

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
ATJAMMU**

**WP (C) No. 121/2023  
CM No. 246/2023**

Reserved on:13.09.2023  
Pronounced on:04.10.2023

**Ranjit Publicity Pvt Ltd.,  
Registered Office 105 Sec-B,  
Sainik Colony, Jammu,  
Through its Director,  
Deepak Dutta, age 42 years,  
S/O Sh. N. P. Dutta, R/O 382  
Gurha Bakshi Nagar, Jammu**

.....Petitioner(s)

Through :- Mr. Gagan Kohli, Advocate

v/s

- 1. Jammu Municipal Corporation,  
Projects Division, through its  
Commissioner, Town Hall, Jammu.**
- 2. Joint Commissioner (Works)  
Jammu Muniipal Corp., Jammu.**
- 3. Executive Engineer,  
Projects Division, JMC, Jammu.**
- 4. M/S Altaf Constructions, Prop.  
Mohammad Altaf Sheikh age 33 years  
S/O Ghulam Mohi-ud-Din Sheikh,  
R/O Kenihama, Nowgam, B. K. Pora,  
District Budgam, Kashmir.**

.....Respondent(s)

Through :- Mr. Rajnish Raina, Advocate for R-1 to 3  
Mr. Zaffar Qadri, Advocate for R-4

**CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE**

**JUDGMENT**  
**10.2023**

1. Petitioner claiming to be a Micro Small Medium Enterprises (MSME) Unit, and having participated in the tendering process in response to e-NIT No. 78(P) of 2022-23 issued by respondent no.3/Executive Engineer Projects Division, JMC Jammu with regard to providing and fixing Static Ad Panels

in Jammu City, through the medium of this petition has sought the following reliefs:

- a) To quash and set aside order dated 09.01.2023 passed by the respondent No.3 which is uploaded in the Govt. Electronic Procurement notification of the Jammu Municipal Corporation, whereby the Technical Bid of the petitioner in pursuance to e-NIT No. 78(P) of 2022-23 dated 01.12.2022 has been cancelled, by issuance of writ of Certiorari.
  - b) Command and direct the respondents to grant relaxation to the petitioner as circulated by the Govt. of India Ministry of Finance, Department of Expenditure, Procurement Policy Division vide its office memorandum dated 26.07.2016 as the petitioner unit being a Micro, Small and Medium Enterprises, by issuance of writ of mandamus.
  - c) Command and direct the respondents to accept the Technical Bid of the petitioner and open the Financial Bid of the petitioner and allot the work in pursuance to e-NIT No. 78(P) of 2022-23 dated 01.12.2022, by issuance of writ of mandamus.
  - d) Prohibiting the respondents from allotting the work advertised by e-NIT No. 78(P) of 2022-23 dated 01.12.2022 to any other person till the financial bid of the petitioner is opened and considered by the respondents, by issuance of writ of prohibition.
2. It has been asserted in the petition that the Jammu Municipal Corporation through its Projects Division came to issue an e-NIT no. 78(P) of 2022-23 for the work of Providing and Fixing Static Ad Panels in Jammu City; that the schedule for submission of bids, opening of bids and the manner of applying in the bidding process stood detailed in the said e-NIT, the petitioner claims to be one of the bidders who responded to this e-NIT and by virtue of Government Portal communication dated 09.01.2023, the petitioner come to be apprised that its bid has not been admitted by the committee and has been asked to get in touch with the Tender Inviting Authority (TIA); that the respondents have been writing letters to the petitioner in other bids and calling upon the petitioner to complete the non mandatory terms, but in the present bid, the respondents have neither

disclosed the non mandatory terms which are lacking nor opportunity to correct the same is being afforded to the petitioner which is illegal and arbitrary; that to the best of information of the petitioner, the contract has not been put to final allotment by reference to the e-NIT in question.

3. The grievance of the petitioner is that the same work has been advertised by respondent no.3 for six times and every time there were only two bidders, one bid was submitted by the petitioner and another by other contractor and as per the Financial Code, if the department is not getting sufficient bid then the department may re-tender the same work for three times and even after third advertisement, there is no healthy competition, then the department can proceed with the tender and finalize the contract.

