

IN THE HIGH COURT OF SINDH AT KARACHI**SUIT NO. 158 / 2015**

Syed Ali Asghar Shah -----Plaintiff

Versus

PIAC & others ----- Defendants

- 1) **For hearing of CMA No. 5144/2015.**
- 2) **For hearing of CMA No. 5145/2015.**
- 3) **For hearing of CMA No. 17544/2014.**

Date of hearing: 23.04.2015**Date of Order: 23.04.2015****Plaintiffs Through Mr. M. Umar Lakhani Advocate.****Defendant Through Mr. Usman Shaikh Advocate.****ORDER**

Muhammad Junaid Ghaffar, J: Through instant Suit the plaintiff has prayed for a Declaration that the plaintiff has legal and vested right to provide services to the defendants on the basis of Letter of Intent dated 19.8.2011 and further that letter dated 20.11.2014, whereby the Plaintiff has been informed that the period stipulated in the Letter of intent dated 19.8.2011 has been completed, is illegal and has been issued without any lawful authority. Along with the Suit an application bearing CMA No. 17544/2014 was filed under Order 39 Rule 1 & 2 CPC, on which, vide order dated 29.12.2014, parties were directed to maintain status quo. Subsequently, on 30.3.2015 another application bearing CMA No. 5144/2015 was filed under Section 94 read with

Section 151 CPC, on behalf of the plaintiff, through which restraining orders were sought against the defendants, for suspension of the bid process in respect of the services already being provided by the plaintiff. Both these applications have been heard together and are being decided through this order along with CMA No. 5145/2015 which has been filed under Order 39 Rule 2 & 3 CPC for alleged contempt of the status quo order passed on 29.12.2014.

2. Learned Counsel for the plaintiff has contended that the plaintiff is providing janitorial services to the defendant No. 1, as elaborately stated in Para 6 of the plaint which includes the following groups / areas pertaining to the operations of the defendant No. 1:-

- 1) PIA Flight Kitchen
- 2) PIA Training Centre
- 3) PIA Speedex and Employment
- 4) PIA Store and Press
- 5) PIA Motor Transport
- 6) PIA Township
- 7) PIA Airhostess Hotel

Learned Counsel further submitted that initially a Letter of Intent dated 19.8.2011 was issued to the plaintiff which is available at page 37 as annexure "P", whereby, the management of defendant No. 1 had approved the award of annual contract for providing janitorial services at PIA Karachi Network, on certain terms and conditions as reflected in the Letter of Intent dated 19.8.2011. Per learned Counsel the said Letter of Intent was initially valid for 1.9.2011 to 31.8.2012, and extendable for further two terms on same rates and terms and conditions subject to satisfactory performance. Learned Counsel further contended that after issuance of Letter of Intent dated 19.08.2011, for unknown reasons, another letter dated 29.8.2011 was issued to the plaintiff, whereby, the scope of area of the services initially offered to the plaintiff

vide Letter of Intent dated 19.8.2011, had been reduced to a considerable extent and such letter was impugned by filing a Civil Suit bearing No. 1113 of 2011 before this Court and vide order dated 9.9.2011 the operation of the Letter of Intent (revised) dated 29.8.2011 was suspended and the initial Letter of Intent dated 19.8.2011 was ordered to be deemed to be in the field subject to continued performance of its duties and obligations in terms thereof. Per learned Counsel since then and till filing of instant Suit, through which letter dated 20.11.2014, had been impugned, the Plaintiff was and still is performing / rendering services till date without any hindrance. Learned Counsel further contended that such order dated 9.9.2011 was still in field, when suddenly the impugned letter dated 20.11.2014 had been issued to the plaintiff through which, despite operation of the aforesaid orders of this Court, the defendant No. 1 had informed that the term of the contract has been completed on 31.8.2014 and further that the defendants have initiated fresh tendering process of janitorial contracts and the plaintiff, if so desires, can also participate in the fresh bidding process. Learned Counsel further submitted that the Letter of Intent dated 19.8.2011 still holds the field and the rights accrued to the plaintiff, pursuant to such Letter of Intent, cannot be withdrawn unilaterally. Per learned Counsel the Letter of Intent dated 19.08.2011 clearly stated that the terms and conditions of the contract would be settled through an agreement, whereas, the plaintiff had immediately sent a draft agreement to defendant No. 1, which was never signed or executed by them and per learned Counsel till such time the plaintiff is allowed to complete the period of the term so specified in the Letter of Intent, starting from signing of agreement, the plaintiff has a vested right in performing and rendering janitorial services to defendant No.1,

