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

Case No. LPA 132/2023 in
OWP No. 2022/2017

Reserved on :02.04.2026
Pronounced on :18.08.2026
Uploaded on: 18.08.2026
Whether the operative part or full judgment is pronounced

1. **Union Territory of J&K Th. Chief Secretary, Civil Secretariat, Srinagar/Jammu.**
2. **Vice-Chairman, J&K Lake Conservation and Management Authority, Srinagar.**
3. **Superintending Engineer, J&K Lake Conservation and Management Authority Srinagar.**
4. **Executive Engineer, Lake Division-Il, J&K Lake Conservation and Management Authority Srinagar**

Petitioner/Appellant(s)

Through:- Mr. Furqan Yaqub, GA

V/s

Gulzar Ahmad Wagra,
S/O Wali Mohammad Wagra
R/O Sikendrapora Rainawari, Srinagar

…..Respondent(s)

Through:- Mr. N. A. Beigh, Sr. Advocate with
Mr. Sofi Manzoor, Advocate

CORAM: **HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE**
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

JUDGMENT

PER SINDHU SHARMA-J

1. This Letters Patent Appeal (hereinafter referred to as the "LPA") has been preferred by the appellants against the judgment and order dated 13.07.2023 passed by the learned Single Judge in OWP No. 2022/2017, titled *Gulzar Ahmad Wagra v. State of J&K and Others*, whereby the impugned communication dated 31.07.2017 was quashed and the

appellants were directed to release the CDR amount of Rs. 2,24,750/- in favour of the respondent forthwith, preferably within a period of two weeks. The respondent was also granted liberty to seek recovery of the amount payable towards compensation for the work executed pursuant to the order of allotment dated 10.05.2008 by initiating appropriate proceedings available under law, if so advised. The execution of work on some part of the land necessitated the land acquisition, as such, the Tourism Department, house boat owners and locals of the area did not allow the respondent to execute the work.

2. The case projected by the appellants is that, pursuant to NIT No. 27 of 2007-08 dated 16.01.2008, the respondent, being the lowest bidder, was awarded the contract for construction of a sewer line at Nigeen. In terms of the allotment, the respondent deposited a Call Deposit Receipt (CDR) amounting to Rs. 2,24,750/-. The proposed sewer line was to pass through land belonging to the Tourism Department, initially the department did not allow the respondent to execute the work at site. Some portion of the alignment also involved private land who also did not allow the execution of the work as the respondent failed to commence the work within the stipulated period despite repeated communications requiring him to do so. Ultimately, the respondent commenced the work on 01.12.2008, whereafter the Tourism Department stopped the

execution. Subsequently, it was mutually agreed between the Tourism Department and the LCMA that the sewer line would instead be laid near the Nigeen Bridge. However, the houseboat owners objected to the revised alignment on the ground that it would obstruct access to their houseboats and insisted that the sewer line be laid at least 30 feet away. Thereafter, the respondent attempted to execute the work through private land, but the landowners also prevented the work, apprehending damage to their houses. Although the matter was subsequently, resolved with the Tourism Department and the respondent was again called upon to resume the work, he declined to do so. According to the appellants, the respondent had excavated a trench measuring only about 20 meters in length and 5 meters in depth, which, owing to the passage of time, got refilled. It is, therefore, the stand of the appellants that no substantial work was executed by the respondent so as to entitle him to any payment and that the work had ultimately to be closed on account of the respondent's indifferent and negligent conduct.

3. The appellants further submit that the respondent had also been awarded another contract for construction of a sewer line at Habbak. During the execution of the said work, two labourers, namely, Manzoor Ahmad Gunjoo and Abdul Hamid Akhoon, who were engaged by the respondent-contractor, died while in the course of their employment. The legal heirs of the deceased labourers approached the Commissioner under the

Workmen's Compensation Act (Assistant Labour Commissioner), Srinagar, who awarded compensation of Rs. 4,33,820/- in each case against the appellant-Authority, being the principal employer. Aggrieved thereof, the appellant-Authority preferred appeals before this Court after depositing the awarded amounts in compliance with the statutory requirement. The appeals, however, came to be dismissed, whereafter the legal heirs of the deceased labourers withdrew the compensation deposited by the appellant-Authority.

