

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

OWP 603/2019 (O&M)
[WP(C) No. 1388/2019]
(Through Video Conferencing)

Reserved on : 19.10.2020

Pronounced on : 02.11.2020

M/s Hotel Jammu Premier Pvt. Ltd. ...Petitioner(s)

Through:- Ms. Meenakshi Slathia, Advocate

v/s

State of J&K and othersRespondent(s)

Through:- Ms. Seema Shekher, Sr. AAG

Coram: HON'BLE MR. JUSTICE RAJESH BINDAL, JUDGE

ORDER

1. The petitioner had filed the present petition praying for quashing of E-NIT No. 09 of 2019 dated 27.03.2019. Further direction was sought to allot the restaurants intended to be licensed earlier vide E-NIT No. 04 of 2019 dated 25.01.2019, in favour of the petitioner.

2. The learned counsel for the petitioner submitted that J&K State Cable Car Corporation Jammu Limited (for short 'the Corporation') issued E-NIT No. 04 of 2019 dated 25.01.2019. It was for grant of license for running the restaurants at three terminals of Jammu Ropeway Project. The license was to be granted for a period of five years. The minimum reserved bid was fixed at Rs.

10.00 lacs. One of the important condition in the tender document was that bidder should be a national level food chain outlet company with a minimum turnover of Rs. 2.5 crores per annum. Balance sheet for the last three years was required to be furnished alongwith the bid. The petitioner, who is a franchisee of the national level food chain, namely 'Sagar Ratna', was one of the bidder. To establish this fact and also to refer to the earlier NITs issued by the Corporation for licensing of the same restaurants, the petitioner referred to a table at page No. 23 of the paper book.

3. She further submitted that firstly for the same purpose, E-NIT No. 11 of 2018, dated 09.06.2018, was issued, however, no one qualified. Thereafter in response to E-NIT No. 14 of 2018 dated 13.08.2018 and E-NIT No. 17 of 2018 dated 19.09.2018, no bidder participated. Fourth time, E-NIT No. 21 of 2018 dated 08.12.2018 was issued, wherein only one bidder participated. Thereafter E-NIT No. 04 of 2019 dated 25.01.2019 was issued, in which two bidders participated. They were found to be technically qualified and the financial bids were to be opened. She submitted that the favoritism to allot the aforesaid bid in favour of the respondent No. 5, started much before even the process concluded as the condition No. 4, regarding minimum annual turnover of Rs. 2.5 crores required for the last three years was changed to aggregate turnover of Rs. 2.5 crores in last three years. It was with this change notified by the Corporation on 04.02.2020, that the respondent No. 5 became eligible. To accommodate him even the last date fixed for submission of bids, which was upto 04.02.2019, was also extended. The petitioner was one of the bidder therein.

4. It was further contended that instead of finalizing the aforesaid tendering process, fresh E-NIT No. 09 of 2019, dated 27.03.2019, was issued for the same project. The last date fixed for submission of bids was on 15.04.2019. Again the eligibility condition in the tender document was modified to accommodate the respondent No. 5, wherein turnover required was to the tune of Rs. 2.50 crores in aggregate for the last three years. Instead of '*national level food chain outlet company*' requirement was '*state/national level food chain*'. In fact, this change was made only to accommodate the respondent No.5, as he does not have association with any national level food chain. It is only the petitioner who has franchisee of 'Sagar Ratna'.

5. Ms. Meenakshi Slathia, learned counsel for the petitioner further argued that the conduct of the Corporation was in public domain as it had been issuing NIT for the same purpose time and again. Application was filed by one RTI activist under J&K Right to Information Act, 2009, seeking certain information. The important issues were as to how many firms qualified in the technical and the financial bids and further how many years of experience a bidder was required to have with the national level food chain. The same was responded to vide letter dated 07.03.2019, stating that in response to E-NIT No. 04 of 2019 dated 25.01.2019, two bidders participated. M/s Jammu Darbar offered highest bid of Rs. 24.01 lakhs whereas M/s Hotel Jammu Premier Pvt. Ltd. offered Rs. 22.10 lakhs. Final decision is yet to be taken. To the query as to how much years of experience a bidder was required to have with national level food chain, the answer was that no such condition was put in the tender. In fact, in the earlier tendering process, the petitioner was the only successful bidder as the respondent No. 5 does not have any experience of working in association with a national level food chain. But when the sole aim was to favour the

respondent No. 5, the Corporation did not take any decision and thought of issuing fresh tender notice instead of finalizing the earlier one.

