

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

OWP No. 1275/2017

**Reserved on 18.03.2025
Pronounced on 03.04.2025**

M/s Rajinder Medical Hall and
another

.....Appellant(s)/Petitioner(s)

Through: Mr. Abhinav Sharma, Sr. Adv. with
Mr. Abhirash Sharma, Adv.

vs

State of J&K and others

..... Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The petitioners through the medium of present petition have challenged communication bearing No. SHJ/921-23 dated 22.07.2017 addressed by respondent No. 3 to respondent No. 4, whereby respondent No. 4 has been requested to take steps for initiating necessary action against the petitioner-firm. A further direction to respondent No. 2 for execution of the agreement with respect of the shop allotted to the petitioner No. 2 in the premises of Government Hospital Sarwal, Jammu has also been sought. In the alternative, the petitioners have sought refund of an amount of Rs. 18.50 lacs along with interest at the rate of 18% per annum alongwith a direction to the respondents that they should not evict the petitioner No. 2 from the make shift shop, which is in his possession.
2. Petitioner No. 1 is a sole proprietorship firm owned by petitioner No. 2. According to the petitioners, an NIT was issued by respondent No. 3

inviting tenders for allotment of chemist shop (24x7) situated in the premises of Government Hospital Sarwal for operating a fair price medical shop. Petitioner No. 1 is stated to have participated in the said tendering process and emerged as the highest bidder. A letter of intent dated 23.04.2012 was issued by respondent No. 3 to petitioner No. 1 informing it that its bid to the tune of Rs. 38 lacs per annum has been accepted being the highest bid. The petitioners were directed to deposit 50% of the premium within a week's time and balance 50% of the premium within next 90 days thereafter. It was also provided in the letter of intent that in case of default in payment of first installment of premium, the earnest money paid by the petitioner shall be forfeited and the letter of intent shall be withdrawn. In case of default in payment of second installment of premium within the prescribed period of 90 days, penal interest at the rate of 18% was to be charged for two months and thereafter, the earnest money and the deposited first installment was to be forfeited and letter of intent was to be withdrawn.

3. According to the petitioners, the bids were invited for allotment of a permanent shop but construction of the shop was not completed when the letter of intent was issued in favour of the petitioners, as a result whereof the execution of the agreement was delayed. It has been submitted that another communication dated 23.05.2012 was addressed by respondent No. 3 to the petitioners wherein it was admitted by the respondents that permanent shop was yet to be constructed regarding which the process had been started. It was further conveyed to the petitioners that the

respondents have decided that the petitioners would take over the shop when it would be permanently constructed soon and allotted as it is going to take some time for the shop to be completed and allotted. It was further stated in the aforesaid letter of intent that the petitioners would be allotted a make shift place for the time being so that public does not suffer and in the meantime, the petitioners were asked to deposit initial 50% of the premium within two months or till the permanent shop is completed and allotted. Regarding the balance 50% of the premium, it was provided that the same shall be deposited within 90 days thereafter after the allotment of permanent shop. The petitioners were also directed to deposit the monthly rent of the make shift shop as per terms and conditions of the tender on monthly basis. It has been submitted that the petitioners deposited a total amount of Rs. 18.50 lacs towards the 50% of the bid amount i.e. first installment with the respondents.

4. Vide communication dated 04.03.2015 addressed by respondent No. 3 to the petitioners, a demand of Rs. 95 lacs towards bid money on account of allotment of the shop was made from the petitioners and it was also provided in the said communication that in default, the respondents would invoke the terms and conditions of the tender. It has further been submitted that another notice dated 16.04.2016 was issued by respondent No. 3 asking the petitioners to deposit a sum of Rs. 1,71,50,000/- on account of pending dues of bid money with effect from 2012.
5. The petitioner No. 2 is stated to have responded to the aforesaid communications by bringing it to the notice of the respondents that

permanent shop has not been allotted to the petitioners and that as and when permanent shop will be allotted to the petitioners, the balance bid amount shall be deposited. Accordingly, the respondent No. 3 was requested to withdraw the notices. Another notice dated 02.01.2017 is stated to have been issued by respondent No. 3 to the petitioners reiterating its demand for payment of balance bid amount of Rs. 1,71,50,000/-. The same was responded to by the petitioners by virtue of another communication dated 27.01.2017, whereafter the impugned communication dated 22.07.2017 came to be issued by respondent No. 3, whereby the respondent No. 4 has been asked to take action against the petitioners. In the said communication it has also been communicated to respondent No. 4 that agreement between the parties has expired in May, 2017 and that the petitioners have failed to deposit the pending dues on account of bid money for allotment of fair price shop which comes to Rs. 1,71,50,000/- with effect from 2012.

