

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

WP(C) 2935/2022 CM(7373/2022) CM(8087/2023)

M/S SAVE NATURE CONSTRUCTIONS

...Petitioner(s)/appellant(s)

Through: Mr. Danish, Advocate, vice
Mr. S.A. Makroo, Sr. Advocate

Vs.

UNION TERRITORY OF J AND K AND ORS

...Respondent(s)

Through: Mr. Zahid Qais Noor, GA.
Mr. Illayas Nazir Laway, GA.

CORAM:

HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

ORDER
31.08.2026

1. Admittedly, the petitioner has executed the work of construction of Multipurpose Indoor Sports Hall at Bijbehara, Anantnag, and as per the petitioner, an amount of Rs. 75.28 lakhs has been illegally withheld by the respondents. Earlier, the petitioner had come up with WP(C) No. 894 of 2022, which was disposed of in terms of order dated 04.05.2022 by directing the Secretary, J&K Sports Council, to dispose of the grievance of the petitioner in the light of report submitted by the Joint Secretary, J&K Sports Council, dated 30.12.2021 and take a decision within a period of six weeks from the date of receipt of the copy of the judgment.

2. Pursuant thereto, the respondent No.1, vide order dated 20.10.2022, rejected the claim of the petitioner by asserting that the petitioner had executed the extra work to the extent of 39%, out of which payment for 15% of the excess work had already been released and the amount pertaining to

the remaining 24% of the excess work can't be released because codal formalities were not followed.

3. The petitioner, through the medium of this petition, has assailed the order dated 20.10.2022 on the ground that, in terms of various communications and the report of the Committee, it is admitted and acknowledged by the respondents that the petitioner had executed the excess work with the written authorization of the respondents and all the respondents were aware about the excess work to the extent of 39% executed by the petitioner, for which administrative approval was also sought vide communication dated 05.02.2021. The petitioner has further sought direction for commanding the respondents to release the amount of Rs. 75.28 lakhs along with interest in favour of the petitioner.

4. The respondent Sports Council, which is the main contesting respondent, has filed the response, stating therein that during the execution of the work, it was reported that 39% excess work was executed for construction of Multipurpose Indoor Stadium over and above the allotted cost of Rs. 318 lakhs. The Executive Engineer (K) vide communication dated 05.02.2021, informed that the excess work has been executed to complete the project through same contractor to whom the original contract was allotted and, accordingly, 15% work, on, the allotted cost was allocated in favor of the contractor and an amount of Rupees 47.81 lakhs was released in favor of the petitioner over and above the allotted cost of Rs. 318 lakhs. Regarding the balance amount of Rs. 75.28 lakhs @ 23.50% of the excess work, a Committee was constituted to verify the circumstances under which 39% excess work was executed.

5. The Committee vide its report dated 30.12.2021 observed that no codal procedure had been followed while executing the additional/excess items. It is also stated that, in terms of Notification dated 09.01.2020 under S.O. 15, financial powers were delegated by the Lieutenant Governor to accord administrative approval, technical sanction and sanction of contract to the Administrative Department, Heads of Departments, Class-I officers and Class-II officers to the extent indicated in the Annexure 1 to the notification. At serial number 1, administrative approval for expenditure on individual work is delegated to the Head of Department to the extent of 5 crore, but subject to certain conditions. It is further stated that, as the codal formalities were not adhered to and funds were not available with the J&K Sports Council, the amount can't be released in favour of the petitioner.

6. Respondent No. 2 has filed an affidavit stating therein that the Department has no role in the Project, which was approved by respondent No. 1 and funded and executed by the same department as well.

7. Heard learned counsel appearing for the parties and perused the record.

8. Admittedly, 39% excess work was executed by the petitioner over and above the allotted work amounting to Rs. 318 lakhs, out of which the amount in lieu of the 15% of the excess work has already been released in favor of the petitioner. The only balance amount payable to the petitioner is towards 24% of the excess work, which amounts to Rs 75.28 lakhs.

9. The respondents have admitted the execution of the work. The sole ground on which the claim of the petitioner has been opposed by the J&K Sports Council is the absence of codal formalities, which, in view of this Court, were required to be followed by the J&K Sports Council, though the

petitioner was to assist the J&K Sports Council wherever his assistance was required.

10. In “*Union Territory of J&K and Ors Vs. Sanjeev Kumar*”, the Division Bench of this Court has held as under:

“9. The enquiry reports mentioned above on which the appellants seek to place reliance today was never placed before the writ Court and was not a part of the writ Court record. Even the objections filed by the Planning Department as also the J&K Housing Board do not suggest that there was any apprehension in the mind of the Planning Department or the Housing Board with regard to the manner in which the contracts stood allotted to the petitioner/respondent herein. While it may be true that certain codal formalities might not have been followed before the allotment of the contract in favour of the respondent herein, yet the Government as also the Housing Board permitted not only the allotment of contract but also its completion at the relevant point of time.

10. The petitioner who was allotted the contract by the Housing Board cannot be expected to first verify as to whether the contract that has been allotted to him was being executed within the territorial jurisdiction of the Housing Board or not, nor was he expected to refuse the execution of the work simply because the subject matter of the work was not put to open tendering system. Needless to say that the contractor did execute the works upon being allotted to him for which some amount is certainly due to him.”

11. In view of above, this Court is of the considered view that lack of the codal formalities cannot be cited as a defense by the respondent No. 1 to object the genuine claim of the petitioner.

12. Accordingly, the present petition is disposed of in the following terms:

- i. The order dated 20.10.2022 passed by the J&K Sports Council rejecting the claim of the petitioner is quashed.
- ii. Respondent No. 1 is directed to release the amount of Rs. 75.28 lakhs on account of the execution of the excess work for construction of Multipurpose Indoor Sports Hall at Bijbehara, Anantnag, along with interest at the rate of 6% per annum from the date of filing of this petition till release of amount in favor of the petitioner.

13. Disposed of accordingly.

SRINAGAR
31.08.2026
Junaid

