

(2024) 05 J&K CK 0042

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 1890 Of 2023, Civil Miscellaneous No. 4389 Of 2023

Rehmatullah Naik

APPELLANT

Vs

U.T. Of Jammu And Kashmir And Others

RESPONDENT

Date of Decision : 09-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2024) 05 J&K CK 0042

Hon'ble Judges : Wasim Sadiq Nargal, J

Bench : Single Bench

Advocate : Ravinder Gupta, Pallvi Sharma, Irfan Khan

Final Decision : Allowed

Judgement

Wasim Sadiq Nargal, J

Brief Facts:

1. The petitioner, through the medium of the instant writ petition has prayed for the following reliefs:

“Certiorari

Quashing Govt. order No.215-PW(R&B) of 2022 dated 01.07.2022 issued by respondent no.1 where by the claim of the petitioner for release of admitted liability amounting to Rs.20.74 lacs has been rejected illegally arbitrarily and without any lawful justification.

Mandamus

(i) Commanding the respondents to release the outstanding admitted liability amounting to Rs. 20.74 lacs (Rupees Twenty Lac and Seventy Four Thousand only) in favour of the petitioner on account of work done with regard to work i.e. upgradation of Chacknarwah link road by way of providing and laying 25 mm

thick SDBC (Semi Dense Bituminous Concrete) over 50 mm thick Bituminous Macadam under improvement of City/Town roads.

(ii) Commanding the respondents to pay interest @9% per annum on account of delay from the date the same is due as per the judgment passed by the Hon?ble Apex Court.

(iii) Any other benefit to which this Hon?ble Court deems the petitioner entitled to may also be granted in favour of petitioner in the circumstances of the case.”

2. The petitioner, through the medium of the instant petition is aggrieved of the order impugned bearing No.215-PW(R&B) of 2022 dated 01.07.2022, whereby the claim of the petitioner seeking release of the outstanding admitted liability amounting to Rs.20.74 lakhs, has been rejected. The petitioner claims to be a registered A Class contractor and participated in various e-tendering process issued by respondent no.4 for upgradation of Chacknarwah link road by way of providing and laying 25 mm thick SDBC (Semi Dense Bituminous Concrete) over 50 mm thick Bituminous Macadam under improvement of City/Town roads and the petitioner being the lowest tenderer vide allotment No.5574-78 dated 14.07.2016 was allotted the aforesaid work for allotted amount of Rs.29.62 lacs.

3. The specific case of the petitioner is that since the cost of the aforesaid contract was increased and, as such, the respondent no.4 submitted the case of the petitioner to respondent no.3 for entering into supplementary agreement with the petitioner to the extent of increased quantum and, accordingly, vide No. SED/R&B/6486-87 dated 30.08.2017 the respondent no.3 accorded approval to respondent no.4 for executing the supplementary agreement with the petitioner.

4. Accordingly, vide No.104 dated 09/2017 the supplementary agreement was executed and the cost of the work was fixed at Rs. 69.26 lacs instead of Rs.29.62 lacs.

5. The further case of the petitioner is that the petitioner has completed the aforesaid work satisfactorily within time and the respondent no.4 after verifying the work issued the requisite bill. As per the pleadings, it is apparently clear that a total amount which was claimed was Rs.69,65,589/-out of which Rs.48,92,000/- has already paid to the petitioner out of the revised enhanced liability. However, balance amount of Rs.20,73,589/- was not released till date in favour of the petitioner due to paucity of funds.

6. The petitioner was under a legitimate expectation that the outstanding liability amount to Rs.20,73,589/- will be released in his favour but despite the lapse of considerable time, the needful was not done by the respondents and the petitioner repeatedly approached the respondents seeking release of the balance amount.

7. The record further reveals that in pursuance to the representation filed by the petitioner, the respondent no.4 vide communication dated 03.08.2021 requested the respondent no.3 to release the funds to the tune of Rs.20.74 lacs with a view

to enable the release of pending liability of the petitioner. Thus, the record reveals that the claim of the petitioner has been specifically admitted by the respondents in the aforesaid communication.