In the present case the same work has been advertised sixth time, it has to be finalized but the technical bid of the petitioner has been rejected without disclosing the reasons, therefore, non-consideration of the bid of the petitioner is illegal and arbitrary.

4. Pursuant to notice, the official respondent Nos. 1 to 3 filed objections asserting therein that the present petition is not maintainable for the reason that the petitioner had participated in the tender process however in technical evaluation, after opening of the Technical Bid, the tender evaluation committee found that the petitioner is not qualified as it failed to fulfill the pre-requisites of the qualifying bid; that invitation of fresh bids are based upon the response to bids and adherence to the bid criteria by the bidders, as such, unless and until the bid criteria are adhered by the bidder, the Bid Inviting Officer is bound to invite fresh bids with the approval of the higher authorities; that the petitioner's firm is registered in July 2020 and the tender was initiated in the year 2022 which does not even qualify the minimum three years of experience criteria, as such, even one of the

minimum qualification of experience was not adhered to by the bidder and so far as relaxation is concerned, it is only provided with regard to EMD and bid fees in case of MSMEs and it was finally prayed the present petition be dismissed with exemplary costs.

5. Respondent No.4 also filed objections/reply asserting therein that he being registered AAY-Class contractor, as such, has been working with various departments which include respondent-Corporation, deals with all types of government/semi government works and has successfully completed many projects in the past with full dedication towards the departments concerned; that the respondent-Corporation floated tender e-NIT No. 78(P) of 2022-23 for designing, providing and fixing of static Ad Panels in Jammu City, he submitted his tender documents well within the time as prescribed in the e-NIT along with other contractors which include the petitioner herein, to carry out work, thereafter the technical bid was opened, wherein his tender has been declared as successful bidder and being lowest one, as he successfully qualified the financial bid and subsequently letter of intent was issued in his favour and as per the letter of intent, the Joint Commissioner (Works) JMC vide No. MJ/JC/W/2709-11 dated 18.01.2023 directed the respondent no.4 to produce original documents which he has uploaded for participating tender process, for verification, thereafter he submitted all the documents in original and were found true and correct and also he was directed to submit the performance security of Rs.10,05,750/-, 3% of the accepted advertised amount Rs.3,35,25,000/- which stands submitted in the shape of FDR; that the present petition has been filed by the petitioner with the sole aim and motive to defeat the process of law and not allowing the respondent no.4 to perform his part of obligation, otherwise also the petitioner being not an A-Class contractor had not taken plea that there is a

circular issued by Ministry of Micro, Small and Medium Enterprises Government of India, as such, being an incompetent and ineligible candidate, has no right to participate in the tendering process and lastly it was prayed that the present petition be dismissed.

6. Mr. Gagan Kohli, learned counsel for the petitioner vehemently argued that the Technical Bid submitted by the petitioner in pursuance to e-NIT no. 78(P) of 2022-23 was rejected by the respondents without disclosing any reasonable ground. He has argued that the petitioner filed his representation dated 10.12.2022 for giving him relaxation as per the circular issued by the Government of India from time to time, as a start-up unit, but despite representation, the respondents have not given relaxation to the petitioner. He has further argued that the respondents have been writing letters to the petitioner in other bids and calling upon the petitioner to complete the non mandatory terms, but in the present bid, the respondents have neither disclosed the non mandatory terms which are lacking, nor opportunity to correct the same was afforded to the petitioner, which is illegal and arbitrary.
7. Mr. Rajnish Raina, learned counsel for the official respondents, ex adverso, argued that the petitioner/bidder has to provide financial turnover, year wise i.e from 2017-2018 to 2021-2022 duly certified by the chartered accountant, but the bidder has submitted only for three years. He has further argued that the bidder has to provide list of technical personnel, key plant & equipment to be deployed on contract work and the documents i.e completion certificate of allotted work for qualification ( i.e 80% one, or 50% two or 40% three), but the same were not uploaded by the petitioner. He has further argued that as in the terms and conditions of the tender, it was clearly mentioned that the tender/bid is liable to be rejected if the

tenderer/bidder does not fulfill the requirements as laid down in e-NIT in question, therefore, the bid of the petitioner was rejected and subsequently the Letter of Intent (LoT) stand issued in favour of L1 bidder at the advertised cost of the work. He has further argued that the official respondents have not committed any illegality in rejecting the technical bid of the petitioner as the petitioner has failed to fulfill the pre-requisite of the qualifying bid, as such, the present petition is required to be dismissed.

