

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

**LPA No. 27/2024 c/w
LPA No. 38/2024**

Reserved on: 28.02.2025.

Pronounced on: 20 .03.2025.

LPA No. 27/2024:

Hakeem Mudasir, Age: 53 Years
S/O Hakeem Mohammad Ashraf
R/OKhansahib, Budgam, Kashmir.

... Appellant(s)

Through: -

Mr Syed Faisal Qadri, Senior Advocate with
Mr Faizan Farooq Mir, Advocate.

V/s

1. **M/S Khanday Construction,**
South City Nowgam, Byepass, Srinagar
Through its partner Babar Khanday, Age: 32 Years
S/O Nisar Ahmad Khanday
R/O Nowgam, Srinagar

... Contesting Respondent

2. Union Territory of Jammu & Kashmir
Through Commissioner/ Secretary,
Public Health & Engineering Department,
Civil Secretariat, Jammu/ Srinagar.
3. Chief Engineer, Kashmir, Jal Shakti (PHE) Department, Srinagar.
4. Executive Engineer, Jal Shakti (PHE), Division Budgam.

... Official Respondent(s)

5. District Legal Services Authority through its Secretary, Budgam.
6. Abdul Majeed Sheikh S/o Ghulam Qadir Sheikh
R/o Raitan Tehsil Khansahib, Budgam, Kashmir.

... Proforma Respondent(s)

Through: -

Mr Abdul Rashid Malik, Sr. AAG with
M/S Ilyas Nazir Laway, GA and Younis Hafiz,
Assisting Counsel; and
Mr Ibrahim Mehraj, Advocate.

Clubbed With:

LPA No. 38/2024:

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S/O Hakeem Mohammad Ashraf
R/OKhansahib, Budgam, Kashmir.

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Counsel;
and
Mr Ibrahim Mehraj, Advocate.

CORAM:

Hon'ble Mr Justice Sanjeev Kumar, Judge
Hon'ble Mr Justice Puneet Gupta, Judge

(JUDGMENT)

Sanjeev Kumar-J:

01. Instant appeals, filed under Clause 12 of the Letters Patent of this Court, arise out of a composite Order and Judgment dated 9th of October, 2023 passed by the learned Single Judge of this Court[“the Writ

Court”] in WP (C) No. 2220/2022 and WP (C) No. 2115/2022 filed by the Respondent No.1 herein.

02. Vide the Judgment impugned, the Writ Court has set aside the allotment of works made by the Executive Engineer, Jal Shakti (PHE), Division Budgam in favour of the Appellant herein and directed the Chief Engineer, Kashmir, Jal Shakti (PHE) Department to undertake fresh tendering process for the said works. The Chief Engineer has been further directed to set up a departmental enquiry against the Executive Engineer, Jal Shakti (PHE) Department, Division Budgam for having connived with the Appellant for procuring an Award from the General Lok Adalat. The Award of the Lok Adalat is also set aside.

03. Aggrieved, the Appellant-Hakeem Mudasir, who was Respondent No.5 before the Writ Court, has filed two separate appeals.

04. Before we take up the grounds of challenge urged by Mr Syed Faisal Qadri, the learned Senior Counsel, appearing for the Appellant, we deem it appropriate to set out few facts which are germane to the adjudication of the controversy raised in these appeals.

05. The Executive Engineer, PHE, Division Budgam, issued an e-NIT on 18th of April, 2022 inviting tenders from the eligible bidders for the works enlisted in the said e-NIT. The total number of works enlisted in the e-NIT were twenty eight in number (28). The Appellant herein as also the Respondent No.1 herein-M/S Khanday Construction also participated in the bidding process. The process of bidding was envisaged to be conducted in two stages, i.e., (i) technical evaluation of tenders; and (ii), financial evaluation. Apart from other terms and conditions, one of the conditions for a bidder to qualify the technical bid was submission of latest Income Tax Return (ITR). The technical evaluation was conducted by the Technical Evaluation Committee and both the Appellant as well as Respondent No.1 came to be declared technically qualified. This led to the opening of price bid. Upon financial evaluation of the bids, the Respondent No.1 herein was declared as L-1, whereas, the Appellant herein was declared as L-2.

