Sr. No. 188

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP (C) No. 1433/2026

Date of pronouncement: 07.08.2026

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M/s Tata Power Renewable Energy Limited having its registered office at Corporate Centre, B-34, Sant Tukaram Road, Carnac Bunder, Mumbai, Maharashtra- 400009. Represented by its authorized representative,
JATIN GHULIANI,
Tata Power Renewable Energy Limited Corporate Center B, 34 Sant Tukaram Road, Carnac Bunder, Mumbai- 400009, Maharashtra, India

.....Petitioner(s)

Through :- Mr. Abhinav Sharma, Sr. Advocate with
Mr. Abhirash Sharma, Advocate,
Mr. Siddhant Gupta, Advocate
Mr. Akash Lamba, Advocate,
Mr. Shreyesth Ramesh Sharma, Advocate
Mr. Syed Faisal Qadri, Sr. Advocate with
Mr. Manik Dutt, Advocate.

v/s

1. UT of Jammu & Kashmir
   Through its Principal Secretary/Commissioner Secretary to the Government, Department of Rural Development and Panchayati Raj, Civil Secretariat, Jammu
2. State Procurement and Supplies Agency (SPSA), Department of Rural Development and Panchayati Raj, UT of Jammu & Kashmir, through its Managing Director/Chief Executive Officer, H.No. 21, Sector 1, Trikuta Nagar, Jammu

.....Respondent(s)

Through :- Mr. Abdul Rashid Malik, Sr. AAG.

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

<u>ORDER</u>

1. The present petition calls in question an interlocutory order passed by the ld. Arbitrator under Section 26 of the Arbitration and Conciliation Act, 1996 ("the Act"), whereby a Technical Committee has been constituted to

undertake physical verification and technical inspection of Off-Grid Solar PV Power Plants forming the subject matter of the arbitral proceedings. Respondent No. 2, the State Procurement and Supplies Agency ("SPSA"), awarded a contract to the petitioner pursuant to a Notice Inviting Tender for the supply, installation, testing and commissioning of Off-Grid Solar PV Power Plants of 3.5 KWP capacity at 1,013 project sites spread across 20 districts of the Union Territory of Jammu and Kashmir. Agreements in furtherance thereof were executed between the parties on 16.09.2021 and 17.09.2021.

2. According to the petitioner, it completed installation and commissioning at all 1,013 project sites. The installations were thereafter physically verified and certified by the Jammu and Kashmir Energy Development Agency ("JAKEDA"), the State Nodal Agency under the Department of Science and Technology, Union Territory of Jammu and Kashmir. Commissioning certificates dated 23.01.2024 and 29.01.2024 were issued in respect of 485 Panchayat Ghars in the Jammu Division and 528 Panchayat Ghars in the Kashmir Division respectively, thereby covering all 1,013 sites. The petitioner also relies upon a communication dated 05.10.2024 issued by the CEO/MD of Respondent No. 2, which, according to it, acknowledges completion of the project.

3. The petitioner claims that, notwithstanding completion of the contractual works, outstanding dues of approximately Rs.38.66 crore remained unpaid. It asserts that, having completed its obligations and with nothing further remaining to be performed, it terminated the contract on 08.06.2023. The project sites thereafter remained in the custody and control of the respondents and/or the respective Panchayat authorities.

Disputes having arisen between the parties, the matter was referred to arbitration and an Arbitrator came to be appointed.

4. During the arbitral proceedings, Respondent No. 2 filed an application under Section 26 of the Act seeking appointment of an Expert Committee for physical verification and technical inspection of the project sites. By a detailed order dated 23.12.2025, the ld. Arbitrator declined the request for a wholesale post-closure inspection. At the same time, it expressly preserved its power to appoint an expert *suo motu*, or upon a renewed request by either party, should the necessity for such expert assistance arise at a subsequent stage.

