

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

Date of Decision: September 04, 2017

+ **W.P.(C) 7782/2017 & C.M.32094/2017**

IRONMAN SECURITY SERVICES PVT LTD Petitioner

Through: Mr. Kaushal Yadav and Mr.
Nandlal Mishra, Advocates

versus

UNION OF INDIA AND ANR Respondents

Through: Mr. Vijay Joshi, Senior Panel Counsel
with Dr. K.T. Bhowmik, Advocate

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE CHANDER SHEKHAR

S. RAVINDRA BHAT, J. (OPEN COURT)

1. Petitioner complains of arbitrariness in the manner of consideration of its tender by the respondents and therefore, seeks appropriate direction under Article 226 of the Constitution of India.

2. The brief facts of the case are that on 3rd April, 2017, an E-Tender Notice (*hereinafter called 'NIT'*) was published inviting online bids for the "Two Bids System" from amongst the registered private security agencies with relevant experience, to provide trained security personnel to healthcare institutions. The NIT required 250 Security Guards, 11 Security Supervisors and 36 Quick Response Teams for the Zone-I and 250 Security Guards, 10 Security Supervisors and 12 Quick Response Teams for Zone-II institutions of the respondents. The bidders were advised to apply for the two Zones, but through separate applications.

The pre-bidding meeting was scheduled on 2nd May, 2017 and the bid submission i.e. sale/form downloading, etc., was to start on 8th April, 2017. The bid was to open on 11th May, 2017. The petitioner complains that even though its bid was compliant in all relevant particulars, the respondents arbitrarily emphasized certain errors in the tender documents furnished by it and rejected the bid altogether. The contentious condition in this case is the stipulation in para 1(ii) of the NIT which defines the eligibility and reads as under:-

"1(ii). Should have provided such services to the Healthcare Institution with at least 300 bedded strength for at least three years, the bed strength of hospital may be mentioned in the tender. The agency must have experience of providing at least 100 Security Guard in any Healthcare Institution in one location."

3. The petitioner's bid *inter alia* claims that it had been awarded contracts and therefore provided services into two institutions i.e. King George Medical Hospital, Lucknow, U.P. and Metro Group of Hospitals, both of which stipulated 100 personnel. It is submitted that in the tender form, however, the necessary requisite strengths were not indicated even though the bid supporting documents did so.

4. The petitioner in this case was informed about the tender rejection on 2nd August, 2017 after which apparently it represented to the respondents but without any avail. The representation was rejected by the respondents on 18th August, 2017, in the following terms: -

"Sir,

I am directed to refer your representation No. Ironman/Tender/Legal/97/2017 dated 02.08.2017 and 03.08.2017 on the tender Enquiry No.15-31/Admn-

IV/Security VMMC-SJH/Tender dated 03.04.2017 tender for the security services in the VMMC & Safdarjung Hospital and to inform that the representation was considered by the competent authority in terms of tender terms and conditions but not accepted.

This issues with the approval of Medical Superintendent.

Yours faithfully”

5. Learned counsel for petitioner reiterated the grounds urged in support of the writ petition and submitted that the tender rejection was without application of mind. It is submitted that there was ample documentary evidence to support the bid and further that the petitioner clearly possessed the minimum eligibility threshold bar of having provided 100 security guards/personnel to institutions, specifically the two institutions which had awarded the contracts i.e. King George Medical Hospital, Lucknow, U.P. and Metro Group of Hospitals. It was also highlighted that the tender rejection in this case is mindless and therefore violative of Article 14 of the Constitution of India. The respondents' position however is that besides the omission –which *ipso facto* glaringly supported the tender rejection, even the documentary evidence given in support of the tender does not substantiate the petitioner's eligibility. It was further highlighted on behalf of respondents (*who are represented pursuant to advance notice of these proceedings*) that so far as the petitioner's claim of having provided adequate security service personnel to Metro Hospital is concerned, the petitioner merely claims that the 400 beds serviced were of Metro Group Hospitals, thereby signifying that not one but several institutions were covered by one

contract; thus, undermining the claim that any one institution serviced by the petitioner was not less than 100 personnel. As far as the King George Medical Hospital, Lucknow is concerned, it is submitted that both certificates provided merely posting orders and in the absence of any actual contract or a certificate to that effect, the claim of having crossed the threshold eligibility bar was not proved.

6. It was additionally stated that there were posting orders in respect of the 42 personnel—in King George Medical Hospital, Lucknow, which contained the petitioner's name (the order dated 30th January, 2016). However, there was no further material to substantiate that petitioner had in fact been awarded actual contract by that institution. It is quite evident that the controversy in this case is narrow; as it is to the petitioner's claim of having basic eligibility to bid. The petitioner admits that the tender form in this case was not filled correctly rather the experience shown was erroneous. However, he further argues that the bid ought not to have been rejected merely on the basis of such error given that the documentary support of the claim had existed. The respondents naturally counter this argument by submitting that even the documentary evidence given in support of the claim does not support the claim of the petitioner. The Court is inclined to accept the later submission having regard to the nature of documentary evidence because the petitioner's claim of providing security guards/personnel to the Metro Group of Hospitals does not clearly comply with the tender condition i.e. of having experience of providing at least 100 security guards in any healthcare institution in one location. As far as the claim with respect to King George Medical Hospital, Lucknow is concerned, the Court notices that there is no

certificate or copy of the contract or even the tender award order; rather the petitioner relies—to substantiate its claim, upon two posting orders awarded to it, which though lists its name but does not clearly comply with the eligibility condition of having experience of providing at least 100 security guards in any healthcare institution in one location.

7. For the above reasons, the Court is satisfied that the respondents' decision to reject petitioner's tender or bid suffers neither from vires of arbitrariness nor is it mindless as is alleged. The writ petition is dismissed being without merits. The pending application also stands disposed of.

S. RAVINDRA BHAT
(JUDGE)

CHANDER SHEKHAR
(JUDGE)

SEPTEMBER 04, 2017

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