IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15052 of 2024

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M/s Irene Health Services Pvt. Ltd. through its Authorized Signatory Rajesh Kumar, aged about 40 years, male, Son of Ramanrayan Singh, Resident of 63, Rambabu Colony, Prema General Store, Gur Ki Mandi, Sampatchak, P.S. Gopalpur, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Health Department, Bihar, Patna.
2. The Managing Director, Bihar Medical Services and Infrastructure Corporation Limited.
3. The Chief General Manager (Supply Chain), Bihar Medical Services and Infrastructure Corporation Limited.
4. The General Manager, (Procurement), Bihar Medical Services and Infrastructure Corporation Limited.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vinay Ranjan, Advocate
		Mr. Prashant Shekhar, Advocate
For the State	:	Mrs. Archana Meenakshee, GP- 6
		Mr. Rana Veer Prawar, AC to GP- 6

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 22-01-2025

Heard the learned counsel for the parties.

2. The petitioner/M/s Irene Health Services Private Ltd. was adjudged the sole bidder in the re-tender floated by the Bihar Medical Services and Infrastructure Corporation Ltd.

3. The validity period of the tender was 180 days, which was to be counted from the date of opening of the Technical bid. Technical bid was opened on 12.08.2022. If that be so, then the validity period of the tender would have expired sometimes in February, 2023.

4. One of the clauses of the SBD regarding Earnest Money Deposit, incorporated in Clause 14, provided that the bidder would furnish along with its tender, Earnest Money for the bid security, location wise unit as 10 Lakhs for (for MRI Machine center) Jan Nayak Karpoori Thakur Medical College & Hospital.

5. No exemption was to be allowed in EMD and it was stipulated that without the valid EMD, the bid would be rejected. The unsuccessful bidder's Earnest Money had to be returned to them without any interest.

6. Clause 18 of the said tender paper further declared that the bidder, after submitting his tender, would not be permitted to alter/modify its tender and no tender shall be allowed to be withdrawn after its submission and before the expiry of the tender validity period. If a bidder withdrew the tender during this period, it would result in forfeiture of the Earnest Money furnished by the bidder in its tender.

7. The learned counsel for the petitioner, while challenging the order dated 05.08.2024 passed by the Managing Director of the Corporation, has submitted that though the Technical bid was opened on 12.08.2022, the contract could not be concluded for reasons best known to the Corporation and the financial bid was opened only on 30.11.2023, in which the petitioner was found to be responsive.

8. This had happened way beyond the validity period of the tender.

9. In that case, the submission of the

petitioner is that the Earnest Money Deposit could not have been forfeited.

10. A conjoint reading of Clauses 14.5 and 18 of the General Instructions to the bidders further indicates that no tender would be allowed to be withdrawn after its submission and before the expiry of the tender validity period. If a bidder would withdraw the tender during this period, it will result in forfeiture of the Earnest Money furnished by the bidder in its tender.

11. The application made by the petitioner for withdrawal of his EMD was furnished on 10.12.2022, which was within the validity period.

12. The learned counsel for the petitioner, however, has submitted that the afore-noted request was never addressed by the Corporation and it was only on 30.11.2023, that the petitioner was found to be technically and financially responsive and the agreement was concluded with it.

13. In that event, the contention of the

petitioner is that the Clauses 14.5 and 18 could not have been effected against him. The purpose of keeping such clause was to protect the tender inviting authority against the risk of bidder's conduct, which only would warrant the forfeiture of EMD.

14. The contract got concluded much after the validity period with no extension of the validity period.

15. The only evidence against the petitioner, which has been noted by the Corporation for taking a call with respect to forfeiture of EMD is that a request for the same was made, sometimes earlier, but during the currency of the validity period of the tender.

16. Under such circumstances, it is rather harsh on the part of the Corporation to forfeit the EMD of the petitioner.

17. So far as blacklisting is concerned, we do not find anything on record to indicate that it was intimated to the petitioner that because of his earlier

request letter for withdrawal of EMD, he would be visited with the consequences of blacklisting.

18. The learned counsel for the State, however, has drawn the attention of this Court to a notice dated 30.06.2024, whereby the petitioner was made to understand that if in accordance with the bid document, if MRI Machine is not installed, then the EMD of the petitioner would be forfeited and proceedings would be initiated for blacklisting him.

19. This is no notice in the eyes of law for the purposes of blacklisting the petitioner, which is akin to causing civil death of a contractor. The notice required before taking a decision of blacklisting is to be absolutely clear in its import.

20. The blacklisting has been done on the ground of the petitioner having requested for withdrawal of his EMD.

21. The contents of the notice only indicate that if the MRI Machine is not installed within time, then

blacklisting process would begin.

22. In ***Gorkha Security Services v. Govt. (NCT of Delhi) and Ors., (2014) 9 SCC 105***, it has been adumbrated by the Supreme Court that the notice must be understandable and purposive.

23. It appears, the learned counsel for the petitioner contends, that in order to cover up the delayed carrying out of the tender floated by the Corporation and that also for starting a Medical College & Hospital in one of the districts of Bihar, the buck has been passed on to the contractor.

24. The earlier request, during the currency period of the validity, was never acted upon and the blacklisting is for a different reason.

25. For the afore-noted reasons, we set aside the decision of the Corporation to forfeit the EMD of the petitioner as also the order of blacklisting him, which two orders have been passed in a composite way and which cannot be sustained in the eyes of law.

26. The Corporation shall return the EMD amount to the petitioner within a period of four weeks from today.

27. The writ petition stands allowed.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Sauravkrsinha/
Praveen II

AFR/NAFR	NAFR
CAV DATE	NA
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