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Regular

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 2179/2022
CM(5490/2022) CM(3589/2024)

ZAMAN CONSTRUCTION COMPANY
...Petitioner(s)
Through: Mr. Adil Asimi, Advocate.

VERSUS

UNION TERRITORY OF J AND K AND ORS.
Through: Ms. Rahila Khan, Assisting Counsel vice
Mr. A.R. Malik, Sr. AAG.
...Respondent(s)

CORAM:
HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE.

ORDER
07.08.2025

01. For seeking writ of mandamus unto the respondents for payment of so-called admitted liability amount of **Rs. 7 crore 68 lacs 78, thousand 550/-**, the petitioner came forward with present writ petition instituted on **29.09.2022.**

02. In the name of pleadings, the only factual content worth name and reference being found in the writ petition is a

Table in para 2 which bears reference to purported 15 Works claimed to have been executed during period 2011-2018 by the petitioner out of which the petitioner has purportedly drawn its 15 claims of pending liability of **Rs. 7,68,78,550/-**.

03. Except this tabulated statement, there is no detailing and supporting averments as to how with respect to each and every of enlisted 15 claims, the petitioner is meaning to sustain and lay its claim of unpaid admitted liability coinciding with the execution and completion of the respective contract works and how all the respondents are meaning and admitting the outstanding liability for payment of said claimed amount of **Rs. 7,68,78,550/-**.

04. A discerning perusal of the tabulated data would show that a very scheming presentation has been made in the tabulated statement by starting the chronology in reverse order from 2018 backwards.

05. The earliest work which the petitioner is said to have carried out is finding mention at serial No. 14 in said Table with date and year of allotment being **17.01.2011**

by reference to which the petitioner claims to be due for payment of amount of **Rs. 51,65,812/-** without any feeding averment in the writ petition as to why all along down the passing years the petitioner resorted to no course of action, legal or otherwise, to seek realization of said amount.

06. After year 2011, it is two purported works of year 2015 finding mention at serial No. 12 and 13 with respect to which the petitioner is claiming the alleged due payment of **Rs. 19,34,425/-** and **Rs. 31,96,845/-** respectively but again no explanation for inaction in claiming said amount in time.

07. After year 2015, it is in the year 2017 that the petitioner is referring to a work at serial No. 4 for which the petitioner is claiming payment of **Rs. 51,67,302/-** but still not acting this time also for claiming previous two payment and this one also.

08. The rest of the works said to have been allotted to and executed by the petitioner are of **March-April-December 2018.**

09. There is no whisper of reference as an averment in the writ petition in the name of pleadings as to when and how each of purported work was allotted, commenced and completed and when the corresponding final bill was submitted by the petitioner for the total payment claimed by it and whether the payment/s received by it was/were under protest or not.

10. There are no averments in the writ petition as to how with respect to work of year 2011, for which the petitioner claims to be due for payment of **Rs. 51,65,812/-**, for all subsequent years till filing of the writ petition in year 2022 what the petitioner was doing in terms of asserting its claim. Similar omission of mention goes with purported contract works of years 2015, 2017 and 2018.

11. It is only by reference to the works of year 2018, though non-stated in the writ petition but being submitted orally by the learned counsel for the petitioner that because of abrogation of Article 370 of the Constitution of India followed by COVID-2019 that the petitioner

could not pursue its claim and file writ petition is the explanation being said.

12. Learned counsel for the petitioner vehemently submits that the petitioner's claims were not rejected.

13. It cannot be heard to be submitted by any of the two sides that all these works were allotted to the petitioner without any tendering process.

14. Surely, for each contract work, there is supposed to be an NIT issued. What were the terms and conditions of respective NITs, what were the terms and conditions of respective letters of allotment of contract, whether respective letters of allotment of contracts carried any stipulation for formal execution of an agreement between PWD (R&B), Srinagar/Budgam and the petitioner as a contractor, all these are the aspects which matter for a writ court to draw from and then to examine the claim/s of a person/contractor coming forward with a writ petition invoking Article 226 of the Constitution of India for a writ of mandamus thereby seeking that the contractual/statutory amount claimed

by given person/concern as an admitted liability amount is genuine and well founded.

