HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No. 137/2026

Reserved on 12.11.2026

Pronounced on 17.11.2026

Uploaded on 17.11.2026

Whether the operative part or full judgment is pronounced: - Full

1. **Union Territory of J&K Through Commissioner/ Secretary Revenue, Civil Secretariat, Jammu/Srinagar;**

2. **Deputy Commissioner, Srinagar Tankipora, Srinagar;**

3. **Committee of Officers constituted vide order dated 05.11.2022 through Sub-Divisional Magistrate (East Srinagar) Tankipora, Srinagar;**

4. **Sub-Divisional Magistrate (East Srinagar) Tankipora, Srinagar;**

5. **Tehsildar Khanyar, Srinagar** **... Appellants**

Through: Mr. Mohsin Qadri, Sr. AAG with
Ms. Maha Majeed, Assisting Counsel

Vs.

Hotel New Metro
Bishember Nagar Srinagar through its Prop.
Hajj Khazir Mohammad Dar (Aged 85 years)
S/o Kh. Mohammad Abdullah Dar
R/o Rajbagh, Srinagar;

...Respondent

Through: Mr. Jahangir Iqbal Ganai, Sr. Advocate with
Mr. Kamil Nazir, Advocate

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CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

JUDGEMENT

Per Sanjeev Kumar-J

1. The appellants are aggrieved of and challenge an order and judgment dated 11th February, 2026 passed by the learned Single Judge of this Court ["the writ Court"] in WP(C) No. 590/2023 titled ***"Hotel New Metro Vs. Union Territory of Jammu and Kashmir and others***", whereby the writ Court has allowed the writ petition filed by the respondent and, by a writ of certiorari, quashed the order dated 5th November, 2022, and the report of the Committee dated 10th February, 2023. The writ Court has further directed the appellants herein to liquidate claims of the respondent within a period of eight weeks from the date a copy of the judgment was made available to the appellants.

2. Before we advert to the grounds of challenge urged by the appellants, it would be appropriate to first set out few facts as are germane to the disposal of this appeal.

3. Pursuant to an order issued by the Divisional Commissioner, Kashmir, the hotel of the respondent was hired for accommodating some Sarpanches, Panches, PRI Members, Municipal Councillors and PPS, etc., w.e.f

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15.11.2020 on a sharing basis. The hotel of the respondent was hired with a room rent of Rs. 356 per day per room, with catering charges @ Rs. 225/- per head per day during summer season, and a room rent of Rs. 242/- per day per room, with catering charges of Rs. 216/- per head per day during the winter season. The respondent claims that pursuant to the hiring and occupation of his hotel, bills were submitted to the office of the Divisional Commissioner, Kashmir against proper receipts for payment.

4. The hotel of the respondent, which was hired by the orders of the Divisional Commissioner, Kashmir was de-hired w.e.f 05.10.2021. It is claimed that against the bills submitted for the period commencing from 15.11.2020 to 05.10.2021, some amount was paid, whereas the balance amount was under process. The respondent obviously had no grievance or dispute with the office of the Divisional Commissioner, Kashmir on account of hiring and catering charges for the period commencing from 15.11.2020 to 05.10.2021, on which date the hotel of the respondent was de-hired.

5. The 19 rooms of the hotel of the respondent were again hired, this time by the office of the Deputy Commissioner, Srinagar, in terms of its communication No.

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DMS/JUD/accommodation/459-473/21 dated 27th October, 2021. These 19 rooms of the hotel of the respondent remained under the occupation of the various protected persons accommodated by the appellants till 25th October, 2022. The re-hiring of the hotel accommodation of the respondent was as per the terms and conditions already decided by the Divisional Commissioner, Kashmir, at the time of hiring the hotel of the respondent.