06. After the declaration of result of financial evaluation, the Appellant herein approached the Respondents objecting to the decision of the Technical Evaluation Committee to declare Respondent No.1 responsive. The challenge was laid on the ground that the Respondent No.1 had not uploaded the latest Income Tax Return (ITR). It seems that, while the Technical Evaluation Committee was looking into the matter in reference to the objection raised by the Appellant, the Appellant approached the District Legal Services Authority, Budgam for pre-litigation intervention. The Executive Engineer concerned appeared before the District Legal Services Authority, Budgam and agreed to settle the matter amicably. It was the stand taken by the Executive Engineer concerned that the Respondent No.1, who was L-1, was not technically qualified and, therefore, he had no objection to the award of contract to the Appellant herein, being L-2. The matter was referred by the District Legal Services Authority, Budgam to the General Lok Adalat, which was held in the District Court Complex, Budgam on 17th of September, 2022. The General Lok Adalat recorded the settlement between the Appellant herein and the Executive Engineer concerned and passed its Award in terms of the said settlement. Indisputably, in the proceedings before the District Legal Services Authority and, thereafter, before the General Lok Adalat, the Respondent No.1 herein, who was found L-1 in the financial evaluation, was not arrayed as a party.

07. Immediately, on passing of the Award by the Lok Adalat and in compliance therewith, the Executive Engineer issued letter of intent on 28th of September, 2022 in favour of the Appellant herein. Pursuant to the issuance of the letter of intent, the Appellant claims to have started the execution of the work on 28th of September, 2022, which he claims to have carried upto 28th of October, 2022, when he was informed about the interim directions dated 27.09.2022 passed by this Court in WP (C) No. 2115/2022. The Respondent No.1, being aggrieved of the Award passed by the Lok Adalat dated 27th of September, 2022, filed WP (C) No. 2115/2022, in which the interim Order dated 21st of September, 2022 staying the operation of the Award came to be passed. While WP (C) No. 2115/2022 was pending

adjudication, a corrigendum dated 24th of September, 2022 came to be issued by the Executive Engineer, PHE, Division Budgam, whereby the tender evaluation process, in which the Respondent No.1 had been declared technically qualified and responsive, was revoked. This corrigendum was assailed by the Respondent No.1 in WP (C) No. 2220/2022. Vide Order dated 7th of October, 2022 passed in the aforesaid Petition, the proposed allotment in favour of the Appellant herein was stayed.

08. Both the Petitions were contested by the official Respondents as well as the Appellant herein.

09. In the Reply Affidavit filed in WP (C) No. 2115/2022, the official Respondents took the stand that in response to e-NIT dated 18th of April, 2022 issued by the Executive Engineer, PHE, Division Budgam, two bids were found responsive in respect of the items enlisted at S. Nos. 3 and 4. The following were the bids that were found responsive:

- (a) *M/S Khanday Construction (L-1);*
- (b) *M/S Mudasir Ashraf Hakeem, appellant herein (L-2).*

It was submitted by the official Respondents that during the evaluation of documents submitted by the bidders, it was found that the Respondent No.1 had uploaded Income Tax Return (ITR) for the assessment year 2020-21, which was to be treated as Income Tax Return (ITR) for the accounting year 2019-20. The matter was discussed with the Superintending Engineer, Hydraulic Circle, Budgam and it was decided that the Respondent No.1 should be informed and asked to produce the Income Tax Return (ITR) for the assessment year 2021-22, by or before the issuance of allotment, in case of his emergence as L-1. It was the further stand of the Respondents before the Writ Court that the technical evaluation was completed and final bids were opened, wherein the Respondent No.1 emerged as L-1, followed by Mudasir Ashraf Hakeem-L2. The opening of price bid and declaring of Respondent No.1 as L-1 was objected to by the Appellant herein. The matter was, as per the Reply Affidavit of the official Respondents, reported to the Superintending Engineer, Hydraulic Circle, Budgam, who sent back the case to the Technical Evaluation Committee to verify the documents produced by the Respondent No.1. The documents

