

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**Bench: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL**  
**Date of Decision: 28<sup>th</sup> May 2024**

Case No.:

WP© No. 2167/2021

CM No. 7788/2021

**Petitioner:**

**Karamat Ullah Malik**

**Versus**

**Respondents:**

**Union Territory of Jammu and Kashmir Ors.**

**Legislation and Rules:**

Article 226 of the Constitution of India

Section 70 of the Indian Contract Act, 1872

General Financial Rules, 2017

**Subject:** Writ petition seeking mandamus to compel the release of funds amounting to Rs. 68.50 Lakhs for the construction of a road completed by the petitioner. The funds were withheld by the respondents, despite admitted liability and completion certification.

**Headnotes:**

Public Contracts – Non-payment for Completed Work –

Petitioner's claim for Rs. 68.50 Lakhs for completed road construction from Chowkian to Sarotha upheld – Administrative approval and completion certificate issued – Respondents withheld payment citing lack of "Technical Sanction" and non-adherence to tendering process – Court found objections unjustified, as work was authorized and certified by relevant authorities [Paras 3-6, 11-12].

Doctrine of Promissory Estoppel –

Applied against the government – Government bound by promise made to petitioner for payment upon completion of work – Respondents estopped from denying liability after admitting it in internal communications [Paras 17-19].

Section 70 of Contract Act –

Held applicable – Work done for respondents not gratuitously – Petitioner entitled to compensation for benefits enjoyed by respondents from completed construction [Paras 14-15].

Judicial Review – Contractual Matters –

High Court's writ jurisdiction includes review of executive decisions and administrative actions in contractual disputes – Contract between parties inferred from communications – Reliance on correspondence showing mutual agreement and completed work [Paras 16, 22-23].

Decision:

Writ Petition Allowed – Respondents directed to release Rs. 68.50 Lakhs to petitioner within six weeks – Failure to pay within stipulated time to attract 9% interest per annum from date of filing writ petition [Paras 24-26].

### **Referred Cases:**

- Nishat Ahmed v. Union Territory of J&K, WP© No. 830/2021
- State of West Bengal v. B.K. Mondal & Sons, AIR 1962 SC 779
- Rickmers Verwaltung GMBH v. Indian Oil Corporation Ltd., (1999) 1 SCC 1
- Tapri Oil Industries and Anr. V. State of Maharashtra, AIR 1984 Bom. 161
- Union of India and Ors. V. Godfrey Philips India Ltd., (1985) 4 SCC 369
- ABL International Ltd. And Another v. Export Credit Guarantee Corporation of India Ltd. And Others, (2004) 3 SCC 553
- Zahoor Ahmed Rather and ors v. Srinagar Municipal Corporation and ors, OWP No. 1008/2016

Representing Advocates:

For Petitioner: Mr. Koshal Parihar

For Respondents: Mr. S.S. Nanda, Sr. AAG

## **JUDGMENT**

### **Brief Facts:**

1. The petitioner, through the medium of the instant writ petition has prayed for the following reliefs:

- (i) Allow the present writ petition.*
- (ii) By issuance of an appropriate writ order or direction in the nature of Writ of Mandamus thereby commanding and directing the respondents to forthwith release the payment of an amount of Rs.68.50 Lakhs (Rupees Sixty-Eight Lakhs and Fifty Thousand only) being the admitted liability which payment has been illegally withheld by the respondents despite the petitioner having successfully completed the construction work of road from Chowkian to Sarotha in Block Darhal well within the stipulated*

***period of time and despite the fact that the respondents have admitted the aforesaid liability of the petitioner, yet the admitted liability amount has not been released in favour of the petitioner despite passage of more than Two and a half year of completion of the contract work by the petitioner.***

- (iii) By issuance of further writ or direction in the nature of writ of mandamus thereby commanding and directing the respondent to make the payment of the withheld amount of Rs. 68.50 Lakhs (Rupees Sixty-Eight Lakhs and Fifty Thousand only) along with interest @ 18% per annum for wrongful withholding of the payment of admitted liability having remained unpaid for more than Two and a half year ever since the completion of the contract work which contract work came to be completed by the petitioner way back in the year 2018 itself.***
- (iv) That the cost of the litigation be also awarded in favour of the petitioner and against the respondents.***
- (v) Any other writ, order or direction to which the Petitioner is found entitled to in the fact and circumstances of the case may kindly be issued in favour of the Petitioner and against the respondents along with costs.***

2. In the present writ petition the petitioner is seeking direction to the respondents to release an amount of Rs. 68.50 lakhs which is admitted by the respondents, but withheld.