6. After the hotel of the respondent was vacated by the appellants, the respondent submitted his boarding and lodging bills to the Deputy Commissioner, Srinagar for release of payment. Instead of clearing the bills and releasing the payment in favour of the respondent, the Deputy Commissioner, Srinagar, constituted a Committee under the Chairmanship of the Sub-Divisional Magistrate (East Srinagar) for verification of the bills submitted by various hotel owners, including the respondent, whose hotels had been hired pursuant to the orders of the Deputy Commissioner, Srinagar, for accommodating the protected persons with effect from 5th October, 2021. The decision to constitute the Committee for verification of the bills was taken by the Deputy Commissioner pursuant to the directions issued by the Financial Commissioner

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(Additional Chief Secretary), Home Department, in a meeting held on 18th January, 2023. The Committee, after scrutinizing the records, including the daily entry and exit records of the protected persons, submitted its report indicating the actual occupancy of the hotel rooms of the respondent and, accordingly, the Deputy Commissioner cleared the bills of the respondent on the basis of actual occupancy and not on the basis of the rental for all the 19 rooms hired for accommodating the protected persons.

7. Feeling aggrieved by the action of the appellants in reducing the boarding and lodging charges for the hotel rooms hired by the appellants, the respondent filed a writ petition, being WP(C) 590/2023, before the learned Single Judge of this Court, specifically seeking a writ of certiorari for quashing the order dated 5th November, 2022, whereby a Committee was constituted to verify the bills on the basis of actual occupancy. The respondent also prayed for writ of certiorari for quashing the report submitted by the Committee and a mandamus to direct the appellants herein to clear the pending liability towards the respondent in respect of his hotel.

8. From a reading of the entire writ petition, it is abundantly clear that in his petition the respondent had restricted his

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claim to the hiring and catering charges pertaining to the period commencing from 27th October, 2021 (when the hotel of the respondent was re-hired by the Deputy Commissioner) till 25th October, 2022 (when it was vacated). The genesis of the entire dispute raised in the writ petition was that the respondent was entitled to hiring and catering charges in respect of all the 19 rooms for the said period, irrespective of whether or not the rooms were actually occupied and used by the protected persons for whom the hotel accommodation had been hired.

9. It is also interesting to know that the Divisional Commissioner, Kashmir or for that matter the Administrative Department of Home were not arrayed as party respondents in the writ petition. This was done by the respondent for an obvious reason that the dispute pertained to the period when the hotel rooms of the respondent remained hired by the Deputy Commissioner, though on the terms and conditions set out and fixed by the Divisional Commissioner, Kashmir, from time to time.

10. The writ petition was contested by the appellants, who in their reply affidavit contended that though, in terms of orders issued by the Deputy Commissioner, various hotels, including the hotel of the respondent, had been hired for

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accommodating the protected persons w.e.f. 27th October, 2021 to 25th October, 2022, yet the payment to be released was subject to due verification of the bills and the actual occupancy of the rooms hired.

11. During the pendency of the writ petition, the respondent also filed a supplementary affidavit, raising a claim for the balance amount due to him on account of hiring and catering charges for the period commencing from 15.11.2020, till 05.10.2021. However, neither the writ petition was formally amended nor the hiring authority, i.e., Divisional Commissioner, Kashmir was arrayed as party respondent.

12. The writ Court, having considered the entire gamut of controversy raised in the writ petition as well as in the supplementary affidavit and considering the objections filed by the appellants, allowed the writ petition filed by the respondent. The writ Court not only quashed the order dated 05.11.2022 and the report submitted by the Committee dated 10.02.2023, but also directed the appellants to liquidate all the claims of respondent for the period commencing from 15.11.2020 to 25.10.2022. Thus, the period during which the hotel remained hired by the Divisional Commissioner was also included for the purpose

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of releasing hiring and catering charges in favour of the respondent.

13. The impugned judgment dated 11th February, 2026 passed by the writ Court, is challenged by the appellants primarily on the ground that the writ Court has travelled beyond the scope of the writ petition and has granted the relief which was not prayed for. It is contended that the respondent had not raised any dispute with regard to hiring and catering charges for the period during which his hotel remained hired pursuant to the orders of the Divisional Commissioner, Kashmir, that is the first spell of hiring. However, the writ Court, by placing reliance upon the supplementary affidavit, to which the Divisional Commissioner had no opportunity to rebut or contest, allowed the claim for the aforesaid period as well.

