

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

LPA 125/2023 CM (4089/2023) c/w WP(C) 2581/2023

**Commissioner Srinagar
Municipal Corporation and Ors**

...Petitioner(s)/Appellant(s).

Through: Mr. Bikramdeep Singh, Dy. AG

Vs.

**Mukhtar Ahmad Andrabi and
Anr**

...Respondent(s).

Through: Mr. Javid Hamid, Advocate.

CORAM:

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

ORDER

09.04.2026

1. This appeal under Clause 12 of the Letters Patent of this Court is directed against an order and judgment dated 10th March, 2023 passed by the learned Single Judge of this Court [“the Writ Court”] in WP(C) No. 1376/2019 titled “*Mukhtar Ahmad Andrabi vs. UT of JK and Others*”, whereby the Writ Court has allowed the writ petition of the respondents and directed the petitioners herein to release a payment of Rs. 40.71 lakhs in favour of the respondents in respect of construction of two fountains at Hyderpora Crossing, Srinagar with an interest @ 6% per annum from the date the payment was due till it is actually paid.
2. The judgment impugned is assailed by the appellants primarily on the ground that the Writ Court has not appreciated the stand of the petitioners in correct perspective, in that, it was clearly pleaded by the petitioners that the subject work was executed by the respondents, without there being any formal allotment of work and without issuance of any NIT. It is submitted that the Writ Court also did not consider that the work was executed by the respondents in connivance with the then Executive

Engineer of the Srinagar Municipal Corporation and the execution of work was without any administrative approval by the competent authority.

3. Having heard the learned counsel for the parties and perused the material on record, we are of the considered opinion that the impugned judgment passed by the Writ Court does not call for any interference by us in this Appeal.

4. There is no dispute with regard to the fact that the work of construction of two fountains at Hyderpora Crossing has been completed and handed over to the Srinagar Municipal Corporation by the respondents. The aforesaid work was executed by the respondents without there being any tendering process or formal allotment. This is so, because the petitioners had themselves devised a mode of getting the subject work executed without getting into the formalities of issuance of NIT and formal allotment.

5. Owing to an emergency pointed out by the officers of SMC with regard to the beautification of the Srinagar city, a decision was taken to take up the work of construction of two fountains on Hyderpora Crossing departmentally. The respondent was essentially engaged as a labour contractor to execute the work. This decision which was taken by the then Executive Engineer had the approval of the then Commissioner, Srinagar Municipal Corporation. The petitioners do not dispute that the work in question has been executed on spot and they have also received from the respondents the duly verified bills to the tune of Rs. 40.71 lakhs. The petitioners have, however, disputed their liability to pay only on the technical ground that there was no tendering process and formal allotment of the work in favour of the respondents.

6. While we do not wish to approve the manner in which work was got executed by the petitioners from the respondents yet the fact remains that the subject work was taken up for execution by the Srinagar Municipal Corporation departmentally and the engagement of the respondent contractor was only for execution of the work for and on behalf of the Srinagar Municipal Corporation. We are aware that a work of such magnitude ought not to have been executed in the manner it was done at the relevant point of time. We, however, cannot lose sight of the fact that whatever may have transpired between the then Executive Engineer and the Commissioner, Srinagar Municipal Corporation including the then Mayor, was not in public domain and, therefore, the knowledge of such decision cannot be attributed to the respondent contractor. He was asked to arrange the labour and execute the work as per the designs approved by the Engineering Wing of the Srinagar Municipal Corporation. The respondents, accordingly, executed, completed and handed over the same to the Municipal Corporation.

7. There is nothing on record to show that the competent authority ever took cognizance of the issue i.e. the allotment of the work without any process of tendering and without formal allotment at any time or initiated any action against the erring officers for violating the so called codal formalities.

8. In view of the above fact situation, the Writ Court had no option but to accept the plea of the respondents and grant them the relief prayed for as has been done in terms of the judgment impugned. We see no good reason or justification to take a view contrary to the one taken by the Writ Court. This Appeal is, therefore, found devoid of any merit and the same is accordingly **dismissed**.

9. We, however, leave it open to the petitioners to recover the said amount from the erring officials, if any, by proceedings against them in accordance with law but only after making the payment to respondent as directed by the Writ Court.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR
09.04.2026
Shahid Manzoor