4. Earlier, the respondent had filed OWP No. 997/2011 seeking release of the cost of the work allegedly executed by him amounting to Rs. 11.80 lakhs as well as refund of the CDR amounting to Rs. 2,24,750/- deposited pursuant to NIT No. 27 of 2007-08 dated 16.01.2008. The appellants filed detailed objections, inter alia, contending that the Authority had incurred liability to the extent of Rs. 8,67,640/- towards payment of compensation in respect of the deceased labourers and, therefore, had retained the CDR amount and the value of the material so as to indemnify itself in terms of Section 12(2) of the Workmen's Compensation Act, as amended. By order dated 03.02.2016, the said writ petition was disposed of with the consent of learned counsel for the parties by directing the Vice Chairman to consider and decide the respondent's claim for release of the CDR amount as well as compensation for the work allegedly executed in the light of the recommendations

contained in the communication dated 05.05.2009 issued by the Executive Engineer.

5. Pursuant to the aforesaid order dated 03.02.2016, the Vice Chairman considered the respondent's claim for release of the CDR and, upon examining the matter, concluded that the respondent was not entitled to the said amount in view of the provisions of the Workmen's Compensation Act. Consequently, the respondent's claim came to be rejected vide communication dated 31.07.2017.

6. Aggrieved by the communication dated 31.07.2017, the respondent filed OWP No. 2022/2017, wherein the appellants filed their objections categorically denying the respondent's entitlement to release of the CDR amount or any other monetary claim. In the said writ petition, the respondent sought quashment of the communication dated 31.07.2017 and issuance of a writ of mandamus directing the appellants to release the CDR amount of Rs. 2,24,750/- along with compensation towards the work allegedly executed by him in terms of the order dated 03.02.2016 passed by this Court.

7. The appellants, while admitting that the work in question had been allotted to the respondent, contended before the learned Single Judge that they were legally entitled to recover from the respondent the amount of compensation paid by them to the legal heirs of the deceased labourers, who had died

during the execution of another work undertaken by the respondent.

8. The respondent, on the other hand, contended before the learned Writ Court that he had executed excavation work measuring about 320 meters in length and 6 meters in depth before the work was obstructed by the local landowners as well as the houseboat owners. According to the respondent, the matter was duly reported to the appellants, who convened several meetings and eventually decided to terminate the contract while compensating him for the work already executed. Despite repeated requests for release of the amount of Rs. 11.80 lakhs towards the work executed and refund of the CDR amount of Rs. 2,24,750/-, the appellants failed to release the same, compelling him to institute OWP No. 997/2011. Although the said writ petition was disposed of with a direction to consider his claim in the light of the recommendations made by the Executive Engineer vide communication dated 05.05.2009, the appellants, instead of complying with the said direction, sought to recover from him an amount of Rs. 8,67,640/- towards compensation paid to the legal heirs of the labourers who had died due to leakage of poisonous gas during the execution of an altogether different work, thereby seriously prejudicing his rights and interests.

9. Upon considering the rival submissions and examining the material available on record, the learned Single Judge,

while interpreting Section 12(2) of the Workmen's Compensation Act, held that although the principal employer is entitled to recover the amount of compensation paid by it from the contractor in accordance with law, the mode of recovery adopted by the appellants, namely, withholding the respondent's CDR pertaining to an entirely different contract, was ex facie impermissible and unsupported by any statutory authority. The learned Single Judge further held that any right of recovery available to the appellants against the respondent could only be enforced by resorting to a legally permissible procedure and not by retaining the respondent's CDR. Consequently, the communication dated 31.07.2017 was held to be legally unsustainable, and the appellants were directed to release the CDR amount to the respondent.

10. We have heard learned counsel appearing for the parties at length, given our thoughtful consideration to their rival submissions, and carefully perused the record of the case.

