

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

WP(C) No.1525/2022

Reserved on 15.09.2022.

Pronounced on 16.11.2022.

Hotel Corporation of India Ltd.

..... petitioner (s)

Through :- Mr. Z.A.Shah Sr. Advocate with
Ms. Humaira Shafi Advocate.
Mr. T.H.Khawaja Advocate.
Mr. R.A.Jan Sr. Advocate with
Mr. Aswad Attar Advocate &
Mr. Taha Khaleel Advocate
Mr. Shuja Ul Haq Advocate

V/s

UT of J&K and ors

.....Respondent(s)

Through :- Mr. D.C Raina Advocate General
with Mr. Illyas Nazir Laway, G.A.

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

IA No. 3893/2022

This is an application by the BD & P Hotels (India) Pvt. Ltd., a company incorporated under the Companies Act, 1956 seeking impleadment/intervention in the writ petition on the ground that the applicant has vital interest in the outcome of the writ petition, in that, the petitioner-Corporation has already entered into a management contract with the petitioner-Corporation and there is also in existence an arbitral award passed in its favour and against the petitioner-Corporation.

Having heard Mr. Shuja-Ul-Haq, learned counsel appearing for the applicant and perused the application, I am of the view that the dispute raised in this petition pertains to termination of lease and issuance of notice of eviction by the Government of Union Territory of Jammu and Kashmir against the petitioner-Corporation and, therefore, no third party including the applicant, who may have entered into some contract with the petitioner-Corporation, is a necessary party, though Mr Shuja-Ul-Haq, learned counsel for the applicant was given an opportunity to assist the Court.

The application, for the reasons aforesaid, is therefore, dismissed.

CM No. 3815/2022

This is an application by the Centaur Hotel Employees Union through its President seeking leave to intervene in the matter.

The applicants submit that they being the employees of the petitioner-Corporation would be vitally affected by the outcome of the writ petition. It is further submitted that the termination of lease and eviction of the petitioner would entail serious consequences to the applicants who may lose their jobs.

Having heard Mr. R.A.Jan learned Senior Counsel appearing for the applicants and perused the material, I am of the view that there is hardly any need for the employees of the petitioner-Corporation to intervene in the matter, more particularly when the petitioner-Corporation is vehemently contesting termination of its lease as also the eviction notice issued to it. However, Mr. Jan learned Senior Counsel was also heard in the matter purely for assisting the Court.

The application is, therefore, not maintainable and the same is, accordingly, dismissed.

WP(C) No. 1525/2022

1 The petitioner is a Company registered under the Companies Act having its registered office at Hotel Centaur, IGI Airport, New Delhi. Being a Public Sector Undertaking, the petitioner-Corporation carries out its functions under the aegis of Ministry of Civil Aviation, Government of India. The Centaur Lake View Hotel, Srinagar established by the petitioner-Corporation on the land taken on lease from the erstwhile State of Jammu and Kashmir is one of the Units of the petitioner-Corporation. Pursuant to a Cabinet Decision No. 137 dated 25.06.1979 and in terms of Government Order No. 118 dated 17.10.1981, a piece of land measuring 03 acres was leased out to the petitioner-Corporation by the Government of Jammu and Kashmir for a period of 99 years. A formal lease agreement was drawn between the parties on 10.03.1982. It is this lease agreement granted by the Government of Jammu and Kashmir which came to be terminated by the Secretary to the Government, Department of Tourism, Government of Jammu and Kashmir vide Notice bearing No.TSM-PLG/8/2021 dated 27.12.2021. As a consequence of termination of the lease and on failure of the petitioner-Corporation to hand over the possession of the leased premises to the respondents, proceedings under the Jammu and Kashmir Public Premises (Eviction of unauthorized Occupants) Act, 1988 [‘the Act of 1988’] were initiated. A show cause notice, in terms of Section 4(1) of the the Act of 1988 was issued to the petitioner-Corporation. The reply submitted by the petitioner-Corporation to the aforesaid show cause notice was considered by the Estates Officer/Additional Deputy Commissioner, Srinagar and having

found the same totally non-satisfactory, the Estates Officer concerned vide Notice No.ESI/PPEK/03/2022 dated 25.04.2022 issued under Section 5(1) of the Act of 1988 ordered the petitioner-Corporation to vacate the leased premises within forty five days (45) days of the publication of order. It was also made clear to the petitioner-Corporation that in case of failure to comply with the said order, the petitioner-Corporation would be evicted, if necessary, by use of force.

