

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(Through Virtual Mode)**

Pronounced on : 26.12.2023

Case: OWP No. 155/2000

M/s Sheikh Engineers & Co.
through its Proprietor
Mr. Ghulam Rasool Sheikh,
S/o Muhammad Sidiq Sheikh,
R/o Lar Ganderbal, Srinagar,
Age 45 years.

.....Petitioner(s)

Through: Mr. Z.A.Qureshi, Sr. Advocate with
Ms. Agha Faisal, Advocate.

Vs

1. State of Jammu & Kashmir through
Principal Secretary to Government,
Power Development Department,
Civil Secretariat, Srinagar/Jammu.
2. Managing Director,
J&K Power Development Corpora-
tion, 96 Sogami Building
Rajbagh Srinagar.
3. Chief Engineer Generation Wing
Power Development Corporation,
Bemina, Srinagar.
4. Superintending Engineer,
Generation Circle-I,
Power Development Corporation,
Bemina, Srinagar.
5. Executive Engineer,
General Division,
Power Development Corporation,
Upper Sindh Hydle Project
(USHP-II) Kangan, Kashmir.
6. M/s Trivani Structural Ltd.
through its Managing Director
Naini, Allahabad-211 010.
7. J.A.Shahmiri,Ex-Managing
Director, J&K Power Development
Corporation.

..... Respondent(s)

Through: Mr. Alla Ud Din Ganai, AAG.

Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE
JUDGMENT

1. The petitioner claims to be proprietor of the Firm. The petitioner is aggrieved of the communication dated 31.01.2000 (Annexure Z with the petition). Annexure Z-II is the communication from private respondent to the Superintendent Engineer PDC for further action to be taken in the matter. It is suffice to mention herein that tenders were invited for the fabrication and erection of pen stock for Unit-II Upper Sindh Hydroelectric Project, Kangan. The case of the petitioner is that he and respondent No.6 filed the tender against the NIT issued in respect of the aforesaid work. However, the respondent No.6 was not qualified to execute the work and had defaulted earlier also in carrying out Phase I of the aforesaid work at Kangan. An agenda note was prepared by the Executive Engineer which refers to the deficient performance of respondent No.6 qua earlier work done by the said respondent in Phase I of the project, the same is enclosed as Annexure D with the writ petition. The rates of the petitioner were lowest. The petitioner was in a way directed to proceed in the matter and in pursuance to the same, all the issues regarding the finalization of the Contract with the petitioner were taken up for discussion. In the meeting which took place on 11.10.1991, it was confirmed that the contract has been awarded to the petitioner. The petitioner has admitted in the petition that no formal written orders were given to the petitioners but by way of conduct of respondent Nos. 1 to 5, the work stood allotted to the petitioner. The petitioner has referred to the communications that took place between the petitioner and the consulting firm Thapar Hydro Consult. The petitioner has also made mention of the letter written by the said consulting firm to the Chief Engineer in this regard which is made as Annexure H to the petition. Annexure I to the petition is communication from office of the Chief Engineer dated 01.01.1992 to the petitioner whereby the petitioner was asked to validate the tender submitted by the petitioner and that the terms and conditions agreed to by the petitioner with the consultants

need to be proved beyond doubt and submitted to this office. It appears that further communication took place between the petitioner and the official respondents and also the consulting firm of the petitioner with the official respondents. To the dismay of the petitioner, the tender for the aforesaid Phase II of the project was not granted to the petitioner and the CDR pledged to the Chief Engineer was returned to the petitioner as the Contract Committee had decided to defer the allotment of contract for pen stock for the time being. Infact the contract was allotted to the respondent No.6 vide dated 26.12.1999 and the same is under challenge.

2. The objections to the petition have been filed by the respondents wherein the respondents have pleaded that the contract was never allotted to the petitioner by the respondent. The respondent No.6 had complied with all the conditions and was competent to execute the works. That no preference was given to the respondent No.6 as far as the contract is concerned. The petitioner is not entitled to any relief as the petitioner cannot claim the awarding of a contract in his favour. The petitioner had not the necessary expertise to execute the work. The plea is for dismissal of the writ petition.
3. It is suffice to mention herein that the petitioner was granted interim relief in the matter and the order dated 31.01.2000 was stayed by the court in the writ petition in hand vide order dated 09.05.2000. This order came to be modified vide order dated 20.10.2000 and the court vacated the interim direction dated 09.05.2000 subject to outcome of the writ petition provided that the respondents shall file an undertaking to the effect that they shall compensate the petitioner in case the court comes to such conclusion at the final disposal of the writ petition.
4. The contract in question has been awarded to the respondent No.6. The contract could have been awarded to the private respondent or need not be gone into now in view of the interim directions passed in the case whereby the initial order dated 09.05.2000 impugning order/communication stayed was modified. The petitioner is required