were verified, accordingly, and, vide Order No. 2519-22 dated 7th of July, 2022, the Executive Engineer reported the matter back to the Superintending Engineer concerned with his recommendation that he be authorized to reject the bid of L-1 (Respondent No.1 herein) and accept the bid of Respondent No.2 (Mudasir Ashraf Hakeem). The Superintending Engineer, as it appears from the Reply Affidavit of the official Respondents, sent the case back to the Executive Engineer with a direction to proceed in the matter as per general financial rules after fulfilling all codal formalities. The matter was, again, placed before the Tender Evaluation Committee, which, after examining the case thoroughly in the light of Manual for Procurement of Works, 2019, came to the conclusion that the bid of the Respondent No.1 could not be rejected on the mere reason of uploading of an Income Tax Return (ITR) for the year previous to the requisite one. The Technical Evaluation Committee was of the view that the non-submission of Income Tax (ITR) for the year 2021-22 was only a minor irregularity and that the same could be rectified by allowing the bidder to produce before the issuance of letter of allotment.

10. The Appellant herein also contested the Petitions and filed its Reply Affidavit. The Appellant took the plea that he was forced to go to the Lok Adalat by the conduct of the official Respondents, inasmuch as, despite the ineligibility/ disqualification of the Respondent No.1, they were bent upon to award the contract of the works in question in his favour. It was pleaded by the Appellant before the Writ Court that the submission of Income Tax Return(ITR) for the relevant year was one of the pre-requisites for qualifying the technical bid and, therefore, the Technical Evaluation Committee could not have declared him responsive. It was submitted that the opening of price bid of Respondent No.1, who was technically disqualified, was illegal and an exercise *per se* arbitrary.

11. To the similar extent was the stand of the official Respondents as well as the Appellant herein to the second Petition filed by the Respondent No.1.

12. The Writ Court considered both the Petitions together and, vide the Judgment impugned, allowed the Petitions with the directions which we have already referred to hereinabove.

13. The Writ Court has set aside the award of the General Lok Adalat, primarily, on the ground that there was no procedure known to law providing for taking the matter by the two disputing parties directly to the Lok Adalat and also that in the absence of Respondent No.1, who had emerged as L-1 in the financial evaluation, no proceedings could have been conducted by the Lok Adalat. The Writ Court also found fault with the conduct of the official Respondents as well as the Appellant herein, who, as per the Writ Court, allowed the Appellant to execute the works despite there being an interim order of stay dated 27.09.2022 staying the operation of award of Lok Adalat procured by the appellant.

14. Having heard the learned Counsel for the parties and perused the material on record, we are of the considered opinion that the view taken by the Writ Court that the two parties to a dispute cannot directly approach the Lok Adalat, unless the dispute is pending before a civil Court and the same has been referred to the Lok Adalat under the provisions of the Legal Services Authorities Act, 1987 [“the Act of 1987”] and the Rules framed thereunder, is not correct in law.

15. Section 19 (5) of the Act of 1987, which we will hereinbelow, clearly confers jurisdiction on a Lok Adalat to determine and to arrive at an amicable settlement of a dispute between the parties even in respect of a matter which is not brought before any Court, for which the Lok Adalat is organized. Section 19 (5) reads, thus:

“A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of –

- i. any case pending before; or
- ii. any matter which is falling within the jurisdiction of, and is not brought before any Court for which the Lok Adalat is organized:

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.”

16. Apart from Section 19(5) of the Act of 1987, Regulation No. 12 of the National Legal Services Authority (Lok Adalats) Regulations, 2009 [‘The Regulations of 2009’] also speaks of pre-litigation matters. Regulation No. 12 reads, thus:

“Pre-Litigation Matters— (1) In a pre-litigation matter, it may be ensured that the court for which a Lok Adalat is organised has territorial jurisdiction to adjudicate in the matter.

