

THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION No.6053 of 2024

ORDER:

The writ petition is filed to declare the action of the respondent No.3 in issuing proceedings vide Rc.No.713/GGH, Nlg.2023 dated 04.03.2024 and thereby terminating the services of the petitioners without issuing any Show Cause Notice and calling for any explanation as being illegal, arbitrary and violation of principles of natural justice.

2. The facts leading to the filing of the writ petition are briefly stated hereunder:

(a) The respondent No.3 issued tender notification dated 28.07.2022 bearing Tender No.713/A3/GGH/NIG/2022/---/District/IHFMS/2022-23 inviting tenders for providing Integrated Hospital Facility Management Services in Government General Hospital in Nalgonda District in the State of Telangana. Pursuant thereto the petitioner No.1, respondent No.4 and others submitted their bids through e-procurement website. During the evaluation of bids the respondent No.4 was declared L1 and petitioner No.1 was declared L3. However, petitioner No.1-L3 was declared as successful bidder by rejecting the bid of respondent No.4-L1 and Sai Security Services-L2, for non-fulfilment of tender conditions. Thereafter, agreement was entered into between the respondent No.3 and the

petitioner No.1 on 24.12.2022 and the petitioner No.1 had been providing services at the Government General Hospital, Nalgonda.

(b) While so, the respondent No.3 issued impugned proceedings bearing Rc.No.713/GGH, Nlg.2023 dated 04.03.2024 cancelling the agreement of the petitioner No.1 and restoring the contract in the name of respondent No.4-L1. The following reasons have been cited in the impugned proceedings:

1. Wrong procedure and technical lapses have been noticed in awarding of tender, first being approved of tender to L3 Agency instead of L1 Agency.
2. It is also noticed that, L3 & L2 are the same property ownership agencies and they been blacklisted by the Government in violating the tender conditions by Sir Ronald Ross, Institute of Tropical and Communicable Diseases, Nallakunta, Hyderabad via Rc.No.525/G1/SRRIT&CD/2022/375, Dated:13/09/2022 and also for operating in Mahabubabad. The blacklist of agency is hidden by Tender evaluation committee headed by the Superintendent of Government General Hospital, Nalgonda with malice intentions.
3. Further on 01.03.2024, it is noticed that, the (03) Sanitary employees attempted to suicide as the existing agency i.e., Sai Security Services Pvt. Ltd. is not paying their salaries regularly and harassing employees of the Hospital.

3. The petitioner contended that the impugned proceedings are arbitrary and in violation of principles of natural justice. The respondent No.4, having finalized tenders and awarded

contract to the petitioner No.1, claimed that wrong procedure has been followed. The tenders have been evaluated in accordance with the conditions prescribed in the tender document. The reasons cited for terminating the petitioner No.1 are uncalled for. So far as blacklisting is concerned, it is submitted that the petitioner No.1 is M/s. Sai Security Services Private Limited and not M/s. Sai Security Services, which is blacklisted. In any event, the said agency approached this Court in WP.No.36339 of 2022 wherein the blacklisting order was suspended. The allegation regarding suicide attempt made by three employees for not paying salaries regularly is without any basis. The petitioner No.1 has 184 employees and only three employees, for extraneous consideration, have blamed the management. The allegation made by the three employees is disproved by statement of salaries, Employees Provident Fund Contribution etc. annexed to the writ petition and the same are regularly filed before the concerned authorities in adherence to the terms of tender conditions and agreement.

4. The case of the respondent No.3 is that three employees, whose services were terminated, have attempted to commit suicide. The same resulted in disruption of services at Government General Hospital, Nalgonda. The petitioner No.1 was not able to provide good health care facilities to the patients and the services were totally paralysed. It is contended that serious lapses were

noticed in awarding contract to the petitioner No.1 agency, which was declared as L3. In the enquiry, it was found that the Superintendent has helped the petitioner to get the contract. By taking into consideration such lapses and keeping in mind the public policy, the contract of the petitioner–L3 was terminated. A new contract was entered with the respondent No.4-L1, who was rightful bidder to be awarded the contract. It is submitted that decision has been taken in public interest and in tune with the public policy of the State. Accordingly, the respondent No.2 ordered the respondent No.3 to restore the contract to L1-Agency-respondent No.4, who has taken charge of sanitation and security services, Government General Hospital, Nalgonda, on 04.03.2024 even before filing of the writ petition, by submitting performance guarantee as per the terms of the tender document. The respondent No.4 has also submitted Annexure-6 and Annexure-6A as per the tender norms on 11.03.2024.

