

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 16.05.2014

Judgment delivered on: 28.07.2014

W.P.(C) 7610/2013

SARVESH SECURITY SERVICES PVT. LTD

..... Petitioner

versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Suresh Singh, Advocate

For the Respondents : Ms Zubeda Begum, Advocate with Ms Sana Ansari, Advocate

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J.

1. The present writ petition has been filed by Sarvesh Security Services Pvt. Ltd. (herein referred as 'petitioner') seeking a direction in the nature of mandamus thereby directing the Government of NCT of Delhi (herein referred to as 'respondent No.1') and Medical Superintendent, Aruna Asaf Ali Government Hospital (herein referred as 'respondent No.2') to award the tender for security services to the petitioner company on the basis of the rate

submitted by the petitioner instead of the rate which has been accepted by the Respondent.

2. Brief facts relevant to the present adjudication are enunciated hereinafter:-

3. On 20.06.2013, respondent No.2 floated a tender for providing security services wherein adjacent to the names of the hospitals, the number or quantity was mentioned as 1. The petitioner believed that the rate for only one Security Guard was required and participated in the tender process accordingly, whereas the respondent intended the rate to be for employment of security guards for the entire hospital.

4. Thereafter, on 01.10.2013 the petitioner company intimated the respondent that as per the format of the price bid, the rates for one Security Guard was mentioned.

5. Subsequently, on 29.10.2013 the respondent issued an offer letter to the petitioner mentioning the total rate of ₹9264.99 for employment of security guards for the entire hospital as a unit rather than for one Security Guard.

6. On subsequent dates also the petitioner company intimated the respondent that as per the online format of the price bid the rate filled was for one Security Guard.

7. The respondent responded by reiterating that the bid quotation was considered on the basis of a hospital being an individual unit. It was further stated by the respondent that the earnest money deposited by the petitioner company i.e. ₹6,50,000 would be forfeited in case of non-execution of the agreement.

8. The petitioner company vide letter dated 26.11.2013 stated that in view of the pending disputes between the parties, an impartial arbitrator may be appointed. The respondent in reply vide letter dated 28.11.2013 rejected the request of arbitration as no contract had come into existence between the parties.

9. Learned counsel for the petitioner states that vide letter dated 01.10.2013, it was duly clarified by the petitioner that the rates submitted were on the basis of per Security Guard. The respondent ignored the letter as well as the online format of the price bid, and, issued a letter of offer dated 29.10.2013 stipulating to provide Security Guards for the entire Hospital for a total sum of ₹9254.99. By such arbitrary act of the respondent, the effective rate offered per Security Guard was ₹237.56 per month, which is against the stipulation of minimum wages of ₹7722.00, per Security Guard.

10. It is contended that as the respondent modified/alterd the tender vide letter of offer dated 29.10.2013, the petitioner was refrained from executing

the agreement wherein the respondent had deliberately made departure from per Security Guard rate.

11. It is the grievance of the petitioner that in case the respondent thought that the bid was unresponsive, the respondent could have merely rejected the tender rather than forfeiting the earnest money of ₹6,50,000/- deposited by the petitioner.

12. It is further contended by the learned counsel for the petitioner that the respondent has floated a fresh tender for Security Guards dated 18.12.2013, wherein it has been advised in the Minutes of the Meeting dated 23.12.2013 that the monthly amount shall be for the entire Security Services for each Hospital. No such advice was provided by the respondent in the tender in question.

13. Learned counsel for the respondent argues that the present petition as framed is not maintainable as the petitioner participated in the tender process with full knowledge of the contents of the tender documents where adjacent to the names of the hospitals “1” was mentioned, which meant “1” hospital to be taken as 1 unit.

14. It was further argued that the petitioner was declared the successful bidder L1 by quoting the lowest price of ₹46,324.95 for five hospitals per month and was recommended for providing security services to the five

hospitals by the competent authority. Therefore, the petitioner is estopped from challenging the terms of the tender after having participated in the tender without demur on any ground whatsoever.

15. It is further argued that the petitioner had access to all the terms of the NIT as it was uploaded and was available on the website from 20.06.2013 onwards. An opportunity was given to each of the bidders if they desired to participate in the pre-bid session which was held on 28.06.2013 and seek any clarification or remove any doubts. The last date of the submission of the tender was on 19.07.2013. The pre-qualification bid was opened as per schedule. The answering respondents received five bid's/EMD physically in tender box.

16. It is further stated that the terms of section 2 clause 13.1 of the tender documents do not permit modifications or communication with the department after the submission of the tender documents.

17. It is argued that the petitioner was required to perform its contractual obligation within the stipulated time of four weeks from 29.10.2013 as per the letter of offer acknowledged by them, in terms of section 2, clause 17.2 of the tender document failing which any action as deemed fit could be initiated as per terms and conditions of the tender documents. EMD could be

forfeited as per the terms and conditions of the tender document under section 2 clause 7.6.

18. Accordingly, the respondent has forfeited the EMD FDR No.2612869 dated 16.07.2013 for ₹6,50,000/- issued by IDBI Bank, Vaishali Ghaziabad (U.P.) vide letter dated 03.12.2013 and the petitioner has also been intimated that fresh e-tender for the security services is being initiated, schedule prepared and is already uploaded.

19. Reliance was placed upon *Air India Limited v. Cochin International Airport Limited* : 2000 (2) SCC 617 by the respondent, wherein it was observed that the State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny.

20. We have heard both sides. Tragically, the instant petition is a consequence of heightened misunderstanding between the parties. The respondent having invited cluster bidding to hire services in providing security was expecting prospective bidders to quote the price as a collective whole for the five mentioned hospitals. Per contra, the petitioner quoted price on per head basis consequently, quoting the lowest bid. Annexure A filed by the respondent evinces the bid quotations by 5 bidders. Four of these have quoted between ₹3-6 lakhs and the petitioners bid is ₹9264.99. At the

very least there is a complete absence of consensus ad idem between the parties. The quote considered by the respondent if accepted would be less than the prescribed minimum wages and statutory dues. In that sense the bid can be said to have been completely unresponsive. The bid of the petitioner as understood by the respondent cannot therefore, be enforced.

21. The petitioner has prayed in the following terms:

- a) Issue a writ of mandamus or any other appropriate writ, order or direction thereby directing the respondents to award the contract of Security Services to the Petitioner Company on the basis of per security guard rates;
- b) Issue such writ order or direction as this Hon'ble Court may deem fit on the facts and circumstances of the case.

22. Prayer (a) cannot be granted to the petitioner for the aforesaid reasons as well as the fact that the petitioner may not be the lowest bidder once his bid is calculated on per head basis. Counsel for the petitioner, however, has only pressed that the EMD be refunded to the petitioner.

23. The doctrine of unjust enrichment as propounded by the Supreme Court in **Union of India v. Raman Iron Foundry** : AIR 1974 SC 1265 is squarely applicable to the facts and circumstances of the present case. Unjust enrichment is the retention of a benefit conferred by another, not intended as a gift and not legally justifiable, for which the beneficiary must make

restitution or recompense. Resultantly, the respondent is directed to refund in full the EMD of the petitioner within a period of one month from this order.

24. In terms of the aforesaid direction the writ petition stands disposed of.

There shall be no order as to costs.

SIDDHARTH MRIDUL, J

BADAR DURREZ AHMED, J

JULY 28, 2014

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