

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 3445/2023
CM No. 8339/2023

Reserved on: 07.04.2026
Pronounced on: 16.04.2026
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*Whether the operative part or full judgment is pronounced: **Full***

Bhat Traders through Ghulam
Mohammad Bhat
Aged 70 Years, S/O Abdul Kabir Bhat ,
R/O Brane Nishat

.... Petitioner(s)

Through:- Mr. Mian Tufail, Adv

vs

Union Territory of Jammu And Kashmir
through Commissioner Secretary To
Govt. Tourism Department Civil
Secretariat Srinagar

1. Managing Director, Jammu And
Kashmir, Tourism Development
Corporation, TRC, Srinagar
2. Executive Engineer, Jammu And
Kashmir, Tourism Development
Corporation, Srinagar
3. Accounts Officer ,JKTDC Limited,
Srinagar

.....Respondent(s)

Through:- Mr. Hakeem Aman Ali, Dy.AG

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

Brief Facts

1. The petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking release of an amount of ₹64,99,000/-, which, according to him, has been withheld by the respondents despite being admitted.

2. The case of the petitioner, is that he is a contractor who was allotted various works by the respondent Corporation. The petitioner asserts that he has duly executed all the works entrusted to him and submitted work-done statements along with the requisite bill sheets.
3. It is pleaded that the competent authority of respondent department, including the Executive Engineer and Assistant Executive Engineer, issued communications from time to time recommending release of payments, thereby acknowledging the liability of the respondents.
4. According to the petitioner, although part payments were released in certain cases, a substantial amount remains unpaid without any lawful justification.
5. It is further averred that the petitioner repeatedly approached the respondents for release of the withheld amount; however, the same was deferred on one pretext or the other, including paucity of funds.
6. Aggrieved thereof, the petitioner served a legal notice dated 06.11.2023 upon the respondents, but the same failed to evoke any response, constraining the petitioner to approach this Court.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

7. Learned counsel for the petitioner Mr. Mian Tufail submits that the petitioner has completed all the works in accordance with the terms and conditions governing the allotments and has submitted all requisite bills and supporting documents.
8. It is contended that upon completion of the works, the competent officials of the respondent department, including the Executive Engineer JKTDC and Assistant Executive Engineer JKTDC, addressed various communications to the Accounts Officer recommending release of payments in favour

of the petitioner, thereby clearly acknowledging the liability of the respondents

9. It is further submitted that, despite such acknowledgment, the respondents released only part payments in certain works, while substantial amounts in respect of several works have been withheld without any lawful justification. The total amount so withheld, according to the petitioner, aggregates to ₹64,99,000/-.
10. Learned counsel contends that the petitioner has repeatedly approached the respondents for release of the admitted dues; however, on each occasion, the matter was deferred on the pretext of paucity of funds.
11. It is also submitted that the petitioner, being aggrieved of the continued inaction on the part of the respondents, served a legal notice dated 06.11.2023 upon the respondents, calling upon them to release the withheld amount, but the same evoked no response.
12. Learned counsel further submits that despite such acknowledgment, the respondents have arbitrarily withheld the admitted dues, which is violative of Article 14 of the Constitution of India.
13. It is further submitted that once, the work has been executed and the liability stands admitted, the respondents are under a legal obligation to release the payment, and the continued withholding thereof is unjust and unsustainable.
14. It is also submitted that the petitioner, having incurred expenses in execution of the works, had a legitimate expectation that the admitted dues would be released within a reasonable period.
15. It is also submitted that the petitioner, being aggrieved of the continued inaction on the part of the respondents, served a legal notice dated 06.11.2023 upon the respondents, calling upon

them to release the withheld amount, but the same evoked no response

16.Learned counsel submits that the failure of the respondents to release the payment has caused grave financial prejudice to the petitioner and has adversely affected his livelihood.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

17.Per contra, learned counsel Mr. Hakeem Amaan Ali Dy AG appearing for the respondents raised preliminary objections with regard to the maintainability of the writ petition.

18.It is contended that no fundamental or statutory right of the petitioner has been violated and, therefore, the present writ petition is not maintainable and is liable to be dismissed on this ground alone.

