Serial No. 222

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

OWP No. 672/2018 (O & M)
(Through Video Conferencing)

Reserved on: 26.11.2020

Pronounced on: 09.12.2020

M/s National India Construction Company ….Petitioner(s)

Through: Mr. R. K. Gupta, Sr. Advocate with
Mr. Uday Bhaskar, Advocate

v/s

State of J&K and others ….Respondent(s)

Through: Mrs. Seema Shekhar, Sr. AAG

Coram: HON'BLE THE CHIEF JUSTICE (ACTING)

JUDGMENT

01. The present petition has been filed impugning rejection of the bid submitted by the petitioner during technical evaluation thereof. The bid was submitted in pursuance to e-NIT No. CEJ/PMGSY/503 of 2017-18 dated 10.02.2018 for the construction work of road from L044 - Khourgali to Radnote, Package No. JK14-519, Regular PMGSY (Batch-1, 2017-18), Stage-I, Block Pancheri, District Udhampur.

02. Mr. R.K. Gupta, learned senior counsel for the petitioner submitted that e-NIT in question was issued for construction of road from L044 - Khourgali to Radnote, Package No. JK14-519, Regular PMGSY

(Batch-1, 2017-18), Stage-I, Block Pancheri, District Udhampur. The petitioner being eligible submitted his bid within the time permitted. The bid was to be submitted in two parts i.e. 'technical Bid' and the 'financial Bid'. As per the procedure firstly technical bids were to be opened and those who qualified that stage, were to be considered for financial evaluation. However, the petitioner's bid was rejected during technical evaluation. The decision was uploaded on 09.04.2018. The reason assigned was 'rejected-technical'. No details were forthcoming. The petitioner later on come to know that there was evaluation of the bids on 07.04.2018, wherein the reason for rejection assigned was that similar nature work certificate is not as per requirement of the Standard Bidding Document (for short 'the SBD') and the information about litigation with the department was not furnished. Hence, the petitioner was treated as 'non-responsive'.

03. In the aforesaid document, though may not be relevant for the case in hand, the learned senior counsel for the petitioner pointed out that date of the e-NIT was wrongly mentioned as 19.03.2018 though it was 10.02.2018. Further the date of document was mentioned as 07.03.2018 though it should be 09.04.2018, as the decision rejecting the technical bid of the petitioner was uploaded on 09.04.2018.

04. Referring to the conditions laid down in 'the SBD' the submission is that certain certificates were required to be annexed with reference to the works executed in the last five years and turnover thereof. 50% of which was required to be of civil construction works. Another important condition was that there could be indexing of the turnover by adding 8% p.a. on the turnover of the previous years. The base has to be five years from the date e-

NIT was issued. If the bidder had executed road work under the Pradhan Mantri Gram Sadak Yojana (for short 'the PMGSY') in originally stipulated completion period, the turnover achieved has to be counted as 120% for the period of eligibility.

05. It was further argued that the petitioner firm was earlier registered in State of Punjab at Pathankot and was successful bidder of four works to be executed in between 2005 to 2008. Those were executed in time. In the year 2011, one work was allotted to him, however, there was a complaint made against the petitioner about his eligibility. The petitioner had to approach this Court by filing OWP No. 1620/2011 challenging the action of the authorities in declaring the petitioner ineligible. The writ petition was allowed vide judgment dated November 30, 2012. The matter was referred back for reconsideration. Despite positive observations made by this Court and the aforesaid judgment in favour of the petitioner, still his case was rejected vide order dated 24.01.2013. To challenge the same, the petitioner filed OWP No. 219/2013. As during pendency of the aforesaid writ petition, the works for which the petitioner was the lowest bidder and was subject matter of the litigation before this Court, fresh tender had been issued, OWP No. 910/2015 was filed. Both the petitions were taken up together and allowed vide judgment dated 18.04.2016. The stand taken by the petitioner was vindicated. To challenge the aforesaid order, the government filed two *intra-court* appeals bearing LPAOW Nos. 07 and 10/2017. The same were dismissed vide judgment dated 22.02.2017. The petitioner offered his willingness to perform and complete the works allotted to him at the same rates though period of seven years had lapsed in between. It was issue of the

bonafide of the petitioner that he was serious in execution of work and not interested in merely litigation or profits.

