

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case WP(C) No. 2876/2024

Reserved on: 07.03.2025

Pronounced on: 18.03.2025

M/s Mohd Asif
through its Proprietor Mohd. Asif
S/o Mohd. Ashfaq,
R/o Village Chak Banola,
Tehsil Mendhar District Jammu

....Petitioner(s)

Through: Mr. F. A. Natnoo, Advocate

VERSUS

1. Union Territory of Jammu and Kashmir
through its Financial Commissioner
(Additional Chief Secretary),
Jal Shakti Department,
Civil Secretariat, Jammu / Srinagar.

2. Chief Engineer, Jal Shakti Department (PHE),
Jammu.

3. Superintending Engineer,
Jal Shakti Department (Mech.),
Rural Circle, Jammu.

4. Executive Engineer,
Jal Shakti Department (Mech.),
Ground Water Drilling (GWD),
Division Jammu.
....Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE.

JUDGMENT

1. Through the medium of instant writ petition, the petitioner has challenged communication No.GWD/4878-81 dated 26.11.2024 issued by respondent No. 4 whereby allotment orders issued in favour of the petitioner for execution of 'Deep Drilling of 125 MM dia Bore holes by using ODEX method including, providing, installation, testing commissioning of Mark-II Hand Pumps and

construction of platforms at 23 & 13 number locations in District Poonch on Turkey basis (EPC) under District Capex Budget' have been cancelled.

2. As per case of the petitioner, he had participated in the tender process which was set in motion pursuant to e-NIT Nos. GWD/84 of 20204-25 and GWD/89 of 2024-25 dated 12.10.2024 for construction of Deep Drilling of 125 mm dia Bore Holes etc at different locations in District Poonch. It has been submitted that vide allotment orders No. GWD/4611-15 and GWD/4616-20 dated 18.11.2024 the work was allotted in his favour after he had emerged as the successful bidder. However to the dismay of the petitioner vide impugned communication dated 26.11.2024, respondent no. 4 has cancelled the aforesaid allotment made in favour of the petitioner.

3. The petitioner has challenged the action of the respondents on the grounds that the allotment orders have been cancelled at the behest of the Minister Incharge by exercising the power in a malafide manner. It has been submitted that because father of the petitioner had recently contested the Assembly Elections against the said Minister, as such, he pressurized the respondents to cancel the allotment orders made in favour of the petitioner. It has been further contended that the reason assigned by the respondents for cancellation of the orders is not available to them, because the requisite funds were available to the respondents for execution of these works. It has been further submitted that after the issuance of the allotment orders the petitioner had already started execution of the works, as such cancellation of the impugned allotment orders has caused huge financial loss to him.

4. The respondents in their reply to the instant petition have submitted that after the allotment of works in favour of the petitioner, a meeting of the contract

committee was held in which after thorough discussion and deliberations in respect of the allotments made in favour of the petitioner, it was observed that the funds allocated for Drilling of Hand Pumps under PRI grants for district Poonch have not been released for most of the locations through BEAMS till date, due to which the work will not be completed. It was also observed that this may lead to dispute between the firms and the department, in future regarding release of payment for the work done if allotted to the petitioner-firm. It was further observed that the petitioner has not executed the agreement within stipulated 07 days of the allotment order in respect of the allotted works as laid down in Clause (22) of the terms and conditions of the e-NIT which shows lackadaisical approach of the petitioner. Thus, the Committee recommended cancellation of the allotment orders made in favour of the petitioner along with another firm, namely, M/s Hyper Techno Drillers. In short, as per the version of the respondents, due to non-availability of the funds and due to non-execution of the agreement by the petitioner-firm with the respondent-department, the allotment orders made in favour of the petitioner-firm came to be cancelled.