5. On 25.03.2026, Respondent No. 2 filed a renewed application under Section 26 seeking appointment of an Expert Committee. The renewed request was founded, inter alia, upon district-level field-verification material stated to have been collected in March 2026 and a communication dated 25.03.2026 attributed to Mr. Fayaz Ahmad Bhat, Junior Assistant, stating that he had not been associated with the verification exercise relating to the Kashmir Division sites. The petitioner opposed the application by filing objections dated 17.04.2026. It contended that the renewed application merely sought to reopen an issue already decided; travelled beyond the pleadings; attempted to introduce a new factual defence after closure of evidence; relied upon material generated nearly three years after termination of the contract; and failed to disclose any specific technical issue warranting recourse to Section 26 of the Act.

7. Learned Sr. Counsels appearing for the petitioner assails the impugned order principally on four grounds. First, it is submitted that the renewed

application was substantially a repetition of the earlier application rejected on 23.12.2025 and did not satisfy the conditions expressly stipulated by it, while preserving liberty for a renewed request. The direction for inspection of all 1,013 sites across 20 districts is stated to be precisely the kind of general and open-ended inquiry which the earlier order had declined to permit. Second, it is contended that no foundational case of non-installation, defective installation or non-functionality attributable to the petitioner had been pleaded in the Statement of Defence. Respondent No. 2 had complete access to the sites throughout execution of the project and during the arbitral proceedings, yet no site-specific deficiencies were pleaded. Nor, according to the petitioner, has Respondent No. 2 raised any counterclaim founded upon defective or incomplete execution of the works.

8. The renewed application, it is accordingly submitted, permits Respondent No. 2 to introduce a new factual case after closure of evidence and substantial completion of final arguments. Section 26, according to the petitioner, cannot be employed as a mechanism for collecting evidence or constructing a case which does not arise from the pleadings. Reliance in this regard is also placed upon the principles underlying the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 concerning due diligence after commencement of trial. Third, the petitioner submits that an inspection conducted in March 2026 cannot legitimately determine whether contractual obligations had been duly performed during 2021–2023. The contract was terminated on 08.06.2023 and the installations thereafter ceased to be in the petitioner's custody or control. Any deterioration, damage or non-functionality occurring subsequently, it is

urged, cannot retrospectively impeach performance which had already been verified and certified. Fourth, it is submitted that the material relied upon in support of the renewed application does not constitute a genuine subsequent circumstance. The disclaimer attributed to Mr. Fayaz Ahmad Bhat is stated to be a unilateral declaration by a junior official made during the pendency of the proceedings and incapable of displacing official acts performed pursuant to Government orders.

9. Ld. Sr. Counsels further submits that Respondent No. 2's own communication dated 05.10.2024 acknowledged completion of the project and recorded that the allegations raised by the Anti-Corruption Bureau (“ACB”) had been answered point-wise and that the competent Department had directed processing of the petitioner's outstanding dues. Respondent No. 2, having adopted such a position, cannot now be permitted to approbate and reprobate. It is lastly urged that, after the learned Arbitrator had indicated on 28.03.2026 that pending applications would be considered with the main matter, constitution of an Expert Committee at the stage when evidence stood concluded and final arguments had substantially been heard, amounts to reopening the evidentiary record and creating an altogether new stream of evidence

10. Ld. Sr.Counsels appearing for the respondents opposes the petition and submits that the order dated 23.12.2025 itself expressly preserved the arbitrator’s power to appoint an expert *suo motu* or upon a renewed and appropriately tailored request if subsequent circumstances warranted such a course. According to the respondents, material subsequently came to light casting serious doubt upon the correctness of the earlier verification and certification exercise. Reliance is placed upon the communication

dated 25.03.2026 attributed to Mr. Fayaz Ahmad Bhat and field-verification reports concerning Shopian, Budgam, Ganderbal and Kulgam. It is contended that such material prima facie indicated that installations claimed to have been commissioned were not existing at several locations and that the Quality Inspection Report and commissioning certificates relied upon by the petitioner required technical verification. The respondents also questioned the commissioning certificates on the ground that they did not bear the signature of the CEO, SPSA.

