

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

WP (C) 430/2025

Sadiya Sidiq Lone

... Petitioners/Appellant(s)

Through: Mr. Asif Bhat, Advocate

V/s

UT of J&K and others

... Respondent(s)

Through: Mr. Mohsin Qadiri, Sr. AAG

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
28-02-2025

1. In the instant petition filed under Article 226 of the Constitution

of India, the petitioner herein has sought the following reliefs.

- A. By allowing the petition by issuing a writ, order or direction in the nature of certiorari quashing/setting aside the order of respondent no. 3 rejecting the petitioner's application for an EWS certificate on 2.11.2024.*
- B. By allowing the petition by issuing writ, order or direction in the nature of mandamus directing the respondents to issue EWS certificate in favour of the petitioner.*
- C. Issue a writ, order or direction in the nature of mandamus directing the respondent no. 2 to re-evaluate the petitioner's eligibility for an EWS certificate by affording a fair opportunity to present evidence and witnesses.*
- D. Any order or direction which this Hon'ble Court deems fit in the facts and circumstances of the case be passed in favour of the petitioner.*

2. The facts leading to the filing of the instant petition, as pleaded

by the petitioner, are that the petitioner claiming to belong to the

Economically Weaker Section (EWS) applied Online through

application no. JK-Rev-EWS/2024/19975 dated 13-08-2024 to the respondents for issuance of an EWS certificate under and in terms of the J&K Reservation Rules of 2005. The petitioner contends that despite meeting the income criteria for EWS eligibility, her application for issuance of EWS certificate was rejected by the respondents, despite her family's gross annual income from all sources reckoning to Rs.1,20,000/- having been certified by Tehsildar concerned in certificate no. JK-REV-INC/2024/215070 dated 5-8-2024, which is well below Rs. 8.00 lacs, the threshold prescribed under the Rules of 2005. In addition, the petitioner asserts that her family does not possess any disqualifying asset/s as per the provisions of Rule 21 of the Rules of 2005 which includes agriculture land, residential plot, or plot exceeding specified dimensions and despite this, the respondents have rejected the application of the petitioner based on a report from the concerned Patwari who erroneously recorded that the petitioner's father owns a three-storeyed house constructed over five marlas of land overlooking the fact that the said property was inherited jointly by the petitioner's father, her paternal uncle and her three paternal aunts upon the death of their father.

3. The petitioner has also pleaded that a certificate under the Rules of 2005 for belonging to EWS category was earlier issued by the respondents in her favour, initially vide certificate no. 1067/MM/TEG/22 dated 14-12-2022 for the year 2022-23,

followed by another certificate bearing no. 330/MM/TEG/23 dated 16-6-2023 for the year 2023-24, both certificates have been placed on record with the petition.

4. The petitioner contends that the respondents acted arbitrarily by rejecting her claim for issuance of certificate in question now, disregarding her family's financial status as also their jointly inherited property and that the respondents did not provide the petitioner or her father an opportunity to present additional evidence or witnesses to substantiate her claim for issuance of the certificate in question while pleading further that the committee set up to review the matter as well failed to conduct an independent inquiry into the matter and instead reported erroneous findings based on the report of the Patwari.
5. Upon coming up this matter for consideration and having regard to the case set up by the petitioner in the instant petition as also the submissions made by the counsel for the petitioner inasmuch as that the time is of essence in the matter, it is deemed appropriate not to retain this petition on board but to dispose of the same at this stage. Accordingly, Mr. Mohsin Qadiri, Sr. AAG, present, on asking of the court enters appearance and waives notice on behalf of the respondents. Mr. Qadri is not averse to the disposal of the petition at this stage.

6. It is significant to mention here that Economically Weaker Section now stands recognized as a “Reserved Category” having been incorporated in the J&K Reservation Rules, 2005 by carrying out necessary amendment vide SRO 518 dated 02-09-2019. As per Clause (viii) of Rule 21 of the Rules of 2005, a person is eligible for EWS benefit if the gross income of his/her family is below Rs. 8/- lacs per annum. However, proviso appended to Clause (viii) excludes individuals whose family owns or possesses any of the following assets irrespective of the income:

- i) Agricultural land measuring 5 acres or more;
- ii) Residential flat measuring 1000 sq.ft. or more;
- iii) Residential plot measuring 100 square yards (900 sq.ft.) or more in notified municipalities.
- iv) Residential plot measuring 200 square yards (1800 sq.ft.) or more in areas other than notified municipalities.

