

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement pronounced on: 16.09.2013

+ W.P.(C) 5444 of 2013 & CM No.12164 of 2013 (Stay)

**WELL PROTECT MANPOWER
SERVICES PVT. LTD.**

..... Petitioner

**Through: Mr. Tarkeshwar Nath &
Mr. Saurabh Kumar Tuteja, Advs.**

versus

**DELHI TRANSPORT INFRASTRUCTURE
DEVELOPMENT CORPORATION LIMITED**

..... Respondent

**Through: Ms. Zubeda Begu, Standing Counsel
GNCTD with Ms. Sana Ansari &
Mr. Prem Kumar, Advs.**

**CORAM:
HON'BLE MR. JUSTICE V.K. JAIN**

V.K. JAIN, J.

The petitioner has been providing security personnel at ISBT, Kashmere Gate pursuant to the work awarded to it on 30.9.2011. Initially, the work was awarded for twelve (12) months only but later on it was extended up to 30.9.2013, vide communication dated 28.9.2012. Vide letter dated 16.8.2012, the Estate Manager, DTIDC Limited, Kashmere Gate informed the petitioner that the work of comprehensive maintenance of ISBT had been awarded to BVG India Limited, which was expected to start the work shortly and, therefore, it should withdraw its security personnel from ISBT, Kashmere Gate and vacate the site within a week's time so that it could be handed over to BVG India

Limited. Being aggrieved from being asked to withdraw its security personnel even during the subsistence of the contract, its validity being till 30.9.2013, the petitioner is before this Court seeking the following reliefs:

“i. Quash and set aside the letter dated 16.8.2013 issued by the respondent.

ii. Direct the respondent to allow the petitioner to work in terms of respondent's letter dated 28.09.2012.

iii. Pass any other order that is deemed fit and proper under the facts and circumstances of the case.”

2. A perusal of the counter affidavit and the documents annexed thereto show that a notice dated 6.3.2013 was issued to the petitioner, enumerating therein various discrepancies found during the routine inspections of its work in 2-3 months preceding the notice. The following were the discrepancies mentioned in the said notice:

“1. No name wise attendance register was available with the supervisors deployed by you.

2. As per terms and conditions of the agreement/contract the antecedents of security staff deployed by the security agency were to be got verified from local police authorities but no record in this regard could be made available.

3. During checking it was found that some of the security persons were wearing shabby uniforms.

4. Some of the security persons were not having their name badges.
5. No curriculum vitae (CV) in r/o staff deployed by the security agency was available during inspection.
6. During the course of inspection it has come to notice that 33% manpower from the category Ex-serviceman has not been deployed by you.
7. As per condition of the agreement at least one female security guard is to be deployed at every entry/exits of ISBT in each shift but it has been noticed that female security guards are deployed only in day time.
8. Security staff were not having torches, cells, lathis/ballams and other implements as mentioned in the terms and conditions of the contract.
9. No walkie-talkie was found made available with security supervisors/security guards to ensure effective timely communication between them.
10. During inspection it revealed that the wages are being paid/disbursed to the security staff in cash while as per conditions of the contract same should be paid through cheques.
11. During inspection it is also observed by the undersigned that the security guards were not present on the locations assigned to them particularly at the ISBT's Sarai Kale Khan & Anand Vihar, so it is directed that the security guards should

be available on the duties assigned to them by the Estate Managers as per agreed locations.”

The petitioner was directed to comply with the observations immediately. He was further intimated that if no reply is received within seven (7) days necessary action shall be initiated for closure of the contract.

3. It appears that the petitioner did not respond to the aforesaid notice. Another notice dated 23.5.2013 was then issued to it, referring to the inspections made on 18.12.2012, 19.12.2012 & 4.3.2013 and intimating it that the deficiencies mentioned therein were found during the course of the aforesaid inspections. The following were the deficiencies pointed out in this notice:

“1. None maintenance of attendance register by the contractor for day to day deployment of security personnel.

2. Non verification of antecedents of security staff by the contractor from the local police.

3. The uniform & badges of the personnel were not found properly.

4. The security personnel found deployed for more than 8 Hrs.

5. Female guard not deployed during night hours.

6. Security staff not having sufficient infrastructure & equipment like torch, walkie talkie, sticks, etc.

7. Salaries being disbursed through cash instead of cheques.”

Again the petitioner was directed to remove those discrepancies failing which action as per the terms of the contract was to be taken against it.

4. The petitioner responded to the notice dated 23.5.2013 vide reply dated 29.5.2013 and submitted the following point wise information:

“1. The day-to-day deployment of security personnel attendance register is being maintained and are available with the concerned Supervisor at the ISBT, Anand Vihar, Delhi.

2. Police verification in r/o all deployed security personnel at ISBT Anand Vihar are under process and the same will be submitted in due course. Efforts are being made to collect the verification reports by the concerned employees.

3. The Uniform alongwith badges have already been provided to each & every security personnel.

4. The 8 hours duty is being performed by the security guards but in case of any absentee and non-availability of new Guards, the OTA has to be allowed.

5. The arrangement for the deployment of Female guard has already been made at ISBT Anand Vihar in the night hours.”

5. It would, thus, be seen that though the respondent was not satisfied with the working of the petitioner and that is why it had to issue notice dated 6.3.2013 followed by the notice dated 23.5.2013

referring to various discrepancies found in its functioning and requiring it to remove those deficiencies and further cautioning that action for termination of the contract would be taken in case the deficiencies were not removed, the communication dated 16.8.2013 refers neither the notice dated 6.3.2013 and 23.5.2013 nor to any discrepancy in the functioning of the petitioner in the matter of providing security services at ISBT, Kashmere Gate. The order dated 16.8.2013 is a simple order directing the petitioner to withdraw its personnel from the ISBT on the ground that the work has been awarded to another agency.

6. In my view, the termination of the contract awarded to the petitioner which was extended up to 30.9.2013 was not in accordance with law since it contained no reason for such premature termination. It is settled proposition of law that if an order entailing civil consequences to a person is passed by the State or its agency(ies), the reasons for passing such an order need to be available in the order itself and cannot be provided by way of external evidence. Though the case in the counter affidavit is that various discrepancies found in the working of the petitioner was the cause of premature termination of the contract, that unfortunately is not borne out from the order dated 16.8.2013. If the respondent was not satisfied with the reply dated 29.5.2013 filed by the petitioner to the notice dated 23.5.2013 nothing prevented it from passing an appropriate order referred to in the notices dated 6.3.2013 and 23.5.2013 as also the reply submitted by the petitioner dated 29.5.2013. That having not been done there is no escape from the conclusion that the impugned order dated 16.8.2013 is wholly arbitrary

and illegal being bereft of any reasons for premature termination of the contract.

7. For the reasons stated hereinabove the impugned order dated 16.8.2013 is set aside. It is, however, made clear that quashing of the order dated 16.8.2013 does not preclude the respondent from passing a fresh order, pursuant to notices dated 6.3.2013 & 23.5.2013 issued to the petitioner.

The petition and the application stand disposed of.

Dasti under the signatures of the Court Master.

SEPTEMBER 16, 2013
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V.K. JAIN, J.