11. Considerable reliance is also placed upon the investigation being conducted by the ACB into alleged irregularities concerning procurement and approval of prices of the Solar PV systems. It is submitted that approval under Section 17A of the Prevention of Corruption Act, 1988 had been accorded for inquiry/investigation into the conduct of the concerned public servants, including officials associated with the project. The respondents submit that, in these circumstances, the ld. Arbitrator considered expert assistance necessary to ascertain the factual and technical position at the project sites.

12. It is further contended that constitution of the Expert Committee is purely procedural and does not determine any substantive right or liability of either party. If the Committee's report is averse to the petitioner, the petitioner would remain entitled to object to its methodology, correctness, relevance and evidentiary value before the Arbitrator. Should the arbitrator ultimately rely upon such material while rendering an award adverse to the petitioner, the petitioner would have its statutory remedy under Section 34 of the Act. Interference under Articles 226 or 227 at this interlocutory stage, according to the respondents, would therefore be

contrary to the legislative policy of minimal judicial intervention in arbitral proceedings.

13. I have heard learned counsel for the parties at length and examined the record.

14. Before examining the rival contentions on merits, it is necessary to notice the settled legal position governing interference by this court under Articles 226 and 227 of the Constitution with interlocutory orders passed in arbitral proceedings. In *SBP & Co. v. Patel Engineering Ltd. and Another*, (2005) 8 SCC 618, the Hon'ble Supreme Court emphasised the legislative policy of minimal judicial intervention underlying the Act. The Court disapproved the proposition that interlocutory orders passed by an Arbitrator could routinely be corrected in exercise of jurisdiction under Articles 226 or 227 of the Constitution.

15. The principle was reiterated in *Deep Industries Limited v. Oil and Natural Gas Corporation Limited and Another*, (2020) 15 SCC 706. The Hon'ble Supreme Court held that the statutory scheme cannot be circumvented by subjecting interlocutory determinations of an Arbitrator to supervisory review at every stage. Where the Act contemplates that an objection may ultimately be raised in proceedings under Section 34, interference during the pendency of the arbitration must remain exceptional. In*Sero soft Solutions Pvt. Ltd. v. Dexter Capital Advisors Pvt. Ltd.*, 2025 SCC Online SC 22, the challenge concerned a procedural order of the Arbitrator declining further opportunity for cross-examination. The principle reiterated was that judicial interference with procedural and interlocutory orders in arbitration is permissible only in rare and exceptional circumstances, including cases involving perversity of such magnitude as

is apparent on the face of the record. More recently, in *Manish Kamal Bezboruah v. Bokahola Tea Company Private Limited and Others*, 2026 SCC Online SC 1330, the Hon'ble Supreme Court reiterated that, although the constitutional supervisory jurisdiction under Article 227 cannot be altogether excluded, its exercise in arbitral matters is confined to exceptional situations, such as a patent lack of inherent jurisdiction apparent on the face of the record. An aggrieved party ordinarily must await the award and pursue the statutory remedy available under Section 34 of the Act.

16. The legal position which emerges is that the jurisdiction of this Court under Articles 226 and 227 undoubtedly survives, but its exercise against interlocutory arbitral orders is subject to exceptional restraint. Mere error of fact or law, or the possibility that another view could have been taken, does not justify supervisory interference. The Court is therefore not required, at an intermediate stage of arbitration, to examine the correctness of the arbitrator's procedural determination as though exercising appellate jurisdiction. Intervention would be warranted only where the order demonstrates a patent absence of jurisdiction or such manifest perversity as would justify recourse to the extraordinary constitutional jurisdiction. The challenge in the present case must be examined against this limited jurisdictional threshold.

