

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

Reserved on: 10.03.2025

Pronounced on: 13.03.2025

Crl CP No. 1/2025

CrIM No. 381/2025

Court on its own Motion

.....Applicant(s)/Petitioner(s)

Through :- None

v/s

Sharadul Amarchand Mangaldass & Co.

.....Respondent(s)

through its partner Ritu Bhalla

Through :- Mr. A H Naik, Sr. Advocate with
Mr. Rupinder Singh, Advocate &
Mr. Puneet Ganpathy, Advocate

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE**

J U D G M E N T

(Sanjeev Kumar J)

1. This criminal contempt, placed before us, by the Registrar Judicial of this Court arises out of a *suo moto* cognizance of the contents of a legal notice issued by the respondent, taken by the learned Single Judge while disposing of WP (C) No. 237/2024 vide its judgment and order dated 02.01.2025.
2. Before we consider the application filed by the respondent seeking dismissal of these contempt proceedings, we deem it appropriate to briefly notice the background facts leading to taking *suo moto* cognizance of a legal notice issued by the respondent by the learned Single Judge for the purpose of initiating proceedings for committing the contempt of this Court.

3. The learned Single Judge, as is apparent from the judgment dated 02.01.2025 passed in WP (C) No. 237/2024, was considering a writ petition filed by M/S Sawalkote Prosjektutvikling AS [“SPAS”], a company incorporated under the Norwegian Companies Registration Act. The SPAS had approached this Court under Article 226 of the Constitution of India to seek writ of Certiorari for quashing the communication dated 06.12.2021 issued by the Executive Director (SBD&C) along with MOU dated 03.01.2021 concluded between the Jammu and Kashmir State Power Development Corporation Ltd. [“JKSPDC”] and National Hydro-Electric Power Corporation Ltd. [“NHPCL”].
4. During the course of consideration of the writ petition, a legal notice issued by the respondent firm on behalf of Sawalkote Consortium comprising of writ petitioner SPAS, M/S Hindustan Construction Company Ltd. and M/S Ozaltin Construction Trade and Industry Company came to the notice of learned Single Judge. While reading paragraph 18, 20, 23, 27, 28 and 32 of the legal notice dated 18.04.2022 in the context of controversy raised in the petition, the learned Single Judge came to the conclusion that the respondent firm had deliberately made misconceived and perverted reference to the judgment dated 01.02.2010 passed by this Court. The learned Single Judge concluded that there was misquoting of the judgment by the respondent firm and by doing so, the respondent firm had exposed itself to an action under the Contempt of Courts Act, 1971.

5. Holding so, the Writ Court itself took *suo moto* cognizance of the contents of the legal notice issued by the respondent for the purpose of proceeding against it for commission of criminal contempt of this Court and directed the Registrar Judicial of this Court to issue notice to the respondent for appearance.
6. Since the cognizance by the learned Single Judge stood taken for proceeding against the respondent for committing the criminal contempt, as such, the matter was posted by the Registrar Judicial before us for consideration.
7. On being put on notice, the respondent caused appearance through Mr. A H Naik, Sr. Advocate along with assisting counsel Mr. Rupinder Singh & Mr. Puneet Ganpathy. The respondent has also filed an application seeking dismissal of these proceedings on many grounds.
8. Having heard learned Senior counsel Mr. A H Naik, Sr. Advocate assisted by Mr. Rupinder Singh & Mr. Puneet Ganpathy, Advocates appearing on behalf of the respondent and perused the judgment dated 02.01.2025 passed by the learned Single Judge in WP (C) No. 237/2024, **we are of the considered opinion that no case for initiating contempt proceedings against the respondent is made out.**
9. Section 2 (c) which defines the criminal contempt reads thus:

2. Definitions. —

In this Act, unless the context otherwise requires, —

(a)

(b)

(c) “Criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which—

- (i) *Scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or*
- (ii) *Prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or*
- (iii) *Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.*

(d)

10. From reading of the definition of criminal contempt, it clearly transpires that publication of any matter or the doing of any other act, whatsoever, would be criminal contempt under the following circumstances:

- (i) If it scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any Court; or**
- (ii) If it prejudices, or interferes or tends to interfere, with the due course of any judicial proceedings; or**
- (iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.**

In the instant case, the learned Single Judge does not hold the view that the issuance of legal notice by the respondent firm dated 18.04.2022 scandalized or was intended to scandalize the authority of any Court. The learned Single Judge also does not hold the view that the legal notice (supra) had lowered or had the tendency to lower the authority of any Court. Since, in the year 2022, when the legal notice in question was issued by the respondent on behalf of its client Sawalkote Consortium, there were no proceedings pending in any Court and, therefore, the question of legal notice, causing any prejudice or interference with the due course of judicial proceedings, also did not arise.