19.It is further submitted that the writ petition involves disputed questions of fact, which cannot be adjudicated in exercise of writ jurisdiction under Article 226 of the Constitution of India, and the petitioner ought to be relegated to an appropriate forum for determination of such disputes.

20.Learned counsel for the respondents further submits that the petitioner has an alternate efficacious remedy available in the form of a civil suit for recovery of money and, therefore, the writ petition is not maintainable.

21.It is contended that the writ petition is devoid of merit and has been filed on incorrect and misleading premises. It is submitted that the petitioner has projected the works in question as having been allotted through a tendering process, whereas, in fact, the works were allotted on a “job order basis” by the then management of the Corporation without issuance of any formal tenders.

22.It is further submitted that out of the works claimed by the petitioner, full payment in respect of certain works has already

been released, including the bill deposit amount, and the petitioner has wrongly included the same in the present claim.

23.Learned counsel submits that the petitioner is fully aware that the balance payments in respect of certain works have been withheld for valid reasons.

24.It is contended that the works in question were executed without adherence to the prescribed codal formalities and without proper budgeting or financial sanction. From that standpoint, the works are stated to be unauthorized and, therefore, do not bind the respondent Corporation.

25.It is further argued that the petitioner, being fully aware that the works had been allotted without following due procedure and without compliance with codal formalities, chose to execute the same at his own risk and cannot now seek recovery of such amounts by invoking writ jurisdiction.

26.Learned counsel also submits that the matter regarding such claims was considered by the Corporation in light of the applicable financial rules and Government instructions, including the relevant circulars issued by the Finance Department.

27.It is submitted that, upon such consideration, the claims of the petitioner and other similarly situated contractors were found not to be admissible at that stage on the account that the works had been allotted on a job order basis by the then management ,the cost of works exceeded permissible limit and the works were undertaken without availability of sufficient funds and without proper financial sanction.

28.In light of the aforesaid, it is contended that the petitioner is not entitled to any relief and the writ petition is liable to be dismissed.

LEGAL ANALYSIS

29. The respondents have contended that no fundamental or statutory right of the petitioner has been violated and, therefore, the writ petition is not maintainable. It is no longer *res integra* that arbitrary action on the part of the State or its instrumentalities is amenable to judicial review under Article 226 of the Constitution of India. The guarantee of equality under Article 14 mandate that every State action must be fair, reasonable and non-arbitrary.

30. It is trite that Article 226 of the Constitution is not confined merely to enforcement of fundamental rights, but extends to “any other purpose”. The scope of this jurisdiction is wide enough to encompass cases where State action is arbitrary, unfair, or unreasonable.

31. At this stage, it becomes necessary to examine the settled legal position governing the maintainability of writ petitions in contractual matters involving the State. The determination of maintainability, in such cases, hinges upon whether the dispute involves a public law element, inasmuch as it is now well settled that while purely private contractual disputes ordinarily do not warrant interference under Article 226 of the Constitution of India, but where the action of the State or its instrumentalities is alleged to be arbitrary, unreasonable, or unfair, thereby attracting the mandate of Article 14. In such circumstances, the present writ petition is clearly maintainable and warrants consideration by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

32. In this context, the Hon’ble Supreme Court in **Joshi Technologies International Inc. v. Union of India & Ors** reported as 2015 (7) SCC 728, has held that:

“The distinction between public law and private law element in the contract with State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract. This Court

has maintained the position that writ petition is not maintainable. Dichotomy between public law and private law, rights and remedies would depend on the factual matrix of each case and the distinction between public law remedies and private law, field cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under [Article 226](#) of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision making process or that the decision is not arbitrary.”

33. In the present case, the grievance of the petitioner is not merely contractual in nature, but pertains to arbitrary withholding of dues which are asserted to be admitted and the withholding of admitted dues by a State instrumentality, despite acknowledgment of liability, introduces a clear element of arbitrariness, thereby attracting Article 14. Accordingly, this Court holds that the present writ petition is maintainable, as the dispute is not purely private but involves a significant public law element. Such action, if established, would clearly fall within the ambit of judicial review under Article 226.

34. The respondents have further contended that the writ petition involves disputed questions of fact and, therefore, cannot be adjudicated in writ jurisdiction. The execution of works by the petitioner is not denied. The respondents do not dispute that the works were carried out at their instance and for their benefit. The controversy raised in the instant matter is essentially with regard to the permissibility of payment on account of alleged procedural irregularities.