06. In light of the aforesaid facts the submission is that petitioner was deprived of participation in the tendering process in the last seven years on account of frivolous dispute created by the department. Ultimately the stand of the petitioner was vindicated. In case the turnover of the petitioner for the year 2011 is taken as base year, by ignoring the period in between and 8% indexation benefit is given, the petitioner would be eligible as per the tender conditions. In fact the petitioner had been pushed out of business in the year 2017 also. His bid was rejected for this reason and in the present NIT also, the petitioner has been ousted on that ground. The stand taken by the official respondents in para 7(ii) was referred to justify rejection of the technical bid of the petitioner by taking the base year for the last five years as 2012-13. It was argued that such a stand should not be accepted.

07. He further submitted that the department will also suffer huge loss of about ₹ 50 lacs in case the work is allotted to L-1, who has quoted a price of ₹10,40,11,346.40 as against ₹9,90,10,059/- offered by him.

08. As far as the second ground for rejection is concerned, it was argued that affidavit was submitted on the format prescribed by the employer. OWP No. 1887/2017, which was pending at the time of submission of the bids was clearly mentioned. Hence, there is no concealment.

09. In response, Ms. Seema Khajuria Shekhar, the learned Sr. AAG appearing for the respondent Nos. 1 to 3 submitted that as per the terms and

conditions contained in Standard Bidding Document, the turnover and the works executed by a bidder in last five years has to be considered. The petitioner does not fulfill that condition. The claim made by him that the period during which he remained in litigation with the department should be excluded, cannot be accepted as there is no such provision in the Standard Bidding Document. The litigation was pertaining to the earlier contracts, which has nothing to do with the case in hand. Clause 4.7 of the Standard Bidding Document was referred to, which provides that even though the bidder may meet the qualifying criteria but still his bid can be rejected for the reasons mentioned therein. Earlier litigation by the petitioner was not pertaining to tender in question there. Evaluation of the bids submitted in the tender in question can be with reference to the terms and conditions contained herein. The financial bids have already been opened and L-1 identified. There was time of twenty months for completion of project, however on account of interim stay, the work could not start. The claim of the petitioner that he had offered price less than the L-1 is not relevant for the reason that his financial bid was not opened as he was not technically qualified. Once a bidder is not technically qualified, his financial bid is of no relevance.

10. As far as concealment of details regarding litigation with the department is concerned, the learned counsel for the respondents submitted that the detail of only one case was mentioned. She referred to the pleadings in the objections filed, wherein number of cases filed by the petitioner and other firms/companies, with which the petitioner is associated, have been given. Those were not mentioned by him in the affidavit filed.

11. In response, the learned senior counsel for the petitioner submitted that the cases filed by the petitioner earlier, which had already been decided, were not required to be mentioned. Detail of pending litigation was given. Hence, there was no concealment. As far as OWP No.812/2018 is concerned, the same was filed after the bid in the present case had already been submitted. The cases filed by other firms-companies, with which the petitioner may be associated, were not relevant as this information had not been asked for.

12. Heard learned counsel for the parties and perused the paper book.

13. The basic facts which emerge from the pleadings and the arguments raised by the learned counsel for the parties are that e-NIT No. CEJ/PMGSY/503 of 2017-18 dated 10.02.2018 was issued for the construction of road from L044 - Khourgali to Radnote, Package No. JK14-519, Regular PMGSY (Batch-1, 2017-18), Stage-I, Block Pancheri, District Udhampur. The estimated cost was of ₹1,285.68 lakhs. The period of completion provided was 20 months. The bids were to be submitted in two parts i.e. 'technical bid' and 'financial bid'. The last date of submission of technical bids was 15.03.2018. Thereafter the bids were to be opened. After evaluation of the technical bids, tender summary report was uploaded by the department on 09.04.2018. The status was that the technical bid of the petitioner was rejected. No reason was forthcoming. The petitioner has referred to another document with reference to the NIT in question, wherein following two reasons have been assigned for rejection of the technical bid of the petitioner:

"(i) Similar nature work certificate is not as per the requirement of SBD.

(ii) Giving wrong information about litigation as he is already in litigation with the department."

14. Though not related to the decision of the *lis* in the case in hand but this court would like to make certain observations regarding the aforesaid document and for that purpose entire document needs to be reproduced. The same reads as under:

"Government of Jammu and Kashmir
Officer of the Chief Engineer PMGSY (JKRRDA) Jammu

Sub:- Construction of road from L044-Khourgali to Radnote, Package No:- JK14-519, Regular PMGSY (Batch-I, 2017-18), Stage-I, Block Pancheri, District Udhampur (Length = 13.920 Kms)

Ref.: NIT No. CEJ/PMGSY/503 of 2017-18 Dated:- 19-03-2018

Composition of evaluation committee who has evaluated technical bids:-

1. Superintending Engineer PMGSY Circle Reasi
2. Technical Officer to Chief Engineer PMGSY Jammu
3. Accounts Officer PMGSY Jammu
4. Head Draftsman Direction Office

Position with respect to responsive/non responsive bidders.

