Sr. No. 69

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
ATJAMMU

Date of pronouncement: 29.10.2026.
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WP(C) No. 3441/2026
CM No. 7668/2026

Farha Naz, W/o Shri Sajjad Ahmed Malik, R/o Village Draba, Tehsil Surankote, District Poonch. .....Applicant(s)/Petitioner(s)

Through :- Mr. Rohit Verma, Advocate.

v/s

1. Union Territory of Jammu and Kashmir through the Commissioner/Secretary to Government, Department of Rural Development and Panchayati Raj, Civil Secretariat, Jammu.
2. Deputy Commissioner-cum-District Programme Coordinator, District Poonch.
3. Assistant Commissioner (Development), District Poonch.
4. Block Development Officer, Block Buffliaz, District Poonch.
5. Executive Engineer, REW, Poonch.

.....Respondent(s)

Through :-

CORAM: HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

ORDER
29.10.2026

(**ORAL**)

1. Petitioner has invoked the extra-ordinary writ jurisdiction of this Court under Article 226 of the Constitution, seeking quashing of communication dated 23.10.2026 issued by respondent No. 4-Block Development Officer, Block Buffliaz, District Poonch whereby, the agreements entered into between the parties for supply of construction materials were cancelled. Petitioner also seeks quashing of communication dated 23.10.2026, whereby fresh e-Tenders were issued for procurement of key construction materials under MGNREGA/

VB-G-RAM-G in Block Buffliaz for financial year 2026-27. Petitioner further seeks a direction to the respondents to honour, implement and give full effect to Agreements Nos. 01 to 05 of 2026-27 dated 17.09.2026 and place supply orders on the petitioner for the key construction materials at the approved L-1 rates for the period of the contracts.

2. Brief facts as projected by the petitioner are that the petitioner was declared as L-1 in the tenders process floated by respondent No. 4 for supply of construction materials under the material component of VB-G-RAM-G for the financial year 2026-27. Pursuant thereto, accordingly, Agreements Nos. 01 to 05 dated 17.09.2026, were entered between the petitioner and respondent No. 4. It is contended that the petitioner thereafter supplied material including cement, which is evidenced by tax invoices of Shree Cement Limited dated 23.09.2026, 24.09.2026 and 16.10.2026.

3. The precise grievance of the petitioner is that all of a sudden, respondent No. 4, vide order dated 23.10.2026, cancelled the agreements entered into for supply of construction material. While assailing the impugned action, learned counsel for the petitioner mainly relied upon Clause (7) of impugned order dated 23.10.2026. Perusal of the said Clause shows that the contract was cancelled *inter alia* on the basis of reports that no material had been supplied by the petitioner under the agreements, and that the decision was taken solely on procedural and procurement-related grounds and not on the basis of any default, misconduct or breach on the part of the contractor.

4. The challenge is primarily founded on the grounds that the impugned action is *mala fide* and has been passed in breach of the principles of natural justice without putting the petitioner on notice. It is further contended that as per clause (4) of the agreement, the contract can be cancelled only in the event of

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persistent failure to supply or providing of sub-standard materials, which may lead to cancellation of contract, forfeiture of the EMD. It is urged that the respondents cannot resort to a ground which is not envisaged in the contract entered into between the parties.

5. There can be no denial of the proposition that once the parties enter into a contract, they are bound by its terms and none of them can be permitted to resile therefrom unilaterally. The contract in question pertains to state largesse and must, therefore, conform to the mandate of Article 14 of the Constitution. At the same time, it is equally well-settled that where the agreement itself contains a Clause providing for dispute resolution, the parties are expected to resort to the remedy agreed upon by them at the time of entering into the contract, and a writ petition may not be maintainable in such circumstances.

6. As per the agreement dated 17.09.2026, there is a specific Clause (6) under the heading, "Dispute Resolution & General Directives", which provides that in case of any dispute between the Vendor and the Department regarding rates or terms, the matter shall be referred to the Assistant Commissioner Development (ACD), Poonch or the District Programme Coordinator, Poonch.