5. The respondent No.4, in his counter affidavit, contended that the petitioner No.1 is running another proprietary firm by name Sai Security Services and petitioner No.2, D. Swamy Reddy, is the proprietor of the said firm. The said Sai Security Services has been blacklisted by the respondent No.3 – Superintendent, GGH, Nalgonda. Due to serious irregularities committed by the respondent No.3, as pointed out in the audit report dated

22.11.2023 vide No.AG (Audit)/TS/GSS-04/2023-24/A.E.No.25, enquiry was conducted and it was found by the authorities that procedure followed in awarding contract to the petitioner No.1, who is L3, was irregular, hence, vide order dated 04.03.2024, the department has corrected the mistake. The District Collector vide proceedings No.713/A3/ GGH/Nlg./2022 dated 01.03.2024 ordered departmental enquiry against the then respondent No.3 as he helped the petitioner to get the contract. Further, the employees of the petitioner No.1 attempted to commit suicide and petitioner No.1 is facing serious allegations. The black listing of the agency was suppressed by the petitioner No.1 at the time of tender evaluation. As the contract was awarded to the petitioner without following procedure, a representation was submitted by the respondent No.4 to the Hon'ble Chief Minister, pursuant to which enquiry was conducted and contract illegally awarded to the petitioner was cancelled.

6. Mr. Pandu Ranga Reddy, learned counsel for the petitioners submitted that the action of the respondents in cancelling the contract of the petitioner is in violation of principles of natural justice. The order black listing M/s. Sai Security Services was suspended by this Court. The issue relating to the alleged attempt made by three employees to commit suicide is blown out of proportion. The petitioner No.1 has hundreds of employees. In any

case, that cannot be a ground to recall the contract awarded to the petitioner No.1. Even assuming that there are lapses, notice should have been issued to the petitioner No.1 affording it opportunity of hearing. The impugned action of the respondents is violative of Article 14 of the Constitution of India.

7. Learned Assistant Government Pleader for Medical and Health submitted that there are no merits in the writ petition. The petitioner No.1, who is a beneficiary of serious lapses and illegalities, cannot be heard to say that there is violation of principles of natural justice. A person, who is awarded contract by back door method, cannot plead violation of principles of natural justice. The audit enquiry reveals that there are serious lapses committed in awarding tender to the petitioner No.1 and the writ petition is liable to be dismissed.

8. Mr. V.T. Kalyan, learned counsel for the respondent No.4, referred to lapses pointed out by the Audit Officer, Office of the Accountant General (Audit), Telangana, Hyderabad, vide letter No.AG (audit)/TS/GSS-04/2023-24/A.E.No.25 dated 22.11.2023 issued to the respondent No.3 and order dated 01.03.2024 whereby the contract of the petitioner was cancelled and restored to respondent No.4.

9. Heard Mr. Pandu Ranga Reddy, learned counsel for the petitioner, Mr. V.T. Kalyan, learned counsel for the respondent No.4 and learned Assistant Government Pleader for Medical and Health.

10. Learned counsel for the petitioner has not disputed that audit objection was taken to the manner in which the contract was awarded to the petitioner by violating the terms and conditions of the tender. The audit department vide letter dated 22.11.2023 pointed out lapses under three heads viz. (i) Awarding contract to L3 tenderer, (ii) Non-considering the highest turnover of respondent No.4 in finalization of tender and (iii) Non-conducting of performance assessment of the agency. The audit department has given detailed findings on all the three points. So far as points No.2 and 3 are concerned, it deals with evaluation of the bids submitted by the petitioner-L3 and respondent No.4-L1. Though points No.2 and 3 are also relevant, the observations made on point No.1, in the opinion of this Court, are more significant, which are as under:

"1. Awarding of contract to L3 tenderer: As per the tender condition 4.2.3 (i), Commercial pesticide applicator license shall be obtained from the controlling authority to carry out the business or MOU with agency having such license. Further, as per the tender condition 4.2.3(j) valid license shall be obtained by the controlling authority of any State in accordance with Private Agency Regulation Act (PSARA) 2005 is accepted. If the bidder belongs to other state and if his bid is successful then he shall obtain the

license within 3 months from the State of Telangana from the date of agreement or MOU with agency having such license. The L1 agency, M/s. A1 Facility & Property Managers Pvt., Ltd., Mumbai has submitted Pest Control license of Government of Maharashtra. Though the bidder was qualified a L1, the tender was rejected on the ground that pest control certificate from the Government of Telangana was not obtained.

