

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

WP(C) No. 2894/2021

CM No. 9661/2021

CM No. 3746/2023

Reserved on: 05.08.2025

Pronounced on: 19.08.2025

Syed Akhlaq Hussain

.....Petitioner(s)

Through: Mr. M. I. Sher Khan, Advocate
Mr. Masood Choudhary, Advocate

Vs

Vice Chancellor SMVDU Katra and others

..... Respondent(s)

Through: Ms. Shivani Jalali, Advocate

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

01. The instant petition has been preferred by the petitioner under Article 226 of the Constitution of India seeks the following reliefs:

- i) **Writ of Certiorari:** quashing the Order No. SMVDU/Sec/21-71 dated 16.09.2021; may also quashing the Order No. SMVDU/S/Sec/21-77 dated 22.10.2021 being illegal, arbitrary, mala fide, discriminatory and against the conditions of the tender; may also quashing and declaring the tender of Agency BSS service given by respondent No. 3 working as illegal, against the law and facts.
- ii) **Writ of Mandamus:** Commanding the respondents to implement the bid/allotment of the security work in view of the security tender notice e-NIT No. 3 of 2021 dated 15.03.2021 being low bidding having lowest tender rate and in view of allotment dated 02.09.2021, allow the petitioner to provide security to the campus in SMVDU and declare the BSS security working as illegal since 02.09.2021; may also commanding the respondents to handover the charge of security to the petitioner or may provide the amount of salary and

expenses of 70 security personnel joined on 7th and 8th September 2021 then against from 13.09.2021 till 16.09.2021 and also provide Rs. 5.00 lacs which was deposited as EMD and security deposit with interest alongwith ligation expenses.

FACTUAL MATRIX OF THE CASE

02. The facts, in brief, are that the petitioner is the proprietor of G. Active Security Service and holds a valid license issued in his favor on 04.02.2019 for providing security services. The said license was initially valid until 13.07.2019 and was subsequently extended and remained valid until 12.07.2022.
03. It is specific case of the petitioner is that respondent Nos. 1 and 2 issued a tender notice bearing No. 2 NIT 03 of 2021 dated 15.03.2021, inviting applications on behalf of Shri Mata Vaishno Devi University (hereinafter referred to as '*the SMVDU*' *for short*), Kakarial for providing security services. The tender sought security supervisors, armed guards, ex-servicemen guards and trained civilian guards both male and female for around the clock security of SMVDU Kakarial campus. The petitioner, being eligible, applied for the contract and deposited ₹1000 as a Demand Draft (D/D). The last date for submitting applications was 06.04.2021 and the bids were scheduled to be opened on 14.04.2021 at 3:00 p.m. Thereafter, the petitioner emerged as the lowest bidder, accepted the offer rate and was awarded the security contract vide Order No. SMVDU/Sec/21/65 dated 02.09.2021.
04. It is specific case of the petitioner that on 07.09.2021, when 70 security personnel deployed by the petitioner, reported before the respondents for

rendering their duties, they were denied entry by the existing security agency i.e BSS Security guards. The following day i.e on 08.09.2021 they again approached the respondents and attempted to join their duties but were once again prevented from doing so. Consequently, the petitioner lodged a complaint at Police Chowki Kakarial, however, no action was taken on the said complaint.

- 05.** The petitioner states that on 13.09.2021, some security personnel managed to enter the University campus and were allowed to work until 16.09.2021. However, the respondents failed to provide them with a accommodation forcing them to remain without shelter. The petitioner on various occasions i.e on 08.09.2021 and 11.09.2021 had approached the University Authority to take charge, but were either ignored or asked to return without any concrete response.
- 06.** It is specific case of the petitioner that on 14th and 15th September 2021, the respondents issued two separate notices requesting deployment of 115 security persons. In response, the petitioner deputed trained security staff as required. However, the respondents neither handed over the charge of security to the petitioner, nor provided accommodation for the deputed security persons. Instead, respondents 1&2 allowed the BSS agency to continue providing security services without any tender process. Subsequently, the respondents terminated the petitioner's contract vide order No. SMVDU/Sec/21/71 dated 16.09.2021 illegally with *mala fide* intentions, despite there being no breach of any tender terms or contractual obligations on part of the petitioner.

07. On 28.10.2021, the petitioner sent a legal notice to the respondents seeking the release of Earnest Money Deposit (EMD) and security deposit of ₹5.00 lacs to be disbursed in favour of the security persons who worked upto 13/14.09.2021. However, despite the notice, the respondents have failed to take any action, compelling the petitioner to file the instant petition.

