

**CWP-17410-1999 (O&M)****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****101****CWP-17410-1999 (O&M)****Date of Decision : January 10, 2025****HAWKS EYE SECURITY SERVICES LTD****-PETITIONER****V/S****PUNJAB STATE CO-OP. SUPPLY & MARK. FEDERATION LTD &
ORS****-RESPONDENTS****CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Yagsimant Attri, Advocate
for the petitioner.

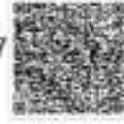
Mr. Karmander Singh, Advocate with
Mr. Prabhsher Singh Walia, Advocate
for the respondents.

*********KULDEEP TIWARI, J. (ORAL)**

1. What has caused grievance to the petitioner is the drawing of the declining order dated 10.11.1999 (Annexure P-11) upon its representation, therefore, it has been propelled to institute thereagainst the instant writ petition under Articles 226 and 227 of the Constitution of India.

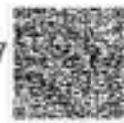
2. Concisely stating, the gravamen of the instant *lis* is centered upon the act of the respondent(s) concerned, wherethrough, the earnest money of ₹ 25,000/-, as deposited by the petitioner in response to the tender floated by the respondent(s) concerned for appointment/allotment of security contract, has been forfeited.

3. The facts of the present case are that, the respondent(s) concerned floated tender for the appointment of security guards through security agencies.

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After shortlisting, six security agencies, including the petitioner, were called for negotiations. The final negotiation was held on 20.05.1998 and the petitioner expressed its willingness to work at the negotiated rate of 4.5% against the tender rate of 6% along with others. Resultantly, vide letter dated 03.06.1998, the petitioner was informed that its offer for appointment as security agency in response to the tender opened on 03.04.1998 and subsequent negotiations has been accepted. Moreover, the petitioner was requested to visit the office for execution of agreement and furnishing of bank guarantee etc. When the needful was not done, the petitioner was again reminded by the respondent(s) concerned on 12.06.1998 for the execution of agreement and furnishing of bank guarantee within a weeks' time. When the petitioner again failed to comply with the directions (supra), reminder(s) was again sent to it on 24/25.06.1998 and the deadline for execution of agreement and furnishing of bank guarantee was extended uptill 29.06.1998. In pursuance to this reminder, the petitioner wrote a letter dated 26.06.1998, thereby requesting for extension of time for one week for furnishing the bank guarantee. However, when the petitioner failed to adhere to its own deadline, therefore, after waiting for considerable time, Clause 7 of the terms and conditions of the tender was invoked by the respondent(s) concerned and the petitioner was informed vide letter dated 25.08.1998 that, owing to its failure to execute the agreement and to furnish the bank guarantee, the offer @ 4.5% stands cancelled and the earnest money of ₹ 25,000/- also stands forfeited.

4. It would be apt to record here that, this is the second round of litigation. Fetching grievance from the act (supra) of the respondent(s) concerned, the petitioner had earlier also approached this Court by filing CWP-

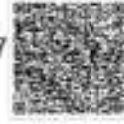
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10019-1999, which was disposed of by this Court by making the hereinafter extracted directions:-

“After going through the averments made in the petition and perusing the annexed documents, we are prima facie satisfied that till the petitioner had agreed to accept the terms and conditions offered by the respondents, no concluded contract came into being which could bind the petitioner and, therefore, the action of the respondents to forfeit the amount of ₹ 25,000/- deposited by the petitioner does not appear to be justified. However, as representation submitted by the petitioner has not been decided so far, we deem it appropriate to direct respondent No.3 to treat the petitioner’s writ petition as its representation and decide the same on merits by passing a speaking order within one month of the submission of certified copy of this order together with a copy of the writ petition.”

5. The learned counsel for the petitioner submits that, neither the petitioner participated in any negotiation process, nor the counter offer of reduced service charges from 6% to 4.5%, as alleged by the respondent(s) concerned, was ever accepted by the petitioner. Therefore, in the absence of any acceptance of the counter offer by the petitioner, there existed no legally enforceable contract between the parties. Consequently, the punitive clause 7 of the terms and conditions of the tender cannot be invoked against the petitioner.

6. The submissions made by the petitioner’s counsel are vociferously opposed by the learned counsel representing the respondents. He draws attention of this Court towards paragraph 11 of his written statement, wherein, it has been stated that, during negotiation, the petitioner reduced service charges from 6% to 4.5% and the said offer was duly accepted. To

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substantiate this claim, he makes dependence upon the minutes of meeting dated 22.05.1998 (Annexure R-1/5), relevant portion whereof is extracted hereunder:-

“...The remaining four agencies during discussions had shown their willingness to work at the negotiated rate of 4.5% against their tendered rate of 6% in respect of M/s Terrier Security & Detectives, M/s Haws Eye Security Services and M/s Jassu Ex. Soldiers Indl. Security and 5% in respect of M/s Prehari Security & Detectives Pvt. Ltd....”

7. This Court has heard the submissions made by the learned counsels for the contesting litigants and also made a studied survey of the record.

8. What clearly surges forth from the record available before this Court is that, the petitioner did participate in the negotiation process and did accept the offer of reduced service charges. Moreover, the claim (supra) of the respondents, as made in paragraph No.11 of the written statement, has never been refuted by the petitioner by filing any replication.

9. Furthermore, it is evident from the record that, post participation in the negotiation process, the petitioner made a request to the respondent(s) concerned on 26.06.1998 for extension of time for executing the agreement and furnishing the bank guarantee. Therefore, a presumption is created against the petitioner that, post its participating in the negotiation process, he made request for extension of time, meaning thereby, he accepted the respondent(s)' offer of reduced service charges from 6% to 4.5%. Consequently, it is abundantly clear that, it was the petitioner, who was at fault for not adhering to the deadline despite repeated requests and reminders.



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10. In summa, this Court does not find any illegality or perversity in the impugned order. Resultantly, the instant writ petition is **dismissed** and the impugned order is affirmed.
11. Pending application(s) stand disposed of accordingly.

January 10, 2025	(KULDEEP TIWARI)
devinder	JUDGE
Whether speaking/reasoned	: Yes/No
Whether Reportable	: Yes/No