

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

Reserved on: 19.12.2024

Pronounced on: 14.05.2025

Case No.:- AA Nos. 10/2002, 9900002/2002, 9900003/2002, 9900004/2002, 9900005/2002,
9900006/2002, 9900007/2002, 9900012/2002, 9900014/2002, 9900015/2002 &
9900016/2002,

Rehmat Ullah Bhat & Ors

.....Petitioner(s)

Through: Mr. K.S. Johal, Sr. Advocate with
Mr. Karman Singh Johal, Advocate.
Mr. Akeel Wani, Advocate.

Vs

UT of J&K & ors

..... Respondent(s)

Through: Mr. Rajesh Thappa, AAG.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

1. All these connected bunch of petitions are sourced to Sections 30 and 33 of the Jammu and Arbitration Act, 1945 (in short, '**Act of 1945**') thereby impugning an arbitration award/s passed by the arbitrator Mr. Dev Raj Sharma, [(District and Sessions Judge (Retd.)) in terms whereof Jammu and Kashmir State Forest Corporation (in short,

‘JKSFC’) has been held entitled to money recovery against the petitioners.

2. The facts and circumstances attending all the connected cases are placed alike and, therefore, for the facility of convenience, lead case No. AA-10/2002 is being taken for the sake of reference of the facts which read alike with respect to all other cases.
3. In November, 1987, General Manager (M&T) JKSFC allotted a contract in favour of Rehmat Ullah Bhat (now deceased) for launching of SFC timber stocks of identified compartment, its Mahaning, Nikasi and Head Carriage at the identified catching point at the given rate per scant with a lump sum figure in favour Rehmat Ullah Bhat, the contractor. The issuance of contract order was in terms of NIT issued in September, 1987.
4. Pursuant to the said allotment, a written agreement in November, 1987 came to be made.
5. In February, 1991, demand notice came to be served to Rehmat Ullah Bhat, the contractor demanding recovery money claim of Rs. 76.42 lacs as valuation of Mahan loss which came to be responded by the contractor-Rehmat Ullah Bhat in March, 1991 with a legal notice addressed to Divisional Manager (M&T), J&K SFC.

6. Rehmat Ullah Bhat was one of the four contractors who was allotted the work of the aforesaid nature and the other three being Abdul Majid Wani (now deceased), Ghulam Ahmad Wani and Abdul Karim Wani.
7. It is by reference to these four contractors, namely, Rehmat Ullah Bhat, Abdul Majid Wani, Ghulam Ahmad Wani and Abdul Karim Wani that the aforesaid bunch of cases are related to.
8. Thus, respective demand from the end of JKSFSC unto said four contractors and corresponding response from the end of said four contractors to JKSFSC set up a situation of dispute arbitrable as per the agreement which led to institution of **thirteen (13) petitions** in the following order before this Court under Section 20 of the **Act of 1945** seeking reference. Said petitions are set out here under:
 1. AA 116/1994: Abdul Majid Wani vs JKSFSC with respect to demand for Rs. 31,83,250/-
 2. AA 119/1994: Abdul Karim vs JKSFSC with respect to demand for Rs. 4,43,450/-
 3. AA 121/1994: Rehmat ullah Bhat vs JKSFSC with respect to demand for Rs. 76,42,000/-
 4. AA 122/1994: Abdul Majid Wani vs JKSFSC with respect to demand for Rs. 6,51,10,050/-
 5. AA 123/1994: Ab. Majid Wani vs JKSFSC with respect to demand for Rs. 79,71,400/-
 6. AA 124/1994: Gulam Ahmad Wani vs JKSFSC with respect to demand for Rs. 54,41,275/-
 7. AA 125/1994: Rehmat Ullah Bhat vs JKSFSC with respect to demand for Rs. 12,04,000/-
 8. AA 126/1994: Ghulam Mustaffa Bhat vs JKSFSC with respect to demand for Rs. 54.125 lacs.