35. In the present case, the respondents are State instrumentalities, and the allegation is of arbitrary withholding of admitted dues. Compelling the petitioner to undergo the civil trial, despite

prima facie acknowledgment of liability, would defeat the ends of justice.

36. It is settled law that mere existence of disputed questions of fact, does not operate as an absolute bar to the exercise of writ jurisdiction, particularly where the foundational facts are not seriously disputed or can be adjudicated on the basis of the material on record.

37. The Hon'ble Apex Court in **(Special Leave Petition (C) No.14350/2022) titled as M/S Utkal Highways Engineers And Contractors Versus Chief General Manager & Ors decided on 08.01.2025** has unequivocally held that:

“8. Be that as it may, the High Court has not dealt with the merits of the writ petition. Moreover, it is not an inviolable rule that no money claim can be adjudicated upon in exercise of writ jurisdiction. Non-payment of admitted dues, inter alia, may be considered an arbitrary action on the part of respondents and for claiming the same, a writ petition may lie.¹ Further, throwing a writ petition on ground of availability of alternative remedy after 10 years, particularly, when parties have exchanged their affidavits, is not the correct course unless there are disputed questions of fact which by their very nature cannot be adjudicated upon without recording formal evidence.”

38. In the present case, the execution of works by the petitioner is not denied. The communications placed on record prima facie indicate acknowledgment of liability. The issue, therefore, does not involve complex factual adjudication but rests primarily on appreciation of admitted documents. Consequently, this Court finds no reason to relegate the petitioner to an alternate remedy and holds that the writ petition is maintainable in the given facts and circumstances.

39. The principal defence of the respondents rests on the assertion that the works were executed without adherence to codal formalities, without proper financial sanction, and on a job

order basis, therefore, the Corporation is not bound to make payment.

40. At the outset, it needs to be emphasized that the respondents do not dispute the execution of the works. It is also not in dispute that the works were executed at the instance of the respondent Corporation and that the Corporation has derived benefit therefrom.

41. The record further reveals that the respondents issued communications recommending release of payments. Such recommendations are indicative of acknowledgment of liability.

42. The question that arises is whether the respondents can run away from their liability on the ground of internal procedural lapses or non-compliance with codal formalities.

43. A perusal of the record reveals that the total value of the works executed by the petitioner aggregates to approximately ₹81.10 lakhs, out of which an amount of ₹28.86 lakhs has been released by the respondents from time to time, leaving a substantial balance of ₹52.24 lakhs unpaid. What assumes significance is that the liability of the respondents is not in dispute, inasmuch as the competent authorities of the respondent Corporation themselves have, on multiple occasions, acknowledged the same. In particular, the Executive Engineer, vide communication no. JKTDC/EE/M&W/2560 dated 21.11.2015, addressed to the Accounts Officer, JKTDC, specifically recommended the release of payment in favour of the petitioner, thereby clearly evidencing that the works executed by the petitioner. The official communications leave no manner of doubt that the liability of the respondents stood admitted.

44. Notwithstanding such unequivocal acknowledgment, the respondents have released only part of the admitted amount, while withholding the balance amount without any justifiable

cause. The continued withholding of the remaining amount, despite the aforesaid communication and absence of any legal impediment, is manifestly arbitrary and unsustainable. The conduct of the respondents, in retaining the admitted dues of the petitioner, not only lacks bona fides but also falls foul of the principles of fairness and reasonableness governing State action.

45. The amount remaining unpaid stands duly substantiated from the record placed before this Court. The statements of accounts, coupled with the communication issued by the competent authorities of the respondent Corporation, clearly demonstrate that while part payments have been effected, a substantial balance amount continues to remain outstanding. The official record, furnished by the respondents themselves, indicate that against the total value of works executed, a sum of ₹52.24 lakhs remains unpaid.

46. Once the execution of the works by the petitioner stands admitted, the respondents cannot be permitted to question the same at this belated stage. The record unequivocally reflects that the works were carried out at the instance of the respondent Corporation and were duly verified and acknowledged by the competent authorities. Having accepted the execution of the works and having acted upon the same by issuing recommendations for release of payment, the respondents are clearly estopped under law from disputing either the execution or the entitlement of the petitioner.

