

Serial No.88
Suppl. cause list

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR**

WP(C) No. 352/2025

M/s Tech Builders

..... Appellant/petitioner(s)

Through: -

Mr. Yavar Ramzan, and Mr. Azhar Showkat, Advocates

V/s

UT of J&K and Ors.

..... Respondent(s)

Through: -

CORAM:

HON’BLE MR JUSTICE MOHD YOUSUF WANI, JUDGE

(ORDER)

25.02.2025

1. The case of the petitioner Firm is that it is established and registered as a hot mix plant set up for purpose of undertaking construction work and is located at Lasjan Bypass, District Srinagar, J&K. That on 27.04.2027, respondent Executive Engineer, Horticulture Planning and Marketing Construction Division, Srinagar for and on behalf of the Governor, J&K UT, floated e-tenders on short term notice basis for the purpose of up-gradation of Fruit and Vegetable Mandi Parimpora, Srinagar, by way of providing/laying of 50mm thick Bituminous macadam and 25 mm thick semi dense with 6mm thick IRC type seal coat machine mix laid by paver Quardant “D” (Group A) RDO/0-/74M for an advertised cost of Rs. 90.00 lacs and invited bids in this regard vide tender notice No. 01 of 2017 dated 27.04.2017. That on 15.05.2017, respondent Executive Engineer, Horticulture Planning and Marketing Construction Division, Srinagar for and on behalf of the Governor, J&K UT floated another short term tender notice for the purpose of up-gradation of Fruit and Vegetable

Mandi Parimpora, Srinagar, by way of providing/laying of 50mm thick Bituminous macadam and 25 mm thick semi dense with 6mm thick IRC type seal coat machine mix laid by paver Quardant “ A, B, C”. That the petitioner Firm being eligible and fulfilling the criteria, submitted a bid and the petitioner Firm came to be allotted the tender works by an allotment order. That during the subsistence of the work, allotted to the petitioner Firm, short additional work came to be proposed by the respondent department to be also executed by the petitioner Firm in the light of the compelling circumstances faced by the department on account of other reasons, which led to the execution of an agreement in connection with execution of that other work, which was also allotted to the petitioner Firm at the cost of Rs. 31.80 lacs. That the allotted works came to be successfully executed by the petitioner Firm, but the Firm was made only part payment when the substantial portion of the amount is still lying with the respondents despite lapse of defect liability period. That the petitioner Firm is badly suffering on account of non-payment of the due balance amount on account of execution of the aforementioned allotted works.

2. It is submitted by learned counsel for the petitioner Firm that the matter can be disposed of even at its threshold stage by passing appropriate directions to the respondents regarding immediate release of outstanding due payment to the petitioner Firm on account of execution of the aforementioned allotted works. Learned counsel for the petitioner Firm in support of his arguments placed reliance on the Judgment of the Coordinate Bench of this Court dated 23.09.2021 passed in OWP No. 1641/2016 clubbed with CPOWP No. 319/2018.

The relevant paras 6 and 7 of the referred Judgment are reproduced hereunder for ready reference:-

“ 6. *Contractors, admittedly do not execute work for charity. They invest money with the hope that on execution of work they will earn profits and, thus, meet their day to day needs and run their homes. The respondents need to realize the difficulty of such contractors instead of acting in a whimsical manner, and deny them the payments by putting forth the standard excuse of paucity of funds. If Union Territory is short of funds, there is no point in issuing NITs, inviting people to execute works by investing their hard earned money. There are many cases where the contractors execute allotted works after getting financial help from the banks, where they are supposed to pay high rate of interest. I am sure, by this conduct of Union Territory and its agencies, many contractors must have run in deep financial crisis.*

7. *In view of the above and with a view to mitigate the suffering of such contractors, who successfully execute works for the Government departments and other agencies to their satisfaction as also to avoid this unnecessary and uncalled for litigation, while disposing of this petition, by directing respondents to release the balance payment of the petitioner to the tune of Rs. 20.97 Lakhs along with the interest at the rate of 6% from the date it has become due within a period of two months from the date a copy of this order is served on the respondents, I would like to issue further directions:*

- i) *That the Chief Secretary of the Union Territory shall examine this issue after getting inputs from all the departments and the agencies of the Government which get their works executed through contractors and deny them their due payments citing paucity of funds as impediment. He shall ensure that these matters are settled by the government at its own level without constraining the aggrieved contractors to approach this court. This would avoid unnecessary litigation and piling up of cases in this court.*
- ii) *That the Chief Secretary is well advised to constitute a high empowered committee consisting of administrative Secretary of the concerned department, Secretary Finance and a senior Chief Accounts Officer, to examine these claims of the contractors and wherever claims are found genuine, the concerned department will make the payments without any further wastage of time, based on the recommendations of the aforesaid Committee.*
- iii) *Should there be any delay in the settlement of admitted claims of the contractors, the amount shall be paid along with the interest at the lending rate of interest of the bank, so that the contractors are not made to face starvation and financial crisis.”*

3. Admittedly, in the facts and circumstances of the case, this Court is also of the opinion that it may meet the ends of justice and save the precious time of this Court as well as of the respondent department in case the matter is disposed of at this threshold stage with appropriate directions to the respondents in the matter, which otherwise are meant to be carried into effect as per the law.

4. Accordingly, the instant petition is disposed of at this threshold stage with the direction to the respondents to immediately consider the claim of the petitioner Firm in accordance with law governing the field and release the outstanding due amount to the petitioner Firm within a time bound manner and submit a status/compliance report before the Registry of this Court within a period of four weeks from today.
5. Disposed of along with connected CM(s), if any.

(MOHD YOUSUF WANI)
JUDGE

SRINAGAR
25.02.2025
“Mohammad Yasin Dar”