8. The petitioner has also submitted the work done claim to the tune of Rs.69.66 lacs, out of which, Rs.48.92 lacs has already been released and an amount of Rs.20.74 lacs was pending due to non availability of the funds in spite of the fact that the demand has been raised well in time by the petitioner. Since the pending liability of the petitioner was not released in spite of the repeated representations and the admission on the part of the respondents, the petitioner was constrained to file a writ petition in the earlier round of litigation before this court which was registered as WP(C) No. 2198/2021, whereby, direction was sought against the respondents to release the balance amount in favour of the petitioner along with interest.

9. The aforesaid writ petition came to be disposed of on 08.10.2021 by a Coordinate Bench of this court by directing the respondents to consider the claim of the petitioner as per his entitlement for the release of the outstanding admissible amount in favour of the petitioner within a period of six weeks from the date copy of the said order was made available to the respondents. For facility of reference, the said order is reproduced as under:

1. The petitioner vide e-NIT No.11 of 2016 dated 09.06.2016 was allotted a contract for upgradation of road by way of providing and laying 25mm thick SDBC (Semi dense bituminous concrete) over 50mm thick bituminous macadam under improvement of City/town roads. The respondent No.3 in view of the exigency which had arisen approved and directed the respondent No.4 to enter into a supplementary agreement with the petitioner for increased quantum of work on the same rates, terms and conditions laid for the original contract vide his communication dated 30.08.2017. This work was duly executed by the petitioner.

2. The short grievance projected by the petitioner is that after completion of the work satisfactorily and after due verification of the same, the petitioner raised bill for total amount of work executed, i.e. Rs.69,65,589/- out of which the respondents have paid only Rs.48,92,000/- and an amount of Rs.20,73,589/- is yet to be released in his favour. It is urged that as the respondents have admitted the liability as per their first and final bill but still the same has not been released to the petitioner. The petitioner has repeatedly approached the respondents for release of the same but of no avail. It is submitted that the petitioner has to disburse the amount to the labourers, engaged by him for the execution of the work as also to make payments for the construction material and machinery utilized for the said works and since the amount has not been released by the respondents, the same is causing a grave hardship to the petitioner.

3. The respondent No.4 vide his communication dated 03.08.2021 has admitted

the pending liability of Rs.20.74 lacs but stated that due to non availability of funds, amount could not be released and requested for release of funds from the respondent No.3 to clear the pending liability.

4. In *M/s Surya Construction Vs. The State of U.P.* in Civil Appeal No.2610/2010 dated 02.05.2010 it is held and well settled that even in the realm of contract, this Court can interfere under Article 226 of the Constitution of India as held in *ABL International Ltd. and Another V. Export Credit Guarantee Corporation of India Ltd. and Others* (2004 (3) SCC 553). The work being completed long back and there being no dispute on amount and payment being admitted by the respondents, same cannot be withheld and denied when the work stands executed.

5. Learned counsel for the petitioner submits that the petitioner would be satisfied, if the respondents are directed to consider release of the claim of the petitioner for admitted liability within some time frame.

6. In view of the aforesaid, this petition is disposed of with a direction to the respondents to consider the claim of the petitioner as per his entitlement for release of the outstanding admissible amount in favour of the petitioner within a period of six weeks from the date a copy of this order is made available to the respondents.

10. The further case of the petitioner is that the aforesaid judgment dated 08.10.2021 was duly served upon the respondents but the respondents did not comply the same within the time granted by the court, which constrained the petitioner to knock the doors of the court yet again by way of filing contempt petition, which was registered as CCP(S) No. 13/2022.