6. It was further contended that though the petitioner is not the participant in the tendering process in question, however, it has right to seek a direction to the Corporation to allot the tender to the petitioner, being the only eligible and successful bidder in the earlier tendering process, which was abandoned for no good reason. The respondent No. 5, who was the bidder alongwith the petitioner, was not having experience with a national level food chain.

7. On the other hand, Ms. Seema Shekher, learned Sr. AAG appearing for the respondents submitted that the project in question is prestigious. It would invite lot of tourists from outside the Union Territory of Jammu and Kashmir besides the local residents. To provide facilities to them three eating joints were planned at different stations of the cable car project. The process for allotment of the same was initiated with the issuance of E-NIT No. 11 of 2018. However, on four occasions the Corporation was not successful as either no one participated or qualified or there was only one bidder. In the last E-NIT No. 04 of 2019, there were two bidders namely the petitioner and the respondent No. 5. She submitted that corrigendum was issued on 04.02.2019, for correcting the error in the bid document where the turnover required was mentioned as per annum, for the last three years, though the same was required as aggregate of turnover for the last three years. Though, the petitioner claimed that he has experience of working with national level food chain namely 'Sagar Ratna', however, the agreement, the petitioner had with 'Sagar Ratna' was for a period of ten years starting from the year 2007 and the same expired in the year

2017. Hence, it was also not eligible. There being only one bidder remaining, decision was taken to cancel the tendering process and issue fresh tender, which is subject matter of challenge in the present petition. Now, three bids have been received. There are no malafides alleged. The effort of the Corporation is to invite more and more bidders so that in competition, the bid amount is also increased and the quality and the variety of food available to the tourists is also good. The respondent No. 5, had offered higher bid than the petitioner in E-NIT No. 04 of 2019, still it was not allotted to him.

8. In response, learned counsel for the petitioner submitted in response to a query raised under Right to Information Act, the answer was that both the bidders had qualified in the technical bid and the financial bids were opened and the finalization was under process. This is contrary to what is now being stated in the objections filed by the Corporation claiming that the petitioner was not technically qualified as its agreement with 'Sagar Ratna' had expired. These are only the excuses being made now for ousting the petitioner from healthy competition. She further referred to the communication issued by 'Sagar Ratna' in favour of the petitioner on 03.02.2019, stating that 'Sagar Ratna' is a well established national food chain having its Jammu franchisee at Hotel Jammu Premier Residency Road, Jammu, which is running successfully since 2007. The aforesaid communication is prior to the last date for submission of bids in pursuance to NIT No. 04 of 2019 dated 25.01.2019. The date initially fixed as 04.02.2019 was extended later. Reference was made to a judgment of Hon'ble the Supreme Court in (1994)6 SCC 651 titled as *Tata Cellular v. Union of India* and this Court in OWP No. 2576 of 2018 titled as *M/s K. C. Food Pvt. Ltd. v. State of J&K & Ors.*, decided on December 31, 2018.

9. Heard learned counsel for the parties and perused the paper book.
10. From the material placed on record by the parties, it is evident that the Corporation executed Jammu Ropeway Project connecting Bahu Fort to Peerkho. It has three terminals namely - Bahu, Mahamaya and Peerkho Stations. At these three stations, the Corporation had constructed restaurants. The intention was to outsource these restaurants on license basis for a period of five years. Initially, the effort was made to award license to a national level food chain outlet owners, having sufficient experience in the relevant field but the fact remains that despite repeated efforts, the Corporation was not successful. A table has been prepared by the petitioner and annexed with the writ petition at page No. 23, giving details of five NITs issued prior to the one in question in the present writ petition for the same purpose. Apparently, the aforesaid table has been prepared with information supplied to one RTI activist in response to queries raised by him.
11. The information is evident of the competence and seriousness of the officers of the Corporation, who could not finalize even a tender for grant of license for running three restaurants at different stations on Jammu Ropeway Project. Further the time when the same should have been issued. First tender in the series was issued on 09.06.2018. The same was followed by subsequent E-NITs dated 13.08.2018, 19.09.2018, 08.12.2018 and 25.01.2019. Having failed in five efforts, NIT in question was issued on 27.03.2019. The Ropeway Project became operational on July 27, 2020, however, till date, the restaurants at three stations, which could generate income not only for the Corporation but even for the Government as well in the form of GST, could not be allotted. This puts a serious question mark on the seriousness and capability of the officers

concerned in planning and executing the project. This is fortified from another fact, which is in public domain. The project was planned in the year 1995. We are twenty five years down the line. The work started only in the year 2016 and still the same is not complete though it was to be completed in about thirty months. Apparently there are no checks and review of the working of the officers. One needs to examine as to how much was the increase in the cost of project because of delays.

