

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

**Case:** WP(C) No. 3071/2024  
CAV No. 2484/2024

Ajay Kumar Sareen

..... Petitioner(s)

Through :- Mr. P.N. Raina, Sr. Advocate with  
Mr. Aseem Kumar Sawhney, Advocate

**Vs**

U.T. of J&K and Ors.

.....Respondent(s)

Through :- Mrs. Monika Kohli, Sr. AAG for R- 1 to 4  
Mr. Parshant Jigyal, Advocate for R-5

**CORAM:**  
**HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE**

**ORDER**  
**30.12.2024**

**CAV No. 2484/2024**

With the appearance of Mr. Parshant Jigal, Advocate for the caveator,  
the caveat stands discharged.

**WP(C) No. 3071/2024**

**01.** Through the medium of the instant petition, the petitioner is challenging the order dated 16.12.2024, (which is impugned in the present petition), passed by respondent no. 2-Deputy Commissioner, Jammu in case titled '*Ashima Gupta Versus U.T. of J&K and Anr*' whereby, respondent no. 2 has cancelled the EWS certificate bearing No. JK-REV-EWS/2022/04658 dated 27.10.2022 issued by respondent no. 3-Tehsildar Jammu Khas in favour of the petitioner in an application/appeal/revision filed by respondent no. 5.

**02.** It has been urged by learned Senior counsel for the petitioner that respondent no. 2 has relied upon some complaint of respondent no. 5 and the inquiry conducted by respondent no. 4 i.e. Tehsildar Nazool, Jammu at the back of the petitioner and that too without affording an opportunity of being heard in the said complaint/inquiry, which inquiry report has been relied by respondent no. 2 while deciding the impugned revision/appeal preferred by respondent no. 5 without providing the copy of the same to the petitioner or soliciting any objection from the petitioner.

**03.** The further case of the petitioner is that during the pendency of the revision before the Deputy Commissioner, Jammu, neither any inquiry got conducted nor any evidence was sought or any inquiry report or record was called for and on the other hand, respondent no. 2 has passed the order impugned on the basis of the inquiry report dated 11.09.2024, which was forwarded by Additional Deputy Commissioner, Jammu on 12.09.2024 and has been taken into consideration while passing the order impugned and that too without providing any opportunity of being heard to the petitioner or supplying the said adverse material to the petitioner. Thus, while passing the order impugned, as per the learned counsel, the petitioner has been condemned unheard, and resultantly, the offshoot of the same i.e. the order impugned cannot sustain the test of law and is liable to be quashed.

**04.** It has also been urged by Mr. P.N. Raina, the learned Senior counsel for the petitioner that in the order impugned, a finding has been recorded against the petitioner that the petitioner has misled the competent authority by

concealing the information about plot which falls within the realm of committing fraud and the Deputy Commissioner, Jammu was swayed away with the said finding, which ultimately led to the passing of the order impugned.

**05.** The specific case of the petitioner is that with a view to arrive at such finding of fraud or misrepresentation, the petitioner ought to have been heard and a detailed inquiry ought to have been conducted, which has not happened in the instant case and the adverse material which led to the passing of the aforesaid order has not been supplied to the petitioner and no inquiry whatsoever has been conducted and thus, the very foundation of the aforesaid order falls flat in absence of any regular inquiry or providing an opportunity of being heard to the petitioner.

**06.** According to the learned Senior counsel for the petitioner, the Deputy Commissioner while passing the order impugned has moved with a preconceived notion, as if the petitioner has committed fraud and was influenced by the one sided inquiry conducted by his Subordinate revenue Officers, where the petitioner was not associated at all and was not provided an opportunity of being heard while conducting the so called unilateral inquiry by his Subordinate Officers, which ultimately led to the passing of the order impugned. Besides, the petitioner was not aware of the adverse material relied by respondent no. 2, as the same was not provided to him.

