

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

Reserved on : 17.02.2025

Pronounced on: 27.02.2025

WP(C) No. 804/2021

Rattan Singh Parmar

.....Appellant(s)/Petitioner(s)

Through: Mr. Sandeep Singh, Advocate

vs

Union Territory of Jammu and Kashmir and
Ors.

..... Respondent(s)

Through: Mr. Ravinder Gupta, AAG

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

01. The petitioner was allotted work for construction of road from "Katali Galla to Una" in District Rajouri from 1st Km to 5th Kms. After completion of the said work, liability of the work done by the petitioner was calculated as Rs. 1,05,06,595/- till 31.12.2011 and the road was thereafter handed over to the PMGSY Division, Rajouri for further construction. It is contended that out of the total liability of Rs. 1,05,06,595/- an amount of Rs. 55,06,595 was paid to the petitioner and the balance amount could not be paid on account of the non-availability of funds, as conveyed vide communication dated 12.01.2012 by respondent No. 2 to respondent No. 1. In the same communication, request was also made for release of the balance amount of Rs. 50.00 lacs so that the work done claim of the contractor could be cleared.

02. The petitioner submitted a representation before the Hon'ble Prime Minister of India and Office of the Hon'ble Prime Minister, New Delhi vide communication dated 07.03.2014 forwarded the said representation of the

petitioner dated 28.02.2014 to the Chief Secretary of the erstwhile State of J&K. Thereafter, respondent No. 2 vide communication dated 17.12.2015 requested respondent No. 1 for release of Rs. 22.74 lacs for settling the claim of the petitioner. The communication dated 17.12.2015 was issued pursuant to the report dated 12.12.2015 submitted by respondent No. 3 to respondent No. 2. Thereafter, the petitioner again submitted representation to the then Minister for Finance and Planning of the erstwhile State of Jammu and Kashmir, for redressal of his grievance, which in turn was marked to the respondent No.1 for his examination. Thereafter, the Director, Planning PW (R&B) Department requested respondent No. 2 to take immediate appropriate necessary action in the matter under intimation to the department. When no action was taken by the respondents, another representation was submitted by the petitioner to the Advisor to the Governor of erstwhile State of J&K, which was referred to respondent No. 2 for necessary action. The petitioner thereafter sent a Legal Notice to respondent No. 1 for release of funds and making payment to him, but nothing was done, which prompted the petitioner to file the present petition for directing the respondents to release the payment of Rs. 50.00 lacs alongwith interest at the rate of 9% from 31.12.2011 till its disbursal to the petitioner.

03. The respondents have filed the response, stating therein that the present petition has been filed after about 10 years from the accrual of cause of action, as such, the same is required to be dismissed. It is stated that the petitioner was allotted work for the construction of “Katalli Gala to Una road KM 1st Rd 0 to 165 and Rd 750 to 900’ by way of earthwork cutting/filling vide respondent No. 4’s office allotment No. 990-94 dated 03.06.2009 for an amount of Rs. 12.08 lacs, where the period of completion of the work was two months only

and supplementary agreement came to be drawn for an amount of Rs. 27.85 lacs vide Superintending Engineer PWD (R&B) Circle Rajouri No. 01 of 05/2010 and also post facto approvals were accorded by Superintending Engineer, PWD (R&B) Circle Rajouri for an amount of Rs. 31.62 lacs and 13.13 lacs for construction of above said road upto KM 4th RD 125 by way of earthwork in cutting as reported vide respondent 4's communication dated 28.11.2015. It is stated that the balance payment of the contractor by way of earthwork is 170170 CUM, the cost of which comes to Rs. 22.74 lacs and is payable to the petitioner.

04. Mr. Sandeep Singh, learned counsel for the petitioner has argued that there is admission on the part of the respondents with regard to the execution of the aforesaid work allotted to the petitioner by the respondents and the whole payment could not be made to the petitioner, as the funds were not available.

05. Per contra, Mr. Ravinder Gupta, learned AAG has objected to the claim of the petitioner only on the ground that the petition suffers from delay and laches, as the same was filed after about 10 years of accrual of cause of action.

