

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

EMG-LPA No.2/2020

EMG-CM No.4/2020

(Through Video Conferencing from
Jammu)

Rakesh Kumar Choudhary

.....Appellant

Through :- Mr. Vikram Sharma, Advocate
(On Video Conferencing from High Court at
Jammu)

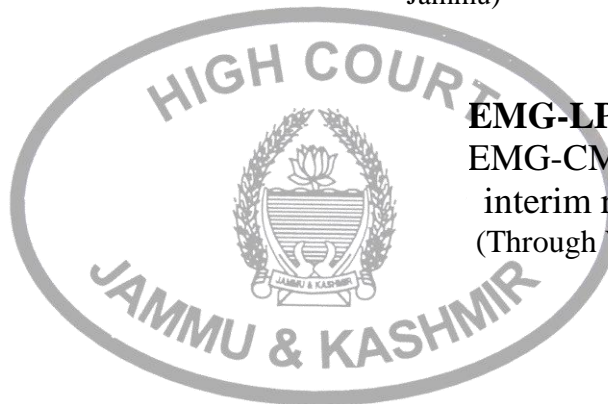
Mr. Sunil Sethi, Sr. Advocate
(on Video Conference from High Court at
Jammu)

V/s

Union Territory of J&K and Others

.....Respondent(s)

Through :- Mr. F. A. Natnoo, AAG
(On Video Conferencing from High Court at
Jammu)



EMG-LPA no.5/2020

**EMG-CM no.13/2020 (for
interim relief)**

(Through Video Conferencing)

Chaman Lal

.....Appellants

Through :- Mr. P.N.Raina, Sr.Advocate
(On Video Conference from High Court at
Jammu)

V/s

**State of J&K (Now Union Territory of
J&K) & Others**

.....Respondent(s)

Through :- Mr. F. A. Natnoo, AAG
(On Video Conferencing from High Court at
Jammu)

EMG-LPA No.41-A/2020

EMG-CM No.9/2020

(Through Video Conferencing from
Srinagar)

M/s Usman Construction and others

.....Appellant

Through :- None.

V/s

Union Territory of J&K and Others

.....Respondent(s)

Through :- Mr. F. A. Natnoo, AAG
(On Video Conferencing from High Court at Jammu)

**EMG-LPA No.50-A/2020 in
OWP no.477/2019**
EMG-CM No.10-A/2020
(Through Video Conferencing from Srinagar)

M/s Mohammad Ashore and others

.....Appellant

Through :- Mr. Javaid Iqbal, Advocate
(On Video Conference from High Court at Srinagar)

V/s

**Commissioner/Secretary to Government
and Another**

.....Respondent(s)

Through :- Mr. F. A. Natnoo, AAG
(On Video Conferencing from High Court at Jammu)

EMG-LPA no.54-A/2020
EMG-CM no.13-A/2020
(Through Video Conferencing from Srinagar)

Mohammad Farooq Lone & Others

.....Appellants

Through :- M/s. Javaid Iqbal and Hakim
Suhail Ishtiaq, Advocates
(On Video Conference from High Court at Srinagar)

V/s

Union Territory of J&K & Others

.....Respondent(s)

Through :- Mr. F. A. Natnoo, AAG
(On Video Conferencing from High Court at Jammu)

HON'BLE THE CHIEF JUSTICE

(On Video Conference from High Court at Jammu)

Coram:**HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

(On Video Conference from High Court at Jammu)

