

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

LPA No. 113/2021
CM No. 8466/2021,
CM No. 8467/2021,
CM No. 8468/2021,
CM No. 7743/2022,
CM No. 1042/2022,
CM No. 4165/2023

Pronounced on :15.12.2023

Sulabh International Social Service Organization
62/1, Trikuta Nagar, Jammu through its
Hony. Controller, Mr. Anil Kumar Singh,
Aged 55 years, S/O Late Kulananad Singh
Office at 62/1, Trikuta Nagar,
Jammu-180 012 (J&K)

..... Appellant(s)

Through: Mr Sunil Sethi, Sr. Advocate with
Ms. Veenu Gupta, Advocate and Ms.
Surbhi Gupta, Advocate

Versus

1. Saral Sugam Sewa Society
D-5, 348 Sangam Vihar
New Delhi-62.

2. UT of J&K through
Commissioner/Secretary,
Urban & Housing Development Deptt.,
Civil Secretariat, Jammu/Srinagar.

3. Jammu Development Authority,
Through its Vice Chairman/Secretary,
Vikas Bhawan, Rail Head Complex,
Jammu.

4. Superintending Engineer,
Jammu Development Authority,
Vikas Bhawan, Rail Head Complex,
Jammu.

.....Respondent(s)

5. Executive Engineer
 Jammu Development Authority,
 Vikas Bhawan, Rail Head Complex,
 Jammu.

.....Proforma respondent(s)

Through:Ms. Shivani Jalali, Advocate
 Mr. Adarsh Sharma, Advocate.

CORAM:

HON'BLE MR JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

PER BHARTI-J

CM No.8466/2021:

1. It is reported that there is delay of about five years, i.e., 1575 days in preference of the appeal against the order of learned writ Court. The appellant has tried to explain the delay and filed an application for condoning the same on the plea that he acquired the knowledge of the impugned judgment only on 27.10.2021, to which, vide order dated 11.11.2021, the other side was granted 10 days' time for filing response. The detailed objections to the condonation application have been filed contending therein that there is huge delay of five years and the cause enumerated in the application is no cause muchless sufficient to condone the delay.

2. We have gone through the contents of the application and reply filed thereto coupled with the submissions made at the Bar. We are of the view that in the interests of justice, the delay in filing the instant appeal

requires condonation. Accordingly the delay caused in filing the LPA is condoned. Application **disposed** of.

3. Hereinafter, main appeal is taken up for final disposal.

LPA No. 113/2021 a/w connected CM(s)

4. The instant appeal has been filed against the judgment and order dated 16.05.2017 passed in OWP No. 1505/2016 titled *Saral Sugam Sewa Society Vs. State of J&K and others* whereby the writ petition filed by the writ petitioner-respondent No.1 herein, has been allowed by quashing the orders of allotment of contracts.

5. Writ petitioner-respondent No.1 herein filed a writ petition seeking quashment of orders dated 08.09.2016, 20.06.2016 and 20.05.2016 by which the respondent No.5-appellant herein has been allotted the contracts for the work of construction of Sulab Toilet Complexes situate at Rail Head Complex, Jammu, Fruit Market, Narwal, Jammu and Nehru Market, Jammu. When the matter was taken up by learned Single Judge on 16.05.2017, learned counsel for the writ petitioner-respondent No.1 herein as well as respondent-JDA jointly submitted that the controversy involved in the writ petition was squarely covered by the order dated 27.09.2016 passed by the Court in OWP No. 891/2013. On the other hand, learned counsel for the respondent No.5-appellant herein submitted that non-floating of tenders and non-holding of auction was to be result of exercise of executive power in an arbitrary manner. In support of his submissions, the learned counsel for respondent No.5-appellant herein placed reliance on the decisions of the Supreme Court in the cases of *Nagar Nigam, Meerut Versus Al Faheem Meat Exports Pvt. Ltd. And others.*, 2006 Legal Eagles (SC) 1122, *Netai Bag and others Versus State of W.B. and others*, 2000 Legal Eagles (SC) 1481

and Kasturi Lal Lakshmi Reddy, etc. Versus State of J&K and another, 1980 Legal Eagles (SC) 264. In view of the submissions made by learned counsel for the parties, the writ Court after considering the submissions of the parties and perusing the record held that in the case of **Netai Bag** (supra), the Supreme Court has held that by way of exception to the general rule non-floating of tenders and non-holding of auction can be justified and further held that there was no material on record to justify the non-issuance of either NIT or non-holding of auction and the Government in the matter of grant of contract is supposed to act in a reasonable and fair manner and in public interest and accordingly, learned writ Court quashed the impugned orders in view of the reasons assigned in the order dated 27.09.2016 passed in OWP No. 891/2016 and directed Jammu Development Authority to issue NIT for construction of Sulabh Toilet Complexes in question in accordance with law.

6. It is contended that the appellant acquired the knowledge of the impugned judgment and order dated 16.05.2017 only on 27.10.2021 when respondent No.5-appellant during the course of hearing of writ petition *OWP No. 188/2014 titled Saral Sugam Sewa Society Vs. JDA and others* produced a copy of the order and judgment dated 16.05.2017. It is further contended that prior to the said date, the appellant was not at all aware of the passing of the impugned order/judgment dated 16.05.2017.

