

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 1446/2020

Date of Order: 01.12.2025

Abdul Aziz Peer (Aged: 61 years)

...Petitioner(s)

S/O: Late Mohammad Yousuf Peer

R/O: Madmadow Kalaroos Kupwara
Kashmir, J&K.

Through: Mr. Bilal Ahmad Malla, Advocate.

Vs.

1. *U.T. of J&K through Commissioner*
Secretary to Govt. Revenue
Department, Civil Secretariat,
Srinagar/Jammu.

2. Divisional Commissioner, Kashmir,
J&K.

3. Deputy Commissioner, Kupwara,
Kashmir J&K.

4. Additional Deputy Commissioner
Kupwara, Kashmir, J&K.

5. Sub-Divisional Magistrate Lolab
(Sogam) Kupwara Kashmir, J&K.

6. Tehsildar Kalaroos, Kupwara,
Kashmir, J&K.

7. Senior Superintendent of Police,
Kupwara Kashmir, J&K.

8. SHO P/S Kalaroos Kupwara, Kashmir,
J&K.

...Respondent(s)

Through: Mr. Alla Ud Din Ganai, AAG.

Mr. Hakim Aman Ali, Dy. AG.

CORAM:

Hon'ble Mr. Justice Wasim Sadiq Nargal, Judge.

JUDGMENT (ORAL)

01.12.2025

01. Through the medium of the instant writ petition filed under Article 226 of the Constitution of India, the petitioner has sought the following reliefs:

"a) By issuance of writ, order or direction one in the nature of certiorari, the order bearing No. DCK/LRA/SC/20/65-85 dated 18-9-2020 issued by respondent No. 3 be quashed.

b) By issuance of writ of Mandamus, the respondents be commanded not to cause any sort of interference either directly or indirectly in the smooth running of the moveable tractor (Rice husking Machine) by the petitioner.

c) By issuance of writ of Mandamus, the respondents be commanded to promote the machine based farming in the State of J&K and not to insist the farmers to restrict themselves to manual farming including harvesting.

d) Any other relief which the Hon'ble Court deems fit and proper under the circumstances of the case may also be passed in favour of the petitioner."

02. The petitioner is aggrieved of the order bearing No. DCK/LRA/SC/20/65-85 dated 18th September, 2020 issued by respondent No. 3-Deputy Commissioner, Kupwara, whereby Subordinate Revenue Authorities as well as Police Authorities have been directed to seize all illegal Rice

Husking Machines, Bandsaw and Tractor Based Machines functioning in District Kupwara.

03. The facts leading to the filing of the instant writ petition as projected by the petitioner, are that, the petitioner had purchased Movable Tractor Mounted Rice Husking Machine on demand from the farming community from the village way back in 2019. The decision for purchasing the Movable Tractor Mounted Rice Husking Machine was taken by the petitioner to minimize the scarcity of labour during the harvesting season in District Kupwara and to introduce machine husking of the rice crop in the district.

04. The further case of the petitioner is that consequent upon purchasing the Movable Tractor Mounted Rice Husking Machine, the petitioner applied before the State Pollution Control Board (SPCB) for grant of NOC for running and commissioning of Movable Tractor Mounted Rice Husking Machine and in terms of the communication dated 24th September, 2019, the petitioner was informed that the Moveable Tractor (Rice Husking Machine) does not fall in UCM as per guidelines of SPCB at that relevant point of time. In terms of the said communication, the petitioner was also informed that the Board has not issued any kind of NOC in respect of moveable Tractor (Rice husking Machine). The State Pollution Control Board by way of communication dated 24th September, 2019 clarified that Movable Tractor Mounted Rice Husking Machine was not falling in UCM as per the guidelines of State Pollution Control Board, yet it was in August, 2020 that the petitioner applied before the Chief Agriculture Officer, Kupwara, for permission to install Movable Tractor Mounted Rice Husking Machine and after

processing the case of the petitioner, a communication came to be issued by Chief Agriculture Officer, Kupwara, on 28th August, 2020 to the District Officer State Pollution Control Board, Kupwara, whereby, the Chief Agricultural Officer, recommended permission for operation of Movable Tractor Mounted Rice Husking Machine in favor of the petitioner.

05. The further case of the petitioner is that on 15th September, 2020 the Regional Director, J&K State Pollution Control Board issued permission/NOC for installment of Movable Tractor Mounted Rice Husking Machine in favor of the petitioner, subject to the conditions as envisaged in the said order.

06. It is the specific case of the petitioner that although the petitioner had obtained permission/NOC from the State Pollution Control Board as well as from the Agriculture Department for running Movable Tractor Mounted Rice Husking Machine, yet the respondents caused unnecessary interference in the running of the Movable Tractor Mounted Rice Husking Machine by the petitioner, as a result of which, a communication was addressed by Chief Agriculture Officer on 17th September, 2020 to the Tehsildar, Kupwara, whereby Tehsildar, Kupwara, was informed that the Department of Agriculture District Kupwara had no objection for installation of Movable Tractor Mounted Rice Husking Machine in favor of the petitioner.