11. It is the specific case of the petitioner that in the aforesaid contempt petition, a stand has been taken by the respondents in the detailed statement of facts that since the matter has already been taken up with the higher authorities by the respondent no.4, therefore, it is expected that some more time may be consumed to examine in considering the case of the petitioner as per his entitlement for release of the outstanding admissible amount in favour of the petitioner. For the facility of reference, relevant para of statement of facts filed by the respondent no.1 to 4 is reproduced as under:

"6. That the humble respondents respectfully submits that the respondent no.4 immediately after the receipt of the order dated 08.10.2021 took up the matter with the higher authorities vide communication No.17840-44 dated 04.12.2021 and thereafter vide No.24330-33 dated 10.02.2022. Copies of the communications dated 04.12.2021 and 10.02.2022 are enclosed as annexure R-1 colly. Since the matter has been taken up with the higher authorities by the respondent no.4, therefore, it is expected that some more time may be consumed to examine and consider the case of the petitioner as per his entitlement for release of outstanding admissible amount in favour of the petitioner."

12. Thus, from the record, it is apparently clear that there was no denial on the part of the respondents with regard to the claim of the petitioner for balance amount to the tune of Rs.20,73,509/-.

13. The further fact of the matter is that another set of statement of facts was filed on 09.07.2022 by the Public Works Department, who was not a party respondent and yet the statement of facts was filed and along with the statement of facts the respondents have placed on record the order dated 01.07.2022, which is impugned in the present petition, whereby, contrary to the earlier stand taken by the respondents in the statement of facts, the respondents rejected the claim of the petitioner and in the aforesaid backdrop, the proceedings in the instant contempt petition were closed on 07.06.2023 granting opportunity to the petitioner to seek appropriate remedy. This is how, the present writ petition has been filed assailing the aforesaid order dated 01.07.2022.

Arguments on behalf of Petitioner:

14. Mr. Irfan Khan, learned counsel appearing on behalf of the petitioner has vehemently argued that the order impugned cannot sustain the test of law as the same has been issued in total non application of mind on the part of the respondents by virtue of which claim of the petitioner has been rejected.

15. From a bare perusal of the order impugned, the only ground which has been urged against the petitioner in rejecting his case was that since the petitioner has executed the work beyond the admissible amount of Rs.29.62 lakhs, which is allegedly in violation of the General Financial Rules as such, he is not entitled for the release of the balance amount. It has also been alleged that the petitioner contractor has connived with the officials and has executed the work which is more than the allotted cost, which is against the General Financial Rules.

16. The order of rejection further reveals that Ant Corruption Bureau has recommended for initiation of regular departmental action against the Executive Engineer for the alleged violation and, in the aforesaid backdrop, the claim of the petitioner stood rejected being devoid of any merit.

17. The learned counsel appearing on behalf of the petitioner further submits that the cost of the work allotted, was increased by virtue of a supplementary agreement, which has been placed on record along with instant petition by the competent authority and this aspect of the matter has been admitted by the respondents all along and even the statement of facts was filed on behalf of the respondents, wherein, the respondents have not denied the claim of the petitioner, rather the respondents have prayed for some more time for the release of the balance amount and contrary to the earlier stand taken by the respondents in the statement of facts, the respondents have taken a U-turn and rejected the claim of the petitioner on the ground that the same is in violation of the General Financial Rules, when admittedly, the supplementary agreement was executed by the competent authority and the work was executed within timeframe by the petitioner.

18. It is not so, even the respondents after having released an amount of Rs.48.92 lakhs i.e. beyond the allotted cost, have raised this issue in the year 2022 by virtue of the order impugned with a view to frustrate the claim of the petitioner who has since executed the work. The learned counsel further submits that respondent no.3 has accorded formal approval to respondent no.4 for executing the supplementary agreement with the petitioner and, accordingly, vide order No.104 dated 09/2017, the supplementary agreement was executed which clearly prescribes that the approximate cost of the work shall be Rs.69.26 lakhs instead of Rs.29.62 lakhs and this aspect of the matter has not been given any weightage by the respondents while issuing the order impugned.