12. There may be total lack of vision. Jammu is the second most populous city of the Union Territory of Jammu & Kashmir. It is known as the city of Temples and is famous for Ancient Temples and Hindu Shrines. It is the most visited place in the Union Territory. It's the entry point for visit to Holy Cave of MATA VAISHNO DEVI. About a crore of pilgrims visit the Holy Cave annually. But the authorities have not been able to create any other tourist attraction at Jammu though there are lot of potentials available. Drafting of a tender document with reference to the terms and conditions and the time when it should be issued, is certainly the work of experts in the field. Failure of the Corporation in not getting a successful bidder even after five efforts, has certainly put a question mark as to whether there was application of mind before putting the restaurants in public domain for outsourcing or the effort was to cause loss to the exchequer and benefit private players. Apparently the project was not complete when the tenders were repeatedly issued, with the same terms and conditions. As a result none or few had shown interest to participate. It's a business proposal. The successful bidder has to work out his economics as well. The tenders were being floated almost every month. As from June 2018 till January 2019, there were five NITs issued within a period

of about 7-8 months, as if the new bidders will just crop up within a month or so or the wait was for some favorite to participate.

13. The conduct of the Corporation otherwise also is not above the Board. In response to RTI query, the stand taken in communication dated 07.03.2019, is that in response to NIT No. 04 of 2019 dated 25.01.2019, two bidders participated. The figure of financial bids was also disclosed. There is no reason assigned as to why final decision of allotment was not taken. Once, the financial bids had been opened that means that the bidders had successfully crossed the stage of evaluation of technical bid. Any issue with regard to eligibility of a bidder is examined during technical evaluation. In case, the respondent No. 5, was the highest bidder, the learned counsel for the Corporation has not been able to apprise the Court as to the reason for not finalizing the aforesaid NIT except that the Managing Director of the Corporation has right to accept or reject the bid without assigning any reason. Hence, he decided to invite fresh bids. The stand was sought to be taken that the petitioner was not eligible in E-NIT No. 04 of 2019 as the franchisee of 'Sagar Ratna' with it expired in the year 2017 and there was no subsequent document in support of its claim. In fact, the stand of the Corporation is self contradictory. Apparently, they lack knowledge about the procedure to be adopted for evaluation of tenders. The system of having two bids in any tendering process, namely the technical bid and the financial bid and the stages at which these are to be opened and what is to be evaluated therein, is not known to the persons concerned. Once the stand taken in response to RTI query is that the petitioner was the second highest in the two bidders as far as the bid amount is concerned, that would necessarily mean that it was technically qualified. The financial bid could be opened only after a bidder is technically qualified. There is nothing

mentioned about the technical qualification of the respondent No. 5, as the petitioner had sought to join issue on that claiming that he does not have any experience of working with a national level food chain.

14. The stand taken in the objections filed by the Corporation is that respondent No. 5, was found to be the highest bidder having given financial bids of Rs. 24.01 lacs, however, the same was not accepted by the Corporation and thereafter, the petitioner being the single bidder could not have claimed that his bid should have been accepted. Though, its offer was less than the one submitted by respondent No. 5.

15. Much water has flown after the issuance of the NIT in question on 27.03.2019. The J&K Reorganization Act was enacted by the Parliament and it came into force on October 31, 2019. The then State of Jammu and Kashmir has been bifurcated into two union territories i.e. Union Territory of Jammu and Kashmir, and Union Territory of Ladakh. The economy of newly created union territory is being opened up and new investment is being invited to generate more employment opportunities for the residents of the area. Tourism will also pick up. With proper application of mind, efforts of all concerned with administration should be to work in that direction and not work with close mind.

16. There is need to change the mindset from wasting the public money, causing loss to the exchequer and benefit the private players to work in larger public interest and generate more revenues so that the same can be used for creating more and better infrastructure. Such types of projects are also required to be promoted by making these known to the tourists so that more and

more persons visit the place. The ropeway project in question connects three ancient temples in Jammu – ‘Jamwant Gufa Peerkho, Mahamaya Temple and Bahu Fort Temple’. Though the object behind the project was to boost pilgrimage tourism but the authorities have failed to achieve that objective as information about this project is hardly available. There is no website of the Corporation, on which information about any of its projects is available. The only information which could be retrieved about the Corporation is that it is involved in the manufacturing of basic iron and steel. Apparently transparency doesn’t suit them.

