

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

Reserved on:- 28.05.2025

Pronounced on:- 04.06.2025

WP(C) No. 1185/2025

CM Nos. 2809/2025 & 3188/2025

Bhole Bhandari Charitable Trust Regd.
Th. Rajan Gupta

.....Petitioner(s)

Through: Mr. P.N. Raina, Sr. Advocate with
Mr. J.A. Hamal, Advocate.
Mr. Raghu Mehta, Advocate with
Mr. Nigham Mehta, Advocate.

Vs

Shri Amarnathji Shrine Board Jammu/Srinagar
Th. Its Chairman and ors.

..... Respondent(s)

Through: Mr. Mohsin Qadri, Sr. Advocate.
(**Th. Virtual Mode**) with.
Mr. Anuj Dewan Raina, Advocate.

Coram: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

JUDGMENT

CM No. 3188/2025 in WP(C) No. 1185/2025

1. The above-titled writ petition filed under the provisions of Article 226 of the Constitution of India came up for hearing before the Court on 14.05.2025.
2. Mr. Anuj Dewan Raina, Advocate appeared at the aforesaid first hearing of the case and accepted notice on behalf of the respondents. The respondents were directed to file their reply to the main petition and objections to the interim application by the next date of hearing, which was fixed as 23.05.2025. By way of ad-interim relief, the respondent No. 2 at para-15 of the order dated 14.05.2025 was left at his discretion to consider the

pending request of the petitioner for grant of Letter of Indent (LOI) for organization of langer during the forthcoming 2025 SANJAY by bearing in mind that the petitioner, *per-se*, does not suffer any last time disqualification/disability in relation to the conduct of the langer during SANJAY 2024.

3. The respondents filed their reply/objections to the petition/application on 23.05.2025. The learned counsel for the parties, Mr. P.N. Raina and Mr. Mohsin Qadri, senior Advocates were heard in part in respect of the interim application on 23.05.2025 & 26.05.2025.

4. When the matter was taken up for conclusion of arguments in respect of interim application on 27.05.2025, Mr. P.N. Raina, learned Senior Advocate for the petitioner submitted that the petitioner be permitted to withdraw his petition with liberty to file a fresh one, as some objections, *inter-alia*, raised by the learned arguing counsel for the respondents, Mr. Mohsin Qadri, Sr. Advocate during his arguments, have necessitated the impleadment of some parties as co-respondents in the case for conclusive elucidation of the writ petition.

5. The learned arguing counsel for the respondents, Mr. Qadri, Sr. Advocate, however, submitted that since the prayer for withdrawal is not unconditional, as such, he objects the withdrawal of the petition with liberty. He further submitted that the petitioner be required to file a formal application for withdrawal, regarding which, he shall file his objections.

6. The learned arguing counsel for the petitioner-trust, Mr. Raina, Senior Advocate requested for keeping the matter on board for a while to enable

the petitioner to move a formal motion, which otherwise was not required. Subsequently, a formal withdrawal application bearing CM No. 3188/2025, being the subject matter of the disposal through this order was filed. Mr. Anuj Dewan Raina, Advocate after receiving a copy of the withdrawal application was directed to file his objections to the same during the course of the day. The respondents-Board filed its objections to the withdrawal application on the same day, i.e., 27.05.2025.

7. Before proceeding further towards the disposal of the withdrawal application, it is felt proper to give a brief resume of the controversy between the parties.

8. The petitioner-trust alleges that it has a good and proven track record of over 28 years in rendering free public welfare services during Shri Amarnathji Yatra at Panjtharni (except 2 years of Corona period, i.e., 2020-21), including the provision of meals (Bhandara), night shelter facilities, mobile phone charging facility and solar-powered solutions for the benefit of yatriis, Sadhus, Sewadars and sanitation/support staff. That by offering free food to about 1500-200 yarties everyday during the early period of the yatra, it has been one of the biggest bhandara at Panjtharni. That it has also erected a temporary structured shelter capable of accommodating approximately 250-300 Sadhus, Sadhvis, where they can rest and perform their religious practices including establishment of Dhuna. That thousands of devotees and institutions from across the country are emotionally and religiously connected with the trust. That they extend their support by also contributing financially and/or through physical assistance at the langer site during the yatra period. That the arbitrary

and non-speaking refusal of the respondent-Shri Amarnathji Shrine Board (SASB) to issue the letter regarding Expression of Interest (EOI) for holding of langer as usual at Panjtharni Pahalgam to the petitioner-trust has not only deeply affected the members of the trust, but has also caused immense distress to the thousands of devotees, who are seeking facilities of bhandara or contributing for the same, thereby hurting their religious sentiments. That the petitioner-trust has been providing its services constantly even before formation of the respondents-Board. That selfless efforts of the petitioner-trust have been recognized by the SASB by conferring various appreciation certificates to it. That despite submitting the application/representation to the respondents-Board, the petitioner-trust surprisingly has not received the offer inviting letter/Expression of Interest (EOI) from the respondents. That the petitioner-trust made repeated representations through different modes of communication to the respondents-board, requesting for issuance of offer of interest, but in vain.

