HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

OWP No. 1742/2013

Reserved on: 02.11.2026
Pronounced on: 04.11.2026
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Operative part or full judgment - Full

Aryabhatt Seva Sansthan,
Through its Chairman
Mr. Mukesh Kumar Jha
Road No. 9, Rajiv Nagar,
Patna 800024

....Petitioner(s)

Through: Ms. Veenu Gupta, Advocate.

Vs

1. State of Jammu and Kashmir
Through Principal Secretary,
Housing and Urban Development
Department, Civil Secretariat, Jammu.

2. Jammu Municipal Corporation
Town Hall, Jammu
Through its Commissioner.

3. Joint Commissioner (W)
Jammu Municipal Corporation,
Town Hall, Jammu.

4. Executive Engineer,
Jammu Municipal Corporation
Division Trikuta, Trikuta Complex,
Dogra Hall, Jammu.

5. Chief Accounts Officer,
Jammu Municipal Corporation, Jammu.

6. M/S Lakshya
Social Service Organization,
167/7 Nanak Nagar, Jammu.

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….. Respondent(s)

Through: Mr. Harshwardhan Gupta, Advocate
for R-1 to 5.
Respondent no. 6 Ex-parte.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

ORDER
(02.11.2026)

01. The petitioner, through the medium of this petition, seeks direction in the nature of writ of certiorari, quashing Allotment Order No. MJ/13/Tech/T/03-07 dated 08.04.2013 issued by respondent No. 4, whereby construction of toilet complex in Sector No. 3, Ward No. 50, Channi Himmat Jammu was allotted in favour of the private respondent No. 6, allegedly without inviting any tenders or without following any procedure, in sheer contravention and violation to the provisions of law. The petitioner seeks further direction in the nature of mandamus, directing the official respondents, to allot the contract for construction of aforesaid toilet complex to the lowest tenderer, after inviting tenders, strictly in consonance with the provisions of law.

02. The petitioner has assailed the allotment of the work of the construction of toilet complex allotted in favour of the private respondent No. 6, without inviting tenders. The main grievance of the petitioner is that the official

respondents have not adopted the legal recourse available to them, as the respondent-Municipal Corporation Jammu was under an obligation to invite tenders for construction of the toilet complex, instead of allotting the same to the private respondent No. 6 at its own whim.

03. Pursuant to notice, the respondents No. 2 to 5 have filed their objections stating therein that in order to improve the sanitation condition, Jammu Municipal Corporation is constructing toilet complexes and maintenance thereto; that earlier attempts for tendering were not successful and the construction and maintenance of toilet complexes was being done by NGO M/S Sulabh International Social Service Organization; that when private respondent No. 6 approached the answering respondent through respondent No. 1 and in order to encourage another NGO, the work of toilet complexes was allotted to respondent No. 6, who is also NGO empanelled with Housing and Urban Development Department; that petitioner never approached the answering respondents and they had come to know about the same through this writ petition only; that allotment of contract in favour of the private respondent No. 6 is not allotted with ulterior motive and malafide consideration.

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04. It was further contended that the petitioner never approached the Jammu Municipal Corporation for allotment of work as they are neither working in Jammu or they have any office in Jammu; that the allotment of work of toilet complexes had been granted to the private respondent No. 6 on the terms and conditions as usually applicable to Sulabh International Organization, who had been working with the respondent-Jammu Municipal Corporation, for the last two decades; that the private respondent No. 6 has been working in the field of sanitation throughout the country and has about 20 years of experience to its credit; that the contract was granted after verifying the credentials of the organization by JMC, hence, there is no violation of Article 21 of the Constitution of India. Finally, it has been prayed that the petition be dismissed with costs.

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05. Despite issuance of notice, the respondent No. 6 has not caused its appearance. The said respondent No. 6 is, thus, set ex parte.

06. Heard learned counsel for the parties and perused the record.

07. The controversy raised in the present petition essentially revolves around the legality and validity of the allotment of a public work by a public authority without inviting

tenders and adhering to any transparent and fair procedure. The Jammu Municipal Corporation, being a statutory body and an instrumentality of the State, is under a constitutional obligation to act fairly, reasonably and transparently in all matters involving distribution of public largesse and award of public contracts. Such exercise of power cannot be left to the unfettered discretion of the authorities concerned, nor can the same be exercised, in a manner, which is arbitrary, discriminatory or contrary to the mandate of Article 14 of the Constitution of India.

