

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

1. OWP No. 902/2011
CMP no.1227/2011
2. OWP No. 971/2011
CMP No. 1316/2011
3. OWP No. 1307/2011
CMP No. 1807/2011

Date of Decision: 28.10.2011

1. Ali Mohd Khatu.	v.	State of J&K and ors.
2. Ali Mohd Khatu.	v.	State of J&K & Ors.
3. Ali Mohd Khatu	v.	State of J&K and ors.

CORAM:

MR. JUSTICE J. P. SINGH.

Appearing counsel:

For Petitioner(s) : M/s. Zulfikar Ali and R. K. Dullu, Advocates.

For Respondent(s) : Mr. R. S. Jamwal, Dy. A. G.

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| i) | Whether approved for reporting
in Press/Media | : | Yes. |
| ii) | Whether to be reported
in Digest/Journal | : | Yes. |
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The petitioner-Ali Mohd. Khatu was allotted Contract for Privatization of Entry Ticket System at Bagh-e-Bahu, Jammu for a period of one year effective from 27.08.2010 by the Government of Jammu and Kashmir in the Directorate of Floriculture, Jammu. Before the expiry of the Contract Period, he approached the Government seeking extension of the period of Contract saying that because of fall in tourist rush in the State in view of turmoil in Kashmir Valley and un-scheduled electricity cuts, he had suffered loss in business and was, therefore, entitled to the benefit of Cabinet Decision No. 65/7/2011 dated 18.03.2011, in terms whereof, the State Government had allowed extension of Contract period of the

Contractors indicated in Annexure-A to Government Order No. 102-Agri of 2011 dated 25.03.2011 upon payment of 30% of the previous Bid Amount. His request having not been attended to by the State Government, he approached this Court by his Writ Petition OWP No. 902/2011 seeking directions against the State-respondents to renew his Contract on payment of 30% of the Bid Amount of the year 2010. This Court, by an interim order, directed the Government to consider the petitioner's Representation in the light of the Cabinet Decision. The petitioner's Representation was still pending consideration when the Department of Floriculture, Jammu issued another Tender Notice for Privatization of Entry Ticket System in Baghe-Bahu, Jammu w.e.f 27.8.2011 to March 31, 2012. The petitioner again approached this Court by his Writ Petition OWP No. 971/2011. Another interim order was issued on his Writ Petition, staying process initiated pursuant to Tender Notice No. 07 of 2011-12.

During the pendency of the above two Writ Petitions, the State Government in the Agriculture Production Department, rejected the petitioner's Representation finding no merit therein.

The petitioner questioned the Government decision by his Writ Petition OWP No. 1307/2011.

The dispute in all these Writ Petitions revolves around the petitioner's claim to extension in the period of Contract in terms of Cabinet Decision No. 65/7/2011 dated 18.03.2011.

In their Response to the petitioner's Writ Petition, OWP No. 971/2011, the State-respondents contest the petitioner's Claim to extension of the period of Contract saying that the petitioner was not entitled to the benefit in terms of the Government Order, which, according to them, was available only to those Contractors of Kashmir Valley who had suffered loss due to stone pelting incidents in the Valley. Petitioner's Claim that he too had suffered loss because of turmoil in Valley and additionally because of unscheduled electricity cuts in Jammu, is contested by saying that there was no decline in tourists rush to Bagh-e-Bahu, Jammu because record number of visitors had visited the Holy Cave of Shri Mata Vaishno Devi Shrine and Shri Amarnath Shrine and those very visitors would visit Bagh-e-Bahu too and in this view of the matter, the petitioner's case was not akin to those Contractors who had been allotted work in Gardens in Kashmir Valley and had suffered because of stone pelting incidents.

Heard learned counsel for the parties.

During the course of consideration of the petitions, learned State Counsel produced official records including Note submitted to the Cabinet pursuant where to Cabinet Decision No. 65/7/2011 dated 18.3.2011 came to be made.

Perusal of the Note submitted by the Agriculture Production Department to the Cabinet, indicates that the Cabinet had been requested to grant concession to the Contractors of Kashmir Valley, who were indicated to have

suffered loss because of stone pelting incidents in Valley which had resulted in sharp decline of tourists to Gardens in the Valley. Government Order No. 102-Agri of 2011 dated 25.3.2011 too indicates that the Government had accorded sanction for renewal of Contract of the Contractors working in 12 Gardens located in Kashmir Valley.

The petitioner has questioned rejection of his Representation urging that being similarly situated, he was also entitled to extension of his Contract upon payment of 30% of the previous Bid Amount as was allowed to the Contractors of Kashmir Valley.

The petitioner has neither pleaded such facts nor placed requisite material on records, on the basis whereof, he may be said similarly situated with the Contractors of Kashmir Valley, who suffered because of stone pelting incidents in Valley, resulting in decline of tourists to Kashmir Gardens. The petitioner's plea that he too suffered because of turmoil in Valley, in that, tourist rush in Jammu had declined, which was specifically denied by the State-respondents, thus remains unsubstantiated.

In view of the State-respondents' reply that the petitioner's business at Bagh-e-Bahu did not suffer and that there was no decline in tourist rush as record number of pilgrims had visited Holy Cave of Shri Mata Vaishno Devi Shrine and Shri Amar Nath Shrine, which visitors would visit Bagh-e-Bahu too, the plea of the petitioner that he too had

suffered losses and was entitled to similar treatment that was given to Contractors of Kashmir Valley, cannot, therefore, be accepted, in the absence of material indicating similarity in the status of Kashmir Contractors and the petitioner.

The decision of the State Government that the Contract period of the petitioner's Contract cannot be extended as his case was not on all fours with the case of Contractors in Valley who had suffered because of stone pelting incidents, cannot, therefore, be said to be arbitrary or malafide, as projected by the petitioner's learned counsel, in view of the detailed order passed by the State respondents on the petitioner's Representation indicating that his case was not similar to those of the Contractors of Kashmir Valley.

For all what has been said above, there is no merit in the petitioner's Writ Petitions.

All these Writ Petitions are, therefore, dismissed, lifting interim orders issued by the Court during the pendency of the Writ Petitions.

Records be returned to the learned State counsel.

(J. P. Singh)
Judge

JAMMU:
28.10.2011:
Tilak, Secy.