ARGUMENTS ON BEHALF OF THE PETITIONER

08. Learned counsel for the petitioner Mr. M I Sherkhan has argued that no opportunity was provided by the respondents to address the alleged deficiencies. All the security personnel/guards deputed by the petitioner were trained and many belonged with the backgrounds in the Army, BSF, and similar forces. The petitioner provided security within ten days from the date of the award/contract, as evidenced by the complaint submitted to Police Chowki, the communication dated 11.09.2021, and other correspondences, including the notice dated 15.09.2021. Therefore, the allegations mentioned in the impugned order are unlawful, factually incorrect, and not supported by the law.
09. Learned counsel further submits that the respondents deliberately refused to hand over the charge of security to the petitioner, despite the timely deployment of trained security personnel. Instead they permitted respondent No.3 (BSS agency) to continue providing security services without any tender process.
10. Learned counsel for the petitioner has submitted that the notice period given by the respondents was unreasonably short, one to two days, making it practically impossible to ensure full deployment of the security personnel. The guards were required to travel from distant locations and

were also required to obtain COVID-19 certificates from the hospitals. Moreover the lack of proper accommodation, made it difficult for the personnel to stay in the campus. As such, the allegations in the impugned termination order are unlawful and unjustified.

ARGUMENTS ON BEHALF OF THE RESPONDENTS

11. ***Per contra***, Reply on behalf of respondents Nos. 1 to 3 has been filed wherein they have pleaded that the present petition is not maintainable and deserves to be dismissed out-rightly as the petitioner has not come to the Court with clean hands and no illegality or irregularity has been committed by the answering respondents, which is a *sine qua non* for invoking the extra-ordinary writ jurisdiction.
12. Learned counsel for the answering respondents Ms. Shivani Jalali submits that the petitioner has approached this Court on misrepresented facts and no fundamental, statutory, legal or constitutional rights of the petitioner have been infringed. The respondents further affirm that a contract for around the clock security service was awarded to the petitioner on 02.09.2021. However, due to petitioner's failure to comply with the terms and conditions of the contract and also the tender document that the answering respondents were constrained to terminate the contract on 16.09.2021, after serving them as many as two to three show cause notices which though duly received but were not paid any heed to by the petitioner.
13. The failure on the part of the petitioner to make good the deficiencies and deploy the requisite number of security personnel within ten days of the

allotment of award of Contract as per Clause-iii, resulted in the termination of the Contract dated 02.09.2021 *ab initio*.

14. Learned counsel for the answering respondents has argued that following the termination of the contract by the University, the petitioner submitted a request vide letter No. G-Active/Tender/ SMVDU /20-21 /013 dated 20.09.2021 seeking release of the EMD and Security Deposit. In response to which the petitioner was informed vide University letter No. SMVDU/Sec/21/177 dated 22.10.2021 that their request for release of the said deposit was not tenable, as per terms & conditions of the tender document and the award of contract.
15. Learned counsel further argued that Para (xvii) of the award of contract and also Paras (8 & 9) of the terms & conditions of the Tender document expressly provides that in case of failure of the firm to provide the services of mentioned security personnel at SMVDU, the University shall be at liberty to forfeit the Earnest Money Deposit and Security Deposit. Additionally, appropriate actions under the terms of the outsourced services can also be initiated. The agreement entered into by the petitioner with the answering respondents also stipulated that the University shall have a right to terminate the contract forthwith, to forfeit the security deposit and also the earnest money deposit, in case, the services rendered by the Contractor are found to be unsatisfactory, which agreement is within the knowledge of the petitioner. Considering the petitioner's failure to meet the deployment requirements, as per terms and conditions of the award of contract, the tender document in respect of the Contract with the agency, was terminated *ab-initio*.

16. Heard learned counsel for the parties at length and perused the record.

LEGAL ANALYSIS

17. In light of the above analysis, the writ petition survives only insofar as the release of the security amount is concerned as the petitioner has not pressed the other reliefs prayed in instant petition.

18. From bare perusal of the record, it reveals that as per the terms and conditions of the tender, the petitioner was obligated to comply with the requirements of the Tender Notice in terms of Clause-iii and since, he has failed to comply with the requirements as stipulated under Clause-iii, the security of the petitioner was required to be forfeited. Thus, any issue/dispute arising out of the contract or tender cannot be adjudicated by this Court under its writ jurisdiction, as the petitioner has failed to demonstrate any grounds warranting interference by projecting the exceptions carved out by the Apex Court in catena of judgments.