9. AA 127/1994: G. A. Wani vs JKSFC with respect to demand for Rs. 18,77,400/-
10. AA 128/1994: G. A. Wani vs JKSFC with respect to demand for Rs. 78,15,200/-.
11. AA 129/1994: Rehmat Ullah Bhat vs JKSFC with respect to demand for Rs. 25,14,820/-
12. AA 130/1994: Rehmat Ullah Bhat vs JKSFC with respect to demand for Rs. 12,56,400/-.
13. AA 131/1994: Rehmat Ullah Bhat vs JKSFC with respect to demand for Rs. 4,11,600/-

9. By virtue of a common order dated **22.12.1994**, all the above thirteen (13) cases stood referred for arbitration to Advocate Mr. R.S. Mehta appointed as an arbitrator to carry out the arbitration under the aegis of J&K Arbitration Act, 1945.
10. J&K Arbitration Act, 1945, First Schedule, Clause-3 provides the period for an arbitrator to commence and conclude the arbitration proceedings subject to extension of time being granted either by the consent of the parties or by the order of the court. Said prescribed time period is four months after entering into the reference and is an essential aspect with respect to mandate of an appointed arbitrator and his continuing as such upon extension whereas Section 28 provides for power of court only to enlarge time for making award.

11. The parties appeared before the arbitrator lodging their respective claims and counter claims thereby setting into effect the arbitration proceedings.
12. As the appointed arbitrator Advocate Mr. R.S. Mehta was taking his time in conducting the arbitration, as such, this Court was approached with applications by JKSFCA for change of the arbitrator which plea came to be declined by virtue of an order dated **10.04.1997**.
13. Later on, originally appointed arbitrator Advocate Mr. R.S. Mehta came to be changed to be replaced by arbitrator Mr. Dev Raj Sharma, [District and Sessions Judge (Retd.)] in terms of an order dated **09.08.2000** in bunch of application Nos. **13/1998, 14/1998, 15/1998, 16/1998, 17/1998, 18/1998, 19/1998, 20/1998, 21/1998, 22/1998, 23/1998, 24/1998 and 25/1998** with a mandate to carry forward the arbitration proceedings conducted by erstwhile former arbitrator Advocate R.S. Mehta w.e.f., 14.01.1998 onwards.
14. The statutory time limitation equally operated upon the newly appointed arbitrator Mr. Dev Raj Sharma, [District and Sessions Judge (Retd.)] for him to bear and continue to bear the mandate and mantle of an arbitrator under the Act of 1945.

15. By virtue of an order dated 20.10.2000, arbitrator Mr. Dev Raj Sharma, [District and Sessions Judge (Retd.)] formulated the points of dispute in the arbitration.
16. The liability which was intended to be fastened from the end of JKSF C unto the contractor was shortage of scants out of total scants for which the contract work was allocated to the contractor.
17. By virtue of an award dated **15.03.2002**, the arbitrator Mr. Dev Raj Sharma, [District and Sessions Judge (Retd.)] came forward with a brief award thereby granting in favour of JKSF C the following recovery claims against respective contractors above named by reference to whom the bunch of petitions hereinabove referred came to be preferred:
 - (i) **AA No. 10/2002 with respect to award for Rs. 21,63,170/- titled Rehmat Ullah Bhat (deceased) through Sajad Ahmad Bhat Vs. J&K SFC & Ors, D.O.I. 29.07.2005.**
 - (ii) **AA No. 10-A/2002 with respect to award for Rs. 14,55,132/- titled Rehmat Ullah Bhat (deceased) through Sajad Ahmad Bhat Vs. J&K SFC & Ors,, D.O.I. 15.07.2005.**
 - (iii) **AA No. 10-B/2002 with respect to award for Rs. 1,56,559/- titled Abdul Karim Wani Vs. J&K SFC & Ors, D.O.I. 23.07.2005.**
 - (iv) **AA No. 10-C/2002 with respect to award for Rs. 5,40, 570/- titled Ghulam Ahmad Wani Vs. J&K SFC & Ors, D.O.I. 23.07.2005.**
 - (v) **AA No. 10-D/2002 with respect to award for Rs. 26, 44, 229/- titled Ghulam Ahmad Wani Vs. J&K SFC & Ors, D.O.I. 23.07.2005.**

