IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

WP (C) No. 2010/2020

Reserved on: 22.10.2026
Pronounced on: 28.10.2026
Uploaded on: 28.10.2026
Whether the operative part or full judgment is pronounced: *Full*

Hotel Hajr …Petitioner(s)/Appellant(s)

Through: Mr. S. F. Qadiri, Sr. Adv. with Ms Fozia Rashid, Adv.

Vs.

Union Territory of JK & Ors. ...Respondent(s)

Through: Mr. Numan Idrees Malik, GA vice
Mr. Mohsin Qadiri, Sr. AAG
Ms Shagufta Maqbool, Adv.

CORAM:

HON'BLE MR. JUSTICE YASH PAUL BOURNEY, JUDGE

J U D G M E N T

1. The petitioner in this writ petition has questioned the Communication dated 1st October 2020 bearing No. Rent/Bud/Hajr/2020/143-46 and sought a direction in the form of Writ of Certiorari to quash the said communication issued by the respondent No. 4 in terms of which the excess amount of Rs. 20,35,296/- has been shown as recoverable from the petitioner on account of non-deduction of rebate @ 32% as indicated in the Government Order No. 129-Est of 2010 dated 12.07.2010. A further direction in the nature of Writ of Mandamus is sought commanding the respondents to adhere to the contents of the Government Order No. 164-Est of 2015 dated 10.09.2015 and consequently release the payments in the form of tariff for the use and occupation of the hotel without making any deductions whatsoever.

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2. Petitioner's case at hand is that he owns a hotel with business name "Hotel Hajr" at Rajbagh which is registered with the Department of Tourism, Government of J&K and falls in the category "C" and a certificate of registration has been issued in his favour by the Competent Authority. It is further the case of petitioner that his hotel has been under the occupation of the respondents w.e.f 03.08.2018 for providing accommodation to the Security Forces. The tariff has been provided and revised under various orders issued by the Government through respondent No. 5 from time to time in terms of recommendation of the Rent Assessment Committee and latest by order No. 164-Est of 2015 dated 10th September 2015. As per the said order, the Hotels falling in Category "C" have to be paid revised tariff of ₹ 356/- per room per day and the Halls @ ₹ 500/- per Hall per day. The total accommodation in the hotel is stated to be 42 rooms and 13 Halls which was occupied and is admittedly under the use and occupation of the respondent No. 6. It is further case of the petitioner that respondents had all along been paying the tariff @ ₹ 300/- per room per day and ₹ 500/- per Hall per day from the date it was taken over without any deductions etc. till issuance of the order impugned dated 1st October 2020 whereby the petitioner has been directed to deposit an amount of ₹ 20,35,296/- towards adjustment of the excess amount released in his favour.

3. The order is challenged on the ground that it had been issued without proper application of mind, in an arbitrary manner and as such, is violative of the fundamental right of the petitioner to carry out his business as guaranteed under Article 19 (1) (g) of the Constitution and

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without affording an opportunity of being heard in gross violation of principles of natural justice.

4. The order impugned has been issued ostensibly in application of the Government Order No. 129-Est of 2010 dated 12th July 2010 which reads thus:-

> **"Subject: Rebate on account of Boarding & Lodging in respect of non-move hotels.**
>
> Government Order No. 129-Est of 2010
> Dated 12.07.2010.
>
> Sanction is accorded to
>
> i. Deduction of rebate @32% on account of lodging charges and @ 4% on boarding charges in respect of hotels hired by the Department during the winter months w.e.f 13.01.2010 to 30th April 2010 and for subsequent winter months also (i.e. 1st November to 30th April).
>
> ii. No rebate during the summer months i.e., 1st May to ending October will be deducted from the hoteliers bills whose hotels are hired by the Department.
>
> By order of the Government of Jammu and Kashmir."

5. However, according to petitioner, the said order has no application to the petitioner's case since it does not grant any authority for making any deductions. It is also urged that order impugned is otherwise not based on any independent enquiry, but is simply issued on the basis of some observations/query raised by the Audit Committee when it was required and to be enquired into and only verified by respondent No. 5.

6. Replies have been filed by respondent No. 6 wherein it has been admitted unequivocally in paragraph 6 that 42 rooms and 13 Halls of the hotel in question have been under the occupation of the two Companies viz. C/25 and D/25 of the 25 Bn. CRPF w.e.f. 3rd August

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2018, so, there is no dispute with respect to the number of rooms and halls under the actual occupation of the respondents.

7. Respondent Nos. 1 to 4 have taken several objections; preliminary as well as factual claiming *inter alia* that no constitutional or statutory right of the petitioner is violated and disputed questions of fact are sought to be raised by way of this writ petition which are beyond the scope. On facts, it is contended that deductions are sought to be recovered on the basis of the observations of Audit Committee. It is further admitted that the hotel of the petitioner has been occupied by respondent No. 6 after obtaining sanction from PHQ which has been issued vide letter No. BDR-03/2018/3446 dated 06-10-2018. That the observations have been made by the Audit Committee on the basis of Certificate of Registration issued by the Tourism Department bearing 42 rooms are registered and two of those rooms are occupied by the hotel staff, however, no Hall is shown to be registered with the Tourism Department.

