

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

**Case:-WP(C) No. 3222/2023
CM No. 7794/2023**

**Mohd. Arshid, Age 43 years,
S/o Sh. Bashir Ahmed,
R/o Dullangal, Block Duggan,
Tehsul Bani, District Kathua.**

..... Petitioner(s)

Through: Mr. S.S. Ahmed, Advocate.
Mr. Zulkernain Choudary, Advocate.
Mr. Sayed Majid Shah, Advocate.

Vs

- 1. UT of J&K Th.
Commissioner/Secretary to Govt.,
PWD (R&B) Department, Civil
Secretariat, Jammu;**
- 2. The Director,
Sheep Husbandry, Jammu;**
- 3. The Executive Engineer,
Horticulture (P&M),
Division Jammu;**
- 4. The Executive Engineer,
Horticulture (P&M),
Division Jammu;**
- 5. The Executive Engineer,
PWD (R&B), Division Basohli.**

..... Respondent(s)

Through: Ms. Palvi Sharma, Advocate vice
Mr. Ravinder Gupta, AAG.

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

**ORDER
27.12.2023**

1. Through the medium of instant petition, petitioner seeks the following reliefs:-

“1. **MANDAMUS:-**Commanding the respondents to release the payment of construction work of Veterinary Dispensary at Bhoond (Non-Snow Bound) executed by the petitioner to the tune of Rs. 15,83,345/- (Rupees Fifteen Lakh Eighty Three Thousand Three Hundred and Forty Five only) pursuant to e-NIT No. 13 of 2019-20 e-tendering Endst.

No.127-36 dated 20.08.2019 and allotment order No. EEHPM/E-Tender/Allot/2019-2020/91-96 dated 24.09.2019;

II. Commanding the respondents to decide the representation of the petitioner dated 20.12.2019, 10.08.2022 and 07.09.2022 by passing a reasoned/speaking order;

Prayer for grant of any other interim or final relief as may be deemed fit and appropriate in the facts and circumstances of the case.”

2. Briefly stated the facts of the case are that the petitioner is a Govt. Contractor registered with the Public Works Department (PWD) bearing No. SE/PWD/R&B-J/BEE/06/2018-19 and is fulfilling all his obligations with respect to the execution of development works allotted to him with utmost honesty and efficiency. The petitioner responded to the said e-NIT and quoted his rates for the proposed work, which was being issued by the respondent No. 4 for an estimated cost of Rs. 18.03 lacs (Advertised Cost) and he being the successful bidder was allotted the aforesaid work by the respondent No. 4 vide Allotment order bearing allotment order No. EEHPM/e-Tender/Allot/2019-2020/91-96 dated 24.09.2019. It is stated that after allotment of the aforementioned work, the petitioner started the work on spot from October, 2019 and after completion of the ground leveling work and foundation work (plinth) for the said building, he noticed that the land on the back side of the building was getting muddy/becoming wetty day by day and was perceiving a threat of landslide on the said land. The petitioner being cautious and vigilant towards any mis-happening/untoward incident in future, filed a representation to the respondent No. 3 on 01.10.2019, thereby highlighting the aforementioned problems with regard to the said land and discharged himself from any liability/ies arising out of any unfortunate incident in the future.

3. It is the case of the petitioner that the respondent No. 3 in response to the aforementioned representation made by the petitioner vide his reply No.

DSHJ/P&S/2019-20/348-50 dated 11.11.2019 requested the petitioner to do the needful so as to complete the construction work within some stipulated time frame. The petitioner thereafter, completed the allotted construction work upto slab level on 01.12.2019, as the same was reported by the concerned Assistant Executive Engineer, Sub-Division 1st HPM, Jammu and the bill (CC 1st), amounting to Rs. 8.02 lacs has been framed and forwarded to the respondent No. 3 vide letter No. EEHPM/2019-20/932-33 dated 17.02.2020 for uploading of bill and payment. It is stated that neither the amount of Rs. 8.02 lacs recorded in CC 1st/Bill form nor the whole payment allotted for the construction work, i.e., Rs. 15,83,345/- was released in favour of the petitioner, which, in turn, has financially drained and caused financial hardships to the petitioner.