- (vi) AA No. 10-E/2002 with respect to award for Rs. 21, 54, 846/- titled Kh. Ghulam Ahmad Wani Vs. J&K SFC & Ors, D.O.I. 23.07.2005.
- (vii) AA No. 10-F/2002 with respect to award for Rs. 3,41,488/- titled Rehmat Ullah Bhat (deceased) through Sajad Ahmad Bhat Vs. J&K SFC & Ors, D.O.I. 20.07.2005.
- (viii) AA No. 10-G/2002 with respect to award for Rs. 15,43,355/- titled Rehmat Ullah Bhat (deceased) through Sajad Ahmad Bhat Vs. J&K SFC & Ors, D.O.I. 07.07.2005.
- (ix) AA No. 10-H/2002 with respect to award for Rs. 9,02,372/- titled Abdul Majid Wani Vs. J&K SFC & Ors, D.O.I. 18.07.2005.
- (x) AA No. 10-I/2002 with respect to award for Rs. 1,41,63,706/-titled Abdul Majid Wani Vs. J&K SFC & Ors, D.O.I. 20.07.2005.
- (xi) AA No. 10-J/2002 with respect to award for Rs. 26,81,579/- titled Abdul Majid Wani Vs. J&K SFC & Ors, D.O.I. 18.07.2005.
- (xii) AA No. 10-K/2002 with respect to award for Rs. 1,05,900/- titled Rehmat Ullah Bhat (deceased) through Sajad Ahmad Bhat Vs. J&K SFC & Ors, D.O.I. 29.07.2005.
- (xiii) AA No. 10-L/2002 with respect to award for Rs. 1,45,096/- titled Rehmat Ullah Bhat (deceased) through Sajad Ahmad Bhat Vs. J&K SFC & Ors, D.O.I. 29.07.2005.

18. The present petitions under Sections 30 and 33 of the Act of 1945 came to be preferred by legal representative of original contractor Rehmat Ullah Bhat, Abdul Majid Wani whereas other two contractors, namely, Ghulam Ahmad Wani and Abdul Karim Wani came in their own name, thereby questioning not only the award/s but also the very mandate

of the arbitrator Mr. Dev Raj Sharma, [District and Sessions Judge (Retd.)] to continue with the arbitration. In this regard, the grounds of challenge are set out in para 20.

19. This Court is not inclined to examine the grounds of challenge posed to the arbitration award at first instance as the first legal question which self-poses itself before this Court with respect to the validity and legality of the award in reference is as to whether the arbitrator Mr. Dev Raj Sharma, [District and Sessions Judge (Retd.)] was having the mandate and mantle to continue with the arbitration proceedings without seeking extension of time from this court in terms of Section 28 of the Act of 1945 by whose order his appointment as an arbitrator had come to take place.
20. The entire and minute perusal of the record by this Court further confirmed by the reading of the recitals in the entire impugned award would show that at no point of time, the arbitrator Mr. Dev Raj Sharma, [District and Sessions Judge (Retd.)] was ever granted extension of time to continue beyond four months original period of appointment as an arbitrator in place of Advocate Mr. R.S. Mehta nor any such extension was ever availed by the said learned arbitrator or by any of the parties from this court meaning thereby the entire course of proceedings upon expiry of four months if

not from order dated 09.08.2000 when Mr. Dev Raj Sharma, [District and Sessions Judge (Retd.)] came to be appointed as an arbitrator but surely from order dated 20.10.2000 when said arbitrator came to formulate points of dispute in the arbitration, is nonest in the eyes of law and that defect is incurable because Clause 3 of the First Schedule read with Section 28 of the Arbitration Act, 2002 (J&K Arbitration Act of 1945 AD) was bestowing no such self drawn authorization with respect to an appointed arbitrator to continue with mandate and mantle of arbitrator upon expiry of four months period of entering upon reference.

21. From the perusal of the record, this Court is surprised even with respect to the fact that how without the provisions of Section 14 of the Act of 1945 which actually envisaged formal filing of an award before the court, be it at the request of the parties to the arbitration or any person claiming under said party or if directed by the court, the commencement of the proceedings under Sections 30 and 33 of the Arbitration and Conciliation Act came to take origin and that too on insufficiently stamped award in each and every case.
22. Be that as it may, since this court has not come across with the fact that Mr. Dev Raj Sharma, [District and Sessions Judge (Retd.)] was bearing any mandate upon expiry of four

months to carry on with the arbitration proceedings, as such, the entire exercise at his end leading upto the passing of the impugned award and even the impugned award rendered illegal which is accordingly set aside.

23. All the petitions are thus, allowed by setting aside of the impugned award. A copy of this order be placed on the record of each file for the sake of reference.

(RAHUL BHARTI)
JUDGE

JAMMU
14.05.2025
Naresh/Secy.

