

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

OWP No.845/2015
MP No. 2/2016
MP No. 1/2015

Date of Order: 09.02.2017

Charan Choudhary.	Vs.	Union of India & ors.
-------------------	-----	-----------------------

Coram:

Hon'ble Mr. Justice Ramalingam Sudhakar, Judge.

Appearing Counsel:

For the Petitioner(s)	:Mr. Vikram Sharma, Advocate.
For the Respondent(s)	:Mr. Jahangir Iqbal Ganai, Sr. Advocate with Mr. Ahtsham Bhat, Advocate.

i/	Whether to be reported in Press/Media	:	Yes/No
ii/	Whether to be reported in Digest/Journal-Net	:	Yes/No

1. Application has been filed seeking amendment of the writ petition which is not admitted. Objections have been filed by the respondents to the main writ petition. Learned Advocate General appears as senior counsel for Food Corporation of India FCI.

2. Factual matrix of the present case is as follows:

The FCI-respondent No. 2 advertised an invitation for tender NIT bearing No. Engg. J&K/16(1)/PEG-2008/Vol.-V dated 28.12.2011 under two bid system for construction of FCI godown for storage of food-grains in various revenue districts in the State of J&K including Revenue and to build its storage facility by persons who own land in the area of Reasi. On publication of this tender, several persons participated. The present writ-petitioner also participated in the Tender process and it was found that he was lowest bidder but that notice inviting

tender and the consequent proceedings were subject matter of OWP No. 525/2012 by one Suram Singh the present petitioner is respondent No.9. It appears the writ petition was dismissed in default. However, FCI had filed their objections to the writ petition and in that they have stated the factual matrix of the notice inviting tender dated 28.11.2012 in the following manner:

“3. That the contents of para 3 are matter of record. However, it is submitted that the petitioner was not having its own land but he intended to acquire the same after the contract was awarded in his favour. But in the present case when the tenders were opened it was found that the petitioner tender was not the lowest whereas the tender of the respondent No. 9 was the lowest as such he was allotted the contract. As earlier submitted in the preliminary objections, the three persons technically qualified for opening of the tender and the tenders were opened on 12.3.2012 and the following three persons rates were received.

M/s Pooja Gupta Rs. 9.69 per qlt per month

M/s Charan Choudhary Rs. 7.90 per qlt per month

Suram Singh Rs. 7.97 per qlt per month

Since the tenders of the respondent No.9 was the lowest one as such he qualified for the allotment of the tenders.”

3. It appears that by way of an interim order, restraining FCI from proceeding with the tender. After dismissal of the writ petition on 28.05.2014, a fresh notice inviting the tender was issued on 30.01.2015 on the same terms, two bid system for construction of godowns for FCI storage requirements under PEG-2008 Scheme for a guaranteed lease of ten years on build, own and operate basis for 21670 MT capacity for storage of food grains for various Revenue District of Poonch, Shopian and Reasi. In response to this, petitioner has participated in the tender

process and thereafter he has filed present writ petition pleading that this tender is build in response to tender dated 28.12.2011 having declared as lowest he was awarded the contract and therefore, without cancelling the notice inviting tender dated 28.12.2011, the present NIT dated 30.01.2015 is bad. Emphasis is laid on paragraph No. 3 of the counter affidavit filed in OWP No. 525/2012 which has been extracted above.

4. Per contra, senior counsel Mr. Jahangir Iqbal Ganai appearing for FCI refers to the objections and the documents annexed thereto to state that no doubt the petitioner was a lowest bidder of NIT of 28.12.2011 which is clear from paragraph No. 3 of the affidavit that the present writ petitioner-respondent No.9 in OWP No. 525/2012 was lowest bidder and a qualified person for allotment of tender but infact was not allotted the tender.