14. The impugned judgment is also called in question on the ground that the writ Court failed to appreciate that the respondent was not entitled to any hiring or catering charges for the rooms which were not occupied by the protected persons for whom the hotel in question had been hired.

15. It is argued that once a room has not been used and the food has not taken by the protected person, the State cannot be

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made liable to pay rental and the catering charges qua the said room.

16. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment impugned, insofar as it pertains to the period commencing from 15.11.2020, when the hotel of the respondent was hired by the Divisional Commissioner, Kashmir, till 05.10.2021, when the hotel was de-hired and vacated, is not sustainable in law. We are saying so because there was no case in this regard set up by the respondent in the writ petition. It is true that in the writ petition there was a reference to the pending payment on account of hiring and catering charges in respect of a period commencing from 15.11.2020 till 05.10.2021. However, no prayer seeking release of the said amount was made in the writ petition.

17. Rather, it was the case of the respondent that part payment for the aforesaid period had been released by the office of the Divisional Commissioner, whereas the balance payment due to the respondent was under process and pending consideration before the Divisional Commissioner. The relevant extract of paragraph 5 of the writ petition deserves attention and is, therefore, set out below:

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> *".....it is further submitted that on the strength of the order bearing No. 361-Divcom/estt of 2021 dated 1st October, 2021 all the 14 hotels hired were ordered to be de-hired w.e.f 5th October, 2021 and in the meantime, petitioner sought payment on account of boarding and lodging charges for the said period and payment due from the office of the Divisional Commissioner is in the process of being disbursed as had been disbursed in favour of other hoteliers who had provided accommodation."*

18. From the above narration, it is evident that the respondent did not contemplate any dispute with the office of the Divisional Commissioner, Kashmir, in respect of boarding and lodging charges for the period commencing from 15.11.2020 to 05.10.2021 and, therefore, neither arrayed the Divisional Commissioner, Kashmir as party respondent nor made a prayer for disbursement of the balance amount due to him from the office of the Divisional Commissioner. It seems that the aforesaid period came to be introduced through the medium of the supplementary affidavit filed by the respondent, wherein a claim for the period commencing from 15.11.2020 to 05.10.2021 was raised for the first time.

19. Neither the writ petition was amended to include the aforesaid claim nor the Divisional Commissioner, Kashmir was made party respondent. In these circumstances, the

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claim which could have been lodged against the Divisional Commissioner could not be contested by the said authority. The writ Court, therefore, committed an error in allowing the said claim without even affording an opportunity of hearing to the Divisional Commissioner, the competent authority, who was supposed to disburse the amount for the period commencing from 15.11.2020 to 05.10.2021.

20. The direction of the writ Court, insofar as it pertains to liquidation of the liability of the respondent for the aforesaid period is concerned, is certainly beyond the scope of the writ petition and is otherwise in breach of the principles of natural justice.

21. So far as the claim of the respondent for payment of boarding and lodging charges on the basis of actual hiring rather than actual occupancy is concerned, we need to examine the matter in the light of the order of allotment/hiring passed by the Deputy Commissioner, Srinagar. As per the order of the Deputy Commissioner, Srinagar, dated 27th October 2021, 19 rooms of the hotel belonging to the respondent were hired for accommodating the protected persons, like Sarpanches, Councillors, DDC Members, Contesting Candidates, etc., of the District Srinagar. The 19 rooms of the hotel belonging to the

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respondent were hired on the terms and conditions already decided by the office of the Divisional Commissioner, i.e., room rent of Rs. 356/- per day per room and catering charges Rs. 225/- per head per day during summer season, and room rent Rs. 242/- per day per room and catering charges of Rs. 216/- per head per day during the winter season. This is obvious from the Circular of the Divisional Commissioner, Kashmir dated 7th November, 2020.