ORDER
28.05.2020

EMG-LPA Nos.2, 5, 41-A, 50-A & 54-A/2020

1. Heard remaining arguments of Mr. Javaid Iqbal, Advocate in EMG-LPA Nos.50-A & 54-A/2020 and Mr. P. N. Raina, learned Senior Advocate in EMG-LPA No.5/2020.
2. During the course of his submissions, Mr. Javaid Iqbal, learned counsel has supported the primary submission which was made by Mr. Z. A. Shah, learned Senior Advocate yesterday when it was contended that the communication dated 26th February 2019 is not an order of cancellation in accordance with the law.
3. Mr. Javaid Iqbal, learned counsel has gone further to urge that the impugned communication dated 26th February 2019 is not an order in accordance with law inasmuch as any Government order had to be issued in terms of the Jammu and Kashmir Business Rules nor does it comport to the requirements of the then applicable Sections 43 & 45 of the Constitution of Jammu and Kashmir or even of Article 166 of the Constitution of India as applies now. It has been submitted at length that the impugned communication dated 26th February 2019 is only an intra-departmental communication between the two Government officers.
4. Mr. Javaid Iqbal, learned counsel has also supported Mr. Z. A. Shah, learned Senior Advocate in his submissions that the Government order has to stand on its own legs and no additional material either in the counter affidavit or otherwise can be utilised by the respondents to support it.
5. Mr. F. A. Natnoo, learned AAG for the respondents vehemently disputes these contentions and submits that he will make good that the order of the Government is a valid order and that its action is in accordance with law. We

are informed by Mr. Natnoo, learned AAG that the order scrapping the auction appears to originate in a noting dated 8th February 2019 of the concerned Secretary which has been approved up to the highest level.

6. Be that as it may, without prejudice to the rival contentions, we see that the Communication dated 26th February 2019 refers to “*approval of the competent authority*”. It also refers to scrapping of the open auction carried out under the Rules of 2016. This approval and the order of scrapping of the auction are not in any of the records before us.

It is essential to have these on record and to give an opportunity to the appellants to examine the same and make submissions thereon.

7. We are informed by learned counsel for the parties that the learned Single Judge had called for and examined the original records of the respondents. In order to take a view in the matter, it would be necessary for this Court as well to examine the original record, especially in view of the contents of the Communication dated 26th February 2019.

8. We, therefore, direct as follows:

(i) The official respondents shall file an affidavit placing on the record the approval which is referred to in the Communication dated 26th February 2019 and copies of the extract of the relevant portion of the original records as well as connected documents. The affidavit of the respondents shall give full details of the manner in which the matter has been processed.

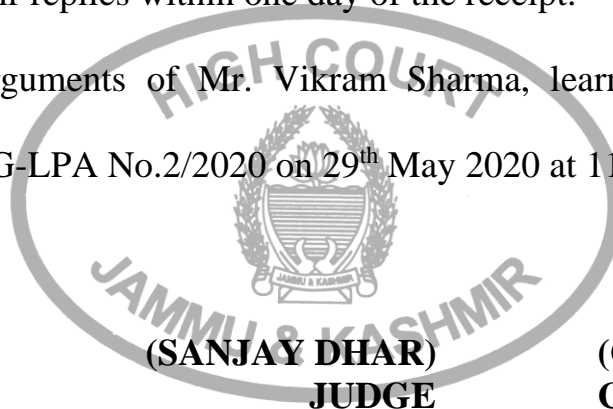
(ii) All original records of the respondents which led to the issuance of the communication dated 26th February 2019 shall be produced before us.

(iii) The original record relating to the individual appellants shall also be kept available for our scrutiny and perusal on the next date of hearing.

(iv) For reasons of expediency, we direct that the affidavit shall be filed by the respondents in *EMG-LPA No.50-A/2020, Mohammad Ashore Mir v. Union Territory of Jammu and Kashmir and others*. Copy thereof shall be served upon counsels appearing in all the other appeals as well.

(v) The affidavit as above shall be filed within one day with advance copy to each of the counsels appearing in the matter who may all file their replies within one day of the receipt.

9. List for arguments of Mr. Vikram Sharma, learned counsel for the appellants in EMG-LPA No.2/2020 on 29th May 2020 at 11.30 A.M.



(SANJAY DHAR)
JUDGE

(GITA MITTAL)
CHIEF JUSTICE

Jammu
28.05.2020
Raj Kumar