Sr. No.	Name of Scheme	Total no. of bids received	Call	Responsive	Non Responsive	
					Name	Reason of Rejection
1	Construction of road from L044--Khourgali to Radnote, Package No:- JK14-519, Regular PMGSY (Batch-I, 2017-18), Stage-I, Block Pancheri, District Udhampur (Length = 13.920 Kms)	5	1st	1. M/s Katyal Construction. Co. 2. M/s R.K. Gupta & Co. 3. Sh. Rajesh Kumar 4. M/s SGF Infra Pvt. Ltd.	1. M/s National India Construction Co.	(i) Similar Nature Work certificate is not as per the requirement of SBD. (ii) Giving Wrong information about litigation as he is already in litigation with the department. Hence Non-Responsive

The financial bid of responsive bidders for the work package will be opened online on 09.04.2018 at 11:00 A.M.

No:- CEJ/PMGSY/288
Date:- 07/03/2018

Chief Engineer
PMGSY (JKRRDA)
Jammu"

15. A perusal of the aforesaid document shows that the same is under the signature of the Chief Engineer, PMGSY (JKRRDA), Jammu. It is evident that the document had been examined and countersigned by two officers and finally signed by the Chief Engineer. But none of them cared to read the same either before putting their initials or appending final signature. To start from the beginning, the date of e-NIT has been mentioned wrongly as 19.03.2018 though it is 10.02.2018. It states that final bids were opened on 09.04.2018, but the date given on the document at the bottom after its number is 07.03.2018. No one can possibly comprehend dates in the document. The officers who prepare and finally sign any document need to be careful as sometimes the dates and numbers mentioned on any document make lot of difference. It also creates avoidable litigation as parties may approach the court referring to those dates and numbers and persuade the court to entertain the dispute.

16. Coming back to the merits of the controversy, the reasons on account of which the technical bid of the petitioner has been held to be 'non responsive' need to be examined. The first reason is that similar nature work certificate has not been annexed as per the requirement of the Standard Bidding Document. Clause 4 of the Standard Bidding Document provides for qualification of bidder. The relevant part thereof is extracted below:

> "4. Qualification of the Bidder
>
> 4.1 x x x x
>
> 4.2 All bidders shall include the following information and documents with their bids in Section 3, Qualification Information unless otherwise stated in the Appendix to ITB:

(a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business, written power of attorney of the signatory of the Bid to commit the Bidder;

(b) total monetary value of civil construction works performed for each of the last five years;

(c) experience in works of a similar nature and size for each of the last five years, and details of works in progress or contractually committed with certificates from the concerned officer not below the rank of Executive Engineer or equivalent."

x x x x

4.4A To qualify for award of the Contract, each bidder should have in the last five years:

(a) Achieved in any one year, a minimum financial turnover (as certified by Chartered Accountant, and at least 50% of which is from Civil Engineering construction works) equivalent to amount given below:

(i) 60% of amount put to bid, in case the amount put to bid is ₹200 lakhs and less.

(ii) 75% of amount put to bid, in case the amount put to bid is more than ₹ 200 lakhs.

The amount put to bid above would not include maintenance cost for 5 years and the turnover will be indexed at the rate of 8% per year.

If the bidder has executed road works under Pradhan Mantri Gram Sadak Yojana in

originally stipulated completion period, the financial turnover achieved on account of execution of road works under PMGSY shall be counted as 120% for the purpose of this sub-clause.

In Naxal/Left Wing Extremist Affected Districts, the figures of 60% and 75% in (i) and (ii) above would be replaced by 50%.

(b) Satisfactorily completed, as prime Contractor or sub-contractor, at least one similar work equal in value to one-third (one-fourth in case of Naxal/LWE affected districts) of the estimated cost of work (excluding maintenance cost for five years) for which the bid is invited, or such higher amount as may be specified in the Appendix to ITB The value of road work completed by the bidder under Pradhan Mantri Gram Sadak Yojana in originally stipulated period of completion shall be counted as 120% for the purpose of this Sub-Clause."

17. As far as the first ground of rejection of the technical bid of the petitioner is concerned, the condition laid down in Clause 4.4A provides for furnishing information with reference to turnover of the bidder for the last five years. The NIT in question was issued on 10.02.2018. As far the stand taken by the official respondents in the objections filed is concerned, five completed financial years in the case in hand have to be taken from the year 2012-13 onwards, which will end in the financial year 2016-17 as the NIT in question was issued in the year 2017-18.

