

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

Reserved on: 08.10.2025

Pronounced on: 18.10.2025

Uploaded on: 18.10.2025

Whether the operative part or
full judgment is pronounced

Case No.:- WP(C) No 1406/2024

M/s Malik Builders & Contractors

.....Petitioner(s)

Through: Mr. Muzaffar Iqbal Khan, Advocate
Mr. Mazher Ali Khan, Advocate.

Vs

UT of J&K and anr.

..... Respondent(s)

Through: Mr. Ravinder Gupta, AAG
Mr. M.Y Akhoon, Advocate

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The petitioner, through the medium of present petition, has challenged order No. 23-CEP (R&B) of 2024 dated 05.06.2024 issued by respondent No. 2 whereby Letter of Acceptance issued vide No. CEP/R&B/3296-3300 dated 15.02.2024 in favour of the petitioner in connection with the work "construction of road from Darmala Saleri to Danti Killa (under NABARD)" has been withdrawn. Challenge has also been thrown to e-NIT No. 01 of 2024-25 dated 05.06.2024

issued by respondent No. 2 whereby fresh tenders have been invited for the aforesaid work.

2. Briefly stated, the facts emanating from the pleadings of the parties are that e-NIT No. 01 of 2023-24 dated 24.11.2023 for allotment of civil works including the work related to construction of road from Darmala Saleri to Danti Killa in District Rajouri was issued by respondent No. 2. The estimated cost of work was to the tune of Rs. 810.00 lacs. The petitioner as well as respondent No. 3 and 05 more entities responded to the aforesaid e-NIT. Upon opening of technical bid on 05.02.2024, the petitioner and three more bidders including respondent No. 3 were declared as “responsive”, whereas, three other bidders were declared as “non-responsive”. Respondent No. 3 was also declared as “non-responsive” by the “Technical Evaluation Committee” in terms of technical Evaluation Summary Sheet/Report dated 14.02.2024. Thereafter, the official respondents opened the financial bid on 14.02.2024 and declared the petitioner as lowest bidder (L1).

3. It seems that one of the bidders M/s Green Earth Infrastructure Pvt. Ltd called in question the Technical Evaluation Summary Sheet/Report dated 14.02.2024 to the extent of declaration of the petitioner firm as technically qualified/responsive by way of writ petition bearing WP(C) No.

327/2024. Challenge was also thrown to financial bid summary dated 14.02.2024 issued by respondent No. 2 whereby the petitioner-firm was declared as lowest bidder. The aforesaid writ petition came to be disposed of by this Court in terms of judgment dated 22.03.2024.

4. Respondent No. 2 vide his communication No. CEP/R&B/3296-3300 dated 15.02.2024 issued Letter of Acceptance in favour of the petitioner-firm whereby while, accepting offer of the petitioner for contract price of Rs. 6,25,89,900/- , the petitioner firm was directed to furnish security (3%) for an amount of Rs. 18,77,697/- with additional performance security (10%) for an amount of Rs. 62,58,990/- valid as per Standard Bidding Document (SBD) conditions duly pledged to Chief Accounts Officer, PW(R&B) Department, Pir Panjal Range within a period of 21 days from the date of issuance of Letter of Acceptance and it was further provided that the petitioner shall submit documents in original for signing contract agreement within 10 days.
5. According to the petitioner, in compliance to the aforesaid Letter of Acceptance, it deposited the performance security as well as additional performance security vide two separate bank guarantees dated 26.03.2024, copies whereof have been placed on record.

6. It seems that the official respondents after the aforesaid developments, issued the impugned order dated 25.06.2024 wherein, it has been provided that it has become necessary to rectify the bidding process by way of a withdrawing Letter of Acceptance dated 15.02.2024 issued in favour of the petitioner so as to avoid huge loss of Government Exchequer and to conduct healthy competition amongst the bidders. Besides this, the official respondents vide the said order which, it appears has been issued on the recommendations of Technical Evaluation Committee members found lack of merit for allotment of contract in favour of the petitioner and it was also decided that fresh e-NIT shall be issued for execution of the work in question. Pursuant to the said order, the impugned e-NIT No. 01 of 2024-25 dated 05.06.2024 has been issued by the official respondents.
7. The petitioner has challenged the impugned action of the respondents on the grounds that the same is mala-fide and actuated by extraneous considerations. It has been contended that once the Letter of Acceptance was issued by the official respondents in favour of the petitioner, the contract between the two stood concluded as such, it was not open to the official respondents to revoke the said contract that too without hearing the petitioner. It has been further contended that the reason assigned by the official respondents in revoking the

Letter of Acceptance and in issuing the fresh tender is completely irrational inasmuch as merely, because private respondent No. 3 had submitted a bid lower than the bid of the petitioner would not give a cause to the official respondents to revoke the Letter of Acceptance and issue fresh tenders particularly, when private respondent No. 3 had admittedly been declared as “non-responsive” during the technical evaluation. It has been contended that the action of respondent No. 2 is completely arbitrary which cannot be sustained in law.