7. It is a positive case of the petitioner that her family's gross annual income from all sources is Rs.1,20,000/- having been certified by the concerned Tehsildar vide certificate no. JK-REV-INC/2024/215070 dated 05.08.2024 *supra*. With respect to the assets/immovable property, the petitioner claims that her grandfather owned five and a half marlas land under Khasra No. 4812 situated at village Zoonimar and a three-storeyed kacha residential house built upon it and after his demise the said

property devolved upon the petitioner's father, her paternal uncle namely Mohammad Hanief Lone and her three paternal aunts, and though both the petitioner's family and her uncle's family reside separately but within the same *kacha* house which has remained undivided as per Muslim law of inheritance and after apportioning the above property amongst the legal heirs of her grandfather, the petitioner's father's share falls below the threshold limit prescribed under Rule 21 of the Rules of 2005. A tentative calculation has also been done as follows:

Land: Total area: 1496 sft

Share of father: 427.4 sq.ft Share of uncle 427.4 sq.ft Share of 3 aunts 641.2 sft

House: Total area: 2520 sft

Share of father 720 sq.ft Share of uncle 720 sq.ft Share of 3 aunts 1080 sft

8. It is also the case of the petitioner that on the basis of the aforesaid calculation, the EWS certificate had been earlier issued to the petitioner by the respondents for the years 2022-23 and 2023-24.
9. Perusal of the impugned rejection order issued by the respondents tends to show that the mutation attested *qua* the aforesaid property after the demise of the petitioner's grandfather, has been in favour of her father and her uncle and it has in fact become the basis of rejection of the application of the petitioner, however, no reasons have been recorded as to how in absence of any change in the circumstances as pleaded by the petitioner, the earlier certificates had been issued for the years 2022-23 and 2023-24 in her favour. Additionally, no opportunity

of hearing has seemingly been given by the respondents to the petitioner before issuing impugned rejection order.

10. Although Rule 25 of the Rules of 2005 provides a statutory remedy of appeal against the rejection of an EWS certificate before the appellate authority under Section 17 of the J&K Reservation Act 2004, which the in present case is Deputy Commissioner Srinagar, it is well settled principle of law as laid down and reiterated by the Apex Court in a series of judgments that existence of an alternative remedy does not preclude the invocation of writ jurisdiction of the High Court where there is violation of principle of natural justice. A reference in this regard to law laid down by the Apex Court in case titled as **Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum-Assessing Authority and others** reported in (2023) 109 GSTR 402 would be relevant wherein at para 4 following has been laid down:

4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by [Article 226](#) of the Constitution having come across certain orders passed by the high courts holding writ petitions as “not maintainable” merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under [Article 226](#) is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to [Article 329](#) and ordainments of other similarly worded articles in the Constitution. [Article 226](#) does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether

to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition "not maintainable". In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law.

In the instant case, it is manifest and writ large from the record that the respondents have issued the impugned rejection order without affording an opportunity of hearing to the petitioner, inasmuch as without recording reasons, which thus cannot but be said to be arbitrary and violative of principles of natural justice, thus warranting interference by this Court under Article 226 of the Constitution.

11. As has been noticed in the preceding paras, the impugned rejection order has been issued by the respondent owing to the reason that the names of the petitioner's father and her uncle have been recorded in the relevant revenue record upon the death of the grandfather of the petitioner who owned the property in question, suggesting that the petitioner's father and her uncle alone have inherited the said property. Law in regard to the significance of revenue entries/mutations is no more *res integra* and stands settled by the Apex court in a catena of judgments including in case titled as **Balwant Singh and another vs. Daulat Singh (dead) by LRs** reported in (1997) 7

SCC 137 wherein the Supreme Court has held that mutation in the revenue record does not create or extinguish title nor has it any presumptive value on title and that it only enables the person in whose favour mutation is ordered to pay the land revenue in question. The said view has also been reiterated by the Apex court in case titled as **Suraj Bhan v. Financial Commissioner** reported in **(2007) 6 SCC 186** wherein the Supreme Court has ruled that the revenue record does not confer title of the property upon a person whose name appears in the Record of Rights and that revenue records or Jamabandi have only ‘fiscal purpose’ and do not establish ownership.

12. For what has been observed, considered and analysed hereinabove, the instant petition deserves to be allowed and is accordingly allowed and disposed of as under:

- i. By issuance of a writ of certiorari, the impugned order bearing no. 1308/NTZ/MN/24 dated 02.11.2024 is quashed.
- ii. By issuance of a writ of mandamus the respondents are commanded to revisit and reconsider the case of the petitioner for issuance of EWS certificate, while having due regard to the fact that the said certificate stands earlier issued in favour of the petitioner for the years 2022-23 and 2023-24, as also to the observations made hereinabove.

iii. The aforesaid exercise be commenced and concluded by the respondents within 15 days from the date a copy of this order is produced by the petitioner before the respondents.

(JAVED IQBAL WANI)
JUDGE

Srinagar
28-02-2025
N Ahmad

Whether the order is speaking: Yes
Whether the order is reportable: Yes