It is further alleged by the petitioner-trust that the action of the respondents-board suffers from arbitrariness and violates the Article 14 of the Constitution. That the action of the respondents-board appears to be a clear case of targeted exclusion.

The petitioner-trust, accordingly, seeks the issuance of directions/writs, *inter-alia*, in the nature of mandamus for commanding the respondents-board to forthwith issue the offer, inviting letter/Expression of Interest (EOI) followed by necessary permission (LOI) in its favour for rendering bhandara services at Panjtharni during SANJAY 2025 and also to take a decision after granting an adequate opportunity of being heard to the

petitioner-trust, in the interest of natural justice and communicate its decision to the petitioner-trust regarding the issuance of offer inviting letter/Expression of Interest (EOI) and the subsequent permission letter or any other decision through a speaking order within one week.

The stand of the respondents-Board is that it came to be constituted by an Act of Legislature, i.e., Shri Amarnathji Shrine Act, 2000 (*hereinafter referred to as, “the Act” for short*) for the better management of Shri Amarnathji yatra, upgradation of facilities for the holy pilgrims or matters connected therewith or incidental thereto. That the writ petition filed by the petitioner-trust in its present form is utterly misconceived both in law as well as on facts and, accordingly, not maintainable under Article 226 of the Constitution of India. That the respondents-Board in view of its obligations under Sections 16 & 21 of the Act considered it necessary to regulate the allocation of permissions for setting of langers during the yatra period and any permission for holding any langer services is issued, subject to the terms and conditions. That none of the constitutional or any other legal rights of the petitioner-trust stands violated by the respondents-Board in not issuing offer for the Expression of Interest (EOI) to organize langer, as the said acts fall within the judicious discretion of the respondents-Board to be exercised in the interests of the smooth management of Shri Amarnathji Yatra. That SASB has been according permission as per its requirement to various langer organizations/NGOs since the inception of the Board and any such langer organizations/NGOs, who are accorded permission by the Shrine Board are mandated to adhere to terms and conditions laid down by the respondents-Board during the holy yatra period.

That the petitioner-trust has not been issued offer to expression its interest in holding the langer for SANJAY 2025 as per the decision of the respondents-Board after taking into consideration, various factors related to safe and hassle-free conduct of yatra. That as per No Objection Certificate of the previous year 2024 camp Director, it came to be pointed out that the petitioner-trust violated the terms and conditions issued for establishing the langer. That the petitioner-langer organization during the SANJAY 2024 as per the NOC of the camp Director, dumped the construction material (sand, tiles) for construction purpose without permission. Further, the petitioner (LO) provided langer services beyond the date of closure, i.e., 30.07.2024. That the conduct and performance of the petitioner-trust in respect of the establishment of the langer during the yatra 2024 has not been appreciated because the petitioner-trust intended to undertake permanent construction at the camp site by bringing tiles, sand and other construction material without permission and approval of the respondents-Board.

9. Through the medium of the instant application, the petitioner-trust has sought withdrawal of the main petition with liberty to file a fresh one on the same subject matter, *inter-alia*, on the main grounds that the respondents-board through its pleadings as well as through the arguments of its counsel, have raised the objections pertaining to the security issues, necessitating the inclusion of Union of India and Union Territories of Jammu & Kashmir and Ladakh as a necessary parties; that additionally, some new pleadings need to be incorporated to address the raised concerns comprehensively; that it is well settled that a party can invoke the provisions of Order XXIII Rule 1 of the Code of Civil Procedure

1908 and withdraw a suit or proceeding with the leave of the Court; that the Hon'ble Apex Court in its various judgments has upheld the right of a party to withdraw a petition with liberty to file afresh, especially when new facts or circumstances have arisen, warranting a reconsideration of the matter and that the filing of a fresh petition has become imperative in the ends of justice.

10. The instant withdrawal application has been resisted by the respondents on grounds that the same is not maintainable and deserves dismissal with exemplary costs as being an attempt to abuse the process of law. That same does not disclose any of the legal grounds, as contained in the provisions of Order XXIII CPC read with J&K High Court Rules on the subject. That the respondents have nowhere pleaded that the petitioner has not been offered to express its intention regarding organization of langer during SANJAY 2025 only due to the alleged security concerns, which plea of the petitioner-trust is afterthought and based upon assumptions and presumptions.