18. It is the undisputed case of the petitioner himself that if his turnover is considered during the aforesaid period of five years, he does not qualify the conditions laid down in the NIT. His pleading is that the turnover of the petitioner during financial year 2010-11 was ₹5.83 crore and if the same is indexed by adding 8% per annum thereon, he will be eligible as his turnover exceeds ₹10 Crores, whereas the required was ₹9.48 crore.

19. In support of the aforesaid arguments, reference was sought to be made to the writ petition filed by the petitioner pertaining to the contract awarded to him way back in the year 2011. The aforesaid case remained subject matter of litigation before this Court, which was finally concluded after decision in the appeals bearing LPAOW Nos. 7 and 10/2017 decided on 22.02.2017. The petitioner was deprived of participating in any tendering process in Jammu and Kashmir during this period. As in the aforesaid litigation, the stand of the petitioner was vindicated, he should not be made to suffer and debarred from participation in the tendering process treating him ineligible on account of non-fulfillment of the conditions of turnover during that period, as the petitioner was not at fault. It was the fault of the employer. The argument seems to be attractive but does not have any merit. The petitioner has not been able to refer to any condition laid down in the tender document, which enables the employer to relax any of the condition laid down in the Standard Bidding Document with reference to eligibility of a bidder. In the absence thereof, the plea raised by the petitioner cannot be accepted.

20. In any case, before submission of the tender, the petitioner is supposed to and must have gone through the conditions laid down in the Standard Bidding Document. He very well knew that he is not fulfilling the

conditions as he did not have requisite amount of turnover during five previous financial years before the e-NIT was issued. Challenge to a condition in the tender document or rejection of his bid on account of non-fulfillment of those conditions, cannot be entertained after his technical bid had been rejected. It is like participation in the process and challenging the conditions thereof after being rejected. Hence, there is no merit in the aforesaid arguments raised by the learned counsel for the petitioner.

21. As far as the second argument regarding non-mentioning of complete details about the litigation is concerned, the claim of the petitioner is that he had furnished requisite details in the affidavit required to be annexed with the bid. Clear mention was made therein about OWP No. 1887/2017. This was the only case pending at the time of submission of bid documents. Details of decided cases and details regarding litigation pertaining to sister concerns, was not required. In the objections filed by the official respondents to the writ petition, details of other litigation by the petitioner have been mentioned. Clause 4.7 of the SBD, which provides for the conditions, on account of which the bidder can be dis-qualified read as under:

> "4.7 Even though the bidders meet the above qualifying criteria, they are subject to be disqualified if they have.
>
> i) made misleading or false representations in the forms, statements, affidavits and attachments submitted in proof of the qualification requirements; and/or
>
> ii) record of poor performance such as abandoning the works, not properly completing the contract,

inordinate delays in completion, litigation history, or financial failures etc; and/ or

iii) participated in the previous bidding for the same work and had quoted unreasonably high or low bid prices and could not furnish rational justification for it to the Employer."

22. Clause 4.7(ii) requires furnishing of 'litigation history'. On a plain meaning, this would require furnishing of details of the entire litigation of a bidder with the department and not merely the pending litigation, as the word 'history' is important. In para 9(xiii) of the objections filed by the respondents, details of the earlier litigation of the petitioner and his sister concerns with the department, have been given. The same reads as under:

> "xiii) That in reply to the Sub ground (xiii) it is respectfully submitted that the contents of the Sub ground are wrong, baseless and misleading thus vehemently denied. It is respectfully submitted that the contracting firm while submitting the requisite documents during bidding process has appended an affidavit wherein it has undertaken that the it has no litigation history whereas Sh. Sanjeev Singh S/o P.S Jasrotia R/o Sunjwan Road, a partner of petitioner firm who is also authorized signatory/representative of a firm from Assam has been indulging in litigation with this department since 2010 on one pretext or the other to hood wink with the officers/officials resulting in inordinate delay in implementation of road construction schemes duly approved and funded by the Ministry of Rural Development Govt. of India thus depriving the people of far flung areas the fruits of road connectivity. The details of the cases filed by the Sh. Sanjeev Singh as partner/authorized representative are as under;-
>
> 1. OWP No. 1620/2011, OWP No. 219/2013 and OWP No.910/2015 in case titled M/s National India Construction

Company through its partner Sh. Sanjeev Singh S/o Sh. P.S Jasrotia Vs State and others for allotment of tenders for roads namely:

i. Dera Baba to Tanda Block Reasi Package No. JK14-128
ii. Basantgarh to Khaneed Block Dudu, Package NO.JK14-105
iii. Kainthgali Bariote Road Km 26" to Lower Basnote Block Paricheri, Package No. JK14-27.