17. Information available on the website of Ministry of Corporate Affairs, Government of India, is astonishing. The corporation is a limited company incorporated under the Companies Act, 1956. The date of incorporation being 28.11.1988. The authorized capital is Rs. 50 crores, whereas the paid up capital is Rs. 23.57 crores. From the information available it is evident that it is not doing any business as the date of last Annual General Meeting is 12.11.2012 and the Balance Sheet filed with the authorities is for the period ending 31.03.2007. Even statutory returns are not being filed. It’s status is ‘**ACTIVE NON-COMPLIANT**’. If the information available is upto date, this shows the mindset of people, which is more towards ‘*defying than complying*’ with law. Are the persons at the helm of affairs of the corporation not aware of the penal provisions of the Companies Act, for not filing statutory returns, annual returns and the Balance Sheets? They can be prosecuted besides levy of personal penalties on the persons incharge of the affairs. There are certain more compliances to be made by the State Government company. Or they may be thinking that they are immune from prosecution and penalties. The Company Master Data as is available on the website is extracted below :

Company Master Data	
CIN	U27106JK1988SGC001071
Company Name	JAMMU & KASHMIR STATE CABLE CAR CORPORATION LIMITED
ROC Code	RoC-Jammu
Registration Number	001071
Company Category	Company limited by Shares
Company Sub-Category	State Govt. company
Class of Company	Public
Authorised Capital(Rs)	500000000
Paid up Capital(Rs)	235700000
Number of Members(Applicable in case of company without Share Capital)	0
Date of Incorporation	28/11/1988
Registered Address	ZUM ZUM HOTEL RAMBAGH SRINAGAR JAMMU AND KASHMIR JAMMU AND KASHMIR JK 000000 IN
Address other than R/o where all or any books of account and papers are maintained	-
Email Id	cs.jeelani@gmail.com
Whether Listed or not	Unlisted
ACTIVE compliance	ACTIVE Non-Compliant
Companies Present filing status (defaulted in filing its statutory returns for the last two years i.e. 16-17 and 17-18)	INACTIVE
Suspended at stock exchange	-
Date of last AGM	12/11/2012
Date of Balance Sheet	31/03/2007
Company Status(for efilling)	Active

Charges				
Assets under charge	Charge Amount	Date of Creation	Date of Modification	Status

No Charges Exists for Company/LLP

Directors/Signatory Details				
DIN/PAN	Name	Begin date	End date	Surrendered DIN
01227764	AZIZ WANI	19/02/2009	-	
02505275	FAROOQ AHMAD KHAN	03/09/1997	-	
02664588	FAROOQ AHMAD SHAH	20/03/2007	-	
03348984	TALAT PARVEZ ROHELLA	31/05/2010	-	
06620700	TUFAIL MATTO	20/04/2013	-	
AKUPD5774C	AJAZUL REHMAN DAR	06/01/2009	-	

18. Apparently a dead sleeping company was given the project. That is why it remained on papers for a long time and resulted in delayed execution. Strange is the fact that this corporation, though the name suggests, was not involved in execution of two earlier projects of cable cars/rope ways in Jammu & Kashmir i.e. Gulmarg Gandola and Patnitop.

19. Less said the better even about the website of the J&K Tourism Department. It does not have information about any of the cable car/rope way projects in Jammu & Kashmir. We have prestigious one at Gulmarg, known as 'Gulmarg Gandola'. It takes one from the height of 8,530 ft. above the sea level to 12,293 ft. It is said to be second highest cable car project in the world. Second one in J&K was made operational at Patnitop alongwith other adventure sports facilities. But no information about the same could be noticed on any government website, especially of tourism department. Third one at Jammu is

in progress. All three have their own importance with reference to location, height and the facilities but none thought of promoting these for tourism. We all know the reach of social media. Days of hard copies of brochures are gone. Prospective tourists visit websites, especially the government websites, as these provide authentic information but we have failed. Again question if of mindset. Why we want to keep everything close to our chest? We are not playing card game. Let the people all around know about the tourism and adventure sports facilities available in Jammu & Kashmir and show them that its really a *'Paradise on Earth'* but one has *'to visit, see and feel to believe'*. Or the idea is to create facilities not for promoting tourism but to keep it to ourselves and let the projects fail because of lesser foot fall. It cannot be denied that tourism in Jammu & Kashmir is one of the major employment/revenue generator but our closed mind has failed us in exploiting this source to the optimum.