06. Heard learned counsel for the parties and perused the record.

07. The respondents have admitted the claim of the petitioner regarding the balance amount of Rs. 22.74 lacs for execution of the works mentioned in the petition. Admission for balance payment has been made in paras 3 & 8 of the objections filed by the respondents.

08. The respondents are objecting to the claim of the petitioner by submitting that the petition has been filed after 10 years of the accrual of cause of action.

09. The only issue that requires consideration is as to whether the respondents can take plea of delay and laches to object the claim of the petitioner, once they are admitting that the balance amount of Rs. 22.74 lacs is payable to the petitioner.

10. India is a welfare State and is 5th largest economy of the world. The Government, in order to develop infrastructure to ease the life of the residents of this country, has been collaborating with the private sector. A Contractor may be a man of means or a small contractor, who executes the work, often after borrowing loan from Financial Institutions, with a hope that the amount due to him would be released in his favour after the completion of work or as per the terms and conditions of agreement. The delay in releasing payment for one reason or another for the work carried out by the small contractor often puts the small contractor in financial doldrums and may result into bankruptcy bringing the contractor and his family to the brink of starvation and vagrancy. The Government must put in place the mechanism in place so that the situation that has arisen in this case does not arise in future.

11. So far as the present case is concerned, the petitioner has represented with the respondents for the release of amount umpteen times, but the representations submitted by the petitioner resulted into generation of reports from one officer to another, though admitting the balance amount payable to the petitioner. Once the respondents admit the payment due to the petitioner but request the release of funds from the officers higher in the hierarchy of the administrative set up, the respondents cannot take the refuge under the 'delay and laches' to deny the justified and admitted claim of the petitioner. The Government cannot act as an ordinary litigant to deny the monetary claim just

on technical grounds and to enrich itself in an unjust manner. Rather this court finds the respondents guilty of delay and laches in releasing the balance amount in favour of the petitioner.

12. In terms of Article 300-A of the Constitution of India, no person can be deprived of his property save by authority of law. When a contractor executes work to the satisfaction of the Government, more particularly when there is admission on the part of the respondent with regard to the completion of the work by the petitioner, non-payment of the same cannot be denied only on the ground that the petition has been filed after an inordinate delay.

13. In **Madras Port Trust v. Hymanshu International**,¹ the Hon'ble Supreme Court has held as follows:

“2. We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by Section 110 of the Madras Port Trust Act (II of 1905).

The plea of limitation based on this section is one which the court always looks upon with disfavor and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. **Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable.** Here, it is obvious that the claim of the respondent was a just claim supported as it was by the recommendation of the Assistant Collector of Customs and hence in the exercise of our discretion under Article 136 of the Constitution, we do not see any reason why we should proceed to hear this appeal and adjudicate upon the plea of the appellant based on Section 110 of the Madras Port Trust Act (II of 1905).

3. We accordingly revoke the special leave granted to the appellant, and direct that the appellant do pay the cost of the respondents.”

(emphasis added)

¹[(1979) 4 SCC 176],

14. In **Vidya Devi v. State of H.P.**², Hon'ble Supreme Court of India has held under:

“12.12. The contention advanced by the State of delay and laches of the appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.”

15. The respondents have admitted that the balance payment for the above said work comes to Rs. 22.74 lacs duly certified by the Assistant Executive Engineer, PWD (R&B) Sub Division, Sunderbani, which is clear from the report submitted by the then Superintending Engineer dated 12.12.2015. The respondents have denied that they are under obligation to pay Rs. 50.00 lacs to the petitioner, rather they have admitted that only Rs. 22.74 lacs are outstanding.

16. Viewed thus, for what has been said and discussed hereinabove, the petition is allowed in part by directing the respondents to release the admitted liability of Rs. 22.74 lacs in favour of the petitioner within a period of three months from today alongwith interest @ 6% per annum from the date of filing of this petition till the amount is released.

17. Disposed of.

(RAJNESH OSWAL)
JUDGE

Jammu
27.02.2025
Karam Chand/Secy.

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes

²[(2020) 2 SCC 569]