

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

- 1. OWP No. 91/2016, MP No. 1/2016
- 2. OWP No. 1831/2015, MP Nos. 4/2016 , 1/2015 & 3/2016
- 3. OWP No. 1740/2015, MP No. 1/2015
- 4. OWP No. 379/2016, MP No. 1/2016
- 5. Contempt (OWP) No. 88/2016  
In OWP No. 20/2016

Date of decision:- 19/04/2017

1. Gurvinder Singh and ors.	Vs.	State of J&K and ors.
2 Rajeev Tandon & ors.	Vs.	State of J&K and ors.
3. Pawan Anand and ors.	Vs.	State of J&K and ors.
4. Ajaz Ahmed Bhatt.	Vs.	State of J&K and ors.
5. Nazma Akther.	Vs.	Tanveer Ahmed.

**Coram:**  
**Hon’ble Mr. Justice Ramalingam Sudhakar, Judge**

**Appearing counsel:**

For the Petitioner (s)	:	Mr. S.K.Shukla, Advocate. Ms. Rani Kiyala, Advocate. Mr. Ravinder Sharma, Advocate. Ms. Monika Sumbria, Advocate. Ms. Meenakshi Salathia, Advocate. Mr. S.H Rather, Advocate.
For the respondent(s)	:	Mr. Chandan Sharma, GA vice Mr. Ehsan Mirza, Dy. A.G. Mr. Sudesh Magotra, GA.
For intervener(s)	:	Mr. Sudershan Sharma, Advocate. Mr. Pawan Dev Singh, Advocate. Mr. Ashish Sharma, Advocate. Mr. Ronik Sharma, Advocate.

i)	Whether approved for reporting in NET.	Yes.
ii)	Whether approved for reporting Digest/Journal.	Yes.

- 1. Writ petitions are of the years 2015 and 2016.
- 2. Writ petitioners in OWP No. 91/2016, sought the following reliefs:-

“i) Writ, order or direction in the nature of Writ of Mandamus commanding upon the respondents to allow the petitioners who have been enrolled/enlisted as Cross LOC Traders at TFC Chakkan Da Bagh, Poonch w.e.f. 21.10.2014 vide order No. TFC/CDB/P/Trade/2215-70 dated 21.10.2014 read with Order No. TFC/CDB /P/Trade/2221-26 dated 21.10.2014 issued by the Respondent No. 3, to conduct the Cross LOC Trade at TFC Chakkan Da Bagh, Poonch;

ii) Writ, order or direction in the nature of Writ of Mandamus commanding upon the respondents to include the name of the petitioners in the upgraded list of enrolled Cross LOC Traders at TFC Chakkan Da Bagh, Poonch so as to facilitate Cross LOC Trade by the petitioners at TFC Chakkan Da Vagh, Poonch without any interference;

iii) Any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, may also be issued in favour of the petitioners and against the respondents along with costs."

3. Petitioners in OWP No. 1831/2015, sought the following reliefs:-

“(i) Issue appropriate writ, order or direction to the respondents to provide requisite infrastructural facilities/mechanism including storage capacity and other facilities in order to carry the L.O.C trade in a smooth manner.

(ii) Issue appropriate writ, order or direction to the respondents to provide full body scanners to scan the trucks which carry goods from across the border across L.O.C. in order to carry on the trade without any security threats.

(iii) Issue appropriate writ, order or direction to the respondents more particularly respondent No. 6 to conduct an independent enquiry and probe into the genuineness and authenticity of the firms registered with the respondent No. 4 and antecedents of their properties.

(iv) With a further prayer restraining the respondents from resorting to registration of any new firms till the time requisite infrastructural facilities /mechanism are developed to carry on the L.O.C. trade.

(v) With the further prayer to issue appropriate writ, order or direction to the respondents particularly respondent No. 4 to settle the claims/dues of the petitioners by initiating the process for holding joint Meeting of Traders of both the sides to sort out their claims.

(vi) Such other additional or alternative relief which this Hon'ble Court may in the facts and circumstances of the case deem fit and proper be also passed in favour of the petitioners and against the respondents."

4. Writ petitioners in OWP No. 1740/2015, sought the following reliefs:-

“(i) Issue appropriate writ, order or direction to the respondents to provide requisite infrastructural facilities/mechanism including storage capacity and other facilities in order to carry the L.O.C trade in a smooth manner.

(ii) Issue appropriate writ, order or direction to the respondents to provide full body scanners to scan the trucks which carry goods from across the border across L.O.C. in order to carry on the trade without any security threats.

