
(2020) 09 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 1079 Of 2020, Civil Miscellaneous No. 2566 Of 2020, Caveat No. 742 Of 2020

Shabir Ahmad

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 07-09-2020

Acts Referred:

Citation : (2020) 09 J&K CK 0012

Hon'ble Judges : Puneet Gupta, J

Bench : Single Bench

Advocate : Nisar Ahmed Bhat, Shah Aamir, Sharaf Wani

Final Decision : Dismissed

Judgement

Puneet Gupta, J

1. The petitioner concern was awarded contract for running the 'canteen services at Government Medical College & its Associated Hospitals' Srinagar in terms of e-tender notice No. 05 of 2016. The rate contract was approved finally on 15.06.2017 and was operative for a period of 12 months from the date of issuance of approved rate contract or till such time the new rate contract for succeeding year is finalized. As per the petitioner, the canteens which were required to be run by the petitioner were not handed over to him by the hospital authorities as a result of the same he had to suffer huge losses. The petitioner was later on handed over the possession of only three canteens though he was entitled to run eight canteens as per tender. It appears that fresh tender notice was issued in the year 2018 vide No. 36 of 2018 and the same was challenged by the petitioner herein in OWP No. 2345 of 2018 and the court directed vide interim order dated 19.12.2018 that e-tender notice shall not be finalized in the meantime.

2. The grievance of the petitioner is that the e-tender notice No. 72 of 2020 dated 10.07.2020, impugned in the present writ petition, cannot be issued or

contract given in pursuance of the same as the petitioner was not handed over the possession of all the canteens by the department as well as the earlier contractor and consequently he could not completely run the canteen for one year term as per the contract. He cannot be deprived to run the canteen for the full period as envisaged under the contract of year 2017.

3. The objections to the petition have been filed wherein the respondents while admitting the basic contention of the petitioner that the contract was awarded to the petitioner to run the canteens as per e-tender Notice 05 of 2016, have further submitted that the term of the contract has already expired and the contention of the petitioner that he is entitled to run the canteens for complete one year stands fulfilled as he has already run those canteens for that period of which he opted to take possession. The respondents deny that there was omission on the part of the respondents in handing over the canteens to the petitioner and further state that the petitioner was not entitled to run eight canteens as claimed by him. It is also pleaded that the petitioner did not approach the concerned authorities of Kashmir Nursing Home for possession of the canteen. The respondents have also stated in the objections the dates on which the possession of the canteens was taken over by the petitioner. No legal right of the petitioner stands violated and the petitioner is not, in any case, entitled to run the canteens beyond the period of twelve months.

4. The controversy involved in the petition is short. It is evident from the pleadings of both the sides that the contract was awarded to the petitioner on 15.06.2017 in terms of e-tender notice No. 05 of 2016. The possession of the canteens was not handed over to the petitioner immediately on the awarding of the contract to the petitioner.

5. The petitioner has raised the grievance that he was not handed over the possession of all the canteens of GMC Srinagar and its associated hospitals as per the contract and, therefore, the tender impugned in the petition cannot be awarded to anyone till he completes atleast one year of the run of all the canteens. The respondents claim that the petitioner was entitled to run six canteens as per the tender and not eight as alleged by the petitioner. The tender notice specifies six hospitals for running the canteens. The tender notice does not make mention of GB Pant hospital nor the Super Specialty Hospital for which the tender was floated though the petitioner made submission to this effect during arguments. It may be mentioned that the petitioner has not asserted so in his pleadings. The claim of the petitioner that he was required to run three canteens in the SMHS Srinagar and also one at GB Pant Hospital, Srinagar is disputed by the respondents during course of arguments. The emphatic assertion of the respondents is also that the GB Pant Hospital is not Associated Hospital of GMC Srinagar and the petitioner cannot lay any claim if any over the canteen in the said hospital. The Court does not find any reason to disbelieve this assertion of the respondents in their reply. The petitioner has also not brought on record any proof in support of his contention.

6. The petitioner has, as per own saying, completed run of one year of three canteens. It is pertinent to mention here that the petitioner has referred to the communications he allegedly addressed to the authorities regarding not making available some of the canteens to him and at the same time stating that three canteens were made available to him but not stating in clear terms which canteens were handed over to him and if the period of one year stands completed in respect of those canteens. The petitioner has not made a whisper regarding the canteens of Chest Diseases Hospital or Kashmir Nursing Home which were required to be run by him. The petitioner appears to have consciously omitted to mention this vital fact in the petition. The court has not been made aware of certain basic facts which should have found the place in the pleadings and instead generalized the contentions. The respondents, on the other hand, have asserted that the petitioner has, in any, case enjoyed more than one year of running of the canteens. The respondents have categorically stated in the objections of the dates of handing over of the possession of the canteens which remains un-rebutted by the petitioner. The petitioner cannot lay any further claim so far as the running of the canteens is concerned. Taking extreme view of the matter that the petitioner was not handed over the possession of any canteen or was not allowed to run the canteen for the requisite period the assertion becomes disputed question of fact as the same stands negated by the respondents and cannot be gone into and thrashed in the writ petition. The tender impugned in the present petition cannot be allowed to be stalled on the basis of the contract awarded to the petitioner almost three years ago in the year 2017 for a period of one year. In case the petitioner has any claim/dispute with regard to contract awarded to him in the year 2017 he can avail any other remedy which may be available to him. The tendering process for canteens cannot be allowed to be stalled for above reasons and also in view of the overall public convenience in the present pandemic scenario. The factual context of the case does not support the petitioner.

7. The learned counsel for the petitioner has also submitted that in view of the interim order passed by this Court in OWP No.2345/2018 the present tender issued of the canteens is illegal and in violation of the court order. The Court does not agree with the contention of the learned counsel for the petitioner in view of the factual position that emerges from the above discussion. The interim direction, to say the least, was only regarding the tender issued in the year 2018. The other argument raised by the petitioner that the objections filed earlier to the writ petition of 2018(supra) are substantially inconsistent to the objections filed in the present writ petition is without substance and does not hold water in the facts that emerge in the present scenario. The petitioner has to make out and build his own case and not to rely on the weakness of the other side opposing his claim.

8. It is also brought to the notice of the court by the learned counsel for the respondents that the tender impugned in the present writ petition has been finalized though learned counsel for the petitioner has submitted that some

dispute has arisen with regard to it. This aspect of the matter makes no impact as far as the present writ petition is concerned.

9. Keeping in view the discussion made, the Court holds that no right of the petitioner stands violated in pursuance to the tender notice impugned in the present writ petition. The petition is without merit and is, accordingly, dismissed along with connected applications.