Serial No. 10

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

WP(C) No. 1962/2023

Reserved on: **28.09**.2026
Pronounced on: **15.**10.2026
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Operative part or full judgment : ***Full***

Ghulam Hassan (67 years)
S/O Gh. Mohammad,
R/O Puneja,
Tehsil Bhaderwah,
District Doda.

…....Petitioners

Through: Mr. Nitin Verma, Advocate.

Vs.

1. **UT of J&K** through
   Commissioner/Secretary to Govt.
   Health Department,
   Civil Secretariat, Jammu
2. Director, Health Services,
   Jammu.
3. Block Medical Officer,
   Bhaderwah

….. Respondents

Through: Mr. Raman Sharma, AAG with
Ms. Jagmeet Kour, Advocate.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

1. The petitioner, through the medium of the instant writ petition, filed under Article 226 of the Constitution of India, seeks direction in the nature of writ of mandamus, commanding upon the respondents, to quash the notice no. BMO/B/1664-67 dated 19.07.2023, issued by the respondent no.3, whereby the

petitioner has been asked to deposit an amount of Rs.6,55,500/- and further to vacate the premises, being illegal, arbitrary and unjust.

2. The brief facts of the case, as projected in the writ petition, is that a tender was got issued by the respondent no.3 for allotment of canteen to be provided within the premises of New Sub Hospital, Dandi Bhaderwah in the year 2013; that being eligible, petitioner submitted the tender document within time, however, the petitioner's bid, being the highest, was cancelled for the reason that he has not affixed the revenue stamp on the tender bid; that aggrieved thereof, he approached this court by way of OWP No.1093/2013 titled 'Ghulam Hassan v. State of J&K & Ors'; that this court, while issuing notice to the other side, stayed the operation of the impugned notice No.992 dated 30.07.2013; that, on 23.12.2021, the said writ petition came to be dismissed for non prosecution; that on 19.07.2023, petitioner was issued the impugned notice No. BMO/B/1664-67 dated 19.07.2023, whereby, he was again directed to vacate the canteen within two weeks and also to deposit an amount of Rs.6,55,500/-.

3. Aggrieved of the aforesaid impugned notice 19.07.2023, the petitioner has approached this court, by way of filing the instant writ petition, seeking its quashment, on the following grounds:

> *"i) that the said impugned notice is arbitrary;*
>
> *ii) that the impugned notice is in grave violation of Article 14 of the constitution of India and the same is infringing the right of the petitioner;*
>
> *iii) that the impugned notice has been sent to the petitioner, who is not running the canteen at Sub District Hospital, Dandi Bhaderwah and the person, who is not running a premises, cannot be asked to pay the rent;*

iv) that no one can be forced to pay the rent of a premises when the fact remains that the same has been used by another person, such, notice is unreasonable; and

v) that the impugned notice is in teeth of various judgments passed by this court as well as Supreme Court and, therefore, deserves to be quashed."

4. Pursuant to notice, objections stand filed on behalf of respondents, seeking outright dismissal of the writ petition, inter alia, for the reason that it was the petitioner Ghulam Hassan, who was running the canteen services in the old premises of Sub District Hospital, Bhaderwah, which was earlier allotted to him without calling any tender; that with the shifting of the hospital to new location, respondents issued NIT vide Notice No.656 dated 10.07.2013, in which, as many as 8 bidders participated in the tendering process, including the petitioner; that the petitioner's bid was rejected, though highest bid, on the ground that he had not affixed Rs.5 revenue stamp on the bid paper; that vide Notice No.992 dated 30.07.2013, he was asked to vacate the canteen; that petitioner challenged his rejection of bid as well as notice of eviction, by way of filing OWP No.1093/2013 titled 'Ghulam Hassan V. State & Ors' wherein this court passed an interim order on 05.08.2013, stayed the impugned order, whereby the petitioner was asked to vacate the premises; that due to non prosecution, OWP No.1093/2013 got dismissed and respondents, thereafter, issued impugned order dated 19.07.2023 to the petitioner asking him to vacate the canteen within two weeks and also to deposit an amount of Rs.6,55,500/-.

5. Respondents contend, further, that the petitioner has filed the instant petition and is misleading the court as petitioner himself has participated in the bid process in the year 2013, which is substantiated from the Financial Bid of Rs.65,500/-

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offered by the petitioner which bears his signatures; that no legal right of the petitioner has been violated; that petitioner has no locus standing or right to file the instant petition; that petitioner has not come up with clean hands and has tried to mislead the court by sheer misrepresentation of facts; that petitioner has raised factual aspects in the present writ petition, which, cannot be adjudicated upon by this court in exercise of its extraordinary jurisdiction. Lastly, it is prayed that writ petition deserves to be dismissed.

