

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No: 2240/2022.

Date of Institution: 03.06.2022.

Date of Decision: 28.02.2023.

Muhammad Khalid Khan S/o Shair Muhammad Khan, Managing Director Ayan Restaurant and Mannat Caterers & Decorators, Abpara Market Islamabad, R/o Post Office Rangla, CarryNarul, Tehsil Dheerkot, District Bagh, Azad Jammu and Kashmir.

(Petitioner)

Versus

1. Azad Govt. of the State of Jammu and Kashmir through Secretary Department of Physical Planning and Housing, New Secretariat, Chatter Muzaffarabad.
2. Department of Physical Planning and Housing, Azad Govt. of State of Jammu and Kashmir through Secretary Physical Planning and Housing Department, Azad Govt. of State of Jammu and Kashmir having his office at new Secretariat Chatter, Muzaffarabad.
3. Secretary Physical Planning & Housing Department, Azad Govt. of State of Jammu & Kashmir having his office at New Secretariat Muzaffarabad.
4. Estate Officer, Jammu & Kashmir House Sector F-5/2, Islamabad.

(Respondents)

WRIT PETITION

Before: ***Justice Syed Shahid Bahar, J.***

PRESENT:

Syed Zulqarnain Raza Naqvi, Advocate for the petitioner.

Abdul Malik Siddiqui, Legal Advisor for department of Physical Planning and Housing AJ&K.

A.A.G for Azad Govt.

Judgment:

The titled writ petition has been filed under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974, whereby the petitioner is soliciting following relief:-

“It is, therefore, most humbly prayed on behalf of the petitioner that by accepting the captioned writ petition high prerogative writs in the nature of prohibition, mandamus and others be issued in favour of the petitioner against the respondents to restrain from cancelling the office memorandum dated 13.05.2022 for which the petitioner has been declared as successful bidder, moreover, the respondent may kindly be directed to issue work order in favour of the petitioner in pursuance of the agreement dated 13.05.2022 in true letter and spirit to meet the ends of justice.”

2. The long and short of the instant petition is that petitioner is first class State Subject of AJ&K and is permanent resident of Rangla Azad Jammu and Kashmir. Respondents issued an advertisement calling for tenders regarding Canteen/Cafeteria of Jammu and Kashmir House situated at sector F-5/2 Islamabad. The petitioner submitted bid according to requirements alongwith the Call deposit No.25732687. He was declared successful bidder in the competition on opening of the bids vide letter dated 13.05.2022 and in pursuance of the said letter, the petitioner entered into the contract with the respondents vide agreement dated 13.05.2022. It has been alleged by the petitioner that it was clearly mentioned in the agreement that the same shall come into force for a period of one year from 01.06.2022 to 31.05.2023,

therefore, the petitioner approached the relevant forum regarding implementation of the said agreement but it is astonishing for the petitioner that the respondents instead of implementing the agreement dated 13.05.2022 and issuing work order in favour of petitioner refused to act in accordance with the same, against the rights of the petitioner. The respondents under the said agreement are duty bound to act accordingly and hand over the said Canteen to the petitioner as he is the successful bidder but they are prolonging the matter without any reasons.

3. After admission of the writ petition, respondents were directed to file written statement, who later on by filing application prayed that the comments already filed on behalf of respondents may be treated as written statement, accordingly ordered. Preliminary objections were raised in the comments/written statement submitted by the respondents wherein the claim of the petitioner has been negated and contended therein that according to condition No.12 of the agreement, the dispute shall be referred to Secretary PP&H, whose decision will be final, which cannot be challenged in any court. The petitioner did not file any appeal before the competent authority and directly invoked the jurisdiction of this court by filing instant writ petition, which is not maintainable. The claim of the petitioner has been negated in toto and lastly prayed for dismissal of the writ petition.

4. *I have heard the learned counsel for the parties and gone through the record of the case with due care.*

5. At the outset, pre conditions qua exercise of Constitutional Jurisdiction conferred under Article 44 of the Interim Constitution can be brought on the compass of powers in infra manner:-

1. Petitioner has a locus standi to invoke constitutional petition being an aggrieved person as his right is denied to be given him.
2. Justiciable right of the petitioner is infringed in any manner.
3. Any statutory provision has been violated while performance of an act which is detrimental to the rights of the petitioner.
4. Where violation of constitutionally guaranteed fundamental rights has been jeopardized or bypassed while passing any order or performing any Act.
5. Where no other adequate remedy is provided.

6. In the instant matter the case of the petitioner is simply that in response of the advertisement calling for tender regarding Canteen/Cafeteria of Azad Jammu and Kashmir House Islamabad, the petitioner submitted a bid according to requisite manner alongwith call deposit, resultant of which, the petitioner was declared successful bidder on the opening of the bid vide letter dated 13.05.2022 and in pursuance of letter dated 13.05.2022, the petitioner entered into agreement with respondents dated 13.05.2022.

7. Thereafter, the respondents instead of implementing upon the agreement dated 13.05.2022 and allowing the petitioner to carry on the assigned work, they have slept over the matter

without any plausible reason, as a result of which the petitioner has left with no option except to invoke the jurisdiction of this Court for redressal of his grievance through this writ petition. Notices were issued to other side. Comments have been filed on behalf of answering respondents wherein the only stance taken by the respondents that on account of security issue contract of running the Canteen/Cafeteria cannot be allowed to any outsider. In this regard, paragraph No.4 of the comments is reproduced as under:-

4۔ اس ضمن میں تحریر ہے کہ جناب وزیراعظم آزاد حکومت ریاست جموں و کشمیر نے کشمیر ہاؤس کا دورہ کیا جس میں زبانی احکامات صادر فرماتے ہوئے محکمہ کے متعلقہ عملہ سے کام لینے بارے ہدایات جاری ہوئیں جن کے مطابق کشمیر ہاؤس کی کنٹینن سیکورٹی خدشات/رسک کی وجہ سے پرائیویٹ فرم کو کشمیر ہاؤس کا ٹھیکہ الاٹ نہ کیا جاسکتا ہے۔ محکمہ ہذا کے پاس اپنے ملازمین خانسامے + ویٹرز وغیرہ موجود ہیں۔ لہذا محکمہ خود کنٹینن چلائے۔ جس کے باعث رٹ پٹیشن قابل اخراج ہے۔

8. Be that as it may, advertisement was given by the official quarter for the purpose of allocating the work for running a Canteen, resultant of which, the petitioner has not only participated in the bid process but remained successful bidder, consequent of which, the work was allowed in his favour and parties accordingly entered into agreement. The stance of the non-petitioners is not entertainable. Law does not allow the approbate and reprobate or any sort of rigmarole. After inviting applications for such like work and thereafter allocating the same to the petitioner, now the respondents cannot take U-Turn. Rule of proprietary demands that everyone should have been dealt with

completely in accordance with law, even leaving no piece of arbitrariness or mala-fide in performance of official work or acts.

Although policy making is prerogative of the competent authority but same cannot be chalked out in a way to snatch accrued rights of a person, by applying the same retrospectively.

9. Nub of the above discussion is that instant writ petition is accepted and respondents are directed to redress the grievance of the petitioner as per agreed terms.

Petition stands accepted.

Muzaffarabad,
28.02.2023.

JUDGE