

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20128 of 2021

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M/S Scientific Security Management Services Pvt. Ltd. through its Assistant Vice President, Operation Mr. S. Sohail Akhtar Jameel (Male) aged about 49 years, S/o Late Prof. S. Shahid Ahmad, resident of Near Tripolia Hospital, Prof. Colony, Tripolia, Sampatchak, Patna having head office at E-1, Mansarover Garden New Delhi- 110015. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Home Department (Special Cell) Government of Bihar, Patna.
2. The Secretary, Home Department (Special Cell) Government of Bihar, Patna.
3. The Director, Indira Gandhi Institute of Medical Science, Sheikhpura, Patna - 14, Bihar.
4. M/S Trig Detective Pvt. Ltd. Office No. D/3-6, Ground Floor, Sitaldevi CHSL., Opp. Indian Oil Nagar, D.N. Nagar, Andheri (W), Mumbai - 400053.

... .. Respondent/s

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Appearance :

For the Petitioner/s	: Mr. Reyaz Alam, Advocate Mr. Jitendra Kishore Verma, Advocate Mr. Rashid Zafar, Advocate Mr. Anjani Kumar, Advocate
For the State	: Mr. Sheo Shankar Prasad, S.C. 8 Mr. Ruchikar Jha, A.C. to S.C. 8
For the Respondent No.3	: Mr. Sunil Kumar Singh, Advocate
For the Respondent No.4	: Mr. Alok Kumar, Advocate Mr. Raghwendra Pratap Singh, Adv Mr. Birendra Kumar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 02-02-2023

Heard learned counsel for the petitioner, learned counsel for the Indira Gandhi Institute of Medical Science ('IGIMS' in short), learned counsel for the State of Bihar and learned counsel for the respondent no. 4.



The petitioner has filed the instant writ application for the following relief(s) :-

“(i) For canceling the awarded service contract of M/S Trig Detective Pvt. no, 4 letter no: /2021/2321 आई. जी.आई.एम.एस. dated 08.11.2021 (Annexure-7) which is in violation of section 4 of PSARA 2005 (The Private Security Agency (Regulation) Act 2005) which prohibits any person or private security agency to engage or provide private security guard without holding a licence issued under PSARA 2005 Act which respondent no. 4 does not possess as per petitioner's information.

(ii) For declaring that respondent no-3 is not legally entitled in law to add new clause in provision of para 2.2 of its "Instructions to the Bidder awarding service of contract to the security agency on undertaking of registration within two month after award of this service contract at IGIMS, which is in violation of Section 4 PSARA 2005 (The Private Security Agency (Regulation) Act 2005) that too after start of tender process.

(iii) For a direction on the respondents concerned to award the service contract to the petitioner who are amongst the successful bidder whose bid has been found to be responsive and who is eligible and qualified to perform the service contract with regards to deployment of security agencies for providing watch and ward services for different areas for Unit B on two years service contract basis at IGIMS, Sheikhpura, Patru 800014.

(iv) For grant of such other relief or reliefs to which



the petitioner is found entitled to in law and in the facts of this case.”

The case of the petitioner in brief is that pursuant to the E-tender invited by the IGIMS on 3.7.2021 for deployment of security agency on contract for a period of two years, the petitioner which is a security agency applied for watch and ward service for Unit-B. The IGIMS published a corrigendum on 28.7.2021 to the E-tender notice which was to the effect that the bidder should be registered under the Private Security Agency (Regulation) Act, 2005 ('PSARA 2005' in short) and corresponding regulations of respective State Governments as applicable in Bihar, the bidder must have Zonal/Regional Headquarters in Bihar or undertaking of registration within two months after award of this service contract at IGIMS. Further, by the said corrigendum the date of online submission of complete tender was extended till 5.8.2021 (3.30 pm) and hard copy of the same was to reach by 7.8.2021 (1 pm). The petitioner participated in the E-tender and along with three other bidders was declared qualified by the committee of IGIMS.

