

IN THE HIGH COURT OF JAMMU AND KASHMIR AT SRINAGAR

Pronounced on 30.06.2026

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WP (c) 1100/2021 cm (3739/2021)

Mohammad Ishaq Najar and ors

.....*Petitioner(s)*

Through:- Mr. R. A Bhat, adv.

Vs.

Union territory of J&K & Ors

.....*Respondent(s)*

Through: - Mr. Jehangir Ahmad Dar, GA

CORAM:

Hon'ble Mr Justice Mohd Yousuf wani, Judge

JUDGMENT

1. This matter has been awaiting its disposal since last five years. The case of the petitioners is that they are the permanent residents of UT of J&K and citizens of India, thus, having right to move this Court through the medium of the instant writ petition invoking the provisions of Article 226 of the Constitution of India for enforcement of their constitutional and other legal rights.

That the respondents initiated process for restoration of PHE pipe lines in various sub divisions of District Baramulla which had got damaged due to heavy rains that occurred from 4th to 8th April, 2017. That the execution of the restoration of the said damaged works was entrusted to them and they executed the said works under the instructions of the respondents within the stipulated time. That the communications *inter se* the respondents came to be made right from

report to the respondents No. 6. That again on the same day i.e 22.04.17 respondent No.10 i.e Executive Engineer, PHE Division, Baramulla made a communication to the Respondent No.9 i.e Superintendent Engineer Hydraulics PHE Baramulla, Circle Sopore, where-under the list of schemes and works damaged due to heavy rains in the sub division of District, Baramulla, came to be submitted with further remark that the restoration work under SDRF stands already taken up in hand departmentally as per the instructions given in the meeting held in the office chamber of Respondent No.6 i.e District Development Commissioner, Baramulla. That they executed the work of repairing and restoring of various water supply lines in various Sub Divisions of District, Baramulla, that had got damaged due to heavy rains during 4th to 8th April 2017 as per the instructions of the Respondents.

That on 6.5.2017, Joint Director Planning, Baramulla, communicated to SE Hydraulics for furnishing pre execution certificates as well as photographic/video-graphic evidence of the damages caused to the infrastructure due to incessant rains/floods of April 2017 being undertaken for restoration under SDRF on the instructions of the Chief Secretary. That subsequently on 20.03.2018, Additional District Development Commissioner, Baramulla (Chairman SDRF verification) Baramulla i.e Respondent No.7 communicated to Respondent No.6, District Development Commissioner Baramulla indicating that the physical verification has been conducted by the Verification Team

subsequently on 28.03.2018, the DDC Baramulla, submitted the statement regarding physical works executed under SDRF post the damage thereof due to torrential rains of April 2017 and pertaining to PHE Division, Baramulla. That the total cost of the works executed was shown in the said communication as Rs.211.28 lacs (civil plus department).

That on 30.05.2018 the Divisional Commissioner Kashmir while communicating with the Respondent No.1 i.e Commissioner/Secretary to Government, Disaster Management, Relief, Rehabilitation & Reconstruction made a requisition of an amount of Rs. 211.28 lacs under the SDRF on account of the work done liability. That on 13.06.2018, the Respondent No.2 i.e Director Finance Department of Disaster Management, Relief, Rehabilitation & Reconstruction (DMRRR) Srinagar made a communication to the Respondent No.4 i.e Divisional Commissioner Kashmir on the subject by stating that in terms of SDRF norms, claim up to Rs.1.5 lacs per scheme are covered under SDRF with further clarification that the case be recommended through Respondent No.3 only i.e Financial Commissioner (Revenue) J&K Government Tankipora Srinagar. Subsequent thereto, the Respondent No.10 i.e Executive Engineer PHE Baramulla, made a communication dated 24.09.2018 to the Respondent No.6 i.e DDC Baramulla to the effect that the subject works have been declubbed and are now within the permissible guidelines. That the said fact was in turn communicated by

dated 30.10.2018. That the said works came to be again verified afresh under the directions of the Divisional Commissioner, Kashmir.

That subsequently vide communication letter dated 12.10.2019, the Executive Engineer apprised the Dy. Commissioner, Baramulla, regarding the fact of furnishing verification of executed work done under SDRF with the request for making of payment in favour of the rightful claimants. That subsequently on 28.10.2019, the District Development Commissioner again wrote to the Divisional Commissioner, Kashmir, for releasing the amount of Rs.864.17 lacs for meeting the liability under the SDRF,

That the respondents have always been admitting the execution of the subject works and the verification of the same but despite all that, they are not being made their legitimate payments. That the delay in making the payment against the executed works is also attributed to the reason that in terms of SDRF norms “**Drinking Water Scheme**” can be funded only up to 1.50 lacs and there may be few works above the said limit but it is not understandable as to how the petitioners who only executed the restoration works of damaged water schemes by laying and fitting of water pipes etc are hit by said ceiling as their claim amounts per scheme on account of their execution work does not exceed the slab of 1.5 lacs per scheme. That the material was provided by the PHE department itself and they only executed the restoration works by laying and fitting of pipes etc

with held because of departmental lapses since 2017 till date. That they are poor people having earned the above mentioned amount by putting their blood and sweat together. That they are being discriminated in comparison to the contractors of other districts who also executed works under SDRF in 2014 floods onwards and have received due payments but in the District Baramulla the payment for the work done is with-held as is clearly born out from the communications *inter se* the respondents and hereinbefore referred to.

