Sr. No. 148

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU.

WP(C) No.3731/2025

Eduspark International Pvt. Ltd. ..... Petitioner(s)

Through :- Mr. Rahul Pant, Sr. Advocate with
Mr. Vikram B. Trivedi, Advocate
Mr. Sunil Tilok Chandani, Advocate
Mr. Rahul Sharma, Advocate

Vs

Union of India and others .....Respondent(s)

Through :- Mr. Raman Sharma, AAG

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

ORDER
11.02.2026

01. The case which has been projected by the petitioner in the instant petition is that the Ministry of Rural Development, Govt. of India came up with Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDUGKY) in the year 2014 for carrying forward which Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU-GKY) Guidelines of July, 2016 came to be formulated and prescribed.

02. The objective of said Scheme was aimed at livelihood diversification and poverty reduction under Deen Dayal Antyodyay Yojana - National Rural Livelihoods Mission of the Ministry of Rural Development, Govt. of India.

03. Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU-GKY) is aimed to skill rural youth who are poor and to provide them with jobs having regular monthly wages at or above the minimum wages for semi-skilled so as to promote sustainable livelihoods for rural youth through placement linked skilling programmes.

04. With respect to Jammu & Kashmir and Ladakh, the Ministry of Rural Development, Govt. of India came forward with a special scheme

nomenclatured as "Himayat" workable under Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU-GKY).

05. Under Himayat Scheme, the component areas were Urban as well as Rural Youth, Below Poverty Line (BPL) as well as Above Poverty Line (APL) persons and lastly wage employments/ selfemployments / GIG employments.

06. Further case of the petitioner is that Himayat Scheme was 100% centrally funded scheme implemented with the help of the State Government by a dedicated Himayat Mission Management Unit (HMMU) located in Srinagar, Jammu and Ladakh.

07. Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU-GKY) Guidelines 2016 were prescribed to be applicable for carrying out Himayat Scheme.

08. It is by reference to the aforesaid scenario that Himayat Mission Management Unit (HMMU) by a drawing a purported reference from and relation to Jammu & Kashmir State Rural Livelihoods Mission, acting through its the then Chief Operating Officer, namely, Mr. Kapil Sharma (KAS), came to enter into a Memorandum of Understanding (MOU) with two entities coming forward as consortium for the purpose of project implementation.

09. The record reveals that the petitioner and the respondent No. 4, as consortium, split their relationship vis-a-vis Memorandum of Understanding (MOU) dated 30.08.2018 by a Mutual Separation Agreement dated 13.10.2021.

10. Memorandum of Understanding (MoU) dated 30.08.2018 came to be executed in furtherance of sanction order No. 42-HMMU of 2018 dated 19.07.2018 for skilling of one thousand (1000) candidates. Total project

cost spelled out in said Memorandum of Understanding (MOU) dated 30.08.2018 was Rs.11,30,09,590/-. The project was a time bound project to be carried out in four years time period as per the sanction order by the consortium of said two entities, one of which being the petitioner herein and the other one the respondent No. 4.

11. The execution of the project was meant to be supervised and monitored by a Central Technical Support Agency appointed for monitoring projects in Jammu & Kashmir by the Ministry of Rural Development, Govt. of India.

12. Memorandum of Understanding (MoU) dated 30.08.2018 carried an arbitration clause 9, clause 15 provided for penalty and clause 16 provided for recovery of dues under the Memorandum of Understanding (MoU).

13. The petitioner and the respondent No. 4 had constituted themselves into a consortium for execution of Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU-GKY) by entering into a consortium agreement dated 20.02.2018 which had facilitated the two entities as consortium to enter into Memorandum of Understanding (MOU) dated 30.08.2018.

14. Before execution of Mutual Separation Agreement dated 13.10.2021, the original sanction order No. 42-HMMU of 2018 dated 19.07.2018 had come to be revised with a Sanction Order No. 47-HMMU of 2020 dated 07.08.2020.

15. In terms of Mutual Separation Agreement dated 13.10.2021, the respondent No. 4 walked out of consortium leaving the project assigned under Memorandum of Understanding (MOU) dated 30.08.2018 exclusively in the hands of the petitioner.

16. There did not take place any fresh/ revised Memorandum of Understanding (MOU) between the respondent No. 3-Himayat Mission Management Unit (HMMU), Jammu & Kashmir and the petitioner in

view of Mutual Separation Agreement dated 13.10.2021 being executed and given effect to between the petitioner and the respondent No. 4, thereby leaving the petitioner as the only party in Memorandum of Understanding (MOU) with the respondent No. 3 — Himayat Mission Management Unit (HMMU).

17. The petitioner has filed the present petition under Article 226 of the Constitution of India being aggrieved and dissatisfied by the action of Respondent No.3 whereby the Authority has issued the impugned Notice of Imposition of Penalty dated 10th November 2025 (Impugned Penalty Notice) to pay a penalty of 2% of the amount released by respondent No.3 in favour of the petitioner, amounting to Rs.5,65,048/-. The petitioner also challenges the impugned recovery notice issued by the respondent No.3 which is also dated 10th November 2025 under which the respondent No.3 has sought to recover the entire amount of Rs.2,82,52,397/-. released in favour of the petitioner alongwith 10% annual interest.