7. The law relating to maintainability of the writ petition under Article 226 of the Constitution in contractual matters involving the State, particularly where an arbitration or dispute/resolution clause exists in the agreement, is well settled by catena of decisions of the Hon'ble Supreme Court. In "**State of U.P. and Ors Vs Bridge & Roof Co. (India) Ltd. (1996) 6 SCC 22"**, the Hon'ble Supreme Court held that when the contract itself provides for a mode of settlement of disputes arising from the contract by reference to arbitration, there is no reason why the parties should not follow and adopt that remedy and invoke the extraordinary jurisdiction of the High Court under Article 226. The existence

of an effective alternative remedy, provided in the contract itself, is a good ground for the Court to decline to exercise its extraordinary jurisdiction under Article 226. Article 226 was not meant to supplant the existing remedies at law but only to supplement then in certain well recognize situations.

8. Learned counsel for the petitioner has sought to place reliance on a judgment of the Hon'ble Supreme Court in "**State of U.P. Vs Sudhir Kumar Singh and others; (2021) 19 SCC 706"**. In that case, Hon'ble Supreme Court held that where a plea of breach of natural justice or arbitrariness is raised against the State in the matter of cancellation of a concluded tenders/contract, a public law element is involved and the writ jurisdiction is maintainable, as such, action attracts Article 14 of the Constitution. The Apex Court emphasised that every case in which citizen knocks at the doors of the writ Court for breach of fundamental rights contains a public law element, as oppose to a pure breach of contract.

9. However, the judgment in Sudhir Kumar Singh (Supra) is clearly distinguishable on facts. The Apex Court expressly distinguished the earlier decision in Bridge and Roof Co. (Supra) on the ground that the observations therein regarding the existence of an arbitration clause as a good ground to decline the writ jurisdiction would not apply where no such clause exists. In the present case, Clause (6) of the agreement dated 17.09.2026 specifically provides a dispute resolution mechanism by way of reference to the designated authority and thereafter to a sole arbitrator under the Arbitration Act. The presence of such clause brings the present case within the ratio of Bridge and Roof Co. (Supra) rather than Sudhir Kumar Singh (Supra).

10. The core dispute between the parties essentially relates to whether the petitioner had in fact supplied the material under the agreement, whether the

grounds of cancellation fall within the contractual framework, particularly Clause (4), and the interpretation and effect of the terms of the agreement. These are mixed questions of fact and law arising out of the contract. Even the allegations of mala fides and non-observance of principles of natural justice can appropriately be raised and examined before the authority/Arbitrator designated under Clause (6) of the Agreement. The agreed mechanism is efficacious and provides a forum where both questions of fact and law can be decided.

11. The decision in Sudhir Kumar Singh case (Supra) affirms that a writ under Article 226 is maintainable against the arbitrary State action in contractual matters where public law element is present and prejudice is shown. However, that decision was rendered in a case where no arbitration clause existed. The Hon'ble Supreme Court carefully distinguished Bridge and Roof Co. case (Supra) on this ground. Where the contract for supply of material contains an arbitration clause and the cancellation involves disputed questions of fact, a writ is ordinarily not maintainable, and interference is not warranted. The contractor must be relegated to the contractual remedy of arbitration.

12. Just for the sake of reference, in Para 8 of the writ petition, the petitioner has specifically disputed the ground of non supply of material raised by the respondents. At the same time, petitioner has also disputed the violation of provisions of General Financial Rules 2017, therefore it is apparent that case involves disputed questions of fact and law, including the interpretation of agreement Clause (s), therefore, same cannot be gone into in the writ jurisdiction of this Court.

13. In view of the specific arbitration/disputes-resolution clause contained in the agreement and the settled position of law, this Court is of the considered view that the extraordinary jurisdiction under Article 226 of the

Constitution ought not to be exercised in the present case. The parties must be relegated to the remedy provided under the contract itself.

14. For the foregoing reasons, the writ petition is held to be not maintainable and is, accordingly, ***dismissed***. It shall, however, be open to the petitioner to avail the remedy available under Clause (6) of the Agreement dated 17.09.2026, in accordance with law.

(Shahzad Azeem)
Judge

JAMMU
29.10.2026
DIKSHA

Whether the order is speaking? Yes
Whether the order is reportable? Yes

HIGH COURT
OF JAMMU & KASHMIR AND LADAKH
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