2. OWP No. 1169/2012 in case titled M/s Nayak Infrastructure Pvt. Ltd. District Nagaon, Assam through Sh. Sanjeev Singh S/o Sh. P.S Jasrotia Vs. State and others for rejection of bids for roads namely:-

i. Block Boundary Ghordi to Kotwait Part-II, Phase-VII, Package No. JK14-74.
ii. Charal to Nappah, Phase-VIII, Stage-I, Package No. JK14-166
iii. Bnjian to Moto, Phase-VII, Stage-I, Package No.JK14-182.

3. OWP No. 1170/2012 in case titled M/s National India Construction through Sh. Sanjeev Singh S/o Sh. P.S Jasrotia Vs State and others for rejection of bids for roads namely;-

i. Km 3rd TKN Road to Challer Block Thathri, Package No. JK04-147.
ii. Thathri to Chira Block Thathri, JK04-148
iii. Km 2nd to Km 25th to Cliampal, Block Bhalessa, Package No. JK04-151.

4. OWP No. 1416/2016 in case title Madan Lal and others including Sanjeev Singh S/o Sh. P.S Jasrotia at S. No. 8 V/s Union of India & Others for deletions of SBD conditions.

5. OWP No. 1887/2017 Construction of road from L044-Khourgali to Radnote Package No. JKl4-519, Regular PMGSY (Batch-li 2017-18) State-I, Block Panchari, District Udhampur.

6. OWP No. 812/2018 in case titled M/s National India Construction through Sh. Sanjeev Singh S/o Sh. P.S Jasrotia Vs State and Others, for the construction of road from Dera Baba to Tanda Block Reasi Package No. JK14-128.

23. A perusal of the aforesaid details shows that ever since 2011, the petitioner had been filing writ petitions in this Court pertaining to different contracts. One of the case bearing OWP No. 1169/2012 was filed by M/s Nayak Infrastructure Private Limited, District Nagaon, (Assam) through Sanjeev Singh, as authorised signatory.

24. It is an undisputed fact on record that the petitioner had furnished the details regarding one pending case i.e. bearing OWP No. 1887/2017 and not any other case. The aforesaid information is also relevant for the reason that in some cases the bidders may be interested in just holding on the works of the department, as a result of which the execution thereof is delayed. The observation is not with reference to the case of the petitioner, rather general in nature. It is further been added that OWP No. 1416/2016 titled as Madan Lal and ors. vs. Union of India and ors., wherein Sanjeev Singh is one of the petitioner, is still pending adjudication before this court. In the said petition, the petitioner therein, who is the partner of the petitioner firm herein, had approached this Court praying for the following reliefs :

> "a) Writ in the nature of certiorari for quashing and setting aside the Clauses 7.2 and 14 of the NITs mentioned above.
>
> b) Writ in the nature mandamus commanding the respondents to adhere to SBD and Model SBD issued by NRRDA alongwith the programme guidelines of PMGSY Scheme.

c) Writ in the nature of Prohibition restraining the respondent j) no.4 from acting upon e-NITs numbers being e-NIT No. / CEJ/PMGSY/391 of 2016-17 dated 17.08.2016, e-NIT No. CEJ/PMGSY/392 of 2016-17 dated 19.08.2016, e-NIT No. CEJ/PMGSY/393 of 2016-17 dated 20.08.2016, e-NIT No. CEJ/PMGSY/394 of 2016-17 dated 23.08.2016, e-NIT No. CEJ/PMGSY/395 of 2016-17 dated 24.08.2016, e-NIT No. CEJ/PMGSY/396 of 2016-17 dated 26.08.2016 e-NIT No. CEJ/PMGSY/398 of 2016-17 dated 27.08.2016, e-NIT No. CEJ/PMGSY/399 of 2016-17 dated 29.08.2016, e-NIT No. CEJ/PMGSY/401 of 2016-17 dated 31.08.2016, e-NIT No. CEJ/PMGSY/402 of 2016-17 dated 02.09.2016 and e-NIT No. CEJ/PMGSY/403 of 2016-17 dated 05.09.2016."

Hence, rejection of the bid of petitioner on that ground also cannot be faulted with.

25. For the reasons mentioned above, I do not find any merit in the present petition. The same is accordingly, dismissed.