whereas the impugned letter dated 20.11.2014, amounts to contempt of Court's order. Per learned Counsel the plaintiff was, and still is rendering services to the defendants, even after expiry of the Letter of Intent, as alleged by the defendants and has been paid the charges for rendering services up to March 2015 by the defendants. Per learned Counsel, it is the case of the plaintiff that neither the Letter of Intent has expired, nor it has been acted upon in its entirety, whereas, the work which has been performed till date by the plaintiff, is not on the basis of Letter of Intent, rather on the orders and directions of this Court. Learned Counsel finally submitted that the defendants were required to act on their obligations for executing the agreement and till such time this is done, the Letter of Intent would remain in field. In support of his contentions the learned counsel has relied upon the cases reported as *Arts Council of Pakistan Vs. Riazuddin Pirzada (PLD 1969 Karachi 349)*, *Province of West Pakistan through the Secretary Public Works Department, Lahore Vs. Gammon's Pakistan Ltd. Karachi (PLD 1976 Karachi 458)*, *RTS Flexible Systems Ltd. VS. Molkerei Alois Muller GmbH and Co. Kg. (2012 SCMR 1027)*, *The Pakistan Employees Cooperative Housing Society Ltd. Karachi Vs. Mst. Anwar Sultana & others (PLD 1969 Karachi 474)*, *Cramaso LLP Vs. Ogilvie Grant, Earl of Seafield and others (2014 SCMR 1238)*, *RTS Flexible Systems Ltd. Vs. Molkerei Alois Muller GmbH and Co. KG (2012 SCMR 1027)*, *Pakistan Fertilizer Limited Vs. Dawood Hercules Corporation Limited (PLD 2015 Sindh 142)* and *Shoukat Ali & others Vs. Government of Pakistan and others (PLD 1997 SC 342)*.

3. Conversely learned Counsel for the defendants submitted that Letter of Intent dated 19.8.2011 was specific with regard to the term and period of the contract, whereas, the Letter of Intent stood expired

on 31.08.2012 and was neither renewed nor acted upon by the defendants, however, since status quo orders were operating in the instant matter, the defendants did not initiated any action against the plaintiff. Learned Counsel further submitted that insofar as the entire period of Letter of Intent is concerned, the same has elapsed after initial expiry of one year on 31.08.2012, and thereafter on expiry of two terms of one year each on 31.08.2014, and was never extended after 31.08.2014, whereas, under the garb of the status quo order, the plaintiff has rendered services till March 2015 and is still continuing, which has seriously prejudiced the interest of the defendants as they intend to call for fresh tenders. Learned Counsel further contended that the orders of the Court cannot be so construed, whereby a party is allowed to work even beyond the period specified in the Letter of Intent / contract, if any. Learned Counsel further contended that the plaintiff has already been provided a chance to participate in the fresh bidding / tenders. In support of his contention the learned Counsel has relied upon the cases reported as *M/S Muhammad Ishaq & Sons Vs. Government of Pakistan and another (1992 CLC 1515)* and *Petrosin Corporation (Pvt) Limited Singapore and 2 others Vs. Oil and Gas Development Company Ltd. (2010 SCMR 306)*.

4. I have heard both the learned Counsel, perused the record and the case law so relied upon by the parties. It appears that the plaintiff had participated initially in the bidding process for rendering janitorial services to PIA, whereas, after short listing, the plaintiff was issued a Letter of Intent dated 19.8.2011. The said Letter of Intent provided a contract period with effect from 1.9.2011 to 31.8.2012, extendable for further two terms on same rates, terms and conditions subject to satisfactory performance. Whereas, the plaintiff was also required to

confirm the execution of subject contract and submit draft agreement and 5% security deposit of the annual contract value within 15 working days from the date of issuance of Letter of Intent. It further appears that on 29.8.2011 a modification in respect of Letter of Intent dated 19.8.2011, was issued, whereby, the area of services was reduced from 7 to 3 which was impugned by the plaintiff by filing Suit No. 1113 of 2011, in which this Court had passed interim orders on 9.9.2011, whereby, the operation of the Letter dated 29.8.2011 was suspended and the Letter of Intent dated 19.8.2011 was deemed to be in field subject to continued performance by the plaintiff of its duties and obligations. Thereafter, the said matter is still pending before this Court and no final adjudication could be made with regard to the dispute between the parties as raised in that Suit. It is further noted from the record that during this period the plaintiff continued to perform and render janitorial services to defendant No.1 (PIA). On 20.11.2014 the defendants addressed a letter to the plaintiff, whereby, the plaintiff was informed that initially a Letter of Intent dated 19.8.2011 was issued to him with effect from 1.9.2011 to 31.8.2012, extendable for two terms and before entering into a formal agreement, the stay order was obtained in Suit No. 1113 of 2011. It was further informed that the plaintiff was allowed to continue work, pursuant to such orders of this Court and after expiry of first term they were further allowed to complete two terms of one year each to maintain the sanctity of the directives of the Court. The plaintiff was further informed that the period as mentioned in the Letter of Intent dated 19.8.2011, had expired on 31.8.2014, and therefore, fresh tender process for janitorial services had been initiated by them and the plaintiff was at liberty to participate in such proceedings. The said letter dated 20.11.2014 was

again challenged through instant Suit and by order dated 29.12.2014 parties were directed to maintain status quo which continues till date. It is the case of the plaintiff, that the Letter of Intent was never acted upon in its entirety, as no formal agreement pursuant to such Letter of Intent had been executed by defendant No. 1, therefore, till such time the agreement as required in the Letter of Intent is finally executed, the Letter of Intent would remain in field for all practical and legal purposes as the same has created vested rights in favor of the Plaintiff.

