



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

Date of decision: 16th AUGUST, 2023

IN THE MATTER OF:

+ **W.P.(C) 1194/2020 & CM APPLs. 3953/2020, 3954/2020, 8510/2020**

EAGLE HUNTER SOLUTIONS LTD Petitioner
Through: Mr. Satpal Singh, Advocate

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY & ANR
..... Respondent
Through: Ms. Anita Sahani, Advocate for R-1.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
JUDGMENT

1. The Petitioner has approached this Court for the following reliefs:-

“a) Pass an order, direction or writ in the nature of mandamus, thereby directing the respondent-university (respondents No.1 and 2) to release the FDR bearing No.258157, dated 24.09.2018 amounting to Rs. 17,34,000/- being deposited towards security tender 2018, and also release the bank guarantee bearing No.162191GPER0042 dated 17.08.2019 amounting to Rs. 18,78,000/-, to the petitioner;

b) Pass an order, direction or writ in the nature of certiorari, thereby quashing the order dated 29.01.2020 passed by the respondent-university in pursuance of show cause notice dated 23.01.2020 thereby forfeiting the FDR bearing No.258157, dated 24.09.2018 amounting to Rs. 17,34,000/- being deposited towards security tender 2018, and also release the bank guarantee bearing No.162191GPER0042 dated 17.08.2019 amounting to



Rs. 18,78,000/- and declaring the action of the respondent-university as illegal, arbitrary, null and void;

c) Pass any other of further order/direction, which this Hon'ble Court may just deem fit and proper in the above facts and circumstances of the case, in favour of the petitioner and against the respondents. ”

2. It is stated that the Petitioner was a participant in a tender bearing Tender No. 2018_GGSIP_156687_1 for the year 2018-19 and tender bearing Tender No- GGSIPU / SECURITY/2019-20/01-(02) for the year 2019-20 issued by Respondent No.1/University for providing round the clock security for the University Campus at Dwarka.
3. The Petitioner who was unsuccessful in the tender, approached this Court challenging the Order dated 29.01.2020 passed by the Respondent/University forfeiting the Earnest Money Deposit (EMD) given by the Petitioner in the shape of FDR bearing No. 258157 dated 24.09.2018 amounting Rs.17,34,000/- and Bank Guarantee bearing No.16219GPER0042 dated 17.08.2019 amounting Rs.18,78,000/-.
4. The facts of the case reveal that the Respondent/University had called for tenders in the year 2018 & 2019 for eligible security agencies for providing round the clock security services in the University Campus at Dwarka for a period of one year. The Petitioner participated in the tender.
5. It is pertinent to mention at this juncture that on 06.07.2017, a criminal case was initiated against the Petitioner for which CC No.69/2015 in the Court of ACM (SW), Dwarka for not complying with the guidelines dated 22.06.2015. The said order which will have a bearing on the judgment reads as under:-



“NBWs were stayed till today. They are cancelled subject to cost of Rs.1000/-. Cost paid.

Arguments on notice heard.

*Prima facie there are sufficient material to frame notice against the accused persons as on the date of issuance of show cause notice the Company not compelled with the guidelines dated 22.06.2015. Notice framed to which accused persons plead guilty and do not claim trial. **Accordingly, the accused persons stands convicted.***

Ld. Counsel for the convict submits that lenient view be taken as 99% compliance has been done. However, Ld. Counsel for the complainant submits that he has instructions to say that only 72% compliance has been done.

In view of the fact that compliance has been done, no purpose would be served by imposing a sentence of imprisonment upon accused. Hence, the Company is directed to deposit a fine of Rs.4,000/- in the Court, out of which Rs.3,000/- shall be paid to the complainant. Accused No.2 being the Director of the Company and as per Form 5A is responsible to comply with the directions and in view of his plea of guilt accused No.2 is sentenced to pay a fine of Rs.4,000/- out of which fine of Rs.3,000/- shall be paid to the complainant.

Fine paid including the amount to the complainant.

File be consigned to record room.”

(emphasis supplied)

6. Clause 2.0 of the tender document lays down the eligibility criteria for providing security services for University Campus at Dwarka for the year 2018-19. The relevant portion of the same reads as under:-



“2.1(g) The bidder/organization has not been punished by way of imprisonment and / or fine in the last 5 years, upto last date of receipt of tender. Undertaking to this effect shall be attached as, per Annexure - G.”

7. It is stated that the Petitioner filed an affidavit in terms of Annexure-G, which reads as under:-

“

Annexure G

***DECLARATION REGARDING NON PENALIZE/
PUNISH FOR TAKING PART IN TENDER.***

I/We Lt. Col. B. P. Puri (Retd.) hereby declare that the firm /agency namely M/s. Eagle Hunter Solutions Limited, Eagle House, 61C, Kalu Sarai, Sarva Priay Vihar, New Delhi has not been penalized in the past five years by the Labour Court; EPFO & ESI by way imprisonment.

In case the above information found false, I / we are fully aware that the tender/ contract will be rejected / cancelled by the University, and EMI) (Earnest Money Deposit)/ SD (Security Deposit) shall be forfeited.

In addition to the above, the University will not be responsible to pay the bills for any completed/partially completed work.

DEPONENT

Attested:

(Public-Notary / Executive Magistrate) with Date

Name: Lt. Col. B. P. Puri (Retd.)



Address: M/s. Eagle Hunter Solutions Limited, Eagle House, 61C, Kalu Sarai, Sarva Priay Vihar, New Delhi
”
(emphasis supplied)

8. Clause 16.3 of the tender document for the year 2018-19 provides that if any information furnished by the tenderer is found to be incorrect at any time, the contract would be liable to be terminated and the security deposited to be forfeited. The Petitioner being an applicant in the said tender have given a security deposit of Rs.17,34,000/- for tender bearing No. 2018-_GGSIP_156687_1.