6. The petitioners have challenged the impugned communication on the grounds that the respondents have not executed any agreement with the petitioners for allotment of the shop, as such, there is no question of expiry of the agreement. It has further been contended by the petitioners that they were only allotted a make shift shop in the premises of Government Hospital, Sarwal and the permanent shop is yet to be handed over to them in terms of letter of intent as such, there is no question of their paying any bid amount to the respondents. It has been submitted that the petitioners besides paying initial bid amount of Rs. 18.50 lacs, have also been

depositing the rent at the rate of Rs. 4000/- per month with the respondents despite the fact that permanent shop has never been handed over to them as a consequence whereof they have been operating the shop from a make shift premises. It has been contended that the respondents have to hand over the permanent shop to the petitioners in terms of letter of intent whereafter an agreement has to be executed between the parties and only then the petitioners would be liable to pay the second installment of the bid amount.

7. Respondent Nos. 1 to 4 have contested the writ petition by filing their reply. In their reply, it has been submitted that pursuant to the issuance of tender with regard to the operation of a fair price medical shop within premises of Government Medical Shop Sarwal, petitioner No. 1 participated in the said tendering process and emerged as the highest bidder with a bid of Rs. 38.00 lacs per annum. Accordingly, vide communication dated 21.04.2012 a decision was taken to allot the fair price medical shop to petitioner No. 1 pursuant where to letter of intent dated 23.04.2012 came to be issued in favour of the petitioners, whereby they were advised to deposit initial 50% of the premium within a week's time.
8. It has been submitted that as per the terms and conditions of the tender, the site plan of the proposed shop was kept available for examination of prospective bidders in the office of medical superintendent and it was specifically mentioned that the chemist shop is to be shifted to permanent shop within the premises later on. From this, it was clear that initially only

a temporary make shift shop was to be allotted. Accordingly, petitioner No. 1 was initially allotted only a temporary make shift shop. It has been submitted that petitioner No. 1 took over possession of the make shift shop and thereafter vide letter dated 26.04.2012 the petitioners made a request that some more space be provided to them for storage of medicines etc.

9. It has been submitted by the respondents that allotment of the permanent shop to the petitioners was delayed as the construction agency could not complete the construction within the specified period. It has been further submitted that another bidder approached the High Court challenging the allotment of make shift shop in favour of the petitioners and the High Court vide its interim order dated 01.09.2014 restrained the respondents from making allotment of fair price medical shop to the petitioners. It has been submitted that the said writ petition was dismissed as withdrawn on 26.03.2015. It has been further submitted by the respondents that after the filing of the present petition, an interim order came to be passed by this Court on 11.08.2017, whereby status quo on spot was directed to be maintained.
10. According to the respondents it is because of aforesaid developments that they could not hand over the possession of the permanent shop to the petitioners despite the fact that the said shop was ready for allotment in the year 2016 itself. Besides this, the petitioners failed to deposit the balance bid amount. It has been contended by the respondents that as of now the allotment period of fair price medical shop has expired and as such, the

petitioners have no legal right to continue to occupy the make shift shop nor have they any right to seek allotment of the permanent shop.

11. It has been further contended that petitioner No. 1 has not deposited the second installment of bid amount nor has it deposited the annual premium right from the year, 2012, till date thereby accumulating the outstanding amount to Rs. 1,71,50,000/-. It is in these circumstances, that the respondents have issued the impugned communication.
12. I have heard learned counsel for the parties and perused the pleadings and the record.
13. There is no dispute to the fact that in the year 2012, the respondents invited bids for allotment of fair price medical shop within the premises of Government Hospital Sarwal, and in the bidding process, petitioner No. 1 had emerged as the highest bidder with a bid amount of Rs. 38.00 lacs per annum. As per terms of the tender documents, the allottee had to pay a monthly rent of Rs. 4,000/- for occupying the premises, besides annual premium of Rs. 38 lacs. It is also not in dispute that petitioner No. 1 deposited the initial 50% of the bid amount with the respondents and it also kept on depositing the monthly rent @ Rs. 4000/- per month.
14. From the pleadings of the parties, it is clear that the petitioners took over the possession of make shift shop and the permanent shop was never handed over to them. The respondents' claim that the permanent shop could not be handed over because the same could not be constructed by the concerned agency within the specified period and also because of the litigation. The fact of the matter, however, remains that it is only the make

shift shop which was handed over to the petitioners in which they are operating their business till date. The question that is required to be determined is as to whether the petitioners are entitled to allotment of permanent shop which has come up now and whether the respondents are entitled to recover the dues from the petitioners on the rates specified in the tender document.