It is the case of the petitioner that the respondent no. 4 not holding licence under PSARA 2005 was not qualified to be included in the meeting of award of contract for Unit-B as he was not satisfying all the eligibility criteria as required by law. It



is further case of the petitioner that the petitioner brought to the notice of the Director, IGIMS the contents of the letter dated 7.9.2021 issued by the Home (Special) Department, Government of Bihar to all government, semi government and private organization not to engage service of any security agency not having PSARA 2005 licence issued by the controlling authority ie. the Home (Special) Department, Government of Bihar. In spite of the petitioner fulfilling all the criteria, the respondent IGIMS awarded the service contract in favour of the respondent no. 4 in violation of PSARA 2005. The said allotment being in violation of section 4 of the PSARA 2005 is not sustainable. It was further submitted that while Clause 2.2 of 'instructions to the bidders' provided that the bidder should be registered under PSARA 2005 and corresponding regulations of respective State governments as applicable in Bihar, this specific provision could not have been modified as was done by the corrigendum dated 28.7.2021.

It was thus submitted by learned counsel appearing for the petitioner that the instructions to the bidders as contained in Annexure-3 to the notice inviting E-tender by the IGIMS having illegally been modified by corrigendum dated 28.7.2021 and the contract having been awarded to the respondent no. 4 in spite of



not being registered under PSARA 2005, the act of IGIMS was illegal, not sustainable and thus, the contract awarded to the respondent no. 4 vide letter dated 8.11.2021 (Annexure-7) be cancelled.

Counter affidavits were filed on behalf of the State of Bihar, the IGIMS and the respondent no. 4.

It is the case of the respondent State of Bihar that the Private Security Agency (Regulation) Act, 2005 was enacted and came into effect on 23.6.2005. As per their record no licence was granted to the private respondent no. 4 under section 4 of PSARA 2005 on or before 3.7.2021 ie. the date of invitation of E-tender. Licence under PSARA 2005 was issued to the respondent no. 4 on 25.1.2022. It was further contended by the respondent State of Bihar in the supplementary counter affidavit that only the licensed agencies provided by the State government can provide security in any Government/Semi Government/Non-Government establishment and premises located in the State. The working of private security agency without a valid licence and providing security is a punishable offence.

In the counter affidavits filed on behalf of the Director, IGIMS their case is that vide notice dated 3.7.2021 the IGIMS



invited pan India E-tender for deployment of security agencies for providing watch and ward services for different areas on contract basis for two years. A corrigendum dated 28.7.2021 was published making amendments, especially in paragraph no. 2.2 to the effect that either the bidder should be registered under PSARA 2005 licence or should provide an undertaking of registration within two months after award of this service contract at IGIMS. In the pre-bid meeting held on 13.7.2021, taking into account the request of the seven bidders, as they were from outside Bihar, the selection committee agreed and the corrigendum dated 28.07.2021 was uploaded on the website of IGIMS. In the meetings that followed, M/s SIS was selected for both Unit-A and Unit-B. However, as per tender rule one company could be given the assignment for only one unit and as M/s SIS selected the assignment of Unit-A, Unit-B was given to respondent no. 4 which was next in line. After approval of the competent authority, security assignment for Unit-A was awarded to M/s SIS and for Unit-B it was awarded to respondent no. 4, both on 26.11.2021.

It is further case of the IGIMS that section 4 of PSARA 2005 provides that no person shall carry on business of private security agency unless he holds a licence issued under the Act.



Further, the Special Secretary, Home Department (Special Branch), Bihar had requested all the heads of institutions to ensure that the security agency should have licence before commencement of work. The respondent no. 4 who was awarded service contract of Unit-B on 8.11.2021 requested the authorities at IGIMS to extend the date for submission of PSARA licence by fifteen working days in view of the prevailing corona pandemic and the same was extended by five days till 12.1.2022. Further request was made by the said respondent no. 4 for extension of ten days time for submission of PSARA 2005 licence and the Medical Superintendent of IGIMS granted extension till 28.1.2022. It is the case of the IGIMS that the respondent no. 4 submitted the PSARA 2005 licence on 27.1.2022 and it was only thereafter that the agreement was entered into between the IGIMS and respondent no. 4 on 2.2.2022 and the respondent no. 4 was directed to start work of Unit-B.