(2) Before referring a pre-litigation matter to Lok Adalat, the Authority concerned or Committee, as the case may be, shall give a reasonable hearing to the parties concerned:

Provided that the version of each party shall be obtained by the Authority concerned or, as the case may be, the Committee for placing it before the Lok Adalat.

(3) An award based on settlement between the parties can be challenged only on violation of procedure prescribed in Section 20 of the Act by filing a petition under Article 226 and 227 of the Constitution of India.”

From the reading of Regulation No.12 of the Regulations of 2009, reproduced above, it is abundantly clear that before referring a pre-litigation matter to the Lok Adalat for settlement, the Authority concerned, i.e., the District Legal Services Authority or the Tehsil Legal Services Committee, as the case may be, shall give a reasonable hearing to the parties concerned. The version of both the parties, as obtained by such Authority or Committee, shall be placed before the Lok Adalat. Furthermore, from reading of Section 19 (5) of the Act of 1987, along with Regulation No.12 of the Rules of 2009, it is abundantly clear that the Lok Adalat has the jurisdiction to determine and to arrive at an amicable settlement of a dispute between the parties at a pre-litigation stage. To assume the jurisdiction, it is not necessary that the dispute between the parties is pending adjudication before a civil Court. We, therefore, regret our inability to agree with the learned Single Judge to the effect that the Lok Adalat, not being a civil Court adjudicating an adversarial litigation, is not competent to entertain a pre-litigation matter.

17. This brings us to the next aspect of the controversy, i.e., whether the Award passed by the Lok Adalat, on the basis of amicable

settlement entered into between the Appellant herein and the Executive Engineer concerned, is sustainable in the absence of Respondent No.1, who had emerged as L-1 in the tendering process.

18. We have given out thoughtful consideration to the aforesaid aspect of the matter and we are of the view that the Respondent No.1, who had emerged as L-1 in the bidding process, had stakes in the controversy that was taken to the Lok Adalat through the District Legal Services Authority and, therefore, was a necessary party. The stand taken by the Executive Engineer before the General Lok Adalat that the bid of L-1 stood rejected for want of submission of Income Tax Return (ITR) for the relevant year was not factually correct. This raises a very strong suspicion about the possible connivance of the then Executive Engineer, PHE, Division Budgam with the Appellant herein. It is true that at that stage, the Appellant had objected to the declaration of the Respondent No.1- as a responsive bidder and, thereafter as L-1 in the financial evaluation. However, the matter was under consideration of the Technical Evaluation Committee which had even arrived at the conclusion that failure to submit the Income Tax Return (ITR) for the relevant year was only an irregularity and, therefore, the Respondent No.1 could be permitted to submit the Income Tax Return (ITR) for the relevant year before the issuance of formal letter of allotment.

19 Obviously, the Appellant pre-empted the allotment of work in favour of Respondent No.1 on submission of the Income Tax Return (ITR) for the relevant year and, with a view to frustrate it, approached the Lok Adalat. He deliberately did not array the Respondent No.1 herein as party to the litigation, so that he can, with the connivance of the Executive Engineer concerned, ensure allotment of works in question in his favour without any protest from respondent No.1. We have no doubt in our mind that the entire exercise undertaken by the Appellant leading to the passing of the Award by the Lok Adalat lacked *bonafides* and was aimed at securing the contract without facing any challenge from the L-1, i.e., the Respondent No.1 herein. The Award, which was challenged before the Writ Court, was, thus, vitiated in law and was, in any case, not binding upon the Respondent No.1

herein. Therefore, the Writ Court has rightly quashed/ set aside the Award of the Lok Adalat, at the instance of Respondent No.1 herein.

20. With the setting aside of the Award of the Lok Adalat, the controversy ought to have come to an end, however, due to subsequent developments, i.e., staying of the impugned Award of the Lok Adalat by the Writ Court on 27th of September, 2022 in WP (C) No. 2115/2022; its service upon the official Respondents as well as the Appellant herein on 28th of October, 2022; the commencement of the execution of the works in question after the issue of letter of intent on 28th of September, 2022, whereby the Appellant herein was called upon to mobilize his men and machinery for execution of the work, the controversy did not subside there.