6. Learned counsel appearing for the petitioner argued that the issuance of impugned notice against the petitioner is non application of mind, on the part of the respondents, as it is the son of the petitioner, who was allowed to run canteen by the Block Medical Officer Bhaderwah, in terms of his communication dated 17.02.2012 (Annexure-V with the writ petition) to the son of the petitioner, wherein, a rent of Rs.300/- per month was fixed for accommodation with 10% increase of total rent every year and was asked to deposit refundable amount of Rs.3000/- as security, therefore, on this count alone, the impugned notice issued to the petitioner is liable to be set aside; that son of the petitioner has cleared all the dues up to the year 2023; that the petitioner cannot be asked to pay amount for the accommodation which has been given to some other person for running a canteen. Lastly, it is prayed that the writ petition be allowed and the impugned recovery notice be quashed in the interest of justice.

7. Mr. Raman Sharma, learned AAG, appearing for the respondents has submitted that Govt. has framed a police vide Govt. Order No.492-HME of 2008 dated 17.06.2008, for allotment of sites/structures for use as Fair Price Medical Shops, Canteens & STD Booths at health institutes of Health and Medical Education Department, by virtue of which, it is provided that all built up structures

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for use as Medical Shops, Canteens, etc available within the premises of health institutions be allotted through auction mode by inviting bids from general public; that petitioner has exceeded the time period of contract and has not even deposited the bid amount of Rs.65,500/- since the year 2013, thereby causing loss to the state exchequer. Lastly, it is prayed that the writ petition be dismissed.

8. Heard learned counsel for the parties, perused the record and considered the matter.

9. The factual background leading to the filing of the instant petition is that the petitioner's son namely Shahid Hussan, subject to filing an undertaking in the form of an affidavit that he shall be allowed to prepare meal/tea in the hospital premises on a monthly rental basis @ Rs.300/- observing all rules and regulations of the Department with an annual 10% increase and deposit of Rs.3,000/- in cash as refundable security, as directed by the Block Medical Officer, Bhaderwah in a communication dated 17.02.2012; that a Notice Inviting Tender (NIT) was issued by the respondent-Block Medical Officer Bhaderwah in the year 2013 seeking tenders for canteen of new SDH (Dandi) Bhaderwah for a period of five years with earnest money of Rs.15,000/- with the condition that the tenders shall be submitted by 27.07.2013 and the tenders shall be opened on 27.07.2013; that on receiving tenders from the interested persons, the tenders were opened and a comparative statement was formulated on 29.07.2013, indicating the bids of amounts quoted by the eight (08) persons, including the petitioner herein. The petitioner's name figures at Serial No.4, who had quoted an amount of Rs.65,550/- only as the bid, however, his bid, along with four other persons was rejected for the simple reason that they had not submitted their bids along with revenue stamp of Rs.5/-, as such, Mansoor Qadir was found to be the highest bidder among the left-over bidders and his

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tender, indicated the bid as Rs.51,000/- only, was approved by the Committee of Officers, who had found him the next highest bidder after the petitioner.

10. The petitioner, herein, aggrieved of rejection of his bid preferred OWP No. 1093/2013, before this court and vide order dated 05.08.2013, the operation of the order was staying directing the parties to maintain status quo as regards the canteen, which was, however, dismissed for non prosecution by this court vide order dated 23.12.2021. After the dismissal of the petition by this court, the respondents issued the impugned notice to the petitioner vide No. BMO/B/1664-67 dated 19.07.2023 directing him to vacate the canteen in two weeks, positively from the date of service of the notice and was also asked to deposit an amount of Rs.6,55,500/-, failing which, action shall be taken against him. This communication has led the petitioner to file the subsequent instant petition assailing the communication in question.

11. The petitioner admitting the averments made with regard to the tendering process challenged the impugned notice on the ground that he had not been running the canteen at SDH Dandi Bhaderwah, as such, he cannot be asked to pay the rent and that his son Shahid Hussan, who had been allotted the canteen premises in the hospital by Block Medical Officer, Bhaderwah had cleared the amount as agreed @ Rs.300/- per month.

