

**W.P.(C) No. 15368 of 2014**

M/s. Active Security & Intelligence Services ..... Petitioner.  
Vs.  
EMET, Odisha & Another .....Opp. Parties.

03. 27.08.2014

The petitioner, challenges the validity of the tender call notice dated 9.8.2014 issued by the Superintendent, SCB Medical College & Hospital, Cuttack inviting tenders for 24 hours Security Services in the establishment for 3 years from the Security Service Agencies/Companies having at least 2 to 3 years of experience in the same field.

2. We have heard Mr. B.S.Tripathy, learned counsel for the petitioner.

3. Briefly stated the facts pleaded and necessary for the adjudication of the instant proceeding are that along with aforementioned tender call notice, the tender conditions were appended, which inter alia, set out the eligibility criteria of the tenderers. The bid to be submitted was to comprise of two parts i.e. (1) Technical Bid and (2) Financial Bid. Qua the technical bid, it was insisted that the same ought to be accompanied, amongst others, by photo copy of the 'Solvency Certificate of Rs. 15.00 lakhs' issued by the Revenue Department and 'Trade License' issued by the concerned Municipal Authority. In the check list, enlisting the documents to be furnished, it was further mentioned that 'Solvency Certificate' of Rs. 20.00

lakhs issued by the Revenue Department and the Trade Licence issued by the concerned Municipal Authority was to be submitted.

4. Learned counsel for the petitioner has emphatically argued that the tender call notice and the stipulation with regard to 'Solvency Certificate' and 'Trade Licence' in particular has been in deviation from the Draft Terms of Reference (in short, hereinafter referred as "the TOR") issued by the Directorate of Medical Education and Training, Odisha to all the Superintendents of Government Medical College & Hospitals and SVPPGIP, Cuttack in the matter of engagement of Outsourcing Agency for services pertaining to "Biomedical Waste, Laundry and Security Services in Government Hospitals". Further, according to Mr. Tripathy, not only there was an inconsistency in the amount of 'Solvency Certificate' as apparent on the face of the tender stipulations, the insistence for 'Trade Licence' in the matter of Security Services is also grossly illogical on the touchstone of relevance and reason.

5. We have carefully analysed the pleaded facts, documents on record and arguments advanced.

6. A plain reading of the Draft TOR (Annexure-3 to the writ petition) per se does not evince that it obligates a

wholly rigid and inflexible adherence thereto in absolute literal terms. No bar is found therein to prohibit the Government Medical College & Hospital etc. to add any stipulation thereto as may be construed to be necessary and relevant for the services sought to be secured through public participation in a tender process. Thus, supplementing the clauses of the Draft TOR is not prohibited thereby and is thus permissible. As a matter of fact, the TOR recognizes the right of the College/Hospital to add terms and conditions as considered appropriate albeit at the time of execution of agreement, if necessary, to test the credibility and suitability of a tenderer in the exigency of the services desired. This, in our comprehension, notionally admits of flexibility in the norms set out in the Draft TOR permitting the concerned Medical College/Hospital to insist for an additional requirement, if construed to be essential to meet the exigency of work.

7. The insistence for Solvency Certificate and Trade Licence, thus, per se cannot be said to be patently irrelevant and unwarranted so as to ipso facto vitiate the tender call notice. The amount of solvency certificate, though is at variance at two different places of the tender documents, the same by itself, in our estimate and on an

overall consideration of the scheme of the tender norms, also does not invalidate the tender call notice. In a process for settlement of public contract, the author thereof has the discretion and power to design the eligibility criteria and prescribe incidental norms best suited to judge, in his perception, the suitability and reliability of a tenderer. No interference at the instance of an intending contender, on the ground of irrelevance and inessentiality as urged in the instance case, is called for in exercise of this Court's power of judicial review. In our comprehension, the Solvency Certificate as well as the Trade Licence cannot be repudiated to be wholly impertinent, so much so, to annul the tender call notice as sought for.

We are thus of the unhesitant opinion that the challenge lacks in merit to justify judicial intervention.

The petition thus is rejected. No costs.

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**Amitava Roy, C.J.**

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**Dr. B.R. Sarangi, J.**