11. I have heard the learned counsel for the parties in respect of the instant withdrawal application.

12. Learned arguing counsel for the petitioner-trust, Mr. P.N. Raina, Sr. Advocate submitted that firstly, he has got sufficient reason for the satisfaction of the Court to grant permission to withdraw from the main petition with liberty to file fresh one on the same subject matter/cause of action and secondly, without prejudice to his foregoing contention, the Court is not bound by the technicalities and procedures, as contained in the Code of Civil Procedure, as the petitioner has invoked the extraordinary powers vested with

this Constitutional Court by filing a writ petition under Article 226 of the Constitution for enforcement of his constitutional and other legal rights.

He further submitted that since the respondents firstly, in their pleadings and secondly, in their arguments advanced through their counsel, Mr. Qadri, Sr. Advocate have, *inter-alia*, raised the security issue as reason for not inviting the petitioner-trust for organization of langer during SANJAY 2025, as such, the impleadment of the Central and UT Governments as party respondents has been necessitated for the just disposal of the writ petition.

13. The learned Senior Advocate, Mr. Raina, further contended that with the impleadment of the proposed parties as co-respondents, he has also to add to his pleadings, which can only be done by seeking the withdrawal of the present petition with liberty to file a fresh one.

14. The learned Senior counsel while inviting the attention of this Court towards the provisions of Section 141 of the CPC submitted that as per the said Section of law, the procedure provided in the Code of Civil Procedure in regard to suits has to be followed necessarily as far as it can be made applicable in all the proceedings in any Court of civil jurisdiction, but as per the explanation added to the said Section, the expression “*proceedings*” includes the proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution.

15. Mr. Raina, Sr. Advocate in support of his arguments placed reliance on an authoritative judgment of the Hon’ble Apex Court cited as “***Puran Singh and others Vs. State of Punjab and ors., (1996) 2 SCC 205***” and on the strength of the said judgment, contended that the Constitutional Courts

exercising extraordinary powers under Articles 226 & 227 of the Constitution are not bound by the procedural limitations. He submitted that it has been further held in the said case that when the Constitution has vested extraordinary power in the High Court under Articles 226 & 227 of the Constitution to issue any order, writ or direction and power of the superintendence over all the Courts and Tribunals throughout the territories in relation to which such High Court is exercising jurisdiction, the procedure for exercising such power has to be traced and found in Articles 226 & 227 of the Constitution itself.

16. *Per-contra*, the learned arguing counsel for the respondents-Board, Mr. Mohsin Qadri, Sr. Advocate submitted that the withdrawal application filed by the petitioner-trust is apparently devoid of any merit in the light of the provisions of Order XXIII Rule 1 CPC. He contended that as per the provisions of Order XXIII Rule 1(3) CPC, a Court can permit the petitioner/plaintiff to withdraw from the petition/suit or part of a claim with liberty to institute a fresh petition/suit in respect of the subject matter of the petition/suit or such part of the claim, if it is satisfied that the petition/suit must fail by reason of some formal defect or that there are sufficient grounds for allowing the petitioner/plaintiff to institute a fresh petition/suit for the subject matter of the petition/suit or part of the claim. He contended that it is not the case of the petitioner-trust that its petition suffers from any formal defect. The contention of the petitioner-trust that the withdrawal is sought with liberty to file a fresh petition, as the impleadment of Union Government and the Government of UT of J&K has been necessitated with addition of some more facts in the petition due to the raising of security concerns by the respondents-board during

arguments of its counsel is not justified at all because firstly, no such ground was taken either in the pleadings or during the arguments and secondly, having regard to the facts and circumstances of the case, the impleadment of the proposed respondents is not at all warranted. The learned counsel while referring to the withdrawal application, pinpointed that the contention of the learned arguing counsel for the petitioner-trust to the effect that the provisions of Order XXIII are not applicable in the writ petition falls flat, in view of the ground pleaded at para-3 of the said petition. The learned arguing counsel, Mr. Qadri, Sr. Advocate in support of his contentions placed reliance on the authoritative judgment of the Hon'ble Supreme Court cited as "**HPCL Bio-Fuels Ltd. Vs. Shahji Bhanudas Bhad**", Civil Appeal No. 12233 of 2024 decided on 07.11.2024 and on the support of the said judgment, contended that it has been laid down by the Hon'ble Supreme Court that the provisions of Order XXIII CPC can be applied in respect of the writ petitions also. The learned counsel also placed reliance on the judgment of the Hon'ble Supreme Court cited as "**K.S. Bhoopathy and ors. Vs. Kokila and ors. 2000 (5) SCC 458**".

