

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

WP(C) No.1072/2022  
CM No.3641/2023

M/S FAROOQ AHMAD MIR

... Petitioner(s)

Through: -Mr.Junaid Rashid, Advocate

Vs.

UT OF J&K AND ORS

...Respondent(s)

Through: -Mr.Ilyas Laway, GA

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER  
08.11.2023

CM No.3641/2023:

This is an application on behalf of respondent No.4 seeking permission to place the reply on record of the writ petition.

For the reasons stated in the application, the same is allowed and the reply filed by respondent No.4 is taken on record.

Application disposed of.

WP(C) No.1072/2022

1. The petitioner through the medium of instant writ petition has sought a direction upon the respondents to release the amount of Rs.55,71,345/- in his favour alongwith interest @ 15% per annum. According to the petitioner he is a registered AAY Class Contractor. It has been submitted that vide Order No.216/Agg/2017-18 dated 02/2018 issued by respondent No.4, the petitioner was authorized and directed to execute the work of improvement/upgradation of

Satellite Colony roads (phase II). The approximate cost of work was Rs.95,21,345/-. According to the petitioner he completed the aforesaid works within the stipulated time and raised the bills upon the respondents in the year 2017-2018. It has been submitted that out of an amount of Rs.95,21,345/- a sum of Rs.39,50,000/- has been released in favour of the petitioners but the balance amount of Rs.55,71,345 has not been released in his favour till date. It has been submitted that works executed by the petitioner have been duly checked and attested by the concerned Executive Engineer and despite this, the outstanding amount of the petitioner has not been released in his favour.

2. Respondent No.4 in his reply to the writ petition has admitted that the petitioner has executed the work to the tune of Rs.95,21,345/- and in this regard a bill has been submitted by the Assistant Executive Engineer Sub Division Charisharief vide Sub Division Office No.SD/Ch-Sh/43 dated 19.11.2018. It has been submitted that the work has been executed by the petitioner in the financial year 2017-18 and the liability statement has been sent to the higher authorities in terms of communication dated 16.11.2020. According to respondent No.4 the amount of Rs.39,50,000/- stands released in favour of the petitioner but the balance amount has not been released in his favour because work was allotted to him without observing the codal formalities like tendering etc. It has been further submitted that the balance amount due to the petitioner could not be

paid to him as the requisite funds were not released by the competent authority.

3. I have heard learned counsel for the parties and perused the record of the case.

4. It is not in dispute that the petitioner has executed the works cost of which comes to Rs.95,21,345/- It is also not in dispute that the work was executed by the petitioner on the basis of an order issued by respondent No.4. A portion of the amount of the liability has been released by the respondents in favour of the petitioner but an amount of Rs.55,71,345 has remained outstanding.

5. The stand of the respondents is that the codal formalities were not adhered to while allotting work to the petitioner and the requisite funds have not been allotted so that the same could be released in favour of the petitioner.

6. The issue whether or not the codal formalities were adhered to while allotting contract to the petitioner cannot disentitle the petitioner of his dues. The adherence to codal formalities is an internal mechanism of the respondents and once they have allotted a contract in favour of the petitioner and the work has been executed by him to their satisfaction, they are bound to release the payment in his favour for the work done. If the officers concerned have not adhered to the codal formalities, the respondents are at liberty to take action against them but in no case they can withhold the payment of the petitioner who has executed the work to the satisfaction of the respondents and has incurred expenses out of his own pocket. The

non-availability of funds with the respondents cannot offer them a ground to deny payment to the petitioner. If the funds were not available then respondents should not have allotted the work in favour of the petitioner. Once the work has been allotted and same has been executed by the petitioner, there is no justification for the respondents to deny his dues on flimsy grounds.

7. For the foregoing reasons the writ petition is **allowed** and the respondents are directed to release a sum of Rs.55,71,345 in favour of the petitioner within a period of two months from the date a copy of this order is made available to the respondents. In case the aforesaid amount is not released in favour of the petitioner within a period of two months from today, the aforesaid amount shall carry interest @12% per annum from the date of filing of this writ petition i.e, 21.05.2022 till its realization.

(SANJAY DHAR)  
JUDGE

SRINAGAR  
08.11.2023  
*Sarveeda Nissar*

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