19. The learned counsel further submits that the petitioner has duly executed the work pursuant to the valid allotment order followed by the supplementary agreement duly approved by the competent authority and thus, the respondents are under a legal obligation qua the petitioner to have released the payment in his favour. Even an amount of Rs.48.92 lakhs, out of the enhanced liability, has been released in favour of the petitioner on the strength of the supplementary agreement and after releasing the extended and enhanced liability, the respondents have issued order impugned by rejecting his claim to receive the balance amount of Rs.20.74 lakhs without any justifiable cause.

Arguments on behalf of Respondents:

20. Per contra, time was granted to the respondents to file counter affidavit as the matter stands admitted on 26.07.2023. The counter affidavit was not filed within timeframe in spite of granting opportunity by this court and accordingly, last and final opportunity was granted vide order dated 28.12.2023 and yet, the counter was not filed. In the aforesaid backdrop, the court was constrained to close the right of the respondents to file the counter affidavit vide order dated 27.03.2024 and the matter was directed to be listed for hearing. This is how the matter has been heard at length, today.

21. However, Mr. Ravinder Gupta, learned AAG was granted time to assist the court in the light of the factual averments. The learned counsel has argued that, the claim of the petitioner is time barred and thus the writ petition is stale and is not maintainable in the eyes of law and liable to be dismissed out rightly on the ground of limitation.

22. The learned counsel appearing on behalf of the respondents, has drawn the attention of the court to the allotment order dated 14.07.2016 and he has specifically referred to Clause (3) of the aforesaid allotment order, a perusal whereof, reveals thus 'The date of start of the work shall be reckoned from 7th day from the date of issue of the allotment letter and the work be completed within a period of 01 month as sanctioned in the NIT'.

23. Learned counsel has further referred to the supplementary agreement, which has been placed on record by the petitioner, a perusal of Sub Clause (iii) reveals that the work will have to be completed on 03.09.2016 instead of 19.08.2016 in

terms of the aforesaid clause. Lastly, the learned counsel appearing on behalf of the respondents has referred to the communication dated 03.08.2021, a perusal whereof, reveals that the fact that an amount of Rs.20.74 lakhs was pending against the petitioner was made known to the petitioner in the year 2021 and yet, the petitioner slept over the matter and did not agitate the cause within timeframe and, thus, the instant writ petition is barred by delay and laches and is not maintainable.

Rejoinder to the objections:

24. However, learned counsel appearing on behalf of the petitioner has countered the objection raised by Mr. Ravinder Gupta, AAG by projecting that the petitioner has never slept over the issue and rather has been filing the representations from time to time for release of his pending claim. He further submits that whatever was required under law, on the part of the petitioner, was done and, yet, the respondents did not release the balance amount in favour of the petitioner and adopted dilly dallying tactics with a view to defeat the rights of the petitioner.

25. Mr. Irfan Kahn, learned counsel appearing on behalf of the petitioner, with a view to substantiate his argument, has drawn the attention of the court that the petitioner has filed a writ petition before this court, by way of first round of litigation, in the year 2021, which was allowed by directing the respondents to consider the claim of the petitioner as per his entitlement for the release of the outstanding admissible amount in favour of the petitioner within a period of six weeks. Since, the aforesaid direction was not complied with, the contempt petition, was preferred and the respondents never objected to the entitlement of the petitioner to the claim of the balance amount, rather prayed for some more time for according consideration to the case of the petitioner in conformity with the direction passed by this court which has since assumed finality.

26. There was no whisper in the aforesaid statement of facts, wherein, the respondents have even objected the entitlement of the petitioner for the release of the balance amount and after having accepted the entitlement of the petitioner, the respondents, with a view to defeat the rights of the petitioner, have taken altogether a contrary stand in the order impugned, whereby, the case of the petitioner was rejected, on the ground that the same being in violation of General Financial Rules which is not sustainable in the eyes of law.