20. It is expected that the Tourism Department will make an extensive exercise to update the information, as on date and continue to do that regularly, on its website about various tourist destinations and other facilities available and also use other social media platforms to promote tourism in Jammu & Kashmir. And let the world know that now we are different. In addition thereto, option for making bookings online for the cable car/ ropeway should be made available. The J&K Tourism Development Corporation should make such facilities available on its website, making it quite feasible and less challenging for the potential tourists for making arrangements. It is suggested that State Government should make an effort to have an integrated portal providing all tourism related information and for online booking for all the facilities available in the Jammu & Kashmir for the potential tourists such as Hotels/ House Boats/ Huts, Adventure Sports, Cable Car/Ropeway, Travel, Cuisines etc. and such

other attractions to promote the tourism activities in the State. Tourists also need to be guided regarding best weather to visit any particular area. One needs to keep in mind about growth of religious tourism also, hence, provide detailed information regarding that with proper guidance and package tours from Jammu or Srinagar. Plea of shortage of staff may be an eye wash if seen in the light of the fact the in Jammu & Kashmir government employees with reference to the population are very high if compared with other States. Here we have about 3,600 per lakh of pollution, whereas one of best governed State of Gujrat has about 830 per lakh of population (Source - on the website. Figures pertain to the year 2016 and are believed to be correct). With so much of strength of government employees, we could have really made Jammu & Kashmir, a Paradise on Earth, but failed. There is nothing wrong, if the Government is creating job opportunities for its subjects but those who are given employment also have duty to justify the salary or the wages, they receive. We need to cultivate some work culture also, instead of shirking work or passing on the buck. Or may be the people run after government jobs only for the reason that they will get paid without working.

21. Now coming to the merits of controversy, in my considered opinion, the tender in question needs to be scrapped and a fresh tender notice issued, specifying in details the facilities available or the time period during which the same will be available to the prospective bidders. Fresh tender is also required to be issued for the reason that its already more than one and a half years back when the present one was issued and there are lot of changes in Jammu & Kashmir thereafter. With changed mindset now everything needs to be planned and executed. We need to get up from slumber now and start working with new zeal and energy.

22. Ordered accordingly.

23. Before parting with the order and seeing astonishing facts about a government company, which have come before the Court, and there being number of State Government companies in Jammu & Kashmir, which may be just on papers and a drain on the public exchequer, information is required to be asked from the concerned departments through the Chief Secretary so that the public at large also come to know as how their hard earned money, contributed by way taxes to the Government, is being misused/wasted. The information be furnished in tabulated form, giving following details :

1. Name of the company
2. CIN No
3. Main objects and reasons for which incorporated and the present business being carried on. With annual turnover for the last 10 years, alongwith balance sheet and profit and loss accounts. Number of employees working in these companies.
4. Authorized and paid up capital
5. Whether shares listed in stock exchange?
6. Percentage of government holding?
7. Whether provisions of Companies Act are being complied with?
8. Names of Managing Directors, specifying as to whether this is additional charge. And other directors with their other occupation.
9. Date of last Annual General Meeting?
10. Last year upto which accounts have been audited and Balance Sheet finalized and submitted to the authorities concerned.

24. Let copy of this order be sent to the Chief Secretary for information arranging the information to be furnished in Court. And the Secretary, Tourism, Law Secretary, Government of Jammu & Kashmir and Managing Director of J&K Tourism Corporation to sit together and plan a common strategy and platform to promote tourism in Jammu & Kashmir instead of sitting in offices and remain busy in Durbar moves only, and spend time to find out accommodation for its staff at Jammu and Srinagar.

25. A copy of this order be also sent to the Registrar of Companies, Jammu, which has failed in discharge of his duty. It is to enable him to examine the level of violations of provisions of Companies Act, by the corporation and the action to be taken against the persons incharge of the affairs.

26. The writ petition is disposed of. However, for review of the information sought from the Government, the same shall be listed before the Court on December 23, 2020, before a bench to be nominated by Hon'ble the Chief Justice. For the purpose, the Registry is directed to obtain appropriate order.

(RAJESH BINDAL)
JUDGE

JAMMU
02.11.2020
SUNIL-I

Whether the order is speaking : Yes/No
Whether the order is reportable : Yes/No