11. The core issue before us is not whether the appellant-Authority has a right to be indemnified, but whether the *mode of recovery* adopted by them is legally permissible.

12. Upon our consideration of the matter, we are of the view that the learned Single Judge has correctly appreciated the scope and ambit of Section 12(2) of the Workmen's Compensation Act. The said provision undoubtedly confers a right upon the principal employer to seek indemnification from

the contractor in respect of the compensation paid to the workmen or their legal heirs. However, the statute does not authorize the principal employer to unilaterally appropriate or withhold amounts lying in relation to another independent contract as a mode of enforcing such right. The right of indemnity contemplated under Section 12(2) is required to be enforced in accordance with law before the Competent Forum.

13. The Hon'ble Supreme Court in case titled ***Union of India v. Raman Iron Foundry***, (1974) 2 SCC 231 has held as under:-

> "....Now the law is well settled that a claim for unliquidated damages does not give rise to a debt until the liability is adjudicated and damages assessed by a decree or order of a Court or other adjudicatory authority. When there is a breach of contract, the party who commits the breach does not eo instanti incur any pecuniary obligation, nor does the party complaining of the breach becomes entitled to a debt due from the other party. The only right which the party aggrieved by the breach of the contract has is the right to sue for damages."

14. Again the Hon'ble Supreme Court in case titled ***M/S Gangotri Enterprises Limited v. Union of India***, (2016) 11 SCC 720 has observed as under:-

> "On perusal of the record of the case, we find that firstly, arbitration proceedings in relation to the contract dated 22.08.2005 are still pending. Secondly, the sum claimed by the respondents from the appellant does not relate to the contract for which the Bank Guarantee had been furnished but it relates to another contract dated 22.08.2005 for which no bank guarantee had been furnished. Thirdly, the sum claimed by the respondents from the appellant is in the nature of damages, which is not yet adjudicated upon in arbitration proceedings. Fourthly, the sum claimed is neither a sum due in praesenti nor a sum payable. In other words, the sum claimed by the respondents is neither an admitted sum and nor a sum which stood adjudicated by any Court of law in any judicial proceedings but it is a disputed sum and lastly, the Bank Guarantee in question being in the

> nature of a performance guarantee furnished for execution work of contract dated 14.07.2006 (Anand Vihar works) and the work having been completed to the satisfaction of the respondents, they had no right to encash the Bank Guarantee."

15. In the absence of a specific "recovery" or "lien" clause in the agreement of the Nigeen contract allowing adjustments from other works, the appellants cannot bypass due process. A right to be indemnified must be enforced through legally recognized channels either by establishing a claim before a competent forum or by adjusting bills within the specific contract where the liability arose (the Habbak project). Unilaterally, withholding the CDR of a separate project amounts to executive high-handedness and violates the principles of natural justice and contractual propriety.

16. In the present case, the CDR amount of Rs. 2,24,750/- was furnished by the respondent in connection with an altogether different contract. The appellants have failed to point out any contractual stipulation or statutory provision empowering them to retain the said amount towards satisfaction of the liability arising out of another contract. The impugned communication dated 31.07.2017, therefore, rightly came to be quashed by the learned Single Judge. At the same time, the liberty reserved in favour of the appellants to recover the amount, if otherwise legally recoverable, by adopting appropriate proceedings in accordance with law adequately safeguards their rights.

17. We are, therefore, satisfied that the judgment and order passed by the learned Single Judge neither suffers from any error of law nor from any perversity warranting interference in exercise of appellate jurisdiction under the Letters Patent.

18. Consequently, the present Letters Patent Appeal, being devoid of merit, is dismissed. The judgment dated 13.07.2023 passed by the learned Single Judge is affirmed. It is, however, made clear that dismissal of the present appeal shall not preclude the appellants from pursuing such remedy as may be available to them in law for recovery of the amount allegedly recoverable from the respondent.

(Shahzad Azeem)
Judge

(Sindhu Sharma)
Judge

JAMMU
18.08.2026
Ram Murti

Ram Murti
2026.08.18 17:52
I attest to the accuracy and integrity of this document