2 The petitioner-Corporation, apart from assailing the termination notice, is also aggrieved by the eviction notice dated 25.04.2022 issued by the Estates Officer concerned and the order dated 30.06.2022 passed by the Appellate Authority under the Act of 1988 dismissing the appeal of the petitioner-Corporation against the eviction notice.

3 The impugned notice and the order of the Appellate Authority have been assailed by the petitioner-Corporation on variety of grounds. Before I advert to the grounds of challenge urged by Mr. Z.A.Shah, learned Senior Counsel ably assisted by Mr. T.H.KHawaja Advocate, I am of the view that it is necessary to first understand the status of two litigating parties before me.

4 Indisputably, the Hotel Corporation of India Ltd. is an autonomous body/Public Sector Undertaking subject to ultimate administrative control of the Ministry of Civil Aviation, Government of India. The other party to the litigation is the Government of UT of Jammu and Kashmir which under the Constitution of India is administered by the Ministry of Home Affairs, Government of India. So far as the status of the petitioner-Corporation is concerned, it is beyond any cavil that it is a Public Sector Undertaking subject to the final administrative control of Ministry of Civil Aviation. It is, thus, a

Corporation which is fully funded, controlled and administered by the Government of India. The documents on record placed by both the sides substantiate the aforesaid position.

5 There is no dispute with regard to the fact that the leased premises was the property of the erstwhile State of Jammu and Kashmir and the same was leased out by the then Government of Jammu and Kashmir in the year 1982 to the petitioner-Corporation for a period of 99 years on the terms and conditions enumerated in detail in the lease agreement executed between the parties. The erstwhile State of Jammu and Kashmir was divided in two Union Territories i.e, the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh by the Act of Parliament known as the Jammu and Kashmir Reorganization Act, 2019 [‘the Reorganization Act’]. In this way, the erstwhile State of Jammu and Kashmir ceased to be the State of Union of India and became the Union Territory of Jammu and Kashmir and Union Territory of Ladakh respectively w.e.f 31.10.2019.

6 Section 84 of the Reorganization Act provides for apportionment of assets and liabilities of the erstwhile State of Jammu and Kashmir between the successor Union Territory of Jammu and Kashmir and the successor Union Territory of Ladakh. In short, all the assets and liabilities of the erstwhile State of Jammu and Kashmir subject to their apportionment under Section 84 of the Reorganization Act have become the assets and liabilities of Union Territory of Jammu and Kashmir.

7 At this stage, it may be relevant to allude to Section 13 of the Reorganization Act which reads thus:

“13. Applicability of article 239A of Constitution.

On and from the appointed day, the provisions contained in article 239A, or any other Article containing reference to elected members of the Legislative Assembly of the State which are applicable to Union territory of Puducherry, shall also apply to the 'Union territory of Jammu and Kashmir'.

8 The Union Territory of Jammu and Kashmir with a legislature was, thus, created on the model of Union Territory of Puducherry under Article 239A of the Constitution of India. Part VIII of the Constitution of India deals with Union Territories. Article 239 of the Constitution lays down that every UT shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify. This is, however, subject to the contrary, if any, provided by the Parliament by law.

9 From a plain reading of Article 239, it is abundantly clear that, save as otherwise provided by the Parliament by law, every UT is to be administered by the President through an administrator to be appointed by him. Viewed thus, as per Article 239, the Union Territory of Jammu and Kashmir shall also be administered by the President through the Lieutenant Governor appointed by him. This is, however, subject to anything contrary provided by the law enacted by the Parliament.

10 We have the Reorganization Act, a law made by the Parliament in respect of the Union Territory of Jammu and Kashmir and UT of Ladakh. The Reorganization Act provides for creation of UT of Jammu and Kashmir with a legislature on the pattern and on the analogy of UT of Puducherry created under Article 239 of the Constitution of India. Section 14 of the Reorganization Act clearly provides that there shall be an administrator appointed under Article 239 of the Constitution of India for the UT of Jammu and Kashmir and

shall be designated as Lieutenant Governor of the UT of Jammu and Kashmir. The Legislative Assembly has been empowered to make laws for the whole or any part of UT of Jammu and Kashmir with respect to matters enumerated in the State List except subjects mentioned at entries 1 and 2, namely 'public order' and 'police' respectively or the Concurrent List in the Seventh Schedule to the constitution of India, insofar as any such matter is applicable in relation to Union Territories. This is so provided in Section 32 of the Reorganization Act.

