

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 25360 of 2024

General Security and Information Services
India Pvt. Ltd. & Anr.

Vs.

The State of West Bengal & Ors.

For the writ petitioners	:-	Mr. Anuj Singh, Adv. Ms. Soni Ojha, Adv. Ms. Sambrita B. Chatterjee, Adv.
For the State	:-	Mr. Dipanjan Datta, Adv. Ms. Suknya Datta, Adv.
Heard on	:-	26.02.2025
Judgment on	:-	26.02.2025

Amrita Sinha, J.:-

1. The communication dated 26th September, 2024 by the Principal, Burdwan Medical College, Burdwan rejecting the petitioners' claim for relaxation of the terms and conditions of the Notice Inviting Tender with regard to deposit of performance security is impugned in the instant writ petition.

2. The petitioners participated in a tender process floated by the Principal of the Medical College in December, 2022. The Notice Inviting Tender had a clause regarding payment of performance security. It was mentioned that additional performance security @10% of the amount

calculated in the same way as fixation of EMD is required to be paid by way of bank guarantee.

3. The petitioners were found successful in the tender process and contract was executed in June 2024. In September 2024, the petitioners requested the authority to allow payment of reduced performance security deposit @ 3% in terms of the Office Memorandum of the Ministry of Finance, Government of India dated 12th November, 2022 wherein a decision was taken by the Government to reduce performance security from existing 5-10% to 3% of the value of the contract for all existing contracts. The Office Memorandum dated 12th November, 2020 was valid till 31st December, 2021. By memorandum dated 25th February, 2022, the validity of the Office Memorandum was extended till 31st March, 2023.

4. The petitioners submit that as the Notice Inviting Tender was published within 31st March, 2023, the extended period of the Office Memorandum, accordingly, the benefit of the reduced performance security deposit should be made applicable in this case.

5. In support of the submission that as the authority decided to extend the benefit for a particular period, the authority ought to provide the said benefit in respect of all contracts floated during the said period. The authority ought not to compel the petitioners to pay higher performance security. Principle of promissory estoppel has been relied upon.

6. Decision passed by a coordinate Bench of this Court on 21st December, 2023 in **WPA 12006 of 2021 in C. Doctor and Company Private Limited -vs- Bharat Heavy Electricals Limited & Anr.** reported in **2023 SCC online Cal 5468** has been relied upon wherein the Court was

of the opinion that the authority has to act in terms of the Office Memorandum in respect of the existing contracts as on the date of issuance of the said Office Memorandum by accepting bank guarantee at the reduced rate.

7. Reliance has also been placed on the judgment delivered by this Court in the matter of ***Surendra Prasad Misra -vs- Oil and Natural Gas Commission*** reported in ***AIR 1987 CAL 1 : 1985 SCC Online CAL 82*** wherein the Court held that the doctrine of promissory estoppel is an equitable doctrine and it must yield when equity so requires.

8. Prayer has been made to direct the authority to accept reduced performance security from the petitioners @ 3 %.

9. Learned counsel representing the authority opposes the submission and prayer of the petitioners. It has been submitted that the petitioners participated in the tender process in response to the notice inviting tender dated 3rd February, 2023 wherein it was specifically mentioned that, 10% additional performance security deposit is to be paid.

10. The petitioners accepted the offer of the authority on 2nd July, 2024 clearly mentioning that the office has no objection to accept and execute the work as per the terms and conditions enumerated in the notice inviting tender and the establishment has its full consent to accept the award of contract.

11. It has been submitted that, the contract is for a period of one year only out of which seven months are over. It is only after the contract was executed that the petitioners made a prayer for acceptance of reduced performance security.

12. It has been argued that, the tender issuing authority does not have any power to relax and/or change the terms and conditions of the notice inviting tender. A level playing ground ought to be provided to all the bidders. Had the NIT mentioned regarding reduced performance security to be deposited, then there may have been more bidders. Prayer has been made to dismiss the writ petition.

13. I have heard and considered the submissions made on behalf of both the parties.

14. The initial Office Memorandum dated 12 November, 2020 mentions about obtaining reduced performance security for all existing contracts. The same was on account of the slowdown in the economy due to the pandemic and the acute financial crunch among the commercial entities and the contractors who were facing problem in timely execution of the contracts. The ability of the contractors to bid in the tenders was also taken into consideration at the time of reduction in the quantum of security deposit in government contracts.

15. The said Office Memorandum was initially valid till 31st December, 2021 but later stood extended till 31st March, 2023. The Memorandum dated 25th February, 2022 extending the period for depositing reduced performance security mentions that, the benefit of the reduced performance security deposit would extend to all existing contracts.

16. The contract of the petitioners was not executed during the extended period of the subject Memorandum. The notice inviting tender was, however, floated during the said period, but the contract was actually executed when the Memorandum was not in force.

17. The notice inviting tender mentions about the 10% performance security to be deposited. The notice inviting tender was widely published. The petitioners, being aware of the terms and conditions of the notice inviting tender, participated in the tender process and also made a written communication to the authority disclosing its intention to accept the terms and conditions of the notice inviting e-tender. After the contract was executed, the petitioner made a prayer for depositing performance security at a reduced rate.

18. Allowing the prayer of the petitioners for reduced performance security deposit after nearly seven months of execution of the contract, would tantamount to change, variation, relaxation in the terms and conditions of the contract. Once the contract stood validly executed by and between the parties, the terms and conditions ought not to be altered or changed at the instance of only one of the parties.

19. If the prayer of the petitioners is accepted at this stage, then the other bidders, who may not have participated in the bid because of the higher performance security deposit clause, would be left remediless. Their right to participate in the tender process on the reduced performance security deposit clause, would be infringed.

20. In *C. Doctor and Company Private Limited (supra)*, the contract was executed during the validity period of the Office Memorandum and, accordingly, the Court directed the authority to grant the benefit of the reduced performance security deposit. Such is not the case here. Accordingly, the ratio of the said judgment cannot be made applicable in the instant case.

21. In Surendra Prasad Mishra (supra), the Court reiterated the settled principle of promissory estoppel. There is no qualm with the said doctrine. In the instant case, there is no promise whatsoever from the authority regarding the acceptance of the reduced performance security. On the contrary the petitioners promised that they are agreeable to accept and perform work on the basis of the terms and conditions mentioned in the notice inviting tender. Accordingly, the ratio laid down in the said judgment also does not help the petitioner in any manner.

22. In view of the discussions made hereinabove, the Court is not inclined to allow the prayer made by the petitioners. The petitioners would be bound by the terms and conditions of the notice inviting tender reduced to the form of a contract validly executed by and between the parties.

23. The writ petition fails and is hereby dismissed.

24. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

(Amrita Sinha, J.)