(iii) With a further prayer restraining the respondents from resorting to registration of any new firms till the time requisite infrastructural facilities/mechanism are developed to carry on the L.O.C. trade.

(iv) With the further prayer to issue appropriate writ, order or direction to the respondents particularly respondent No. 4 to settle the claims/dues of the petitioners by initiating the process for holding Joint Meeting of Traders of both the sides to sort out their claims.

(v) Such other additional or alternative relief which this Hon’ble Court may in the facts and circumstances of the case deem fit and proper be also passed in favour of the petitioners and against the respondents.”

5. Writ petitioner in OWP No. 379/2016, sought the following reliefs:-

“a) **MANDAMUS:**

commanding the respondents to formally register the firms of the petitioner for participation in Cross LOC Trade from Poonch to Rawalakot and to issue formal registration order in favour of the petitioner and further to place the petitioner’s firm in the roster as per standard operating procedure in vogue.

b) **MANDAMUS:**

Commanding the respondents to compensate the petitioner for the loss of business due to delay on part of the respondents in getting the firm of the petitioner registered despite the completion of requisite formalities including the verification submitted by the CID, J&K Jammu from the date other similarly situated persons were registered and

allowed to participate in cross LoC Trade.

Any other relief which this Hon'ble Court, in facts and circumstances of the case deems fit and proper."

6. The trade across Line of Actual Control is the location of this controversy. A group of traders, registered with the 4<sup>th</sup> respondent-General Manager (Custodian), Trade Facilitation Centre District Industries Centre, Poonch, have filed these petitions on a common cause for the above stated common relief.

7. According to these petitioners, they are importing products like Anar-Dana (Pomegranate Seeds), Almonds, Apples, Oranges, Clothes, Walnuts (Akhrot), Dates (Khajoor) etc., and exporting products like Mirch, Zeera, Banana, Lemon, Tamatoes etc., and other edible items. This business of importing and exporting across the Line of Actual Control is regulated by the authority official respondents. The Traders who want to conduct the business of import and export, these commodities are required to be registered with the Authority. In order to facilitate the trade as above, certain infrastructure has been established in the Line of Control.

8. The reason for filing the two petitions titled Rajeev Tandon and ors vs. State of J&K and ors OWP No. 1831/2015); and Pawan Anand and ors. Vs. State of J&K and ors (OWP No. 1740/2015) is on the premise that respondent No. 4, General Manager (Custodian) is in the process of registration of new firms / traders without proper infrastructure, without proper verification of their doubtful existence and tainted antecedents. This is done in a collusive

manner for extraneous consideration.

9. According to the petitioners, some of the traders who have been registered earlier are ineligible to be registered. In some cases due to their incapacity it disentitles them to be registered. However, without making a thorough and proper verification and without proper material, many of them have been registered as trading firms. Many of them are fake and bogus firms and indulge in nefarious activities.

10. Petitioners further contend that proper infrastructure has not been provided at the Trade Facilitation Centre across the LOC, in the form of security features, Plan quarantine, storage and other facilities that are prerequisite for a proper trade facility.

11. The further grievance of the petitioners is that by increasing the number of firms or traders, it will lead to more pollution, congestion. It will also expose the LOC to security breach. Therefore, it is pleaded that in fitness of things, registration of new firms should be properly regulated depending on the nature of the facilities available and the existing firms scanned so that bogus or fake firms/traders are removed.

12. Writ petitioners, on the plea as above, sought for and have obtained an interim order restraining the official respondents from registering new firms. That order is working against the claim of other traders / firms, who intend to get registration for the purpose of doing business.

13. This Court by way of order dated 09.03.2017 passed in MP No. 02/2016 in OWP No. 1831/2015, impleaded proposed traders as interveners and they are represented by Mr. Sudershan Sharma, Mr. Pawan Dev Singh, Ronik Sharma, Ashish Sharma and Ajeet Sharma, Advocates. The newly added respondents oppose the interim order. They pleaded that they should be given an opportunity to establish that they are genuine traders/firms and they have the requisite capacity to do the import export business. They should not be restrained at the behest of rival traders whose intent is to safeguard their business alone. The sole object of this batch of writ petitioners is selfish interest and due to business rivalry. The so-called security concern is a farce and they are raising false and baseless alarm to scare away new traders and firms. The writ petitions have not been filed in good faith but out of selfish pecuniary motive. The newly impleaded respondents state that their right to engage in trading activity for their livelihood is obstructed by the petitioners for personal greed. The reasons stated in the writ petitions are purely imaginary and without any substance.

