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

+ **W.P.(C) 184/2019**

PUSHPA DEVI

..... Petitioner

Through: Mr M.K. Mathur, Advocate.

versus

DIRECTOR, AYUSH NCT OF DELHI

..... Respondent

Through: Mr Satyakam, ASC for GNCTD with
Mr Roshan on behalf of Principal,
Tibbia College.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **11.01.2019**

1. Issue notice. The learned counsel appearing for the respondent accepts notice.
2. The petitioner has filed the present petition, *inter alia*, praying that directions be issued to the respondent to enter into the contract awarded to the petitioner – in the name of her sole proprietorship concern M/s Green Housekeeping – and act in terms of the awarded contract.
3. The petitioner (M/s Green Housekeeping) is a Government Contractor providing house-keeping and sanitation services in Government Hospitals.
4. On 04.06.2018, a bid was held through the respondent (Director, AYUSH, NCT of Delhi) for the supply of 114 Nursing Orderlies through GeM portal of A&U Tibbia College, Karol Bagh, New Delhi. In the said bid, M/s Green House Keeping was selected L-1 on the basis of experience. The said bid was approved by the Secretary, H & FW Department (hereafter

‘the Department’) for a contract amounting to ₹2,26,21,959/- in favour of the petitioner. The term of the said contract was for a period of eleven months. Thereafter, the said bid was also approved by the Department.

5. The letter for award of contract was issued on 06.12.2018 to the petitioner. In terms of the said Letter of Award, the petitioner was requested to fulfil the following conditions:

“1. You will submit a Performance Bank Guarantee of Rs. 22,62,196/- (Rupees twenty two lakh sixty two thousand one hundred and ninety six only) within 15 days of issue of this work order.

2. You will execute on agreement with the department within 15 days of issue of this work order as per the terms & conditions of GeM.

3. You will start supply of N.O from the morning of 10.12.2018 and tender shall be for 11 month only with Rs. 588/- per day per person on minimum wages as approved by Competent Authority.

4. You shall deploy 19 no. of Nursing Orderlies in A & U Tibbia College & Hospital and 95 no. of Nursing Orderlies as per the direction Of Deputy Director, Directorate of AYUSH.

If agreed submit your acceptance and joining letter up to 08.12.2018.”

6. In compliance to the aforesaid, the petitioner issued a letter of acceptance and joining report dated 07.12.2018 to the Principal of A & U Tibbia College and the same was duly received by the respondent. On the same day, the petitioner also provided the details of the employees (Nursing

Orderlies).

7. Thereafter, on 10.12.2018, the respondent issued a letter restraining the petitioner from commencing the performance of the contract till execution of the contract agreement and furnishing of the performance bank guarantee. In the said letter, the petitioner was further directed to await intimation to commence the performance of the obligations (providing Nursing Orderlies) under the contract.

8. Accordingly, on 12.12.2018, the petitioner deposited the performance bank guarantee for a period of twenty-four months. Thereafter, the petitioner also issued a letter dated 24.12.2018 to the Department requesting to start the awarded contract. The petitioner further made a purchase of a stamp paper of ₹1,000/- for the contract agreement.

9. The petitioner's grievance is that she has complied with all the conditions required to be fulfilled to commence the performance of the contract, however, the respondent has failed to execute the contract agreement and has obstructed the petitioner from performing her contractual obligations.

10. Mr Satyakam, the learned counsel appearing for the respondent states that the petitioner has been informed not to commence the contract, as it was discovered that the tender was floated on the basis of the Nursing Orderlies being semi-skilled persons. He states, on instructions, that it was subsequently observed that the Nursing Orderlies are un-skilled persons and, therefore, the decision has been made to re-tender for the contract.

11. It is, plainly, clear from the averments and the sequence of events that a binding contract had come into existence even though a contract

agreement was not signed. It is also clear that the petitioner has alternate remedies for breach of contract.

12. In this view, the present petition is disposed of leaving it open for the petitioner to institute any appropriate action including for damages as so advised.

JANUARY 11, 2019
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VIBHU BAKHRU, J