

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(Through Virtual Mode)

CJ Court

Case : Arb P No. 2/2025

Date of Pronouncement: 28.11.2025

Uploaded on: 02.12.2025

M/S Umar Soil & Constructional Works

..... Appellant/Petitioner(s)

Through: Mr. M.M. Dar, Advocate

Vs

Union Territory of J&K and others

.....Respondent(s)

Through: Mr. Waseem Gul, GA

Coram: HON'BLE THE CHIEF JUSTICE

ORDER

(ORAL)

1. The present petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator.
2. The petitioner-M/S Umar Soil & Constructional Works is a registered Class (1) A Contractor holding registration No. 3AAY/HYDL/SE ANG.- 1999-2000. It is submitted that pursuant to NIT bearing No. 890 CD-11, 9726-36 of 2017-18 dated 12.09.2017 for the work **“Bemina widening of 04 lane of Budgam Road from Tatoo Ground to By-Pass by way of earth work, GSB, WBM Grade-II, WMM, R/B walls footpath, central verge and Box Culvert,** the petitioner, being the successful bidder, was allotted the contract vide Allotment No. (CE/RBK/WS/32991-94) dated 31.03.2018.
3. As per the agreement entered between the parties, petitioner deposited an amount of Rs. 38,83,622/- as earnest money and additional performance security for an amount of Rs. 23,30,221/- before the Respondents against total

contract of Rs. 7,76,72,455/-. After fulfilling the said requirements, the petitioner agreed to complete the work at the rates and quantities specified in the said agreement within a period of 730 days, strictly in accordance with PWD specifications.

4. On the basis of above referred allotment and the agreement, the petitioner commenced construction at site. However, he was unable to complete the work due to hurdles created by the land owners and occupation of certain land by the Srinagar Development Authority as well as shifting of utilities. Upon confronting with these difficulties, the petitioner immediately submitted a representation before the Assistant Executive Engineer (R&B) Constructions, Sub-Division, National Highway, Srinagar on 19.06.2018, requesting the said Authority to take up the matter with concerned departments and to release the work done amount. Since no decision was taken, the petitioner again submitted representations dated 02.07.2018 and 30.07.2019, which were received by the Authority concerned.

5. It is submitted that the Executive Engineer, R&B, Constt. Division No.II, Srinagar, forwarded the said representation to the Superintending Engineer, PWD (R&B), Circle Sgr/Budgam, Srinagar on 13.09.2019, apprising the said respondent regarding the difficulties faced by the petitioner. It was also acknowledged in this communication that the petitioner had completed work to the extent of Rs. 85 Lacs, out of which Rs. 27 Lacs had already been released. Thereafter the Superintending Engineer again directed the Executive Engineer to submit a report regarding the release of additional security and the work done payment in favour of the Petitioner. In response, the Executive Engineer sent a communication dated 15.10.2019, reiterating that the detailed report had already been submitted vide communication dated 13.09.2019.

6. It is submitted that, meanwhile, due to continuous strike in the Valley due to abrogation of Article 370 and 35(A) and thereafter due to Covid-19 pandemic, the petitioner again submitted an application before respondent No.2 on 06.05.2020, requesting release of the CDR/FDR, additional security, preparation and release of work done payment and closure of the contract with a closure certificate. It is further submitted that respondent No. 2, while taking

into consideration the representation submitted by the petitioner as well as communications addressed by the Superintending Engineer, was pleased to address a communication dated 21.09.2020 to the respondent No. 1, requesting the said respondent that since the Superintending Engineer concerned had proposed de-sanctioning/foreclosure of two schemes under the languishing programme in which the work allotted to the petitioner is figuring at S.No. 1 and the reasons given for closing of the same is non-availability of the land on spot and shifting of certain electric lines and water lines as the hurdles have been created by the locals.

7. That the petitioner thereafter continuously approached the respondents through further representations dated 11.01.2021, 10.03.2021, 09.04.2021 & 06.11.2021, which were forwarded *inter se* for redressal and for steps towards de-sanctioning/foreclosure of the work allotted to him.

