

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31/01/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 41170 of 2002
and
WPMP No. 60937 of 2002 and WVMP No. 1771 of 2002

M/s. Sanghvi Movers Limited,
having its Regional Office at
No.121, Chennai-Bangalore Road,
Chembarambakkam-602 103,
represented by its AGM (Operations)
Mr. R.K. Ozarkar. . . Petitioner.

-Vs-

M/s. Oil and Natural Gas
Corporation Limited,
Regional Office: Southern Region,
CMDA Building, 8th floor (East Wing),
8, Gandhi Irwin Road, Egmore,
Chennai-8. . . Respondent.

Petition under Article 226 of the Constitution of India, for issuance of a
Writ of Mandamus, as stated therein.

For petitioner:- Mr. T.K. Bhaskar.

For respondent:- Mr. G. Masilamani, Senior
Counsel for M/s. Sarvabhauman Associates.

:ORDER

Messers. Sanghvi Movers Limited, Chembarambakkam, have approached this Court to issue a writ of mandamus to direct the respondent to renew the contracts entered into with the petitioner in respect of one Crane with Registration No. of the Cranes NL-02/D 0691 for the full extension period of one year pursuant to the tender No. MAS/TPT/HYD. CRANES/TYPE III/KG-CAU/2000-2002

2. The case of the petitioner is briefly stated hereunder:

According to the petitioner, they engaged in the business of hiring Cranes for the last 14 years. The petitioner company has been performing satisfactorily in respect of their contracts right from the time of supplying cranes to respondent company. The cranes supplied by the petitioner have been functioning in respect of KrishnaGodavari and Cauvery Projects since 1990.

The petitioner company has bid in various tenders and has been awarded contracts for the said cranes on hire from time to time and on each occasion the contract period in the tender has been stipulated as 2 +1 years. The contract period is granted for a period of at least 3 years to enable successful tenders to offer their services efficiently and to realize the value of their investments which is substantial. Pursuant to tender notification No. MAS/TPT/HYD.CRANES/TYPE III/HG CAU/2000-2002, the respondent company has invited tenders for hiring of diesel hydraulic truck mounted cranes with capacity of lifting a minimum load of 20 MTS at 3 metres and 12 MTS at 6 Metres operating radius with 11 Metres left from the ground level. The tender specifications mentioned in the document and the tender was invited for a total quantity of 14 Nos. cranes for a period of 2 years with extension of further period of one year at the sole discretion of the respondent. The period of contract mentioned in Clause 2 of the agreements executed between the petitioner and the respondent for an initial period of two years which may be extended by one year in 2 instalments of 6 months each at sole discretion of ONGC on the same rates, terms and conditions, subject to satisfactory performance, of Cranes and execution of the contract. The petitioner has been satisfactorily performing in respect of each of the contracts. The contract period for the NL 02 D 0691 expired on 2-11-2002. The respondent extended the contract for a temporary period of 3 months which period is terminable at the discretion of the respondent at a lower rate. The respondent has floated a fresh tender for 17 numbers cranes in respect of the Krishna Godavary and Cauvery projects even before the contracts with the petitioner have expired. The respondent has not considered the fact that the petitioner has performed satisfactorily under the contract and extended the contract for the extended period of one year. No opportunity has been given to the petitioner to establish a case for extension of the contract and the respondent has acted unilaterally and in violation of the principles of natural justice. The exercise of discretion by the respondent is arbitrary, unfair and unjust. The petitioner by their letter dated 7-11-2002 arbitrarily extended the time for 3 months instead of 6 months. The petitioner has invested substantial sums in respect of the cranes put on hire with the respondent and was quite legitimate expectation that the contracts could be renewed for the extension period mentioned in clause 2 of the agreements entered into with the respondent. However, the respondent has failed to extend the same. Having no other effective remedy, filed the present writ petition challenging the arbitrary and mala fide action of the respondent.

3. On 15-11-2002 while admitting the above writ petition, in W.P.M.P.No. 60937/2002, this Court granted interim order to the limited extent, namely, the respondent shall not finalise the awarding of the contract to any third party until further orders. Now the respondent has filed W.V.M.P.No. 1771 of 2002 to vacate the said interim order. In the counter affidavit, it is stated that since the petitioner does not have a legal right of extension of the contract period, he cannot seek for the issue of Writ of a Mandamus. As per clause 2 of the contract between the parties, the duration of contract is 2 years initially, the extension for a period of one year in 2 instalments is at the sole discretion of the ONGC. It is the exercise of this administrative decisions that is subject matter of challenge in this writ petition and this Court may not sit in appeal over an administrative decision taken by the