That the respondents despite admitting their claim have failed to discharge their obligation by making the payments due to them (petitioners), which makes their acts unfair, unjust and unreasonable thereby offending the Article 14 of the Constitution of India. That they cannot be denied their legitimate amounts on account of the technicalities being raised by the Respondents through *inter se* communications.

2. The petitioners have accordingly sought for issuance of writ of the mandamus for commanding upon the respondents to discharge their obligations and duty in making the due payment towards them (petitioners) on account of the execution of the restoration of damaged PHE works in the various Sub Divisions of District Baramulla, with interest @ 12% p.a from the date the same was due to them.

Commissioner, Baramulla, has filed separate reply dated 04.11.2022 as well as joint reply with the Respondents 3,4, 6 & 7 on 30.06.2025. The said Respondents 3 to 7 have *inter alia* pleaded in their written replies that they have a legal obligation to pay the liability for the works executed under SDRF strictly as per the guidelines communicated by the Department of Disaster Management, Relief, Rehabilitation and Reconstruction, J&K, as and when the funds are released specifically for those works which were executed by the PHE Department under SDRF in the year 2017.

4. The Respondents 8 to 10 (PHE Department) who have utilized the services of the petitioners for restoration of damaged works have pleaded in reply to paras 8 & 9 of the writ petition that their Division has already submitted its stand regarding SDRF related liabilities to the effect that once the funds as demanded are made available and post facto authorization/codal formalities are fulfilled, payment shall be made to the petitioners under rules. That the only reason of non payment of funds to the petitioners is that the work has been done under SDRF and as such the funds are to be released by the Respondents 3 to 7. That they have been time and again reminding the aforesaid respondents 3 to 7 for release of funds in order to clear the liabilities of the petitioners/contractors and the matter has remained unresolved due to non release of the requisite funds.

5. It is very pertinent to mention that as per the order dated 18.03.2023 the Respondents 8 to 10 were directed to file supplementary affidavit indicating the work done by the petitioners under SDRF and the amount due to them on account of such work. The said supplementary affidavit was filed by the Respondents 8 to 10 on 18th of August 2023. The requisite information came to be filed by the said Respondents 8 to 10 (PHE Deptt) as annexure to their supplementary affidavit.

It has been submitted through the said supplementary affidavit that the list of work done by the petitioners with amount due to them was vetted by the Additional Development Commissioner, the Tehsildar and the Superintendent Engineer concerned respectively, whereafter the same was already sent to concerned quarters under office letter No. 2655-56 dated 20.06.2019.

It has been further stated that funds are to be released by the Respondents 3 to 7. That the issue of funds was taken up with the respondents 3 to 7 in order to clear the liabilities of the petitioners. That in case of SDRF related liabilities, once funds, as demanded are made available along with post facto authorization, the payments shall be made under rules. The requisite statement forming annexure R-1 to the supplementary affidavit appears to have been signed by the Executive Engineer, PHE Division, Baramulla (Member), Tehsildar concerned Wagoora (Member), Assistant Executive Engineer, PHE Sub Division

Development Commissioner, Baramulla (Chairman SDRF). The said statement bears the note to the effect that the works have been executed under SDRF and are not reflected in any other programme/scheme of the Department. That the works have been executed within the stipulated period as per the SDRF norms.

6. The learned counsel for the parties who have been heard in the matter have reiterated their respective stands taken in their pleadings.
7. The learned counsel for the petitioners submitted that the respondents do not dispute their liability towards the petitioners. He submitted that the respondents in their replies as well as in the supplementary affidavit filed by the respondents 8 to 10 pursuant to the order dated 18.03.2023 of the court have fully admitted the claim of the petitioners. He submitted that it has been brought on the record in the shape of communications between the respondents *inter se* that the technical issues/queries whatever came to be raised during the process of the release of liability on account of restoration of damaged scheme/works of PHE Department in the various Sub Divisions of Baramulla including the liability of petitioners as “**civil cost**”, came to be replied after doing the needful as per the governing norms, but despite the completion of all the requisite formalities, the payment was not still made in favour of the petitioners who have been badly suffering since April 2017 on account of non-

volunteered to work in disaster time for restoration of essential water supplies services have been made to suffer by the respondents on account of their inaction.