8. The official respondents while, defending their action have submitted that during the opening of the financial bids inadvertently, the financial bid of private respondent No. 3 who was declared as “non-responsive” during the technical evaluation also came to be uploaded/opened though, he was not eligible. It has been further submitted that the rates quoted by the said bidder were Rs. 94.63 lacs less than the rate quoted by the petitioner. Thus, there was a huge gap between the rate quoted by the petitioner and that quoted by private respondent No. 3. Taking into consideration this aspect, the matter was again referred to Technical Evaluation Committee for re-examination and it was decided that in exercise of power under Clause 28.1 of the SBD, Letter of Acceptance issued in favour of the petitioner deserves to be

revoked and the work should be put to retendering so as to avoid loss to the State Exchequer.

9. The official respondents have further contended that there was no concluded contract between the petitioner and the official respondents and that letter dated 15.02.2024 was only a Letter of Intent and in terms of the said letter, the petitioner was required to fulfil certain conditions which included the furnishing of performance security and additional performance security in accordance with the terms of SBD. It has been submitted that the petitioner furnished bank guarantees only for a period of one year though as per the terms of the SBD, it was required to furnish bank guarantees for 05 years. Thus, the petitioner has not fulfilled the terms and conditions mentioned in the Letter of Acceptance as such, no concluded contract had taken place between the parties.

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

11. From the pleadings of the parties, it comes to the fore that it is not in dispute that pursuant to the participation of the petitioner in e-NIT dated 24.11.2023, the work relating to construction of road from Darmala Saleri to Danti Killa was allotted to the petitioner in terms of Letter of Acceptance dated 15.02.2024. The official respondents claim that they cancelled

its Letter of Allotment because during the re-examination of bid documents, it came to the fore that inadvertently, financial bid of private respondent No. 3 who was admittedly declared as disqualified/non-responsive during the process of technical evaluation, had been uploaded/opened. It is the case of the official respondents that bid submitted by the said respondent was lower by more than Rs. 94 lacs than the bid of petitioner and in view of this huge gap, the Technical Evaluation Committee decided to cancel the allotment letter issued in favour of the petitioner so as to avoid loss to the State Exchequer. It is the further case of the official respondents that as per the terms of allotment letter dated 15.02.2024, the petitioner was required to furnish two bank guarantees on account of performance security and additional performance security valid for a period of 05 years but instead of doing so, it furnished bank guarantees valid only for one year. Thus, the conditions of Letter of Acceptance have not been fulfilled by the petitioner as a result whereof, no concluded contract has come into being between the parties.

12. In the impugned cancellation order dated 05.06.2024, the only reason given by the official respondents for cancellation of letter of allotment is inadvertent opening of financial bid of private respondent No. 3 which turned out to be Rs. 94.63 lacs below the rate quoted by the petitioner who had emerged as L1

amongst the responsive bidders. The case set up in the impugned cancellation letter dated 05.06.2024 is that in the interests of the State Exchequer, it was decided to cancel the letter of allotment issued in favour of the petitioner and to retender the works. In the impugned cancellation letter, aid of Clause 5.6.6 of Manual for Procurement of Works, 2019 issued by Government of India, Ministry of Finance Department and Expenditure has also been taken for issuing the said letter. The official respondents, in their reply, have also relied upon Clause 28.1 of Section 1 of Instructions to Bidders as contained in SBD.

13. As already noted, there is no mention of non-furnishing of bank guarantees valid for a period of 05 years by the petitioner as a ground for cancellation for the letter of allotment issued in favour of the petitioner in the impugned order. This stand has been taken by the official respondents for the first time in their reply affidavit. The Supreme Court has, in the case of **Mohinder Singh Gill Vs. Chief Election Commissioner; 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. The Supreme Court has further observed that if an authority is allowed to supply fresh reasons, then an order bad in the

beginning may be, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.

14. In the face of aforesaid legal position, it is not open to the official 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 called upon the petitioner to extend the validity of bank guarantees furnished by it and that despite this, the petitioner had avoided to do so. Thus, the contention of the official respondents in this regard cannot be accepted.

15. That takes us to the question as to whether the other reason furnished by the official respondents for cancelling the letter of allotment of the petitioner offers the justification for their impugned action. The only reason given by the official respondents for cancelling the letter of allotment in favour of the petitioner is that while opening the financial bid of a non-responsive bidder, it was found that bid of the said non-responsive bidder was more than Rs. 94 lacs below the bid submitted by the petitioner and therefore, with a view to avoid loss to the State Exchequer, it was thought appropriate to cancel the letter of allotment issued in favour of the petitioner.