21. From reading of the letter of intent dated 28th of September, 2022, it clearly transpires that the Appellant herein was only called upon to mobilize its men and machinery for execution of the works in anticipation of the formal allotment of the works. It is, therefore, not understandable as to how the Appellant could commence the construction of the works on the basis of letter of intent, particularly when the letter of intent did not contain any direction to the Appellant herein to commence the execution of the works. The Appellant was only asked to make proper arrangements to take over the execution of the work upon issuance of formal letter of allotment. It is, thus, evident that the part of work in question, if any, executed by the Appellant was without any authority of law. He may have been permitted to work by the Executive Engineer, but there is nothing on record to show whether he was ever handed over the site for execution of the work. We, are therefore, at a loss to understand as to how the work, if any, came to be executed by the Appellant herein between 28th of September, 2022 till 28th of October, 2022, as is claimed by the Appellant herein.

22. We are in agreement with the learned senior counsel for the Appellant that the interim Order of stay granted by the Writ Court in WP (C) No. 2115/2022 dated 27th of September, 2022 was served upon the Appellant on 28th of October, 2022 . The execution of the works by the Appellant, after having been served with the interim Order dated 27th of

September, 2022 passed in WP (C) No. 2115/2022 and Order dated 7th of October, 2022 passed in WP (C) No. 2220/2022, has not been proved. Although, the Order dated 7th of October, 2022, staying the proposed allotment of work in favour of the Appellant herein, was passed in presence of Mr. M. A. Chashoo, the then Additional Advocate General, representing the Respondents, yet the same was not in the notice of the Appellant herein till 28th of October, 2022. It is also a matter of concern as to how the Executive Engineer concerned allowed the Appellant herein to execute the work after 7th of October, 2022, i.e., when the Writ Court stayed the allotment, if any, made by the Executive Engineer in favour of Respondent No.1. This Order was passed in WP (C) No. 2220/2022. On 17th of October, 2022, the official respondents had issued fresh notice inviting tenders for the work to comply with the directions of the Writ Court.

23. Having regard to the facts and circumstances, as explained hereinabove, this Court is of the *prima facie* view that the entire exercise undertaken by the Appellant, right from approaching the Lok Adalat till the alleged execution of part of work by the Appellant, was orchestrated by the Appellant in connivance with the then Executive Engineer concerned. The work, if any, executed by the Appellant was without any authority and at his peril. The Award of the Lok Adalat, which was leveraged by the Executive Engineer to issue letter of intent in favour of the Appellant, was an outcome of crafty exercise undertaken by the Appellant with the active connivance of Executive Engineer to bag the contract. The matter was *sub-judice* before this Court when the Executive Engineer concerned issued the corrigendum rejecting the bid of the Respondent No.1 and issued letter of intent in favour of the Appellant-L2. Even though the issuance of letter of allotment in favour of the Appellant was stayed on 7th of October, 2022 in the presence of Mr M. A. Chashoo, the then Additional Advocate General, appearing for the Executive Engineer, Budgam, yet, the Executive Engineer concerned allowed the Appellant to go ahead with the execution of the work. That being the clear picture emerging from the documents on record, we are left with no other option, but to hold the Appellant not entitled to

even a single penny for the work, if any, executed by him without any authority of law.

24. For all the aforesaid reasons, both these appeals are found to be without any merit. The same are, accordingly, **dismissed** and the impugned Judgment dated 9th of October, 2023 passed by the Writ Court is upheld, though for slightly different reasons, as indicated hereinabove. Interim direction(s), if any subsisting, shall stand vacated in both the appeals.

25. Registry to place a copy of this Judgment on both these connected files.

SRINAGAR

20.03.2025

"TAHIR"

(Puneet Gupta)
Judge

(Sanjeev Kumar)
Judge

i. Whether the Judgment is approved for reporting? Yes