It is submitted by learned counsel appearing for the IGIMS that the date of submission of PSARA licence by private respondent no. 4 was extended in larger public interest.

The respondent no. 4 filed a separate counter affidavit stating therein that they are one of the leading professional



security solution providers with more than forty years of experience and have been providing more than ten thousand security and manpower services all over the country. They have licence of many states issued under PSARA 2005 prior to taking licence of the State of Bihar. It is their case that in the pre-bid meeting which took place on 13.7.2021, some of the bidders requested the selection committee to give them two months time for submission of licence as required under PSARA 2005 after the award of the service contract. The same was agreed upon by the selection committee and accordingly the corrigendum to the E-tender was published on 28.7.2021 making amendment with respect to the provision contained in paragraph no. 2.2 of the 'instructions to the bidders'. Subsequently on opening of the bids, in the meeting of the Technical Evaluation Committee the respondent no. 4 was selected and awarded the assignment for security of Unit-B on 8.11.2021. The respondent no. 4 was required to take PSARA 2005 licence from the State Government within two months to commence work and accordingly, requested the IGIMS for some more time to submit the licence. The extension was granted till 28.1.2022. The petitioner submitted the PSARA 2005 licence on 27.1.2022 and thereafter commenced work from 1.2.2022.



It was submitted by learned counsel appearing for the respondent no. 4 that there has been no illegality in the award of tender nor has any prejudice been caused to any of the parties. The answering respondent only after obtaining the licence under PSARA 2005 entered into an agreement with IGIMS and commenced work. It was submitted that thus, there is no merit in the instant application filed by the petitioner and the same be dismissed.

Having heard learned counsel for the parties and having perused the material on record it transpires that the relevant facts for the instant application are that the respondent IGIMS on 3.7.2021 came out with a notice inviting E-tender for deployment of security agencies for providing watch and ward services for different areas (Unit-A and Unit-B) on two years service contract basis at IGIMS, Patna. As per the notice the pre-bid meeting was fixed for 13.7.2021, the last date for submitting of tender document was 24.7.2021, the closing date and time for receipt of bids was 26.7.2021 at 3 pm and the date for opening of technical bids was 27.7.2021 at 3 pm.

As per the 'instructions to the bidders' contained in Annexure-III to the tender document, Clause 2.2 thereof provided that the bidder should be registered under PSARA



2005 and corresponding regulations of respective State government as applicable in Bihar (both Unit-A and Unit-B) and further the bidder must have Zonal/Regional/Headquarters. Subsequent to the pre-bid meeting on 13.7.2021, the IGIMS came out with a corrigendum dated 28.7.2021 to the E-tender making certain changes/modifications in the notice inviting E-tender. One of the modifications relevant for the instant case was to the effect that the aforesaid requirement with respect to the tenderer being registered under PSARA 2005 as provided in Clause 2.2, the words 'or undertaking of registration within two months after award of this service contract at IGIMS' was added. Thus, the effect of this modification was that in view of the corrigendum, the tenderer were not required to be registered under PSARA 2005 on the date of submitting their bids but in case they were not already registered, they were required to furnish an undertaking that they would be registered within two months after award of the service contract at IGIMS. It would also be relevant to point out that pursuant to this corrigendum having been uploaded on the relevant website of Bihar government on 28.7.2021, by the said corrigendum itself the date of online submission of complete tender was extended from 26.7.2021 (3 pm) to 5.8.2021 (3.30 pm) and the date for opening



of technical bid was changed from 27.7.2021 (3 pm) to 9.8.2021 (3 pm).

