



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

Reserved on: 19th and 21st September, 2023

Pronounced on: 27th September, 2023

+ W.P.(C) 12314/2023ⁱ

M/S BOMBAY INTELLIGENCE SECURITY INDIA LTD

..... Petitioner

Through: Mr. Pankaj Kumar and Ms. Shruti
Sharma, Advocates with AR of
Petitioner.

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

Through: Ms. Hetu Arora Sethi, ASC for R-1.

+ W.P.(C) 12445/2023, CM APPL. 49031/2023 & 49032/2023ⁱⁱ

M/S SCIENTIFIC SECURITY MANAGEMENT SERVICES PVT.
LTD. Petitioner

Through: Ms. Shruti Sharma, Ms. Ritika
Srivastava and Mr. Pankaj Kumar,
Advocates.

versus

GOVERNMENT OF NCT OF DELHI (GNCTD) & ORS.

..... Respondents

Through: *Appearance not given.*

+ W.P.(C) 12471/2023, CM APPL. 49177/2023 & 49178/2023ⁱⁱⁱ

M/S SINGH INTELLIGENCE SECURITY PVT. LTD.

..... Petitioner

Through: Ms. Shruti Sharma, Ms. Ritika
Srivastava and Mr. Pankaj Kumar,
Advocates.

ⁱ Reserved on 19th September, 2023.

ⁱⁱ Reserved on 21st September, 2023.

ⁱⁱⁱ Reserved on 21st September, 2023.



versus

GNCTD & ORS.

..... Respondent

Through: Mr. Avishkar Singhvi, Mr. Nipun Katyal, Mr. Vivek Kumar Singh, Mr. Naved Ahmed, Mr. Deokinandan Sharma and Ms. Kismat Chauhan, Advocates for respondent No.1 & 2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGEMENT

SANJEEV NARULA, J.:

1. Bombay Intelligence Security (India) Ltd., Scientific Security Management Services Pvt. Ltd., and M/s Singh Intelligence Security Pvt. Ltd., the Petitioners,¹ emerged as the successful bidders in tenders issued by Respondent – Directorate of Education [“DoE”], Government of NCT of Delhi. Subsequently, DoE chose to annul the tender process, which resulted in cancellation of contracts/ deployment orders issued in favour of the Petitioners. Aggrieved by this adverse outcome, the Petitioners seek redress from this Court, challenging the decision to cancel the tender.

2. The writ petition W.P.(C) 12314/2023 was heard extensively on 19th September, 2023, and reserved for orders. Thereafter, W.P.(C) 12445/2023 and W.P.(C) 12471/2023, urging similar issues, were heard on 21st September, 2023, and likewise reserved for orders. Given the congruence in

¹ Hereinafter referred to as Bombay Intelligence, Scientific Security, and Singh Intelligence, respectively.



the facts and contentions raised, it is considered apposite to pronounce a common judgement. For clarity and convenience, the Court shall predominantly refer to the facts set out in W.P.(C) 12314/2023. The details, where they deviate, are delineated in the judgement.

The Petitioners' case

3. Mr. Pankaj Kumar, counsel for Petitioners, presented the following facts and arguments:

3.1. The present controversy pertains to ten distinct tenders issued by DoE in relation to deployment of security personnel in Government schools in various clusters. Of these, eight were designated for unaided schools, and two for aided schools. The first round of tenders was issued on 04th January, 2022. Following the tenders' announcement, Top Edge Security and Services Pvt. Ltd. and Good Year Security Services lodged two writ petitions [W.P.(C) 805/2022 and W.P.(C) 912/2022], questioning the legal standing and validity of said tenders' terms and conditions. In the ensuing proceedings, the counsel for DoE conveyed an intent to retract the aforesaid tenders, and affirmed that DoE would issue new tenders in line with the law, post thorough deliberation.

3.2. Sequel to this, DoE released ten fresh tenders for the afore-noted purpose on 20th May, 2022. The Petitioner-companies, who specialize in offering security and workforce services to various agencies, including government bodies and public sector enterprises, submitted their bids for four of such tenders, pertaining to different clusters. Bombay Intelligence participated in the process for GEM/2022/B/2195447 and GEM/2022/B/2195541, while Scientific Security and Singh Intelligence



expressed interest in GEM/2022/B/2194834 and GEM/2022/B/2195769, respectively. Notably, these tenders were again contested by Top Edge Security and Services Pvt. Ltd. and Good Year Security Services, through another set of writ petitions [W.P.(C) No. 8903/2022 and W.P.(C) 9460/2022], wherein, this Court, on 01st June, 2022, passed an interim order placing the tender finalization process on hold. Later, on 27th July, 2022, DoE sought permission to conclude the tender process, which was considered by this Court, and the interim order dated 01st June, 2022 was modified as follows:

“This Court by order dated 01.06.2022 has directed the Respondents not to finalise the tender.

Learned counsel for the Respondents has stated before this Court that the Respondents be permitted to finalise the tender. The Respondents shall open the tender of all the parties without prejudice to the rights of the Petitioners. However, no LOI shall be issued in the matter. He has also stated that the Respondents shall produce the entire record in respect of finalisation of tenders on the next date. He is permitted to do so.