47. Moreover, the conduct of the respondents in deriving benefit from the works executed and, thereafter, seeking to deny liability on untenable grounds, is wholly impermissible. The respondents cannot be allowed to approbate and reprobate at the same time, as such a course would strike at the very foundation of fairness and reasonableness. Once the execution is admitted and the benefit thereof has accrued to the

respondents, the corresponding obligation to honour the payment cannot be evaded. Any attempt to do so would not only be contrary to settled legal principles but would also amount to unjust enrichment at the cost of the petitioner, which this Court cannot countenance.

48. This Court, in **WP(C) 3061/2023 titled Mohd Ashraf vs UT of J&K decided on 25.02.2026** has observed as under:

“This Court is of the considered view that the duty of the State to pay for work executed and enjoyed is a constitutional obligation flowing from Article 14, and delay in seeking enforcement of such right cannot absolve the State from its responsibility. Article 14 of the Constitution of India guarantees equality before the law and equal protection of laws. The jurisprudence under Article 14 has evolved far beyond formal equality; it now encompasses the principle that State action, whether legislative, executive, or contractual, must not be arbitrary, unreasonable, or unfair. The Government, when entering into contracts or dealing with contractors, does not shed its constitutional obligations. Unlike a private party, the State is bound to act as a model litigant. Once the liability is admitted, such as when work is duly executed, measured, and certified, the withholding of the payment without justification amounts to arbitrary action and thus falls foul of Article 14.”

49. Applying the aforesaid principle to the present case, this Court is of the view that the respondents cannot be permitted to evade their liability on the plea of internal procedural lapses or non-compliance with codal formalities, particularly when the execution of work is not in dispute and the benefit thereof has been derived by the State. The obligation of the State to make payment for work executed is not merely contractual but carries a constitutional mandate under Article 14, enjoining fairness and non-arbitrariness in its actions. Once the liability stands acknowledged, the withholding of payment without any justifiable cause amounts to arbitrary exercise of power and cannot be sustained. The respondents, being State instrumentalities, are expected to act as model litigants and

cannot take advantage of their own administrative lapses to deny legitimate dues of the petitioner.

50. Once it is established that the petitioner executed the works and the respondents derived benefit therefrom, the respondents cannot be permitted to avoid payment by citing their own internal irregularities.

51. The contention that the petitioner executed the works at his own risk, is liable to be rejected. The works were carried out on the directions of the respondent-Corporation. The petitioner cannot be penalized for procedural lapses attributable to the respondents themselves.

52. The plea of non-availability of funds is equally untenable. The Financial constraints cannot absolve the State of its obligation to discharge admitted liabilities.

53. This view is further fortified by a judgment rendered by this Court in **M/s Saint Solider Engineer and Contractor Pvt Ltd vs Union Territory of J&K & Ors, decided on 26.09.2025**, wherein it has been held as under:

“20. It is well settled that execution of work gives rise to a corresponding obligation upon the State to honour its financial commitments. Any administrative approval or availability of funds is a matter to be ensured by the department prior to the allotment of work. After the execution of the contract, no “post facto” objection can be raised to deny or delay payment.

21. This Court is constrained to observe that in numerous cases involving government contracts, despite completion of work in accordance with the terms and conditions of the contract, the payments due to contractors are not released in a timely manner. The delay is often attributed to administrative reasons, such as the need for administrative approval or the alleged paucity of funds or the funds being diverted to other projects to frustrate the claim of the contractors. In the present case as well, despite admitted liability and due completion of work by the petitioner well in time the payment has been unjustifiably withheld for a considerable period of time.

