



**UNION TERRITORY OF JAMMU & KASHMIR**  
**DIRECTORATE OF HEALTH SERVICES, JAMMU**

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Subject: - OWP No:-36/2019 titled C.L.Sons & anr Vs State of J&K & Ors.

**ORDER**

Whereas, the Hon'ble High Court at Jammu has disposed of the writ petition filed by the petitioner, on 22-02-2019, with the judgment whose operative portion reads as under:-

**“This petition is disposed of with a direction to the respondents to determine the entitlement of the petitioner and consider payment of such amounts as are payable to the petitioner. Let a decision in this regard be taken within four weeks from today.”**

Whereas, the petitioners have filed the writ petition seeking directions to command the respondents to release the outstanding payment to the tune of Rs. 43,77,250/- in favour of petitioners and further to command the respondents to pay to petitioners an interest at the market prevalent rate of 12% on the payments which are lawfully due to petitioners, and;

Whereas, the petitioners, inter-alia, have stated in the writ petition that in the month of June, 2018, Directorate of Health Services, Jammu has issued supply order bearing No:-DHS/J/360-66, dated 23-06-2018 in favour of petitioner's firm for arranging supply of various hospital furniture items including Fowler Beds and in this regard, Directorate of Health Services, Jammu approved such rate and terms and conditions for making supply as earlier approved by Managing Director, Jammu & Kashmir Medical Supplies Corporation Limited vide Rate Contract bearing No:- JKMSCL/Gen/Adm/RC/2015/ 110, dated 28-11-2015. It has further been stated that after obtaining the supply order from the Directorate of Health Services, Jammu the petitioners firm made supplies within time stipulated under the supply order and invoice/bill was also raised. The petitioner has further contended in the writ petition that due verification was conducted and

material supplied by the petitioners but till date payment amounting to Rs. 43, 77,250/- has not been released, and;

Whereas, consequent upon judgment of the Hon'ble Court the matter was referred to the Administrative Department, Health and Medical Education vide letter No:-DHSJ/Legal/17612, dated 02-03-2019. However, in the meantime, the petitioner filed contempt petition in the Hon'ble High Court bearing CP(OWP) No. 77/2019. In response to this office letter dated 02-03-2019, the Administrative Department, vide letter No:-HD/Legal/Genl/MR-32/2019, dated 20-05-2019, has requested this Directorate to determine the entitlement of the petitioners, the amount due to them in first instance and thereafter take appropriate decision for considering the payment of such amounts as are payable to the petitioners and after taking appropriate decision in the matter get the compliance report filed in the contempt petition filed by the petitioner, and;

Whereas, consequently, a committee was constituted by this Directorate, vide Order No:-DHSJ/Legal/4062-67, dated 28-06-2019, to examine the whole issue circumspectly and to determine the entitlement of the petitioners, and;

Whereas, the committee after conducting an enquiry into the matter submitted its report with the following recommendations:-

*"Keeping in view the above observations and the facts that although codal formalities for procurement of fowler beds had not been fulfilled but the supplier has supplied the items requisitioned and they are in use. The issue of payment of an amount of Rs. 4958549.00 as certified by COS (H) vide his letter No:- COSH/J/946-48, dated 01-10-2019 may be settled after seeking legal opinion from the concerned section."*

Whereas, the matter was taken up with the then Sr. Addl. Advocate General, Jammu for his legal opinion in the matter and the Sr. Addl. Advocate General suggested the following course of action:-

- i. *The Administrative Department may be approached for accord of post facto sanction to the purchases in the light of justification which the department may submit.*
- ii. *The authority responsible for adopting such a course needs to be put to notice to explain as to why the codal formalities were not adopted in the instant case and why no prior approval has been obtained from the Administrative Department for departure from the set norms. Depending upon the explanation, the department may consider further course of action under rule.*