The respondent no. 4 as also others submitted their bids and the tender was opened on 9.8.2021 in presence of all the bidders. The meeting of the Technical Evaluation Committee was held on 25.8.2021 and on subsequent dates. The security agency M/s SIS was selected for both Unit-A as also Unit-B. However, in view of the tender rule, as one company could be given assignment for only one unit, and as M/s SIS selected Unit-A for assignment, Unit-B was given to the private respondent and the award of service contract was communicated by the IGIMS to the private respondent by letter dated 8.11.2021. It is not in dispute that subsequent to award of the service contract at IGIMS, the private respondent filed an application for issuance of licence under PSARA 2005 which was issued to them on 25.1.2022 and it was thereafter that they submitted the PSARA 2005 licence on 27.1.2022, entered into an agreement with the IGIMS and commenced work on 1.2.2022.

In the case of **Michigan Rubber (India) Ltd. v. State of Karnataka** [(2012) 8 SCC 216], while dealing with the principles on which the Court could interfere in tender or



contractual matters in exercise of its power of judicial review and the requirements of the manner in which the State was required to act, the Hon'ble Supreme Court held as follows :-

“23. From the above decisions, the following principles emerge:

(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted; (d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably,



fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.

24. Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"? and

(ii) Whether the public interest is affected? If the answers to the above questions are in the negative, then there should be no interference under Article 226."

In the case of **Montecarlo Ltd v. NTPC Ltd** [(2016) 15 SCC 272] the Hon'ble Supreme Court held that the power of judicial review would be called for if the approach is arbitrary or malafide or procedure adopted is meant to favour one. It further held that the decision making process should clearly show that the said maladies are kept at bay.

The Hon'ble Supreme Court in the case of **Tata Cellular v. Union of India** [(1994) 6 SCC 651] held as follows :-

"77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?



2. *Committed an error of law,*
3. *committed a breach of the rules of natural justice,*
4. *reached a decision which no reasonable tribunal would have reached or,*
5. *abused its powers.*

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of pro-



proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention". (Emphasis supplied)

Coming to the facts of the instant case, Clause 2.2 of the 'instructions to the bidders' (Annexure-3 to the tender document) provided that the bidder should be registered under PSARA 2005 and corresponding regulations of respective State governments as applicable in Bihar both Unit-A and Unit-B and further the bidder must have Zonal/Regional Headquarters in Bihar. It would be relevant to mention here that the Private Security Agencies (Regulation) Act 2005 which was notified in the Gazette of India, Extra Ordinary on 15.3.2006 was enacted for regulation of private securities agency. Section 4 thereof provided as follows:-

4. Persons or Private Security Agency not to engage or provide private security guard without licence.

—No person shall carry on or commence the business of private security agency, unless he holds a licence issued under this Act: Provided that the person carrying on the business of private security agency, immediately before the commencement of this Act, may continue to do so for a period of one year from the date of such commencement



and if he has made an application for such licence within the said period of one year, till the disposal of such application: Provided further that no private security agency shall provide private security abroad without obtaining permission of the Controlling Authority, which shall consult the Central Government before according such permission.

Thus, it is clear that the Act clearly provided that no person shall carry on or commence business of private security agency unless he held a licence issued under the Act.

The condition as contained in Clause 2.2 of the ‘instructions to the bidders’ which provided that the bidder should be registered under PSARA 2005 was a mandatory condition. The same was modified by the corrigendum dated 28.7.2021 according to which either the bidder should be registered under PSARA 2005 or were required to give an undertaking of registration within two months after award of the service contract at IGIMS. So far as the modification of the condition as contained in Clause 2.2 of the ‘instructions to the bidders’ is concerned, in the opinion of the Court, the same cannot be faulted in view of the fact that the same was done consequent to pre-bid meeting, it was with respect to all the parties and even the date for online submission of tender was extended from the earlier fixed date of 26.7.2021 to 5.8.2021.