27. Learned counsel appearing on behalf of the petitioner, with a view to counter the stand taken by the respondents, has argued that once, the supplementary agreement has been executed by the competent authority strictly under rule, which was in vogue, at that relevant point of time, it does not lie in the mouth of the respondents to agitate now, at this belated stage that the same was violative of the General Financial Rules, more particularly, when the work has since been executed by the contractor (petitioner herein) well within time and no objection was ever raised against the petitioner for his entitlement to receive the balance

amount all along these years i.e. right from the day when the allotment of the contract was made in favour of the petitioner in 2016 till 2022, when, all of a sudden, the respondents have taken a contrary stand by virtue of the order impugned.

28. No such objection with regard to the entitlement of the petitioner to claim the outstanding amount, in pursuance to the execution of the supplementary agreement, was ever raised by the respondents from 2016 till 2022. It appears from the record that the respondents, with a view to frustrate the order/judgment passed by this court, which has assumed finality and to defeat the rights of the petitioner, have taken a stand, which is contrary to record and the same is not permissible, at this belated stage, when the work has since been executed.

29. Heard learned counsel appearing on behalf of the parties at length and perused the record.

LEGAL ANALYSIS:

30. The core issue raised by the petitioner in the instant petition is the failure of the respondents to release of admitted balance liability amounting to Rs 20.74 lakhs in his favour against the work executed by him i.e. upgradation of Chacknarwah link road by way of providing and laying 25 mm thick SDBC (Semi Dense Bituminous Concrete) over 50 mm thick Bituminous macadam under improvement of City/Town roads.

31. Insofar as the case of the petitioner is concerned it is emphatically clear that the cost of the aforesaid contract was increased by virtue of supplementary agreement and, as such, the respondent no.4 submitted the case of the petitioner to respondent no.3 for extent of increase quantum and, accordingly, vide order no. SED/R&B/6486-87 dated 30.08.2017, the respondent no.3 accorded approval to respondent no.4 for executing the supplementary agreement with the petitioner. Accordingly, vide no.104 dated 09/2017, the supplementary agreement was executed and the cost of the work was fixed at Rs 69.26 lacs instead of Rs.29.62 lacs.

32. It is pertinent to mention here in that the cost of the work allotted was increased by virtue of supplementary agreement by the competent authority, which has been placed on record along with instant petition and this aspect of the matter has been admitted by the respondents all along and even the statement of facts was filed on behalf of the respondents wherein the respondents have not denied the claim of the petitioner, rather the respondents have prayed for some more time for release of the balance amount.

33. In the similar facts and circumstances of the case, the co-ordinate bench of this court in OWP No. 1008/2016 titled Zahoor Ahmed Rather and ors V/S Srinagar, Municipal Co-orporation and ors., has been pleased to hold as under:

13. The work as well as the additional work stands admitted, the respondents

have also not denied the fact that the additional works stood verified by the officer of the respondent and revised detailed estimate by the executive engineer, Left River Works, Division SMC vide communication No. SMC/EELRWD/360 dated 22.06.2015 to the Joint Commissioner (Works), Srinagar Municipal Corporation, has sought approval for balance amount. This communication which is on record reads as under:

"This office has issued allotment vide reference mentioned above for an amount of Rs. 12.93 lacs against the Advertised cost of Rs 16.90 Lacs , resulting thereby a saving of Rs. 3.97 Lacs, As this work was in progress and during execution , the worthy Commissioner, SMC has directed to execute the additional item of work at same site which include wood carving, khatumband, patells etc and as per the order of Commissioner, SMC adhered to all these items executed through the same agency on reasonable rates as reported by the AEE concerned.

Accordingly in the view of the directions/orders, the revised estimate has been framed/forwarded by the AEE concerned for the above mentioned proposed works fan an amount of Rs. 44.74 Lacs including already allotted cost.

It is as such, requested that necessary approval be granted for the balance amount of Rs. 31.81 Lacs, through the same agency as per the terms and conditions of the allotment orders referred above.

16. In view of the aforesaid, this petition is allowed. The respondents are, accordingly, directed to release the admitted amount of Rs. 31.81 Lacs in favour of the petitioner within a period of two months from the date a copy of this order along with writ petition is made available to the respondents by the petitioners, in the event of non-payment of the admitted amount within the aforesaid time, the same will be payable with an interest @6% per annum."