**07.** Thus, the adverse material which has been relied by the Deputy Commissioner, which led to the passing of the order impugned has not been

supplied to the petitioner nor the petitioner has been put to any notice and even the petitioner was not aware of any such inquiry which was held ex-parte against the petitioner and was the basis of the passing of the said order. However, the petitioner after coming to know about some inquiry later on applied for the certified copy of the said inquiry and has also been called in question in the instant petition. The order impugned and the so called inquiry as per the petitioner are illegal, perverse and liable to set side.

**08.** Another argument which has been raised by the learned Senior counsel for the petitioner is that the law of filing of an appeal is envisaged under Chapter V of Reservation Act of 2004. He further laid emphasis that there is no dispute with regard to the fact that any person who is aggrieved by the order of the competent authority passed under Section 16 is entitled to file an appeal within a period of 90 days from the date of the said order. However, under Section 18 of the Reservation Act, the appellate authority may either suo-moto or an application made to it call for the records of the proceedings or the orders made by any competent authority for the purpose of satisfying itself to the legality or propriety of such proceedings or orders and pass such orders in reference thereto as it deems fit.

**09.** Learned Senior counsel for the petitioner concurs with a view taken by the Division Bench of this Court in case titled '*Abhishek Khajuria Versus State of J&K and Ors.*' in LPA No. 107/2019 decided on 16.09.2023, wherein it has been held in paras 34 & 35 as under:-

***“From a conjoint reading of Sections 16, 17 and 18 of the Act of 2004 and the Rule 25, it clearly transpires that intention of the***

*legislature is to provide remedy of appeal only to a person who is aggrieved by an order of rejection of his application for issuance of relevant category certificate. It is because of this reason and clear intent, Rule 25 clearly lays down that an appeal to the Appellate Authority under Section 17 of the Act of 2004 would lie at the instance of a person aggrieved by an order of rejection of the Competent Authority under Rule 23. The remedy of a person other than a person who is aggrieved by order of rejection of his application for grant of category certificate is to invoke the revisional jurisdiction of the Appellate Authority under Section 18 of the Act of 2004.*

*As we have held herein above, Section 18 of the Act of 2004 does not lay down any period of limitation for invoking such power whether suo moto or on an application made to it. In the instant case, respondent no. 7 had no reason to be aware of the issuance of ALC certificate in favour of the appellant till she was confronted with the name of the appellant figuring in the select/waist list of Accounts Assistants under ALC category. This led the respondent No. 7 to enquire into the matter and lodge her protest before the Appellate Authority i.e. Deputy Commissioner, Jammu, which she did by filing an application styled as appeal/revision.”*

09. Learned Senior counsel for the petitioner has further clarified that an appeal to the Appellate Authority under Section 17 of the Act of 2004 would lie only at the behest of a person aggrieved by an order of rejection of the competent authority within limitation period of 90 days from the date of order. The remedy of a person other than a person who is aggrieved by order of rejection of his application for grant of category certificate is to invoke the revisional jurisdiction of the Appellate Authority under Section 18 of the Act of 2004. Section 18 of the Act of 2004 does not lay down any period of limitation for invoking such power whether suo moto or on an application made to it.

10. He further laid emphasis that the object and scope of appreciation of evidence under different provisions by way of appeal and revision under the statute is entirely different and merely that the period of limitation has lapsed in filing the appeal, the party cannot under law invoke the revisional power and take advantage where new facts and evidences can be appreciated. As per the petitioner, new facts and evidences cannot be appreciated in revision proceedings.

11. Mr. Raina has also drawn the attention of this Court with regard to the findings recorded in the order impugned, whereby the, Deputy Commissioner has held as under:-

**“It is amply clear from the observations made by the Hon’ble Court that the sale agreement does not confer title and as such in the instant case the plot No. 112/F Sector 9 JDA Housing Colony, Upper Roop Nagar is still the property of the father of the respondent no. 2 and therefore should have been included as property of father of respondent no. 2 while considering the application of EWS certificate. Having settled this position, now the question remains as to whether the Certificate has been acquired by means of fraud and concealment of material facts.**

**It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act as falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures there from although the motive from which the representations proceeded may not have been bad. In the**

instant matter, the fact that the plot No. 112/F Sector 9 JDA Housing Colony, Upper Roop Nagar is still being held in the name of father the respondent no. 2 has been deliberately concealed in order to get the benefit of EWS certificate. The impugned certificate has been issued by competent authority without considering the above mentioned plot.