11. This brings us to find out, as to whether the legal notice dated 18.04.2022, which was issued by respondent in respect of the earlier judgment dated 01.02.2010 passed by the learned Single Judge of this Court in OWP No. 854/2006 interfered with, or had the tendency to interfere with, obstructed or had the tendency to obstruct the administration of justice in any manner. This calls for correct appreciation and understanding of the judgment dated 01.02.2010 passed by the learned Single Judge of this Court in OWP No. 854/2006.
12. The aforesaid writ petition was filed by consortium of three companies including M/S SPAS. The consortium sought a writ of certiorari for quashing Government Order No. 212-PDD of 2006 dated 21.11.2006, whereby, the Government Order No. 366-PDD of 2005 dated 21.12.2005 and Addendum issued thereto dated 04.04.2006 had been superseded. The Government of Jammu and Kashmir had ordered the implementation of Sawalkote Hydro Electric Project through the process of competitive bidding. The writ petition was considered at length by the learned Single Judge in light of the reply affidavit filed by the respondents and the arguments addressed at the Bar. The learned Single Judge allowed the petition and quashed the Government Order No. 212-PDD of 2006 dated 21.11.2006 having been issued by the Government arbitrarily and in violation of the principles of natural justice and the provisions of Article 14 of the Constitution of India. With the quashing of Government Order dated 21.11.2006 (supra), the Government Order No. 366-PDD of 2005 dated 21.12.2005 along

with Addendum issued thereto dated 04.04.2006 came to be automatically revived.

13. At this juncture, it is necessary to understand the nature of Government Order dated 21.12.2005. The State Power Development Corporation Ltd. [“SPDCL”] invited Limited International Competitive Bidding on 07.12.1997 for Engineering, Procurement and Construction Contract [“EPC”] for the 600 Mega Watts Sawalkote Hydro Electric project. Six contractors responded to the bid and submitted their preliminary proposals to SPDCL. On evaluation, the bid of Statkraft Anlegg & Kvaerner Energy [“SA/KE”] was found to be attracted. The SPDCL, therefore, invited SA/KE to submit proposal for execution of the project on the basis of financing up to 85% of the project cost. Based upon the preliminary proposal of SA/KE, the SPDCL entered into MOU dated July 26th, 1999 with SA/KE. The KE left the Consortium after its acquisition by General Electric and M/S Hochtief Aktiengesellschaft Germany [“Hochtief”] joined the project in the year 2000. Similarly, SA was acquired by M/S NCC International AS, Norway (NCC) and was renamed as NCC International. The Sawalkote Consortium developed the detailed project report and submitted its EPC offer to SPDCL, which on evaluation, was found to be in Internationally Competitive Price Levels.

14. Be that as it may, upon evaluation of the offer, the SPDCL decided to enter into EPC Contract with Sawalkote Consortium. The EPC contract was finally entered into between SPDCL and Sawalkote Consortium on 21.04.2001. There were some technical

consultations by the SPDCL at its level. The State of J & K also constituted a high level Sawalkote Committee headed by its Economic Advisor to look into all aspects/issues relating to the project. The Sawalkote Committee after holding various meeting with the Sawalkote Consortium decided that all the conditions of EPC Contract dated April 21st, 2001 would remain intact, except that, the project capacity would be raised from 600 MWs to 1200 MWs and the cost of the project would be Euro 750 Millions.

15. The Sawalkote Committee's recommendations were accepted by SPDCL in its 42nd Board Meeting and the matter was placed before the State Cabinet for approval. Pursuant to the approval granted by the State Cabinet for implementation of the project by Sawalkote Consortium, Government Order No. 366-PDD of 2005 dated 21.12.2005 was issued. This was followed by an addendum issued on April 4th, 2006 making a clarification with regard to the escalation, as would apply to the agreed EPC contract amount.

16. Acting upon the aforesaid Government Order, a detailed project report was prepared by the Consortium for the enhanced capacity of the project, which was forwarded by the SPDCL to the Central Electricity Authority ["CEA"], which suggested revision and consolidation of the DPR, which too was done by the Consortium. While the Consortium was awaiting the final nod to implement the project in terms of Government Order dated 21.12.2015, the Government constituted a Cabinet Sub-Committee on October 19th, 2006 to have a fresh look into various aspects of the Sawalkote Hydro Electric Project.