11 From a reading of the entire Reorganization Act, it transpires that, though UT of Jammu and Kashmir has been envisaged to be a Union Territory with a State legislature having conferred legislative powers, yet the final control of the Union Territory vests in the President who exercises such control through the Lieutenant Governor of Union Territory of Jammu and Kashmir.

12 Without dilating much on the issue and being convinced that Union Territory of Jammu and Kashmir is not an entity fully autonomous in its functioning and also having regard to the fact that affairs of the Government of Jammu and Kashmir are monitored and controlled by the Government of India through the Ministry of Home Affairs, I, for the purposes of discussion, I am undertaking hereinafter, treat the UT of Jammu and Kashmir as part of Government of India. The dispute raised in this petition is, thus, a dispute between an Autonomous Body (the petitioner-Corporation) fully owned, controlled and administered by the Ministry of Civil Aviation, Government of India and the Union Territory of Jammu and Kashmir which is administered by the President of India through Lieutenant Governor who is answerable to the President through the Ministry of Home Affairs, Government of India.

Thus, such disputes between the two limbs of Government of India should not be brought to the Court, to be fought for years at the expense of public exchequer.

13 The Hon'ble Supreme Court has, on more than one occasion, noticed the tendency of various Government Departments and the Public Sector Undertaking entering into litigation *inter se* and consuming public time and public exchequer. The Supreme Court in the following cases set up a mechanism for reconciliation, arbitration and resolution of disputes between the two Departments of the Government or between a Government and the PSU.

(i). ONGC vs. Collector of Central Excise, 1995 Supp, and (ii) ONGC vs. City and Industrial Development Corporation Maharashtra Ltd., and others, (2007) 7 SCC 39.

14 The Alternative Dispute Resolution Mechanism suggested and set up by the Supreme Court was, however, later reviewed by the Supreme Court in the case of **Electronics Corporation of India vs. Union of India, (2011) 3 SCC 404**. The Supreme Court though found the principle and the object behind the passing of various orders by it in the supra judgments unexceptionable and laudatory, but noted that the experience had shown that despite best efforts of the Committee of disputes (COD), the mechanism did not achieve the desired results. The mechanism provided was found counterproductive and led to delays in litigation. The Supreme Court, therefore, recalled all the orders passed in the aforesaid cases. Notwithstanding the recall of the directions issued by the Supreme Court in the aforesaid cases setting up a mechanism for resolution of inter-departmental disputes and the disputes between one Department of the Government and the Public Sector Undertaking, the

Government of India through the Ministry of Law and Justice promulgated detailed instructions/guidelines for settlement of disputes other than relating to taxation. This was done by the Ministry of Law and Justice, Department of Legal Affairs vide Office Memo No. 334774/DoLA/AMRD/2019 dated 31.03.2020. The Office Memo issued by the Ministry of Law and Justice is significant for our purpose and is, therefore, set out below:

“No. 334774/DoLA/AMRD/2019

Government of India Ministry of Law & Justice

Department of Legal Affairs

*Shastri Bhawan, Rajendra Prasad Road,
New Delhi-110001. Dated the 31st
March, 2020*

OFFICE MEMORANDUM

Subject: Settlement of disputes other than taxation between Government Ministries / Departments inter se and between Government Ministries / Departments and other Ministries / Departments / Organization(s) – Administrative Mechanism for Resolution of Disputes (AMRD).

Instructions have been issued to Ministries / Departments of the Governments of India, in the past to avoid inter-departmental litigations in any Court of law, including by all CPSEs / Boards / Authorities, etc., under their Administrative control and to resolve the same amicably or through Arbitration.

2. In order to provide for an institutionalized mechanism for resolution of such disputes, Secretary, Department of Legal Affairs has vide DO letter No. 332619/338367/LS/2019 dt. 28th February, 2020 (copy enclosed) advised all Secretaries to the Government of India that the existing Administrative Mechanism for Resolution of Commercial Disputes(AMRCD), currently applicable to commercial disputes between CPSEs inter se and also between CPSEs and Government Departments / Organisations, shall stand extended for resolution of disputes other than taxation, between Ministries / Departments inter se and between Ministries / Departments and other Government Ministries / Departments / Subordinate / Attached offices /

Autonomous and Statutory Bodies under their administrative supervision/control. Details of the new mechanism, namely, Administrative Mechanism for Resolution of Disputes (AMRD), are hereby outlined for guidance.

