

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

OWP No. 192/2019

**M/s Gupta Furniture House,
New Market, Dhar Road Chowk,
Udhampur
Th. Its Sole Propretor Sh. Mohan
Lal, age 65 years
S/o Late Sh. Anant Ram
R/o New Market, Dhar Road
Chowk, Udhampur**

.....Appellant(s)/Petitioner(s)

Through: Mr. Udhay Bhaskar, Advocate

Vs

- 1. Union of India
Th. Engineer-in-Chief,
Military Engineer Services,
Kashmir House, Rajaji Marg,
New Delhi.**
- 2. Chief Engineer
Northern Command, Udhampur
C/o 56 APO**
- 3. Chief Engineer, HQ.
31-Zone,
Pin 91436 C/o 56 APO**
- 4. WE, HQ. 154
Pin-914134
C/o 56 APO**
- 5. Assistant Garrison Engineer (i) (P)
HQ 134 Works Engineer Pin-914134,
C/o 56 APO**

..... Respondent(s)

Through: Mr. Vishal Sharma, DSGI

**CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE
ORDER
(08.05.2025)**

01. Heard learned counsel for the petitioner.
02. The petitioner is registered class 'D' contractor bearing registration No. **D-127/NC** with Military Engineer Services (MES).
03. By that designation, the petitioner's concern is entitled to participate in tender processes relatable to the MES contracts with respect to the works for which the petitioner is enlisted as class 'D' contractor competent to bid for.
04. The petitioner as class 'D' contractor is said to have earned a contract No. **CESZ-7(B)/2014-15**, with respect to "**PROVISION OF MAP FURNITURE At SOMGARH, SRINAGAR**".
05. It is by reference to alleged non-performance of the petitioner in carrying out and executing the contract **CESZ-7(B)/2014-15**, a dispute came to arise between the petitioner and the **Chief Engineer, Military Engineer Services-(MES)**, leading to the appointment of an arbitrator for adjudication.
06. In so far as the cause of action for the petitioner to come up with the present writ petition is concerned, the same is said to have arisen because of mention of the petitioner's name at Sr. No. 171 of **Communication No.**

42594/WLR/586/E8 dated **26/12/2018**, issued by **Chief Engineer (QS & C) Jt DG (Contracts) for Chief Engineer, (MES).**

- 07.** The impugned communication was declaring the enlisted contractors' concerns who were having positive and adverse Work Load Returns-WLRs and therefore, were to be held entitled and disentitled for taking further work load.
- 08.** In the context of the petitioner figuring at Sr. No. 171, the remarks at column No. 6 under the heading whether considered capable for handling more work, it came to be mentioned that petitioner was not capable of handling more work because contract in its favour had been cancelled in CE 31 Zone.
- 09.** The petitioner came forward with the present writ petition stating therein the manner in which its performance in connection with the contract in reference came to be adversely effected for which the petitioner was not to be held accountable or responsible.
- 10.** In the writ petition, the petitioner has also adverted to the fact of commencement of arbitration proceedings related to the dispute emerging out of the cancellation of the contract against it.

- 11.** In the writ petition, the petitioner has also dwelled upon the Manual of Military Engineer Services, (MES), which is said to govern, monitoring and preparation of reports and returns relatable to the contract works in currency and the contractors engaged for carrying out the completion of the contract works.
- 12.** By reference to clause 33.2(b) (vii), the petitioner came to assail the incorporation of its name in the impugned communication with adverse Work Load Return-WLR by stating that before mentioning the petitioner in adverse manner, no showcause notice as envisaged under clause 33.2(b) (vii) was issued to it and that renders the incorporation of the petitioner in adverse manner in the impugned communication as violative of rules of natural justice.
- 13.** In reply to the writ petition, the respondents came forward explaining the basis on the basis of which the Work Load Returns-WLRs are generated vis-à-vis the each contractor engaged with the Military Engineer Services, (MES), and further submitting that the generation of Work Load Return reports on quarterly basis is not subject to judicial review of the High Court under article 226 of the Constitution of India as that would be amounting substituting MES by High Court as principal vis-à-vis its contractors. In addition, it has

come to be stated in reply that the petitioner had the opportunity of invoking clause 3 of the impugned communication for redressal of its grievance against adverse Work Load Return-WLR for the quarter ending September 2018.

14. Be that as it may, this Court is of the view that long pendency of this writ petition has perhaps rendered the issue only of academic interest, particularly, when the petitioner has come to earn an award dated 27.10.2024 from the **Arbitral Tribunal of Sole Arbitrator Sh. Rajinder Paul Singhal, ADG (Arb) (R).**

15. Para 52 of the said award has come to be in faovur of the petitioner in terms whereof the petitioner's removal as enlisted contractor with Military Engineer Services, (MES), has come to be struck down and set-aside by further holding that the contract in reference on the basis of which the petitioner came to earn adverse Work Load Return-WLR report is to be reviewed by the Department because the contract was cancelled purely to the defaults attributable to the Military Engineer Services, (MES).

16. The award so earned by the petitioner subsumes the impugned adverse Work Load Return-WLR entry of quarter ending September 2018 and therefore, it is in the light of the arbitration award so earned by the petitioner

that its status is to be recognized by the Military Engineer Services subject to outcome of any petition under Section 34 of the Arbitration and Conciliation Act, 1996 filed by the Military Engineer Services, (MES).

17. In the light of the aforesaid, this writ petition is ***disposed of*** by holding that the impugned Work Load Return-WLR for the quarter ending September 2018 stands subsumed by the arbitration award earned by the petitioner and accordingly, on the outcome of section 34 petition or any order passed by the court seized of section 34 petition, the status of the petitioner shall get governed in terms of its right to participate in the contracts put to tendering process by the Military Engineer Services, (MES), for class 'D' contractors to participate in but till that time the petitioner not to be prejudiced by the adverse Work Load Return of quarter ending September 2018.

18. ***Disposed of.***

(RAHUL BHARTI)
JUDGE

JAMMU
08.05.2025
SUNIL