

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

Case: WP(C) No. 205/2022

Mohd. Farooq Shawl, Age 66 years
S/o Sh. Abdul Hamid
R/o Ward No. 2, Gujjar Mandi
Tehsil & District Rajouri.

..... Petitioner(s)

Through :- None.

Vs

01. Union Territory of J&K
Through Chief Engineer
Public Works Department (R&B)
Lok Nirman Bhawan Bahu Plaza
Jammu.

.....Respondent(s)

02. Superintendent Engineer
Public Works Department (R&B)
Circle Rajouri-Poonch
HQ Rajouri J&K 185131.

03. Executive Engineer
Public Works Department (R&B)
Circle Rajouri-Poonch
HQ Rajouri J&K 185131.

Through :- Mr. Ravinder Gupta, AAG

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT(ORAL)

11.08.2025

BRIEF FACTS:-

01. The petitioner through the medium of instant petition has sought the following reliefs.

- i) **Writ of Certiorari:** whereby quashing the corrigendum bearing No. 1323-43 dated 31.01.2019 issued by respondent No. 3, is

patently illegal and un-constitutional.

- ii) **Writ of Mandamus**: commanding upon the respondents to release an amount of Rs. 9,85,932/- (Rupees nine lac eighty five thousand nine hundred and thirty two only) along with interest @ 24% p.a. in favour of the petitioner with respect to the execution of work allotted to him by the respondents vide allotment order No. EER/R&B/6/2018-19/12512-17 dated 29.01.2019 and E-NIT No. 96/18-19 dated 3/1/2019 with respect to construction of 12 nos community Bunker in Border Area of Rajouri District Block Rajouri.

STAND OF THE PETITIONER:-

02. The brief case of the petitioner, which has been projected in the instant petition is that the petitioner being a leading contractor has executed number of Govt. contracts and has participated in e-tenders. In response to the invitation of e-tender, the petitioner submitted a bid for construction of 12 community bunkers in Border Area of Rajouri District, Block Rajouri vide E-NIT No. 96/2018-19 dated 03.01.2019. After entering into contract and issuance of the work order, a corrigendum dated 31.01.2019 was issued, which according to the petitioner is not permissible under law and has challenged the same in the present petition.
03. The further case of the petitioner is that the petitioner being a successful bidder, the work was allotted to the petitioner through NIT bearing No. EER/R&B/6/2018-19/12512-17 dated 29.01.2019 issued in pursuant to E-NIT No. 96 of 2018-19 dated 03.01.2019. It has been further projected

that along with the contract allotment, the respondents also provided a rate list which was also the part of allotment order dated 29.01.2019.

04. The further stand of the petitioner is that following the work allotment order dated 29.01.2019, the respondents directed the petitioner to execute the agreement within 7 days and subsequently to commence the allotted work. In compliance with the said directions, the petitioner executed the agreement with the Executive Engineer PWD (R&B) Division Rajouri vide No. 170/OW dated 08.02.2019. Also, the petitioner had deposited the earnest money of Rs. 204000/- through a TDR dated 19.01.2019.
05. The further case of the petitioner is that respondents have specified the rates of Item no. 5 in Annexure-A of the rate list attached to the allotment order, which reads as under:-
- “In 5.00 Providing an laying in position specified grade of reinforced cement concrete excluding the cost of centering, shuttering, finishing and reinforcement-All work upto plinth level 1.1.5:3 (1 cement: 1:5 coarse sand: 3 graded stone aggregate 20 mm nominal size) including curing, all leads/lifts and carriages (Complete job).”**
06. The petitioner upon raising the construction of Bunker, as per the allotment submitted an application before the respondents requesting, for release of the cost of centering and shuttering items as per the rates approved by the official respondents while allotting the contract to the petitioner, which amounts to Rs. 9,85,932/-.
07. It has also been pleaded that the respondents duly accepted the said bill and admitted their liability being satisfied with the work executed by the

petitioner, thus the respondents were under an obligation to release the admitted amount, however, despite several applications submitted in this regard, the payment has not yet been made.