3. Applicability

AMRD shall apply to any/all dispute(s), other than those related to taxation, between Central Government Ministries / Departments inter se and between Central Government Ministries / Departments and other Ministries /Departments / Organisation(s) / Subordinate / Attached Offices/Autonomous and Statutory Bodies, etc., under their administrative supervision / control.

4. Structure

(i) Disputes, other than taxation, shall be referred at the First level (tier), to a Committee comprising of Secretaries of the Administrative Ministries / Departments to which the disputing Parties belong and Secretary, D/o Legal Affairs;

(ii) The Joint Secretaries (JSs) / Financial Advisors (FAs) (for commercial disputes) of the two concerned Administrative Ministries / Departments may represent the issues, related to the dispute in question, before the Committee.

(iii) In case the two disputing parties belong to the same Ministry / Department, the above Committee may comprise of the Secretary of the administrative Ministry / Department concerned and Secretary, D/o Legal Affairs. Secretary, Department of Public Enterprises may be invited in case the dispute pertains to a CPSE.

(iv) The resolution of such disputes shall be by unanimous decision of the Committee.

(v) In case the dispute remains unresolved after consideration by the Committee, it will be referred at the Second level (tier), to the Cabinet Secretary, whose decision will be final and binding on all concerned.

5. Procedure

(i) At the First level (tier), the claiming party (Claimant) may be represented, before the Committee, by the JS / FA of the administrative Ministry / Department. The Secretary of administrative Ministry / Department of claiming party will inform in writing the details of the dispute, to the Secretary of

administrative Ministry / Department of responding party (Respondent) and Secretary, D/o Legal Affairs and request for convening a meeting. Thereafter meetings may be held to examine the facts and resolve the dispute on merit. The JSs / FAs of the concerned administrative Ministries / Departments will represent the issues, related to the dispute in question, before the above Committee. After the Committee arrives at a decision, it shall be signed by the members of the Committee. A copy of the decision will be communicated by the Secretary of the administrative Ministry / Department of the claiming party to members of the Committee and to each party to the dispute for implementation.

(ii) The Committee of Secretaries at the First level (tier) shall finalise its decision within 3 months after having received the reference/notice in writing regarding the dispute from the concerned aggrieved party.

6. Appeal

Any party aggrieved with the decision of the Committee at the First level (tier) may prefer an appeal before the Cabinet Secretary at the Second level (tier) within 15 days from the date of receipt of decision of the Committee at the First level, whose decision will be final and binding on all concerned.

7. All administrative Ministries / Departments are requested to bring these guidelines to the notice of all Authorities / Boards / Subordinate / Attached Offices / Autonomous and Statutory Bodies, etc., under their administrative supervision/control for strict compliance.

8. This issues with the approval of the Competent Authority”.

15 From a reading of the Office Memo (supra) in its entirety, it is evident that notwithstanding the recall of mechanism in place pursuant to the directions of the Supreme Court, the Government of India has devised an institutional mechanism for resolution of disputes other than those related to taxation, between Central Government Ministries/Departments *inter se* and between Central Government Ministries/Departments & other Ministries/Departments/Organization(s)/

Subordinate / Attached Offices / Autonomous and Statutory Bodies, etc., under their administrative supervision / control. The Office Memo provides two tier structure for resolution of the disputes. The First level (tier) consists of a Committee comprising of Secretaries of the Administrative Ministries / Departments to which the disputing Parties belong and Secretary, Department of Legal Affairs. For commercial disputes, the First level Committee shall consist of Joint Secretaries/ Financial Advisors of the two concerned Administrative Ministries / Departments. It is further provided that in case the dispute remains unresolved after consideration by the Committee, it shall be referred at the Second level (tier), to the Cabinet Secretary, whose decision shall be final and binding on all concerned. The memo further provides that any party aggrieved by the decision of the Committee at the First level (tier) may prefer an appeal before the Cabinet Secretary at the Second level (tier) within 15 days from the date of receipt of decision of the Committee at the First level, whose decision shall be final and binding on all concerned Departments.

