

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

...
LPA no.247/2022

Dated: 22.08.2023

Munificent Angels Nowgam

..... Petitioner(s)

Through: Mr H. Suhail Ishtiaq, Advocate

Versus

Union Territory of J&K and others

.....Respondent(s)

Through: Mr Rais ud din Ganai, Dy.AG

CORAM:

**HON'BLE MR JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR JUSTICE RAJESH SEKHRI, JUDGE**

JUDGEMENT (ORAL)

1. This Appeal is directed against judgement and order dated 28th September 2022, passed in a writ petition, being WP(C) no.2100/2022 titled as *Munificent Angels v. Union Territory of J&K and others*, and for setting-aside the same on the grounds tailored therein.
2. We have heard learned counsel for parties. We have gone through the Writ record as also judgement impugned and considered the matter.
3. Perusal of the file reveals that the Ministry of Women and Child Development, Government of India, launched a scheme, One Stop Centre (OSC), for providing coordinated interagency response for Women affected by violence at home or at workplace mostly assisting in their immediate aftermath of an assault and also offer Long Term Specialized Counselling and Advocacy and other services. For

implementation of the above OSC Scheme, Advertisement Notice dated 21st April 2020 was issued inviting proposals qua functioning of OSC. Five tenders were received. Writ petitioner/appellant herein was found lowest tenderer to run OSC in District Srinagar for a period of two years. In this regard, allotment order no.220 of 2020 dated 29th September 2020 was issued by District Development Commissioner, Srinagar (respondent no.3 herein). This was followed by signing of Memorandum of Understanding (MOU) by parties as well containing therein various terms and conditions, to be strictly implemented and complied with by writ petitioner/appellant during the term of two years.

4. It had been grievance of writ petitioner/appellant that he was not allowed to complete the term of two years as respondents issued E-NIT no.01/2022 of DSWOS dated 22nd April 2022, inviting applications for providing manpower for running OSC at Srinagar, so he knocked at the portals of this Court with a writ petition, bearing WP(C) no.1352/2022. It had been claimed by writ petitioner/appellant that he was not only entitled to complete his initial term of two years but was also entitled for extension after two years' term as his work and performance had remained exemplary and to the satisfaction of respondents. However, this claim of appellant was seriously disputed by respondents as according to them it was found by respondent no.3 that OSC at Srinagar was non-functional on many occasions and, as a result whereof appellant was not entitled to any extension.

The Writ Court while considering the matter in light of documents on record, found that contract between petitioner-society and respondent had expired on 24th June 2022 because MOU between respondents and petitioner was signed on 25th June 2020 inasmuch as MOU was valid for a period of two years and that it was only for respondents to take call and pass appropriate orders for extension, or otherwise, strictly in terms of Clause 16 of MOU which provided that extension beyond the period of two years was subject to appraisal/evaluation of performance for running of OSC by petitioner-society. Accordingly, writ petition – WP(C) no.1352/2022, was disposed of vide Order dated 20th July 2022, leaving it open for respondent no.3 to evaluate performance of petitioner-society and that further extension of petitioner would depend upon decision to be taken by competent authority and till decision was taken E-NIT was directed not to be finalised.

5. As record on its perusal would unveil, in compliance to Order dated 27th July 2022, passed in WP(C) no.1352/2022, respondent no.3, vide Order dated 23rd August 2022, rejected the claim of petitioner as being devoid of merit. Aggrieved thereof, writ petitioner/appellant had come up with writ petition – WP(C) no.2100/2022, which came to be dismissed vide judgement impugned. Hence this appeal.
6. While dilating his arguments in support of the case set up in the appeal, counsel for appellant would contend that Clause 16 of MOU in clear cut terms provides extension on completion of two years after appraisal/evaluation of performance of running OSC and that instead

of evaluating performance of petitioner, respondents re-tendered the centre, which is in violation of the contract executed by petitioner and respondents, and that this aspect of the matter has not been considered and appreciated by the learned Writ Court in its right and proper perspective.

This contention of counsel for appellant is unfounded. Appellant relies upon MOU that according to him provides extension after two years. While perusing MOU, we have gone through Clause 16 as also Clause 17 of MOU. Thus, it would be apposite to reproduce these Clauses hereunder:

“16. Commencement and duration:

- a) The MOU will commence from the date it is signed by and between the parties.
- b) The Memorandum of Understanding shall be valid for a term of 2 years (two years) initially from the date of signing of the MOU and the same will be extended after every 02 years (two years) after appraisal/evaluation of the performance of running OSC (Sakhi) project by the organisation.

17. Dispute Resolution:

- a) Any dispute in relation to this memorandum of understanding of the management and the functioning of the OSC will be settled amicably through negotiation between the parties and decision taken by the parties shall be final and binding on both.
- b) Any dispute, if not resolved by both the parties amicably shall be referred to arbitrator appointed by both the parties whose decision shall be binding on the parties and the matter shall be resolved strictly in accordance with the provision of the Arbitration and Conciliation Act, 1996 or any Statutory modification or re-enactment thereof and rules framed there under from time to time.”

7. From Clause 16, it is clear that MOU would be valid for a term of two years initially from the date of its signing. The term would be extended after every 02 years (two years), after appraisal/evaluation of the performance of running OSC (Sakhi) project by the organization.

Thus, it is exclusively within the domain of respondents to either extend the term or issue a fresh tender. So, there is no force in the submission of appellant that respondents are under obligation to extend the term in his favour exclusively. Extension of term, as is obvious from Clause 16 of MOU, is subject to appraisal/evaluation by respondents and this Court cannot evaluate performance of petitioner, nor petitioner can claim to have more expertise than respondents to make appraisal/evaluation vis-à-vis his performance for the term of two years. If respondents have found performance of petitioner not up to the mark, the learned Writ Court or this Court cannot sit over the said evaluation of respondents as if it is an appellate court/authority. It is in view of this fact situation that the learned Writ Court has found order passed by respondent no.3, impugned in the writ petition, well-reasoned and well founded and as a consequence of which, dismissed the writ petition being devoid of merit.

8. Another aspect of the matter cropped up during the course of arguments, when we went through Clause 17 of MOU as it provides for arbitration in the event of any dispute. This important aspect of the matter appears to have not been brought to the notice of the learned Writ Court; otherwise, the writ petition could have been dismissed on this ground alone. Once arbitration clause is available in case of dispute between the parties, then writ petition is not maintainable.
9. Counsel for respondent during the course of arguments has stated that as on date the writ petitioner/appellant is not running the OSC, Srinagar, and in support of this submission he has produced a copy of

Provisional Selection List of the candidates for the posts in respect of OSC for Women Srinagar. He states, and rightly so, that in view of this development the appeal has become infructuous.

10. For the foregoing reasons, the impugned judgement/order does not call for any interference and as a sequel whereof, this appeal is **dismissed.**

(Rajesh Sekhri)
Judge

(Tashi Rabstan)
Judge

Srinagar
22.08.2023
Ajaz Ahmad, PS

Whether approved for reporting? Yes/No

