Mathur has relied upon the observations made by the Apex Court in case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , and in case of Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., , in support of his submissions that the courts cannot arrogate to themselves the power of executive and direct the respondents to continue the services of the petitioners, who were engaged purely on the contractual basis.

7. Having regard to the submissions made by the learned counsels for the parties and to the documents on record, it appears that the petitioners were engaged as either specialists or coordinators or experts by the respondents on their executing separate agreements. The details of the petitioners are given in the Schedule-A annexed to the petition. In the opinion of the Court, since there were separate agreements executed by the petitioners on different dates for different positions for carrying out their respective work at different places, the present common petition would not be maintainable and the same is bad for misjoinder of parties and for misjoinder of causes of action. Further, it is not disputed that all the petitioners had executed similar agreements like the ones annexed to the petition as Annexures-4 & 5. One of the clauses in the said agreement being clause-F pertained to the arbitration clause according to which any dispute or difference arising out of the contract in between parties had to be settled by the sole arbitrator in accordance with the Arbitration Act. The present petition having been filed for the enforcement of their rights arising out of the said agreements, and there being arbitration clause in the agreement itself, the present petition is also liable to be dismissed on the ground of availability of alternative remedy.

8. So far as the merits of the petition are concerned, it is pertinent to note that the petitioners were engaged by the respondents for different positions of specialists/experts purely on contractual basis as per the agreements in question, and therefore the terms and conditions contained in the said agreements were binding to both the parties. As per the said agreements, the duration of agreement was only for one year and was liable to be extended by a mutual agreement only, with one month's notice prior to termination date, as per the Schedule-B annexed to each of such agreements. As transpiring from the documents on record, the period of contract of some of the petitioners had expired in 2012 and in case of some of the other petitioners was to expire in September 2014. It also emerges that the period in case of the petitioners which had expired in 2012, was extended from time to time and lastly upto 30.09.2014

as per the order dated 30.08.2013, and in case of others as per the order dated 06.8.2014 (Annexure-12 & 13). Apart from the fact that the respondents had decided to extend the period of agreement only upto 30.09.2014, and not any further, and therefore no notice as contemplated under the condition No. 2 contained in Schedule-B of the agreement was required to be given, as such the petitioners could not be said to have any legal right to compel the respondents to extend the said period dehors the agreement. It is further pertinent to note that before the said extended period was to expire on 30.09.2014, the petitioners had approached this Court under the apprehension that the period of contract would not be further extended by the respondents after 30.09.2014, and this Court by the ex parte interim order had directed the respondents to continue the services of the petitioners and therefore the services of the petitioners have been continued by the respondents till this date, otherwise their contracts have already come to an end with the expiry of the extended period after 30.09.2014. As stated hereinabove the duration of agreement having already expired and the respondents having taken decision not to extend the said duration any further after 30.09.2014, the respondents had acted absolutely within the terms of the contract, and the petitioners could not force or compel the respondents to V continue the contract. The petitioners have failed to point out any legal right much less fundamental right to continue with their contracts after the expiry of their term.

9. The submission of the learned counsel Mr. Sharma for the petitioners that the termination of the agreement could take place only in case of significant incompatibility of the Experts with local personnel as per clause 4(b) of the agreement, could not be accepted for the simple reason that the said clause pertained to the premature termination only. The initial period of contract and the extended period having expired, the petitioners could not invoke the said clause pertaining to the premature termination.

10. The Court also does not find any substance in the submission made by the learned counsel for the petitioner that the financial implication of the remuneration on the State Government being very negligible, the petitioners should be continued on their respective positions. In the opinion of the Court, it is for the State Government to decide whether to take services of the experts or of its own employees. As per the settled legal position, the Courts ought not to impose financial burden on the State, by giving directions to continue the persons who are appointed purely on contractual or ad hoc basis, though their services are not needed by the State. Beneficial reference of the decision of the Apex Court in case of Secretary, State of Karnataka versus Uma Devi (3) & Ors., (supra) be made in this regard. The petitioners having been aged as the consultants or specialists purely on contractual basis, they have no right to be continued after the expiry of such contracts.

11. In that view of the matter, the petition being devoid of merits, deserves to be dismissed and is accordingly dismissed. The ex parte order dated 29.09.2014

stands vacated forthwith.

12. By this order, the stay application and other pending applications if any, also stand dismissed.