

(2023) 03 J&K CK 0033

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 42, 56, 62 Of 2022, Civil Miscellaneous No. 3090, 3653, 3654, 3994, 3996, 3997, 4948, 4949 Of 2022

Mohd. Latief & Others

APPELLANT

Vs

UT Of J&K & Others

RESPONDENT

Date of Decision : 17-03-2023

Acts Referred:

Citation : (2023) 03 J&K CK 0033

Hon'ble Judges : Tashi Tabstan, J;M.A. Chowdhary, J

Bench : Division Bench

Advocate : Muzaffar Iqbal Khan, R.S. Jamwal

Final Decision : Dismissed

Judgement

Tashi Rabstan, J

1. These Letters Patent Appeals are directed against the judgment and order dated 24.03.2022 delivered by the learned Single Judge in WP(C) No.1887/2021 and WP(C) No.2045/2021, whereby the learned Single Judge dismissed both the writ petitions filed by the appellants-writ petitioners.

2. Since these appeals have arisen out of a common judgment, involving common question of facts and law, as such these appeals are being decided by this common judgment.

3. The facts, as gathered from the appeal files, are that the Government vide Order No.251-FD of 2020 dated 17.09.2020 directed that allotment of works shall be based on tendering, which can be limited to the members of Gram Sabha of each Panchayat under Back to Village Programme. However, in respect of funds to be utilized in convergence from other schemes, i.e., MGNREGA and FC Grants, the existing scheme guidelines shall apply. In furtherance of the said order, the writ respondents issued e-NIT No.42-REW Rajouri of 2021 dated 02.09.2021; e-NIT No.15/capex of REW Doda 2021-22 dated 08.09.2021 and e-NIT No.02/capex of REW Doda 2021-22 dated 24.08.2021 for works under Capex

Budget Scheme.

4. The grievance of writ petitioners is that the issuance of e-NITs is in violation of Rule 49 of the Jammu and Kashmir Panchayati Raj Rules, 1996 as the said rule specifically provides that all works may be executed by the Halqa panchayat itself by employing daily labour and that no contractor shall be employed except for work of highly technical nature of involving financial investment of more than Rs.3.00 lacs. However, the learned Single Judge dismissed both the writ petitions holding that it is in the public interest to invite tenders and execute projects by those persons who have knowledge and experience of the same. Hence, the present appeals.

5. Heard learned counsel appearing for the parties, considered their rival contentions and also perused the appeal files.

6. According to the writ petitioners, in terms of Rule 49 of the Jammu and Kashmir Panchayati Raj Rules, 1996, every Halqa Panchayat is empowered within the area of its jurisdiction for preparation and sanctioning of projects, and it can also execute the work by employing daily labour and that no contractor shall be employed except for work of highly technical nature of involving financial investment of more than Rs.3.00 lacs. However, issuance of e-NITs by the writ respondents is in contravention to the said rule. Once the procedure has been provided under the Panchayati Raj Act and Rules, the writ respondents ought to have proceeded with the same.

7. The main grievance of writ petitioners is that every Panchayat may not have an eligible contractor to participate in the bidding process, which, ultimately, may render such works unexecuted for want of eligible contractors to participate in the process.

8. Order dated 17.09.2020 (supra) provides that the allotment of works shall be based on tendering which can be limited to members of the Gram Sabha of each Panchayat under Phase-III of back-to-village programme. The said order further provides that in respect of funds to be utilized in convergence from other schemes like MGNERGA and FC Grants the existing scheme guidelines shall apply. The said order clearly provides that the allotment of works shall be based on tendering and limited to members of the Gram Sabha of each Panchayat for back-to-village programme; meaning thereby the process of tendering is limited to back-to-village programme only; also only the members of the Gram Sabha of each Panchayat have the right for allotment of works upto an amount of rupees three lacs except for work of highly technical nature. Only in case of inadequate response to a tender from the members of the Gram Sabha for execution of the work, in that eventuality the participation from adjoining Panchayats is permitted in terms of Order No.238-F of 2021 dated 07.09.2021. Further, there will be no change in existing guidelines of other schemes like MGNERGA and FC Grants etc.; meaning thereby the said order is only limited to works which are to be executed under back-to-village programme and there is no change in the existing

guidelines in respect of other schemes.

9. Viewed thus, we are not inclined to take a view other than the one taken by the learned Single Judge. Accordingly, we dismiss the appeals along with the connected miscellaneous applications upholding the judgment of learned Single Judge. Interim direction shall stand vacated forthwith. CCP(D) No.42/2022 shall stand discharged.