The interim order dated 01.06.2022 is modified. The Respondents are permitted to proceed with the tender process. However, the Respondents shall not issue LOI without leave of the Court. The Respondents shall produce the record in respect of finalisation of the tenders on the next date.

List on 24.08.2022.”

3.3. Availing the afore-noted leave, DoE evaluated the bids received by them and published a letter on 17th March, 2023, unveiling the names of those bidders who had successfully met the technical qualifications for all ten bid clusters, including the Petitioners. Meanwhile, W.P.(C) No. 8903/2022 and W.P.(C) 9460/2022 came to be finally decided by this Court in DoE’s favour on 03rd July, 2023, through a comprehensive order.

3.4. In the wake of afore-mentioned judgment, DoE proceeded to open the financial bids for nine tenders on the GeM Portal. The process of choosing the L-1 bidders was executed automatically using an auto-run method,



which is devoid of manual intervention. In this procedure, Bombay Intelligence was acknowledged as the winning bidder for two clusters tendered under GEM/2022/B/2195447 and GEM/2022/B/2195541, Scientific Security succeeded in GEM/2022/B/2194834, and Singh Intelligence emerged as the L-1 bidder in respect of GEM/2022/B/2195769. Contracts were issued to Bombay Intelligence on 31st July, 2023, and on 26th July, 2023 to Scientific Security and Singh Intelligence. Following this selection, the Petitioners remitted the requisite service charges to the GeM portal and furnished a Performance Security in the form of a Bank Guarantee, as stipulated in their contract(s).

3.5. As per tender terms and conditions, deployment was set to commence from 10th August, 2023. In preparation for delivering the stipulated services, the Petitioners expended substantially and even initiated recruitment of employees, placing them under their payroll. Significant investments were also made in procuring the necessary uniforms and related accessories.

3.6. On 07th August, 2023, DoE communicated a deployment order in respect of Cluster B schools to Singh Intelligence. However, this order was kept in abeyance *vide* DoE's communication dated 09th August, 2023. Work orders in Bombay Intelligence and Scientific Security's names were still awaited. Representations were addressed to DoE, but to no benefit.

3.7. In the meantime, Petitioners learnt of filing of three writ petitions – W.P. (C) 10090/2023 and W.P.(C) 10967/2023 and W.P.(C) 9904/2023, impugning DoE's evaluation of financial bids received for the tenders in question. In anticipation of the deployment orders, Petitioners joined the proceedings in the afore-noted petitions. It is contended that since no stay had been imposed by the Court, no impediments stood in DoE's path to



finalize the tender process; yet, the DoE halted the process, without any justification.

3.8. Much to Petitioners' dismay, on 11th September, 2023, DoE conveyed their decision to annul the entire tendering procedure. This action is entirely unwarranted, devoid of rationality, and contrary to established legal principles. The decision merely states that certain technically qualified bidders had submitted false particulars in their bids. DoE has baselessly equated Petitioners with alleged technically qualified bidders, without assigning any valid reasons. DoE's decision is thus arbitrary, unjust, and perverse. That apart, on the same date, DoE issued another order [bearing F.1/1064/Security/New Tender/2022/681] authorizing the Heads of all Government Schools to outsource security services through the GeM portal, for their respective schools for the period commencing from 01st October, 2023.

3.9. When dismissing Top Edge Security's petition [W.P.(C) No. 8903/2022 and connected matter] challenging the conditions of the tenders in question, this Court had specifically highlighted the absence of any discrepancies and acknowledged transparency in the tender process.

3.10. DoE issued the impugned order on 11th September, 2023 cancelling the process on nebulous and unfounded reasons, overlooking this Court's imprimatur to the process. Furthermore, since the tender process had reached an advanced stage and was on the brink of culminating with issuance of a deployment/work order, DoE could not have terminated it unilaterally. Reliance was placed upon the judgement delivered in *M/s*



Allengers Medical Systems Ltd. v. State of Karnataka and Ors.²

DoE's submissions

4. Ms. Hetu Arora Sethi, counsel representing DoE, supported the impugned decisions, arguing that they do not call for any judicial interference. She further submitted that with the revocation of the tenders, performance guarantee furnished by the Petitioners shall be duly returned, and thus, no prejudice would be caused to them.