Whereas, consequent upon the advice of Sr. Addl. Advocate General the matter was taken up with the Administrative Department, vide letter bearing No:-DHSJ/Legal/12324-26, dated 25-11-2019 and in response thereof the Administrative Department vide communication bearing No:-HD/Legal/Genl/MR-32/2019, dated 01-01-2020 asked to furnish justifications as to why the codal formalities were not adopted and why prior approval has not been obtained from the Administrative Department leading to the departure from the set norms. This communication of the Administrative Department was responded by this Directorate, vide letter No:-DHSJ/Legal/14472, dated 06-01-2020, by stating that the supply order was placed by the then Director Health Services, Jammu, who has now retired from Government services, without adopting the codal formalities and without seeking prior approval from the Administrative Department, and;

Whereas, the Administrative Department, vide communication bearing No:-HD/Legal/Genl/MR-32/2019-I, dated 16-10-2020 advised to release Rs. 4958549/- to clear the payment of M/S C.L.Sons out of the available resources(Revenue/Capex Budget) under the object head: "Furniture/Fixture" during the current financial year 2020-21, subject to the condition that a departmental committee is constituted who shall vouchsafe the technical and financial requirements for making the payment, and;

Whereas, following the advice of the Administrative Department a department committee was constituted vide Order No:-DHSJ/Legal/12721-25, dated 05-12-2020 and the committee submitted its report with the following recommendations:-

*"On perusal of the aforesaid observations and facts, the committee has been given to understand that a Committee comprising of officers of Senior Cadre has already submitted the inquiry report vide No:-DHSJ/10282, dated 10-10-2019 to then Director Health Services Jammu wherein the entitlement of the petitioner and recommendation for amount payable to the petitioner has already been confirmed. Further Sr. Additional Advocate General, Jammu has recommended to seek post facto sanction from the Administrative Department to the said purchase plus calling an explanation from the authority responsible for adopting departure from the set norms. The chronology of communications thereafter reveals the course of action advised by Director Finance vide letter No:-HD/Legal/Gen/MR-32/2019-I, dated 16-10-2020 to release an amount of Rs. 4958549/- to clear the payment of M/S C.L.Sons out of the available resources (Revenue/Capex Budget) under the object Head Furniture/Fixture during the current financial year 2020-21, subject to the condition that a departmental committee is constituted who shall vouchsafe the technical and financial requirements for making the payment. The advice has been accompanied with the clear instructions to observe all the required formalities before releasing the funds.*



*In light of such instructions, the committee considers it imperative to state that the fulfillment of codal formalities and vouchsafing technical and financial requirements is a pre-emptive exercise that on record has been violated resulting in non clearance of the said liability till date. Such compliance of instructions from the Administrative Department, by the committee at this juncture is impossible when the procurement has already been done with departure from set norms.*

*With reference to the operative part of the judgment, the committee has observed that it is purely due to gross violation of codal procedures that the said payment has been withheld, not cleared till date and is not due to any extraneous considerations or without any justifiable reasons, as pointed out.*

*With due reverence to the court judgment and contempt proceedings looming large, the committee recommends that the Authority Competent may view the possibility to authorize one time exception for waving off the Codal formalities in this procurement so as to facilitate the consideration of payment to the supplier."*

Whereas, consequent upon the recommendations of the departmental committee so constituted on the advice of Administrative Department, the matter was again taken up with the Administrative Department, vide letter No:- DHSJ/Legal/13799-800, dated 23-12-2020 asking to authorize one time exception for waiving off the Codal formalities in the procurement so as to facilitate release of payment to the petitioner, and;

Whereas, the proposal of the Departmental Committee to waive off the Codal formalities for procurement of furniture was taken up with the Finance Department by the Administrative Department and the Finance Department returned the proposal vide U.O No. FD-VII-17(01)2010/98-I-Part dated 23-06-2021 with the following advisory:-

*"The department is advised to submit the proposal as per the General Finance Rule, 2017 for consideration of Finance Department."*

Whereas, the Administrative Department after examining the case in terms of GFR-2017, the proposal was again forwarded to the Finance Department and vide U.O No. FD-Code/292/2021-02-10995) dated 25-08-2021, it was advised by the Finance Department to seek the opinion of the Law Department, and;