8. It is submitted that while examining the annexures annexed with the petition, it is clear that inspite of allotment made in favour of the petitioner and despite completion of part of work on spot he was stopped by the land owners and other stakeholders of the land through which the work was to be executed and the petitioner stopped the work and brought facts to the notice of respondents in which they were also apprised that there is total outstanding of Rs. 1,17,13,795/- which was invested by the petitioner and in spite of his request and despite the admission on the part of the respondents that steps have been taken by the respondents 2 & 3 while referring the issue to respondent no. 1 for de-sanctioning of the work in question, but finally no decision was taken, which constrained the petitioner to approach the Hon'ble Court through the medium of WP(C) No. 470/2022, which was disposed of on 15.03.2022, with a direction to the respondent No. 1 to take a final decision whether the contract in question allotted to the petitioner is to be foreclosed/de-sanctioned and further directed to take a decision within a period of two months. Depending upon the decision so taken, the counsel for the petitioner would work out his remedy.

9. Pursuant to this order, the Assistant Director Public Works, Kashmir, addressed a communication dated 25.04.2022 to respondent No.2 for appropriate action. As no decision was taken, the petitioner was constrained to file contempt petition bearing CCP(S) No. 225/2022 and after putting the respondents to

notice, they filed statement of facts, contending that measures are being taken for de-sanctioning of the work and issue is pending before the Executive Director JKIDFC.

10. During the pendency of the contempt petition, another communication dated 14.12.2023 surfaced, revealing that even the funds earlier allotted for the work were being diverted/withdrawn without a de-sanctioning order.

11. Ultimately, the respondents filed a compliance report stating that the project had been de-sanctioned vide order dated 01.01.2024, whereupon this Court disposed of the contempt petition on 11.03.2024, granting liberty to the petitioner to avail appropriate remedy as may be available to him under law. It is submitted that after disposal of the contempt petition, the petitioner filed an application for appointment of an Arbitrator, which was received by respondent No. 2 on 19.07.2024.

12. It is further submitted that thereafter petitioner noticing the fact that respondents have failed to take the measures and, in the given circumstances, as per Clause 25.3 of the Arbitration Agreement, which provides that *“when the parties fail to agree for appointment of sole Arbitrator then the Arbitral Tribunal will consist of three Arbitrators, in which each is to be appointed by the employer and the contractor and the third Arbitrator to be chosen by the two Arbitrators, so appointed by the parties to act as presiding Arbitrator”*, the petitioner has nominated his Arbitrator, namely, Er. Zahoor Ahmad Chat (B-E Civil Honours Executive Director JKSPDC Retired) in Jal Shakti Department, J&K Government on 05.11.2024.

13. It is contended that after nomination of the above referred Arbitrator, petitioner again sent a reminder to the earlier application dated 19.07.2024 to the respondents to nominate his Arbitrator as has been nominated by the petitioner, so that both the Arbitrators will take decision with respect to appointment of third Arbitrator as a Presiding Arbitrator vide reminder application dated 15.11.2024 and the same has been received by the respondents vide receipt No. 11071 dated 19.11.2024, which was also addressed to respondent No.3.

14. Despite this, respondents failed to nominate their Arbitrator. As Clause 25 mandates arbitration under the J&K Arbitration Act and the respondents have

failed to appoint an Arbitrator, the petitioner is constrained to file this petition under Section 11(6) seeking appointment of an independent arbitrator.

15. Heard. Notice.

16. Pursuant to the notice issued by this Court, the respondents though caused appearance but no reply/response has been filed on their behalf.

17. The existence of the arbitration clause, as aforesaid, and its invocation by the petitioner vide notice dated 19.07.2024 is not disputed.

18. Thus, having argued the matter at some length and in the given circumstances, learned counsel for the respondents, as always, fairly submits that let an arbitrator be appointed. But since the claim that is sought to be made by the petitioner is vehemently disputed/denied, it is submitted that respondents be granted liberty to raise all possible pleas/objections before the arbitral tribunal/ arbitrator in this regard.

19. In the given facts and circumstances, coupled with statement made at the Bar by learned counsel for the respondents, the petition is allowed. Accordingly, with consent of learned counsel for the parties, Mr. M.H.Attar, Former Judge of the High Court of Jammu & Kashmir and Ladakh (Mobile No. 9419000940) is appointed as the sole arbitrator. Who shall proceed with the matter in accordance with the provisions of the Act. And to make an award within the time provided in the Act itself after charging the prescribed fee along with incidental expenses to be shared by the parties.

20. Registry to send a copy of this order to the learned arbitrator.

(ARUN PALLI)
CHIEF JUSTICE

Jammu :
28.11.2025
Pawan Chopra/Secy