17. The principal submission of the petitioner is that the impugned order violates the arbitrator's own earlier order dated 23.12.2025. The submission is not without substance at first impression. The earlier order had declined a wholesale post-closure inspection and had prescribed safeguards governing any renewed request.

18. The decisive question, however, is not whether this Court, sitting in appeal, would have considered the renewed request justified. The question is whether the arbitrator lacked jurisdiction to entertain it or whether the exercise of power is so manifestly perverse as to warrant constitutional intervention during the pendency of the arbitration. On that question, the order dated 23.12.2025 assumes significance. The arbitrator did not finally foreclose expert assistance. On the contrary, it expressly preserved its power to appoint an expert *suo motu* or upon a renewed request if necessity arose at a subsequent stage on the basis of the record and circumstances then obtaining. That order was never challenged and attained finality *inter partes*. The respondents thereafter moved the renewed application dated 25.03.2026, asserting that material had subsequently surfaced which cast doubt upon the factual basis of the commissioning and verification exercise.

19. The respondents relied, amongst other material, upon the communication dated 25.03.2026 attributed to Mr. Fayaz Ahmad Bhat and field-verification reports concerning four districts. Their case before the arbitrator was that this material called into question the correctness of the Quality Inspection Report and the commissioning certificates upon which the petitioner substantially relies in support of its monetary claims.

20. Whether the said material is credible, whether it could or ought to have been produced earlier, whether it genuinely constitutes subsequent material, and what evidentiary weight can ultimately be attached to it are all matters on which the petitioner has raised substantial objections. Those objections, however, pertain primarily to the admissibility, relevance, probative value and ultimate effect of the material rather than to the

existence of the Arbitrator's statutory power to obtain expert assistance. Section 26 of the Act expressly empowers an Arbitrator, unless otherwise agreed by the parties, to appoint one or more experts to report to it on specific issues to be determined by the arbitrator. The petitioner does not dispute the existence of that power.

21. The underlying arbitration concerns the petitioner's claim for substantial contractual payments on the basis that the Solar PV systems were duly supplied, installed, tested and commissioned. The petitioner claims approximately Rs.38,66,26,621/-, together with pre-reference, *pendente lite* and future interest at 18% per annum, inter alia, towards unpaid supply-stage and installation-and-commissioning payments, expenditure incurred in completing the project and losses allegedly resulting from breach of the agreements. Questions concerning whether the contracted systems were in fact installed and commissioned, and the evidentiary value of the certificates relied upon to establish such performance, are therefore connected with the contractual dispute before the Arbitrator.

22. The fact that an ACB investigation may separately concern alleged irregularities in the tender process, pricing or conduct of public officials does not alter the essentially contractual character of the disputes referred to arbitration. Equally, however, the existence of such investigation does not, by itself, disable the Arbitrator from examining material otherwise relevant to the contractual disputes pending before it. The Arbitrator has taken the view that, in light of the material subsequently placed before it, technical assistance is required concerning the design, supply, installation, testing, commissioning and physical position of the systems forming the

subject matter of the contract. Whether the conclusions ultimately drawn from such inspection are sustainable is a distinct question.

23. The petitioner's contention that the present condition of the installations cannot establish their condition as on the date of completion or termination also raises an important evidentiary issue. The project sites ceased, according to the petitioner, to remain under its custody or control after termination on 08.06.2023. It is therefore possible that deterioration, damage, removal or non-functionality discovered subsequently may have causes unrelated to the petitioner's contractual performance. That consideration, however, bears upon the relevance and weight to be assigned to the Committee's eventual findings. It does not establish that the Arbitrator inherently lacks jurisdiction to obtain the report.

24. A physical condition found in 2026 cannot automatically be treated as proof of the condition prevailing in 2023. The causal and temporal connection, if any, between the Committee's observations and the petitioner's contractual performance would have to be independently established and evaluated by the Arbitrator after hearing both sides. The same distinction applies to the petitioner's objection that the renewed application travels beyond the pleadings. Whether a particular finding of the Expert Committee can legitimately be relied upon in the absence of a corresponding pleaded case, and whether doing so would prejudice the petitioner or impermissibly enlarge the scope of the dispute, are questions capable of being raised before the Arbitrator if and when such material is sought to be relied upon.