15. If we have a look at the Notice Inviting Tender, Clause (3) thereof which would be relevant for determining as to whether the respondents had invited a bid for the allotment of the permanent shop or for allotment of make shift shop, reads as under:

“The present site plan is kept available for examination of prospective bidders in the office of the Medical Superintendent **(Chemist shop is to be shifted to permanent shop within premises later).**”

16. From a perusal of the aforesaid clause, it is clear that bids were invited for allotment of a premises within the precincts of Government Hospital Sarwal and it was provided that later on the chemist shop would be shifted to permanent shop within the same precincts. This means that it was made clear to the bidders that the permanent shop is not ready and initially allotment would be made in respect of a make shift shop, whereafter the chemist shop would be shifted to permanent shop. This position gets further strengthened from other conditions of the tender. Clause (6) uses the expression “site/structure” and as per this clause, “site/structure” was to be utilized only for the purpose for which it is allotted. Similarly, as per Clause (28) rent for the “space occupied” has been specified as Rs. 4,000/- only per month. The expression used is “space occupied”. Thus, the

aforesaid Clauses of the tender, make it clear that the respondents intended to invite bids for allotment of a “space” inside the precincts of Government Hospital Sarwal and after its allotment, the operations of the chemist shop were to be shifted to permanent shop, the construction whereof was incomplete. It was also made clear in Clause (8) of the terms and conditions of the tender that the contract shall be for a period of 5 years extendable by a period of another 90 days.

17. The respondents’ claim that in terms of letter of intent dated 23.04.2012, petitioner No. 1 had to deposit 50% of the premium within a week’s time and the balance 50% within next 90 days thereafter. According to the respondents, the petitioners failed to pay balance Rs. 50% within next 90 days and has not paid the premium even for subsequent years. Thus according to the respondents, the petitioners are in arrears amounting to Rs. 1,71,50,000/-.
18. *Per contra*, the petitioners claim that vide communication dated 23.05.2012 issued by respondent No. 3 at the time of allotting make shift space for the time being, the respondents asked the petitioners to deposit initial 50% of the premium within two months and further asked the petitioners to pay balance 50% of the premium within 90 days thereafter after allotment of permanent shop. It is the contention of the petitioners that eventuality of depositing balance 50% of the premium which the petitioner No. 1 was to deposit within 90 days after allotment of permanent shop never arose because the permanent shop was never allotted to the petitioners. Thus, there was no occasion for the petitioners

to deposit the balance amount of 50% of the premium and the amount of premium for the subsequent years, as admittedly, the permanent shop was never handed over to the petitioners.

19. In the above context, it is to be noted that vide communication dated 23.05.2012 the respondents had offered the petitioners to take over the possession of make shift shop subject to payment of 50% of the annual premium with the condition to pay the balance amount of premium within 90 days of allotment of permanent shop. The petitioners accepted this offer and paid 50% of the premium. They also took over the possession of the make shift shop and started operating their business therefrom. Thus the contract between the parties stood novated by their conduct. Since the respondents failed to deliver the possession of permanent shop to the petitioners therefore, there was no occasion for them to deposit the balance amount of premium or the amount of annual premium thereafter. The respondents having failed to perform their part of the novated contract for the reasons not attributable to the petitioners, they cannot claim recovery of arrears of premium from the petitioners.

20. That takes us to the question whether the term of contract between the parties has expired after five years, as has been claimed by the respondents. In this regard, it has been contended by the petitioners that they are entitled to allotment of the permanent shop once its construction has been completed and that the contract between the petitioners and respondent No. 3 would come into being after allotment of the permanent

shop. On this ground it is being contended that the term of contract between the two has not even started as yet.

21. I am afraid that the aforesaid contention of the petitioners cannot be accepted because the petitioners pursuant to the communication dated 23.05.2012 issued by respondent No. 3 accepted the allotment of make shift space and they also deposited initial amount of 50% of the premium meaning thereby they have accepted the terms of the said letter which provided for allotment of make shift shop with the condition that they will deposit second installment of premium after the allotment of the permanent shop. There is no provision either in the tender conditions or in the communication dated 23.05.2012 that would go on to indicate that the contract period of five years was to begin after the allotment of permanent shop. Therefore, the petitioners cannot claim that the contract is still in existence. Once the petitioners pursuant to communication dated on 23.05.2012 took over possession of the make shift space and operated their business therefrom, the period of contract between the parties has to run from the said date and as such, the period of contract has expired long back.

22. In view of the above, the prayer of the petitioners seeking quashment of the impugned communication dated 22.07.2017 and the prayer for restraining the respondents from evicting them from the make shift shop is not legally tenable. Similarly, the prayer regarding execution of agreement for allotment of permanent shop is also legally impermissible because the agreement between the parties has already run its full course.

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23. So far as the claim of the petitioners seeking reimbursement of Rs. 18.50 lacs along with interest is concerned, the same is also not legally permissible because the petitioners, having accepted the terms of communication dated 23.05.2012 and taken over the possession of the make shift space cannot turn around and seek refund of Rs. 18.50 lacs which they deposited with the respondents in accordance with the terms of the aforesaid letter.
24. For the foregoing reasons, I do not find any merit in this petition. The same is dismissed accordingly. The interim order dated 16.08.2017 passed by this Court shall stand vacated.

(SANJAY DHAR)
JUDGE

Jammu
03.04.2025
Rakesh

Whether the order is speaking: Yes
Whether the order is reportable: Yes