

GOVERNMENT OF JAMMU AND KASHMIR
Tourism Department
Civil Secretariat, J&K, Jammu/ Srinagar.

Subject:- OWP No. 555/ 2017 titled Gh. Hassan Wani Vs State of J&K and Ors – Constitution of Fact Finding Committee, thereof.

GOVERNMENT ORDER NO :- 140- JK(TSM) of 2021.
D A T E :- (7) -12-2021.

Whereas, the petitioner namely Ghulam Hassan Wani has filed a writ petition bearing OWP No. 555/ 2017 before the Hon'ble High Court of J&K at Srinagar wherein he has stated that he has been allotted construction work of Retaining wall/ front faced Right Side Main Entrance Gate and another work for construction of Retaining wall/ Front faced Left Side Main Entrance Gate advertised vide NIT No. CEO/WMDA/303-09 dated 15.05.2012 allotted vide allotment letters dated 28.07.2012 at an allotted cost of Rs. 12,74,286/- and Rs.12,60,680/- respectively. The grievance of the petitioner is that he has executed the allotted work, however he has only paid an amount of Rs. 8,52,000/- and 8,12,000/- and an amount of Rs. 4,22,268/- and Rs. 4,48,680/- totaling to Rs. 8,70,948/- is payable towards him on account of execution of said work.

Whereas, based upon the averments made in the writ petition the petitioner has inter alia prayed for the following reliefs:-

- Am Janna*
- I) Writ of Mandamus, commanding the respondents to release the admitted liability of the petitioner alongwith interest at the rate of 18% from the date of completion of work to the petitioner forthwith.**
 - II) Writ of Mandamus, commanding upon the respondents to deposit an amount of Rs. 8,70,948/- before this Hon'ble Court so that the same may be disbursed in favour of the petitioner without deducting any tax.**

§ **Whereas,** the Hon'ble High Court was pleased to dispose of the above writ petition vide order dated 18.02.2021 with the following direction:-

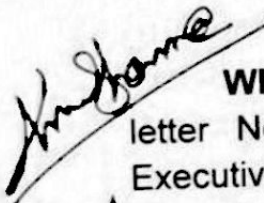
- 1. The petitioner, through the medium of instant petition, has sought a direction upon respondents to release the**

admitted liability in his favour with a further direction to deposit an amount of Rs.8,70,948/. Compensation in the amount of Rs.5.00/ lacs has also been sought by the petitioner from the respondents.

2. It is the case of the petitioner that in response to MIT No.11 of 2012-13 circulated vide No.CEO/WMDA/303-09 dated 15.05.2012, for construction retaining wall/front faced right side of main entrance gate at Ningli Sopore for development of tourist culture in the said area near Wullar Lake, he submitted his bid. According to the petitioner, the rates quoted by him were found lowest and, accordingly, he was allotted contract in terms of allotment letters dated 28.07.2012. It is the case of the petitioner that despite execution of the work in accordance with the terms of the contract and despite making demand for release of payment, the respondents failed to release the payment in his favour compelling the petitioner to repeatedly approach the respondents for the said purpose. According to the petitioner, he has executed the work to the tune of Rs.12,74,260/ out of which an amount of Rs.8,52,000/ stands released in his favour whereas balance amount of Rs.4,22,260/ is pending in respect of construction of retaining wall on the right side. In respect of construction of retaining wall on the left side, the petitioner claims that he has executed work for an amount of Rs.12,60,000/ out of which an amount of Rs.8,12,000/ stands released leaving a balance of Rs.4,48,000. Thus a total sum of Rs.8,70,948/ is stated to be outstanding against the respondents. Petitioner has placed on record number of documents in support of his contentions.