9. Similarly, in the year 2019-20, tender bearing Tender No- GGSIPU / SECURITY/2019-20/01-(02) was issued. Clause 2.1(f) of the said tender document reads as under:-

“2.1(f). The bidder should not have any criminal case pending against its proprietor/ partners as on last date of receipt of tender or having been earlier convicted on grounds of offences involving economic offences or moral turpitude or for violation of laws in force. Undertaking to this effect shall be attached as per Annexure -G.”

10. The affidavit of the Petitioner in terms of Clause 2.1 (f) reads as under:-

“

Annexure G

***DECLARATION REGARDING NON PENDING
CRIMINAL CASE FOR TAKING PART IN TENDER.***

I/We Lt. Col. B. P. Puri (Retd.) hereby declare that the firm /agency namely M/s. Eagle Hunter Solutions Limited, Eagle House, 61C, Kalu Sarai, Sarva Priay



Vihar, New Delhi has no criminal case pending against partners/proprietors/others as on the last date of receipt of the tender.

AND

I/We Lt. Col. B. P. Puri (Retd.) hereby declare that the firm /agency namely M/s. Eagle Hunter Solutions Limited, Eagle House, 61C, Kalu Sarai, Sarva Priay Vihar, New Delhi has not been convicted on grounds of offences involving economic offences or moral turpitude or for violations of law in force.

In case the above information found false, I / we are fully aware that the tender/ contract will be rejected / cancelled by the University, and EMI) (Earnest Money Deposit)/ SD (Security Deposit) shall be forfeited.

In addition to the above, the University will not be responsible to pay the bills for any completed /partially completed work.

DEPONENT

Attested:

(Public-Notary / Executive Magistrate) with Date

Name: Lt. Col. B. P. Puri (Retd.)

**Address: M/s. Eagle Hunter Solutions Limited, Eagle House, 61C, Kalu Sarai, Sarva Priay Vihar, New Delhi
”
(emphasis supplied)**



11. Clause 16.3 tender document bearing Tender No- GGSIPU / SECURITY/2019-20/01-(02), which provides for forfeiture of security deposit reads as under:-

“16.3 If any information furnished by the tenderer is found to be incorrect at any-time, the tender/contract/agreement is liable to be terminated and the security deposit will be forfeited by the University.”

12. Finding that the Petitioner had been convicted in CC No. 69/2015 vide Order dated 07.06.2017 passed by the learned ACMM (SW), Dwarka Courts, the Respondents had taken a decision to forfeit the EMD for an amount of Rs. Rs.17,34,000/- for the year 2018-19 and an amount of Rs.18,78,000/- Bank Guarantee given in the 2019-20.

13. A perusal of the relevant clause of the tender for the year 2018-19 shows that the bidder/organisation was to file an undertaking to the effect that the bidder/organisation has not been punished by way of imprisonment/fine in the last five years upto the last date of receipt of the tender. The format of undertaking reads as under:-

“

Annexure G

***DECLARATION REGARDING NON PENALIZE/
PUNISH FOR TAKING PART IN TENDER.***

(To be executed & attested by Public Notary / Executive Magistrate on Rs.10/- non judicial Stamp paper by the Tenderer)

I/We_____ (Tenderer) hereby declare that the firm /agency namely M/s._____ has not been



penalized in the past five years by Labour Court; EPFO & ESI by way imprisonment.

Or

I/ We _____ (Tenderer) hereby declare that the Finn / agency namely M/s _____ has not been penalized / punished by Union / State Government or any Organization from taking part in Government tenders for a period of _____ years w.e.f. _____ to _____. The period is over on _____ and now the firm /company is entitled to take part in Government tenders.

In case the above information found false, I / we are fully aware that the tender/ contract will be rejected I cancelled by the University, and EMI) (Earnest Money Deposit)/ SD (Security Deposit) shall be forfeited. In addition to the above, the University will not be responsible to pay the bills for any completed /partially completed work.

DEPONENT

Attested:

(Public-Notary / Executive Magistrate) with Date

Name Address'' (emphasis supplied)

14. Annexure-G of the tender document for the year 2018-19 is strictly in terms of Clause 2.1(g) because the format only requires a declaration to be given that the person who is giving the undertaking has not been penalised in the past five years by way of imprisonment.

15. The affidavit for the year 2018-19 has been given in terms of the declaration in the format as published in the tender document that the



Petitioner has not been penalised by way of imprisonment and that the Petitioner has not been penalised/debarred from taking part in government tenders and, therefore, there is no misrepresentation by the Petitioner as far as the declaration for the year 2018-19 is concerned.

16. Coming to the format to the year 2019-20, the affidavit states that the Petitioner has stated that he has not been convicted of ground of offence involving civil or moral turpitude or violation of the laws enforced. This affidavit is in line with the format. This affidavit is false in light of the fact that the Petitioner has been convicted for the violation of law, and, therefore, in terms of Clause 16.3, the decision to forfeit the EMD is in accordance with law.

17. Resultantly, the writ petition is allowed in part. The Respondent is directed to refund the EMD of the Petitioner for the sum of Rs. 17,34,000/- in favour of the Petitioner for the year 2018-19. However, the decision to forfeit the Bank Guarantee No.16219GPER0042 dated 17.08.2019 amounting Rs.18,78,000/- for the year 2019-20 does not require any interference.

18. With the above observations, the writ petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

AUGUST 16, 2023

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