(2022) 03 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 2022 Of 2021, Civil Miscellaneous No. 6683 Of 2021

M/S Galaxy Transport Agencies APPELLANT

Vs

UT Of J&K And Others RESPONDENT

Date of Decision : 07-03-2022

Acts Referred:
Constitution Of India, 1950 — Article 14, 21

Citation : (2022) 03 J&K CK 0014

Hon'ble Judges : Dhiraj Singh Thakur, J

Bench : Single Bench

Advocate : Shuja ul Haq, Asifa Padroo

Final Decision : Dismissed

Judgement

Dhiraj Singh Thakur, J

1. With a view to understand the context in which the present controversy has arisen, the material facts are briefly narrated as under:-

2. The petitioner claims that it is a registered motor vehicle transport undertaking and owns a fleet of commercial vehicles with vast experience in the field of supplying commercial vehicles to Government and semi-Government establishments, the official respondents it is stated that for the financial year 2021-22, issued NIT No. 01 of 2021 dated 26.03.2021 inviting online bids in a two bid system from eligible transports and firms for supply of various types of commercial vehicles without fuel. This was required by the Zonal Police Headquarters for subordinate units of Kashmir Zone for carriage of troops and equipments etc.

3. Only three bidders participated in the tendering process and out of the three only the petitioner was declared as technically qualified. Vide communication dated 14.05.2021, approval of opening of financial bids was sought by respondent No. 4 from respondent No. 2, which was accorded by respondent No.

2 on 28.05.2021 for opening the financial bids.

The petitioner claims that the rates of some of the vehicles quoted by the petitioner were found to be on the higher side, pursuant to which negotiations were held between the petitioner and the respondents. The respondents thereafter addressed a communication to respondent No. 4, seeking approval of rates from the State Level Purchase Committee. It is alleged that the State Level Purchase Committee instead of approving the rates addressed a communication in which it was directed that the hiring of commercial vehicles in the units of Kashmir Zone for the financial year 2021-22 be placed through the GeM Bid portal. This is a communication which is impugned in the present petition. As a consequence of the directions issued by the State Level Purchase Committee, the respondents invited bids through the GeM Bid portal vide their notice dated 20.09.2021, which too has been impugned in the present petition.

4. The entire basis of the challenge in the present petition is that respondent No. 4 was the only competent authority to alter, withdraw or annul the process of tendering initiated initially and the State Level Purchase Committee was not competent to order the invitation of bids through the GeM Bid portal. Secondly, it was urged that the petitioner had changed its position to its detriment based upon the process initiated earlier. It is stated that the petitioner had to make available the requisite fleet of vehicles to make itself eligible for winning the contract in question.

5. Another ground urged by the petitioner is that as many as 47 NITs floated by the respondent-PHQ are in the process of finalization and have been floated by the Police Headquarters on www.jktenders.gov.in and not on GeM Bid portal. Another aspect highlighted in the writ petition is that the directions that had been issued contrary to the interest of the petitioner are restricted to the Kashmir Zone only, while the tenders floated by IGP Range Jammu for supply of vehicles had been kept intact and no such direction issued in regard to a similar NIT by the IGP Range Jammu. It is, therefore, urged that the action of the respondents is per-se discriminatory and arbitrary.

6. The stand of the respondents, as is reflected from their objections and urged at the time of hearing, is that the decision impugned was based upon a policy decision taken by the Government in terms of Circular No.A/GeM/2020-III-(s)-917/J dated 08.01.2021. The stand taken is that the respondents were only following the policy decision and the guidelines issued by the UT of J&K and to bring the process of tendering in accord with the general procedure for placing orders for procuring various supplies.

7. With a view to meet the argument of learned counsel for the petitioner that a similar order for procurement of vehicles through the tendering process initiated for Jammu Zone has not been abandoned, the stand of the official respondents is that the tender floated for hiring of vehicles in respect of Jammu Zone has become the subject matter of litigation bearing WP(C) No. 1113/2021, in which

an order dated 14.06.2021 has been issued by the High Court, directing maintenance of status-quo in the matter. It is further stated that efforts are on to request the Court for vacation of the said order. In addition to this, a stand is taken that after the issuance of the Government Circular dated 08.01.2021 as many as 451 tenders have been floated on the GeM Bid portals.

8. Having considered the matter at length two issues arise for consideration. Firstly, whether the decision to abandon the tendering process initially initiated through the tender portal and the decision to follow Government Circular dated 08.01.2021 for inviting bids and procuring supplies through GeM Bid portal can be said to be bad and arbitrary and secondly, whether by submitting its bids and participation in the process of tendering, the petitioner had in any manner changed its position to its detriment attracting the doctrine of promissory estoppel.

