

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

WP(C) No.3196/2023
CM No.7742/2023

1. M/s Tariq Ahmed Contractor
Through its Proprietor Tariq Ahmed Age
27 years S/o Sh. Basher Ahmed R/o Loran
District Poonch
 2. Tariq Ahmed Age 27 years
S/o Sh. Bashir Ahmed
R/o Loran District Poonch
- Petitioner(s)

Through: Mr. Ajay Bakshi, Advocate

Vs

1. Union Territory of J&K
Through its Commissioner-Secretary,
Power Development Department at Civil
Secretariat, Jammu/Srinagar
 2. Chief Engineer
Power Development Department
District Doda
- Official Respondent(s)
3. Shalaka Infra Tech India Private Limited
Sector E- Sainik Colony, Jammu
 4. Everest Infra Ventures Pvt. Ltd.
Sector-E Sainik Colony, Jammu
- Private Respondent(s)

Through: Mr. Adarsh Bhagat, GA

Coram: HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

ORDER

27.12.2023

1. In the instant petition, the petitioners herein are seeking a writ of mandamus directing upon the official respondent Nos. 1 and 2 not to release the admitted amount of Rs.34,99,635/- in favour of respondent Nos. 3 and 4 with a further direction to respondent Nos. 1 and 2 to release the amount of

Rs.34,99,635/- in favour of the petitioners for the work which has been executed by the petitioners in view of the allotment order issued by respondent No.4.

2. It is stated that respondent No.1 had invited tender for the construction of 22/11 KV substandard, 33 KV lines along with associated lines and related works on turnkey basis in Doda district under RGGVY, DDUGJY and PMDP schemes. The tender was allotted to respondent No.3 being the lowest bidder and after completing the requisite formalities, formal allotment order was issued in favour of respondent No.3 as principal contractor. It is further stated that respondent No.3 had further awarded the contract to respondent No.4, who further allotted the same to the petitioners for execution. It is stated that as per the terms and conditions of the allotment order issued by respondent No.4 on behalf of the principal contractor i.e. respondent No.3, the work had to be executed by the petitioners with specifications given by respondent No.2 being the principal employer. It is stated that the petitioners had completed the work as per the terms of the agreement and execution process report was also submitted to the project office and the same was closely monitored by respondent No.4. The petitioners state that they had raised the invoices of the work executed with respondent No.4, but the same is withheld by respondent No.4. According to the petitioners, the payment should be made by respondent No.4 in the following manner:-

“90% of the invoice rate shall be released within 45 days from the successful election Commission and testing of work and submission of JMC signed and approved by the employer.”

3. The petitioners are stated to have made representation to respondent No.4 for release of the bills raised by the petitioners but same has not been released despite the fact that payment stood released by respondent Nos. and 1 and 2 in

favour of respondent Nos.3 and 4. The petitioners are also stated to have requested respondent No.2 not to release the rest of the payment in favour of respondent No.3 but the official respondents are in the process of releasing the payment in favour of respondent Nos.3 & 4 without verifying the fact that money is to be released in favour of the petitioners, who have executed the work at site in accordance with the terms and conditions of the tender notice issued by the official respondents. It is submitted that though there is no privity of contract between the petitioners and respondent No.1, as per Section 70 of the Contract Act but the petitioners are entitled to the protection under Article 226 of the Constitution in terms of the agreement entered between respondent Nos.3 and 4 and the petitioners which was made integral part of the allotment order issued by respondent No.4 in favour of the petitioner.

4. Mr. Amit Gupta, learned AAG appearing for the official respondents states that there is no privity of contract between the official respondents and the petitioners, as such, instant petition is not maintainable and the petitioners should have approached the appropriate forum.

5. Be that as it may, the instant petition is not maintainable, as there is no privity of contract between the UT Government and the petitioners. The allotment of work initially was made in favour of respondent No.3, who in turn awarded the same to respondent No.4 and on the basis of internal arrangement/agreement between respondent No.4 and the petitioners, the work was executed by the petitioners. Moreover, the petitioners cannot approach this Court with a prayer that respondent Nos. 1 and 2 shall not release the admitted amount in favour of respondent No.3 and 4, who were allotted the contract by the government when as per the petitioners payment has already been released by respondent Nos. 1 and 2 in favour of respondent Nos. 3 and 4.

6. In view of the above, the instant writ petition deserves to be dismissed being devoid of any merit and is dismissed accordingly. However, the petitioners shall be at liberty to approach respondent No.1 by filing comprehensive representation, who shall take decision on the same within a period of four weeks from the date of receipt of the representation.

(Moksha Khajuria Kazmi)
Judge

Jammu
27.12.2023
Vinod, PS

Whether the order is reportable: Yes/No

