

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2621 of 2023

M/s Intelligence Security of India Having its offices at House No. 30 Patliputra Colony, First Floor, Patna- 800013, through its Proprietor Mr. Ajit Kumar Singh, aged about 54 years (Male) Son of Sri Ramyash Singh, resident of Geeta Mansion, Gujral Path Keshrinagar, P.S. Patliputra, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Energy, Government of Bihar, Patna.
2. The Principal Secretary, Department of Energy, Government of Bihar, Patna.
3. Bihar State Power Transmission Company Limited, through its Chairman, 4th Floor, Vidyut Bhawan, Patna 800021, Bihar.
4. The Chairman, Bihar State Power Transmission Company Limited, 4th Floor, Vidyut Bhawan, Patna 800021, Bihar.
5. The Managing Director, Bihar State Power Transmission Company Limited, 4th Floor, Vidyut Bhawan, Patna 800021, Bihar.
6. The Chief Engineer Transmission, (O and M), Bihar State Power Transmission Company Limited, 4th Floor, Vidyut Bhawan, Patna 800021, Bihar.
7. Rakshak Securitas Private Limited, Having its registered office at 3rd Floor, T-5, Plot No. 12, Manish Plaza III, Plot no. 12, Sector 10 Dwarka, New Delhi- 110075.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 4529 of 2023

M/S Jai Shankar Industrial Security Services Pvt. Ltd. a company incorporated under the Companies Act, 1956 having its Office at Bhagwanpur Chatty, Rewa Road, Muzaffarpur- 842001, Bihar through its Director Dilip Kumar, S/o Mahendra Prasad Singh, Male, Aged About 46 years, Resident of Aima, Post- Gidha, P.S.- Digha, Dist.- Muzaffarpur, Bihar- 843106

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Energy Department, Govt. of Bihar.
2. The Chairman, Bihar State Power Transmission Company Limited Vidyut Bhawan-II, Bailey Road, Patna- 800021
3. The Managing Director, Bihar State Power Transmission Company Limited Vidyut Bhawan-II, Bailey Road, Patna- 800021
4. The Chief Engineer, Trans (O and M), Bihar State Power Transmission Company Limited Vidyut Bhawan-II, Bailey Road, Patna- 800021



5. Rakshak Securitas Private Limited, having its Registered Office at 3rd Floor, T-5, Plot No. 12, Manish Plaza III, Sector- 10, Dwarka, New Delhi- 110075

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 2621 of 2023)

Mr. Mrigank Mauli, Sr. Advocate

	Mr. Avinash Shekhar, Advocate
	Mr. Deo Prakash Singh, Advocate
For the BSTCL :	Mr. Umesh Prasad Singh, Sr. Advocate
	Mr. Vaibhav Veer Shankar, Advocate
For the Respondent No.7:	Mr. Raju Giri, Advocate
For the State :	Mr. Yogendra Pd. Sinha, AAG-7
(In Civil Writ Jurisdiction Case No. 4529 of 2023)	
For the Petitioner/s :	Mr. Deo Prakash Singh, Advocate
For the respondent 2 to 4:	Mr. Umesh Prasad Singh, Sr. Advocate
	Mr. Vaibhav Veer Shankar, Advocate
For the Respondent No.5:	Mr. Raju Giri, Advocate
	Mr. Harsh Vardhan, Advocate
For the State :	Mr. Abbas Haider, SC-6
	Mr. Wasi Mohammad, AC to SC-6

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 02-04-2024

Both these writ petitions challenge the award of contract to the party respondent impleaded in both the writ petitions respectively as the 7th and 5th respondents. The contention with respect to the pre-eminence of the petitioners in receiving the contract, is based on the marks awarded for determining the best tenderer as has been provided under the Notice Inviting Tenders (for brevity, the NIT).