#### **SUBMISSIONS ON BEHALF OF THE PETITIONER**

3. The brief case of the petitioner is that the petitioner was issued authority letter by the office of respondent No. 5 vide No. WRS/234-38/BD dated 20.02.2018, whereby he was authorized to execute the work of construction of road from Chowkian to Sarotha and subsequent thereto, the respondent No. 3, i.e. District Development Commissioner, Rajouri issued Administrative approval vide Order No. DDCR 302-OFF of 2018 dated 28.03.2018 for construction of the aforesaid road at the estimated cost of Rs.97.50 lakhs, which work was duly executed by the petitioner. Thereafter, office of the Block Development Officer, Darhal issued the Completion Certificate, thereby certifying that the construction work of the road from Chowkian to Sarotha, Panchayat Halqa Chowkian-A within the estimated cost of Rs.97.50 lakhs for the approved estimate which has been duly executed during the financial year 2019-2020. However, the department concerned has approved the work done liability to the sum of

Rs. 68.50 lakhs, which is evident from communication addressed by District Development Officer, Rajouri to Commissioner Secretary to Government Rural Development and Panchayati Raj vide its No. DDCR/P&S/RDD/01/2019-20/1104-06 dated 05.03.2020.

4. The petitioner submits that he had been approaching the concerned authorities for the purpose of release of all the funds in connection with completion of allotted work, however, office of the Assistant District Development Commissioner, Rajouri took up the matter with the Director General Rural Development Department Jammu vide his communication No. ACDR/2018-19/4077-78 dated 20.09.2018 seeking release of funds to the tune of Rs.50.00 lakhs as work done claim, but no such payment was released.

5. It is submitted that the petitioner represented his grievances with the Hon'ble Governor, in which the Grievance Cell sought the details from the Assistant Commissioner Development, Rajouri who vide his communication No. ACDR/GC-1/2020-21/1734 dated 21.10.2020 admitted the work done claim of the petitioner to the extent of Rs. 69.00 lacs, out of which funds to the tune of Rs. 0.50 lacs was released and rest of the work done claim of Rs. 68.50 lacs was submitted to the concerned authorities.

6. The specific case of the petitioner is that the petitioner had completed the construction work of road from Chowkian to Sarotha in Block Darhal within stipulated period of time, incurring the work done liability of Rs. 68.50 lakhs, however, only a meager amount of Rs. 50,000/- has so far been released and the admitted liability amount of Rs. 68.50 lakhs minus a sum of Rs.50,000/- has not been released for the last more than two years, despite the department itself after having admitted the liability requested the Finance Department for release of the funds.

#### **SUBMISSIONS ON BEHALF OF THE RESPONDENTS**

7. Per contra, reply stands filed on behalf of the respondents by Mr. S.S. Nanda, learned Sr. AAG, in which the respondents, now after completion of the work and admitting the liability of the petitioner have raised an objection on the ground that the work has been executed without “Technical Sanction” and without following the tendering process, which is contrary to the General Financial Rules 2017 as amended from time to time, as such, sanction from the competent authority was required before the sanction/release of funds to clear the liability.

8. It is further submitted that the admissible material component @ 40% of all the Districts for the year 2015-16 to 2017-18 respectively has been released in full as per the guidelines and instructions conveyed by the Ministry of Rural Development, Government of India and the Department to the Districts, while implementing the scheme it is for the District Administration to ensure that all the directions conveyed in the release orders/authorization *inter alia* with respect to maintaining 60:40 ratio for wages and material will be implemented in letter and spirit.

9. It is further submitted that in order to address the representations received from different quarters the matter was taken up with Director, Rural Development Department and all Deputy Commissioners and upon receiving the reports it has been found that the UT has already spent more than 40% on material component for the financial years 2016-17 and 2017-18 and hence the additional liability will come under violation of the guidelines. It is further submitted that no bills for liability claimed have ever been framed/passed by the Rural Engineering Wing of RDD as per the available office record.