07. The learned counsel for the petitioner submits that the respondent No. 3 has no jurisdiction of whatsoever kind in respect of regulation or control of the Movable Tractor Mounted Rice Husking Machine, but the respondent No. 3 by way of arbitrary exercise of power, has issued a general order

dated 18th September, 2020 directing the Subordinate Revenue Authorities as well as Police Authorities to seize all illegal Rice Husking Machines, Band-Saw and Tractor based Machines functioning in District Kupwara.

08. The learned counsel appearing on behalf of the petitioner submits that the respondent No. 3 has usurped the powers of the Agriculture Department and State Pollution Control Board in the field of granting permission with regard to Agricultural activities and introducing Machine based Agricultural activities. The learned counsel further submits that the competent authority for regulating the machine based agricultural activities is the Agricultural Department/ Pollution Control Board and the Deputy Commissioner of the concerned District has no role to play in the field, which is already occupied by the other departments and the circular impugned, as such, is liable to be set aside, as the same is without jurisdiction.

09. The further case of the petitioner is that pursuant to impugned circular dated 18th September, 2020, the respondents have stopped the operation of all husking machines movable as well as immovable irrespective of the permission/NOC's from the concerned departments, which is not only illegal but also an arbitrary exercise of power on the part of the Deputy Commissioner, Kupwara, which is not permissible under law and liable to be set aside.

10. Lastly, the learned counsel for the petitioner has argued that the action of the respondents is violative of Article 19 (1) (g) of the Constitution of India, as all citizens have a right to carry on their trade, profession, business and

the action of the respondents, as such, is violative of the said right, hence, the present writ petition.

11. *Per contra*, reply affidavit stands filed on behalf of the respondents, wherein by way of preliminary objection, the respondents have submitted that the petitioner has not come to this Court with clean hands and has tried to mislead this Court by sheer misrepresentation of facts and, as such, the present writ petition deserves to be dismissed on this ground alone.

12. The respondents have taken a further stand in the reply affidavit that the circular dated 18th September, 2020 which is impugned in the present writ petition, has been issued in terms of guidelines issued by the Department of Food Civil Supplies & Consumer Affairs dated 4th April, 2003 and 13th May, 2005. The circulars issued by the Department prescribe conditions for issuance of licenses to run Shali Husking Mill (Hullar/Sheller type) and vide circular instruction dated 18th September, 2020, it was impressed upon all the Tehsildars/Naib Tehsildars/ SHO's of District Kupwara to stop and seize all illegal Rice Husking Machines, Bandsaw and Tractor based machines and adhere strict compliance. Thus, the instructions have been issued to stop illegal Husking of Shali, without having a valid license from the competent authority and without fulfilling the required conditions as envisaged under the circular instructions issued by the Department of Food Civil Supplies & Consumer Affairs.

13. The further stand of the respondents is that a writ petition involving similar facts bearing WPC No. 911/2021 titled "Nazir Ahmad Lone and Ors vs. UT Of J & K and Ors",

had been filed by some person(s), with the grievance that the private respondents therein, without obtaining any permission and without adhering to the procedure as prescribed under law, had started operating illegal rice husking machines, which were mobile and fitted with tractors. The said petition came to be disposed of by this Court in terms of order dated 4th May, 2021 with the directions to the Deputy Commissioner, Kupwara, to go in to the issue as to whether the licenses for running the Rice Husking Machines have been issued in favour of the private respondents (Tractor based machines) and if not, then appropriate steps be taken in accordance with law.

14. Mr. Alla Ud Din Ganai, learned Additional Advocate General submits that the order passed by this Court in the aforesaid writ petition is squarely applicable to the case in hand as well and the present writ petition can also be disposed of on the similar lines as that of WPC No. 911/2021 as the issue which has been raised in the present petition is similar to that of the aforesaid writ petition.

15. It has been further averred in the reply affidavit that a set of guidelines have been issued by Department of Food Civil Supplies & Consumer Affairs regarding issuance of license(s) for operating the Rice Husking Mill Machines, but the petitioner is running the machine without having valid license issued by the competent authority. Mere seeking of NOC from any particular department/ incompetent authority does not confer any right upon the petitioner to run the Rice Husking Machine without a valid license from the competent authority.

16. The further stand of the respondents is that in terms of Government Order No. 30-FS of 2003 dated 4th April, 2003, the competent authority to issue the license for Rice Husking Machines/Mills is the Deputy Commissioner of the concerned District after charging license fee/renewal fee and fine prescribed vide Government order No. 59-FS of 2001 dated 3rd October, 2001 and 31-FS of 2002 dated 13th June, 2002.

17. It has been further stated by the respondents that license can only be issued after obtaining NOC's from various Departments i.e. concerned Patwari, Police, District Industries, Power Development Department, Pollution Control Committee, Government/Public/Religious Institutions. Hence, as per stand of the respondents, circular instructions issued from time to time by the Respondent No. 3 are in consonance with law with a view to stop the illegal operation of Rice Husking Mills/Machines within the jurisdiction of District Kupwara and no fault can be attributed to such an order/circular.