16. In the first place, the official respondents could not have opened the financial bid of a non-responsive bidder. If they have done so inadvertently, which is a fault attributable to none other than the respondents, they cannot make the petitioner to suffer for that. Merely because the bid of the non-responsive bidder was found to be less than the bid submitted by the petitioner, who had emerged L1 amongst the responsive bidders, does not offer a ground to cancel the letter of allotment in its favour. It is a settled law that merely because a bid is the lowest, the requirement of compliances to the rules and conditions should be ignored. If the logic given by the official respondents is accepted, then if they open the financial bids of other non-responsive bidders, it is quite probable that they may find some other non-responsive bidder having quoted a lesser price than what has been quoted by private respondent No. 3. If such a procedure is permitted, then technical evaluation of bids will become an empty formality and even an unqualified bidder who has quoted less price can stake his claim for contract. The same is not permissible in law. The reason and logic given by the official respondents for cancelling the letter of allotment in favour of the petitioner is grossly irrational and arbitrary which, no prudent employer would take in the facts and circumstances of the case.

17. The official respondents for the purpose of defending their impugned action have taken resort to Clause 5.6.6 of Manual For Procurement of Works issued by the Government of India. The said Clause reads as under:-

“5.6.6 Negotiations

i) Normally, there should be no negotiation. Negotiations should be a rare exception rather than the rule and may be resorted to only in exceptional circumstances. If it is decided to hold negotiations for reduction of prices, they should be held only with the lowest acceptable bidder (L1), who is techno-commercially responsive for the supply of a bulk quantity and on whom the contract would have been placed but for the decision to negotiate. In no case, including where a cartel/ pool rates are suspected, should negotiations be extended to those who had either not tendered originally or whose tender was rejected because of unresponsiveness of bid, unsatisfactory credentials, inadequacy of capacity or unworkable rates. The circumstances where negotiations may be considered could be:

a) Where the procurement is done on nomination basis;

b) Procurement is from single or limited sources; c) Procurements where there is suspicion of cartel formation which should be recorded; and

d) Where the requirements are urgent and the delay in re-tendering for the entire requirement due to the unreasonableness of the quoted rates would jeopardise essential operations, maintenance and safety, negotiations with L1 bidder(s) may be done for bare minimum quantum of requirements. The balance

bulk requirement should, however, be procured through a re-tender, following the normal tendering process.

ii) The decision whether to invite fresh tenders or to negotiate and with whom, should be made by the tender accepting authority based on the recommendations of the TC. Convincing reasons must be recorded by the authority recommending negotiations. The CA should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated.

iii) Normally all counter offers are considered negotiations by other means and the principles of negotiations should apply to such counter offers. For example, a counter offer to L1, in order to arrive at an acceptable rate, shall amount to a negotiation. However, any counter offer to L2, L3, and so on (at the rates accepted by L1) in case of splitting of quantities shall not be deemed to be a negotiation.

iv) After the CA or TC has decided to call a specific bidder for negotiation, the following procedure should be adopted:

a) Negotiations must be carried out by the CA or TC only;

b) It must be understood that, if the period of validity of the original offer expires before the close of negotiations, the original offer will not be available for acceptance. The period of validity of the original offer must, therefore, be extended, wherever necessary, before negotiations;

c) The tenderer to be called in for negotiations should be addressed as per the format of letter laid down in Annexure 4, so that the rates originally quoted by him

shall remain open for acceptance in the event of failure of the contemplated negotiation;

d) A negotiations meeting should be started only after obtaining a signed declaration from the negotiating contractor as per Annexure 4; and

e) Revised bids should be obtained in writing from the selected tenderers at the end of the negotiations in the format of letter laid down in Annexure 5. The revised bids so obtained should be read out to the tenderers or their representatives present, immediately after completing the negotiations. If necessary, the negotiating party may be given some time to submit its revised offer. In case, however, the selected bidder prefers to send a revised bid instead of being present at the negotiation, the offer should be taken into account. In case a bidder does not submit the revised bid, its original bid shall be considered.”

18. From a perusal of the aforesaid Clause, it comes to the fore that negotiations with the bidders after the opening of bids are forbidden except in certain circumstances. It has been provided that negotiations should be held in exceptional circumstances that too only with the lowest acceptable bidder (L1) who is techno-commercially responsive. It further provides that in no case, the negotiations should be extended to those who had either not tendered originally or whose tender was rejected because of unresponsiveness of bid.