2. Shri Mrigank Mauli, learned Senior Counsel appearing in C.W.J.C. No. 2621 of 2023 points out that the



petitioner is aggrieved with the award of marks with respect to two aspects; one the experience as provided by the party respondent, the successful tenderer and the marks awarded for the registered/corporate office situated within the State of Bihar. Reference is also made to the interim order passed by another Division Bench on 10.04.2023, wherein certain directions were issued to recompute the marks awarded based on the findings therein. Even now the party respondent has been chosen as the successful bidder which goes against the conditions stipulated for award of marks. We were specifically taken to the conditions stipulated insofar as experience and also registered/corporate office being within the State of Bihar. It is pointed out that the petitioner, a proprietary concern was registered under the Bihar Shops and Commercial Establishments Act, 1953 but has been denied any marks in the revaluation; while the successful bidder was awarded 10 marks at the earlier instance and 5 in the revaluation. The successful bidder was awarded 10 marks, despite his corporate registration being in Delhi; outside the State of Bihar, which was only because he too was registered under the Bihar Shops and Commercial Establishments Act, 1953. The further contention with respect to experience is specifically on the experience put forth by the successful bidder



being not in governmental establishments/autonomous institutions/corporations. The petitioner, hence, contends that the 18 marks granted to the respondent will have to be reduced to 10 marks.

3. Shri Deo Prakash Singh learned counsel appearing for the petitioner in C.W.J.C. No. no 4529 of 2023 has a grievance with respect to the ISO certification of the petitioner having not been granted marks and the petitioner's personnel, comprised of more than 100 ex-servicemen also having not been reckoned for award of suitable marks. To the contention raised on the *locus standi* of the writ petitioner, since, the tender was submitted by a joint venture; the learned counsel would argue that the petitioner herein was the lead partner.

4. Shri Umesh Prasad Singh, learned Senior Counsel, who appears for the Bihar State Power Transmission Company Ltd. supports the award of marks to the successful bidder both on the count of experience and also on the count of registered/corporate office within the State of Bihar. Insofar as the registered office is concerned, it was the petitioner, who raised the contention at the earlier instance that it has to go by the corporate office and based on the interim order of the learned Single Judge, the respondent company was given only 5



marks to the successful bidder, since he had a corporate office in Delhi and the petitioner was given no marks, since he was a proprietary concern without any corporate registration. Insofar as the experience is concerned, the learned Senior Counsel would take us through the documents produced along with the supplementary counter affidavit by the petitioner himself to argue that South Asian University is one formed by the member States of the South Asian Association for Regional Cooperation (for brevity, the SAARC) and is an autonomous body which is also aided by the governments of the member States including the Central Government. In such circumstances, the experience as projected by the successful bidder in providing security services to the said University cannot be ignored.

5. Insofar as the other writ petition is concerned, it is pointed out that the petitioner, who had associated with another entity to form a joint venture; which itself is a separate distinct legal entity has approached this Court by itself; thus putting to peril its *locus standi*. Reliance is placed on the decision of the Hon. Supreme Court in **New Horizons Ltd. v. Union of India, (1995) 1 SCC 478**. As far as the factual contentions it is pointed out that the ISO certificates were not attached with the tender and there is nothing to establish the



number of ex-servicemen employed by the petitioner.

6. Shri. Raju Giri appearing for the party respondent in both the writ petitions has quite a different contention insofar as the stipulation regarding experience. According to him, there are two limbs to the aspect of experience as coming out from the NIT and the eligibility criteria prescribed. The essential requirement is proof of minimum continuous experience in the last three financial years under governmental organizations or reputed PSUs and then the satisfactory services for each of the last three or more financial years. While the three year stipulation is essentially of experience with governmental organizations or reputed PSUs the further experience would only enable enhancement of the marks granted to a tenderer; which essentially does not have to be in a governmental organization. The learned Counsel also adopts the contention of the respondent company that the University is an autonomous body which has some governmental control; not only of this country but also of the member countries of SAARC. It is submitted that even if the marks for ISO certification is granted to the joint venture, it would not come to the level of the successful bidder.

