

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case: WP(C) No. 127/2025

1. M/s S K Project Petitioners(s)/Appellant(s)
Through its Prop.
Tariq Hussain Sheikh Aged 60 years
S/o Nazim Din Sheikh
R/o Ward No. 1 Gurrekrah Tehsil
Gandoh District Doda.

2. M/s S A Project
Through its Prop.
Tariq Hussain, Aged 60 years
S/o Nazim Din Sheikh
R/o Ward No. 1 Gurrekrah Tehsil
Gandoh District Doda.

Through :- Mr. Umar e Khayan, Advocate vice
Mr. Zeeshan A Chauhan, Advocate

Vs

1. Union Territory of J&KRespondent(s)
Through its Commissioner/Secretary
Public Works Department (R&B)
Civil Sectt. Jammu.

2. Chief Engineer,
Public Works Department (R&B)
Mughal Road Project Bafliaz
Shopian.

3. Executive Engineer
Public Works Department (R&B)
Mughal Road Project Bafliaz
Shopian.

4. Hindustan Construction (HCC) Co.
Ltd. Head Office, Hinson House, Lal
Bahadur Shastri Marg Vikhorli
(West) Mumbai 400083.

Through :- Mr. Ravinder Gupta, AAG for R- 1 to 3
Mr. Raman Sharma, Sr. Advocate with
Mr. Kartikay Sharma, Advocate for R-4

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

ORDER
22.09.2025

01. Through the medium of the instant petition, the petitioners has sought following reliefs:-

“Writ of mandamus thereby commanding and directing the respondents to forthwith release the payment of an amount of Rs. 14,27,966/- and Rs. 9,62,350/- in favour of the petitioners with respect to execution of work on Uri Hydro Electric Project II alongwith interest @ 24% p.a. which payment has been illegally withheld by the respondents despite the petitioners having successfully completed the said contract works.

Writ of Mandamus thereby commanding and directing the respondent to make the payment of the withheld amount of Rs. 14,27,966/- as well as amount of Rs. 9,62,350/- along with interest @ 24% per annum for wrongful withholding of the payment of admitted liability having remained unpaid since the completion of the contract work i.e. Uri Hydral Project II and Sub Contract allotted to the petitioners by respondent No. 4.”

02. The petitioners is seeking direction against respondents in particular respondent No. 4 to release the withheld amount of Rs. 14,27,966/- as well as an amount of Rs. 9,62,350/- along with interest @ 24% p.a. for the wrongful withholding of the payment of the admitted liability having remained unpaid since the completion of the contract work i.e. Uri Hydral Project II and Sub Contract allotted to the petitioners by respondent No. 4 and sub allotted to the petitioners.

03. The instant petition has been filed by Mr. Tariq Hussain Sheikh, who claims to be the proprietor of SK Projects, a firm possessing the requisite experience in civil works. The petitioners states that SK Projects was engaged as a subcontractor by Respondent No. 4. Both petitioners, having a

common cause of action, have jointly instituted this petition challenging the non-payment of dues for the work executed at the Uri Hydroelectric Project II and the Mughal Road Project and seek relief on account of the alleged failure to receive payment for the services rendered.

04. The further case of the petitioners is that the Jammu and Kashmir State Government now the Union Territory had allotted various works to Respondent No. 4, Hindustan Construction Company Limited, including the construction of the Mughal Road Project and the Uri Hydroelectric Project II.

05. It is further submitted that respondent No. 4 after allotting the said contract engaged the petitioners as sub-contractor in order to execute the said work and as per the direction and assurance extended by respondents, the petitioners executed their respective work allotted to them to the satisfaction of the respondents and since the official respondents used to deduct a certain amount to the extent of 5 % of the bill amount every month (as retention amount/security) from petitioners No. 1 for the execution of Uri Hyrdo Project II , which accumulated to a figure amounting to Rs. 14,27,966/- by the time petitioners No. 1 completed all the allotted work on 30.11.2011, which is evident from the statement of accounts as certified by the company as full and final balance as on 25.04.2012.

06. The further case of the petitioners is that the sub contract was taken over by petitioners No. 2 and further work was executed by respondent No. 2 on 18.03.2012 and the payments other than the security/retention amount was not released despite completion of work which compel the petitioners to serve a legal notice upon respondents but despite service of notice, the

amount to the tune of Rs. 9,62,350/- was not released in favour of the petitioners. In addition, it has also been submitted that the petitioners also undertook the said work of Mughal Road from Shopian to Peer Gali on 01.06.2010 and continued to execute the work upto 05.09.2012 and raised a total bill of Rs. 47,42,190/- out of which an amount of Rs. 30,62,638/- was received from respondent No. 4 and balance amount to the tune of Rs. 16,79,552/- was not paid by respondent No. 4 and respondent No. 4 apart from this amount was also under an obligation to pay the bonus of Rs. 1 lac payable to the labour, which bonus was paid by the petitioners.