5. To buttress this argument, learned senior counsel would rely upon documents R2 dated 29.01.2015 which is post dismissal of writ petition No. 525/2012. The order of the Manager (PEG) reads as follows:

“ FOOD CORPORATION OF INDIA
REGIONAL OFFICE:JAMMU

No. Stg/ROJ/PEF/Reasi/2014-15

Dated 29.01.2015

ORDER

Sanction of the Competent Authority is hereby conveyed for release of EMD of the following parties as their offers against NIT dated 28/29-12-2011 under PEG-2008 Scheme for Reasi Centre (7500 MT) have not been accepted by the State Level Committee and the NIT has been cancelled.

S.No.	Name of the Party	Amount (in Rs)
1.	Pooja Gupta	150,000/- One Lac Fifty thousand only)
2.	Charan Choudhary	150,000/- One Lac Fifty thousand only)
3.	Suram Singh	150,000/- One Lac Fifty thousand only)

Manager (PEG)
For General Manager (J&K)

6. From that it is evident that the earlier NIT dated 28/29-12-2011 under PEG-2008 for Reasi Center has not been accepted by the State Level Committee and the NIT has been cancelled. Earnest money deposited in respect of three short listed persons was returned. A copy of this has been sent to the persons concerned. The statement to this effect has been found in objections filed on 05.11.2015 by respondent Nos. 1 to 3.

7. The petitioner has not denied the fact that he has received the earnest money deposited and he also does not deny the fact that he has participated in the fresh NIT dated 30.01.2015.

8. Having considered the rival contentions, it is apparent that insofar as the NIT dated 28.12.2011 no doubt the petitioner was lowest bidder and one among the three short listed due to the pendency of the writ petition interim order was not finalized. Subsequently, the tender was cancelled in proceeding 29.01.2015 after disposal of the writ petition fact remains that earnest money has been returned to all the three parties. Further conduct of the petitioner to participate in the subsequent NIT dated 30.01.2015 makes it clear that he had accepted the stand of Department to cancel the earlier NIT and, therefore, he has participated in fresh one. Even otherwise if the party has not reserved its right at that time and has participated in the fresh NIT, then he cannot turn around and say that earlier one was bad as it was not cancelled. Facts as has been stated above clearly establish that there was no error on the part of the respondents in proceeding to go with the fresh NIT in the year 2015. There is no serious error in the conduct of respondents calling for interference by this Court.

9. Learned counsel for the petitioner raised one other plea that he has made representation and the authorities should be directed to consider the representation in line with the earlier NIT and consider the present tender. This plea has to be rejected at the threshold in view of the decision rendered by the Supreme Court in case titled **Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO) Rep. by its Chairman & Managing Director and Ar. Etc. v. CSEPDIT-Trishe Consortium, reported in AIR 2016 SCC 4879** paragraph No. 37 of which reads as follows:

“37. Before parting with the case we are constrained to add something. We do so with immense pain. The respondent, before finalization of the financial bid submitted series of representations and seeing the silence of the owner it knocked at the doors of the writ court which directed for consideration of the representations. We are disposed to think that the High Court at that stage should have exercised caution. If the courts would exercise power of judicial review in such a manner it is most likely to cause confusion and also bring jeopardy in public interest. An aggrieved party can approach the Court at the appropriate stage, not when the bids are being considered. We do not intend to specify. It is appreciable the owner in certain kind of tenders call the bidders for negotiations to show fairness transparently. But the present case is not a one of such nature. Once the price bid was opened, a bidder could not have submitted representations on his own and seek a mandamus from the Court to take certain aspects into consideration. We have stressed this aspect only to highlight the role of the Court keeping in mind the established principle of restraint.”

10. Finding no merit in the same, the writ petition is dismissed.

(**Ramalingam Sudhakar**)
Judge

Jammu:

Sunita.

09.02.2017

This document was created with Win2PDF available at <http://www.win2pdf.com>.
The unregistered version of Win2PDF is for evaluation or non-commercial use only.
This page will not be added after purchasing Win2PDF.