

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

RP No. 87/2024 in
WP(C) No. 2603/2022

Reserved on : 07.10.2025
Pronounced on: 06.06.2026
Uploaded on : 09.06.2026

Tufail Ahmad Khan, Age 43 years
Proprietor of Cell Air Multi Ventures
S/o Bashir Ahmad Khan
R/o Batmaloo, Srinagar.

.... Petitioner/Appellant(s)

Through:- Mr. Saqib Amin Parray, Advocate

V/s

- 1. Union Territory of J&K through
Commissioner/Secretary to
Government,
Urban Development Department
Civil Secretariat, Srinagar/Jammu.**
- 2. Director,
Urban Local Bodies, Srinagar,
Kashmir.**
- 3. Executive Officer,
Municipality Committee, Pahalgam.**

.....Respondent(s)

Through:- Mr. Ilyas Naizir Laway, GA

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
JUDGMENT

01. The petitioner seeks review of judgment dated 27.05.2024, passed in WP(C) No. 2603/2022, titled "*Tufail Ahmad Khan v. UT of J&K and others*", whereby the petition filed by the petitioner was dismissed.

02. The Municipal Corporation Pahalgam allotted a contract for collection of toll tax at Toll Plaza Sarbal, Pahalgam in terms of notification dated 26.03.2021. The parties entered into an agreement on 28.07.2021. The period of contract was initially for a period of one year i.e. till 24.06.2022, further extendable for two years.

03. During the currency of contract, it is submitted that the petitioner suffered losses due to cancellation of Amarnath Yatra, which affected the free flow of traffic and led to financial loss to the petitioner. Thereafter, the respondents restricted the petitioner from charging toll tax from Yatris and pilgrimage vehicles, in violation of the terms of notification. The petitioner suffered significant losses and approached the respondents for indemnifying the loss sustained by him. It is submitted that the respondents had extended assurance for compensation for such losses and, relying upon such assurances, the petitioner opted for continuation of the contract for the second and third years after depositing the requisite escalated bid amount.

04. Since the petitioner failed to deposit the second installment of current year amount due, a final notice dated 05.11.2022 was issued by the respondents directing the petitioner to clear the dues or vacate the Toll Plaza and handover the vacant possession immediately on account of failure to maintain financial discipline and non-observance of the agreed terms of the contract.

05. By way of the writ petition, the petitioner sought quashing of notice No. MC-PGM/22/3006-09 dated 05.11.2022, vide which, the petitioner was directed to clear the pending dues within three days positively or vacate the Toll Plaza at Sarbal Pahalgam and handover the vacant possession.

06. Further direction is sought to allow the petitioner to continue to collect toll tax at Toll Post Sarbal, Pahalgam from all vehicles except those exempted under the terms and conditions of the contract without interference, and also to direct the respondents to appoint a committee for assessing the loss suffered by the petitioner on account of non-

realization/collection of toll tax from the vehicles carrying yatries to the Holy Amarnath Cave between June 2022 to ending August 2022, and till the committee finalizes the report, the respondents be directed not to interfere with the collection of toll tax from the vehicles entering Pahalgam through toll post at Sarbal, Pahalgam.

07. Notice in this petition was issued on 21.11.2022, on which date this Court has directed that subject to furnishing of bank guarantees amounting to Rs. 25 lakhs before the Registrar Judicial of this Court within ten days by the petitioner, the respondents shall refrain from enforcing communication No. MC-PGM/22/3006-09 dated 05.11.2022, and shall allow the petitioner to operate Toll Plaza Sarbal, Pahalgam, unless there is any other legal impediment thereto.

08. In terms of the directions of this Court, the petitioner continued to operate the Toll Plaza at Sarbal during the pendency of the writ petition. The respondents objected to the writ petition on the ground that neither the auction notice nor the agreement contained any clause providing for relaxation or compensation in the event of natural calamity, hartal, disaster, or any unforeseen circumstance. The petitioner failed to fulfill the conditions of the agreement and, as such, was liable to pay the pending installments of second consecutive year and, as such, this writ petition deserves to be dismissed.

09. The writ petition came to be dismissed vide order dated 27.05.2024 on the ground that the dispute raised by the petitioner pertains to contractual rights and liabilities between the parties. This Court observed that allegations regarding financial loss suffered by the petitioner on

account of inability to collect toll tax from Yatra vehicles could not be adjudicated in writ jurisdiction under Article 226 of the Constitution of India. It was held that the petitioner, if aggrieved, could seek damages for breach of contract before the appropriate civil forum.