Whereas, as per the advice of the Finance Department, the Administrative Department took up the matter with Law Department for opinion/ advice and in response thereof the Law Department vide UO No. File No. LAW-LIT3/197/2021-10, dated 29-09-2021 intimated that the instant issue was placed before the Ld. Advocate General for his valuable opinion/advice and opined as under:-



*"The issues regarding non-fulfillment of the codal formalities viz placing of supply order without obtaining non availability certificate from the concerned authority and there being no deliberation by the Purchase committee, are the issues which are to be dealt with administratively for necessary action against the delinquent. So far as other aspects regarding mitigation of consequences flowing from the non-compliance of codal formalities can be examined and dealt with by the Finance Department.*

*Department is advised to proceed accordingly in the matter."*

Whereas, in pursuance of the advice of the Law Department, the matter was again forwarded to Finance Department and it was returned vide U.O No. FD-Code/292/2021-02-268(S) dated 17-11-2021 with the following remarks:

*"The department is advised to intimate the rates at which the furniture has been purchased are reasonable as compared to the market rates at that point of time."*

Whereas, consequently, the Administrative Department, vide communication bearing No:-HD-Legal/37/2021-02, dated 30-11-2021 asked this Directorate to furnish reply in light of the observation raised by the Finance Department. Thereafter, this Directorate vide communication bearing No:-COS/J/1305-08, dated 04-12-2021 asked the J&K Medical Supply Corporation Ltd to authenticate that the rate contract was valid/reasonable at the time of placing the above said supply order issued by the then Director Health Services, Jammu, and;

Whereas, the General Manager, J&K Medical Supplies Corporation Ltd, vide letter No:-JKMSCL/GM/K/110/7107-111, dated 29-9-2022 communicated that regarding validity of Rate Contract the LOI for Fowler Bed against mentioned NIT was issued on 18-03-2016 and as per terms and conditions of NIT it was valid till 17-03-2017, extendable for 90 days. As far as reasonability of rates is concerned, it has been intimated that out of seven bidders, the contract was issued in favour of L1 bidder @ Rs. 17509.65 per bed, as per approved specifications and standard procurement procedures of JKMSCL, and;

Whereas, the above information of J&K Medical Supplies Corporation was shared with the Administrative Department, vide this office communication No:-DHSJ/Legal/9892-93, dated 12-10-2022 (inadvertently written 2021), who took up the matter with the Finance Department vide U.O. dated 07-11-2022 and the said Department while returning the file vide U.O No. FD-Code/69/2021-03-1730, dated 21-12-2022 has conveyed the following advice:-

*"Returned: Finance Department has issued Circular No. A/40(2017)-288 dated 17-03-2021, where it has been laid down that cases of goods and services procured as per norms laid down in the transparent manner and duly verified, can be processed for payment as per GFR-2017. As such, the Department is advised to issue speaking order, as directed by the Hon'ble Court."*


Whereas, the Administrative Department, vide communication bearing No. HD-Lgal/37/2021-02(CC-31213) dated 26-12-2022, advised to proceed in the matter as per advice of Finance Department and consequently the matter has been deliberated by this Directorate, with reference to the recommendations of the departmental committee, whereby the matter was taken up with Administrative Department requesting for one time exception for waiving off the Codal formalities in the procurement and in response thereof the Administrative Department has conveyed to proceed in the matter in terms of Finance Department Circular No. A/40(2017)-288 dated 17-03-2021, and it has been observed that the claim of the petitioner does not fulfill the norms as per the above mentioned Circular of Finance Department as the purchases have not been made in transparent manner.

Sd/-  
(Dr. Saleem-Ur-Rehman)  
Director Health Services  
Jammu

No:-DHSJ/Legal/14487-90  
Copy to the:-

Dated:-16/01/2023

1. Chief Accounts Officer, Directorate of Health Services, Jammu for information.
2. Controller of Stores (Health), Directorate of Health Services, Jammu for information.
3. Private Secretary to Secretary to Govt., Health and Medical Education Department, Civil Secretariat, Jammu for information.
4. HEB Section to upload the order on official website.
5. Petitioner's Firm M/S C.L.Sons.

  
(Dr. Rajeev K. Sharma)  
Dy. Director Health Services (HQ)  
Jammu