18. The petitioner through the medium of the instant petition has sought the following reliefs:

i) *issue a writ of certiorari and/or any other writ in the nature of certiorari thereby quashing and setting aside the Impugned Penalty Notice dated 10th November 2025 bearing Reference No. COO/ JKSRLN/ HMMU/25/ 2019/2868-2878 issued by Respondent No. 3 (Annexure-I to the Petition).*

ii) *issue a writ of certiorari and/or any other writ, order or direction in the nature of certiorari thereby quashing and setting aside the Impugned Recovery Notice dated 10th November 2025 bearing Reference No.*

COO/JKSRLM/HMMU/25/2019/2879-2889 issued by Respondent No. 3
(Annexure-I to the Petition).;

iii) *issue Writ of Mandamus and/or any other writ, order or direction in the nature of Writ of Mandamus thereby directing Respondent No. 3 to forthwith withdraw and / or cancel the Impugned Penalty Notice dated 10th November 2025 bearing Reference No.*
COO/JKSRLN/HMMU/25/2019/2868-2878 issued by Respondent No.3.

iv) *issue Writ of Mandamus and/or any other writ, order or direction in the nature of Writ of Mandamus thereby directing Respondent No. 3 to forthwith withdraw and / or cancel the Impugned Recovery Notice dated 1 0th November 2025 bearing Reference No.*
COO/JKSRLWHMMU/25/2019/2879-2889 issued by Respondent No.3 being Annexure-I to the petition.

v) *to declare that the Petitioner has not committed any acts of default that would render the Petitioner liable to any major or minor penalty;*

vi) *Any other just and equitable order that this Hon 'ble Court deems fit be granted.*

19. The record further reveals that a Coordinate Bench, while dealing with the instant matter on 29.12.2025, has raised an objection with regard to the maintainability of the instant petition that the petitioner is privy to the Memorandum of Understanding (MoU) dated 30.08.2018 which bears an arbitration clause, which for facility of reference is reproduced as under:-

"9. Arbitration and Applicable Laws:-

9.1. The parties hereby agree that any controversy, claim or dispute araising in connection with this MoU, and which cannot be resolved amicably, shall be referred to the Chief Secretary (Chairman of the Executive Council of Jammu and Kashmir State Rural Livelihoods Mission in the State), whose decision shall be final and binding on all parties.

9.2. All disputes shall be resolved as per the Government of India policies and applicable Indian/State Laws.

9.3. If case is filed for judicial remedy, where the Ministry of Rural Development is the First Party, the case shall be filed in New Delhi. In case for judicial remedy, where the First Party is Himayat Mission Management Unit Jammu and Kashmir State Rural Livelihoods Mission, the case shall be filed in the respective court in the State Headquarters."

20. In the aforesaid backdrop, this Court has directed Mr. Rahul Pant, learned Senior Advocate appearing on behalf of the petitioner to show as to how the writ petition can be maintained by the petitioner instead of invoking the arbitration clause for settlement of dispute and differences emanating from the issuance of the impugned communications between the petitioner and the respondent No.3 i.e. Himayat Mission Management Unit (HMMU) Jammu & Kashmir. The Court has further observed that since the petitioner has not come forward with any averment as to how it intends to evade and avoid the very presence and play of the arbitration clause which is meant to govern the contractual engagement of the petitioner vis-à-vis the respondent No.3 to which the learned counsel for the petitioner seeks to convince the Court that the present petition as is a remedy under Article 226 of the Constitution of India is available at the disposal of the petitioner on account of no alternate or efficacious remedy available to the petitioner in the facts and circumstances of the case. The learned counsel for the petitioner was called upon by this Court vide order dated 29.12.2025 on the maintainability of the instant petition at the first instance in view of operation of the arbitration clause on the next date of hearing.

21. The record further reveals that the matter was thereafter listed on 03.02.2026 on which date the learned counsel appearing on behalf of the petitioner sought permission to file a supplementary affidavit in order to address the issue of maintainability, which was raised by this Court on the very first day of hearing i.e. on 29.12.2025. The prayer of the petitioner was allowed and the learned counsel for the petitioner was directed to file a supplementary affidavit vide order dated 03.02.2026 during the course of the week.

22. In compliance to the aforesaid order, an affidavit stands filed on behalf of the petitioner, in which, the petitioner has relied upon clause 9 of MoU which according to the petitioner does not amount to an arbitration agreement within the meaning of Section 2(b) and Section 7 of the Arbitration and Conciliation Act, 1996 for the reasons pleaded in the said affidavit by placing reliance upon the law laid down by the Apex Court and Hon'ble Chhattisgarh High Court in catena of judgments referred thereto in the said affidavit.

