HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 1635/2023
CM No. 3845/2023

Reserved on: 10.08.2026
Pronounced on: 14.08.2026
Uploaded on: 14.08.2026

Whether the operative part or full judgment is pronounced: Full judgment.

M/s Jai Laxmi Road Builders, NH-1, Raya Morh Samba Through its Proprietor Sh. Atul Sharma S/o Sh. Parladh Kumar Sharma R/o NH-1A, Raya Morh, Patti District Samba. …..Appellant(s)/Petitioner(s)

Through: Mr. R. K. Gupta, Sr. Advocate with Mr. Udhay Bhaskar, Advocate

Vs

1. **Union Territory of J&K** Through Commissioner Secretary Public Works (R&B), Department, Civil Secretariat, Jammu.
2. **Chief Engineer, Public Works (R&B), Department, Jammu.**
3. **Superintendent Engineer, PWD (R&B),** Jammu-Kathua Circle, Jammu.
4. **Executive Engineer Public Works Department (R&B),** Division-Samba

….. Respondent(s)

Through: Mr. Ravinder Gupta, AAG with Ms. Pallavi Sharma, Advocate

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The petitioner was allotted the contract for up-gradation of road surface by way of P/L Wet Mix Macadam and 30 mm thick SDBC on link road Gho-Brahmana to Kothey Pathania by the Executive Engineer PWD (R&B) Division, Samba vide communication dated 07.11.2019 for an amount of

Rs. 21,17,000/-, pursuant to which, an agreement dated 13.12.2019 also came to be executed between the employer and the petitioner. The petitioner claims to have commenced the work on 12.11.2019/14.11.2019 and completed the work within stipulated period i.e. 13.12.2019 to the entire satisfaction of the department. After completion of the contract, two payments were made to the petitioner viz CC-1st for an amount of Rs. 6,50,000/- on 14.01.2020 and CC-2nd for an amount of Rs. 8,00,000/- on 30.03.2020. It is stated that CC-2nd was prepared by the department itself for an amount of Rs. 16,21,000/- in the month of March, 2020, out of which, Rs. 8,00,000/- only was paid to the petitioner but the rest of the payment could not be released on account of paucity of funds. It is further stated that the petitioner made numerous representations to the respondents for release of the admitted outstanding balance amount of Rs. 8,21,000/-. It is further stated that, vide communication dated 28.01.2023, the office of the Chief Engineer, PWD (R&B) Department, proposed to convene a meeting for the purpose of settling the issues relating to clearance of the liability towards the work executed and, accordingly, requested respondent Nos. 3 and 4, as well as the representative of the petitioner-firm, to attend the said meeting. When, despite the aforesaid meeting, no amount was released in favour of the petitioner, the petitioner submitted several representations to the respondents, but to no avail. Consequently, the petitioner filed the present petition seeking a direction to the respondents to release the admitted outstanding liability of Rs. 8,21,000/- in its favour, along with interest @ 18% per annum from the date the said amount became due, i.e., March 2020, till the date of its actual payment.

2. The respondents have filed response, stating therein that there is no administrative approval for the excess work allegedly executed by the petitioner and the writ petition suffers from the vice of delay and laches as the same was filed on 14.06.2023, whereas the amount became due only on 13.12.2019. It is admitted by the respondents that the allotment order has been issued to the petitioner for an amount of Rs. 21,17,000/- only. It is contended that the petitioner, however, executed work in excess of the allotted amount without obtaining the requisite approval from the competent authority.

3. Mr. R. K. Gupta, learned Senior counsel for the petitioner has drawn the attention of this Court towards Clause 8 of the allotment letter dated 07.11.2019, which provides that any item found necessary during the execution shall be paid on SSR-2012 with overall appreciation/depreciation of allotment of the contract. He has further argued that despite numerous representations, the amount was not released in favour of the petitioner, and the petition does not suffer from the vice of delay and laches because in terms of communication dated 28.01.2023, the Chief Engineer concerned convened a meeting for the purpose of issues of clearance of work done liability. He has placed reliance upon the judgment rendered by the Hon'ble Supreme Court of India in case titled, **'M/s Surya Constructions vs. State of Uttar Pradesh & Ors.' reported in (2019) 16 SCC 794** and the judgments passed by the Division Bench of this Court in case titled, **'Union Territory of J&K and ors' vs. Sanjeev Kumar'** as well as this court in **'Rattan Singh Parmar vs. Union Territory of Jammu & Kashmir and**

ors.' and 'M/s Cube Construction Engineering vs. UT of J&K and ors.'.