7. It has also been contended that the appellant organization is a non-government organization (NGO) registered under the Societies Registration Act, 1860 and is involved in the work of alleviating the lot of manual scavengers and providing low cost sanitation to the urban poor and weaker sections of the society. The aims and objects of the appellant-

organization is to construct or get constructed and maintain or get maintained public latrines, baths and urinals for infusing sanitation consciousness among public and for keeping the environment clean, to convert or get converted bucket latrines cleaned by the scavengers into twin pit flush toilets.

8. The Govt. of J&K in the Housing and Urban Development Department has taken various policy decisions to get the community toilet complexes constructed through the appellant. These orders have never been challenged or called in question in any legal proceedings and all such orders and policy decisions taken by the Government of J&K in favour of the appellant for construction of toilet complexes have attained the finality. After the allotment of the works, the appellant started raising the construction on the sites allocated by the respondents 2 to 5 and completed the construction and only plastering work is pending.

9. Learned counsel for the appellant contended that the appellant was not given an opportunity to file objections to oppose the contents of the writ petition which ultimately led to the passing of impugned judgment. Moreover, the right of appellant to file objections was never closed. Had the appellant filed objections to the writ petition there would have been no occasion for the learned Single Judge to arrive at the impugned conclusion. Denial of right to oppose the writ petition by filing objections is burdening the appellant with penal consequences.

10. On the other hand learned counsel for the respondent No.1 contended that appellant had deliberately not filed objections to the writ petition though ample time was given for the same. It is further contended

that the appellant had the knowledge of the judgment passed by the Single Bench as is evident by the order dated 23.04.2021. Any negligence on the part of the counsel in the writ Court is not reporting the same to the present counsel for the appellant would not come under the definition of sufficient cause.

11. Heard learned counsel for the parties and perused the record.

12. The learned Single Judge while passing the impugned order has completely ignored that the appellant had already started the construction on the sites allocated by the respondent nos. 2 to 5 and maximum work had already been completed even before the interim order was passed by the learned Single Judge. To show this fact before this Court, the appellant has filed a separate application for placing on record photographs of actual work done by the appellant which is on the verge of completion.

13. The writ petition filed by the respondent no.1 had challenged the work orders allocated to the appellant by the official respondents on the ground that the same have been issued without issuance of NIT or non holding of auction and the learned Single Judge without inviting objections from the appellant and even without getting objections from the official respondents decided the writ petition by judgment impugned dated 16.05.2017 . Since, the appellant had not been afforded an opportunity to file objections to the very maintainability and admissibility of the writ petition, therefore, the principles of natural justice available to the appellant have been infringed. Besides that, prior to the issuance of the work orders, the approval were accorded by the competent authority which is not challenged by the respondent no.1 before the learned Single Judge and the learned Single Judge has fallen in grave error by quashing the work orders allotted to

the appellant without there being any challenge to the approvals without which the work orders cannot be issued, therefore, the order impugned is not legally sustainable.

14. The learned single judge not only failed to appreciate the law laid down by the Hon'ble Apex Court in *Netai Bag vs State of West Bengal & others*, but, also failed to appreciate the settled proposition of law that the allotment of contracts is not always preceded by tendering process and can also be granted by way of negotiations keeping in view the special attributes and qualification of the organization. In the case at hand, the appellant organization is a renowned organization with respect to the work allotted having experience of more than 30 years. The respondent no. 1 even after passing of the impugned judgement never approached the competent authorities for issuance of NIT and have not even bothered to implement the directions passed by the learned single judge, which speaks volume about their conduct towards the work of public importance.

15. Appellant has filed CM No.4165/2023 for placing on record certain important photographs showing the construction work done so far by the appellant. The said application is supported by an affidavit filed by one Sanjay Kumar Thakur contending therein that after the approval and issuance of work orders to the appellant, the appellant immediately started the construction of Toilet Complexes at different places and the work at Fruit Market Narwal, Jammu is almost 60% complete, work at Nehru Market, Jammu is almost 70% complete, excavation work was done and a huge amount was spent for digging and excavation completing the plinth work at Rail Head Complex, Jammu. The photographs depict the work done by the appellant at these three different places.

16. To ascertain factual position, this Court vide order 12.07.2023 directed counsel appearing for the Jammu Development Authority to file affidavit indicating therein that (i) whether respondents have issued any fresh NIT in terms of the judgment impugned and (ii) whether any structure has been raised in terms of the allotment issued in favour of the appellant.

17. In compliance to order dated 12.07.2023, the Executive Engineer, Jammu Development Authority, Jammu filed an affidavit deposing that no fresh NIT has been issued as on date. It is further stated that the appellant started construction of Toilet Complex situate at Narwal behind OB-8 Complex and the structure raised was incomplete. Similarly, the appellant started construction of Toilet Complex at Nehru Market, Jammu and the same was stopped due to stay order and the structure raised was incomplete. However, no construction has been raised by the appellant for the Toilet Complex, proposed to be constructed near Lemon Tree Hotel Rail Head Complex, Jammu.

18. It may not be out of place to mention here that the projects of public importance cannot be stalled half way as it proves to be detrimental to the society at large. In terms of the affidavit filed by Executive Engineer, Jammu Development Authority, more than 50% of the construction work at Narwal and Nehru Market is completed and this Court without going into the merits of the case, deems it appropriate to modify the order of learned writ Court dated 16.05.2017 to the extent that the construction work of Toilet Complex situate at Narwal behind OB-8, Complex and Nehru Market, Jammu which is nearing completion is allowed to be completed in terms of the allotment orders issued by the respondent- Jammu Development Authority, Jammu and fresh NIT shall be issued by the respondent-JDA