Analysis and findings

5. DoE's order dated 11th September, 2023 rescinding the subject tenders, reads as under:

"ORDER

Subject: Cancellation of bids invited for Outsourcing of Security Guards in Govt. Schools and Govt. Aided Schools

Based on recommendations of the Purchase Committee vide minutes of meeting dated 11.09.2023, the tenders/bids published on GeM portal for awarding the contract of providing Security Services in Govt. Schools in respect of Bid No. GEM/2022/8/2194834, GEM/2022/B/2195060, GEM/2022/8/2195371 & GEM/2022/B/2195586 and in Govt. Aided Schools in respect of Bid No. GEM/2022/B/2195734 & GEM/2022/B/2195769 are hereby cancelled on the following grounds: -

"The bidders technically qualified in above mentioned bids had misled the Directorate of Education, GNCT of Delhi while wrongly and falsely applying for the bid under Micro and Small Category seeking exemption from EMO thereby misleading the DoE to believe that these bidders belong to Micro/Small Category and are eligible for EMO exemption but the fact remains that these bidders were registered under medium category with MSME and falsely and wrongly applied under Micro and Small Category. The act of such bidders is violative of provisions of Rule 170 (i) of General Financial Rules 2017 read with provisions of O.M. 20/2/2014-PPD (Pt) dated 25th July 2017 issued by Ministry of Finance Government of India Procurement and Policy Division. These bids were to be treated as non-responsive and ineligible and were liable to be rejected straightway

² In Writ Petition No. 17634/2022 (GM-TEN).



in-terms of the guidelines of CVC aforesaid. The wrongful act of these 06 Bidders has vitiated the whole process of present 10 bids resulting into causing undue delay in Public Work."

Further, as per the said recommendations, the tenders/bids published on GeM portal for awarding the contract of providing Security Services in Govt. Schools in respect of Bid No. GEM/2022/B/2195292, GEM/2022/B/2195447, GEM/2022/8/2195488 and GEM/2022/B/2195541 are also hereby cancelled as it is found that inclusion of ineligible bidders and their processing on Autorun mode with many ineligible bidders in these bids has vitiated the sanctity of whole process.

As a consequent of cancellation of bids, the work order issued to the bidders and subsequent allocation of work, if any, are also hereby revoked for all intent and purposes with retrospective effect.

Sd/-
(HIMANSHU GUPTA)
DIRECTOR OF EDUCATION"

6. The outcome of the afore-mentioned order entails that henceforth, instead of the DoE, the individual schools shall undertake the process of outsourcing security services. The rationale presented by DoE for tender cancellation stems from the fact that they were misled by certain bidders concerning their qualifications. This connotes that several bidders, who should have otherwise been designated as technically non-responsive and consequently, ineligible, were erroneously taken into consideration during the tender award process. In effect, the integrity of the process under the afore-mentioned ten tenders had been compromised. Not only were the ineligible bidders permitted to submit financial bids, but their automatic progression within the bidding process resulted in inadvertent consideration of numerous unqualified bidders.

7. Central to any tendering process is its integrity. When participants provide misleading information, it not only dilutes the competitive spirit, but also jeopardizes the objective of securing the best service or product. In the



present scenario, the deviation by certain bidders from the set criteria detracted from transparency, fairness, and competitiveness – the fundamental values of any tendering process. The impugned decision is founded on the recommendations of the purchase committee, which stemmed from a rigorous review of the facts and circumstances by the committee of experts. Their advice serves as an additional layer of scrutiny, and the DoE's alignment with their conclusion, underscores the depth of the discrepancy observed. Given these circumstances, where the integrity of entire procedure has been jeopardised, DoE's decision to rescind the tender process and annul the work orders cannot be faulted with.

8. Given the differentiable factual matrix, the case of *M/s Allengers Medical System Ltd.*, cited by the Petitioners, fails to bolster their argument. In the afore-mentioned case, the Respondents had annulled the tender process, attributing it to alleged corrupt practices by certain officers. However, the Court discerned such a factor as insufficient to invalidate an otherwise legitimate tender. Contrarily, in the instant cases before us, the submission of inaccurate facts by the bidders has led to the inclusion of unqualified participants in the contest. The participation of ineligible bidders gravely undermines the integrity of the selection process, the foundation upon which a contract/deployment order was accorded to the Petitioners.

9. In matters such as the present, the Court is tasked with assessing whether the issuing authority, in resorting to rescind the tenders, has acted capriciously or with *malafides*.³ We do not find the situation to be so in the present cases; the order notifying cancellation of the process is grounded in

³ See: *Suncity Projects Pvt. Ltd. v. Government of NCT of Delhi and Anr.*, 2009 SCC OnLine Del 94.



sound reasoning. In relation to DoE's directive for the respective schools to independently outsource the security services, which stands as a policy decision pertaining to a commercial venture, we find no inadequacies or shortcomings therein that would necessitate intervention.

10. Bearing the afore-noted reasons, the Courts finds that the reasons put forth by DoE for passing the impugned order(s) are justifiable, and based on cogent consideration. With respect to the Petitioners' assertion of having incurred losses in preparing themselves, whilst anticipating deployment orders, it is the Court's view that they should seek recourse through the civil court for redressal of this grievance. This Court, in the present writ proceedings, cannot determine the potential loss caused to the Petitioners, if any, on account of cancellation order.

11. In light of the above, we do find any infirmity in the decision of DoE in cancelling the tender process. We dispose of the present petition observing that the Petitioners shall be at liberty to take recourse to civil proceedings for their claim of damages, if any, on account of withdrawal of the tender process.

12. Disposed of along with pending applications.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

SEPTEMBER 27, 2023

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