
(2020) 07 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 1161 Of 2020, Civil Miscellaneous No. 3344,
3346 Of 2020

New Khawja Construction Group

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 29-07-2020

Acts Referred:

Citation : (2020) 07 J&K CK 0006

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : N. D. Qazi, Ravinder Gupta

Final Decision : Dismissed

Judgement

Ali Mohammad Magrey, J

1. By medium of the instant petition, the petitioner is seeking a 'Writ of Certiorari' for quashing the corrigendum dated 8th of July, 2020, issued by the respondent No.3, in terms whereof of the e-NIT bearing No. 19/2020-21 dated 29th of June, 2020 regarding 'Construction of road from Dak Bunglow, Mendhar to Golad upto Behrote, Balakote' has been withdrawn. A 'Writ of Mandamus' is also thereby commanding the respondents to allow the petitioner Group to participate in the tendering process with regard to e-NIT No. 19/2020-21 dated 29th of June, 2020.

2. The case of the petitioner, as comes to fore from a plain reading of the petition of the petitioner, is that vide e- NIT No. 19/2020-21 dated 29th of June, 2020, issued by the Executive Engineer, PWD, Division Poonch, tenders were invited for the (i) construction of road from Dak Bunglow, Mendhar to Golad upto Behrote, Balakote; and (2) Upgradation of Dehri, Sahib Gurdawara to M/s Dehri. It is stated that the petitioner group, comprised of the members of Self Help Group for unemployed Engineers, is registered as a firm, namely, 'M/S New Khawja Construction Group', under registration No. JRF 609 of 2012 dated 26th of

September, 2012. The petitioner Group, being eligible in terms of the aforesaid e-NIT, claim to have completed all the requisite formalities, including preparation of CDR and submitting the necessary fee for getting the tender document, deposited their tender and uploaded the same on the official Website provided by the respondents. The bids, as stated, were scheduled to be opened at 10:00 hours on or after 21st of July, 2020. Thereafter, in terms of the e-NIT, a pre-bid meeting was fixed to be held on 15th of June, 2020 at 12:00 hours in the office of the Executive Engineer, PWD (R&B), Division Poonch, in order to clarify certain issues as well as to answer question(s) on any issue that may be raised in the said meeting. Besides, it was also provided that the technical bids of the bidders shall be opened Online in the office of Executive Engineer, PWD (R&B), Division Poonch at 10:00 hours on or after 27th of June, 2020 and that opening of financial bids shall be intimated later. Subsequently, on 8th of July, 2020, vide Corrigendum No. R&B/CC/2031-60, it is contended that the respondents, without affording any opportunity of hearing to the petitioner Group, have withdrawn the aforesaid tender to the extent of the petitioner Group, constraining the petitioner Group to approach this Court through the medium of the instant petition.

3. Mr Ravinder Gupta, the learned Additional Advocate General, submits that even though the lawfulness of the decision of the respondents in withdrawing the e-NIT in question can be assailed on very limited grounds, but the soundness of the decision cannot be questioned as otherwise this Court would be taking over the function of the tender issuing authority, which it cannot.

4. Heard the learned counsel for the parties, perused the pleadings on record and considered the matter.

5. At the very outset, what requires to be stated herein this case is that it is well settled principle of law that there must be judicial restraint in interfering with the administrative action, particularly in matters of tender or contract. Ordinarily, the soundness of the decision taken by the tendering issuing authority ought not to be questioned, but the decision-making process can certainly be subject to judicial review. The soundness of the decision may be questioned, firstly, if the decision made is so arbitrary and irrational that the Court can say that the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached or, second, if the process adopted or decision made by the authority is malafide or intended to favour someone or, third, if the public interest is affected. In the case on hand, the decision of the official respondents to withdraw the e-NIT cannot be said to be one where they have acted in a manner in which no responsible authority acting reasonably and in accordance with the relevant law would have acted. Furthermore, a perusal of the pleadings attached with the Writ petition does not indicate that the decision made by the authority is malafide or intended to favour someone. Even otherwise, the allegation of malafide or favouring someone would only arise when the process is finalized and contract is allotted. At this stage, no malafide or favouritism is forthcoming from the pleadings attached with the Writ

petition. Likewise, the third ground of public interest is also not affected in the present case because while it may be in public interest to have greater competition, it is also in public interest that all the tender conditions are complied with and that there is no uncertainty in that area.

6. For the foregoing reasons, this writ petition is found to be devoid of any merit, as a sequel thereto, same shall stand dismissed alongwith the connected CM(s).

7. There shall, however, be no order as to costs.