8. I have heard Mr. S. F. Qadiri, learned senior counsel for the petitioner and Mr. Numan Idrees Malik, learned GA appearing vice Mr. Mohsin Qadiri, learned Sr. AAG for the respondent Nos. 1 to 5 and Ms Shagufta Maqbool, learned counsel for respondent No. 6.

9. It is admitted case that hotel owned by the petitioner has been hired for the use and occupation by respondent No. 6 w.e.f 3rd August 2018 and is still occupied by them. In this behalf, the order issued by the Police Headquarters, J&K Jammu bearing BDL-12/2019/465-66 dated 12.02.2020 is a clear acknowledgment of this fact. As regards the

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tariff, there are no specific comments and hence the same is chargeable as per the orders issued by the Estates Department from time to time. Initially, the order bearing PHQ/ADB/1177 of 1991 dated 20th August 1991 fixed the rates as per the particular categories of hotels/dormitories. However, the subsequent order No. 197-Est of 2010 dated 29.09.2010, order No. 170-Est of 2011 dated 22.09.2011 made no such distinction and have provided uniform rates of Catering Charges, Room Rent etc. These rates have been made applicable and extended to hotels occupied by PMFs/Political Protectees in the State. The Government vide order No. 129-Est of 2010 dated 12.07.2010 has further accorded sanction to the deduction of rebate @ 32% on account of lodging charges and @ 4% of boarding charges in respect of hotels hired by the Department during the winter months w.e.f. 13.01.2010 to 30.04.2010 and for the subsequent winter months i.e., from 1st November to 30th April. The room rent etc. has further been revised vide Government Order No. 164-Est of 2015 dated 10.09.2015 whereby the rates has been enhanced from ₹ 300 per room per day to revised rate of ₹ 356/- per room per day w.e.f. 1st May 2014. The charges of Halls are also claimed to have undergone revision, but there is no mention of it.

10. Learned counsel for the petitioner has pointed out during the course of the arguments that he has been paid room rent @ ₹ 300/- per room per day and Halls @ ₹ 500/- per hall per day right from the date hotel was hired though rates stood revised w.e.f. 10.09.2015, therefore, he was and is entitled to claim rent at the enhanced rate. It is further argued that the hotel of the petitioner is occupied and is in use by the Security

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Forces who are stationed permanently and therefore, no deductions are permissible being in occupation of the Security Forces round the year.

11. Mr. Numan Idrees Malik, learned GA on the other hand has countered the arguments on the ground that the rates of rent and the deductions are applicable uniformly to all kinds of hotels hired by the Government without any exception, therefore, petitioner cannot claim any exemption, and more so, when he has accepted the rates of room rent etc. without any reservation.

12. Having considered the submissions made at bar by learned counsel on both sides, there is no dispute as to the number of rooms and halls of the hotel under the actual use and occupation of the respondents. Therefore, the observation of the Audit Committee in reference to the Certificate of Registration that hotel was registered for 42 rooms only without any Hall are not tenable. It is another matter that the petitioner has not got registered the actual accommodation in the hotel for which the registering authority is free to take necessary action as is required under law or for under-stating accommodation at the time of registration. However, respondents being in actual use and occupation cannot draw any benefit out of it. Therefore, they are liable to pay for what they have been in occupation on ground as a matter of fact.

13. Coming to the rate of rent, there is no specific agreements/contract between the parties and therefore, there is no option to fall back on the rates fixed by the Government for hiring similar accommodation. Once the rates are fixed by the Government, the same have to be

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applied uniformly to all the hotels without any exception as to whether the same are hired for Move Employees or otherwise for the simple reason that whether employees move or stay, the accommodation so hired was to remain with the department concerned throughout the year. Therefore, on the same analogy, the rate of deduction of rebate has also to be applied uniformly to all the hotels and more so when the order makes a bold statement that it is with respect to boarding and lodging in respect of "Non-Move Hotels". In that view of the matter, the petitioner cannot escape from the order regarding deductions.

14. For the foregoing reasons, the impugned order dated 01.10.2020 is modified to the extent it pertains to the refund of the charges paid on account of two rooms and 13 Halls and also on account of rebate in rent @ 32% for the winter season. However, petitioner is entitled to the daily charges at the enhanced rate as is prescribed by the Government Order No. 164-Est of 2015 dated 10.09.2015. Respondent No. 5 is directed accordingly to work out the amount due to the petitioner at the enhanced rate of daily usage charges and the amount recoverable from him on account of rebate for winter season within a period of three months. Thereafter, amount due shall be paid/recovered/adjusted accordingly.

15. The petition is accordingly disposed of.

(YASH PAUL BOURNEY)
JUDGE

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Whether approved for reporting? Yes/No

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