4. It is the further case of the petitioner that even after the successful completion of allotted work in the year, 2023, the CDR bearing No. 724831 dated 09.09.2019, amounting to Rs. 36,060/- towards the earnest money drawn in the J&K Bank Ltd., is also not released in favour of the petitioner and taking no notice of the alarm raised by the petitioner in his representation dated 01.10.2019 addressed to the respondent No. 3, the whole building of the Veterinary Dispensary alongwith other buildings nearby dashed to ground due to the heavy rains in the month of July, 2023.

5. Learned counsel for the petitioner submits that the petitioner filed another representation before the respondents on 20.12.2019, wherein the respondents were requested that the payment for the work done be released in his favour. In the said representation, it has also been pleaded that the petitioner has completed the construction upto roof level and the slab work has also been completed and impressed upon the respondents to release the payment for the work done. Learned counsel also submits that despite the receipt of the

representations, the respondents remained unmoved and no payment has been released in favour of the petitioner and thereafter, the petitioner served a Legal Notice dated 10.08.2022 upon the respondents, wherein he informed the respondents that he has completed 80% of the allotted work and no payment has been released in his favour and requested the respondents to release the payment in his favour. He further submits that the petitioner received response on two occasions, i.e., 03.11.2020 and 24.08.2022 with unsatisfactory and ambiguous replies and feeling aggrieved of the same, on 07.09.2022, he again requested the respondents to make the payment in his favour for the work executed by him, but no response was received from the respondents. It is also submitted that pursuant to e-NIT No. 13 of 2019-20, the work was allotted in favour of the petitioner and the petitioner has already placed on record the copy of the Allotment Order as well as CC 1st duly signed by the respondent No. 4. It is further submitted that the petitioner has executed the work for an amount of Rs.15,83,345/-, but till date, he has not received a penny. Feeling aggrieved of what has been stated above, the petitioner has approached this Court by way of instant writ petition.

6. Learned counsel for the petitioner submits that the petitioner would feel satisfied, if the instant writ petition is disposed of by directing the respondents to treat the instant writ petition as representation and accord consideration to the same within some reasonable period.

7. Notice.

8. Ms. Palvi Sharma, assisting counsel to Mr. Ravinder Gupta, AAG waives notice on behalf of the official respondents. She submits that the respondents have no objection, if the instant writ petition is directed to be treated

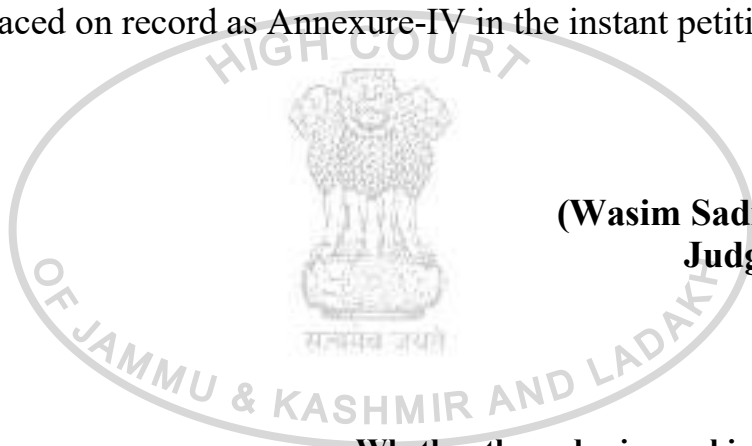
as representation and same is accorded consideration strictly in accordance with the rules and as per law.

9. With the consent of learned counsel for the parties and keeping in view the facts and circumstances of the case, the instant writ petition is disposed of, at the threshold, with a direction to the respondents to consider the claim of the petitioner by treating this writ petition as representation and take a decision thereon, strictly under rules and as per law and pass a consideration order within a period of six weeks from the date a certified copy of this order alongwith complete set of writ petition are made available to the respondents.

10. *Disposed of*, as above alongwith connected application.

11. It is made clear that while considering the claim of the petitioner, the respondents are directed to give due weightage to the bills, which have been verified and placed on record as Annexure-IV in the instant petition.

Jammu
27.12.2023
Ram Krishan



(Wasim Sadiq Nargal)
Judge

Whether the order is speaking? Yes/No
Whether the order is reportable? Yes/No