07. Thus, according to the petitioners an amount of Rs. 17,79,552/- was being payable by respondent No. 4. The further case of the petitioners is that a certificate dated 13.11.2013 was also issued in favour of petitioner No. 2 certifying that petitioner No. 2 has been engaged as sub contractor by respondent No. 4 at Uri Hydro Project since 01.12.2010 to March, 2012 and the said certificate also specify the details of work executed by petitioner No. 2.

08. Through the medium of the instant petition, the petitioners have projected that respondent No. 4 has not released the admitted amount of bills submitted by the petitioners inspite of the fact that the work was allotted by said respondent.

09. The specific case of the petitioners is that since their grievance was not redressed, they were compelled to approach this Court by way of first round of litigation by filing a writ petition, registered as OWP No. 584/2014. During the proceedings of that petition, the respondents filed objections, in which, according to the petitioners, the respondents

acknowledged the claim made by them. The petitioners further contend that, during the pendency of the said writ petition, the respondents agreed to an amicable settlement of the dispute that was the subject matter of the petition. The respondents assured the petitioners that all issues relating to the withheld amounts would be resolved and, on that basis, directed the petitioners to withdraw the writ petition so that their grievance could be addressed accordingly.

10. Accordingly, relying on the bona fide assurance given by the respondents, the petitioners withdrew the said writ petition by an order dated 19.08.2014. However, despite the withdrawal, the respondents failed to release the admitted amount as assured at the time of withdrawal and have since reneged on their commitment. This change in stance compelled the petitioners to initiate the instant petition as a second round of litigation.

11. Per contra, the record reveals that vide order dated 05.05.2025, last and final opportunity was granted to the respondents to file reply in the instant petition and since no reply was filed by the respondents inspite of availing last and final opportunity, the matter was placed before this Court and this is how the matter has been taken up today.

12. Today, when the instant petition was taken up, learned counsel for respondent No. 4 Mr. Raman Sharma learned AAG submits that although, no reply has been filed on behalf of the respondents, yet, he has drawn the attention of the Court to the specific averment of the petitioners pertaining to para 17 and 18 of the instant petition.

13. Learned counsel for respondent No. 4 has vehemently argued that petitioners have not come to this Court with clean hands and have

suppressed the material facts and have tried to mislead this Court to the extent that earlier writ petition, which was preferred by the petitioners was not withdrawn under any bonafide assurance, rather, when, the petitioners were confronted with the maintainability of the petition in light of the judgment rendered by Hon'ble Division Bench, which was applicable to the case in hand in LPA No. 23/2014 dated 18.03.2014, the writ petition was dismissed as not maintainable leaving it open for the petitioners to avail other remedies available under law and in the aforesaid backdrop, the interim direction passed by the Court stood vacated vide order 19.08.2014. The aforesaid order although has been mentioned by the petitioners in the instant petition but the same has not been placed on record with the sole object to mislead this Court.

14. Learned counsel for respondent No. 4 submits that no such assurance was ever extended by respondents which could have paved way for withdrawal of the earlier petition but on the other hand record reveals that the said writ petition was dismissed as not maintainable and once, the petitioners has suffered dismissal in earlier round of litigation on the ground that petition not maintainable, then how and under what circumstances the instant petition has been filed urging similar grounds and seeking the same relief which has already been rejected by this Court in the 1st round of litigation is not forthcoming from the record.

15. Mr. Sharma argued that the petitioners in the instant petition have deliberately tried to mislead this Court with a view to get favourable order and have suppressed the material facts and relevant record for obvious reasons. Having suffered dismissal in the earlier round of litigation in the

similar petition preferred by the petitioners urging similar grounds, the instant petition is not maintainable as the petitioners were directed to avail other remedies available under law and the petitioners instead of availing the other remedies available under law have chosen to file the instant petition and that too after a gap of 10 years by suppressing the material facts and not producing the copy of the aforesaid order which although has been mentioned in para 17 of the instant petition.

16. Thus, it has been submitted that the petitioners have not come to this Court with equitable hands and cannot claim equity and the writ petition according to the learned counsel for the respondents is utterly misconceived, false and frivolous and falls within the realm of an abuse of process of Court, as the material facts have been deliberately suppressed with a view to mislead this Court and to get a favourable order.

