

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

% **Date of decision: 27th August, 2015.**

+ **RFA 511/2005**

VNA SECURITY SERVICES P.LTD. Appellant

Through: Mr. Jatin Rajput and Mr. Anupam
Dubey, Advs.

Versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Ashutosh Jha, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree dated 26th April, 2005 of the Court of Sh. N.K. Kaushik, Additional District Judge (ADJ), Delhi of dismissal of Suit No.340/2004 filed by the appellant/plaintiff for recovery of Rs.15,95,131/- from the respondents/defendants namely, (i) Union of India, Ministry of Health and Family Welfare; (ii) Medical Superintendent, VMMC & Safdarjung Hospital; and, (iii) Medical Superintendent, VMMC & Safdarjung Hospital, for compensation for breach of contract.

2. The appeal was admitted for hearing and Trial Court record requisitioned. The counsels have been heard.

3. The undisputed facts are, (i) that the appellant/plaintiff was a

participant in a tender floated by the respondents/defendants for engagement of Security Personnel to control the crowd and guide the large number of patients and their relatives in Safdarjung Hospital, New Delhi; (ii) the respondents/defendants vide letter dated 2nd August, 2003 informed the appellant/plaintiff that it had been approved by the competent authority and asked the appellant/plaintiff to convey its acceptance in writing; it was further stipulated that “the contract has to be carried out as per terms and conditions accepted by you in the tender and at the rates quoted therein”; (iii) the appellant/plaintiff vide its letter dated 11th August, 2003 conveyed to the respondents/defendants its acceptance of the contract and requested “that the contract may please be awarded to us at your earliest”; (iv) the respondents/defendants vide their letter dated 23rd August, 2003 to the appellant/plaintiff awarded the contract to the appellant/plaintiff “subject to fulfillment of all the terms and conditions of the contract” and “with effect from 1st October, 2003 to 31st March, 2004 (subject to review after every three months)”; the appellant/plaintiff, vide the said letter, was also requested to ensure the following points:

“1. The original copy of Registration Certificate to your firm obtained from Govt. of Delhi may be submitted in the office of the undersigned for verification.

2. To submit a Demand Draft of Rs.2 Lacs in favour of

Medical Superintendent, Safdarjung Hospital toward Earnest Money Deposit before 30.8.03.

3. To submit Ex. Servicemen Service Books including Para-military personnel in original in the office of Addl. M.S. (Security) alongwith the list of personnel to be engaged in the hospital.

4. To submit an undertaking that the required No. Of Guards (including Ex. Servicemen & Para-military personnel) will be provided daily.

5. To make the arrangement for parade up of 150 Guards (including 20% Ex. Servicemen and 30% personnel retired from Para-military forces) in front of CMO Security for physical check up before the commencement of this assignment. Date of parade should be intimated to CMO Security.

6. All the Guards should be in proper uniform with their Identity Card.

7. All the Guards deputed will be medically fit and no Guard will be put on double duty.

Please ensure the acceptance of this and compliance on or before 30.8.2003 positively.”

(v) the appellant/plaintiff, under cover of its letter dated 27th August, 2003, forwarded a pay order for Rs.2,00,000/- as security deposit to the respondents/defendants and receipt whereof was acknowledged by the respondents/defendants on 28th August, 2003; (vi) however, the appellant/plaintiff under cover of its another letter dated 12th September, 2003 bearing the acknowledgement dated 13th September, 2003 of the respondents/defendants forwarded a copy of its Registration Certification

and also informed the respondents/defendants that “desired man power shall be paraded in uniform in batches on 27th – 30th September, 2003—time of same shall be decided after mutual discussion and as per convenience of CMO, Security”; it was also informed to the respondents/defendants that the desired list and ex-servicemen service books shall also be produced; (vii) the respondents/defendants vide letter dated 26th September, 2003 informed the appellant/plaintiff that the matter relating to award of the contract to the appellant/plaintiff had been reviewed and it had been decided to withdraw “the offer of contract earlier awarded to your agency due to financial implications and administrative exigencies in public interest” and returned the pay order for Rs.2,00,000/- forwarded by the appellant/plaintiff towards earnest money deposit.

4. It was/is the case of the appellant/plaintiff that it is entitled to recover from the respondents/defendants, compensation in the aforesaid amount comprising of (i) Rs.2,30,000/- towards placement expenses for staff; (ii) Rs.2,43,350/- towards uniform and accessories issued to staff; (iii) Rs.2,03,670/- being the loss of security service charges from the contract from 1st October, 2003 to 31st March, 2004; (iv) Rs.8,71,031/- towards one month notice period; (v) Rs.10,800/- towards advertisement expenses; (vi)

Rs.6,280/- towards I Card expenses; and, (vii) Rs.30,000/- towards miscellaneous expenses.