26. Before parting with the order, this court is once again constrained to comment on the working of offices in Jammu & Kashmir, as to how lightly the litigation is taken. The result of this casualness is causing huge loss to the public exchequer. The casualness is not limited to the department in question but there is hardly any difference in working of all the departments. Less said is better.

27. Delay is one principle, which has drawn attention of the courts time and again. Primarily it was delay on the part of the party approaching the court. Though the Limitation Act, 1963 provides for limitation for approaching the court for different kinds of reliefs, however, for filing writ

petition, as such no period of limitation is provided. Then evolved the principles of 'delay and laches'. Any party approaching the court after unexplained delay could be ousted only by applying the aforesaid principles.

28. While dealing with the aforesaid principle, Hon'ble the Supreme Court in ***Chennai Metropolitan Water Supply and Sewerage Board and others v. T. T. Murali Babu****, (2014) 4 SCC 108* compared such a litigant with Kumbhkarna from Ramayana, who used to sleep for six months at a stretch. Name of Rip Van Winkle was also referred to in ***State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others****, 2013(6) SLR 629*. He is a character from a famous story 'Rip Van Winkle' authored by American author Washington Irving. The character is inspired from a villager who after consuming liquor from some mysterious men falls asleep in mountains and wakes up 20 years later to a changed world.

29. The aforesaid judgments amongst others, dealing with delay and laches by the party approaching the court have been summed in order dated 27.10.2020 passed by Srinagar bench of this Court in writ petition bearing WP(C) No. 1669/2020 titled as ***Syed Raza Shah Madni vs. Union Territory of Jammu & Kashmir and ors.***

30. The delay can be caused by the other side also, namely the defendants or respondents in the litigation. For filing written statement there was no period prescribed in CPC. Amendment was carried out in Order VIII Rule 1 CPC to provide maximum of 90 days for filing written statement, though it is to be filed within 30 days of service of summons. The aforesaid provision was held to be directory by Hon'ble the Supreme Court in ***Atcom Technologies Limited vs. Y.A. Chunawala and Co. and ors.*** reported as

(***2018)6 SCC 639***, however, with a rider that for any adjournment beyond 30 days, the court will have to record reasons. Similar is with reference to provisions of Order XVII Rule 1 CPC, where three adjournments have been permitted in normal circumstances. But the period can be extended for valid reasons. Reference can be made to judgment of Hon'ble the Supreme Court in **(2011)9 SCC 678**, titled as **Shiv Cotex Vs. Tirgun Plast (P) Ltd**.

31. As delays still could not be checked and there was lot of commercial litigation which was not being decided because of non-filing of written statement in time, with the result delays in execution of projects or resolution of disputes, the Parliament enacted "The Commercial Courts Act, 2015". Vide section 16 thereof, substantive amendments were made in CPC as far as application thereof to resolution of disputes under the aforesaid Act. Most important being amendment of Order VIII Rule 1 CPC. For the purpose of suits under the Commercial Courts Act, the maximum period for filing of written statement is provided as 120 days and the same has been held to be mandatory by Hon'ble the Supreme Court in ***M/s SCG Contracts India Private Limited v. K. S. Chamankar Infrastructure Private Limited and others, AIR 2019 SC 2691***. On default, the defense of the party is struck of. Though CPC as such may not be applicable in writ proceedings but its principles are.

32. In the case in hand and what is seen in other cases filed against the government in this court, replies/objections are not filed in some cases even for a decade. It is not limited to main petitions but even in contempt petitions, compliance report is not filed for long time. This not only results in denying fruits of litigation to the succeeding party but even lowers public trust in the judicial institution. Hon'ble the Supreme Court had compared a

litigant approaching the court after huge delay with Kumbhkarna. I think if considered in that light, for filing of replies/objections in the cases pending in this court, the government officials are no better. As has been mentioned in Ramayana, Demon King Rawana had to use lot of noise and different means to wake up Kumbhkarana, when his kingdom was in trouble. Here also the government officials are to be woken up from slumber by using different means. How Kumbhkarana was woken up is well composed in Yudha Kanda Prose Sarga 60 of Valmiki's Ramayana English translated version, which reads as under:

"Then on his breast they rained their blows,
And high the wild commotion rose
When cymbal vied with drum and horn.
And war cries on the gale upborne.
Through all the air loud discord spread,
And, struck with fear, the birds fell dead.
But still he slept and took his rest.
Then dashed they on his shaggy chest
Clubs, maces, fragments of the rock:
He moved not once, nor felt the shock.
The giants made one effort more
With shell and drum and shout and roar.
Club, mallet, mace, in fury plied,
Rained blows upon his breast and side.
And elephants were urged to aid,
And camels groaned and horses neighed.
They drenched him with a hundred pails,
They tore his ears with teeth and nails.
They bound together many a mace
And beat him on the head and face;
And elephants with ponderous tread
Stamped on his limbs and chest and head.
The unusual weight his slumber broke:
He started, shook his sides, and woke;"