respondent Corporation. The crane bearing No. NL-02D-0691 which is the subject matter of the present writ petition was taken on lease from the petitioner's associate company M/ s. Sanghvi Projects Limited on 7-9-2000 for a period of 3 years starting from 11-9-2000. The petitioner's period of contract with the respondent with regard to the deployment of the above crane drew to an end on 1-11-2002. Based on the request and the rate offered, initially the same was extended for a period of 3 months. Thereafter, the respondent with a team of qualified officers decision not to extend and flow tenders inviting offers from qualified persons. The injunction restraining the respondent from awarding the contract with respect to the new tenders for the period 2002-2004 against the petitioner crane no. NL-02D-0691 is clearly beyond the scope of the main writ petition. Since the tender for 2002-2004 has been finalised with respect to 3 brand new cranes at Rs.6,989/- and the letter of intent has been issued in favour of one Sanjib Kakatia on 8-4-2002, the interim injunction prayed for has become infructuous. Similar writ petition in W. P.No. 39763/2002 filed by the sister concern of the petitioner M/s Sanghvi Projects Limited was dismissed by this court on 10-12-2002.

4. In the light of the above pleadings, I have heard Mr. T.K. Bhaskar, learned counsel for the petitioner and Mr. G. Masilamani, learned senior counsel for the respondent.

5. The only point for consideration in this writ petition is whether a Mandamus can be issued, directing the respondent to renew the contract entered into with the petitioner in respect of one Crane for the full extension period of one year, pursuant to the tender for 2000-2002?

6. Mr. T.K. Bhaskar, learned counsel for the petitioner, after taking me through the terms and conditions of the tender and the agreement between the parties, would contend that the action of the respondent in not extending the contracts in respect of Crane No. NL-02D-091 for one year with two instalments is arbitrary, unjust and unfair. He further contended that the action of the respondent in not exercising its discretion against the contract amounts to abuse of discretion and bad in law. The respondent has also deviated from the longstanding policy in extending the contract for the extended period upon the satisfactory performance by the petitioner. He also contended that the petitioner was under the legitimate expectation that the contract in respect of cranes hired by the respondent could be renewed for the full extension period upon the expiry of the primary contract period.

According to him, in view of the satisfactory performance of the petitioner in respect of contract, the action of the respondent ignoring their claim is contrary to public interest and violative of Articles 14, 19and 21 of the Constitution of India.

On the other hand, Mr. G. Masilamani, learned senior counsel for the respondent, would contend that in the absence of any legal right of extension of contract, a Writ of Mandamus cannot be issued. He also contended that since the respondent Corporation received lower offers during the bid for new tender floated for 2002-2004, the tender committee after series of deliberations, decided to use imported cranes to tender which is one of the essential requirement of fresh tender 2002-2004 and to get the best out of the

market; hence their action cannot be faulted with. He further contended that this Court exercising jurisdiction under Article 226 of the Constitution, may not sit in appeal over an administrative decision taken by the Government Body, more particularly the contract in question is non-statutory falling purely in the realm of private contract.

7. I have carefully considered the rival submissions.

8. In order to appreciate the contentions raised by both sides, it is useful to refer Clause (2) of the Agreement dated 6-12-2 000 between the ONGC and the petitioner which reads as under:

"2. DURATION OF CONTRACT (2 years +1 year)

2.1 The period of contract is from 02/11/2000 to 01/11/2002 for an initial period of TWO years.

2.2 The period of contract may be extended by one year in 2 instalments of 6 months each at sole discretion of ONGC on the same rates, terms and conditions, subject to satisfactory performance, of Cranes and execution of the contract."

It is clear that the period of contract is initially for 2 years and the same may be extended for one year in two instalments of six months each at the sole discretion of the ONGC. It is also clear that the said extension is subject to sole discretion of the ONGC subject to various other factors namely satisfactory performance, of Cranes and execution of the contract. In the light of the terms of agreement, as rightly contended by the learned senior counsel for the respondent, the extension of one year period in two instalments of 6 months each rests on the sole discretion of the respondent. No doubt, the discretion has to be exercised fairly, justly and reasonably. It is the admitted case of the petitioner that after the expiry of the period of two years, the contract was extended only for a period of 3 months which is permissible at the discretion of the respondent at a lower rate. Learned counsel for the petitioner would contend that having spent huge investment, on the legitimate expectation that he would be allowed to continue for the full extended period of one year, the respondent is not justified in limiting the extended period only for 3 months. In support of his contention that exercise must be governed by a rule of law, he relied on three decisions in (i) UNION OF INDIA v. DINESH ENGINEERING CORPORATION ((2001) 8 Supreme Court Cases 491); (ii) PUNJAB COMMUNICATIONS LTD. v. UNION OF INDIA AND OTHERS ((1999) 4 Supreme Court Cases 727; and (iii) MAHABIR AUTO STORES v. INDIAN OIL CORPORATION (AIR 1990 Supreme Court 1031). In the light of the said contention, I have carefully perused the facts in those cases and the dictum laid down therein. Absolutely there is no doubt about the proposition of law enunciated therein. In our case, I have already extracted the duration of contract namely initial period of 2 years and extended period of one year subject to sole discretion of ONGC on the same rates, terms and conditions, satisfactory performance of Cranes and execution of contract, etc. It is the definite case of the respondent that the discretion of not extending the contract period has been exercised by the ONGC after much deliberation and after taking into consideration the highly competitive and improved market

