

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

OWP No.1163/2009
CMA No.1497/2009
Contempt(OW) No.121/2009
Contempt(OW) No.131/2009

Date of Decision: 04.06.2012

M/S Helpline Advertising Services Vs State of J&K and ors.

Coram:

Mr. Justice J.P.Singh.

Appearing Counsel:

For the Petitioner(s)	: Mr. Sunil Sethi, Sr. Advocate with Mr. Ravi Abrol, Advocate.
For the Respondent(s)	: Mr. S.S.Nanda, Advocate. Mr. U.K.Jalali, Sr. Advocate with Ms. Shivani Jalali, Advocate.

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| i) | Whether approved for reporting
in Press/Media | : Yes/No. |
| ii) | Whether to be reported
in Digest/Journal | : Yes/No. |
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Judgment

The petitioner-M/S Helpline Advertising Services' bid in response to Jammu Municipal Corporation's NIT for *privatization of display of Outdoor Advertisements like hoardings, kiosks, Unipoles etc* within the Jammu Municipal Corporation Limits of Municipal Ward Nos. 1 to 48, having been found the highest, a Letter of Intent was issued to it by the Municipal Corporation vide No.JMC/RB/267-68 dated 03.09.2009 to deposit the first year's License Fee of Rs.1,55,00786/- within seven days. The petitioner did not deposit the amount within the

stipulated period. Instead, after the expiry of the statutory period, it informed the Commissioner, Jammu Municipal Corporation vide its Communication Ref. No.HLAS/09-167/ dated 11.09.2009 regarding deposit of cheque for Rs.70 Lac (Rupees Seventy Lac), adjustment of EMD of Rs.10 Lac (Rupees Ten Lac) towards the License Fee for the first year of the Contract and *additionally* saying that ***rest of the amount would be deposited soon after all illegal hoardings, pole-kiosks etc were removed.***

Finding that the first year's License Fee was not deposited within the stipulated period of seven days in lump sum despite Corporation's informing it even by telephone, Corporation rejected the petitioner's bid inviting the second highest bidder to execute Contract with the Corporation. This was done vide Corporation's order No.JMC/RB/294-96 dated 14.09.2009. The Contract was later allotted to M/S Selvel Media Service Pvt. Limited-respondent No.6.

The petitioner questions the Corporation's Communication Nos. JMC/RB/300-01 dated 15.09.2009 and JMC/RB/303-04 dated 17.09.2009, besides seeking directions against the respondents to award it the advertising rights on public property, i.e., hoardings, pole

kiosks etc.

Supporting the questioned Communications and contesting the petitioner's claim to allotment of advertisement rights, on public property on various grounds, the respondents question the maintainability of petitioner's Writ Petition as well.

Learned Senior counsel appearing for the petitioner submitted that the Corporation's action of allotting the Contract to the second highest bidder, without providing the petitioner any opportunity to supply deficiencies, if any noticed on petitioner's behalf, was illegal and actuated with malafides, hence *void*. In the alternative, he would submit that the petitioner was not under any obligation to deposit the annual License Fee within seven days and there was no avoidance of any obligation by the petitioner. The allotment of Contract to respondent No.6 on the ground of petitioner's omission to deposit the annual License Fee in full for the first year is, therefore, urged unwarranted.

The action of the Municipal Corporation is dubbed by the learned counsel arbitrary, unfair and void.

Per contra, the respondents' learned counsel would justify the Corporation's action urging that the omission of the petitioner to deposit the annual License Fee for the

first year in full within seven days, had disentitled it to claim advertisement rights and the Corporation's action was neither unfair nor arbitrary or malafide. According to the learned counsel, the Corporation had acted in accordance with the terms and conditions of the NIT and in the best interests of the Corporation in rejecting the petitioner's offer and allotting the Contract of advertisement on public property to respondent No.6. The maintainability of the Writ Petition is questioned by the respondents on the ground that the issues raised by the petitioner in the Writ Petition, being in the realm of Contract, exercise of the Extra Ordinary Writ Jurisdiction, may not be warranted in the facts and circumstances of the Case.

Considered the submissions of the learned counsel for the parties and perused the records.

Before dealing with the first issue that falls for determination in the case as to whether or not the petitioner had disentitled it to the award of Contract by omitting to deposit the annual License Fee in full within seven days, regard needs to be had to the provisions of Clauses 6 and 8 of the General Instructions/Terms and Conditions applicable to the award of the Contract pursuant to the NIT issued by the Jammu Municipal

Corporation. These read thus:-

“GENERAL INSTRUCTIONS/TERMS AND CONDITIONS:-

.....

6. The successful bidder will have to remit the annual License fee in full for first year and in four quarterly installments for rest of three years from sept. 2010 well in advance before commencement of that particular quarter period. *The commencement of quarters will be Ist sept, Ist Dec, Ist March and Ist June.*

.....