15. A very perusal of the tabulated statement would show that, in fact, in present writ petition, the petitioner has joined fourteen causes of action, meaning thereby the petitioner, at its own ease and risk, was letting the time to go by for it to lay claim/s for the works done in the year 2011 followed by 2015 and 2017 works. Lack of diligence and bona fide on the part of the petitioner is evident exposing it as an indolent litigator.

16. The importance of pleadings in a writ petition, even though not to be held to same rigor standard as pleadings in a civil suit, is nevertheless no less important because that is how a case is presented for adjudication before writ court.

17. In this regard, this Court would draw reference from paragraphs 19 and 20 of the judgment of the Hon'ble Supreme Court of India in the case of ***Ritesh Tewari and Anr. Vs State of U.P. and Ors 2010 AIR SC 3823***. Said two paragraphs are produced hereunder:

19. It is a settled proposition of law that a party has to plead the case and

produce/adduce sufficient evidence to substantiate his submissions made in the petition and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas. In *Bharat Singh & Ors. v. State of Haryana & Ors.*, AIR 1988 SC 2181 : 1988 Legal Eagle (SC) 552 , this Court has observed as under:-

“In our opinion, when a point, which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or the counter-affidavit, as the case may be, the Court will not entertain the point. There is a distinction between a hearing under the Code of Civil Procedure and a writ petition or a counter- affidavit. While in a pleading, i.e. a plaint or written statement, the facts and not the evidence are required to be pleaded. In a writ petition or in the counter affidavit, not only the facts but also the evidence in proof of such facts

have to be pleaded and annexed to it.”

(Emphasis added)

(See also Vithal N. Shetti & Anr. v. Prakash N. Rudrakar & Ors., (2003) 1 SCC 18 : 2002 Legal Eagle (SC) 989 ; Devasahayam (Dead) by LRs. v. P. Savithramma & Ors., (2005) 7 SCC 653 : 2005 Legal Eagle (SC) 724 ; Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal & Ors., (2005) 8 SCC 252 : 2005 Legal Eagle (SC) 818 ; and Rajasthan Pradesh V.S. Sardarshahar & Anr. v. Union of India & Ors., AIR 2010 SC 2221 : 2010 Legal Eagle (SC) 399).

The present appeal definitely does not contain pleadings required for proper adjudication of the case. A party is bound to plead and prove the facts properly. In absence of the same, the court should not entertain the point.

20.The power under Article 226 of the Constitution is discretionary and supervisory in nature. It is not issued merely because it is lawful to do so. The extraordinary power in writ jurisdiction does not exist to set right mere errors of law which do not occasion any substantial injustice. A writ can be issued only in case of a grave miscarriage of justice or where there has been a flagrant violation of

law. The writ court has not only to protect a person from being subjected to a violation of law but also to advance justice and not to thwart it. The Constitution does not place any fetter on the power of the extraordinary jurisdiction but leaves it to the discretion of the court. However, being that the power is discretionary, the court has to balance competing interests, keeping in mind that the interests of justice and public interest are coalesce generally. A court of equity, when exercising its equitable jurisdiction must act so as to prevent perpetration of a legal fraud and promote good faith and equity. An order in equity is one which is equitable to all the parties concerned. Petition can be entertained only after being fully satisfied about the factual statements and not in a casual and cavalier manner. (Vide *Champalal Binani v. The Commissioner of Income Tax, West Bengal & Ors.*, AIR 1970 SC 645 : 1969 Legal Eagle (SC) 500 ; *Chimajirao Kanhojirao Shrike & Anr. v. Oriental Fire and General Insurance Co. Ltd.*, AIR 2000 SC 2532 : 2000 Legal Eagle (SC) 1122 ; *LIC of India v. Smt. Asha Goel & Anr.*, AIR 2001 SC 549 : 2000 Legal Eagle (SC) 1803 ; *The State Financial Corporation & Anr. v. M/s.*