19. In light of the non compliance by the petitioner, the respondents acted within their contractual rights in the forfeiture of the EMD and security deposit, as expressly permitted under the tender documents. The enforcement of this Clause cannot be termed arbitrary or unreasonable, but, rather a legitimate consequences of the petitioner's own failure to meet the agreed obligations.

20. The Hon'ble Apex Court has consistently held that writ jurisdiction under Article 226 is not the appropriate forum for adjudicating the disputes that arise purely from contractual obligation, particularly where, the contract governed by mutually agreed terms and there is no violation of

fundamental rights, statutory provisions or principle of natural justice. The Hon'ble Apex Court in catena of judgments has held as follows;

In case titled "**Rajasthan State Industrial Development and Investment Corp. (RIICO) v. Diamond & Gem Development Corporation Ltd., (2013) 5 SCC 470**", it was observed as follows:

"the existence of a contract between the parties and disputes arising therefrom cannot be a ground for invoking writ jurisdiction unless it involves public law elements."

21. Further reliance is also placed upon another case titled "**Joshi Technologies International Inc. v. Union of India, (2015) 7 SCC 728**" the Hon'ble Apex Court has held as follows:

"in tender or contract-related disputes, unless there is gross arbitrariness or mala fide in State action, writ jurisdiction is not to be exercised."

22. Similar issue has been discussed in "**Tata Cellular v. Union of India, (1994) 6 SCC 651**", wherein the Hon'ble Apex Court has held as follows:

"the court does not sit as a court of appeal but merely reviews the manner in which the decision was made. If the decision relates to a matter of contract, the court must look at the legality of the decision-making process, not the soundness of the decision itself."

23. Thus, from a bare perusal of the communication dated 02.09.2021, it is clear that the petitioner was under obligation to provide around the clock security services in the form of 115 security guards for the Mata Vaishno Devi University, but there was failure on part of the petitioner to supply adequate security personnel as the petitioner supplied only 53 security

guards instead of 115 security guards, meaning thereby, that the petitioner has breached the terms and conditions of the Tender Notice/Contract, constraining the respondents to terminate the contract in question by forfeiting the security amount to the tune of Rs. 5.00 lacs.

24. Therefore the forfeiture of the security deposit is not punitive, but contractually agreed consequences of non-performance. It aligns with the established legal principles and has been consistently upheld by the Hon'ble Apex Court in catena of judgments which reads as follow:

In case titled **“Gorkha Security Services v. Government (NCT of Delhi)”**, (2014) 9 SCC 105, the Hon'ble Apex Court has held as follows:

“when a party to a tender fails to meet essential terms such as the number of manpower or timelines, the contract may be terminated, and any security deposit may be forfeited as per the agreed terms.”

25. Further reliance is also placed on another case titled **“State of U.P. v. Bridge & Roof Co. (India) Ltd., (1996) 6 SCC 22”**, the Hon'ble Supreme Court has observed as follows:

“in contractual disputes, unless there is arbitrariness or violation of statutory duty, Courts should not intervene, particularly when the breach and remedy are governed by the contract itself.”

26. Having considered the facts in detail and legal principles involved, this Court holds that the forfeiture of the security deposit cannot be construed as a penalty but is a legitimate and agreed contractual consequence of non-performance. The Hon'ble Supreme Court, in catena of judgments has consistently affirmed that where essential tender obligations such as

manpower deployment or timelines are not met within stipulated period, the termination of the contract and forfeiture of the security deposit are justified in accordance with the terms and conditions of the contract.

27. Additionally, the Courts must refrain from interfering in contractual matters, unless, there is clear arbitrariness or breach of statutory duty. No such ground has been being pleaded or canvassed by the learned counsel for the petitioner and thus in the peculiar facts and circumstances of the case, this Court upholds the forfeiture of the security deposit as lawful and in accordance with the terms and conditions of the contract and action of respondents in forfeiture of the security deposit can't be termed as illegal.

CONCLUSION

28. Thus, the action of the respondents in forfeiting the security cannot be faulted which is in conformity with terms and conditions of the tender and this Court do not find any arbitrariness or illegality in the respondents' action and therefore, no interference is warranted by this Court under writ jurisdiction. Accordingly, the instant writ petition is found to be devoid of any merit and the same is ***dismissed***.

(Wasim Sadiq Nargal)
Judge

Jammu
19.08.2025
Vijay

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