The agency M/s. A1 Facility & Property Managers Pvt., Ltd., Mumbai (March 2023) submitted a representation to the Chief Minister of Telangana on the tender process. Government (April 2023) issued a Memo and instructed the DME, Hyderabad for taking appropriate action.

The Superintendent, GGH, Nalgonda (May 2023) informed the DME, Hyderabad that though the above tender clause was explained to the Additional Joint Collector (R), Nalgonda, who in turn has instructed for allotment of the IHFMS tender to Sai Security Services Pvt., Ltd., by denying the L1 tender of M/s. A1 Facility & Property Managers Pvt., Ltd., Mumbai. Thus the tender evaluation authority has not given the opportunity to the L1 bidder to obtain the pest control certificate of Government of Telangana within 3 months from the date of agreement or MOU, which is in violation of the tender condition.

11. It is, thus, clear from the above that the tender process followed by the respondent No.3 in awarding the contract to the petitioner was not correct and the tender evaluation committee has not given opportunity to the respondent No.4-L1 to obtain Pest Control certificate within three months from the date of MOU as per condition 4.2.3(j) of the tender document. In the counter filed by

the respondent No.3, it is stated that the respondent No.4 has submitted Annexure-6 and Annexure-6A as per the tender norms on 11.03.2024 satisfying the said condition and they are continuing their services in Government General Hospital, Nalgonda.

12. The Supreme Court in **TATA MOTORS LIMITED v. THE BRIHAN MUMBAI ELECTRIC SUPPLY & TRANSPORT UNDERTAKING (BEST)** [Civil Appeal No.3897 of 2023 arising out of SLP(C).No.15708 of 2022 dated 19.05.2023] it was held as follows:

“52. Ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evident from a three-Judge Bench decision of this Court in ***Association of Registration Plates v. Union of India and Others***, reported in (2005) 1 SCC 679.

53. The law relating to award of contract by the State and public sector corporations was reviewed in ***Air India Ltd. v. Cochin International Airport Ltd.***, reported in (2000) 2

SCC 617 and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere.

54. As observed by this Court in ***Jagdish Mandal v. State of Orissa and Others***, reported in (2007) 14 SCC 517, that while invoking power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluations of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters. If the decision relating to award of contract is bona fide and is in public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.

13. The facts pleaded by the parties and the documents placed on record reveal that the tender process was not properly

conducted by the respondent No.3 and serious lapses were committed in awarding the contract to the petitioner No.1 as evident from the audit objection. In pursuance thereof, the lapses committed by the respondent No.3 were corrected and decision was taken to award contract to the respondent No.4-L1. The rejection of tender of respondent No.4-L1 for non-compliance of condition 4.2.3(j) was found to be wrong. The award of contract to petitioner No.1 was found to be irregular on three grounds. As discussed above, the bid of the respondent No.4 was unduly rejected and later, rectified in the enquiry conducted on the representation of the respondent No.4. It is not the case of the petitioners that the audit enquiry is incorrect and contrary to the procedure laid down under law. The audit enquiry/report is not challenged by the petitioners. There is no material placed before this Court to rebut the contention of the respondent No.3 that cancellation of the tender of the petitioner No.1 was in public interest and to achieve public policy.

14. It is settled principle of law that compliance of natural justice is not an absolute rule. In **A.K. KRAIPAK v. UNION OF INDIA**¹, the Supreme Court held as under:

“20. ... What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under

¹ (1969) 2 SCC 262

which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

The Supreme Court in **JAGDISH MANDAL v. STATE OF ORISSA**², which was followed in **TATA MOTORS LIMITED's** case (supra), held as under:

"22. ... When the power of the judicial review is invoked in matter relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance ..."

15. It has to be taken into account that the party, who approaches the Court, should be fair and without any blemish. The petitioner No.1-L3, being awarded contract contrary to the tender conditions, cannot be permitted to plead violation of principles of natural justice. The respondent No.4-L1 was unduly denied award of contract in violation of condition 4.2.3 (j) of the tender document. The same, being noticed by the concerned authorities, was rectified. Thus, the action of the respondent authorities in issuing impugned proceedings cannot be faulted and viewed from any angle, the writ petition is devoid of merits.

² (2007) 14 SCC 517

Accordingly, the writ petition is dismissed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

August 19, 2024

Note: LR Copy to be marked
(**B/o**) DSK

B. VIJAYSEN REDDY, J