

Serial No. 50
Reg Cause List.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

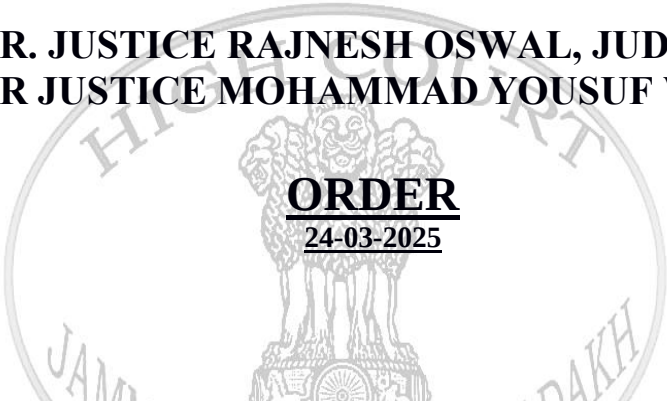
**LPA 179/2024 in[WP(C) 1363/2021]
CM(4097/2024) CM(5569/2024).**

ABDUL GANI LONE.
...APPELLANT (s)
Through: Mr. Mir Majid Bashir, Advocate.

VERSUS

J AND K FOREST DEVELOPMENT CORPORATION AND ORS.
Through: Mr. Illyas Nazir Laway, GA
...RESPONDENT(s)

CORAM:
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.
HON'BLE MR JUSTICE MOHAMMAD YOUSUF WANI, JUDGE.



ORDER
24-03-2025

Per Oswal 'J'

01. This appeal is directed against the judgment dated 7th of May 2024, passed by the learned Writ Court whereby, while dismissing the Writ petition preferred by the appellant, the learned Writ Court has permitted the respondents to have a re-look on the rates of the extraction per cft. determined by it, in the light of the facts projected by the appellant and the recommendations of Range Manager on record.
02. The appellant has impugned the judgment on the ground that the learned Writ Court has left the appellant to the mercy of the respondents to decide the rate structure to the exclusion of the appellant and that it had escaped the notice

of the learned Writ Court that the respondents had unilaterally according to their own whims and caprices fixed the rate @ 130.47 per cft. whereas the appellant in fact had incurred 375 per cft for the purpose of executing the work allotted to him.

03. Learned Counsel for the appellant has argued that the respondents could not have unilaterally fixed the rates and rather were under obligation to consult/ associate the appellant for the purpose of fixing the rate and further they were required to consider the project report.

04. *Per contra*, Mr. Illyaz Nazir Laway, Government Advocate for the respondents has submitted that the appellant has raised the dispute only after he executed the work and received 90% of the payment due to him. He has further submitted that there was no obligation on the part of the respondents to consult/ associate the appellant for the purpose of fixing the rate.

05. Heard and perused the record.

06. A perusal of the record reveals that the appellant was earlier allotted two works for the purpose of extraction and transportation of Timber Firewood regarding which agreements were also executed. The dispute arose only in respect of the Compartment No. 47/Matchil, which was allotted to the appellant in the year 2019.

07. We have examined the Communication dated 25th April 2019, addressed by the Respondent-Chief General Manager (North) Jammu and Kashmir Forest Development Corporation to Divisional Manager, Jammu and Kashmir Forest Development Corporation, wherein the Divisional Manager Jammu and Kashmir Forest Development Corporation was advised to initiate the

process of taking up the work in the above mentioned Compartment through the appellant. It was further mentioned in the communication that the rate structure in the case would be communicated separately. The concerned labour mate was tasked to engage the local labourers. Further an undertaking from the appellant was required to be obtained to the effect that the rate structure, and other terms and conditions as may be fixed by the SFC Management would be acceptable/binding upon him.

08. No documentary evidence has been brought to our notice to demonstrate that the appellant at any point of time furnished an undertaking as sought in the communication dated 25th April 2019. However, this is an admitted fact that the appellant executed the work and even received 90% of the total amount due to him. The appellant has not been able to establish before this court that the rate of work was to be fixed by the parties with mutual consent. The appellant executed the work knowing well that the rate was to be fixed by the respondents as is evident from the tone and tenor of communication dated 25.04.2019. He ought to have disputed the sole prerogative of fixing of the rate reserved by the respondents with themselves and as such, having not done so at the relevant point of time. the appellant cannot now object to the rates fixed by the respondents, particularly when the work stands completed and 90% of the total amount due to the appellant has been received by him.

09. We have examined the judgement passed by the Writ Court and the view taken by the Writ Court is un-exceptionable as such, we do not find any reason to show indulgence and accordingly dismiss this appeal.

10. At this stage, learned counsel for the appellant submits that the respondents may be directed to comply with the judgement passed by the Writ Court in respect of re-looking the rate of extraction. The judgement of the Writ Court is self explanatory, as such we are not inclined to issue any mandamus to the respondents. However, the appellant is left free to avail appropriate remedy as available under law.

(Mohammad Yousuf Wani)
Judge.

(Rajnish Oswal)
Judge

SRINAGAR
24-03-2025
Showkat Khan

