

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR
(Through Virtual Mode)**

EMG-WP(C) No. 08-A/2020
[WP(C) No. 861/2020]

Pronounced on: 30th.06.2020

M/s New J.K. Roadways Petitioner(s)

Through:- Mr. Altaf Nayak, Sr. Advocate

V/s

Union Territory of J&K and othersRespondent(s)

Through:- Mr. B. A. Dar, Sr. AAG for R-1 to 4.
Mr. Shuja-Ul-Haq, Advocate for R-5.

Coram : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. Inspector General of Police, Kashmir Zone, Zonal Police HQR's Kashmir, Srinagar invited online tenders (e-tenders) vide GIST of e-NIT No. 01 of 2020 dated 18.02.2020 from reputed transporters, registered firms and Associations for supply of various types of commercial vehicles (without fuel) for carriage of troops and equipments etc. for the financial year 2020-21. Pursuant to the said tender notice, four parties i.e, M/s Associated Contractors, Quareshi Transport Co., M/s New JK Roadways and M/s Galaxy Transport Agencies submitted their bids for consideration and the same were uploaded through e-tendering system. The tendering process consisted of two bids system i.e., Technical bid and financial bid, only those qualifying the technical bid were to be considered for evaluation of the financial bid.

02. The Tender Opening Committee met on 11.03.2020, i.e, the date of opening of the technical bid and found that M/s New JK

Roadways and M/s Associated Contractors did not qualify in the technical bid.

M/s Quareshi Transport Co. and M/s Galaxy Transport Agencies, qualified the technical bid and both were thus considered for allotment of the contract. The official respondents vide order No. PCRK/MT-2020/2200/03 dated 30.03.2020 allotted the contract for supply of commercial vehicles for the financial year 2020-2021 to the lowest bidder i.e, respondent No. 5, M/s Galaxy Transport Agencies.

03. Petitioner seeks quashing of allotment of contract to respondent No. 5 and further seeks direction for allotment of the said contract to the petitioner. The contention of the petitioner is that respondent No. 5 was not qualified for allotment of contract as per the terms and conditions of the tender as the said firm did not possess the requisite service license authorizing it to execute the contract, as its license to run Motor Transport service was valid only upto 31.03.2020. Since respondent No. 5 lacked this essential requirement, therefore, the firm could not be awarded the contract. It is also submitted that respondent No. 5 did not possess requisite number of vehicles as per the condition of contract because out of the list of 36 vehicles, only 29 vehicles have been found in the name of M/s Galaxy Agency and 07 in the name of some other persons, vehicle at S. No. 29 bearing registration number JK01L-5487 INNOVA was in fact not INNOVA but a PIAGGIO Auto. Thus, the respondent No. 5 did not fulfill the essential condition of possessing 30 vehicles of required specification, and also lacked the necessary experience of work done amounting to Rs. 2.00 crore as well as working experience of five years, therefore, the official

respondents ought to have outrightly rejected the bid of respondent No. 5 and could have allotted the contract to the petitioner.

04. Mr. B. A. Dar, learned Sr. AAG, submits that as per the condition of the Tender notice, the bidders should have at least 30 vehicles both HMVs and LMVs registered in their names. The Tender Opening Committee found that since the petitioner did not satisfy this most essential condition, as the petitioner had submitted list of only HMV vehicles, therefore, the petitioner's bid was rightly rejected and the contract was allotted to the lowest eligible bidder. Therefore, the petitioner having failed to qualify the technical bid cannot now question the allotment of the contract of hiring vehicles to respondent No. 5.

05. Learned counsel for respondent No. 5, Mr. Shuja-ul-Haq, submits that since the petitioner failed to satisfy the prescribed criteria, his technical bid was rejected, therefore, the petitioner cannot assail the allotment of contract made in favour of respondent No. 5, who was found eligible by the tender allotment committee. Respondent No. 5 had qualified the technical bid and being the lowest bidder and therefore, the contract was accordingly allotted in its favour. Moreover, respondent No.5 had submitted a list of 36 vehicles alongwith tender documents and there was a typographic error in typing Registration No. as JK01L-5487 instead of JK01T-5487. A clarification in this regard was sought by the official respondents vide Communication dated 20.04.2020 with regard to five vehicles figuring in the list of vehicles submitted by respondent No. 5. The Respondent No. 5, accordingly, submitted registration copies of vehicles including those which were under process for registration certificate of vehicles bearing Registration No. JK01C-9695, JK03E-

3684, JK01L-6885, JK01L-5487 and JK01D-4956, therefore, contract was rightly allotted to M/s Galaxy Transport Agencies.

06. Heard learned counsel for the parties.

07. The petitioner has questioned the allotment of the contract to respondent No. 5 mainly on the ground that it is against the terms and conditions of the tender. As per the terms and conditions, of the tender notice, applicants had to (i) provide service license issued by the competent authority for handling of transportation; (ii) possess/operate at least 30 vehicles of required specification; & (iii) the firm/association should have working experience of at least five years and work should not less than two crores.