14. The impleaded respondents further plea that some of the reliefs sought for in the writ petitions have no basis in light of the Standard Operating Procedure which is in vogue and properly implemented.

15. Mr. Shukla, learned counsel appearing for petitioner-Gurvinder Singh and others pleads that their firms have already been registered with effect from 21.10.2014, however, they are not being allowed to continue with the trade because

of the interim order passed by this Court at the behest of Petitioners-Rajeev Tandan and Pawan Anand and others. He pleads that proper verification has been done by the competent authority and thereafter firms of the petitioners have been registered. Restraint order should be lifted so as to enable the petitioners to take up trade activity across the LOC.

16. Heard Mr. S.H.Rather, learned counsel appearing for the petitioner in OWP No. 379/2016, who has a similar grievance as that of the case of Gurvinder Singh, stating that his firm is registered but the official respondents are not allowing the petitioner to trade across LOC stating that writ petition is pending.

17. For the writ petitions filed by Rajeev Tandon, Pawan Anand and others, the mandamus is to provide infrastructure facilities and proper security mechanism including storage facility in order to regulate the trade across LOC in a proper manner. This is not opposed by anybody. In fitness of things, to ensure that quality and genuine goods as above are traded across the LOC, it is desirable that the authorities should provide infrastructure facility, security and storage facility keeping in mind the Standard Operating Procedure (SOP). This has to be done in a time bound manner. Proper infrastructure facility, security will ensure genuine trade and eliminate manipulation or malpractices. In this view of the matter, prayer No. 1 in both the writ petitions, i.e., OWP No. 1831/.2015 and OWP No. 1740/2015 is allowed.

18. Prayer No. 2 is to provide full body scanners to scan the trucks, which carry goods from across the LOC. This issue is

highlighted by learned counsel for the petitioners as well as respondents stating that illegal goods, arms and ammunitions are smuggled into India and hence the vehicles have to be scanned so that no goods other than permitted one are smuggled into India. This plea is made keeping in mind the security aspect.

19. If the apprehension expressed as above is true, it is for the authorities to take steps and ensure that proper security facilities are provided at the LOC. This can prevent smuggling of prohibited and banned goods including narcotics. In this view of the matter, prayer No. 2 is allowed as above.

20. Prayer No. 3 in Rajeev Tandon’s case relates to plea for conducting an independent inquiry and probe into the genuineness and authenticity of the firms registered with respondent No. 4 stating that bogus firms/traders are registered. They also contribute to smuggling of banned goods and it is a threat to security of the State.

21. It is stated by the petitioners that they apprehend that some persons with bad or criminal antecedents may enter into the Trade and create situation which may endanger the security of the State and the economy of the Country. The names of the doubtful traders as has been pointed by the petitioners in paragraph 7 of the petition (OWP No. 1831/2015), is as follows:-

S.No.	Name of the firm	Proprietor
2.	M/s Panchal Trading Agency Poonch	Prop. is a News Reporter.
8.	M/s Manju Trader, Poonch	Prop. is an Agriculturist



13.	M/s Al Fareed Trader Khari, Poonch	Prop. is a Labourer
14.	M/s. Jahangeer Trader, Nangali, Poonch	Prop. is Owner Cum Driver
24.	M/s Lord Shiva Traders, Poonch	Prop. is Owner of a Truck
28.	M/s. Bhati Trading Co, Poonch	Prop. is a Govt. Teacher
30.	M/s Salaria Medicos, Poonch	Prop. is running a medical shop Medical goods are not included in export goods.
39	M/s. Rajinder Army Traders, Poonch	Prop. is a vegetable vendor
48	M/s Kohinoor Trading Co.	Prop. owns two vehicles
96.	M/s A.Q.Trader Surankote, Poonch	Prop is a student
102.	M/s Aziz Trader Gursai Mendhar	Prop. is a driver
159.	M/s Shah Ji Traders, Poonch	Prop. is a student
167.	M/s Waqar Enterprises, Saloonia, Mandi	Prop. is a student
	M/s Tahir Traders, Poonch	Prop. is a surrendered militant

22 This issue has to be looked into from the angle of genuineness of the traders, their activity and the nature of goods they are trading. If any trader is a mere namelender then the evil should be lifted and the motive of the real person should be exposed. Benami transaction and doubtful traders to be eliminated in the interest of security of the State. The authority has to ensure that fake, bogus or false registration is avoided and removed.

