

S.No.45

Regular List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 677/2023

GHULAM MOHAMMAD MALIK
 S/O GHULAM MOHI-UD-DIN MALIK
 R/O CHARARI SHARIEF, DISTRICT BUDGAM

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

Through: None

Vs.

1. UT OF J&K THROUGH ...Respondent(s)
 COMMISSIONER/SECRETARY TO
 GOVERNMENT HORTICULTURE
 DEPARTMENT CIVIL SECRETARIAT
 SRINAGAR/JAMMU
2. DIRECTOR GENERAL HORTICULTURE
 KASHMIR, SRINAGAR
3. CHIEF HORTICULTURE OFFICER BUDGAM
4. HORTICULTURE DEVELOPMENT OFFICER,
 CHARARI SHARIEF, DISTRICT, BUDGAM
5. M/S H.N. AGRISERVE PVT. LTD THROUGH
 ITS M.D. MUZAFFAR AHMAD MIR
 JAWAHAR NAGAR SRINAGAR KASHMIR

Through: Mr. Faheem Nisar Shah, GA

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

Judgment (oral)

07-07-2025

1. None appears for the petitioner.
2. The petitioner, through the medium of the present writ petition filed under Article 226 of the Constitution of India, has sought the following relief(s):

“a) Issue a writ of mandamus, commanding the respondent No. 2 to constitute a committee to probe the matter regarding supply of substandard plant material to the petitioner/farmers.

b) Issue a writ of mandamus, commanding the respondents to assess the loss caused to the petitioner due to negligence of official respondents and by providing substandard plant material in violation of the scheme launched by the government.

c) Issue a writ of mandamus, commanding the respondents to pay the compensation to the petitioner for the loss suffered by him due to the negligence and inaction of respondents along with the interest after the assessment.

d) Any other writ order or direction, which this Hon'ble court may deem fit and proper, be also passed in favour of petitioners against the respondents with costs."

3. The brief facts of the petitioner's case, as stated in the writ petition, in a nutshell are that the J&K Government has accorded sanction to the implementation of modified High Density (HD) plantation scheme under which 5500 hectares of horticulture land in the UT will be brought under HD plantation to double farmers' income and the Government of Jammu and Kashmir issued order No. 08-Horti of 2017 dated 07-02-2017 for implementation of 'High Density Apple Plantation Scheme' through private enterprise.
4. It is stated that the petitioner during the year 2016-17 applied for establishment of high density apple orchard through the respondent-department, and the respondent-department directed the petitioner to complete the pre-plantation activities (trellis and micro irrigation) before issuing the plant material by the department. It is submitted that the petitioner completed all the formalities, but the respondent-department did not provide him with the plant material during the plantation season, when in fact some bureaucrats were given preference over the petitioner.
5. It is further pleaded that the petitioner in the year 2017-18 again submitted the bills on this account to CHO office through HDO Charari Sharief vide HDO/Ch/196 dated 08-03-2018 and the

respondent-department released cash incentive on account of installation of trellis and micro irrigation. It is submitted that the plant material provided by the private respondent No. 05 was not up to the mark and was substandard. Out of 777 plants provided by the private respondent No. 05 to the petitioner, only 289 plants survived and 488 plants dried.

6. It is stated that the petitioner represented before the respondent-department regarding the sub-standard material provided by the private respondent No. 5 but despite repeated requests the official respondents have not initiated any action against the private respondent No. 05.
7. *Per contra*, the reply stands filed by the respondents 1 to 4, wherein, it is stated that the petitioner applied for establishment of High Density Apple Orchard during the year 2016-17, and he was accordingly advised to establish trellis and drip irrigation system(Micro Irrigation) but he failed to establish the same in that particular year despite several reminders. It is stated that the petitioner could only establish/complete trellis and Micro Irrigation system during the year 2017-2018 and on this account the financial assistance to the tune of Rs. 2.10 lacs was released in his favour.
8. It is stated that the department of Horticulture in the year 2017-18 did not have the availability of planting material for the distribution to the beneficiaries. Therefore, in order to accomplish the plantation targets, the department made allotment to the private entrepreneur(s) for supply of planting material. The Chief Horticulture Officer, Budgam i.e., respondent No. 3, vide his communication dated 23.04.2018

requested the private respondent M/S H.N. Agri Serve Pvt. Ltd for supply of fruit plants to the petitioner and the respondent No. 3 also authorized the petitioner to lift 777 of fruit plants for an area of 7 kanals from the private respondent vide communication dated 15.04.2019.

9. It is further pleaded in the reply that the petitioner lodged a complaint with the office of the respondent No.3, regarding dryness of the planting material and the respondent No. 3 after taking cognizance on the issue, took up the matter with the private respondent No.5 for replacement of dried plant material to the petitioner. The private respondent, vide communication dated 11.01.2020 assured for replacement of dried/damaged material till 20th April, 2020 in the ensuing plantation season. Later on, in the month of June, 2020, the replacement was made by the private respondent No.5.