7. We will first look at the interim order passed on



10.04.2023. The Division Bench looked at the stipulation in the NIT, to *prima facie* find that while award of marks in respect of Serial nos. 2 and 6; with respect to experience of the firm in security services business and presence in Bihar, it has to be reworked. Holding that the Courts are not expert bodies to assess the award of marks, the respondent was asked to revisit the evaluation by the technical persons available in the office of respondent nos. 3 and 4 and carry out a fresh exercise. We cannot but notice that the Division Bench while recording the arguments of the learned counsel for the respondents noticed the distinction insofar as the petitioner being a proprietorship firm and the successful bidder being a corporate company; which would result in the successful bidder having an edge over the petitioner, though not registered within Bihar. The successful bidder was a registered corporate entity with registration in Delhi, while the petitioner was only a proprietorship concern having no corporate registration.

8. We have looked at the criteria once more as available from Annexure-1 produced along with C.W.J.C. No. 2621 of 2023 at page 46 of the writ petition; wherein the criteria on which the marks are awarded have been detailed. The first question is as to the experience of the firm in security service



business. For any experience in excess of 5 years and up to 10 years, 10 marks are awarded; for 10 years to 15 years, 15 marks; 15 years to 20 years, 18 marks and above 20 years, 20 marks. Before we look at the re-evaluation as done by the respondent company on the basis of the interim order, we look at the evaluation as originally done challenged in the writ petition available in page- 113. Both the petitioners obtained 10 marks and the respondent 18 marks. The petitioners do not have a case that they were not given the due marks and concedes to their entitlement of 10 marks alone based on the experience projected. The petitioners' contention is only with respect to 18 marks having been granted to the party respondent/successful bidder; which is alleged to be excessive for reason of the experience projected not being in governmental organizations or reputed PSUs.

9. For the specific evaluation of marks, we have to look at the supplementary affidavit dated 03.05.2023 filed by the petitioner. Annexure-23 is the reassessment made on the directions of the interim order which also conferred 18 marks as was originally done. The successful bidder's experience were with, (i) DSM Sugar Mansurpur, UP, (ii) South Asian University, Akbar Bhawan, New Delhi, (iii) IGNOU



Headquarters, and (iv) North Campus, University of Delhi which together would be above 15 years entitling the successful bidder to 18 marks. The objection of the petitioner is with respect to the experience with DSM Sugar Mansurpur, UP and the South Asian University. The just prior three year experience in governmental organisation is not disputed. Annexure-24 filed along with the supplementary affidavit clearly indicates that DSM Sugar Mills is a private limited company. Reference is also made to Annexure-25 agreement for establishment of South Asian University wherein it has been specifically stated that the University is a non-state, non-profit self-governing international educational institution. The learned Senior Counsel for the respondent company had pointed out from Article 3 that it receives support from the government of the member States including that of the Republic of India. The contention of the petitioner is that it is not a governmental organization, while the contention of the respondent company is that the University is still an autonomous body; providing of services to which can be reckoned for the purpose of awarding marks on experience.

10. On going through Annexure-25, we are of the opinion that the University is a non-profit partnership which only seeks support from each of the national governments of the



member states, which would not make it a governmental organization. When we look at the specific stipulation, we have to find that, employing the rule of *ejusdem generis*, the University cannot be said to be an autonomous institution as is required under the stipulation, which has atleast a semblance of control by the State. We are not convinced that an autonomous institution if it does not have any control by the State would come within the specification made therein.

11. For more clarity we extract the eligibility criteria at paragraph no. 29 (8) of the NIT (Page-44).

29(8) Scanned copies of proofs of minimum last Three Financial Year's i.e. 2018-21 continuous experience of the firm in the field of providing such service in Central Govt. / State Govt./Semi Govt./ establishments / autonomous bodies/corporations / reputed PSU with details in enclosed tabular form in chronological order and Scanned copies of the satisfactory services where the tender is providing the services for each of the last three or more financial years.

The proof of the just prior minimum three financial years experience has to be in the field of providing such service in Central-Govt. / State-Govt. /Semi-Govt. /establishments/ autonomous bodies/corporations/reputedPSUs. Hence, as we noticed above, going by the principle of *ejusdem generis* the



institutions mentioned should have some pervasive control by the State.