08. Further on 31.01.2019 the petitioner came to know that some corrigendum has been issued by the Executive Engineer, a perusal whereof reveals that by virtue of the said corrigendum certain changes have been made, which reads as under:-

“Providing and laying in position specified grade of reinforced cement concrete excluding the cost of centering, shuttering, finishing and reinforcement all work upto plinth level 1.1.5:3 (1 cement: 1.5 coarse sand : 3 graded stone aggregates 20 mm normal size) including curing, all leads, lifts and carriages. (Complete job).”

09. It is further case of the petitioner that the impugned corrigendum was neither provided to the petitioner nor published or uploaded on the website by the respondents and even the copy of the same was also not provided to the petitioner inspite of various requests in this regard.
10. It is the specific case of the petitioner that the respondents were under a legal obligation to have issued the corrigendum if any, well before the opening of the tender and not after the date of allotment of contract which in the instant case falls on 29.01.2019 and this was done by the respondents with a view to deprive the petitioner of his legitimate claims.
11. The petitioner contends that if the impugned corrigendum had been issued before the E-NIT or agreement, then the position would have been different. The petitioner has relied upon the settled principle of law that

the “rules of the game” cannot be changed or amended midway once the game has started. Therefore, according to the petitioner, the issuance of the corrigendum by the official respondents amounts to a colorable exercise of power and therefore prayed that the same be set aside.

12. The impugned corrigendum as per the petitioner is contrary to law and is liable to be quashed. The issuance of the said corrigendum after the commencement of the process amounts to altering the terms and conditions of the E-NIT, thereby depriving the petitioner of his entitlement, especially with regard to cost of centering and shuttering pursuant to the allotment order.

REPLY ON BEHALF OF RESPONDENTS:-

13. *Per contra*, the reply stands filed on behalf of the respondents in which the respondents have raised a preliminary objection with regard to the maintainability of the instant petition as it raises disputed questions of fact, which cannot be gone into while exercising the writ jurisdiction.
14. The respondents while filing the detailed reply have justified the issuance of the corrigendum on the ground that same has been issued with a view to clarify the typing mistake (*as to read including instead of excluding the cost centering and shuttering*), which has occurred earlier.
15. The further stand of the respondents is that the petitioner has filed the instant petition while suppressing the material facts, including the issuance of the

corrigendum in respect of particular item, wherein, it is clearly mentioned that all other terms and conditions of E-NIT shall remain unchanged.

16. It has also been pleaded that both prior to and during the execution of work, the petitioner was made fully aware regarding typing mistake for the word 'exclusion' with respect to the centering and shuttering work, which was by way of a typographical mistake and it was made clear to the petitioner that the estimate prepared by the department includes the cost of shuttering and centering for all the items of concrete work and at that time, petitioner did not raised any objection, and expressed full satisfaction with the clarification by way of corrigendum.
17. It has further been pleaded that from a bare perusal of the terms and conditions of the corrigendum, it is clearly evident that the rates advertised for the particular item were 9700/cum, which were genuine and advertised after proper analyzing by the technical team and thus, the question for excluding the cost for centering and shuttering does not arise.
18. The further stand of the respondents is that the petitioner was well aware of the issuance of the corrigendum and had no grievance of the same but the petitioner after executing the work and receiving the payment for the same has filed the instant petition by suppressing material facts and making false averments, which are legally not sustainable in the eyes of law, as the same are concocted, misleading and against the record.

19. Learned counsel for respondents with a view to fortify his claim has drawn the attention of this Court to para 4 of the averments pleaded by the petitioner in the writ petition, a perusal whereof reveals that the petitioner has admitted the factum of execution of drawl of the agreement on 08.02.2019, which was in existence before 31.01.2019. Thus, according to the learned counsel for the respondents, the factum of the issuance of corrigendum was in the active knowledge of the petitioner and the petitioner without raising any grouse has accepted the same and has executed the drawl of the agreement with his eyes open and that too without raising any demur.
20. Today, when the instant petition was taken up, there is no representation on behalf of the petitioner. However, a request has been made on part of the learned counsel for the respondents to hear the matter, which is pending before this Court since February, 2022.
21. Heard learned counsel for the respondent at length and perused the record.
22. In light of the stand taken by the respondents and also after perusing the relevant record, it can safely be concluded that the petitioner was aware of the issuance of the corrigendum and with his eyes open, has executed the drawl of the agreement on 08.02.2019 without raising any grouse, as the said corrigendum was issued prior to the execution of the said agreement,

as the date of the corrigendum falls on 31.01.2019. Thus, the petitioner is estopped under law to question the same at this belated stage.