08. The Hon'ble Supreme Court, in ***Nagar Nigam, Meerut v. Al Faheem Meat Exports Pvt. Ltd. & Ors.*, (2006) 13 SCC 382**, while considering the legality of grant of a public contract, has held that a State or its instrumentalities, cannot distribute their largesse at their own sweet will. The Court observed that statutory functions cannot be permitted to be exercised at the whims and caprices of the officers of the Government or local bodies in an arbitrary manner. It was further held that ordinarily, public contracts are required to be awarded through public auction or by inviting tenders after adequate publicity, so as to afford an equal opportunity to all eligible persons to participate in the

process. The relevant observations made by the Hon'ble Supreme Court are extracted as under:

> **"It is now a well settled principle of law that having regard to the provisions of Article 14 of the Constitution of India, a State within the meaning of Article 12 thereof cannot distribute its largesse at its own sweet will."**
>
> **"The Court can ensure that the statutory functions are not carried out at the whims and caprices of the officers of the government/local body in an arbitrary manner. But the Court cannot itself take over these functions."**
>
> **"It is well settled that ordinarily the State or its instrumentalities should not give contracts by private negotiation but by open public auction/tender after wide publicity."**
>
> **"The award of Government contracts through public-auction/public tender is to ensure transparency in the public procurement, to maximise economy and efficiency in Government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution."**
>
> **"The law is, thus, clear that ordinarily all contracts by the Government or by an instrumentality of the State should be granted only by public auction or by inviting tenders, after advertising the same in well known newspapers having wide circulation, so that all eligible persons will have opportunity to bid in the bid, and there is total transparency."**

09. Applying the aforesaid principles to the facts of the present case, it is evident that the construction of the toilet complex at Sector No. 3, Ward No. 50, Channi Himmat, Jammu, constitutes a public work involving the expenditure of public funds and, therefore, its allotment was required to be undertaken in a fair, transparent and

competitive manner. The official respondents, being public authorities, were under an obligation to afford an equal opportunity to all eligible and interested persons to participate in the process of allotment. The direct allotment of the aforesaid work in favour of the private respondent No. 6, without inviting tenders or providing any opportunity to other eligible persons to compete, prima facie, runs contrary to the constitutional mandate of fairness and non-arbitrariness enshrined under Article 14 of the Constitution of India.

10. The justification furnished by the official respondents No. 2 to 5 that private respondent No. 6 is an NGO empanelled with the Housing and Urban Development Department and possesses considerable experience in the field of sanitation, by itself, cannot constitute a valid ground for dispensing with the normal procedure of inviting tenders. The fact that private respondent No. 6 may have experience or expertise in the relevant field does not confer upon it any exclusive entitlement to secure a public contract, nor does such circumstance exempt the Municipal Corporation from complying with the requirements of transparency, fairness and equal opportunity. The official respondents have neither disclosed any compelling or exceptional circumstances

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warranting departure from the ordinary procedure of public tenders, nor have they demonstrated the existence of any statutory provision authorizing such direct allotment, so as to deviate from the settled legal position.

11. The plea of the official respondents that the petitioner had never approached the Jammu Municipal Corporation for allotment of the work or that the petitioner does not have an office in Jammu is also of no consequence in determining the legality of the impugned allotment. The petitioner cannot be deprived of the right to challenge an arbitrary exercise of public power merely on the ground that it had not made any prior representation to the authorities, particularly when the grievance raised is that the official respondents have failed to adopt a transparent and competitive procedure for awarding a public contract.

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12. It is, thus, manifest that the impugned allotment order No. MJ/13/Tech/T/03-07 dated 08.04.2013 has been issued without inviting tenders and without adhering to any transparent or competitive procedure. The respondents have failed to establish any exceptional circumstance or compelling reason which could justify departure from the normal rule of public tender. The action of the official respondents, therefore, suffers from

arbitrariness and is violative of the constitutional mandate of Article 14 of the Constitution of India. The impugned allotment, being the outcome of an arbitrary and non-transparent exercise of public power, cannot be sustained in law and is liable to be quashed.

13. For the foregoing reasons, the present writ petition is allowed. The allotment order No. MJ/13/Tech/T/03-07 dated 08.04.2013, issued by the official respondent No. 4 in favour of the private respondent No. 6 for construction of toilet complex at Sector No. 3, Ward No. 50, Channi Himmat, Jammu, is hereby quashed. The respondents are directed to undertake the process of allotment of the aforesaid work afresh, in accordance with law by inviting tenders, to open competition.

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14. The writ petition is, accordingly, disposed of, as allowed along with connected application(s).

15. No order as to costs.

(M A CHOWDHARY)
JUDGE

JAMMU
02.11.2026
NARESH/SECY

Whether the order is speaking: **Yes**
Whether the order is reportable: **Yes**

...

Naresh Kumar
2026.11.04 16:21
I attest to the accuracy and
integrity of this document