17. I have accorded consideration to the rival arguments advanced on both the sides.

18. Perused the application in hand, the objections filed in rebuttal, the main petition and also the reply submitted to the same.

19. In the facts and circumstances of the case, this Court is of the opinion that no sufficient ground appears to be made out for allowing the petitioner-trust to seek the withdrawal of the petition with permission to file a fresh one in respect of the same subject matter. The main ground basing the

withdrawal application is that the alleged security concerns raised by the learned arguing counsel for the respondents in his pleadings and also during his arguments, being one of the reasons for not communicating the offer to express willingness to the petitioner-trust for organization of langer during SANJAY 2025, has necessitated the impleadment of the Central and UT Governments as co-respondents being necessary parties and in the said backdrop, certain new pleadings need to be added to the petition to address the said concerns adequately.

20. The counsel for the respondents-board, Mr. Qadri, Sr. Advocate has stated that it is not the stand of the respondents-board that the petitioner-trust has not been invited for organizing langer only on the consideration of the security issue. The learned counsel during his arguments in respect of the instant withdrawal application clarified that the respondents-board is under legal obligation in view of the provisions of Section 16 of the Act to, *inter-alia*, make arrangements for the safe journey and medical relief for worshippers and pilgrims and to do all the things, as may be incidental to efficient management, maintenance and administration of the Holy Shrine for convenience of the pilgrims.

21. The learned counsel submitted that the mention of the security concerns, if any, he has referred to during his arguments mean the safety of the pilgrims visiting the Holy Shrine during Yatra period by generating an atmosphere, which is free from stampede, path blockage etc.

22. In the opinion of the Court, the relief prayed for by the petitioner-trust in the main petition is exclusively within the discretionary power of the

respondents-board. The subject matter of the petition cannot be addressed to by any other person or authority except the respondents-board.

The grounds permitted for seeking withdrawal of a suit under Order XXIII Rule 1(3) CPC are of general common sense nature, which can be extended to writ petitions and other proceedings. The provisions of the explanation added to Section 141 CPC do not expressly bar the consideration of the provisions of Order XXIII Rule 1 CPC in the matter of the writ petitions. A writ petition filed under Article 226 of the Constitution cannot be allowed to be withdrawn on the basis of any unjustified ground on the pretext that the jurisdiction of the writ Courts is not circumscribed or limited by the procedural technicalities, after all there has to be a sound and justified ground for seeking the withdrawal of a writ petition with liberty to file a fresh one on the same subject matter. Anyway, the ground pleaded by the petitioner-trust for seeking withdrawal of the petition with liberty to file a fresh one on the same subject matter does not appear to be justified. It is impliedly accepted by the petitioner-trust that issuance of offer/invitation to intending langer organizers for organizing langer during the Annual Shri Amarnathji Yatra is the discretion of the respondents-board. The case in hand is distinguishable from a tender process, in which no qualified and eligible bidder can be stopped from participating in the tender process.

Withdrawal with liberty cannot be granted in the facts and circumstances, where same does not seem to be imperative for elucidation of the real matter in controversy and instead appears to be aimed at giving an extrajudicial colour to the subject matter.

Where the Respondents/Defendants already arrayed in the petition/suit are exclusively competent to address the subject matter, no further impleadment can be allowed under the provisions of Order I Rule 10(2) or Order XXIII(1) CPC, as the same may under some circumstances prove oppressive for the other party.

23. In the facts and circumstances of the case, even an application of the petitioner-trust under Order 1 Rule 10 Clause 2 CPC for impleadment of the proposed parties would not be justified, as the proposed parties as hereinbefore observed, do not seem to be necessary parties, whose presence will enable the Court to adjudicate upon and settle all the questions involved in the petition effectively and completely. Again, in the opinion of the Court, even an application on behalf of the petitioner-trust under Order 6 Rule 17 CPC would be unfounded in the given circumstances because for the determination of the real questions in controversy, the petitioner-trust is supposed to have sued the appropriate party, vested with the exclusive jurisdiction in respect of the subject matter. Any further deliberation is likely to touch the merits of the case, which is not allowed while disposing of the instant application.

24. For the foregoing discussion, there seems to be no merit in the application, which is, accordingly, **dismissed**.

25. The main petition is directed to be listed for hearing on **06.06.2025**.

(Mohd. Yousuf Wani)
Judge

Jammu
04.06.2025
Ram Krishan

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