



2024 : DHC : 3933 -DB



\$~14

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

+ W.P.(C) 15766/2022

SCS ENTERPRISE

..... Petitioner

Through: Mr. Arup Banerjee and Mr. Priyanshu
Raj, Advocates

versus

THE FISHERY ANIMAL HUSBANDRY AND DAIRYING
DEPARTMENT Respondent

Through: Mr. Ravi Prakash, CGSC, UOI with
Mr. Varun Aggarwal, Mr. Taha
Yasin, Mr. Yasharth, Mr. Astu, Mr.
Ayushman Ms. Usha Jamnal, Mr.
Farman Ali and Mr. Ali, Advocates

%

Date of Decision: 13th May, 2024.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

1. Present petition has been filed under Article 226 of the Constitution of India seeking directions to the Respondent i.e., Ministry of Fisheries, Animal Husbandry and Dairying, Union of India, to allow the Petitioner to provide manpower service to the 'Department of Animal Husbandry and Dairying' in terms of the GeM Contract No. 511687782358003 entered into with the said department.

2. A Bid document bearing No. GEM/2022/B/1946951, dated 11th February, 2022, was published on the Government e-Marketplace ('GeM') by the Respondent on behalf of its Department of Animal Husbandry and



2024 : DHC : 3933 -DB



Dairying ('DAHD') for the purpose of outsourcing of Multi-Tasking Staff ('MTS').

2.1. The said bid was awarded by the Respondent to the Petitioner herein vide letter dated 19th May, 2022 and a request was made to furnish a performance security deposit for an amount equivalent to 3% of the value of contract i.e. Rs. 54,88,801/- in the form of fixed deposit or Bank Guarantee. Subsequently, the Contract No. 511687782358003 was generated on the GeM portal on 24th May, 2022.

2.2. However, in the interregnum, an email dated 19th May, 2022, was issued by the Under Secretary of the DAHD stating that the Petitioner is required to enrol 17 MTSs (details whereof were annexed with e-mail), who were currently working with the said Department, on the Petitioner's payroll.

2.3. The Petitioner herein vide letter dated 25th May, 2022, replied to the said email dated 19th May, 2022, stating that it is committed to supply the manpower as per the stated norms with effect from 01st June, 2022, however, there was no mention of the 17 MTSs proposed in email dated 19th May, 2022, to be kept on Petitioner's payroll, in the Bid document. The Petitioner thus offered two options in pursuance of department's request i.e., (i) either the Department furnishes undertaking on behalf of the said 17 MTS to the effect that the department takes onus towards the said deployment or (ii) the Petitioner will commence services in terms of the contract with effect from 01st June, 2022. The department, in pursuance of the aforesaid, issued another email dated 30th May, 2022 furnishing the undertaking of the proposed 17 MTSs but the department did not assume any responsibility for the said personnel.



2024 : DHC : 3933 -DB



2.4. The Petitioner thereafter reported to the office of DAHD with the requisite manpower to commence the services under the contract, however, they were refused entry. The Petitioner, being aggrieved issued an email to the Respondent stating that all 17 MTSs engaged by the Petitioner reported for duty at designated time and some of their names have been entered in the register by the CISF personnel, however, they were refused entry. An incident bearing no. 1222554 was also raised on the GeM portal (last modified on 18th July, 2022) stating that the commencement of services was denied by the DAHD in violation of the contract.

2.5. Subsequently, communications were exchanged between the parties with respect to the issue of non-deposit of Performance Bank Guarantee ('PBG') and ultimately, a Show Cause Notice was issued by DAHD vide email dated 15th June, 2022, directing Petitioner to show cause as to why the contract should not be cancelled due to non-deposit of the PBG. The GeM also sent an email informing that buyer is ready to terminate the contract by mutual consent.

2.6. The Petitioner raised another incident no. 1286899 on the GeM portal on 19th September, 2022, as modified on 14th October, 2022, stating that the Petitioner's contract has been cancelled without any intimation of cancellation of contract.

2.7. The Respondent thereafter issued a similar fresh tender on 28th September, 2022, wherein a fresh contractor i.e. M/s Mritunjyaa Associates was selected.

3. The Respondent in its counter affidavit has not denied the issuance of the e-mails dated 19th May, 2022 and 30th May, 2022. The Respondent has, however, sought to justify its e-mails by stating that Petitioner had not



2024 : DHC : 3933 -DB



consulted the Respondent prior to finalising its manpower of 17 persons enlisted in the e-mail dated 30th May, 2022, and therefore, the Respondent denied them entry. Respondent has also alleged that the Petitioner herein failed to furnish the Performance Bank Guarantee. Lastly, during the course of arguments, learned standing counsel for the Respondent submits that the new contract awarded to M/s Mritunjyaa Associates has already been executed and therefore, the relief sought in the writ petition has become infructuous.

4. In response, learned counsel for the Petitioner states that in the admitted facts, the Respondent has wrongfully refused to accept the services of the Petitioner on 01st June, 2022 and therefore, the Petitioner is entitled to refund of a sum of Rs. 40,003/- paid to the GeM towards fees. He states that with respect to the relief of compensation for wrongful termination, it may be granted liberty to initiate appropriate proceedings before appropriate forum.

5. Having heard the learned counsel for the parties and upon perusal of the e-mails dated 19th May, 2022 and 30th May, 2022 issued by Respondent Department as well as the counter affidavit, we are prima facie of the view that there is substance in the submission of the Petitioner that the Respondent was insisting on continuing with the 17 MTSs engaged by the previous contractor and compelling the Petitioner to engage the said 17 MTSs. The Petitioner has drawn our attention to the stringent terms of the contract which make the Petitioner liable for the quality of services rendered by the personnel deployed by it. In these facts, the Petitioner's unwillingness to absorb the 17 MTSs proposed by Respondent appears fair and reasonable. The Respondent was not entitled to dictate to the Petitioner to employ the



2024 : DHC : 3933 -DB



persons enlisted in email dated 19th May, 2022. The Respondent's action of terminating the Petitioner's contract for not accepting the 17 MTSs proposed by the Respondent, therefore, appears to be unwarranted and unjustified. The Respondent proceeded to terminate the contract and has availed the services from a third-party M/s Mritunjyaa Associates. In these facts, however, the Petitioner is entitled to refund of the amount of Rs. 40,003/- paid to GeM for participating in the tender process.

6. We, accordingly, direct the Respondent to refund the amount of Rs. 40,003/- to the Petitioner within a period of four weeks failing which the Respondent will become liable to pay interest at the rate of 8% per annum with effect from 19th May, 2022. Further, the Petitioner is at liberty to avail its remedy for award of compensation for the wrongful termination of its contract before appropriate forum as the claim for damages would have to be proved by the Petitioner in accordance with law.

7. With the aforesaid directions, the present petition stands disposed of. It is clarified that the rights and contentions of the parties are left open and findings returned in this order is our prima facie view

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 13, 2024/msh/aa