**LEGAL ANALYSIS:**

10. Heard learned counsel appearing on behalf of the parties at length and perused the record.

11. The stand taken by the respondents in the reply is falsified from a bare perusal of the communication No. WRS/234-38/BD dated 20.02.2018, whereby the petitioner was authorized by the Block Development Officer, Darhal to execute the work of construction of road from Chowkian to Sarotha. Subsequent thereto, the District Development Commissioner, Rajouri issued Administrative approval vide Order No. DDCR 302-OFF of 2018 dated 28.03.2018 for construction of the aforesaid road at the estimated cost of Rs.97.50 lakhs, which was duly executed by the petitioner. The Block Development Officer, Darhal has issued the completion certificate and thereafter, the District Development Officer, Rajouri addressed a communication vide his No. DDCR/P&S/RDD/01/2019- 20/1104-06 dated 05.03.2020 to the Commissioner Secretary to the Government Rural Development Department and Panchayati Raj, whereby, release of funds to the tune of Rs. 68.50 lakhs was sought towards clearing the work done liability of the construction work. For facility of reference, the aforesaid communication dated 05.03.2020 is reproduced as under:-

***“Kindly refer to the subject cited above and as desired by your goodself through marked application dated: 18.12.2019, it is submitted that the work namely “Construction of Chowkian Sarotha Road Block Darhal” got approved under CM commitment in the light of demand raised during the Public Darbar held at Rajouri on 23-12-2017 with an estimated Cost of***

**Rs.97.50 Lacs out of which Rs.0.50 Lacs were released and stands utilized under Capex Budget during the year 2018-19. The earth work of the said road has been completed, thereby creating work done liability of Rs.68.50 Lacs, as projected by Assistant Commissioner Dev, Rajouri vide his office No. WKS/ACDR/2019-20/5841 dated 16.01.2020.**

**Further, the Administrative Approval of the said work was also accorded vide this office order No. DDCR-302- of 2018 dated : 28.03.2018.**

**Therefore, the matter is placed before your goodself with the request to kindly arrange/release funds amounting to Rs.**

**68.50 lacs, so that work done labour claim of the above said work is cleared for which the concerned is approaching this office time & again.”**

12. The petitioner thereafter projected his grievances with the Hon’ble Governor and the Grievance Cell sought the details from the Assistant Commissioner Development, Rajouri who in its letter vide No. ACDR/GC- I/2020-21/1734 dated 21.10.2020 admitted the work done claim of the petitioner to the extent of Rs. 69.00 lacs out of which, funds to the tune of Rs. 0.50 lacs was released and the work done claim of Rs. 68.50 lacs has been submitted to be cleared. For the facility of reference, the contents of the aforesaid letter dated 21.10.2020 is reproduced as under:-

**“Kindly refer your office letter No:- DCR/2020-21/GC/470-71 dated 24-09-2020 on the subject cited above, in this connection, it is submitted that the reply has already been submitted. However it is again submitted that the said road namely “Chowkian Sarotha Road” was taken up under CM commitment and the Adm. Approval was accorded for an estimated cost of Rs. 97.50 lac against which funds to the tune of Rs. 0.50 lac are released till date which stands utilized. As reported by Block Development Officer Darhal it is fact that the work done claim of the mate is Rs. 69.00 lac against which funds to the tune of Rs. 0.50 lac are released and still there is work done claim of Rs. 68.50 lac which can be cleared only if the remaining funds are released by District Development Commissioner Rajouri/Director Rural Development Jammu.”**

13. Since the petitioner has performed his part by constructing the road from



Chowkian to Sarotha in Block Darhal within stipulated period of time, the respondents, as such, are under legal obligation to release the payment in favour of petitioner. In this regard reliance is placed on a recent judgment passed by this Court in the writ petition WP(C) No. 830/2021 titled ***Nishat Ahmed versus Union Territory of J&K and others, decided on 02.06.2022***, which is reproduced hereunder:-