8. Mr. Zaffar Qadri, learned counsel for the respondent No.4 M/S Altaf Constructions, who has been impleaded as party respondent in this petition vide interim order dated 13.09.2023 passed in CM No. 5091/2023, has argued that the respondent-Corporation floated tender e-NIT No. 78(P) of 2022-23 for designing, providing and fixing of static Ad Panels in Jammu City, the respondent No.4 has submitted its tender documents well within the time as prescribed in the e-NIT along with other contractors which include the petitioner herein, to carry out work, thereafter the technical bid was opened, wherein the tender of the respondent No.4 has been declared as successful bidder/lowest one, as he successfully qualified the technical bid and subsequently letter of intent was issued in its favour. He has further argued that the petitioner has filed the instant petition challenging the order which has been passed against him, as its bid has been rejected being an incompetent/ineligible tenderer and it has not fulfilled all requisite formalities which included producing the License as an A-class contractor, but the petitioner failed to annex the same, with the tender documents as well as with the writ petition which clearly shows that the petitioner is ineligible tenderer.
9. Heard, perused and considered.

10. Before proceeding further, to consider the case, it would be useful to consider the principles governing the exercise of power of judicial review of the administrative action by the Court.
11. In **Tata Cellular v. Union of India; (1994) 6 SCC 651**, the position has been laid down in Para-94 as under:-

*94. The principles deducible from the above are:*

- (1) The modern, trend points to judicial restraint in administrative action.*
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.*
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.*
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.*
- (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.*
- (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.*

12. Similarly, in **Jagdish Mandal vs State of Orrisa, 2007 14 SCC 517**, Hon'ble the Supreme Court has laid down the following tests for judicial interference in exercise of powers of judicial review of administrative action:

*“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. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or*

*prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succor to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:-*

- i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone.  
OR Whether the process adopted or decision made is so arbitrary and irrational that the court can say : 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached.'*
- ii) Whether public interest is affected.*

*If the answers are in the negative, there should be no interference under Article 226.....”*

13. Hon'ble Supreme Court in case titled **“Balaji Ventures Pvt. Ltd vs Maharashtra State Power Generation Company Ltd. & Anr”**, reported in **2022 LiveLaw (SC) 295** wherein a reference has been approvingly made of the law laid earlier by the court in the case titled **“Montecarlo Limited vs National Thermal Power Corporation Limited, (2016) 15 SCC 272”** by holding that the tender inviting authority is the best person to understand and appreciate its requirement and tender documents, so long as there are no mala fides/arbitrariness, the Government must have freedom of contract and such action can be tested by applying Wednesbury principle and also examining whether it suffers from arbitrariness or bias or mala fides.
14. Having regard to the above legal principles enunciated, the petition is required to be decided, adverting to the case set up. In response to the NIT in question, bids were submitted by the petitioner as well as respondent No.4. Petitioner's technical bid was, however, rejected vide



order dated 09.01.2023, by the respondent No.3 as uploaded, informing the petitioner that its bid has been 'Not Admitted' by the committee.