3. **The respondents have filed their reply to the writ petition in which it has been contended that the writ petition raises disputed questions of fact. The respondents have denied that an amount of Rs.8.70/ lacs is still outstanding but it has been admitted by the respondents in their reply that the works were executed by the petitioner. It has been claimed that it is yet to be ascertained whether the petitioner has completed the requisite works within the stipulated time and as per the specifications given in the tender and the allotment.**

4. **Having regard to the stand taken by the respondents, particularly the fact that while admitting the execution of the work by the petitioner, they have disputed the actual liability/ claim of the petitioner, the writ petition is disposed of with a direction to the respondents to consider the claim of the petitioner as projected by him in the writ petition and take a decision thereon within a period of one month from the date a certified copy of this order along with copy of the writ petition is provided by the petitioner to the respondents. The decision so taken by the respondents shall be conveyed to the petitioner.**


Whereas, after receipt of above referred order this Department vide letter No. TSM-Legal/40/2021-E-41399 dated 10.08.2021 directed Chief Executive Officer, Wallur Manasbal Development Authority to prepare a speaking order in light of the Hon'ble Court direction and get the same vetted through Administrative Department.

Whereas, instead of passing a speaking order considering the claim of the petitioner in light of Hon'ble Court direction by working out the actual liability/ claim of the petitioner, Chief Executive Officer Wullar Manasbal Development Authority has in a very casual manner replied to the above referred communication of this Department stating therein that speaking order is not required to be issued in the instant case neither Hon'ble Court has asked for same. The simple issue involved in the matter is to liquidate the liability of the contractor which has been established as genuine by the

committee constituted vide order No. CEO/WMDA/212-19 dated 14.08.2021 who has submitted its report vide No. AEE/WMDA/115 dated 26.08.2021. Chief Executive Officer, Wullar Manasbal Development Authority has also filed a compliance report before the Hon'ble High Court wherein an admission with respect to the of disputed liability/ actual claim of the petitioner for an Rs.8,70,948/- has been admitted by the CEO without any authorization of the Government/ competent authority i.e., Administrative Department.

Whereas, the instant issue was further examined in the Department it was found that the report of the committee constituted by Chief Executive Officer, Wallur Manasbal Development Authority is not acceptable/ tenable under law as the said committee has not been constituted by the prior approval of the Government/ Administrative Department who has to actually bear the Financial Liability accrued/ created by the Chief Executive Officer, Wullar Manasbal Development Authority by its dehors of rules or otherwise.

Whereas, during the preliminary examination of the instant case, it appears that Chief Executive Officer, Wullar Manasbal Development Authority issued the tender, which is the subject matter of writ petition without obtaining Administrative Approval, Technical Sanction and without ascertaining availability of funds. It has also been found that no actual handover takeover of the allotted work has been made between the contractor and Chief Executive Officer, Wullar Manasbal Development Authority as such it is apparent the true and just calculation of the due outstanding has not been made by the Chief Executive Officer, Wullar Manasbal Development Authority and the same is the matter of enquiry.

Now in compliance with the directions of the Hon'ble High Court passed vide order dated 18.02.2021 in GWP No. 555/ 2017 sanction is hereby accorded to the constitution of fact finding committee to ascertain the actual claim/ liability of the petitioner on account of execution of works in question. The committee shall further enquire as to how the work was allotted without ascertaining availability of funds and how was the commitment made before the Hon'ble High Court admitting the liability of the petitioner without consulting the competent authority and without establishing the due outstanding in a just and fair manner:-

1. Director Tourism, Kashmir.
2. Joint Director, Tourism, Kashmir.

(Chairman)
(Member)

3. Executive Engineer, Tourism, Kashmir

(Member)

The committee shall submit its report within a period of four weeks from the date of issuance of this order and the committee can co-opt any other officer/official.

By Order of the Government of Jammu and Kashmir.

Sd/-


**(Sarmad Hafeez) IAS,
Secretary to Government,
Tourism Department.**

No: TSM/Legal/40/2021-E-41399

Dated: 17-12-2021

Copy to:-

1. Joint Secretary (J&K), Ministry of Home Affairs, Government of India.
2. Secretary to Government, General Administration Department.
3. Secretary to Government, Law, Justice & Parliamentary Affairs.
4. Director Tourism, Kashmir.
5. Joint Director, Tourism, Kashmir.
6. Mr. M.A. Chasho, Additional Advocate General, High Court of J&K.
7. Chief Executive Officer, Wullar Manasbal Development Authority.
8. Executive Engineer, Tourism Kashmir.
9. Private Secretary to Secretary to Government, Tourism Department for information.
10. Petitioner Gh. Hasan Wani for Information.
11. Govt. Order/Stock File (w.2.s.c).


**(Anu Sharma),
Under Secretary to the Government,
Tourism Department.**