8. The successful bidder/agency should attend this office and execute a Registered deed on his own expenditure within the period of 7 days along with non judicial stamp paper worth Rs.100/- from the date of finalization of tendering failing which, the deposit paid by the bidder will be forfeited by the Jammu Municipal Corporation and the tender process will be put to re-tendering as per the decision of Commissioner and the loss that may be caused to the Municipal Corporation due to such re-tendering, shall be the liability of the defaulting tenderer.”

Although perusal of Clause 6 may, at the first blush, generate the impression that there was no requirement of depositing the License Fee in full for the first year and the deposit of the amount in advance referred to in the Clause, was referable only to the Quarters indicated in the latter portion of the Clause; but when read with Clause 8, the Corporation’s intention in requiring the successful bidder to deposit the annual License Fee for the first year within seven days becomes explicit, for, the failure to deposit the first year’s License Fee within seven days, is indicated in Clause 8 to result in successful bidders’ losing right to the award of the Contract.

Even otherwise, reading the Clause with other terms and conditions of the NIT, there does not appear any merit in the petitioner's learned counsel's submission that successful bidder was not under any obligation to deposit the annual License Fee for the first year in lump sum within seven days, in that, such interpretation of Clause 6 may not advance the purpose for which the bids were invited. The Corporation cannot be said to have intended to permit the successful bidder to enjoy advertisement rights for one year without paying any amount to the Corporation.

Be that as it may, a conjoint reading of the General Instructions/Terms and Conditions of the NIT leaves no room for any doubt that the successful bidder was not obliged to deposit the first year's annual License Fee within seven days.

Coming to the question as to whether the petitioner had disentitled it for the award of the advertisement rights for its failure to deposit the advance money, it would be advantageous to refer to what was said by the petitioner in its Communication dated September 11, 2009 addressed to the Commissioner, Jammu Municipal Corporation, Town Hall, Jammu. It reads thus:-

“HELPLINE ADVERTISING SERVICES

Complete Advertising Agency for Print, Electronic & Outdoor Media

3rd Floor Mattoo Complex Red Cross Road Srinagar

[Ph.No.0194-2475564 Fax:0194-2479080]

Ref. No:HLAS/09-167/

Dated:11th Sept 2009

The Commissioner,
Jammu Municipal Corporation,
Town Hall Jammu.

Subject: Removal of illegal Hoardings.

Dear Sir,

With due respect we would like to submit that we have been awarded the advertising rights through various modes (hoardings, pole kiosks, Unipoles and all types of advertisements) within Jammu Municipal Corporation limits (old wards 1-48) vide allotment order No.JMC/RB/267-68 dated 3-09-2009 for a period of 4 years. In this connection we have deposited a cheque for Rs.70 lac and adjustable EMD of Rs.10 lac towards bid amount for the first year of contract.

However rest of the amount shall be deposited soon after all illegal hoardings, pole kiosks etc are removed.

You are humbly requested that all these hoardings and other advertising material displayed/installed illegally should be removed as soon as possible.

With regards,

Yours faithfully,

Sd/-

For Helpline Advertising Services,
Authorized Signatory”

Perusal of the above Communication of the petitioner reveals two things First, the petitioner did not deposit in full the first year's annual License Fee within seven days i.e. before September 10, 2009 and Secondly, that by depositing a cheque for Rs.70 Lac (Rupees Seventy Lac) only and seeking adjustment of EMD of Rs.10 Lac (Rupees Ten Lac), besides requiring the Corporation to remove illegal hoardings, pole-kiosks etc, the petitioner had put conditions on the Corporation to

remove illegal hoardings, pole-kiosks etc.

It is, therefore, apparent that the petitioner had failed to comply with the terms and conditions of the NIT by omitting to deposit the full annual License Fee for the first year. The Corporation's action of rejecting the petitioner's bid *cannot, therefore, be faulted*, for, in view of the conditional deposit of part of the first year's License Fee, the Corporation was justified in cancelling the petitioner's bid in terms of the provisions of Clause 8 of the terms and conditions of the NIT.

The process employed by the Corporation for petitioner's admitted failure to deposit the first year's License Fee within the stipulated period, does not suffer from any vice warranting interference by the Court.

Even otherwise, the issues that the petitioner seeks to project in the Writ Petition on the basis whereof it dubs the Corporation's action malafides, arbitrary and illegal, which allegations have been refuted by the respondents, are issues purely of factual nature, which may not be adjudicated upon by this Court in exercise of its Extra Ordinary Writ Jurisdiction.

This apart, in terms of the conditions of the NIT, dispute(s), if any concerning the NIT between the parties,

was required to be adjudicated upon by the Municipal Commissioner as Arbitrator, whose award was agreed by the parties to be final and binding on them. The petitioner, if aggrieved by the Corporation's action was, therefore, required to work out its remedy through arbitration rather than approaching the Court.

For all what has been said above, *no case* for entertaining the Writ Petition is made out.

This Writ Petition is, therefore, dismissed.

In view of the dismissal of the Writ Petition, COA(OW) Nos. 121/2009 and 131/2009 do not survive for further consideration.

COA(OW) Nos. 121/2009 and 131/2009 shall also stand, accordingly dismissed.

(J.P. SINGH)
JUDGE

JAMMU
04.06.2012
Vinod.