12. The petitioner has disputed the liability raised by the respondents, primarily, on the premises that he had not been holding the canteen, rather it was his son Shahid Hussan, who had been running the same, and, as such, the person who was not holding the canteen within the premises of the respondents, cannot be asked to pay any amounts towards that holding.

13. In this connection, this court, will have to revert to the pleading of the petitioner made in his earlier writ petition OWP No. 1093/2013 titled 'Ghulam

Hassan V. State & Ors', whereof, paragraph no.15 being relevant, is extracted as under:

> ***"15.*** *That the petitioner submits that the petitioner was already running the canteen for the last one and a half years in the premises of New SDH Dandi Bhaderwah along with his son, namely, Shahid Hussan. The canteen was run in the name of son of the petitioner for the last one and a half years and there was no adverse remarks made against the petitioner during the said period of one and half year."*

14. The petitioner had statedly admitted in his earlier petition that he was holding the canteen premises through his son and being the highest bidder was entitled to be allotted the canteen in response to the NIT issued by the respondent Block Medical Officer Bhaderwah, as his bid had been arbitrarily rejected by the respondents, merely for the reason, that he had not filed his bid accompanied by a Revenue Stamp of Rs.5/-. The petitioner, being, admittedly was the highest bidder indicating his bid @ Rs.65,000/- and on him being disqualified by the respondents, the next highest bidder who had indicated Rs. 51,000/- was held to be entitled for the allotment of canteen. The petition remained on the files of this court since 2013 and came to be dismissed for its non prosecution on 23.12.2021. The petitioner, during this period, till he was served with the notice had held the canteen premises in the hospital in SDH Bhaderwah and the allotment based on NIT had not been finalized for allotment because of his petition pending before this court, which, ultimately he chose not to pursue and was dismissed for non prosecution. The petitioner was, thus, from his earlier petition accompanied by an affidavit was ready to hold the canteen at the rate which he had quoted in his bid subject to other conditions of the NIT and the canteen premises was also held by him, through his son, until the notice was issued to him.

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15. It does not lie in the mouth of the petitioner now to take a U-turn, so as to assert that he was not holding the canteen premises and it was his son, who had been given the property by the respondent-Block Medical Officer Bhaderwah, subject to certain conditions, against his own assertion made in the earlier petition that he was holding the Hospital Canteen, through his son and being highest bidder was entitled to hold the same.

16. The petitioner, on the strength of the interim direction passed by this court, had held the canteen premises until the issuance of the impugned notice and was ready to abide by all the conditions of the NIT on the rates quoted by him in his bid. The respondents cannot be put to loss and penalized for the simple reason that they could not finalize the allotment on the basis of their own decision and could not even go for fresh tendering due to pendency of the earlier petition filed by the petitioner. The contention of the learned counsel for the petitioner that the petitioner's son had made payment @ Rs.300/- per month to the respondents, which they had received, does not persuade this court to hold that the petitioner can hold the property on the same rates, for a period of more than a decade, which were agreed in the year 2012 before issuance of the NIT, which ultimately became subject matter of the earlier writ petition filed by the petitioner.

17. The respondents have rightly raised the liability, on the basis of the quoted bid amount, against the petitioner, for holding the canteen premises in the SDH Bhaderwah for a long period of more than a decade, by making the monthly payments of Rs.300/-, as against his annual bid of Rs.65,500/-, which on a monthly basis comes to Rs.5,458/-. At the most, the petitioner could have sought adjustment, of the amount paid by his son towards the canteen premises, held by him through his son and it is not that the conditions by which the property was

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taken over by him from the respondents in the year 2012 can be asked to hold over the same, for over a decade, without any revision.

18. Having regard to the perusal of the pleadings, rival submissions made on both sides, this court is of the considered opinion that the respondents have rightly raised the financial liability of the petitioner, to be liquidated, based on his offer of bid in the year 2013 in response to the NIT issued with regard to running of the canteen in the hospital premises at Bhaderwah. The respondents, however, are directed to adjust the amount received from the petitioner through his son namely Shahid Hussan, as rent in view of the conditions of 2012 and they are held to be entitled to recover the balance amount from the petitioner.

19. Viewed thus, the petition found to be bereft of any merit and substance, is hereby **dismissed,** along with interim application. No order as to costs.

20. Interim direction shall stand vacated.

(M.A Chowdhary)
Judge

Jammu:
15.10.2026
Raj kumar

Whether the order is speaking? Yes
Whether the order is reportable? Yes

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Raj Kumar
2026.10.15 17:42
I attest to the accuracy and
integrity of this document