

IN THE HIGH COURT OF ORISSA : CUTTACK

W.P.(C) No.1613 of 2015

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Subhrakanta Patnaik Petitioner

-Versus-

Union of India and others Opp. Parties

For the petitioner : Ms Saswata Pattnaik

For the Opp.parties : None

P R E S E N T :

**THE HONOURABLE CHIEF JUSTICE MR. AMITAVA ROY
AND
THE HON'BLE DR. JUSTICE A.K. RATH**

Decided on : 30.01.2015

Amitava Roy, C.J.

The petitioner, had been awarded the contract for providing canteen service at the Lifecare Centre at SCB Medical College Hospital, Cuttack for a term that had expired on 30.10.2014, being aggrieved by the initiation of a process for fresh settlement, he seeks annulment of the concerned advertisement dated 17.01.2015.

2. We have heard Ms. S. Patnaik, learned counsel for the petitioner.

3. The pleaded facts synopsisized to the bare minimum are that the petitioner, owner of the firm M/s. ESSKAY Caterer, had been awarded the aforementioned contract vide letter dated 22.12.2012 by M/s.HLL Lifecare Limited-opp. party no.5, a Government of India enterprise. The settlement contemplated letting out of space to provide such service and the duration of the tenancy was for 11 months renewable for a further period of 11 months after expiry of the first term subject to the satisfactory performance on mutually agreed terms and conditions. An agreement was executed between the parties on 10.01.2013 also reiterating the above stipulation in addition to other covenants. At the instance of the petitioner, the initial period of contract was renewed vide letter dated 21.11.2013 for a further period of 11 months subject to renewal for a further period of the same duration on satisfactory performance and on

mutually agreed terms and conditions. The other terms and conditions remained the same. During the currency of this renewed term, a meeting was held between the parties on 18.06.2014 and, in the minutes thereof, it was recorded inter alia that he had been asked to deposit the balance security amount of Rs.1,00,000/- by 28.06.2014 as agreed upon. That he, however, had declined to increase the monthly rent by 10 per cent was also mentioned therein. The minutes in categorical terms referred that the current agreement was valid till 30.10.2014, whereafter it could be renewed by the opp. party no.5 by extension/renewal/re-tendering. Noticeably, prior thereto vide letter dated 29.11.2013, opp. parties had drawn the attention of the petitioner to the following lapses in the service provided and urged upon him to take necessary corrective actions, as hereunder:

- "1. You are keeping around 20 LPG Cylinders in the kitchen and adjacent area, which is highly unsafe practice. Separate are for storage of LPG has already been provided to you. You have to make arrangements for storage in the earmarked area with piping arrangement fro storage point to cooking stations. This must be done within 15 days following all stipulated guidelines of the competent government authorities. Fire extinguishers for designated class should be installed in the LPG storage area, kitchen and dining hall.

2. You have installed a domestic water purifier, which is grossly inadequate for 1000 odd customers being served every day. Most of the customers are being dispensed the tap water, which is very un-hygienic and can cause health hazards. You are advised to install a high capacity water purification system having "Reverse Osmosis (RO)" facilities within next 30 days time. Capacity of the purification system should be adequate to meet the requirements of the Dining as well as cooking area.
3. Cleanliness and House-keeping are the areas of serious concern. Dining Tables are not properly cleaned. Floor looks filthy with dust, mud and left-over falling on the floor. More staff is to be deputed by you to provide better service to the customers. Tables should be cleaned immediately when the customers leave. Floor should be mopped at regular intervals."

4. This was followed by letter dated 04.12.2013 by the petitioner seeking extension of his terms for three years on the grounds as mentioned. It was thereafter that by the impugned advertisement, a fresh process has been initiated by opp. party no.5 to award the work for running canteen, bakery, cyber cafe & xerox shop. As the petitioner's representation dated 21.01.2015 for further extension of his term did not meet with any positive response, he is before this Court seeking redress.

5. Ms. Patnaik has emphatically argued that there being nothing on record to suggest that the petitioner's performance had not been satisfactory during the two terms

awarded to him, opp. party no.5 was obliged in law to grant him further extension as sought for.

6. According to the learned counsel, in view of the quality of the service rendered by the petitioner and the huge investments made by him at the instance of opp. party no.5 to maintain the quality of service, as desired, he had a legitimate expectation of being granted further extension and as the impugned advertisement was in patent extinction thereof, the same is liable to be adjudged illegal and null and void. Learned counsel has insisted that the initiation of the fresh process is only for higher financial realization from the new contractor and this being in total disregard to the commendable service of the petitioner and the clause of renewal, the impugned advertisement ought to be annulled.

7. Upon hearing learned counsel for the petitioner and on an analysis of the pleaded facts and the documents on record, we feel disinclined to intervene in the exercise of this Court's power of judicial review. The rights and liabilities of the parties, as would be apparent on the face of the record, so far as the transaction involved is concerned, are wholly governed by the terms and conditions of the agreement dated 10.01.2013 and thereafter by the letter dated 21.11.2013 referred to herein above.

8. A bare perusal of the clause of renewal makes it abundantly clear that it is a matter of discretion of opp. party no.5 and cannot be claimed as of right by the petitioner. It is significant to notice that apart from the optional element, as adverted herein above, the renewal was made subject to the satisfactory performance and on mutually agreed terms and conditions. The materials available on record including the minutes of the meeting held on 18.06.2014 do not unimpeachably demonstrate the acknowledgement of the performance of the petitioner to be satisfactory by opp. party no.5. On the other hand, serious omissions and lapses were pointed out in its letter dated 29.11.2013, and though the meeting dated 18.06.2014 was held thereafter, the minutes thereof do not as such attest the satisfaction of opp. party no.5 qua the service rendered. There is nothing available on record to even infer about any tangible foundation of the petitioner's claim based on legitimate expectation. No assurance whatsoever by opp. party no.5 is discernable as well to sustain this plea. The stipulation that renewal would be on mutually agreed terms and conditions also, in our estimate, does not envisage the process to be unilateral to be effectuated by the desire or instance of one of the parties. Apart from the fact that relationship between the parties is totally governed by terms and conditions of the agreement entered into by and between them, we are of the view

that, in the facts and circumstances of the case, granting the relief prayed for would amount to enforcement of a condition of the contract by compelling opp. party no.5 to renew the term of the petitioner thus denuding it of its right or discretion to refuse the same. This Court, in our view, cannot assume the role of directing specific performance of the contract between the parties being wholly oblivious of the attendant facts and circumstances which, in our assessment, does not entitle the petitioner to the relief sought for. As it is, there is no overwhelming public interest involved justifying this Court's interference and, in our view, opp. party no.5 ought to be left to pursue the process initiated by the advertisement dated 17.01.2015.

The writ petition, on a cumulative consideration of all above, thus is bereft of merit and is accordingly dismissed.

.....
Chief Justice

Dr. A.K. Rath, J.

I agree.

.....
Judge

Orissa High Court, Cuttack
Dated 30st January, 2015/PCP