23. The petitioner, through the medium of the aforesaid affidavit, has also enumerated the essential elements of a valid arbitration agreement and contended that the same are not satisfied in the present case, for the reasons elaborated in paragraph 5.3 of the said affidavit. Without prejudice the aforesaid submissions, it has further been averred that even assuming that Clause 9 of MoU contains a valid arbitration agreement, the present writ petition is maintainable, as the disputes relating to imposition of penalty are governed by Clause 15 of the MoU and not Clause 9. However, though such ground has been raised in the said affidavit, but the same has not been pressed during the course of arguments by Mr. Pant.

24. It has also been contended that even if the dispute is held to be covered under Clause 9 of MoU, the writ petition would nonetheless be maintainable in view of the fact that the impugned penalty notice and recovery notice issued by respondent No.3 are arbitrary, non-speaking and

have been passed in violation of the principles of natural justice. On this basis, it is urged that this Court can exercise its jurisdiction under Article 226 of the Constitution of India to grant suitable relief to the petitioner notwithstanding the existence of arbitration clause in the MoU.

25. In view of the peculiar facts and circumstances of the case, this Court deems it appropriate to first decide the issue of maintainability of the instant petition before adverting to the merits of the case in light of the objections raised by this Court, which finds mention in order dated 29.12.2025.

26. Since, no notice has been issued in the instant matter so far, this Court deems it appropriate to issue notice to the respondents, which is waived by Mr. Raman Sharma, learned AAG appearing on behalf of the respondent Nos.2 & 3, who seeks and is granted two weeks' time to file response in the instant matter, positively.

27. Petitioner to take requisite steps for service of the respondent Nos.1 & 4 within two days. Subject to the filing of the requisites within one week, Registry to issue notice for service of respondent NOs.1 & 4. ***Dasti*** service is also permitted.

28. It is further made clear that the respondents, at the first instance, are directed to file the response in the instant matter only on the issue of the maintainability of the instant petition within a period of two weeks from today positively in light of the observations made by this Court vide order dated 29.12.2025 followed by order passed by this Court today, so that the question of maintainability can be decided at the threshold before proceeding further in the matter.

29. It has also been brought to the notice of the Court by Mr. Rahul Pant, learned Senior Advocate assisted by Mr. Vikram B. Trivedi, Mr. Sunil Tilok Chandani and Mr. Rahul Sharma, Advocates that the petitioner had already preferred an appeal before the competent authority i.e. Principal

Secretary Rural Development and Panchayati Raj way back on 13.05.2022 against the order of closure of the project and imposition of the penalty. As per the submissions of the learned counsel for the petitioner, the said appeal has not been decided till date despite a lapse of about four years and in the meantime, the impugned order has been issued, whereby a recovery to the tune of **Rs.2,82,52,397/-** (Rupees Two Crore Eight-Two Lakhs Fifty-Two Thousand Three Hundred Ninety-Seven only) has been imposed upon the petitioner, to be recovered as arrears of Land Revenue allegedly in terms of the MoU. In addition to the imposition of aforesaid amount by way of recovery notice dated 10.11.2025, the penalty has also been imposed to the tune of **Rs.5,65,048/-** (Rupees Five Lakh Sixty-Five and Forty-Eight only) by way of penalty notice which is also impugned in the instant petition.

30. The learned counsel for the petitioner has also apprised this Court that the issue relating to the closure of the project and imposition of the penalty to the tune of **Rs.56,49,396/-** (Fifty Six Lakh-Forty Nine Thousand- Three Hundred-Ninety Six only) is already *sub-judice* before the appellate authority and said amount has already been deposited by the petitioner, which is condition pre-requisite for filing the said appeal.

31. It has also been contended by the learned counsel for the petitioner that the appellate authority ought to have decided the said appeal expeditiously, however, as on date, the appeal has not been decided for more than four years and instead, another order of imposition of penalty and recovery has been imposed by the respondents, which is subject matter of the instant petition.

32. This is very shocking that an appeal, which was preferred by the petitioner way back in the month of May, 2022 till date has not been decided by the appellate authority and is pending adjudication for more than four years before the said authority and this Court is not aware, at this stage, the reasons for such inordinate delay.

33. Thus, with a view to arrive at a subjective satisfaction regarding the cause of delay, whether the same is attributable to the petitioner or to the respondents, this Court deems it appropriate to direct Mr. Raman Sharma, learned AAG to file an affidavit on behalf of the appellate authority explaining and justifying the reasons for such inordinate delay in deciding the appeal preferred by the petitioner and let the scanned record of the appellate Court be also produced on the next date of hearing, positively.

34. In the aforesaid backdrop, the matter is adjourned for two weeks with a direction to the respondents to file detailed reply in the instant matter vis-à-vis the issue of maintainability and reasons for such inordinate delay in deciding the appeal pending before the appellate authority, so that the Court proceeds further in the matter.

35. Heard in part.

36. List for continuation on **02.03.2026**, higher up.

37. Passing of the interim direction is deferred for the time being, however, the same shall be considered on the next date of hearing. It is further made clear that in case, the response is not filed by the contesting respondents, then the interim application of the petitioner will be considered on its merits on the next date of hearing.

(WASIM SADIQ NARGAL)
JUDGE

JAMMU
11.02.2026
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