



2024:DHC:8653-DB



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

+ **W.P.(C) 14441/2024 & C.M.Nos.60517-60518/2024**

WELL PROTECT MANPOWER SERVICES PVT. LTD

.....Petitioner

Through: Mr. Ramesh Singh, Senior
Advocate, Mr. Tarkeshwar
Nath and Mr. Harshit Singh,
Advocate.

versus

BABA SAHAB AMBEDKAR HOSPITAL & ORS.

.....Respondents

Through: Mr. Shiven Varma, Advocate
for R-1 & 2.
Mr. Dhruv Malik, Advocate for
R-3.

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Date of Decision: 6th November, 2024

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, CJ : (ORAL)

1. Present writ petition has been filed by the petitioner to quash and set aside the Bid Document *vide* Bid Number GEM/2024/B/5256946 dated 6th August, 2024, alongwith the Contract *vide* GEMC-511687711535800 dated 09th October, 2024 awarded in favour of respondent no.3.

2. Mr. Ramesh Singh, learned senior counsel for the petitioner states that without burdening this Court with the previous disputes and litigation filed in that regard, the present petition questions the hasty



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opening of the financial bid and equally hasty award of contract in favour of respondent no.3. He states that while the notice inviting tender bearing GEM/2024/B/5256946 dated 6th August, 2024 was challenged by the petitioner in W.P.(C) 12076/2024 and is pending adjudication before this Court, the respondent-hospital without awaiting the outcome hastily awarded the contract to respondent no.3. It is this action which is being challenged by the petitioner in the underlying writ petition.

3. Mr. Ramesh Singh, learned senior counsel for the petitioner states that challenge of the petitioner to the tender is primarily on the premise that the same violates the provisions pertaining to 'Supervisors' as provided in Rule 10 of the Delhi Private Security Agencies (Regulation) Rules, 2023 (hereinafter referred to as "*DPSA Rules*"). He states that the said rules are statutory and have been framed in exercise of powers conferred by Section 25 read with Clause (i) of Section 2 of the Private Security Agencies (Regulation), Act, 2005 (hereinafter referred to as "*PSAR Act*"). He states that it is trite that in case of contradictions or repugnancy between the terms of the contract on the one hand and provisions of a statute, the statutory provision will override those of the contractual terms. He states that admittedly in the present case, the respondent-hospital issued the tender for 227 security guards and sought for seven (7) supervisors to monitor the 227 security guards. He states that this is contrary to and in violation of Rule 10 of the DPSA Rules which prescribes one supervisor to supervise the work of not more than 15 private security guards. In case this rule were to be followed, at least 15 supervisors are required for 227 security guards. He states that this prescription



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not having been followed, the tender and the subsequent contract issued to the private respondent no.3, ought to be quashed and set aside.

4. Learned senior counsel for petitioner also states that while this Court was cognizant of the challenge by the petitioner to the tender issued on 6th August, 2024 in W.P (C) No.12076/2024 and has listed the matter for consideration of 05th February, 2025, respondent-hospital was neither under any statutory compulsion nor orders of the Court to open the financial bid, yet, hurriedly awarded the contract. He states that this was done purely with the intention to frustrate the W.P.(C) 12076/2024 and non suit the petitioner. He further states that it is unfathomable as to how the respondent no.3 would work out the contract inasmuch as not only has the estimated cost of the contract been decreased in the present tender, the respondent no.3 is likely to incur substantial cost on account of eight (8) additional supervisors to be appointed in accordance with Rule 10 of DPSA. According to him, this subterfuge would result in the bid cost as submitted by the respondent no.3 getting substantially hiked up which would disentitle respondent no.3 from being declared L1, thus violating the conditions of the tender document.

5. This Court has heard the arguments of Mr. Ramesh Singh, learned senior counsel and Mr. Shiven Varma learned counsel for the respondent nos.1 and 2 and Mr. Dhruv Malik, learned counsel for the respondent no.3.

6. It is not disputed that respondent no.3 was the successful bidder of the tender in question and a contract was awarded on 9th October, 2024 to it. The respondent no.3 has also deposited a sum of



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Rs.3,54,000/- to GeM portal on 10th October, 2024 on account of transaction charges. It is also stated that the respondent no.3 has completed the taking over of the site from the existing agency on 16th October, 2024. Respondent no.3 also has informed that it has mobilized its resources and has incurred significant cost for uniform, batons, walkie-talkies, travel of manpower along with their boarding and lodging.

7. While it is true that the statutory provisions would override the contractual terms to the extent of repugnancy, yet in this case, the contract having already been awarded to respondent no.3, who has also filed an undertaking in the form of an affidavit to comply with the provisions of Rule 10 of the DPSA, we do not find any reason to interfere with the contract so awarded. For clarity, the relevant para of the affidavit of respondent no.3 is reproduced hereunder:-

“11. That in furtherance of the directions of this Hon'ble Court vide its order dated 16 October, 2024, I being the sole proprietor of the Respondent No. 3, unequivocally state that the Respondent No. 3 will abide by all provisions of PSARA Act and DPSA Rules applicable including the provisions pertaining to Supervisors and continue to abide to all other applicable statutory compliances.”

8. This Court also notes that the tender does stipulate the requirement of seven (7) supervisors. Though the number of supervisors qua 227 security guards would be fifteen (15) supervisors as per the Rules, yet it is not a situation where no supervisor was requisitioned in the tender documents originally. On this score too, this Court finds that there appears to be an error, albeit ostensibly unintentional, in mentioning seven (7) supervisors rather than fifteen (15) supervisors in the tender documents. This lacuna having been now fulfilled by way of an affidavit of respondent no.3, nothing



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further survives for the adjudication by this Court on that score.

9. So far as the argument regarding hasty award of contract to respondent no.3 as also the additional burden of eight (8) additional supervisors are concerned, this Court is of the considered opinion that having regard to the fact that the term of the erstwhile security agency was coming to end on 16th October, 2024, coupled with the fact that in W.P.(C)12076/2024, no restraint order was granted in favour of petitioner, the respondent-hospital was at liberty to proceed with the opening of the financial bid followed with award of the contract. With respect to the second submission regarding the financial burden of eight (8) additional supervisors hiking the bid cost of respondent no.3, resulting in disintitling respondent no.3 as L1 is concerned, this Court has already noted the undertaking rendered by way of an affidavit by the respondent hereinabove and is satisfied that the respondent no.3 would abide by the undertaking within the terms of the contract which has been awarded to it.

10. In that view of the matter, nothing survives for adjudication in the present petition and consequently, the same is disposed of as such alongwith the pending applications.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

NOVEMBER 06, 2024/rl