

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
CPLA No. 08/2009

Before: **Mr. Justice Muhammad Nawaz Abbasi, Chief Judge.**
 Mr. Justice Muhammad Yaqoob, Judge

Salamat Jan s/o Hajji Ramzan Government contractor and General Order Supplier, Airport Road, Gilgit.

Petitioner.

Versus

1. Deputy Commissioner Gilgit 2. Provincial Government through Chief Secretary N.As Gilgit 3. Aqeel Ahmed s/o Faqir Muhammad Rakaposhi Autos Air Port, Road Gilgit.

Respondents.

**PETITION FOR LEAVE TO APPEAL AGAINST
THE JUDGMENT DATED 29-03-2010
PASSED BY THE CHIEF COURT GILGIT
BALTISTAN IN CA NO 06/2009.**

Mr. Muhammad Issa, Sr. Advocate assisted by Mr. Shafqat Wali Sr. Advocate for petitioners
Advocate General Gilgit Baltistan
Mr. Munir Ahmed Advocate for respondents

Date of hearing: 06-05-2010

Order

Justice Muhammad Nawaz Abbasi, CJ: The subject matter of the present petition is the contract for supply of different type of vehicles on hire purchase basis for the use of law enforcing agencies. The Deputy Commissioner Gilgit (respondent No. 2) called tenders for supply of vehicles and the petitioner and respondent No. 3 alongwith others participating in the tenders offered bid on the basis of vehicle wise rent. The bid offered by the petitioner was lowest in respect of four types of vehicles whereas the bid of respondent No. 3 was found lowest in respect of three types of vehicles but the average bid for whole lot of vehicles included in tender notice offered by respondent No. 3 was lowest, therefore, he was awarded the contract of supply of vehicles.

The petitioner being aggrieved of the grant of contract for supply of vehicles to respondent No. 3 on the basis of average lowest bid filed a suit for declaration with permanent injunction and alongwith the suit also filed an application for interim relief in the form of temporary injunction to restrain the official respondents not to issue the supply order on the ground that since bid was given vehicle wise, therefore grant of contract on the basis of average bid was not proper and legal and was also violative of the terms of bid in tender notice. This application for temporary injunction alongwith main suit was dismissed throughout by the Court of first instance and the appellant court in appeal and also by the Chief Court in Civil Revision.

The case of the petitioner is that the bid was called for supply of different vehicles without specifically mentioning in tender notice that contract would be awarded on the basis of average bid therefore in absence of express condition of average bid the contract was to be necessarily awarded on the basis of lowest bid in respect of each vehicle. The learned counsel argued that petitioner having offered lowest bid in respect of four types of vehicles was entitled to the grant of contract for supply of the said vehicles, whereas respondent No. 3 would be entitled only for the grant of contract of three kind of vehicles for which he offered lowest bid but the official respondents in an illegal and arbitrary manner in departure to the terms of tender notice awarded contract of whole lot of vehicles to respondent No. 3 on the basis of average lowest bid. The learned counsel submitted that petitioner had a strong Prima Facie case for grant of temporary injunction but all the three

courts without proper application of mind to the facts of the case dismissed the application alongwith the suit.

The Learned Advocate General on the other hand has submitted that careful perusal of tender notice would show that tender was not called for the separate bid of each vehicle rather the bid was for whole lot of vehicles and the contract was rightly awarded on the basis of average lowest bid.

The bid no doubt was offered on the basis of vehicle wise rate of rent but it is understandable that contract was to be awarded on the basis of lowest average bid for the duration of period mentioned in tender notice with the condition that number of vehicles could be increased or decreased at the time of tender.

After hearing the learned counsel for the petitioner and learned Advocate General and examination of the record we have not been able to find out any illegality in exercise of discretionary jurisdiction by the Chief Court calling for interference of this Court. The bid was called for whole lot of vehicles and in absence of an express condition in the tender notice, the bifurcation of contract on the basis of vehicle wise rate of rent may not be practicable.

Be that as it may the contention that vehicle wise bid was called in tender notice and contract was to be awarded accordingly was not supported by any evidence on record rather the condition of increase or decrease of vehicles on the basis of future need would show that official respondents reserved the right to change the terms of bid or the contract and courts are not supposed either to change the terms of tender notice or bifurcate the contract on the basis of vehicle wise bid.

The interim injunction in the form of restrained order in the contract of supply of vehicles may disturb the official business of the concerned department which is against the policy of law therefore the same was rightly refused and we would not like to interfere in the matter.

The trial court while disposing of the application for temporary injunction without rejecting the plaint also dismissed the suit. The order of the trial Court was further maintained by the first appellant court and the Chief Court in the Civil Revision. The summary dismissal of suit without rejecting the plaint was not legal and consequently we set aside the Order to this extend and direct that suit will be deemed to be pending for decision on its own merits in due course of time in accordance with law.

For the foregoing reasons this petition in the above modification in the order of Chief Court is dismissed.

Chief Judge

Judge