34. The judgment passed by a co-ordinate bench mentioned supra is fully applicable to the facts and circumstances of the case in hand.

35. Since, there were a series of communications between the parties, which have not been denied by the respondents and, accordingly, it can safely be concluded that there was a binding contract between the parties and the respondents cannot escape from their liability of making the payment to the petitioner arising out of the said binding contract. In this regard, I am fortified by the judgment of the Hon'ble Apex Court in case titled Rickmers Verwaltung GMBH v. Indian Oil Corporation Ltd., reported in (1999) 1 SCC 1, in which it has been held as under:

"An agreement, even if not signed by the parties, can be spelt out from correspondence exchanged between the parties. It is the duty of the court to construe correspondence with a view to arrive at a conclusion whether there was any meeting of mind between the parties, which could create a binding contract between them but the court is not empowered to create a contract for the parties by going outside the clear language used in the correspondence, except insofar

as there are some appropriate implications of law to be drawn. Unless from the correspondence, it can unequivocally and clearly emerge that the parties were ad idem to the terms, it cannot be said that an agreement had come into existence between them through correspondence. The court is required to review what the parties wrote and how they acted and from that material to infer whether the intention as expressed in the correspondence was to bring into existence a mutually binding contract. The intention of the parties is to be gathered only from the expressions used in the correspondence and the meaning it conveys and in case it shows that there had been meeting of mind between the parties and they had actually reached an agreement upon all material terms, then and then alone can it be said that a binding contract was capable of being spelt out from the correspondence."

36. Insofar as the release of balance amount of Rs.20.74 lacs is concerned, the respondents have taken a U-turn and rejected the claim of the petitioner on the ground that the same is in violation of the general Financial Rules, when admittedly the supplementary agreement was executed by the competent authority and the work was executed within time by the petitioner.

37. In the similar facts, where the objections of State claim on the ground of delay and laches is concerned, the Co-ordinate bench of this Hon'ble court in OWP No.631/2016 titled Abdul Hafiz Wani v/s State Of J & K and Others decided on 02.03.2022 has rejected the objection of respondents in the following manner:

"10. Regarding plea of Mr. Ravinder Gupta, learned AAG that this petition should be thrown out being belated is also not tenable. The petitioner has been pursuing with the respondents from time to time and the communication of the Chief Planning Officer, Doda dated 28.12.2015 and communication of the Executive Engineer concerned dated 01.03.2014 addressed to the District Development Commissioner, Doda, which are appended with the writ petition as Annexure-H clearly indicate that the liability towards the petitioner for the works executed by him has been acknowledged and if that be the position, neither this petition would be hit by delay and laches nor the suit, if it had been brought by the petitioner, would have been barred by limitation.

11. For the foregoing reasons, the writ petition is allowed and the petitioner is held entitled to the payment of his balance dues amounting to Rs.5.76 lac along with interest of 6% per annum from the date of the payment has become due i.e. January 2013. This is so, as all the bills were raised in the year 2012, they should have been, in the ordinary course of things, cleared by the year 2012. "

38. The jurisdiction of the High Court while exercising the powers under Article 226 of the Constitution of India is not restricted only to the review of the administrative actions and executive decisions of the State and in the light of the extended applicability of the "doctrine of promissory estoppels" of which the whole object is to see that the Government strikes to its promise and abides by it.

39. I am supported by the law laid down in this regard in case titled Tapri Oil

Industries and Anr. etc. v. State of Maharashtra and Ors., reported in AIR 1984 Bom. 161, wherein it has been held as under:

"The jurisdiction of the High Court under Article 226 of the Constitution is not restricted only to the review of the administrative actions and executive decisions of the State and in the light of the extended applicability of the doctrine of promissory estoppel of which the whole object is to see that the Government strikes to its promise and abides by it."

