

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

WP(C) No. 1962/2022

Reserved on: 31.07.2024
Pronounced on: 05.08.2024

M/S Cube Construction Engineering ...Petitioner(s)

Through :- Mr. Bhavesh Bhushan, Advocate
v/s

UT of J&K & Ors.Respondent (s)

Through :- Mr. Ravinder Gupta, AAG

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

1. Petitioner, a partnership firm, pursuant to e-NIT No. CEJ/PMGSY/474 of 2017-18 dated 30.10.2017, participated in the tendering process for the work namely "Construction and maintenance of road from Malwan Jagir to Abli Masri, Package No JK04-301, Phase-X, Stage II, Block Doda District Length 6.00 kms" and being the lowest bidder was allotted the aforesaid work vide Order No. CEJ/PMGSY/27614-23 dated 14.02.2018.

2. The case set up by the petitioner is that on completion of the aforesaid work, it raised its final bill (CC-8th) to the respondents for pending amount of Rs. 13.90 lacs duly approved by respondents after necessary tests on site. According to the petitioner, the exceeded work amounting to Rs.13.90 lacs, with respect to which a comparative statement showing excess over the allotted cost along with its estimate was prepared and approved by respondent No. 3-Executive Engineer,

PMGSY, Division and was submitted to respondent No. 2-Superintending Engineer on 23.10.2021. It is contention of the petitioner is that aforesaid work was completed by it without any complaint or deficiency, owing to which, Executive Engineer, PMGSY Division, Doda issued a completion certificate on 27.01.2021. According to the petitioner, the balance payment in question is outstanding against the respondents inspite of regular follow ups on its part.

3. It is further case of the petitioner that it filed a complaint dated 25.01.2022 in the J&K Government Grievance Cell for release of the aforesaid admitted liability. Respondent No. 3 submitted its reply to the aforesaid complaint of the petitioner on 01.02.2022 whereby excess work done by the petitioner came to be admitted but with the reason that payment could not be made due to internal approvals.

4. Grievance of the petitioner is that despite execution of the allotted work, within the prescribed period to the satisfaction of the respondents, respondents have withheld its admitted liability without any reason or justification.

5. Respondents are affront to the claim of the petitioner for the release of balance payment in question, primarily on the premise that the alleged excess work might have been done by the petitioner firm on its own free will but without any express written order from the competent authority. It is contention of the respondents that petitioner cannot claim the payment, for the excess work done by it without formal Administrative approval.

6. Heard arguments and perused the file.

7. Learned counsels for the parties have reiterated the grounds urged in their respective pleadings in the arguments. Learned counsel for the petitioner has relied upon a judgment dated 07.05.2022 passed by this Court in **Abdul Rashid Malik v. Union Territory of J&K and others; WP(C) No. 873/2021.**

8. This Court in **Abdul Rashid Malik** has held that it is not for the contractor to consider whether the Administrative approval, technical sanction and other formalities have been completed or not before undertaking any work, but it for the respondents to explain how these works were executed in the absence of necessary approval and sanction. It was also observed that contractor executing the work on behalf of the respondents undertakes the same on the firm belief that the work is being undertaken by him on the asking of respondents after its due approval and completion of all the formalities. The Co-ordinate Bench in the aforesaid case relying upon **M/s Surya Construction v. The State of UP in Civil Appeal No. 2610/2010 dated 02.05.2010** also clarified that State, while entering into a contract or agreement with private individuals, has to act in just, fair and reasonable manner as the contractual obligations of the State coexist with the constitutional obligations.

9. If the stand of the respondents is carefully glanced over, it is evident that respondents have neither denied the execution of work done by the petitioner over and above the allotted work, nor their liability to make the payment. There is nothing in the stand of the respondents to indicate that petitioner firm has not executed the allotted work to its satisfaction or within the prescribed time line. It is also admitted position of fact that completion certification after the execution of the work also came to be issued by the respondents in favour of the petitioner firm. The final bill raised by the petitioner firm amounting to Rs.13.90 is also not in dispute. The only exception of the respondents to the claim of the petitioner is that it has executed the work over and above the allotted work on its own, without express Administrative approval. It is contention of the respondents that application for accord of Administrative approval, for excess work down by the petitioner creating liability, has been submitted to the higher authorities and as

soon as funds are placed at the disposal of respondent No. 3 by the higher authorities, payment shall be released in favour of the petitioner.

10. In the circumstances, respondents cannot escape the liability to make the balance payment for the work, which is admitted to have been executed by the petitioner firm in the guise of the Administrative approval.

11. It is evident from the very stand taken by the respondents that admitted liability of the petitioner has been withheld without any lawful justification. The stand of the respondents, besides being arbitrary, unreasonable and unfair is unconstitutional. Hence, the present petition is allowed and respondents are directed to release admitted liability of the petitioner firm amounting to Rs. 13.90 lacs along with interest @ 6% per annum till its realization within a period of six weeks from the date copy of this order is made available to them.

12. With the aforesaid direction, the present petition stands disposed of.

JAMMU
05.08.2024
(Paramjeet)

(RAJESH SEKHRI)
JUDGE

