

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 2108/2022
CM No. 5317/2022

Pronounced on: 15.12.2023

Ghulam Qadir Bhat and another Petitioner/Appellant(s)

Through:- Mr. M.A. Wani, Advocate.
Mr. Z.A. Wani, Advocate.

V/s

U.T of J&K and othersRespondent(s)

Through:- Mr. Faheem Nisar Shah, G.A

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

JUDGMENT

01. The Chairman, State Level Purchase Committee, Sheep Husbandry Department, J&K issued e-NITs bearing Nos. DSHK/ACTTS/22-23/2851-62 dated 11.06.2022 and DSHK/ACTTS/22-23/2827-38 dated 11.06.2022 for supply of Livestock (Sheep/Goat) from the States having similar agro-climatic conditions as of Kashmir for establishment of units under ISDS (Integrated Sheep Development Scheme).

02. The contention of the petitioners is that they had fulfilled all the codal formalities and participated in the tendering process and being the lowest bidders were declared as L-1 in both the e-NITs. The respondents did not finalize the tendering process despite lapse of time, constraining the petitioners to approach this Court by way of a writ petition bearing WP(C) No. 1852/2022.

03. Upon consideration of this writ petition on 26.08.2022, it was observed as under :-

“In the meanwhile, subject to objections and till next date of hearing before the Bench, respondents are directed to take the tendering process initiated in terms of NITs’ dated 11th June, 2022 to logical end provided there is no legal impediment and the same is not contemplated to be withdrawn.”

04. In their objections submitted by the respondents on 15.09.2022, they submitted that e-NITs have been cancelled *ab initio* due to technical issues vide office order dated 20.08.2022. The writ petition was disposed of with a liberty to the petitioners to challenge the cancellation order.

05. The petitioners seek quashing office order No. DSHK/Accts/2022-23/6649-52 dated 20.08.2022 vide which NIT No. DSHK/Accts/22-23/2851-62 dated 11.06.2022 & NIT No. DSHK/Accts/22-23/2827-38 dated 11.06.2022 have been cancelled *ab initio* due to technical reasons.

06. It is submitted that after the petitioners were declared as L-1, they made all the preparation for executing the eNIT as the respondents have extended assurance to them that the allotment would be made in their favour. The petitioners, thus, made all the necessary preparations including raising a loan to enable them to execute the tenders for supply of livestock (sheep/goat). The respondents instead of taking the tendering process to its logical process, cancelled the same *ab initio* due to technical issues.

07. The petitioners are aggrieved of the impugned office order dated 20.08.2022 vide which the e-NIT have been cancelled, *ab initio*. It is submitted that the respondents have cancelled the eNITS only on the basis of minutes of meetings only to stall the proceedings before this

Court. The respondents have issued the impugned order in violation of the order of the Court dated 26.08.2022, which directed the respondents to take the tendering process to its logical conclusion. The respondents have issued the meeting to derail the process of transparent procurement of good quality sheep. The respondents instead of having a transparent mechanism in place have again resorted to purchasing the sheep from local market on exorbitant rates for extraneous reasons.

08. Learned counsel for the petitioners submits that the petitioners have altered their position while participating in the tendering process and being L-1 had a legitimate expectation of allotment order being issued in their favour to enable them to dispose of the livestock purchased on behalf of the department.

09. The petitioners had a legitimate expectation that an allotment order would be issued to them but the respondents have misused their powers and issued an office order dated 20.08.2022 cancelling the tendering process and the same is challenged by the petitioners in this petition, as the same according to them is in violation of the orders passed by this Court on 26.08.2022. This apart, it is submitted that the respondents are under legal obligation to issue an allotment order in favour of the petitioners and have resorted to cancellation of the same in an arbitrary and unreasonable manner. This arbitrary cancellation has resulted in violation of their fundamental and legal rights. They, thus, seek a direction for quashing of the impugned cancellation order dated 20.08.2022 qua the petitioners with a further prayer to command the respondents to finalize the tendering process and make allotments strictly

in their favour in terms of e-NITs Nos. DSHK/ACTTS/22-23/2851-62 dated 11.06.2022 and DSHK/ACTTS/22-23/2827-38 dated 11.06.2022.

10. The stand of the respondents is that the e-NITs were issued by the respondents for procurement of Livestock (Sheep/Goat) from Uttarakhand and Himachal Pradesh for establishment of units under ISDS. However, during the tendering process, the issue with regard to Integrated Sheep Development Scheme and Livestock Breeding Policy, J&K was discussed under the Chairmanship of Financial Commissioner (Additional Chief Secretary), Agricultural Production Department on 18.08.2022, when the opinion of the expert participants was sought. The experts opined that the Livestock in the states of Himachal Pradesh, Uttarakhand is meager and the quality is poor, raising an apprehension that the farmers would reject the same. Therefore, it was suggested that guidelines be modified and they be permitted to utilize the locally available stock for establishment of unit. It was also opined that the J&K has the best genetic sheep in the Country and induction of sheep from neighbouring states may jeopardize the efforts of proving the genetic mark, thus, compromising on quality.

