

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.153 of 2018

In

Civil Writ Jurisdiction Case No.14970 of 2016

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The Spider Protection Services Pvt. Ltd. through its Director, Corporate Office at 126/11 R- Block, Top Floor, Govind Nagar, Kanpur- 208006 (U.P.)

... .. Appellant/s

Versus

1. The Imperishable Security Services Pvt. Ltd. Through its Director Kaustabh Ranjan having its Head Office- F-3/78-79 Ground floor, sector-16 Rohini, Delhi- 110089 and Corporate office: Sharmkanta Chowk, N.H. 57 Mahesh Bhagat Banwari Lal Intermediate College Road, Bairiya, P.S.- Ahiyapur, District- Muzaffarpur, Bihar and Branch Office: Karmalichak, Near Kirti Petrol pump, N.H 30, Fatuha Road, Patna City- 800009.
2. The State of Bihar through its Principal Secretary Department of Health, Govt. of Bihar, Patna.
3. The Director (Health Service), Government of Bihar, Patna.
4. The Regional Director, Tirhut Division Health Services Muzaffarpur.
5. The District Officer Sitamarhi.
6. The Superintendent, Sadar Hospital, Sitamarhi.
7. The Deputy Superintendent of Sadar Hospital, Sitamarhi.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Arup Kumar Chongdar, Advocate
For the State	:	Mr. S.D. Yadav, AAG-IX
For private respondent	:	Mr. Karandeep Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-12-2018

Heard Shri Arup Kumar Chongdar, learned counsel for the appellant, Shri S.D. Yadav, Additional Advocate General-IX for the State and Shri Karandeep Kumar, learned counsel for the respondent-petitioner.

2. The dispute centers around the tender relating to the placement of Security Guards at the Sadar Hospital,



Sitamarhi. The facts in detail have been narrated by the learned Single Judge in the impugned judgment and, therefore, it is not necessary to reproduce them once again but the dispute in short is that the respondent-petitioner filed the writ petition giving rise to this appeal challenging the work order dated 2nd of July, 2016 issued to the appellant for the said work on the ground that the respondent-petitioner had not been intimated about either the opening of the technical bid or the financial bid which was a *sine qua non* of the tender conditions and as a matter of fact the respondent-petitioner was kept away from participation in the tender bidding process as a result whereof prejudice has been caused to him. Other grounds were also taken in support thereof to which a response was filed by the State through a counter affidavit and a supplementary counter affidavit and the appellant who was the Respondent No. 8 in the writ petition also filed a response whereafter the learned Single Judge came to the conclusion that the writ petition deserves to be allowed on account of the procedural infirmities as pointed out by the learned Single Judge that hit Article 14 of the Constitution of India. The learned Single Judge concluded that the manner of service of notice on the respondent-petitioner could not be proved and, therefore, the said action was treated to be unfair



and even otherwise the learned Single Judge perused the records relating to the documents on which reliance had been placed by either side whereafter the writ petition was allowed.

3. This appeal is by the Respondent No. 8 contending that as a matter of fact there ought not to have been any interference inasmuch as the appellant was the lowest bidder when the financial bids were opened and no prejudice or malice could be demonstrated much less a procedural violation so as to allow any interference under Article 226 of the Constitution of India keeping in view the scope of interference which has time and again been spelt out by the Apex Court including that in the case of **Michigan Rubber (India) Limited Vs. State of Karnataka and others**, reported in **(2012) 8 SCC 216, Paragraph 24**. Learned counsel submits that if the respondent-petitioner has failed to make out any case so as to establish that any special favour had been carved out in support of the bid of the appellant then in that event the action cannot be presumed to be arbitrary nor any public interest was being affected and consequently in view of the said proposition of law there is a limited scope of interference ignoring which the learned Single Judge has proceeded to allow the writ petition and which judgment deserves to be set aside.



4. Learned counsel further submits that the appellant is not to gain in any way nor any public purpose would be served inasmuch as the respondent-petitioner admittedly is not the lowest bidder and even otherwise nothing has been shown so as to indicate that the bid of the appellant suffered from any infirmity on account of the tender conditions.

5. Shri S.D. Yadav, learned counsel for the State contends that as a matter of fact there was neither any procedural violation nor any prejudice has been caused and in the absence of any material to the contrary as alleged by the respondent-petitioner there was no occasion for any interference. He submits that even if there was some discrepancy in the records, the learned Single Judge had himself summoned the records and perused the same and recorded dissatisfaction but in spite of the same the learned Single Judge proceeded to interfere in the matter which was unwarranted.

6. Learned counsel for the respondent-petitioner Shri Karandeep Kumar contends that specific allegations of infirmities had been pointed out and the fact that the respondent-petitioner had not been served with any notice pertaining to the opening of financial bids is itself evident. He contends that the appellant had resorted to filing of a manipulated document



namely the document recording the opening of the technical bid which fact has been clearly noticed by the learned Single Judge and, therefore, the claim of the appellant was founded on documents that were manipulated.

7. Learned counsel for the appellant on the other hand contends that the respondent-petitioner suppressed the material fact of the service of notice with regard to participation in the technical bid and this suppression itself was sufficient to dismiss the writ petition. In the circumstances, the appeal deserves to be allowed and the impugned judgment deserves to be set aside.

8. Having considered the submissions raised it is correct that the respondent-petitioner had not indicated any fact relating to the service of notice for participating in the technical bid but what is more surprising is that the appellant who was the respondent No. 8 filed the document pertaining to the recording of the minutes of the technical bid i.e. Annexure-R/3 at Page-61 of the paper-book of the writ petition. The said document indicates that there is no signature of the second member namely District Sales Tax Officer, Sitamarhi. Secondly, the serials of signatures of the participants are that of one Mr. Abhishek at Serial No. 1, Shri Amit at Serial No. 2, a third



person who has initialed as AKS at Serial No. 3 and Shri G. Sharma at Serial No. 4.

9. The State had filed a counter affidavit and along with the counter affidavit the technical bid opening document that was filed is Annexure-A to the counter affidavit at page-45 of the paper-book of the writ petition. On a perusal of this document, we find that there is a signature of the District Sales Tax Officer, Sitamarhi with an interpolated date thereon. Not only this, the serialim of the participants and their signatures are almost reversed with Mr. G. Sharma at the top and Mr. Abhishek right at the bottom.

10. It is not understandable as to how this reversal and interpolation has crept in inasmuch as it is the case of the State that the document filed as Annexure-A at page-45 is the correct document and it was found on record on perusal by the learned Single Judge. If that is so, then the respondent-petitioner filed a document which is not the same document that is on record. The appellant's counsel has been unable to explain as to how and from where such document was received and how could it be brought on record to demonstrate the recording of the minutes of the technical bid. Since the very recording of the technical bid becomes doubtful on a comparison of these two



documents which are on record and do not require any further investigation, it is evident that the opening of the technical bid was also clearly manipulated.

11. Coming to the issue of the opening of the financial bid, it is undisputed on the facts on record that there is no evidence of service of notice on the respondent-petitioner except for the indication of the dispatch of the notice as alleged by the State-respondent. In this view of the matter, this entire procedure relating to opening of the technical bid and the participation of the respondent-petitioner either in the technical bid or in the financial bid remains under a serious cloud and has not been established by the State.

12. Consequently, the learned Single Judge was justified in allowing the writ petition. We do not find any merit in the appeal. The same stands rejected accordingly.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-

AFR/NAFR	AFR
CAV DATE	
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