8. It was further submitted by the learned counsel that the respondents 8 to 10 who represent the PHE Department and have got the restoration works executed on ground through the petitioners submitted in their replies that they repeatedly took up the matter for release of funds under SDRF with the respondents 3 to 7 so as to clear the liabilities of the petitioners but in vain. The learned counsel submitted that the petitioners are entitled to the amount due to them on account of civil cost along with the interest @ 12% p.a from the date same was due to them till the final payment.
9. The learned counsel for the Respondents however, submitted that in case of SDRF related liabilities, once funds as demanded are made available along with post-facto authorization, the payment shall be made under rules. He submitted that the only reason of non payment of the funds to the petitioners is that the work has been done under SDRF and as such, the funds once released may be paid to the petitioners to clear their liabilities under rules.

10. I have perused the memo of the petition and the copies of documents

respondents as also the supplementary affidavit of respondents 8 to 10 have also been gone through.

11. The respondents through their pleadings did not dispute the liability of the petitioners. The respondents have submitted that they have legal obligation to pay the liability for the works executed under SDRF strictly as per the guidelines communicated by the Department of Disaster Management, Relief, Rehabilitation and Reconstruction J&K. That as and when funds are released specifically for those works which were executed by PHE Department under SDRF in the year 2017, the payment shall be made under rules.

12. The case of the petitioners to the effect that they were entrusted the execution of the speedy restoration of the damaged works/schemes in the various sub divisions of District, Baramulla, under SDRF scheme in the year April 2017 has remained uncontroverted at the proceedings of this petition. The copies of the documents i.e Annexure (i) to (xiv) being the communications *inter se* the respondents on the subject matter involved in the petition fully reveal that the restoration of the damaged PHE works/schemes in the various sub divisions of District, Baramulla, under SDRF was fully verified and found completed on spot. The said documents also reveal that the technical issues/queries whatsoever raised in the process of demand of funds to meet the liability against the

proceedings of this petition that the subject restoration works were undertaken and completed in accordance with the norms of the SDRF scheme. As hereinbefore mentioned the respondents did not dispute the restoration of the damaged works of PHE in the various sub divisions of District, Baramulla, under SDRF in the year 2017.

- 13.The petitioners in the petition, have prayed that the Respondents be directed to act upon the communication dated 19th Jan. 2021, issued by the Respondent No.2 under No. DMRRR/SDRF/SEC/2020/10,whereby the clarification has been issued as regards the utilization of State Disaster Management Response Fund (SDRF).

It appears that the petitioners have been constrained to approach this Court after their exhaustion from offices of the Respondents, in the process of the demand for release of their legitimate claim on account of the execution of immediate restoration of the damaged Water Supply Schemes in various sub divisions of the District, Baramulla.

Once, some work is undertaken by the Government, after allotment of execution of the same or by utilizing the services/manpower, as the case may be, the person(s) who bonafidely volunteer for such **execution**/services cannot be denied the legitimate payment, on account some-technical issues involved or some formality to be completed.

- 14.The responsibility to account for due and legitimate liability is always

Any irresponsible and unaccountable conduct on the part of Government officers at the helm of affairs, has an indirect tendency to affect the quality of the public works.

Sometimes some government works like the one involved in this case, being of essential services cannot be allowed to brook any delay. When work is allotted for immediate execution or services are availed with promptitude, the due claim also needs to be cleared with same force.

15. The delayed payments of the due claims burdens the state with interest component. The petitioners are supposed to have been badly suffering on account of delay in payment of their due claim.

It has been *inter alia* pleaded in the petition that due payments under SDRF were made in respect of the restoration of similar disaster hit works in other districts and they have been discriminated within the same class.

16. The inaction on the part of the Respondents is supposed to have infringed the fundamental rights of the petitioners guaranteed to them under the Articles 14 and 21 of the Constitution of India. The restoration works constituting the subject matter of the petition comprises (i) Civil Cost (ii) Material Cost.

The petitioners have approached this court only for the payment to them against the “Civil Cost” component.

various sub divisions of the District, Baramulla and forming the subject matter of the petition, in favour of the petitioners, if not already made, along with interest at the rate of 10% per annum from the date of the filing of the petition i.e 08.06.2021 till final payment.

18.The respondents 2,4,6,9 & 10 in **co-ordination** shall take immediate steps for release of the necessary funds, drawal and disbursement of the same on account of the restoration of PHE works/schemes/pipe lines of various sub divisions of District, Baramulla, under SDRF in 2017, under rules, along with the interest as directed, provided the payments have not been already made.

19.The needful is directed to be done within a period of six weeks from the date copies of this order are left at the offices of the Respondents 2,4,6,9 and 10.

20.Disposed of along with miscellaneous application.

(Mohd Yousuf Wani)
Judge

Srinagar:
30. 06.2026.

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- i) *Whether approved for reporting.* *No/ Yes.*
ii) *Whether the judgment/order is speaking.* *No/Yes*