5. From perusal of the record placed before me and the Letter of Intent dated 19.08.2011, as referred to hereinabove, I am of the view that such contention raised by the learned Counsel for the plaintiff is not correct and is rather misconceived. On careful examination of the Letter of Intent dated 19.8.2011, it reflects that the contract period is specifically and clearly mentioned which started from 1.9.2011 to 31.8.2012, and was further extendable for two more terms. Though the Letter of Intent does not specify the word "*term*" but since the initial term has been specified for a "*year*" therefore, necessary inference which could be drawn from the wording of Letter of Intent would be, that at the most, the Letter of Intent could be extendable for another two terms of one year each which admittedly stands expired on 31.8.2014. In between this period, the plaintiff has filed two Suits before this Court in which interim orders have been obtained, which are still operative and even the entire term of Letter of Intent / contract stands expired, whereas, the defendants in view of the fact that interim orders are still operating, have allowed the plaintiff to continue with the rendering of such services even beyond the period specified in the Letter of Intent dated 19.08.2011. The contention of the learned counsel for plaintiff that until and unless a formal agreement is finally executed by

the defendants, the period specified in the Letter of Intent does not start running, whereas the three terms as specified in the Letter of Intent, would only come into motion after a formal agreement as referred to in the Letter of Intent dated 19.08.2011 is executed and signed is concerned, the same appears to be misconceived and without any force or legal justification. I am afraid such an attempt on the part of the learned Counsel for the Plaintiff does not appear to be based on any sound principles of equity and justice and to me amounts to an absurd proposition. It appears not only contrary to good sense, but also to good law. The plaintiff is required to establish some right in its favor for grant of an injunctive relief on the basis of an instrument, deed or even a Letter of Intent. In the instant matter, the Letter of intent stands expired admittedly, hence no further relief by way of an extension in the contract period can be granted by this Court. Even if it is assumed that the Plaintiff had been allowed to complete the entire period as mentioned in the letter of intent after signing of an agreement as contended by the learned Counsel for the plaintiff, could the plaintiff come to this Court after expiry of such period, to seek an injunctive relief by way of restraining the defendants from calling any fresh tenders? To me the answer is no. The period mentioned in the letter of intent, impliedly means that after expiry of such period, the contract stands revoked, hence no vested right accrues to the plaintiff and no relief could be sought in terms of Sections 21 and 56(f) of the Specific Relief Act 1877 as the contract (letter of intent) cannot be specifically enforced any more. The injunction in such matters can only be granted where the terms of contract are free from doubt or are not in dispute, whereas, in the instant matter, the letter of intent stands expired. It must also be noted that an order for temporary injunction under Order

39 Rule (2) CPC, (as is the case here) can only be sought in aid of the prospective order for a permanent injunction, whereas, even otherwise, such relief being discretionary in nature, the same has to be exercised in a judicial manner. It is also settled law that even if the contract or license is revoked without reasonable notice and during the subsistence of an agreement or license, at best the aggrieved party can claim damages but no injunctive relief as is being sought in the instant matter.

6. It would not be out of place to mention, and without prejudice to the fact, that whether any vested right accrues on the basis of Letter of Intent or not, even otherwise if an agreement had been in field, the plaintiff could not have sought specific performance or enforcement of the agreement / contract, beyond the period stipulated in the Letter of intent / contract. Therefore, if enforcement of the said agreement cannot be sought, the necessary corollary is that no injunctive relief can be asked for. At the most the plaintiff may have a case of damages, owing to the alleged cancellation / modification of Letter of intent. However, the plaintiff cannot be allowed to continue and keep working on the basis of interim orders, even beyond the period stipulated in the Letter of Intent / contract. The plaintiff cannot establish a vested right on the basis of interim orders passed by this Court. Insofar the case law relied upon by the learned Counsel for the plaintiff is concerned, the same are not relevant as the facts of the instant case are entirely different and even otherwise the learned Counsel for the plaintiff has failed to establish or justify the contention with regard to continuous validity of the Letter of Intent beyond the period specified therein.

7. In view of hereinabove facts and circumstances of the instant case, on 23.4.2015 application bearing CMA No. 5144/2015 and 17544/2014 were dismissed by means of a short order with cost of Rs. 50,000/- to be deposited in the Sindh High Court Clinic, whereas application bearing CMA No. 5145/2015 was also dismissed as having become infructuous. The above are the reason for the short order.

J U D G E

ARSHAD/