10. It is stated that the petitioner again approached the office of the respondent No.3 in September, 2021 with the plea that out of 488 number of fruit plants provided under replacement, 250 number of fruit plants were of substandard quality and upon verification through the concerned Horticulture Development Officer, it came to fore that among the replaced plants about 250 do not show characteristics of Red Delicious cultivar and more than 200 replaced plants were found below the standard specification. The respondent No. 5 was accordingly contacted through its authorized representative, Mr. Syed Mudasir Ahmad, who assured that these plants shall be replaced again with 5 plus feathers during the approaching planting season 2021-22. The proposal, however, was refused by the petitioner, who claimed

payment of compensation for the loss. Consequently, a memorandum of understanding (agreement) was entered into on 14.03.2022 between the petitioner and private respondent No. 5 through its representative Mr. Arshad Ahmad, wherein the parties have mutually agreed, on the following points:

- a) That the parties shall work together in a cooperative and coordinated effort so as to bring about the achievement and fulfillment of the purpose of the MoU.
- b) That the parties have agreed to the fact that party No. 02 (respondent No. 5) will provide party No. 01 with 488 number of five feathered High Density Plants of Gala Group by or before the end of this Month i.e. 31.03.2022 at the site of plantation.
- c) The claim of the party No. 01 for compensation of losses will be compensated with the fact that the plants already in hold of the party will be property of party No. 01 and party no. 02 shall not ask him to return the said material.
- d) That the party No. 01 has agreed to take back the complaint after fulfillment of the above terms and conditions by party No. 02.

11. It is stated that the private respondent has entered into agreement with the petitioner, where, the parties have agreed that the private respondent No. 5, will provide 488 number of five feathered High Density Plants of Gala group to the petitioner and also shall not claim the return of the plant material which is already in possession of the petitioner. It is further pleaded; that the department wants the execution of the agreement entered between the parties, but cannot force it, since the matter has to be resolved between the petitioner and private respondent No.5 by themselves.

12.Mr. Faheem Nisar Shah, learned GA for the official respondents vehemently argued that the petitioner has not come to this court with clean hands and has suppressed the factum of entering into a memorandum of the understating/agreement dated 14th March, 2022 between the petitioner and the private respondents No.5, and prays that the petition be dismissed.

13.It has also been argued by Mr. Shah, learned GA, that relief cannot be granted to a party who is guilty of suppression of material fact and the petitioner has not come to the Court with clean hands. Thus, according to learned counsel for the respondents the instant petition is grossly misconceived and falls within the realm of playing fraud with the court.

14.Heard learned counsel for the respondents and perused the record.

15.The petitioner had applied for establishment of High Density Apple Orchard during the year 2016-17 and was advised to establish trellis and drip irrigation system (Micro Irrigation) by the respondents but failed to do despite several reminders. The petitioner established/completed trellis and Micro Irrigation system during the year 2017-2018 and on this account the financial assistance to the tune of Rs.2.10 lacs has been released in favour of the petitioner.

16.The respondent No. 3, due to non-availability of planting material for distribution to the beneficiaries in the year 2017-18 to the beneficiaries, requested the private respondent for supply of fruit plants to the petitioner and the respondent No. 3 also authorized the

petitioner to lift 777 of fruit plants for an area of 7 kanals from the private respondent vide communication dated 15.04.2019.

17. The petitioner lodged a complaint before the respondent No. 3 regarding dryness of the planting material and upon taking cognizance by the respondent No. 3, the dried/damaged planting material has been replaced by the private respondent in June, 2020.
18. The petitioner again approached the respondent No.3 in September, 2021 with the plea that out of 488 number of fruit plants provided under replacement, 250 number of fruit plants were of substandard quality and upon verification through the concerned Horticulture Development Officer, it came to fore that among the replaced plants about 250 did not show characteristics of Red Delicious cultivar and more than 200 replaced plants were found below the standard specification. Upon cognizance the respondent No. 5 was, assured the petitioner that these plants shall be replaced again with 5 plus feathers during approaching planting season 2021-22. The proposal, however, was refused by the petitioner. Consequentially, a memorandum of understanding (agreement) was entered into on 14.03.2022 between the petitioner and private respondent No. 5 through its representative Mr. Arshad Ahmad, wherein the parties have mutually settled the controversy. However, the petitioner instead of executing the agreement, has come to this court with unclean hands and has suppressed the factum of entering into a memorandum of the understating/ agreement dated 14th March, 2022 between the petitioner and the private respondents No.5 through its representative Mr. Arshid Ahmad.

19. It is trite law that the writ jurisdiction under Article 226 is equitable and discretionary. A petitioner invoking such jurisdiction is duty bound to disclose all material facts candidly and fairly. Any suppression or concealment of material particulars disentitles the petitioner to relief.

20. The Hon'ble Supreme Court in *K.D. Sharma v. Steel Authority of India Ltd.*, reported as (2008) 12 SCC 481, has unequivocally held:

“The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 is extraordinary, equitable and discretionary. It is well settled that a prerogative remedy is not available as a matter of course. In exercising discretionary jurisdiction, the courts always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose all the material facts fairly and truly or suppresses material facts or is guilty of misleading the court, the court may decline to grant relief and dismiss the petition.”

21. The petitioner herein has, admittedly, failed to disclose that he had already entered into a negotiated settlement dated 14.03.2022, which, in effect, substantially resolved the grievances sought to be agitated in the present writ petition. Such non-disclosure is not a mere procedural lapse but strikes at the very root of the cause of action as well as the maintainability of the petition itself.

22. The conduct of the petitioner amounts to suppression of material facts and in effect an attempt to mislead this Court. The writ jurisdiction cannot be permitted to be invoked in such circumstances.

23. Furthermore, once the dispute stands settled by way of a memorandum of understanding, and such settlement has neither been alleged nor demonstrated to be illegal, unreasonable, or vitiated by fraud, misrepresentation, or coercion, no writ can be maintained to reopen the controversy on the very same grounds which stand concluded by the agreement.

24. For what has been observed, considered and analyzed hereinabove, the instant petition is held to be grossly misconceived and deserves dismissal, and is, accordingly, **dismissed** alongwith all connected applications.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:

07-07-2025

Mubashir

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| i. | Whether the Judgment is Reportable: | Yes/No |
| ii. | Whether the Judgment is Speaking: | Yes/No |