19. This Court fails to comprehend as to how the afore quoted Clause comes to the rescue of official respondents. As per the mandate of said Clause, the respondents could not have held

negotiations with respondent No. 3 who was admittedly non-responsive and, therefore, could not have been treated as L1. Amongst the responsive bidders, the petitioner was the L1 and they could have negotiated only with the petitioner and no one else if at all negotiations were needed. By taking resort to the said Clause, the official respondents cannot justify their impugned action.

20. The official respondents have also drawn support for their impugned action from Clause 28.1 of Section 1 of Instructions to bidders of the SBD, which reads as under:-‘

“Notwithstanding Clause 27 the Employer reserves the right to accept or reject any bid and to cancel the bidding process and reject all bids, at any time prior to award of Contract, without thereby incurring any liability to the affected bidder or bidders or any obligations to inform the affected bidder or bidders of the grounds for the Employer’s action”

21. A perusal of the aforesaid Clause reveals that employer has the right to accept or reject any bid or even to cancel the bidding process as a whole but the said right has to be exercised prior to the award of the contract. In the instant case, the bid submitted by the petitioner which was admittedly responsive, was accepted by the official respondents pursuant where to they issued Letter of Acceptance dated 15.02.2024. In the said letter, the respondent No. 2 has, in unequivocal terms

conveyed to the petitioner that its bid in response to e-NIT No. 01/2023-24 dated 24.11.2023 with respect to work for construction of road from Darmala Saleri to Danti Killa stands accepted for contract price of Rs. 6,25,89,900/- meaning thereby a concluded contract came into being between the petitioner and official respondents with the issuance of the said letter.

22. Section 4 of the Contract Act clearly provides that communication of the acceptance is complete as against the proposer when it is put in course of transmission so as to be out of the power of the acceptor and as against the acceptor when it comes to the knowledge of the proposer. In the present case, e-NIT issued by the official respondents constituted an invitation to offer in pursuance whereof, the petitioner submitted its bid for contract price of Rs. 6,25,89,900/- which constitutes its proposal to the official respondents. Once Letter of Acceptance dated 15.02.2024 was put into transmission by the official respondents accepting the proposal of the petitioner, the said acceptance is complete as against the official respondents when the said letter came to the knowledge of the petitioner. Thus, the moment, Acceptance Letter dated 15.02.2024 came to the knowledge of the petitioner, a concluded contract came into being between the petitioner and the official respondents. Therefore, at that

stage, it was not open to the official respondents to take resort to the Clause quoted above with a view to revoke the acceptance letter as well as the bidding process.

23. The acceptance letter issued by respondent No. 2 is clear and unequivocal. The requirement of fresh performance security and additional performance security and signing of contract agreement is only a formality, and not a condition precedent to the contract. Merely, because the petitioner in the first instance, did not furnish the bank guarantees valid for period of 05 years and instead furnished bank guarantees with validity for a period of one year, does not amount to non-fulfilment of the conditions of the Letter of acceptance which, as already stated, is unequivocal and unconditional in nature.
24. It has been contended by learned counsel for the respondents that even if there is any breach on the part of the respondents, still then, the remedy available to the petitioners is to claim damages by filing a civil suit against the official respondents. I am afraid the contention raised by learned counsel for the official respondents is not legally tenable. As already stated, with the issuance of Acceptance Letter dated 15.02.2024, a complete and binding contract came into being between the parties giving rise to rights and liabilities amongst the parties *inter-se*. The official respondents were, therefore, obliged to issue a notice to the petitioner before taking any action

prejudicial to his interests under the Contract. The official respondents being officers of the State are duty bound to act fairly before taking an action against the allottee of the work which, in the instant case, has not been done.

25. The Supreme Court in the case of **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 Letter of Acceptance in favour of the petitioner smacks of arbitrariness as they have breached the principles of natural justice, thereby rendering their action unsustainable in law. Once it is shown that the action of the functionaries of the State smacks of arbitrariness violating the provisions of Article 14 of the Constitution, writ Court would be well within its jurisdiction to intervene even in contractual matters. Thus, the present writ petition is maintainable.

26. In view of what has been discussed hereinabove, the instant writ petition is allowed and the cancellation order dated 05.06.2024 whereby Letter of Acceptance issued in favour of the petitioner and the e-NIT No. 01 of 2023-24 dated 24.11.2023 have been cancelled, is quashed. Consequently, e-NIT No. 01 of 2024-25 dated 05.06.2024 shall also stand quashed. The respondents are directed to permit the petitioner

to execute the work in accordance with the terms and conditions of the contract/allotment letter.

(SANJAY DHAR)
JUDGE

JAMMU
18.10.2025
Tarun/PS

Whether order is speaking: Yes

Whether order is reportable: Yes