5. I have heard learned counsel for the parties and perused the record of the case.

6. From the pleadings of the parties, it comes to the fore that it is not in dispute that pursuant to participation of the petitioner in E-NIT dated 12.10.2024 the works which were subject matter of these E-NITs were allotted to the petitioner in terms of the two allotment orders dated 18.11.2024. The respondents claim that they cancelled these allotment orders because of non-availability of funds. It is further case of the respondents that in terms of Clause (22) of the

terms and conditions of the contract, the petitioner did not execute the agreement with the respondent-department within the stipulated period of seven days.

7. In the impugned cancellation letter, the only reason given by the respondents for cancellation of the allotment orders is the lack of financial resources. There is no mention of non-execution of agreement as a ground for cancellation of the allotment in the impugned communication. The Supreme Court has in case of *Mohinder Singh Gill vs. The Chief Election Commission and others*, 1978(1) SCC 405, held that where an authority makes an order based on certain grounds its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise an order bad in the beginning may by the time it comes to Court on account of a challenge get validated by additional grounds later brought out. Thus, it is not open to the respondents to supply an additional ground for their impugned action by urging the same in their reply affidavit. In any case, the respondents have not placed on record any document to even remotely suggest that they had asked the petitioner to execute the agreement which he avoided. Thus, the contention of the respondents in this regard cannot be accepted.

9. This takes us to the question as to whether the other reason given by the respondents for cancelling the allotment orders of the petitioner offers a justification for their said action. As already indicated the only reason given for cancelling the allotment orders in favour of the petitioner as given in the impugned communication is non-availability of the funds. In this regard, it is to be noted that the petitioner has placed on record copies of Order No. 105 DDCP of 2024 dated 26.07.2024 & Order No. 197 DDCP of 2024 dated 14.08.2024

whereby administrative approval under Capex Budget (SSY) 2024-25 has been accorded in favour of Executive Engineer (M) Ground Water Division Jammu for execution of various works which includes the work that was allocated in favour of the petitioner.

11. Administrative approval for execution of a work is accorded only once funds are made available with the executing agency. Both these administrative approvals pertain to Capex Budget (SSY) 2024-25, meaning thereby that the funds were to be released in the Capex Budget. The petitioner has also placed on record by way of a additional affidavit, the information furnished by the respondents under RTI in which it has been indicated that the funds stand released to Executive Engineer (M) Ground Water Division Jammu On BEAMS for execution of the works which were allotted to the petitioner under PRI Grants of District Capex Budget 2024-25. The respondents have also admitted the release of the funds for execution of the work allocated to the petitioner but their contention is that release of funds was made only on 01.01.2025 and by that time the impugned cancellation letters had already been issued.

12. The contention raised by the respondents does not merit any consideration for the reason that once administrative approval was accorded for execution of the works, it has to be inferred that funds were available with the respondents and it was only a matter of time till the same were uploaded on BEAMS. The reason assigned by the respondents for cancellation of the allotment orders made in favour of the petitioner is, therefore specious.

13. Apart from the above, once the respondents accepted the bid of the petitioner and issued allotment orders in his favour, a complete and binding contract came into being between the parties giving rise to rights and liabilities

amongst the parties *inter se*. The respondents were, therefore, obliged to issue a notice to the petitioner before taking any action prejudicial to his interests under the Contract. The respondents being officers of the State are duty bound to act fairly before taking an action against allottee of a work, which in the instant case they have not done. The Supreme Court has in a case titled as ‘ ***R. D. Shetty vs. Intl. Air Port Authority***’ 1979 (3) SCC 489 held that actions of the State authorities even in matters relating to contract have to meet the tests of fairness and reasonableness. The action of the respondents in cancelling the allotment orders in favour of the petitioner smacks of arbitrariness as they have breached the principles of natural justice, thereby rendering their action unsustainable in law.

14. In view of the above, the instant writ petition is allowed and the impugned cancellation letter dated 26.11.2024 is quashed. The respondents are directed to permit the petitioner to execute the work in accordance with the terms and conditions of the contract/allotment orders.

(Sanjay Dhar)
Judge

JAMMU
18.03.2025
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Whether order is reportable: Yes