[Source- Griffith, Ralph T.H. (1873). The Ramayana of Valmiki, translated into English verse: Project Gutenberg- Mar 18, 2008]

33. It is a case in which the project for creation of infrastructure in Union Territory of Jammu & Kashmir had been put on hold, on account of interim stay granted by this Court on 17.04.2018. As usual the department was sleeping over the matter. They did not even take care to file objections immediately after receipt of notice. Apparently sleeping over a matter may be more suitable for the reasons best known to them but the result remains that the people of Jammu & Kashmir remain deprived of better infrastructure facilities. Even the order passed by this Court on 15.05.2019 did not wake them up. The same reads as under:

> **"OWP No. 672/2018**
>
> In this case, because of the order dated 17.04.2018, the finalization of the bids has been stalled. Since the matter relates to the developmental works in the State, it is surprising, as to why the State has failed to file its objections till date.
>
> Let the needful be done positively, within two weeks.
>
> List on 30.05.2019.
>
> Interim orders, insofar as, the OWP No. 672/2018 is concerned, shall continue till next date of hearing."
>
> ***(emphasis supplied)***

34. Despite this order the official respondents continued sleeping over the matter for more than one year and objections were not filed to the writ petition. To wake them up, they had to be scolded. Now it was a communication from the Minister of Agriculture & Farmers Welfare Rural Development and Panchayat Raj, Government of India, mentioning details of various works under PMGSY. For the works to be executed under PMGSY-2 the period of completion was upto March 31, 2020. It was mentioned that number of works were still pending for execution in Jammu and Kashmir, whereas some had still not been awarded despite sanction

granted long back. The details were furnished in the aforesaid communication. It was clearly mentioned therein that in case the works, which had been sanctioned before April 1, 2020 and remain un-awarded till December 31, 2020 will be dropped from the list of sanctioned works of PMGSY and no funds shall be allowed for these works out of PMGSY funds. The Union Territory of Jammu and Kashmir will have to fund these projects out of its own resources. The observations were also made regarding delay in release of the funds to the Nodal Agency of the Union Territory of Jammu and Kashmir after release thereof by the Central Government and further commensurate State share in the projects. The request was to review all the pending projects.

35. It was after the aforesaid communication that the officers got up from slumber. It may be for the reason that fresh funds were to flow, otherwise no one is taking care of the projects for which funds have already been released and those are hanging fire. They thought of filing objections in the petition November, 2020. All of a sudden there was urgency. Even an application was filed for early hearing of the petition. The aforesaid fact establishes that apparently there has to be some monitoring authority standing on the heads of all the departments with a stick to take even routine work from them. There can be some vested interest to keep silent and delay execution of projects. One reason can be with delays arbitration clause is invoked and lot of money is siphoned off in the form of claims. The litigation there also is not contested properly, as many times the Government fails on account of delay only.

36. All the government employees are trustees of the public money and time has come that people can ask them to be accountable for not using the same properly or wasting the same. The way of working and attitude of shirking responsibility will not change unless the people at the helm of affairs are held accountable for their actions and inactions, of course bonafides are always seen. If the officers and staff is paid salaries from the amounts contributed by the public, why the public exchequer should suffer for their inefficiency and casualness. Alertness of senior officers of the government is evident from a recent case, where the writ petition was dismissed, however, on account of conduct of the official respondents, costs of Rs. 2,00,000/- was imposed, to be recovered from the guilty officers/officials. Despite there being nothing decided against the government, appeal bearing **LPA No. 103/2020**, titled as ***U.T. of J&K Vs. Om Kumar and others***, was filed to challenge order passed by the Single Bench, without any delay. Otherwise there are instances where appeals are filed after five years. These types of appeals have been termed to be 'certificate cases' by Hon'ble the Supreme Court. This is one way to keep the officers awake to discharge their normal duties.