54. This Court is of the view that once the work is allotted and executed, the State is under a binding obligation to honour its financial commitments, and issues, such as administrative approvals or non-availability of funds cannot be raised as post facto justifications to deny payment. The respondents, having permitted execution of works and having derived benefit therefrom, cannot withhold the admitted dues on the ground of internal administrative constraints or lack of funds. Such conduct is not only unjustified but also contrary to the settled principles governing State action, and therefore cannot be sustained in law.
55. Time and again, Courts have deprecated the practice of withholding legitimate dues on the pretext of paucity of funds, holding that such a defence is neither legally sustainable nor morally tenable.
56. The contention that certain payments have already been made does not dilute the liability of the respondents in respect of the remaining amount. Partial discharge of liability cannot be used as a shield to justify withholding of the balance amount.
57. The material on record clearly establishes that the petitioner executed the works entrusted to him. The respondents derived benefit from such works. The officials of the respondents acknowledged the liability by recommending release of payment;
58. Despite such acknowledgment, the balance admitted dues have not been released. The conduct of the respondents, in withholding payment without any lawful justification, is arbitrary and violative of Article 14 of the Constitution.
59. The petitioner, having altered his position and incurred expenditure in execution of the works, had a legitimate expectation that the respondents would honour their obligation within a reasonable time.

60. The prolonged withholding of payment has not only caused financial hardship to the petitioner but also undermines the principles of fairness and reasonableness in State action.

61. Recently, this Court has reiterated the aforesaid position in **M/s Lumber India Corporation v. UT of J&K (WP(C) No. 733/2023, decided on 10.04.2026)**, wherein it was once again emphasized that the State cannot withhold admitted dues for works executed and enjoyed, on the pretext of administrative constraints or paucity of funds, and that such action would be arbitrary and violative of Article 14 of the Constitution of India. For the facility of reference same is reproduced as under:

“It must be emphasized that once the State has availed the benefit of work executed, it is under a corresponding obligation both legal and constitutional to ensure timely payment. Any failure in this regard strikes at the core of Article 14 of the Constitution of India, which mandates fairness, reasonableness and non-arbitrariness in State action.

In these circumstances, this Court deems it appropriate not only to grant relief to the petitioner but also to reiterate, that the State must put in place an effective mechanism to ensure that admitted dues are released without compelling parties to seek judicial redress.”

62. This Court finds that the petitioner has established a clear legal right to seek release of the admitted dues and the petitioner is also entitled to interest on the delayed payment, as denial of such interest would amount to permitting the respondents to unjustly retain the money of the petitioner.

CONCLUSION

63. In view of the aforesaid discussion, this Court is of the considered opinion that the action of the respondents in

withholding the admitted dues of the petitioner is arbitrary, unreasonable and violative of Article 14 of the Constitution of India. The preliminary objections raised by the respondents, both with regard to maintainability as well as on merits, do not withstand judicial scrutiny and are accordingly rejected.

64. The material on record clearly establishes that the petitioner has executed the works, the respondents have derived benefit therefrom, and the liability stands acknowledged. In such circumstances, the continued withholding of payment is wholly unjustified and cannot be sustained in law.

65. This Court cannot lose sight of the fact that the State and its instrumentalities are expected to act as model litigant and uphold the highest standards of fairness. Permitting the respondents to deny admitted dues on the pretext of internal procedural lapses or paucity of funds would strike at the very root of the rule of law.

66. This Court had directed the petitioner to file a supplementary affidavit to place on record the complete details of the amount yet to be paid, however, despite grant of sufficient opportunity, the petitioner has failed to comply with the said direction. The Registry has also reported that no such supplementary affidavit has been filed. In these circumstances, this Court proceeds to consider the matter on the basis of the material available on record, more particularly the admitted position regarding the amount payable to the petitioner.

67. Accordingly, the instant writ petition is allowed and the respondents are directed to consider the release of admitted amount in favour of the petitioner to the tune of ₹52.24 lakhs (fifty two lakhs and twenty four thousands), within a period of four (04) weeks from the date a copy of this order, along with writ petition and annexures are made available to respondents, in case, if there is no other legal impediment. It is made clear, failing such compliance within the stipulated period, the

petitioner shall be entitled to interest @ 6% per annum on the aforesaid amount from the date the said amount was due and not paid by respondent.

68.It is, however, made clear that in case the petitioner claims any amount over and above the admitted liability, he shall be at liberty to file a detailed representation within a period of two weeks before the appropriate respondent and shall also be at liberty to place on record the requisite documents evidencing the factum of such liability. Upon filing of the said representation along with supporting documents, the respondents shall consider the same within a further period of two weeks thereafter and pass appropriate orders in accordance with law.

69.The writ petition is disposed of, along with all connected application.

(WASIM SADIQ NARGAL)
JUDGE

Srinagar

16.04.2026

Shamim/PS

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No