40. Further, the Court held that:

"The law may, therefore, now be taken to be sensed as a result of this decision (Anglo Afghan Agencies Case) that where the Government makes a promise knowing or intending that it would be acted on by the promisee and in fact the promisee acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government."

41. The apex court in a similar Case titled Bhoruka Power Corporation Ltd. V. State of Haryana and ors , reported in AIR 2000 P&H 245, held as under:

"It is a settled proposition of the law that after having laid down the standard for the judging its conduct, a public authority cannot deviate from the said standards"

42. It is to note that since the right to file the counter affidavit has been closed and as per law of the pleadings, the averments pleaded in the writ petition have not been controverted, so the pleadings are admitted to be true and respondents cannot take a stand which is contrary to record and not denied specifically.

43. The learned counsel for respondents has drawn the attention of the court to the allotment order dated 14.07.2016 and he specifically referred Clause 3 of the aforesaid allotment order, a perusal whereof , reveals that 'the date start of the work shall be reckoned from 7th day from the date of issue to the allotment letter and the work be completed within a period of one month as sanctioned in NIT. However, as per the statement of facts filed by the respondents, there was no whisper, wherein, the respondents have even objected the entitlement of the petitioner for the release of the balance amount and after having accepted the entitlement of the petitioner, the respondents, with a view to defeat the right of the petitioner, have taken altogether a contrary stand in the order impugned, whereby, the case of the petitioner was rejected on the ground that the same being in violation of General Financial Rules. It is pertinent to mention herein that once, the respondents, have already released the part payment out of the enhanced liabilities, on the strength of supplementary affidavit then, it does not lie in the mouth of the respondents to agitate, at this belated stage that the petitioner is not entitled to the balanced amount out of the said enhanced liability just by the transfer of the officer. In one of the cases WP(C) No. 1072/2022 titled M/S Farooq ahmad Mir V/s J & K & Ors. decided on 08.11.2023, this Court has

held as under:

"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 the 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."

44. This court, in case titled Mukhtar Ahmad Andrabi v. UT of J&K and Others passed in OWP No.519/2019 decided on 10.03.2023, involving similar facts, as has been emerged in the present case, has opined in para 34 as under:

"34. Thus on a careful analysis of the record and the stand taken by the parties, it can safely be concluded that the petitioner was allotted work by the respondents on the directions of competent authority i.e., Commissioner, Srinagar Municipal Corporation and the petitioner in compliance to directions issued, executed the work within a time frame and accordingly, the respondents are under legal obligation to release the admitted liability/payment in favour of petitioner to the tune of Rs.40.71 lacs in respect of construction of 2 No. of fountains at Hyderpora Crossing Srinagar (which has already been verified/ admitted by the respondents), within a period of four weeks from today and in case, if the payment is not released within the aforesaid period the petitioner will be held entitled to the interest @ 6% from the date the said payment was due and not released by the respondents. In light of the aforesaid discussions, the present writ petition is allowed in the manner as indicated hereinabove."

Conclusion:

45. I, hereby, conclude that law does not put any bar or any fetters on the High Court in respect of exercising its writ jurisdiction in contractual matters. The

judgments, which have been cited hereinabove, clearly prove that there has been paradigm shift in the approach of the Courts in exercise of its Writ Jurisdiction in the matters of contractual disputes with State and its authorities.

46. For the foregoing reasons, and what has been discussed hereinabove, coupled with settled legal position, the writ petition is allowed and the respondents are directed to release a sum of Rs.20.74 lakhs in favour of the petitioner, within a period of six weeks, from the date a copy of this order is made available to the respondents.

47. In case, the aforesaid amount is not released in favour of the petitioner within the aforesaid stipulated time period, in that eventuality, the outstanding amount, along with interest @9%, shall be payable to the petitioner by the respondents, from the date of filing of the writ petition i.e. 24.07.2023 and the interest component will be payable by the respondent/officer on whose count such delay occurs.

48. The writ petition is allowed in the manner indicated above.