37. Another angle which needs consideration of competent authority is the manner in which the estimated cost of project is evaluated. The same also needs to be re-looked. In the case in hand e-NIT mentioned the estimated cost of the project as ₹1,285.68 lakhs. Five bidders participated in the process. Four were found eligible. The financial bids submitted by them are summed up as under:

Procurement System for Pradhan Mantri Gram Sadak Yojana (PMGSY)
Created by: Jagdeep Singh
Created date/Time: 09-Apr-2018 12:02PM
Construction of road from L044-Khourgali to Radnote, Package No. JK14-519, Regular-PMGSY(Batch-I, 2017-18) Stage-1, Block Panchari, District Udhampur
Tender id: 2018_JKRRD_59730

Tender Inviting Authority: CHIEF ENGINEER PMGSY JKRRDA JAMMU ON BEHALF OF GOVERNOR OFJAMMU AND KASHMIR STATE

Name of Work: (i) Construction of Road from L044-Khourgali to Radnote,Package No. JK14-519 Regular-PMGSY(Batch-I, 2017-18) Stage-1st , Block Panchari, District Udhampur.

Contract No: JK14-519 Length: 13.920 Kms

SCHEDULE OF WORK/(ITEM(S)

S.N	Bidder Name	Estimated Rate	Quoted Percentage	Quoted Rate in Figures and Words	
				Rate	AMOUNT
100	M/s R. K. Gupta and Co	12856779541	-15 21	109012633.73	Ten Crore Ninety Lakh Twelve Thousand Six Hundred and Thirty Three
200	M/s Rajesh Kumar Contractors	12856779541	-19 10	104011346.49	Ten Crore Forty Lakh Eleven Thousand Three Hundred and Forty Six
300	SGF INFRA PVT LTD	12856779541	-18 90	104268482.08	Ten Crore Forty Two Lakh Sixty Eight Thousand Four Hundred and Eighty two
400	KATYAL CONSTRUCTION COMPANY	12856779541	-17 17	106492704.94	Ten Crore Sixty Four Lakh Ninety Two Thousand Seven Hundred and Four

Lowest Amount Quoted by:
M/s Rajesh Kumar Contractors (104011346.49)

38. As against that, the petitioner claimed that his offer was for ₹9,90,10,059/-. Though the aforesaid offer may not be relevant as the petitioner was not found to be technically qualified. But the fact remains that the difference in cost estimated by the department as compared to the bids submitted by the bidders was about 15-20%. The lowest bidder had offered the rate, which was 19.10% less than the estimated cost.

39. Still further another fact strangely noticed here is that any successful bidder is ready and willing to execute the project at the same rates even after five to ten years after the same was allotted. Such instances have come before the Court earlier. This fact is also evident from the case in

hand. It is with reference to the earlier litigation of the petitioner himself, where he offered to execute the work at the same rates at which it was allotted to him seven years back. Relevant para from judgement in the LPA filed in the case of the petitioner is extracted below:

> "20. Learned Single Judge has however, has issued a direction to the appellants herein to award the contracts in question to the respondent firm. Usually, we would have modified the order passed by the learned Single Judge, however, in the peculiar facts of the case and taking into account the undertaking given by the respondent before us that the respondent firm is willing to perform and complete the works, which may be awarded to him on the same rates, which were offered by him at the time of submission of bids i.e. 7 years ago, we are not inclined to interfere with the order, as there has already been delay in execution of the public project and public exchequer would suffer. In view of preceding analysis, we do not find any merit in this appeal, in the result the same fails and is hereby dismissed."
>
> ***(Emphasis supplied)***

40. Apparently, it can be for one reason that the rates at which the works are allotted are so high that any contractor is able to execute the same even after five to ten years of allotment thereof, even if the time provided for completion of the work may be 1-2 years. The fact cannot be disputed that there is always increase in various cost including the labour cost during all this period besides this material cost also increases. May be it is more lucrative to work in Jammu & Kashmir as one of the company registered in Assam was also in litigation with the department here, with reference to some contract. There can be issue of quality of construction also.

41. The aforesaid issues need deep examination. We direct the Chief Secretary, Government of Jammu & Kashmir to refer some cases for test audit to the Central Road Research Institute, New Delhi for quality of the works being executed here. Estimated cost of project calculated by the department should also be gone into by the Institute. Besides this, any other related matter can also be referred by the Chief Secretary to the Institute. Idea being to bring transparency in the system and create better infrastructure.

42. Let copy of the order be sent by Registry of this court to the :

(i) Chief Secretary, Union Territory of Jammu and Kashmir,

(ii) Commissioner/Secretary to Government of J&K, PWD (R&B) and

(iii) Commissioner/Secretary to Law Department,

for appropriate action.

HIGH COURT JAMMU & KASHMIR

(RAJESH BINDAL)
CHIEF JUSTICE (ACTING)

Jammu
09.12.2020
Vijay

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

VIJAY KUMAR
2020.12.09 11:20
I agree to specified
portions of this document