15. While enumerating factual aspects, official respondents stated in the objections that petitioner failed:

- i) To specify the requisite information properly with regard to information regarding any litigation, during last five years;
- ii) To submit financial turnover certified by Chartered Accountant for the years 2017-18 to 2021-22;
- iii) To upload completion certificate of allotted work for qualification, for similar nature of works;
- iv) To upload undertaking for the details of the works underway/no underway;
- v) To provide profit and loss statement, balance sheet, ITR and TDC for last five years as details were shared only for three years;
- vi) To upload list of technical personal key plant and equipment to be deployed on contract work;
- vii) To upload credit facility of 10% of advertised cost duly certified by the bankers;
- viii) To upload undertaking to invest minimum cash upto 25% of cash of contract value of the work;
- ix) To upload affidavit to seek reference from the bidders' bank and bid validity for period not less than 120 days; and
- x) To upload integrity pact, proposed methodology and progress of construction, quality assurance programme and registration and verification certificates.

16. The failure on the part of the petitioner to satisfy the technical terms of the bid, it was declared unsuccessful vide impugned communication, as such, financial bid was opened on-line and respondent no.4 was declared as successful bidder and the respondent no.2, vide communication dated 18.01.2023, issued Letter of Intent (LoI) for advertised/accepted amount of Rs.3,35.25 lacs asking respondent no.4 to submit 3% of it amounting to

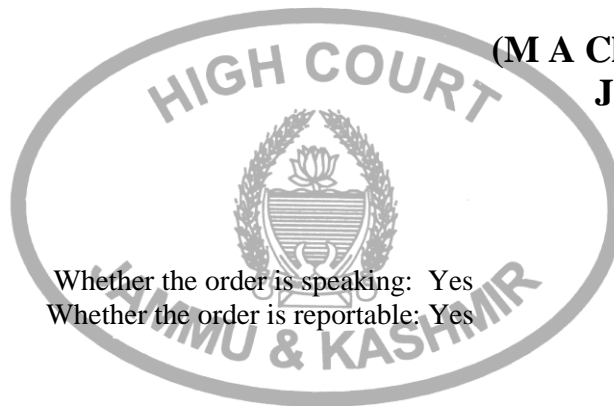
Rs.10,05,750/- as performance security. Respondent No.4 is stated to have deposited the performance security and as L1, invested huge amount, in the direction of execution of the contract work.

17. The petitioner has questioned the technical evaluation result, whereby the bid of respondent No.4 has been accepted and that of the petitioner had been rejected. The main contention of the petitioner is with regard to relaxation being a small medium enterprise, as a start up unit, with regard to its experience. From the record as disclosed by the official respondents, the petitioner had defaulted not only in his experience but had failed almost on ten counts as mentioned in detail in para-15 of this judgment. The petitioner is, thus, not able to satisfy the technical bid conditions so as to qualify the same. The respondent-Tender Inviting Authority has thus rightly shown the bid of the petitioner as 'not admitted' and declared respondent no.4 as successful bidder issuing him a Letter of Intent. The respondent no.4 has also deposited the amount of Rs. 10, 05, 750/- as performance security, being 3% of the advertised/accepted amount of the tender.
18. This Court having no expertise to correct an administrative decision, cannot sit as a court of appeal, to review the administrative decision so as to substitute its own decision. The technical bid's result, in absence of any specific allegation does not seem to be actuated by any *mala fide* and intended to favour someone, therefore, the process adopted by the official respondents cannot be said to be arbitrary or irrational, for any interference by this Court. The public interest is also not seemed to have been affected. Rather it has been brought to the notice of this Court that the tender in question was 6<sup>th</sup> in a row as the earlier five tenders have not received any response so as to culminate into the contract. Therefore, the public interest

for not finalizing the contract would, otherwise, suffer in case the technical bid of respondent no.4 as accepted by the respondents is not allowed again, by interference by this Court. The petitioner has thus, failed to substantiate its plea, so as to warrant any interference by this Court into administrative decision of the respondents, vide impugned order dated 09.01.2023.

19. Having regard to the foregoing discussion and the reasons stated hereinabove, the petition filed by the petitioner is found to be without any merit and substance and is liable to be **dismissed**, upholding the impugned order.
20. The petition is, thus, dismissed along with pending application(s). There shall be no order as to costs.

JAMMU  
04.10.2023  
Vijay



(M A Chowdhary)  
Judge

Whether the order is speaking: Yes  
Whether the order is reportable: Yes