The Hon'ble Supreme Court in the case of **B.S.N Joshi & Sons Ltd vs. Nair Coal Services Ltd & Ors.** [(2006) 11 SCC 548] held as follows:-

“66. We are also not shutting our eyes towards the new principles of judicial review which are being developed; but the law as it stands now having regard to the principles laid down in the aforementioned decisions may be summarised as under:

(1) if there are essential conditions, the same must be adhered to; (ii) if there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully:

(iii) if, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing:

(iv) the parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance with another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in nature could not be relaxed and thus the same



was wholly illegal and without jurisdiction:

(v) when a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with;

(vi) the contractors cannot form a cartel. If despite the same, their bids are considered and they are given an offer to match with the rates quoted by the lowest tenderer, public interest would be given priority.

(vii) where a decision has been taken purely on public interest, the Court ordinarily should exercise judicial restraint.”

In view of the facts narrated herein above, the essential condition for the bidders as contained in Clause 2.2 of the ‘instructions to the bidders’ duly modified by corrigendum dated 28.7.2021 was to the effect that either the bidder should be registered under PSARA 2005 or was required to give an undertaking of registration within two months after award of the service contract at IGIMS. The respondent no. 4 was by letter dated 8.11.2021 of the IGIMS communicated about the award of service contract. Thus, they were required to get themselves



registered within two months ie by 8.1.2022. On 6.1.2022 the respondent no. 4 requested the authorities of IGIMS to extend the date of submission of PSARA 2005 licence by fifteen working days and the same was extended by the IGIMS till 12.1.2022. This itself in the opinion of the Court was contrary to the essential condition as provided in the tender document duly modified by the corrigendum dated 28.7.2021, however, the PSARA 2005 licence was still not submitted. The respondent no. 4 once again on 18.1.2022 requested the Director of IGIMS for yet another extension of ten days time for submission of PSARA 2005 licence and the Medical Superintendent granted extension till 28.1.2022. It was on 27.1.2022 that the PSARA 2005 licence was submitted by the respondent no. 4 and he was asked by the IGIMS to commence work from 1.2.2022. The only explanation furnished by the respondent IGIMS was to the effect that the same was done because of corona pandemic and in larger public interest.

In the opinion of the Court, pursuant to the pre-bid meeting held on 13.7.2021, taking into account the suggestions of the bidders, Clause 2.2 of the 'instructions to the bidders' was suitably modified and uniformly applied. In terms of the modified condition, the bidder in case was not possessing the



PSARA 2005 licence, was required to be registered within two months after award of the service contract at IGIMS which in the instant case was 8.1.2022, the service contract having been awarded to the private respondent on 8.11.2021. There was no scope for the respondent IGIMS to further continue to extend the time for registration/submission of PSARA 2005 licence time and again, as asked for by the respondent no. 4.

Any extension after 8.1.2022 was clearly in teeth of an essential condition of the duly modified notice inviting tender and was clearly impermissible. Thus, the act of respondent IGIMS in accepting the submission of the PSARA 2005 licence by the private respondent on 27.1.2022 and the consequent agreement entered into between the IGIMS and the respondent no. 4 with respect to award of service contract for deployment of security agencies for providing watch and ward services for Unit-B for two years on contract basis at IGIMS Patna is clearly illegal, unreasonable, arbitrary and not sustainable in law and the same is set aside. Consequently the award of service contract to respondent no. 4 by the IGIMS, the subject matter of the instant application, is canceled.

The respondent IGIMS is directed to proceed with the tender for deployment of security agencies for providing watch



and ward service for Unit-B on two years service contract basis
at IGIMS Patna in accordance with law.

The writ application stands allowed.

(Partha Sarthy, J)

Sanjay Karol, CJ - I agree

(Sanjay Karol, CJ)

Prakash/-

AFR/NAFR	AFR
CAV DATE	09.01.2023
Uploading Date	02.02.2023
Transmission Date	