5. The learned ADJ has dismissed the suit holding, (i) that the appellant/plaintiff was required to comply with the requirements of contents in the letter dated 23rd August, 2003 on or before 30th August, 2003; (ii) that however the appellant/plaintiff complied only with the requirement of deposit of security money before the said date and did not comply with the other requirements of the letter dated 23rd August, 2003; (iii) that the appellant/plaintiff had not even placed before the Court the initial contract or the terms and conditions on the basis of which tender was floated and the appellant/plaintiff made his offer; (iv) that a contract with the respondents/defendants has to be in conformity with Article 299 of the Constitution of India and which had admittedly not been entered into; (v) that no contract came into being on the acceptance letter dated 11th August, 2003 aforesaid of the appellant/plaintiff, inasmuch as the respondents/defendants vide letter dated 23rd August, 2003 made a counter offer and which was not accepted by the appellant/plaintiff within the time limited for acceptance thereof; (vi) that there was thus no legally enforceable contract between the parties and the question of awarding any damages for

breach thereof did not arise.

6. I have also at the outset enquired from the counsel for the appellant/plaintiff about the tender document inasmuch as the same would be necessary to understand the correspondence aforesaid proved before the Court and to determine when the binding contract was to come into being.

7. The counsel for the appellant/plaintiff has fairly admitted that the same has not been filed or proved and is not even available.

8. I am of the opinion that without the tender document it is not even possible to determine the compensation if any to which the appellant/plaintiff would be entitled to inasmuch as the letter dated 23rd August, 2003 supra does not contain any of the terms and conditions, not even the rates at which the payments was to be made by the respondents/defendants to the appellant/plaintiff.

9. The counsel for the appellant/plaintiff has however contended that since the respondents/defendants had reneged from the contract only on the ground of financial implications and administrative exigencies and in public interest, the same was not deemed relevant and no issue was also framed thereon.

10. I am unable to agree.

11. The respondents/defendants vide letter dated 26th September, 2003 supra did not terminate the contract. What they did, was to withdraw the offer. It was thus for the appellant/plaintiff to prove before the Court that the matter had proceeded beyond the stage of offer and that a binding contract had come into being between the parties. The petitioner has however utterly failed to do so.

12. Though I entertain doubts as to the correctness of the observation of the learned ADJ, of the letter dated 23rd August, 2003 being in the nature of a counter offer, inasmuch as the contract had to be in terms of the tender and the letter dated 23rd August, 2003 did not claim to vary the said terms but the same would not come in the way of myself otherwise agreeing with the reasoning of the learned ADJ that the appellant/plaintiff has failed to prove that a binding contract had come into being between the parties. It cannot be lost sight of that the appellant/plaintiff, vide its letter dated 11th August, 2003, while conveying its acceptance had called upon the respondents/defendants to award the contract at the earliest and the respondents/defendants vide letter dated 23rd August, 2003 awarded the contract, subject to the compliance by the terms and conditions mentioned therein and which the learned ADJ has rightly held that the

appellant/plaintiff has failed to prove / establish that it did comply with all the terms and conditions which were to be complied with by 30th August, 2003. Merely because the appellant/plaintiff may have complied with one of the terms and conditions of deposit of security money would not absolve the appellant/plaintiff in the absence of any waiver, from performing the other tasks for the award of contract.

13. Thus, on the basis of the documents and oral evidence adduced before the Trial Court, no fault can be found with the conclusion arrived at by the Trial Court, of no binding contract having come into existence between the parties.

14. Not only so, as aforesaid, the appellant/plaintiff has totally failed to prove that it has suffered any damages. Though the Director of the appellant/plaintiff in his evidence claimed that he has engaged the Guards and expended money thereon but failed to establish the same by producing before the Court the witnesses in support thereof. As aforesaid, even the rate at which the appellant/plaintiff was entitled to claim from the respondents/defendants has not been proved. The appellant/plaintiff which is otherwise in the business of providing security services failed to prove that the amount claimed to have been spent by it was wasted or was not utilised

for the purposes of performance of other contracts of the appellant/plaintiff.

15. There is thus no merit in the appeal, which is dismissed.

No costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

AUGUST 27, 2015

bs