23. As stated earlier, the petitioners state that bogus firms have been registered as traders and they are indulging in malpractice. If this allegation is true, then serious action has to be taken. If there is slackness on security across the LOC area and if fictitious persons are registered it may give rise to serious threat to the security. In this aspect, it is respondent No. 6 who can assist in verifying the antecedents of all the registered traders/firms, their authenticity can help respondent No. 4 to take appropriate action as per law.

24. Keeping in mind the above, State-respondent No. 1 shall ensure that proper verification is done by the competent authority which may include officers of the Police Department, if Government so desires. Needless to state that inquiry into the genuineness and authenticity of the firms is a paramount issue and there should not be any slackness on the part of the official respondents. The authority will however follow the principles of natural justice by putting them on notice to avoid allegation of violation of principles of natural justice. The relief in prayer No. 3 is ordered as above.

25. Prayer No. 4 in Rajeev Tandon's case and Prayer No. 3 in Pawan Anand's case is one and the same and it will be dealt with in the end.

26. Prayer No. 5 in Rajeev Tandon's case and Prayer No. 4 in Pawan Anand's case is relating to the petitioners' request for a direction to respondent No. 4 to initiate a process and to hold a Joint Meeting of the Traders of both India as well as POK so as to enable the parties to settle their dues etc.

27. Mr. Chandan Sharma, learned Government Advocate appearing vice Mr. Ehsan Mirza, learned Deputy Advocate General pointed out that there is Standard Operating Procedure that provides for a mechanism to address these issues. He refers to the reply filed by respondent No. 2 in response to the writ petition wherein it is mentioned that quarterly joint meetings of registered traders of Jammu and Kashmir and POK are regularly held at LOC Point. Relevant para 2 of the reply reads as under:

“2. In reply to the averments made in para 2 , it is submitted that the averments which are contrary to record are denied. The petitioners in the para have given the brief background of Cross Line of Control trade. It is denied that the trade lacks grievance redressal system. Quarterly joint meetings of registered traders of Jammu & Kashmir and POK are continuously held at LOC point for clearance of dispute/claims if any. Even otherwise for any trade related dispute, it is the trader who has to take a call on it.”

This takes care of the issue raised in prayer Nos. 5 & 6 as above. As the Standard Operating Procedure is already in vogue, the same shall strictly be followed so that the issues raised by the petitioners get resolved properly.

28. The last issue that arises for consideration is as to whether the respondents should be restrained from resorting to registration of new firms till such time requisite infrastructural facilities/mechanism are developed to carry on the LOC trade.

29. In this regard, it will be relevant to refer to the

reply filed by respondent No. 4, General Manager (Custodian), Trader Facilitation Centre, District Industries Centre, Poonch dated 02.12.2016. In that, it has been clearly stated that registration is being undertaken strictly in accordance with the mandate of Standard Operation Procedure and the additional Guidelines issued by the Ministry of Home Affairs, Government of India. According to the 4<sup>th</sup> respondent, it is stated that 303 traders have been registered after fulfilling all the conditions required and 500 new files are pending registration. The authority denies the allegation of malpractice in registration.

30. Respondent No. 4 states that if specific instances of ineligible persons or bogus registration are pointed out, the authority will immediately take action. Insofar as the registration is concerned, it will be done after proper verification. Insofar as existing firms/traders are concerned a thorough inquiry should be undertaken to verify the antecedents and genuineness of the firms registered with respondent No. 4. This direction will care of the issue for the present.

31. It is further stated by official respondents that trade is conducted in a smooth manner. The question of bogus registration does not arise. The authority further states that the trade is done in regulated manner between India and POK based on registration with respondent No. 4 as per the Standard Operating Procedure between India and POK and Traders are registered with respondent No. 4 as per the Standard Operating Procedure and the guidelines issued by the Ministry of Home Affairs, Government of

India.

32. It is further stated that only a few traders are registered after proper verification. The fact that more than 500 files are kept pending for verification will establish that the authorities are taking due care and caution. The registration of the traders is not done on mere asking and it involves detailed scrutiny.

33. In view of the above, question of restraining the authority from registering the new firms does not arise. Interim order shall stand vacated. The authority to verify the claims of the petitioners in accordance with the Standard Operating Procedure (SOP) and register the firms after thorough scrutiny. Insofar as the traders/firms that have already been registered, the authority to proceed as directed above. The existing traders/firms may be permitted to trade if found genuine after verification. The authority to expedite the process as soon as possible.

34. Writ petitions are disposed of in the terms as above and in view of the order passed in the writ petitions; contempt Petition No. 88/2016 is closed.

**(Ramalingam Sudhakar)**  
**Judge**

**Jammu,**  
**19.04.2017**  
**Tilak, Secy.**

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