

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 716/2023
CM No. 1694/2023
CM No. 4759/2023
CM No. 6454/2023

Bashir Ahmad Malik

...Petitioner(s)

Through: Mr. Shariq Riyaz Jan, Adv.

Vs.

UT of JK and Ors.

...Respondent(s)

Through: Mr. Ilyas Laway, Adv, for 1 to 4
Mr. Saqib Amin Parray, Adv, for 5

CORAM:

HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE

J U D G M E N T

Oral:

01. The petitioner is aggrieved of and has called in question an Order dated 13th February, 2023, issued by the Deputy Director, Tourism, Srinagar, whereby allotment of work of reconstruction of the “Ziyarat Shareef Hazarat Syed Noor Shah Wali Bagdadi (R.A).” at Waltengoo Kund, Kulgam, allotted in favour of the petitioner vide Allotment Letter dated 4th July, 2019, has been cancelled.

02. Before adverting to the grounds of challenge urged by learned counsel for the petitioner, it would be appropriate to briefly notice few facts. Pursuant to an e-NIT dated 29th May, 2019, floated by respondent no. 3, the work in question was allotted to the petitioner vide Allotment Letter dated 4th July, 2019 at the estimated cost of Rs. 42.00 lacs. The petitioner started the execution of the work as per the terms and conditions of the allotment order, but the same was stopped by the respondent no. 5 on the allegation that the work in question was being executed in violation of DPR approved by the

Government. There are communications on record, a perusal whereof indicates that the respondent no. 5 was not satisfied with the work being executed by the petitioner and, accordingly, created all possible hurdles in the smooth execution of the work. The department of Tourism was cognizant of the dispute as also of the discrepancies between the DPR and the order of allotment. It is also evident from the communications of the department of Tourism that there was a dispute as to whether the work in question was to be executed as per DPR or as per the terms and conditions laid down in the allotment order. It seems that the petitioner-contractor wanted to execute the work as per the DPR sanctioned vide Government Order No. 268-TSM of 2018 dated 19th September, 2018, whereas the department of Tourism was in favour of re-advertising the work. This dispute between the petitioner, the department of Tourism and respondent no. 5 led to the filing of WP(C) No. 1446/2021 by the petitioner in this Court.

03. The petitioner in the aforesaid writ petition prayed for a direction to the respondents to allow him to execute the work in question strictly as per DPR sanctioned by the Government vide its Order dated 19th September, 2018. The petitioner also prayed for a direction to the official respondents not to re-tender the new components of work under execution of the petitioner. The petition was contested by the respondents and a Bench of this Court vide Order dated 16th September, 2022 dismissed the petition being grossly misconceived. The Court concluded that the petitioner was bound to carry out the execution of the work strictly as per the terms and conditions of the allotment and, therefore, had no reason or occasion to delay the execution of work on the premise that the remaining work components should also be

allotted to him for execution. The Court held that with regard to new work components the department of Tourism was supposed to issue fresh tenders. It seems that in the absence of allotment of new work components by way of tender the department felt it difficult to get the work allotted to the petitioner executed on spot. The respondent-department also noticed some variations in the DPR approved by the Government and the terms and conditions laid down in the allotment order issued in favour of the petitioner. Without specifically finding fault with the work of the petitioner and having regard to the developments that had taken place after the work was allotted to the petitioner, a decision was taken by the respondent-department to cancel the work allotted to the petitioner. Accordingly, the Deputy Director, Tourism vide Order dated 13th February, 2023, issued the cancellation order, which is impugned in this petition.

04. Impugned order of cancellation of allotment is challenged by the petitioner, *inter alia*, on the ground that the same is passed in violation of principles of natural justice, in that, the petitioner was not given any opportunity to explain his position. Impugned order is also challenged on the ground that it is illegal, arbitrary and violative of Article 14 of the Constitution of India.

05. Having heard learned counsel for the parties and perused the material on record, I am of the considered opinion that the order of cancellation of allotment dated 13th February, 2023, is neither mala fide nor arbitrary. The respondent-department has given cogent reasons necessitating the cancellation of allotment of the petitioner. It is true that, *prima facie*, there is nothing on record to suggest that the contract allotted to the petitioner has been cancelled on account of any act or omission attributed to the petitioner. The cancellation of allotment appears to have been necessitated due to

administrative reasons. Without commenting upon as to whether the cancellation of allotment of the petitioner is tantamount to breach of contract, this Court leaves it for the petitioner to work out his remedies available under law. Suffice it to say that petitioner has failed to make out a case for interference with the impugned order on the settled parameters of law laid down by the Hon'ble Supreme Court as well as this Court for interfering with the administrative decisions of the Government. Having said that, this Court cannot lose sight of the fact that the petitioner has executed some work pursuant to a valid order of allotment and the work executed by the petitioner is not, *prima facie*, disputed by the respondent-department. In that eventuality, the petitioner is at least entitled to have the measurements taken in respect of work executed by him so that the admitted payment due to him is paid without any prejudice to his right to claim compensation for breach of contract under law.

06. For the foregoing reasons, the writ petition, in so far it pertains to challenge to the impugned order of cancellation of allotment, is **dismissed**. However, a direction is issued to the respondents 1 to 4 to immediately and forthwith constitute a team of officers (experts) to take measurements of the work of the Shrine executed by the petitioner. The petitioner shall also be associated in the process of measurements. The respondents shall assess the amount payable to the petitioner for the work executed by him and disburse the same within a period of two months from today provided there no dispute with regard to the quality of work executed. The disbursement of admitted payment to the petitioner shall be without prejudice to his right to work out his remedy for claiming compensation for breach of contract, if any, by invoking arbitration clause.

07. It is however, clarified that the respondents shall be entitled to get the work of Shrine executed by issuing fresh tenders or otherwise in accordance with law only after the measurements of the work executed by the petitioner are taken and preserved in terms of this Judgment.

(SANJEEV KUMAR)
JUDGE

SRINAGAR
18.12.2023
"Shamim Dar"

Whether the Judgment is reportable?	Yes/No
Whether the Judgment is speaking?	Yes/No