17. On the basis of the report of the Cabinet Sub-Committee, the Government issued Government Order No. 212-PDD of 2006 dated 21.11.2006, whereby, the EPC contract signed by SPDCL with Sawalkote Consortium was cancelled and a decision was taken to float global tenders. This order of the Government dated 21.11.2006 was quashed by the learned Single Judge vide its final judgment and order dated 01.02.2010, passed in OWP No. 854/2006.
18. It is in reference to this, the respondent acting on behalf of and under the instruction of Sawalkote Consortium, issued a legal notice dated 18.04.2022 to the Chairman & Managing Director, NHPCL. In the notice, there is, of course, reference to the judgment dated 01.02.2010 passed by the learned Single Judge of this Court in OWP No. 854/2006.
19. In the notice, it is clearly mentioned that an illegal and arbitrary attempt of cancelling the award of project to the Sawalkote Consortium vide Government Order No. 212-PDD of 2006 dated 21.11.2006 was successfully challenged before this Court and the said Government order was set aside. This is so stated in Para 3 of the notice. In Para 18 of the notice, in which there is reference to the judgment passed by the learned Single Judge dated 01.02.2010, the NHPCL is purportedly informed that it is bound to accept and permit the Consortium to discharge its role under the contract *viz.* - *a-viz.* the Project. It was also claimed on behalf of the Consortium that the contract was alive, thriving and binding and stood upheld by this Court.

20. It is true, that the contract entered into between SPDCL and the Sawalkote Consortium on 21.04.2001, stipulating rights and obligations of the parties, in execution of the project, has not been specifically upheld by the learned Single Judge. However, the fact remains that by quashing Government Order No. 212-PDD of 2006 dated 21.11.2006, the earlier Government Order No. 366-PDD of 2005 dated 21.12.2005 and the addendum issued thereto dated 04.04.2006 came to be revived. *A fortiori*, the position as it existed prior to the issuance of Government Order dated 21.11.2006 came to be restored too and this was the position where EPC contract between SPDCL and the Sawalkote Consortium stood signed. It is only in this context, the reference has been made to the judgment of learned Single Judge in Para 18.
21. The same position is reiterated in Para 20, 23, 27, 28 and 32 of the legal notice. The respondent has understood the judgment in the context of controversy in its own way and cannot be called a deliberate and intentional attempt to either distort the judgment or to misquote it to derive undue benefit.
22. With the quashing of the Government Order 212-PDD of 2006 dated 21.11.2006, whereby, the contractual obligations entered into by SPDCL with the Sawalkote Consortium were sought to be cancelled and global bidding was sought to be resorted to, the position as it existed prior to the issuance of impugned Government Order came to be revived automatically. It is in this context, there is a reference to the judgment of this Court in several places in the notice.

23. Viewed thus, we do not find that the contents of legal notice, particularly, those contained in Para Nos. 18, 20, 23, 27, 28 and 32 either interfere or have the tendency to interfere with, or have the tendency to obstruct the administration of justice in any other manner. At the cost of repetition, we must say that the notice was issued at a time when there were no judicial proceedings pending between the parties in any Court of law. The notice was issued on behalf of Consortium to NHPCL and the same was subject to examination and appreciation by NHPCL with the help of its legal experts. The NHPCL has not complained of having deliberately and intentionally misled by the legal notice.

24. It is trite that a bonafide interpretation of a Court judgment, even if differing from Court's intended meaning, generally does not constitute Contempt of Court as long as the interpretation is not willful or deliberate and does not obstruct course of justice. Bonafide interpretation means an interpretation made in good faith, without malice or intent to deceive, mislead or obstruct justice. We need to remember the contempt jurisdiction is a special jurisdiction to be exercised sparingly and with utmost caution. The alleged offending legal notice only conveys the bonafide understanding of a judgment passed by this Court without there being any intention to willfully distort the judgment to mislead a Court of law. Offending legal notice is in the nature of a communication from one company to another, sent through law-firm, that too, at a time when no litigation between the parties was pending in any Court of law.

25. For the foregoing reasons, we are of the considered opinion that the contents of legal notice read in its entirety and in the context of controversy do not disclose the commission of criminal contempt as defined under Section 2 (c) of the Contempt of Courts Act, 1971.
26. In view of the aforesaid, **the proceedings in the instant contempt petition are closed and the rule issued is discharged.**

(Moksha Khajuria Kazmi)
Judge

(Sanjeev Kumar)
Judge

JAMMU
13.03.2025
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