9. To deal with the second issue first, one of the main ingredients of the doctrine of promissory estoppels is that there should be a promise and the person acting and relying on the promise changes his position and suffers any detriment based thereupon. In my opinion, it cannot be presumed that there was any promise at all made to the petitioner when the respondents issued the NIT inviting bids from eligible bidders for supplying the vehicles for transportation of troops and equipments. In the bidding process, there is no certainty whether the petitioner would necessarily be the successful bidder. There was a distinct possibility that even if the tendering process was taken to its logical conclusion and orders placed, the petitioner would lose as against a lower bid. Merely by issuing an NIT, the respondents cannot be said to have extended any unequivocal promise that if anybody participated in the tendering process, he would necessarily be allotted the contract.

10. Any preparation made by the petitioner to participate in the bidding process infact would not amount to 'altering his position to his detriment based upon any promise.' A notice inviting tender is nothing but an invitation to eligible bidders to make offers, which may or may not be accepted and, therefore, there is no element of any promise whatsoever. In my opinion, therefore, the doctrine of promissory estoppel is not at all attracted in the present case and reliance placed upon Motilal Padampat Sugar Mills Company Limited V/S State of U.P. and others, reported in AIR 1979(SC) 621 and other judgements does not at all help the petitioner in the facts and circumstances of the present case.

11. The second issue is whether the decision to invite bids through the GeM Bid portal is an arbitrary decision or not. In my opinion, in view of the Government Circular dated 08.01.2021, it appears that the entire focus is on procuring supplies through the GeM Bid portal and if the stand of the respondents is to be noticed, as many as 451 tenders have already been floated through GeM Bid portal. The decision has been taken to follow a policy decision by the Government in that regard.

12. The scope of Judicial review in policy matters is no longer res integra. It is settled law that the Court would not ordinarily interfere with the policy decision of the executive unless the same can be faulted on the grounds of malafides, unreasonableness, arbitrariness or unfairness, in which case the policy would render itself to be declared unconstitutional. In State of Punjab and Others vs. Ram Lubhaya Bagga and Others, reported in (1998)4 SCC 117, it was held thus:-

"…………..When Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. it would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 When it restricts reimbursement on account of its financial constraints."

13. On similar lines was the pronouncement of Apex Court in case of Ugar Sugar Works Ltd. vs. Delhi Administration and Others, reported in (2001)3 SCC 635, wherein the Apex Court held as under:-

"The challenge, thus, in effect, is to the executive policy regulating trade in liquor in Delhi. It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the executive. The Courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State."(Emphasis supplied)

14. In Balco Employees Union (Regd.) vs. Union of India and Others, reported in (2002)2 SCC 333, the Apex Court in paragraph 92 & 98 held as under:-

"92. In a democracy, it is the prerogative of each elected Government to follow it's own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the Court.

98. In the case of a policy decision on economic matters, the Courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgement of the experts who may have arrived at a conclusion unless the Court is satisfied that there is illegality in the decision

itself.”

15. This view has recently been reiterated by the Apex Court in Parisons Agrotech Private Limited and Another vs. Union of India and Others, reported in (2015)9 SCC 657, The Court observed as under:-

“14. No doubt, the writ court has adequate power of judicial review in respect of such decisions. However, once it is found that there is sufficient material for taking a particular policy decision, bringing it within the four corners of Article 14 of the Constitution, power of judicial review would not extend to determine the correctness of such a policy decision or to indulge into the exercise of finding out whether there could be more appropriate or better alternatives. Once we find that parameters of Article 14 are satisfied; there was due application of mind in arriving at the decision which is backed by cogent material; the decision is not arbitrary or irrational and; it is taken in public interest, the Court has to respect such a decision of the Executive as the policy making is the domain of the Executive and the decision in question has passed the test of the judicial review.”

16. In the present case, there is no specific challenge to the policy decision taken by the Government to invite bids through GeM Bid portal. The shifting of the tendering process from one portal to another portal by itself, therefore, cannot be said to be illegal or arbitrary, especially when the said policy is sought to be implemented uniformly throughout the Union Territory of J&K. In the absence of a specific challenge to the Government Circular and the policy and considering the stand of the respondents that in cancelling the earlier bid of the petitioner, they were only following the policy to invite bids through GeM Bid portal, in my opinion, the decision cannot be said to be arbitrary and illegal. In the ultimate analysis, the petition is found to be without any merit and is, accordingly, dismissed.

17. All interim directions shall also stand vacated.