4. Mr. Ravinder Gupta, learned AAG claims that the present petition is hopelessly time barred. He further submitted that there exists an Arbitration clause, therefore, the writ petition cannot be entertained and further that excess work for an amount of Rs. 1,54,000/- was executed without approval from the competent authority. He has placed reliance upon the judgments of the Hon'ble Supreme Court of India in cases titled, **'The National Textile Corporation Ltd. vs. Nareshkumar Badrikumar Jagad & Ors.' 2012 AIR (SC) 264, 'Kerala State Electricity Board vs. Kurien E. Kalathil', 2000(6) SCC 293, 'Joshi Technologies International Inc. Vs. Union of India and ors.' 2015 (7) SCC 728, 'State of M.P. vs. Bhailal Bhai', 1964 AIR (Supreme Court) 1006** and the judgments passed by the Coordinate Bench of Sringar Wing of this Court in WP(C) No. 2179/2022, titled, **'Zaman Construction Company vs. Union Territory of J&K and ors.'** and in WP(C) No. 553/2023, titled, **'Abdul Majid Bhat vs. Government of J&K and ors.'**

5. Heard learned counsel for the parties and perused the record.

6. Although no objection with regard to the entertainability of the writ petition on the ground of availability of an alternative remedy of arbitration has been raised in the response, learned counsel for the respondents has sought to raise the said objection only during the course of arguments.

7. Hon'ble the Supreme Court of India in case titled, **'Uttar Pradesh Power Transmission Corporation Ltd. and anr. Vs. CG Power and Industrial Solutions Limited and anr.'** reported in **AIR ONLINE 2021 SC 243** has

held that the presence of an Arbitration Clause within a contract between the State and Instrumentality and a private party is not an absolute bar for entertaining the writ petition. Therefore, there is no force in this contention, as such, the same is rejected.

8. The next contention of the respondent is that the writ petition is hopelessly time barred as the cause of action accrued to the petitioner on 13.12.2019. This Court in WP(C) No. 804/2021, titled, **'Rattan Singh Parmar vs. Union Territory of Jammu & Kashmir and ors.'** has observed as under:-

> "8. The respondents are objecting to the claim of the petitioner by submitting that the petition has been filed after 10 years of the accrual of cause of action.
>
> 9. The only issue that requires consideration is as to whether the respondents can take plea of delay and laches to object the claim of the petitioner, once they are admitting that the balance amount of Rs. 22.74 lacs is payable to the petitioner.
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> 10. India is a welfare State and is 5th largest economy of the world. The Government, in order to develop infrastructure to ease the life of the residents of this country, has been collaborating with the private sector. A Contractor may be a man of means or a small contractor, who executes the work, often after borrowing loan from Financial Institutions, with a hope that the amount due to him would be released in his favour after the completion of work or as per the terms and conditions of agreement. The delay in releasing payment for one reason or another for the work carried out by the small contractor often puts the small contractor in financial doldrums and may result into bankruptcy bringing the contractor and his family to the brink of starvation and vagrancy. The Government must put in place the mechanism in place so that the situation that has arisen in this case does not arise in future.
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> 11. So far as the present case is concerned, the petitioner has represented with the respondents for the release of amount umpteen times, but the representations submitted by the petitioner resulted into generation of reports from one officer to another, though admitting the balance amount payable to the petitioner. Once the respondents admit the payment due to the petitioner but request the release of funds from the officers higher in the hierarchy of the administrative set up, the respondents cannot take the refuge under the 'delay and laches' to deny the justified and admitted claim of the petitioner. The Government cannot act as an ordinary litigant to deny the monetary claim just on technical grounds and to enrich itself in an unjust manner. Rather this court finds the respondents guilty of delay and laches in releasing the balance amount in favour of the petitioner.