10. In the present review petition, the petitioner contends that the writ petition was dismissed on an erroneous assumption that the petitioner had failed to deposit the installments and had not opted for continuation of the contract for the subsequent years. The petitioner submits that he had deposited the entire amount of Rs. 25 lakhs in the shape of bank guarantee and had continued with the contract for the second and third years, which fact has been brought to the notice of this Court. It is argued that the respondents being the party to the contract are bound by the terms and conditions of the contract and cannot take recourse to any sort of discretion which will result in rescinding the contract or altering/modification of the contract unilaterally. The vehicles which were exempted from payment of toll tax were mentioned in the notification itself in terms of clause 17 of the notification, as such, no further exemption could have been made part of the contract. The relationship between the petitioner and the respondents in terms of the notification is a contractual obligation but the respondents being a State must adhere to the promise made to its citizens, which give rise to legitimate expectation of being treated in a certain way and in deviation from that by the State calls for interference by this Court under Article 226 of the Constitution of India. Reliance in this regard is placed on the judgment passed by the Hon'ble Apex Court in "**State of Jharkhand v.**

Brahmputra Metallic Ltd., Rachi and another”, 2023 (10) SCC 634,

wherein it is held as under: -

“....37 While this doctrinal confusion has the unfortunate consequence of making the law unclear, citizens have been the victims. Representations by public authorities need to be held to scrupulous standards, since citizens continue to live their lives based on the trust they repose in the State. In the commercial world also, certainty and consistency are essential to planning the affairs of business. When public authorities fail to adhere to their representations without providing an adequate reason to the citizens for this failure, it violates the trust reposed by citizens in the State. The generation of a business friendly climate for investment and trade is conditioned by the faith which can be reposed in government to fulfill the expectations which it generates....”

11. Heard learned counsel for the parties and perused the record including the writ record.

12. The review of the judgment is in terms of Rule 65 of J&K High Court Rules, which provides that an application for review can only be entertained on the grounds mentioned in Order XLVII Rule I of the Code.

13. The scope of review under Order XLVII Rule 1 is well-settled. It provides that the review of judgment can be made on the ground that, there is new or important matter and evidence which after exercise of due diligence was not within his knowledge or could not be produced by him or discovered by him or if there is a mistake or error apparent on the face of the record or for any other sufficient reason. Any other sufficient reason has to be extinguished to mean for a reason which is analogous to the first two.

14. Averting to the facts of the case, the petitioner is aggrieved of the judgment and seeks review on the ground that paragraphs 21 and 22 are not in accordance with the factual matrix of the case. The submission of the

petitioner is that he has deposited the second and third installments as per the agreement and had also opted for the subsequent two years, but this aspect was not considered while issuing the final notice. As per the final notice, the petitioner had failed to deposit the amount and, therefore, the notice was issued calling upon him to deposit the second and third instalments. It was only by intervention of this Court that the petitioner was allowed to operate the toll plaza and complete the remaining two years of his contract period.

15. The next contention of the petitioner was that there was an alteration in the contract as he was unable, firstly, to charge toll from the vehicles because the Amarnath Yatra got cancelled and, secondly, because the vehicles carrying pilgrims were exempted from payment of toll tax. The respondents submit that, in terms of the agreement between the parties, specifically Clause 11, they were not bound to provide any relief, relaxation, or compensation on account of any event, adversity, or unavoidable circumstance such as hartal, bandh, or disaster which could lead to financial loss.

16. This apart, the issue whether the petitioner had actually suffered any loss cannot be considered in these proceedings. Therefore, essentially the petitioner is alleging breach of contract on the ground that he has suffered losses. Further, a direction regarding appointment of a committee to assess the losses also cannot be granted in these proceedings, as it is for the petitioner to prove the loss by leading evidence.

17. Essentially, in the present case, the petitioner has filed the review petition seeking re-argument of the entire matter, which is impermissible in

review jurisdiction. The Hon’ble Supreme Court in case titled “**Lily Thomas v. Union of India**”, reported in **2000 (6) SCC 224**, held that a review lies only for correction of an error apparent on the face of the record and cannot be treated as an appeal in disguise. In para 53 the Hon’ble Supreme Court observed as under:-

“The dictionary meaning of the word "review" is "the act of looking; offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakersh and Ors. v. Pradyunman singh ji Arjun singh ji held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. If cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of Justice. Law has to bend before Justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error.”

18. In the present case, no error apparent on the face of the record has been demonstrated for review of the judgment dated 27.05.2024 and, accordingly, the review petition is **dismissed**.

(SINDHU SHARMA)
Judge

Jammu:
06.06.2026
VISHAL KHAJURIA

Whether the judgment is speaking	:	Yes
Whether the judgment is reportable	:	Yes