12. However, we are impressed with the argument of the learned counsel appearing for the party respondent/successful bidder that there are two limbs to the eligibility criteria, the first limb as we noticed above, is with respect to minimum three financial years continuous experience in governmental organizations; that is from 2018 to 2021. Then the second limb is with respect to satisfactory services for each of the last three or more financial years in which the specification of governmental organization is not available. In the above circumstances, we are of the opinion that though a private limited company and a non-profit organization, the services of the petitioner to the private limited company and the University could be added for the further experience beyond the experience in the just prior three financial years. The provision of satisfactory services to governmental organization applies only to the three financial years just prior to the tender notification. We, hence, find that successful bidder is entitled to 18 marks as provided in the NIT.

13. Now, the second ground raised is with respect to the registration, which we have to specifically notice from the



criteria and marks awarded, is for the presence in Bihar, which is specifically stated to be registered/corporate office in Bihar and registered/corporate office outside Bihar for which respectively 10 and 5 marks are awarded. It is very explicit that a proprietorship concern, a partnership firm or a corporate entity could submit a tender under the NIT. In such circumstances, the registration is not of the corporate office alone. We would understand the term employed of presence in Bihar, especially in the context of the tender being for provision of security services to the respondent company and its premises. The registration within the State of Bihar being given pre-eminence is only on account of the regulatory measures of state authorities being made applicable to the tenderer. It is pertinent that registration and corporate office has been mentioned alternatively with a slash in between. In the present case, both the petitioner and the successful bidder had registration under the Bihar Shops and Commercial Establishment Act, 1953, which provides them with 10 marks each which has been granted in the first evaluation. We find that the petitioner in C.W.J.C. No. 2621 of 2023, has no sustainable case against the award of the contract.

14. Insofar as C.W.J.C. No. 4529 of 2023, we



accept the contention raised by the learned Senior Counsel appearing for the respondent company based on **New Horizons Ltd.** (supra). We extract paragraph no.24 from the cited decision hereunder:-

“24. The expression “joint venture” is more frequently used in the United States. It connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. It requires a community of interest in the performance of the subject-matter, a right to direct and govern the policy in connection therewith, and duty, which may be altered by agreement, to share both in profit and losses. (Black's Law Dictionary, 6th Edn., p. 839.) According to Words and Phrases, Permanent Edn., a joint venture is an association of two or more persons to carry out a single business enterprise for profit (p. 117, Vol.23). A joint venture can take the form of a corporation wherein two or more persons or companies may join together. A ‘joint venture corporation’ has been defined as a corporation which has joined with other individuals or corporations within the corporate framework in some specific undertaking commonly found in oil, chemicals, electronic, atomic fields. (Black's Law Dictionary, 6th Edn., p. 342.)...”

A joint venture hence would be conferred the status of a



separate legal entity which is distinct from its constituents. The petitioner though the lead partner cannot file a writ petition by itself, since it is the joint venture which applied under the NIT. There is not even an authorization produced from the other constituent in the writ petition.

15. We have also looked at the specific grounds raised in the writ petition by the petitioner. The ISO certification as stated by the petitioner is for 15 years, which would enable him 15 marks as per the specification in the NIT. Even discounting the contention raised that the certificates were not produced along with the tender, if we add 15 marks to the marks obtained by the joint venture that would only take it to 85 marks, which is far below the 98 marks obtained by the successful bidder. Insofar as the contention related to ex-servicemen, we see from the records that nothing is produced to establish that there are more than 100 ex-service personnel employed with the petitioner. We have also found that the writ petition itself is not maintainable.

16. The petitioner relied on Rule 126(v) and Rule 131R of the Bihar Financial Rules. It is submitted that petitioner's tender was not rejected by a reasoned order. Rule 126(v) only requires that at every stage of procurement; which



obviously includes a tender issued by a public authority, the concerned authority should place on record the considerations which weighed with it while taking the procurement/award of tender decision. We cannot but notice that the authority had valid reasons in taking the decision which was presented to us on a challenge being raised. We do not think Rule 131R has any application and there is no ground raised of lack of transparency, competition, fairness or even any arbitrariness in the procurement process; which herein is the tendering process.

17. Both the writ petitions for the reasons stated above stand dismissed. The parties shall bear their respective costs.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	09.04.2024.
Transmission Date	