12. In terms of Article 300A of the Constitution of India, no person can be deprived of his property save by authority of law. When a contractor executes work to the satisfaction of the Government, more particularly when there is admission on the part of the respondent with regard to the completion of the work by the petitioner, non- payment of the same cannot be denied only on the ground that the petition has been filed after an inordinate delay.

13. In **Madras Port Trust v. Hymanshu International, (1979) 4 SCC 176** the Hon'ble Supreme Court has held as follows:

*"**2.** We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by Section 110 of the Madras Port Trust Act (II of 1905).*

The plea of limitation based on this section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable. Here, it is obvious that the claim of the respondent was a just claim supported as it was by the recommendation of the Assistant Collector of Customs and hence in the exercise of our discretion under Article 136 of the Constitution, we do not see any reason why we should proceed to hear this appeal and adjudicate upon the plea of the appellant based on Section 110 of the Madras Port Trust Act (II of 1905)

***3.** We accordingly revoke the special leave granted to the appellant, and direct that the appellant do pay the cost of the respondents."*

(emphasis added)

14. In **Vidya Devi v. State of H. P. [(2020) 2 SCC 569]**, Hon'ble Supreme Court of India has held under:

"*12.12. The contention advanced by the State of delay and laches of the appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice."*

9. So far as the claim of the petitioner in the present petition is concerned, the petitioner has been continuously representing with the respondents for release of the amount and respondent No. 2 in the year 2023, convened the meeting so as to settle the claim of the petitioner, but despite that the claim was not settled, which prompted the petitioner to file this writ petition on 14.06.2023. The claim of the petitioner by no stretch of imagination can be considered as time barred particularly when an amount of Rs. 6,50,000/- was released in favour of the petitioner in terms of CC-1st and another amount of Rs. 8,00,000/- was released in favour of the petitioner on 30.03.2020 in terms of CC-2nd, showing the balance amount as outstanding, as such, there is no force in the contention raised by the respondents that the claim of the petitioner is time barred. Accordingly, this contention of the respondents is also rejected.

10. It is also urged by the respondents that excess work was executed by the petitioner without following the requisite codal formalities. In this context, reference is made to Clause 8 of the allotment order, which provides that any item found necessary during execution shall be paid as per SSR-2012 with overall appreciation/depreciation of allotment of the contract. Thus, the petitioner could have executed the additional work in terms of Clause 8, if the same was found necessary during execution of the work. Otherwise also, the contention of the respondents that the excess work was executed by the petitioner in utter disregard of the codal formalities is misconceived as the Division Bench of this Court in **LPA No. 137/2020 titled 'Union Territory of J&K and ors. vs. Sanjeev Kumar'** has observed 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. Otherwise also, the compliance with the codal formalities is required to be undertaken by the respondents and non-compliance thereof cannot be attributed to the petitioner.

12. Lastly, it was contended by the respondents that there was no admission on their part with regard to payment due to the petitioner. However, the Running Accounts Bill dated 30.03.2020 placed on record by the petitioner has not been disputed by the respondents and in the said bill, an amount of Rs. 8,21,000/- has been shown outstanding payable to the petitioner. Thus, there is admission on the part of respondents regarding the amount due to the petitioner.

13. Thus, this Court is of the considered view that the petitioner is entitled to the sum of Rs. 8,21,000/- on account of outstanding balance payment due to him in lieu of the work executed by the petitioner as mentioned above.

14. In view of the foregoing discussion, the present writ petition is disposed of with a direction to the respondents to release the outstanding amount of Rs. 8,21,000/- in favour of the petitioner, along with interest @ 6% per annum

from the date of filing of this writ petition till the date of actual payment. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

15. **Disposed of**.

(RAJNESH OSWAL)
JUDGE

Jammu
14.08.2026
Neha-II

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