condition where crane operators have offered new/imported cranes at lower rates. It is also stated that after series of deliberations, the qualifications of the participants was re-cast in order to broaden the vendor base and to increase the competition. Mr. G. Masilamani, learned senior counsel for the respondent, by relying on a decision of the Supreme Court in STATE OF WEST BENGAL v. NIRANJAN SINGHA, reported in (2001) 2 M.L.J. 24 (S.C), would contend that the action of the respondent inviting fresh bids cannot be said to be arbitrary and there is no question of applying doctrine of legitimate expectation. In the said decision, the respondent therein requested the Executive Engineer concerned for extension of the agency for a period of another one year in terms of Clause 5 of the agreement having complied with the conditions stated therein. The appellant therein instead of extending the period of agency in favour of the respondent, invited fresh bids; hence a writ petition was filed by the respondent in the High Court seeking for quashing of notification calling for fresh bids. The learned single Judge directed for consideration of the representation of the respondent and ultimately the writ petition was allowed by upholding the claim of the respondent for renewal of the agreement for another period of one year. The matter was carried in appeal to the Division Bench. On behalf of the respondent the contention put forth before the Court was that Clause 5 of the agreement entered into between the appellant and the respondent, involved an element of 'legitimate expectation' and non-consideration of the same would amount to arbitrary exercise of the power and, therefore, the learned single Judge was justified in issuing the writ. The Division Bench upheld the order made by the learned Single Judge, hence appeal to the Supreme Court. Disapproving the view expressed by the High Court, the Supreme Court has held, (para 4)

"4. We may notice that the distinction sought to be made by the High Court that this is not a case involving grant of a fresh agency but extension of the existing one does not make much sense. An extension of an agreement or renewal is granted on the expiry of the period of the existing agreement. Either the extension or the renewal of the existing agreement may be on the same terms or on different terms. If it is a case of extension of the existing agreement on the same terms and conditions and such consideration gives rise to a question of legitimate expectation being a part of the concerned agreement, economic consideration of getting higher bid for the same period would be a relevant consideration. If the Governmental authorities had found that it would be feasible to have the agency, as in the present case, on fresh terms by enhancing the amount payable to the Government, it would be a relevant factor and in such a case it cannot be said that the legitimate expectation of the respondent had been affected because the public interest would out-weight the extension of the period of the agreement. The doctrine of "Legitimate expectation" is only an aspect of Art.14 of the Constitution in dealing with the citizens in a non-arbitrary manner and thus, by itself, does not give rise to an enforceable right but in testing the action taken by the Government authority whether arbitrary or otherwise, it would be relevant. The decision in FOOD CORPORATODN OF INDIA v. M/S. KAMDHENU CATTLE FEED INDUSTRIES, (1993) 1 S.C.C. 71 does not lay down any principle which detracts from what we have stated now. In a case where the agency is granted for collection of toll or taxes, as in the present case, it can easily be discerned

that the claim of the respondent for extension of the period of the agency would not come in the way of the Government if it is economically more beneficial to have a fresh agreement by enhancing the consideration payable to the Government. In such an event, it cannot be said that the action of the Government inviting fresh bids is arbitrary. Moreover, the respondent can also participate in the tender process and get his bid considered. Hence, we do not think that the view taken by the High Court can be justified."

Here, in our case in the counter affidavit the respondent has pointed out new developed Cranes and reduction in rate by inviting competitive bid, etc. Apart from these details, I have already referred to the duration of contract which clearly shows that the period of contract is for two years and the extension in a period of one year in 2 instalments of 6 months each is at the sole discretion of ONGC subject to fulfilling certain terms. Though the petitioner was granted extension for a period of 3 months, in view of the competitive offers, availability of new model Cranes, the respondent decided to go for a fresh tender. In such a circumstance, as observed by the Supreme Court in (2001) 2 M.L.J. 24 (S.C) (cites supra), the proposed fresh tender is economically more beneficial. In such a circumstance, it cannot be said that the action of the ONGC inviting fresh bids is arbitrary. As rightly pointed out, the petitioner can also participate in the tender process and get his bid considered. Hence, I do not find any valid ground to issue Mandamus as claimed by the petitioner. It is also brought to my notice that in respect of similar claim made by the sister concern namely M/s. Sanghvi Projects Limited, R. Balasubramanian, J., after considering similar contentions, dismissed W.P.No. 397 63/2002 on 10-12-2002.

9. In the result, I do not find any merit in the claim of the petitioner; consequently the Writ Petition fails and the same is dismissed. No costs. Consequently, connected W.P.M.P., and W. V.M.P., are closed.

31-01-2003

Internet : Yes

R.B.

To:-

M/s. Oil and Natural Gas
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