23. Since, the petitioner has gladly and voluntarily accepted the terms and conditions stipulated in the said corrigendum without raising any objection, protest, or demur at the relevant point in time, he is now estopped under law to challenge the same through the medium of instant petition, which is matter of afterthought. The petitioner's conduct amounts to clear acquiescence, reflecting his conscious decision to abide by the corrigendum and its implications. Such acceptance, having been made without reservation, signifies an unequivocal waiver of the right to subsequently question or dispute the corrigendum's validity, legality, or enforceability. In this context, the doctrine of estoppel, a well-settled principle in law, precludes a party from approbating and reprobating i.e., accepting the benefits or implications of a document or decision and then turning around to challenge it when it no longer suits their interest.

24. This Court is fortified by the view taken by Hon'ble Apex Court in case titled **Union of India v. N. Murugesan reported in (2022) 2 SCC 25** wherein it has been held as under:

"APPROBATE AND REPROBATE:

“26. These phrases are borrowed from the Scott's law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or

disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally."

25. Furthermore, the law does not allow any party to remain silent during the execution stage and only contesting it later when it is beneficial for them. Allowing such conduct would defeat the principles of fairness, certainty, and good faith in judicial proceedings. Therefore, the writ petition preferred by the petitioner, seeking to challenge the corrigendum after knowingly and willingly accepting its terms and conditions, lacks both factual and legal merit and is liable to be dismissed at the threshold as the same is not maintainable which falls within the realm of gross abuse of the process of law. The petitioner, having waived his right to object, cannot now seek the court's intervention against a decision to which he had previously acceded without protest.
26. The "doctrine of acquiescence" would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to

continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place.

27. The doctrine of acquiescence has been given recognition and in the decision of the Hon'ble Apex Court in ***Chairman, State Bank of India v. M.J.James, Civil Appeal No. 8223 of 2009***, dated 16.11.2021 has highlighted the doctrine of acquiescence in the following manner:

“Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and inspite of the infringement takes no action mirroring acceptance. However, acquiescence will not apply if lapse of time is of no importance or consequence.”

28. Thus, the petitioner after having accepted the terms and conditions of said corrigendum without any demur, the petitioner is estopped under law to question the same and the writ petition, which has been preferred challenging the aforesaid corrigendum is not maintainable and liable to be dismissed being devoid of any merit.
29. The factum of the execution of the agreement has been admitted by the petitioner in filing the instant petition, which is after the issuance of the aforesaid corrigendum and thus, it does not lie in the mouth of the petitioner to agitate subsequently that the respondents ought to have not issued the said corrigendum by relying upon the principle that the rules of game cannot be changed, once the game has started.

30. The aforesaid principle is not applicable to the case in hand, as the petitioner has gladly and voluntarily with his eyes open has executed the agreement and has carried the work on the strength of the allotment order and after executing the work, the instant petition has been filed on false and flimsy grounds, which cannot sustain the test of law and is liable to be dismissed.
31. The petitioner cannot be allowed to blow “hot and cold” in the same breath, as the petitioner has accepted the terms and conditions of the said corrigendum and did not raise any objection while executing the work and thus, the filing of instant petition is a matter of afterthought and the writ petition on this ground as well is not maintainable.
32. Thus, in light of what has been discussed hereinabove and also in light of the stand taken by the respondents, the writ petition, which is devoid of any merit deserves dismissal and the same is, accordingly, ***dismissed*** along with all connected application(s).

(WASIM SADIQ NARGAL)
JUDGE

JAMMU
11.08.2025
Mihul

Whether the order is speaking : Yes/No
Whether the order is reportable : Yes/No