to be compensated is now to be seen by the court. The petitioner had in pursuance to the assurance given by the respondents and by their conduct had indicated that the contract shall be awarded in favour of the petitioner and the petitioner infact had made some arrangements in view of the discussions the petitioner had with the official respondents and had incurred expenses in pursuance to such assurance given by the respondents is what is pleaded by the petitioner.

5. The respondents have of course denied that any assurance was given to the petitioner as pleaded by him. As no contract was awarded to the petitioner and the same is admitted by the petitioner himself there is no reason for the petitioner to raise any claim against the respondents. The petitioner otherwise never qualified for the contract. The discussion with the respondent-department does not mean awarding of contract in favour of the petitioner or indicates that the petitioner has been assured of the contract which came to be awarded in favour of the respondent No.6 is the plea of the official respondents.
6. The petitioner has given the losses which he has suffered as he had taken steps towards execution of the contract. The official respondents have of course denied the claim raised by the petitioners in their response to the same.
7. The contract was never awarded to the petitioner by the respondents and that is not in dispute. The petitioner has annexed copies of certain communications which the petitioner had with the official respondents and more particularly the office of Chief Engineer and also the communication between the Thapar Consultant with the official respondents. It appears that the initial report prepared by the Executive Engineer and which is annexed as Annexure D to the writ petition in a way made the petitioner to believe that the petitioner-firm shall be awarded the contract. The rates offered by respondent No.6 were held to be on higher side and that in case the work is allotted to the said respondent the rates need to be kept firm and negotiated suitably. The petitioners entered into negotiations with M/s Thapar Hydro Consult

regarding designing of pen stock, preparation of drawing, cutting plant etc. Not only that, the Executive Engineer Gen. Division UGHP-II Kangan vide communication dated 25.09.1991 (Annexure F) with the petition sought details from Thapar Consultants of technical and engineering support as the said consultant was ready to extend technical support to the petitioner-firm. Further communications from the Thapar Hydro Consult to the Chief Engineer office are annexed with the writ petition. The petitioner paid certain amount to the consulting firm in pursuance to the negotiations entered between the parties is reflected in the communication from the petitioner to the Chief Engineer vide dated 09.03.1992 (Annexure J with the petition).

8. The petitioner was never informed of being not intended to be allotted the requisite work which resulted into spending the amount by the petitioner on various counts is what is the plea of the petitioner. No doubt the respondents in their reply have denied the assertions of the petitioner it cannot be denied that the petitioner had somewhat genuine expectation that the petitioner-firm will be awarded the contract formally in due course more so when the respondent No.6 was not initially found competent to be awarded the contract by the official respondents and would have incurred some expenses.
9. The petitioner might have made some ground work in pursuance to the legitimate expectation the petitioner had from the respondents though denied by them. The petitioner is required to be compensated for the loss which might have been incurred by the petitioner as the contract never came to be awarded in his favour by the respondents. It is not possible for the court to assess the compensation in definite terms as there is no expertise for the court to arrive at such a conclusion. The petitioner has of course given the expenses which the petitioner had incurred on various count. The respondents in their rebuttal to the claim preferred by the petitioner have denied that any compensation is required to be awarded to the petitioner. The plea raised by the learned AAG is that the compensation aspect cannot be considered in the

present petition in any case as the same aspect was taken care of in the earlier petition filed by the petitioner. The Court is of the view that in view of the interim order passed in the petition in hand the argument of learned AAG does not survive.

10. The circumstances that emanate from the record do make out that the petitioner is entitled to some compensation in the petition in hand. The Court grants compensation to the tune of Rs. 5 lacs in favour of the petitioner to be paid by the official respondents. The same be paid within a period of two months from the date copy of the order is made available to the respondents. The Court has only granted a tentative compensation to the petitioner. In case the petitioner has any other remedy under law to seek further relief in the matter he can avail the same. In case the petitioner approaches any other forum for redressal of his grievance that forum will form its opinion independent of any observations made in the present petition.
11. The petition is, accordingly, disposed of.

(Puneet Gupta)
Judge

Jammu:
26.12.2023
Pawan Chopra

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