It may not be out of place to observe that the respondent no. 2 has misled the competent authority by concealing the information about plot No. 112/F Sector 9 JDA Housing Colony, Upper Road Nagar being held by respondent's father. Hence the Economically weaker Section certificate bearing no. EWS Certificate No. JK-REV-EWS/2022/04658 dated 27.10.2022 is hereby cancelled ab-initio with immediate effect."

12. Learned Senior counsel for the petitioner has also placed reliance upon the interim orders passed by Coordinate Bench of this Court in the similar facts and circumstances of the case, the copies of which have been supplied to this Court in cases titled '*Jyoti Kataria Versus U.T. of J&K and Ors. in WP(C) No. 2730/2024*', *Mohammad Irfan Bhat Versus U.T. of J&K & Ors in WP(C) No. 2721/2023* and *Abrar Ahmed Mawaz Qureshi Versus Yasin M Choudhary & Ors. in WP(C) No. 1658/2024*.

13. **Per contra**, learned counsel for the respondent no. 5/caveator submits that respondent no. 2 has exercised the powers in the instant case as envisaged under Section 18 of J&K Reservation Act, 2004 by way of a revision and not by way of an appeal under Section 17. He further submits that in so far as exercise of power under Section 18 of the Act of 2004 is concerned, no period

of limitation has been provided for invoking such power whether suo-moto or an application made to it.

14. He further laid emphasis that the remedy of a person other than a person who is aggrieved by the order of rejection of application for grant of a particular certificate is to invoke the revisional jurisdiction of competent authority under Section 18 of the Act of 2004, which admittedly has been invoked in the instant case and rightly so, the order dated 16.10.2024 has been passed by Deputy Commissioner, Jammu after hearing at length both the parties which is perfectly legal and in consonance with the Reservation Act and the rules framed thereunder.

15. Heard learned counsel for the petitioner and caveator at length and perused the record. *Prima facie*, a case for indulgence is made out. From a bare perusal of the order impugned, *prima facie*, this Court is satisfied that the Deputy Commissioner, Jammu has moved on the premise that the petitioner is guilty of fraud, misrepresentation and concealment of facts and the said finding has been recorded in the beginning of the order impugned. Once, the petitioner has already been held guilty of fraud, concealment of fact and misrepresentation, then the entire exercise of power as revisional authority while passing the order impugned was a mere formality as the decision has already been taken by the concerned Deputy Commissioner. The entire exercise by way of revision in passing the order impugned *prima facie* smacks foul play and with preconceived notion on part of the Revisional Authority.

16. Since an important question of law has been raised by learned Senior counsel for the petitioner, this Court deems it proper to issue short notice to the respondents, which is waived by Mrs. Monika Kohli, learned Sr. AAG for respondent nos. 1 to 4 and Mr. Parshant Jigyal, Advocate on behalf of the respondent no. 5(caveator).

17. List on 14.02.2025.

18. In the meantime, subject to objections from other side and till next date of hearing before the Bench, the impugned order dated 16.12.2024 passed by Deputy Commissioner, Jammu in File No. DCJ/RDR/2024-25/257 titled '*Ashima Gupta Versus U.T. of J&K and Anr.*' shall remain stayed.

19. Registry is directed to summon the original record of case titled '*Ashima Gupta Versus U.T. of J&K and Anr.*' in File No. DCJ/RDR/2024-25/257 from the Office of Deputy Commissioner, Jammu.

20. Alteration/Modification/Vacation on Motion.

**(WASIM SADIQ NARGAL)**  
**JUDGE**

JAMMU  
30.12.2024  
Mihul