***“From the record, it is evident that respondents have not denied their inter se communications and rather the respondent No. 2 has placed on record the communication dated 14.03.2020. A perusal of the communication dated 14.03.2020 reveals that the respondent No. 4 though has mentioned that the work done claims of above amount, has not been prepared in light of SDRF (SOP) guidelines but the fact is that the contractor, petitioner herein has actually done the work and his claim is genuine as reported by the Executive Engineer PMGSY, Kishtwar. Once the respondents have admitted the execution of the work by the petitioner and the genuineness of the claim of the petitioner, the respondents are estopped from objecting the said claim on the ground that the work was executed without any work order or tender. Once the respondents have admitted the liability of Rs. 24.85 lacs towards the petitioner, they are bound to pay the same to the petitioner. The contention of the respondents that the claim is time barred, is misconceived as the respondents have admitted their liability and the petitioner has been continuously impressing upon the respondents to clear the liability of Rs. 24.85 lacs towards the petitioner. So far as objection of the respondents that the petitioner should have filed a civil suit is concerned, the same is also misconceived, particularly when the respondents have admitted their liability and the writ petition for grant of monetary reliefs is maintainable, provided the liability is admitted.”***

14. The issue whether there was a contract between the parties, can be decided in light of Section 70 of Contract Act which is reproduced as under:-

***“Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.”***

15. Section 70 of the Contract Act is based on the premise that something was



done by one party for another and that the work so done voluntarily, was accepted by the other. Therefore, as a corollary, the plea that there was a subsisting contract in the nature of business transactions, is antithetic to the very essence of section 70. This is why section 70 forms part of Chapter V of the Indian Contract Act, which is titled as “Of certain relations resembling those created by contract”. In **State of West Bengal v. B.K. Mondal & Sons, AIR 1962 SC 779** is a landmark case in the arena and stated the above-mentioned legal position.

16. Since there were a series of communications between the parties which have not been denied by the respondents and accordingly, it can safely be concluded that there was a binding contract between the parties and the respondents cannot escape from their liability of making the payment to the petitioner arising out of the said binding contract. In this regard I am fortified by the judgment of the Hon’ble Apex Court in case titled **Rickmers Verwaltung GMBH v. Indian Oil Corporation Ltd., (1999) 1 SCC 1**, in which it has been held as under:

***“An agreement, even if not signed by the parties, can be spelt out from correspondence exchanged between the parties. It is the duty of the court to construe correspondence with a view to arrive at a conclusion whether there was any meeting of mind between the parties, which could create a binding contract between them but the court is not empowered to create a contract for the parties by going outside the clear language used in the correspondence, except insofar as there are some appropriate implications of law to be drawn. Unless from the correspondence, it can unequivocally and clearly emerge that the parties were ad idem to the terms, it cannot be said that an agreement had come into existence between them through correspondence. The court is required to review what the parties wrote and how they acted and from that material to infer whether the intention as expressed in the correspondence was to bring into existence a mutually binding contract. The intention of the parties is to be gathered only from the expressions used in the correspondence and the meaning it conveys and in case it shows that there had been meeting of mind between the parties and they had actually reached an agreement upon all material terms, then and then***

***alone can it be said that a binding contract was capable of being spelt out from the correspondence."***

17. The jurisdiction of the High Court while exercising the powers under Article 226 of the Constitution of India is not restricted only to the review of the administrative actions and executive decisions of the State and in the light of the extended applicability of the ***"doctrine of promissory estoppel"*** of which the whole object is to see that the Government strikes to its promise and abides by it.

18. I am supported by the law laid down in this regard in case titled ***Tapri Oil Industries and Anr. etc. v. State of Maharashtra and Ors., AIR 1984 Bom. 161***, the Court held that:

***"The jurisdiction of the High Court under Article 226 of the Constitution is not restricted only to the review of the administrative actions and executive decisions of the State and in the light of the extended applicability of the doctrine of promissory estoppel of which the whole object is to see that the Government strikes to its promise and abides by it."***  
***Further, the Court held that:***

***"The law may, therefore, now be taken to be sensed as a result of this decision (Anglo Afghan Agencies Case) that where the Government makes a promise knowing or intending that it would be acted on by the promisee and in fact the promisee acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government."***

19. The Apex Court in case titled **Union of India and Ors. v. Godfrey Philips India Ltd., (1985) 4 SCC 369**, has held as under:

***"There can, therefore, be no doubt that the doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive functions the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel."***

***"The doctrine of Promissory estoppel represents a principle evolved by equity to avoid injustice and though commonly named promissory estoppel; it is neither in a realm of contract nor in the realm of estoppel."***

20. Since the respondents have taken a specific plea with regard to the fact which has been disputed by the respondents in contractual matters. Although, stand taken by the respondents is contrary to record, yet I will deal with the powers of the Writ Court to deal with the question of fact. There is no dispute with regard to the proposition that in certain cases even a disputed questions of fact can be gone into by this Court by entertaining the petition under Article 226 as has been held in case titled **ABL International Ltd. and Another v. Export Credit Guarantee Corporation of India Ltd. and Others' (2004 (3) SCC 553)**].

21. In the similar facts and circumstances of the case, the co-ordinate Bench of this court in OWP No. 1008/2016 titled **Zahoor Ahmed Rather and ors V/S Srinagar, Muncipal Co-orporation and ors.**, has been pleased to hold as under:

**13. The work as well as the additional work stands admitted, the respondents have also not denied the fact that the additional works stood verified by the officer of the respondent and revised detailed estimate by the executive engineer, Left River Works, Division SMC vide communication No. SMC/EELRWD/360 dated 22.06.2015 to the Joint Commissioner (Works), Srinagar Municipal Corporation, has sought approval for balance amount. This communication which is on record reads as under:**

**“This office has issued allotment vide reference mentioned above for an amount of Rs. 12.93 lacs against the Advertised cost of Rs 16.90 Lacs , resulting thereby a saving of Rs. 3.97 Lacs, As this work was in progress and during execution , the worthy Commissioner, SMC has directed to execute the additional item of work at same site which include wood carving, khatumband, patells etc and as per the order of Commissioner, SMC adhered to all these items executed through the same agency on reasonable rates as reported by the AEE concerned.**

**Accordingly in the view of the directions/orders, the revised estimate has been framed/forwarded by the AEE concerned for the above mentioned**

***proposed works fan an amount of Rs. 44.74 Lacs including already allotted cost.***

***It is as such, requested that necessary approval be granted for the balance amount of Rs. 31.81 Lacs, through the same agency as per the terms and conditions of the allotment orders referred above.***

***16. In view of the aforesaid, this petition is allowed. The respondents are, accordingly, directed to release the admitted amount of Rs. 31.81 Lacs in favour of the petitioner within a period of two months from the date a copy of this order along with writ petition is made available to the respondents by the petitioners, in the event of non-payment of the admitted amount within the aforesaid time, the same will be payable with an interest @6% per annum.”***

22. Thus, from a bare perusal of the record and on careful analysis of the judgments cited above, I hereby conclude that law does not put any bar or any fetters on the High Court in respect of exercising its writ jurisdiction in contractual matters. The judgments which have been cited hereinabove clearly prove that there has been paradigm shift in the approach of the Courts in exercise of its Writ Jurisdiction in the matters of contractual disputes with State and its authorities. The law regarding the exercise of judicial review in contractual matters with State or its instrumentalities has definitely evolved over the years and the ordinary citizens can, in appropriate cases, approach the High Courts for exercise of Writ Jurisdiction.

23. To sum up, the underlying principle is that ***“in matters of contractual dispute with the State and its instrumentalities there is no absolute bar to exercise the writ jurisdiction and the High Court should take a holistic view and make a determination as to whether it would be proper to exercise its writ jurisdiction.”***

## **CONCLUSION**

24. For the foregoing reasons, and what has been discussed hereinabove, coupled with settled legal position, the writ petition is **allowed** and the respondents are directed to release a sum of Rs.68.50 lakhs in favour of the petitioner, within a period of six weeks, from the date a copy of this order is made available to the respondents.
25. In case, the aforesaid amount is not released in favour of the petitioner within the aforesaid stipulated time period, in that eventuality, the outstanding amount, along with interest @9%, shall be payable to the petitioner by the respondents, from the date of filing of the writ petition i.e. 30.09.2021 and the interest component will be payable by the respondent/officer on whose count such delay occurs.
26. The writ petition is **allowed** in the manner indicated above.

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