17. Heard learned counsel for the parties.

18. After perusing the record and also the averments pleaded by the petitioners, this Court is of the considered opinion that the petitioners have deliberately tried to suppress the material facts with a view to mislead this Court and to get a favourable order and once, the petitioners have suffered dismissal in the earlier round of litigation in a writ petition preferred urging similar grounds and fact, the instant petition is not maintainable. Once the learned writ court has dismissed the said petition holding the same not maintainable in light of the law laid down by the Division Bench of this Court which was squarely applicable to the case projected in the earlier round of litigation then the petitioners are estopped under law to file similar petition on same grounds. It is not so, even the petitioners have tried to

mislead this Court by projecting that the respondents have assured the petitioners that the grievance of the petitioners would be redressed which was subject matter of OWP No. 584/2014 and in light of the bonafide assurance given by the respondents, the petitioners withdrew the said writ petition vide order 19.08.2014. The said statement of the petitioners is factually incorrect and contrary to record and record reveals that no such assurance was ever extended by the respondents, rather, the writ petition was dismissed as not maintainable leaving it open to the petitioners to avail other remedies available under law.

19. The Hon'ble Supreme Court has consistently underscored the critical importance of full and honest disclosure of all material facts in judicial proceedings. The principle is fundamental to the integrity of the justice delivery system and is premised on the notion that a litigant must come before the court with "clean hands." Concealment or suppression of material facts not only undermines the judicial process but can fundamentally vitiate the entire proceeding, rendering it a nullity.

20. It is the duty of every party before the court to lay all relevant facts necessary for the fair adjudication of the matter. Failure to do so strikes at the very root of justice because the court's ability to dispense fair and equitable relief depends on an accurate and complete factual matrix. When material facts are deliberately withheld or concealed, the court is misled and the adversarial process is compromised. This not only results in injustice but also erodes public confidence in the legal system. The Hon'ble Apex Court has been unequivocal in stating that the omission of material facts is not a mere procedural lapse but a serious misconduct. The Court has

repeatedly observed that such conduct can lead to the dismissal of petitions even when they may be meritorious on other grounds. The rationale is that the integrity of the judicial process takes precedence over individual claims, and no party should benefit from dishonest or fraudulent behavior.

21. To illustrate this principle, the Apex Court, in the landmark judgment of ***Dnyandeo Sabaji Naik & Anr. v. Mrs. Pradnya Prakash Khadekar & Ors., 2017 SCC (5) 496***, held that the court must adopt a stringent approach against litigants who abuse the judicial process. The Court emphasized that the sanctity of the judicial process is paramount and that attempts to circumvent truth or manipulate court procedures must be firmly dealt with. The judgment underscored that litigants who take liberties with the truth or procedural norms should be made aware of the severe consequences, including the imposition of exemplary costs, to deter such conduct and maintain public confidence in the administration of justice. The relevant para is reproduced as under:-

"This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others would not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on truth."

21. Further reinforcing this stance, this Court in a recent judgment, *Satpal Sharma & Ors. v. State of J&K & Ors.*, OWP No. 2015/2018, delivered on 20.09.2024, dealt with a case where the petitioners failed to come before the Court with clean hands by suppressing material facts. Recognizing the gravity of such conduct, the Court imposed a cost of Rs. 50,000/- on the petitioners as a punitive measure to deter such practices in future. This decision reflects the Court's proactive approach in discouraging concealment of material facts and ensuring that justice is not only done but is seen to be done transparently.

22. Thus, in the light of the law laid down by the Hon'ble Apex Court and also by various High Courts including this Court on such like matters, it can safely be held that **“transparency and honesty in pleadings are non-negotiable.”** The judicial system relies on the good faith of parties, and any deviation in the form of suppression of material facts invites stringent consequences, including dismissal of the petition and imposition of costs. This approach ensures that justice is administered in an environment of trust and fairness, safeguarding the dignity and sanctity of the judicial process.

23. The petitioners instead of availing other remedies available under law has chosen to file the instant petition by way of 2nd round of litigation urging similar grounds and facts and that too by suppressing the material facts and with a view to mislead this Court to get a favourable order.

24. This Court in the aforesaid backdrop holds that the petitioners has abused the process of Court by filing the instant petition and it is a fit case, where the exemplary costs can be imposed with a view to deter such unscrupulous litigants to abuse the process of Court.

25. Accordingly, this Court deems it proper to impose costs to the tune of Rs. 20,000/- on the petitioners for abusing the process of Court in filing the instant petition by suppressing the material facts which amount shall be paid by the petitioners in the Advocates' Welfare Fund within a period of two weeks from today.

26. The writ petition being devoid of any merit is **dismissed** along with all connected applications.

27. Before parting, this Court makes it clear that the amount of costs which has been imposed by this Court shall be deposited by the petitioners before the Registry within two weeks and in case, amount is not deposited, Registry will list the instant petition by way of index only for a limited purpose by submitting report whether the direction passed by this Court is complied with or not.

(WASIM SADIQ NARGAL)
JUDGE

JAMMU
22.09.2025
Mihul

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