11. In compliance to the directions issued by the Administrative Department, the NITs for procurement/importation of Livestock (Sheep/Goat) from the States of Uttarakhand, Himachal Pradesh, Punjab, Haryana and other States, was cancelled *ab initio* and impugned order dated 20.08.2011 was issued.

12. The record note of minutes of the meetings dated 18.08.2022 has also been placed on record in which it was decided that locally

available livestock (ewes) shall be utilized for establishment of sheep units under ISDS 2022-23 and the tendering process/rate contract for induction of livestock from outside the Union Territory shall be cancelled *ab initio* due to technical issue.

13. The moot question in this petition is that whether the petitioners have a right to seek allotment after having participated in the tendering process or not.

14. It is well settled that the tender is only an invitation to offer and the other party makes an offer pursuant to the invitation to offer, as such, it is not obligatory to the authority issuing tender to accept the offer and no right is created on the basis of merely being L-1. Thus, the respondents were well within their right to cancel the tender before the acceptance was made. A right would only be arisen when a contract comes into existence.

15. The invitation to offer merely invites the other party to make negotiations and makes an order. This offer was yet to be accepted by the respondents for a contract to come into existence which could be enforceable for the parties. It is a well settled position of law that merely by participating in the tender, no right is created in favour of the bidder and the tenderer cannot be precluded from its option to cancel the tendering process on any grounds. The tendering process, thus, can be cancelled at any stage before finalization and issuance of letter of acceptance as there was no concluded contract between the parties. Thus, the legitimate expectations on the petitioners having altered their positions on the basis of being declared L-1 has no significance as there was no contract between the parties.

16. This apart, the scope of judicial review in contractual matter is very circumspect. The law with regard to interference of the Courts in judicial review of the administrative decisions is well settled under Article 226.

17. In '**Rishi Kiran Logistics Pvt. Ltd. vs. Board of Trustees of Kandla Port Trust and others**, reported as **(2015) 13 SCC 233**,' the letter of allotment to successful bidders was issued for construction of Liquid Storage Tank. However, the contract could not be concluded due to environment clearance. The clearance was received 5 years after the issuance of NIT, accordingly, the Board took a decision to cancel the tendering process on 09.12.2010. This decision was conveyed to successful bidders and the petitioner challenged the validity of resolution.

18. The scope of judicial review of administrative action is well settled in **Tata Cellular vs Union of India** reported as **1994 (6) SCC 651**, whereby the Hon'ble Supreme Court has held as under:-

“70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favoritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article-14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article -14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is

exercised for any collateral purpose the exercise of that power will be struck down.”

19. Similarly, in **‘Raunaq International Ltd. vs. I.V.R. Construction Ltd., (1999) 1 SCC 432’**, 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.

20. Similarly, in **‘Jagdish Mandal vs. State of Orissa, (2007) 14 SCC 517’**, the Hon’ble Apex Court has held as under:

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. 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.....”

21. It was found that the best genetics of sheep in the Country and induction of animals from the neighbouring States would jeopardize the

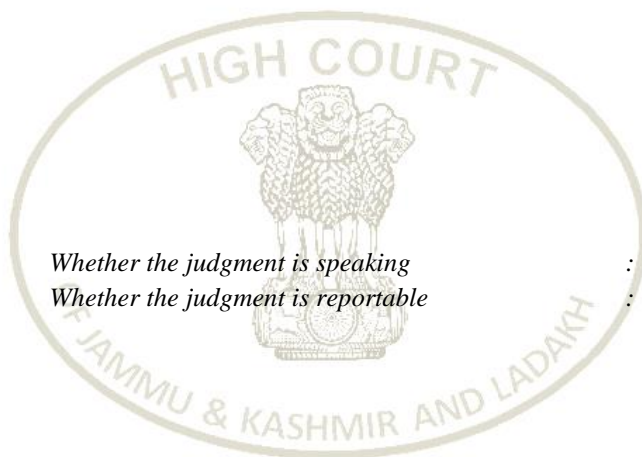
efforts of the Department, put in place for improving the genetic makeup of our sheep population.

22. Therefore, the recommendation was that Livestock required for establishment of Sheep/Goat units must be procured from within the UT of J&K to prevent the dilution of sheep population.

23. This apart, the petitioners have failed to show any *mala fide* intention or arbitrariness in the impugned order. having considered the aforesaid facts and circumstances, there is no merit in this petition and the same is, accordingly, **dismissed**.

(Sindhu Sharma)
Judge

Srinagar:
15.12.2023
Michal Sharma



Yes
Yes