25. The constitution of the Committee does not, by itself, amount to an adjudication that the petitioner's installations were defective, incomplete

or non-existent. Nor does the Committee's report, when submitted, determine the rights and liabilities of the parties. It remains material placed before the adjudicatory forum and is subject to scrutiny in accordance with law. The petitioner must therefore be afforded an effective opportunity to question the report, including its methodology, factual assumptions, temporal relevance and conclusions, and, where permissible, to place rebuttal material or evidence before the arbitrator.

26. The petitioner's further contention based upon Respondent No. 2's communication dated 05.10.2024, including the plea of approbation and reprobation, likewise concerns the evidentiary and legal effect of Respondent No. 2's earlier acknowledgment. Nothing in the impugned order precludes the petitioner from relying upon that communication before the Arbitrator or from contending that the respondents are bound by the position earlier adopted by them. Likewise, the question whether the material relied upon in March 2026 truly satisfies the conditions contemplated by the order dated 23.12.2025 is capable of being examined in the arbitral proceedings and, if necessary, in a challenge to the eventual award. At this stage, the mere fact that the petitioner disputes the assessment of those circumstances cannot convert the impugned procedural determination into an order passed without jurisdiction.

27. Considered in this perspective, the impugned order represents an exercise of a power expressly conferred upon the Arbitrator by Section 26 of the Act and additionally preserved by its earlier order dated 23.12.2025. Whether it has exercised that power correctly, or whether the eventual report can legitimately sustain any finding adverse to the petitioner, are

matters distinct from the Arbitrator's competence to undertake the exercise.

28. The present challenge therefore essentially invites this Court to determine, at an interlocutory stage, whether he has correctly assessed the necessity, timing, scope and evidentiary justification for expert assistance. Undertaking such an inquiry would require this Court to sit in appeal over a procedural determination made in the course of ongoing arbitral proceedings, which is precisely what the settled principles governing Articles 226 and 227 cautions against. No patent lack of inherent jurisdiction is demonstrated. Nor does the impugned order disclose manifest perversity of the exceptional degree necessary to justify interference with an ongoing arbitration.

29. The petitioner's apprehension of prejudice can adequately be addressed by ensuring that the Expert Committee's report is not acted upon adversely without affording the petitioner a reasonable opportunity to challenge its contents, methodology, relevance and conclusions before the learned Arbitrator. For the reasons aforesaid, this Court finds no exceptional circumstance warranting interference under Articles 226 or 227 of the Constitution of India with the impugned interlocutory order. The writ petition is, accordingly,dismissed, interim direction if any shall stand vacated.

30. Having regard, however, to the advanced stage of the arbitral proceedings, the ld. Arbitrator is requested to endeavour to conclude the proceedings as expeditiously as possible, while affording adequate opportunity of hearing to both sides. In the event that the report of the Expert Committee, or any part thereof, is averse to either party, the party affected shall be afforded a

reasonable opportunity, in accordance with law, to raise objections to the report, including its methodology, relevance and conclusions, and to lead evidence in rebuttal, if otherwise permissible, before such report is acted upon by the Arbitrator.

31. It is further clarified that the physical condition of any installation found during an inspection conducted in 2026 shall not, merely by reason of such condition, be treated as determinative of its condition at the time of installation, commissioning or termination of the contract. The relevance and evidentiary weight of any such finding, including its temporal and causal connection with the petitioner's contractual performance, shall be independently considered by ld. Arbitrator after hearing the parties while drawing final award.

(Sanjay Parihar)
Judge

JAMMU
07.08.2026
Manik

Whether this order is speaking: Yes
Whether this order is reportable: Yes