18. It has been further clarified by the respondents while filing the reply affidavit that the respondent No. 3 is the competent authority to issue such license(s) instead of Agricultural Department, as the Agricultural Department has no power to issue any kind of license for Rice Husking. The rights guaranteed to the petitioner under Article 19 are subject to the restrictions imposed by virtue of circulars issued from time to time. Accordingly, it has been prayed that the writ petition be dismissed.

19. Heard learned counsel for the parties at length and perused the material on record.

20. With the consent of the learned counsel for the parties, the instant writ petition is taken up for final disposal at this stage.

21. The grievance of the petitioner which has been projected in the instant petition, is that in spite of the fact that petitioner has got all the requisite permissions/NOCs, the respondents without any authority and without adherence to the procedure as prescribed under law, have restrained the petitioner from operating his tractor, which he has fitted by the mobile rice husking machine. The petitioner who claims to possess such permission/NOCs, has a right to operate the said Movable Tractor Mounted Rice Husking Machine in the area, in terms of the permission granted by the Agriculture Department and the Pollution Control Board (now Authority).

22. From a bare perusal of the circular which is subject matter of the instant writ petition, it transpires that the same has been issued by the Deputy Commissioner, Kupwara with a view to curb the running of illegal rice husking machine(s), as large number of complaints were being received by the Deputy Commissioner, Kupwara, from different quarters of the said District.

23. In the aforesaid backdrop, the impugned circular was issued by the Deputy Commissioner, Kupwara, whereby a direction was issued to the concerned Tehsildars to keep a close vigil and to check the illegal Rice Husking Machines, Bandsaw and Tractor Based Machines and to provide a detailed report/list of such illegal machines. By virtue of the circular which is impugned in the instant petition, all the authorities i.e. Tehsildars/Naib Tehsildars/SHOs were impressed upon to stop/seize all illegal Rice Husking

Machines, Bandsaw and Tractor Based Machines and adhere strict compliance by submitting an action taken report in this behalf.

24. It is submitted at the bar by the learned counsel appearing on behalf of the respondents that in spite of issuance of the circular in question, the illegal husking is being carried on by the petitioner, that too without obtaining valid license from the competent authority i.e. Deputy Commissioner concerned.

25. The record reveals that this Court by virtue of interim order dated 28th September, 2020 has allowed the petitioner to operate his Moveable Tractor Mounted Rice Husking Machine in terms of the permission/NOC received by him from the then State Pollution Control Board vide communication No. PCB/ROK/NOC/KUP/145/100-03 dated 15th September, 2020, which order continues to be in operation for more than five years.

26. It is the specific case of the respondents that the petitioner is running the Moveable Tractor Mounted Rice Husking Machine without seeking valid permission from the competent authority and thus, the instant writ petition can also be disposed of on the similar lines as that of WPC No. 911/2021 (*supra*), with a direction to the Deputy Commissioner to go into the issue as to whether the license for running the Rice Husking Machines has been issued in favour of the petitioner herein in accordance with law, by the competent Authority, and, if not, then appropriate steps shall be taken in accordance with law.

27. In the aforesaid backdrop, no fruitful purpose would be served by keeping the instant writ petition pending, and with the consent of the learned counsel for parties, the same is taken up for final disposal.

28. Accordingly, the writ petition is disposed of with a direction to the Deputy Commissioner, Kupwara to take a decision in the matter as to whether the license for running the Moveable Tractor Mounted Rice Husking Machine has been issued in favour of the petitioner herein in accordance with law and, if not, then appropriate steps shall be taken in this regard strictly in accordance with law and as per rules occupying the field, within a period of four weeks' from today. While according due consideration to the case of the petitioner, all the circulars and the orders which have been issued by the Government by way of policy, be adhered to while taking the decision in the matter.

29. It is further made clear that while taking a decision in terms of the order passed by this Court in the aforementioned writ petition, in case the Deputy Commissioner, Kupwara, deems it appropriate that personal hearing is required, the same shall be given to the petitioner by notifying the date for such appearance in advance and the petitioner in that eventuality, shall be at liberty to put forth his case and can also place on record the requisite documents/NOCs before the competent authority, if required.

30. Till the decision is taken by the Deputy Commissioner concerned within the time hereby granted, interim direction passed by his Court on 28th September, 2020 shall remain in operation. However, continuance of the same shall be subject to the decision to be taken by the Deputy

Commissioner concerned. It is made clear that if the decision goes against the petitioner, he shall be at liberty to seek appropriate remedy under law.

31. Writ petition disposed in the manner indicated above.

(Wasim Sadiq Nargal)
Judge

SRINAGAR:

01.12.2025

"HAMID"

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| ❖ | <i>Whether Judgment is Speaking?</i> | <i>Yes/No.</i> |
| ❖ | <i>Whether Judgment is Reportable?</i> | <i>Yes/No</i> |