16 The office memo has been directed to be brought to the notice of all the Authorities / Boards / Subordinate / Attached Offices / Autonomous and Statutory Bodies, etc., under their administrative supervision/control for strict compliance. This office memo is on the website of the Ministry of Law and Justice and has not been revoked or recalled.

17 I gave carefully gone through the record placed before me and am of the view that the dispute with regard to the termination of lease by the Government of Union Territory of Jammu and Kashmir which operates and

functions under the aegis of Ministry of Home Affairs, Government of India and the Hotel Corporation of India which is financed, controlled and administered by the Ministry of Civil Aviation, Government of India as also the dispute in respect of consequent eviction ordered by the Estates Officer of Union Territory of Jammu and Kashmir against the petitioner-Corporation are the disputes which can be resolved through the Administrative Mechanism for Resolution of Disputes (AMRD) by relegating the parties to the mechanism set out in the office memo dated 31.03.2020 (supra).

18 I am aware that at an earlier occasion when a dispute had arisen between the petitioner-Corporation and the erstwhile State of Jammu and Kashmir in respect of award of management contract by the Corporation to a third party and the claim put forth by the then Government of Jammu and Kashmir to retrieve the leased premises, the Dispute Resolution Mechanism, then in place, in terms of the orders by the Supreme Court in ONGC matters, was resorted to. I also find that, at one point of time, it was decided by the petitioner to cancel the management contract entered into with the third party and transfer the leased premises back to the State of Jammu and Kashmir. However, for reasons which are not discernible from the record, the resolution of the dispute between the then Government of Jammu and Kashmir and the petitioner Corporation remained unresolved. However, due to subsequent developments and with the coming into existence of UT of Jammu and Kashmir in place of the then State of Jammu and Kashmir, the Government of UT of Jammu and Kashmir decided to retrieve the leased premises from the petitioner- corporation and proceeded to terminate the lease on the ground that

the petitioner-corporation had violated the terms and conditions of the lease agreement.

19 Be that as it may, the dispute between the parties now is in respect of termination of lease and the issuance of notice of eviction under the Act of 1988. The termination of lease and issuance of eviction notice by the Government of Jammu is resisted by the petitioner corporation. Many issues of law and fact were debated before me in the matter. However, instead of going into all these issues and having regard to the fact that the dispute is between two limbs of Government of India, it would be desirable to relegate the parties to the Administrative Dispute Resolution Mechanism provided under the Office Memo (supra).

20 This petition is, accordingly, **disposed of** with the following directions:

(A). The Government of India through its Cabinet Secretary shall constitute a Committee comprising of (i) Secretary to the Government Ministry of Civil Aviation, (ii) Secretary to the Government, Department of Home Affairs, and (iii) Secretary, Department of Legal Affairs to adjudicate the dispute in question that has arisen between the petitioner-Corporation and the Government of UT of Jammu and Kashmir;

(B). Effort shall be made to resolve the dispute amicably by following as far as practicable the mechanism provided under Office Memorandum dated 31.03.2020 (supra);

(C) Needless to say that in case any of the parties is aggrieved by the decision of the Committee aforesaid, it shall be open to it to file an appeal under para 6 of the memo before the Cabinet Secretary whose decision, on the subject, shall be final and binding on both the parties;

(D) Should the Committee at its level fail to resolve the dispute between the parties for any reason whatsoever, the matter shall be referred to the Cabinet Secretary whose decision shall be final and binding on all the concerned; and,

(E). The Committee shall be free to put on notice any Department, Officer or official of Government of India or Government of Union Territory of Jammu and Kashmir to elicit any information or record.

21. Let the Government of India/Cabinet Secretary constitute a Committee within a period of four weeks from the date of judgment under an intimation to the disputing parties. The Committee shall hear all the stakeholders and finalize its decision within a period of two months. Till a final decision on the matter is taken by the Competent Authority, there shall be status quo in respect of leased premises.

22 It is made clear that this Court has not expressed any opinion on the merits of the case and that the office memo dated 31.03.2022 shall be read subject to the directions issued hereinabove. In case of any conflict, the directions of this Court shall prevail.

(SANJEEV KUMAR)
JUDGE

16.11.2022
Sanjeev

Whether order is speaking:Yes

Whether order is reportable:Yes