22. Indisputably, the 19 rooms of the respondent's hotel were hired and there was no stipulation in the order of the Deputy Commissioner, Srinagar, dated 27th October, 2021 that the rental/hiring charges would be paid on the basis of actual occupancy. In the absence of any such clear stipulation in the hiring order dated 27th October, 2021, passed by the Deputy Commissioner, Srinagar, the respondent was under an obligation to keep all the 19 rooms un-booked and ready for accommodating all the 38 protected persons named in the order itself.

23. It is not the case of the appellants that the hotel owner, i.e., respondent herein, could have hired the rooms which were not actually occupied by the named protected persons to the guests and strangers. That being the clear position emerging from the reading of the order of the Deputy

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Commissioner, Srinagar dated 27th October, 2021, it would be highly unjustified and rather ridiculous to say that the respondent was entitled to receive the rental/hiring charges on the basis of actual occupancy and not in respect of all the 19 rooms which remained hired during the period commencing from 27.10.2021 till 25.10.2022.

24. The report of the Committee, determining actual occupancy of the rooms and recommending the payment of rentals only for the period during which the hired rooms remained under the actual occupation of the protected persons, is untenable and without any justification. However, we are of the considered opinion that the payment on account of catering charges cannot be claimed by the respondent in respect of all the 38 protected persons. The catering charges would be payable on the basis of the number of persons who actually availed themselves of the food services in the hotel. The order of the Deputy Commissioner, read with the Circular of the Divisional Commissioner dated 07.11.2020, makes it clear that catering charges are payable per head per day. This would mean that if twenty persons availed themselves of the catering/food services in the hotel, the respondent would be entitled to charge the amount fixed by the Divisional Commissioner per head, i.e., for twenty

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persons only. Food is prepared by the hotel keeping in view the number of guests staying therein. It is not the case of the respondent that he was made to prepare food for all the 38 persons every day, despite the fact that some of the protected persons who had been allotted the accommodation in the hotel did not actually occupy the rooms.

25. Viewed thus, we find substance in the argument of Mr. Mohsin Qadri, learned Sr. AAG, that catering charges could not be paid for all the 38 protected persons named in the allotment letter. Rather, these charges would be payable on a per head per day basis and as per the actual number of protected persons availing themselves of the food services in the hotel.

26. For the forgoing reasons, we allow this appeal partially and dispose it of by providing as under:

    a. **The judgment of the writ Court is set aside so far as it pertains to boarding and lodging charges for the period commencing from 15.11.2020 when the hotel of the respondent was hired by the Divisional Commissioner, Kashmir, till 05.10.2021, when it was de-hired.**

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b. The respondent would be at liberty to claim boarding and lodging charges, if any, due for the aforesaid period from the office of the Divisional Commissioner, Kashmir, by making a representation.

c. Needless to say that, if any, such representation is made, the same shall be considered on its merits and, if any, amount is found payable to the respondent, the same shall be disbursed by the Divisional Commissioner, Kashmir, without any further delay. In case the respondent feels dissatisfied and aggrieved, he shall be free to file fresh writ petition.

d. That the respondent would be entitled to rental/hiring charges qua all the rooms hired by the Deputy Commissioner, Srinagar for the period commencing from 27.10.2021 to 25.10.2022 minus the amount, if any, already paid for the said period. This payment would be for all the rooms hired, irrespective whether these rooms were actually occupied or not.

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e. **That the catering charges for the period commencing from 27.10.2021 till 25.10.2022 shall be payable to the respondent on actual occupancy basis, i.e., as per the actual heads availing the catering services in the hotel. The amount, if any, pending on that count shall also be released forthwith.**

f. **The appellants shall consider the claims of the respondent in the light of this judgment and make the balance payment within a period of two months from the date of judgment, failing which the entire amount shall become payable along with interest @ 6% per annum, to be calculated from the date it fell due till it is actually disbursed.**

27. With the aforesaid directions and modifications, the judgment of the writ Court shall stand modified to the aforesaid extent.

(Mohd Yousuf Wani)
Judge

(Sanjeev Kumar)
Judge

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i. Whether the order is reportable? Yes/No.
ii. Whether the order is speaking? Yes/No

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