
(2021) 08 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 3302, 3303 Of 2019

Ajay Kumar And Others

APPELLANT

Vs

State Of H.P. & Ors

RESPONDENT

Date of Decision : 02-08-2021

Acts Referred:

Citation : (2021) 08 SHI CK 0006

Hon'ble Judges : Tarlok Singh Chauhan, J; Satyen Vaidya, J

Bench : Division Bench

Advocate : Tarun K. Sharma, Ashok Sharma, Rajinder Dogra, Vinod Thakur, Hemanshu Misra, Shiv Pal Manhans, Bhupinder Thakur

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. Since common questions of law and facts arise for consideration in both the petitions, therefore, the same were taken up together for consideration

and are being disposed of by common judgment.

2. The respondents State floated tender(s) for providing LWSS to PC habitation under LWSS Jakhyol phase 2nd and LWSS Karohta in Tehsil

Bhoranj, District Hamirpur, Himachal Pradesh (estimated cost: Rs.86,54,171/Â) in the case of petitioner in CWP No.3302/2019 and for augmentation

of LWSS Bani Barsar Garli Phase 1st and 2nd improvement of LWSS Bani Barsar Garli distribution system in Tehsil Barsar, District Hamirpur, SH

constructing 4 Nos. overhead storage tanks (estimated cost: Rs.41,81,250/Â?) in the case of the petitioner in CWP No. 3303/2019.

3. The petitioner in CWP No. 3302/2019 is aggrieved by condition No.6 in the tender, which reads as under:Â?

(6). Experience having successfully completed similar works (Similar work means providing and laying of rising main/gravity main, supply & erection of pumping machinery) executed by the intending contractor along with performance certificate issued from the competent authority be uploaded online.

Whereas, petitioner in CWP No. 3303/2019 is aggrieved by condition No.10 in the tender, which reads as under:Â?

(10). only such contractor shall participate in the tender who executed the similar work i.e. RCC over head tank, otherwise tender will be rejected.

4. According to the petitioners, the aforesaid conditions are illegal, void and against the instructions dated 28.5.2014 issued by the Additional Chief

Secretary (I&PH) to the Government of Himachal Pradesh, wherein it has been specifically mentioned that the eligibility criteria shall be introduced in

the tender notice for the work above Rs. 1 crore only, which, according to the petitioner, means that the tender notice for the work less than Rs. 1

crore cannot contain any condition muchless the condition(s) as aforesaid, therefore, the same are liable to be struck down.

5. The respondentsÂState have contested the petitions by raising various preliminary objections like the petitioners having not approached the Court

with clean hands and having mislead the Court by misrepresenting and suppressing material facts etc.

6 Material objections are contained in paras 4 and 5 thereof, wherein it is averred that unless the petitioners are able to demonstrate that the

government largesse is suffering because of incorporating the conditions in the notice inviting tenders or there is some mala fide intent in incorporating

the same, the same cannot be interfered with. It is further averred that the issue of specifying any term and condition in the notice inviting tender or

under the eligibility criteria falls exclusively within the domain of the Tender Approving Authority and it can lay down any such condition(s) as it may

consider fit and proper for execution of the work(s) in question.

7. We have heard the learned counsel for the parties and have also gone through the material placed on record.

8. At the outset, we need to notice that similar issue had earlier come up before the learned Division Bench of this Court in CWP No. 6928/2013, titled

as. M/s Himachal Techno Engineers & ors. vs. State of Himachal Pradesh & ors.,

decided on 4.10.2013, wherein challenge was laid to the condition specified in the tender document regarding qualification of the bidder, which was stated to be inconsistent with the condition specified in the previous tender process in spite of being the same work.

9. This Court while dealing with the issue held that it is always open to the authority to change the tender condition in the successive tender process

including the qualification requirement, if the situation so warrants. That is the subjective satisfaction of the authority on technical matters. It shall be

apposite to refer to the relevant observations, as contained in para 9 of the judgment, which reads as under:Â?

â??9. Notably, it is not the case of the petitioners that the qualification condition specified in the impugned tender document is, in any way, lower than

the bench mark noted in the purported Rules of 1993. It is always open to the Authority to change the tender condition in the successive tender

process including the qualification requirement, if the situation so warrants. That is the subjective satisfaction of the Authority on technical matters.

The learned Advocate General has justly invited our attention to the exposition of the Apex Court in Villianur Iyarkkai Padukappu Maiyam Vs. Union

of India and others (2009) 7 SCC 561, in particular, paragraph 167 onwards, which has taken the view that the policy decision and economic tests

determined by the Authorities, judicial review thereof is very limited. No case for judicial review of qualification condition has been made out, which

may warrant its judicial review. The legal question raised by the petitioners about the authority to alter the qualification condition, as aforesaid, is

untenable.â??

10. We see no reason to take a different view that then one taken in the aforesaid judgment.

11. Apart from above, the courts have repeatedly held that the government policy can be changed with changing circumstances and only on the

ground of change, such policy will not be vitiated. The Government has a discretion to adopt a different policy or alter or change its policy calculated

to serve public interest and make it more effective. Choice in the balancing of the pros and cons relevant to the change in policy lies with the authority,

but like any discretion, exercisable by the Government or public authority, change in policy must be in conformity with Wednesbury reasonableness

and free from arbitrariness, irrationality, bias and malice.

12. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or

more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are

contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power.

13. Thus, what emerges to be a settled legal proposition is that the Government has the power and competence to change the policy on the basis of

ground realities, but the same should not be indirectly amounts to favouring or depriving a person of a legal right or, in some cases, even the legitimate

expectation.

14. It has to be remembered that whenever the issues brought before the Court are intertwined with those involving determination of policy and a

plethora of technical issues, the Courts are very wary and must exercise restrained and not trespass into policy-making. The burden is heavy to

demonstrate a manifest illegality or arbitrariness or procedural lapses in the culmination of the policy decision, which the petitioners unfortunately have

not been able to discharge. The petitioners have miserably failed to prove on record violation of any fundamental or legal right.

15. In view of aforesaid discussions, we find no merit in both the petitions and the same are accordingly dismissed, so also the pending application(s), if

any, leaving the parties to bear their own costs.