08. The allegation that respondent No. 5 did not have the valid service license in terms of the Rule-127(2) of the Jammu & Kashmir Motor Vehicles Rules, 1991 for handling the transportation job, thus, it could not have been considered for allotment of contract. The respondents with their objections have placed on record the registration of respondent No. 5 in terms of Rule-127(2) of the Jammu & Kashmir Motor Vehicles Rules, 1991 which was valid upto 31.03.2020. It is stated that at the time of submission of tender, respondent No. 5 was possessing valid transportation service license which was due to expire on 31.03.2020 and prior to furnishing the documents, he had sought extension of validity of service license. However, before the decision on the extension of that license could be taken, lock down was imposed on account of the outbreak of COVID-19, resultantly, a general order was issued that the validity of all the documents of service relating to transportation service shall be deemed to have been extended till

30.06.2020. Therefore, respondent No.5 fulfilled the eligibility condition of holding a valid service license.

09. The next objection raised was that since respondent No.5 did not own 30 vehicles both HMVs/LMVs in its name, as such, contract could not have been allotted in its favour. A complaint in this regard was also filed by the unsuccessful bidders with regard to the facts as stated in this petition. The same was forwarded to SSP, Srinagar to ascertain the veracity of the allegations and the documents submitted by respondent No. 5. As per his report, 05 vehicles were found to be in the name of other individuals but respondent No. 5 had provided a list of 36 vehicles, and as per the terms of the contract, he had to furnish list of 30 vehicles, therefore, even if five vehicles were not in his name yet respondent No. 5 fulfilled the criteria having 30 vehicles registered in its name. Respondent No. 5 also submitted his explanation regarding these allegations and SSP PCR was directed to verify explanation tendered by respondent No. 5 was correct. The SSP PCR submitted reports concurring with the explanation of respondent No. 5 on the basis of reports received from RTO, Kashmir and RTO Anantnag, that the vehicles are registered in the name of respondent No. 5 in one registration No. JK01L-5487 (Auto), there existed a typographical error and (L) instead of (T) was mentioned so it was JK01T-5487 and the same was accordingly rectified.

10. It was also submitted that the respondent no. 5 did not have requisite working experience of at least five years with documentary proof and work experience should not be less than Rs.02 crores per year. In this regard, the Senior Superintendent of Police, PCR Kashmir has

certified that respondent No. 5 had done work for the Police Control Room Kashmir during parliament/Assembly Election upto the turnover of Rs.2.00 Crore. A letter in this regard was also forwarded to the Inspector General of Police, Kashmir by the Senior Superintendent of Police, PCR Kashmir who had forwarded the work done certificate of respondent No. 5 on 19.03.2020. Though, the official respondents have submitted that respondent No. 5 fulfilled all the criteria but the experience certificate of respondent No. 5 is only from 2014 to 2018, therefore, the question which is for consideration is whether this would be enough to disentitle respondent No. 5 from allotment of contract.

11. The argument of the respondents that it was within the competence of Tendering Authority to give effect to the terms and conditions of the tender documents commensurate with the object sought to be achieved deserves consideration. It is true that since the contract was for supply of commercial vehicles for carriage of troops and equipments, therefore, tendering authority was best judge with regard to interpretation of the terms and conditions in this regard. Since the contract is essentially a commercial transaction which must be determined on the basis of consideration relevant to such decision, therefore, they are not open to judicial scrutiny unless found to be discriminatory, biased and mala fide. Since four parties had submitted their bids and only two had qualified for financial bid, therefore, the respondents, keeping in view the public interest, were well within their rights to allot the contract to respondent No. 5.

12. This apart, as per the terms and condition, the respondents reserved the right to accept or reject any tender as per condition No. 31.

They, thus, rightly accepted the bid of respondent No. 5 keeping in view the requirement. It is settled law that there is an inherent limitation in exercise of power of judicial review in the matters relating to award of contract by the State and its instrumentality.

13. The scope of judicial review in contract matter was considered by the Apex Court in **M/s Michigan Rubber (India) Limited Vs. State of Karnataka & ors., 2012 (8) SCC 216** in which it has been held that ;

“24. 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"? and

(ii) Whether the public interest is affected?

If the answers to the above questions are in the negative, then there should be no interference under Article 226.”

14. In **Raunaq International Limited v. I.V.R. Construction Ltd. & Ors. (1999) 1 SCC 492**, their lordship reiterated the principle governing the process of judicial review and held that the Writ Court would not be justified in interfering with commercial transactions in which the State is one of the parties to the same except where there is substantial public interest involved and in cases where the transaction is mala fide.

15. In Jagdish Mandal v. State of Orissa (2007) 14 SCC 517

where the Court laid down the following tests for judicial interference in exercise of power of judicial review of administrative action:-

“22.....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.”

16. Considering the submissions of the parties and in view of the law laid down by the Supreme Court and also the fact that the contract is for the year 2020-21, which has already commenced w.e.f. 1st April, 2020, public interest would be severely jeopardized if the respondents are not allowed to execute the contract because the bid of respondent No. 5 was the lowest. It is, therefore, in public interest not to interfere in the allotment of contract in favour of respondent No. 5, who satisfied the criteria as laid down in technical bid as he had furnished list of HMV & LMV vehicles which was the most essential condition of the tender. Thus, the petitioner having been found ineligible cannot now

question allotment of contract to respondent No. 5 because the petitioner is not similarly situated.

17. This apart, there is no allegation of any mala fides or bias against any of the official respondents. Even otherwise, when charge of mala-fides or bias is to be laid, the officer concerned has to be impleaded as party by name. None of the respondents have been impleaded by name in this case, so the question of showing any favour to respondent No. 5 does not arise.

18. In view of the aforesaid discussions, there is no merit in this petition and the same is, accordingly, **dismissed**.

(Sindhu Sharma)
Judge

SRINAGAR
30th.06.2020
Ram Murti

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