**Jagdamba Oil Mills & Anr., AIR 2002 SC 834 :
2002 Legal Eagle (SC) 112 ; Chandra Singh v.
State of Rajasthan & Anr., AIR 2003 SC 2889 :
2003 Legal Eagle (SC) 537 ; and Punjab
Roadways, Moga through its General Manager
v. Punja Sahib Bus and Transport Co. & Ors,
(2010) 5 SCC 235 : 2010 Legal Eagle (SC)
297).”**

19. It is not meant for this Court to survey, scratch and search the record in support of the writ petition and then draw out for each and every work how the admitted liability component of the adjudication is to be drawn from when in writ pleading there are no related foundational pleas made by the writ petitioner. This Court is not meant to be doing an Accountant’s job for the petitioner.

20. Petitioner’s counsel Mr. Adil Asimi’s repeated reference that everything is on record of the writ petition even if without any pleading is literally amounting to reckon this Court as fetcher of the petitioner to figure out and verify the details of the petitioner’s each and every claim

and then dole out writ of mandamus in the hands of the petitioner.

21. In the entire writ petition in the name of explaining delay and laches, the petitioner in para 4 of the writ petition comes forward with a plea that he is a noble and polite person who gave the respondents considerable time for making his due payments but because of their careless and callous approach, the petitioner was left with no option but to file the writ petition. The petitioners have not made any whisper as to why for its claim of 2011, it kept mum all along and so is the case with the claims for the years 2012, 2015 and 2018. The purported excuse which came to be crafted by the petitioner is reference to the response from the Executive Engineer R&B Division Sumbal and the Executive Engineer R&B LRCR Division Srinagar, responding to the legal notice sent by the petitioner to the said officers.

22. It is interesting to note that the legal notice dated **15.05.2022** was actually sent to the Chief Engineer PW R&B Department Kashmir Srinagar, and not *per se* to

the Executive Engineer R&B Division Sumbal, the Executive Engineer R&B Division Chadoora and the Executive R&B LRCR Division Srinagar. The very fact, that in the year 2022 from the end of the petitioner a legal notice came to be dished out to the Chief Engineer PW R&B Department, Kashmir Srinagar, is, in fact, a latent admission that before **15.05.2022**, the petitioner had made no communication whatsoever with the respondents or for that matter with the Chief Engineer R&B Department, Kashmir Srinagar in terms of pressing for its claim/s reckoning from 2012 onwards. Thus, legal notice was meant more to create an appearance of so-called alertness and active indulgence on the part of the petitioner in pursuing its claim which in fact is not the situation.

23. “Doctrine of delay and laches” is a well-entrenched doctrine related to exercise of writ jurisdiction under Article 226 of the Constitution of India and in this regard draws reference from the judgment of the Hon’ble Supreme Court of India in the case of **State of Jammu and Kashmir Vs R.K. Zalpuri, 2016 AIR (SC) 3006**.

24. Applying the precepts as set out in the aforementioned judgment of the Hon'ble Supreme Court of India, the petitioner fails in its cause even on the ground that the writ petition is badly suffering and afflicted with delay and laches unexplained.

25. In the light of aforesaid, this Court is of the view that the writ petition was and surely is not the appropriate remedy available at the disposal of the petitioner and rather it should have been a civil suit or arbitration, as the case may be, to be invoked and resorted to by the petitioner for claiming the recovery of the money for each and every work if it was/is actually due.

26. Learned counsel for the petitioner submits that this Court is angry is perhaps a very misplaced impression of the leaned counsel for a petitioner as raising searching queries by the Court to a petitioner/respondent is the essence of adjudication. A Constitutional Court, or for that matter any other Court, is not to be dictated in adjudication by display of shallow submissions without any factual foundation laid and pleaded in the case. Just because writ petition has

remained long on docket of this Court does not mean relevant queries cease to lose effect and purpose.

27. However, the disposal of this writ petition will not prejudice the petitioner's right to claim its recovery in furtherance of ordinary procedure of law if permitting by law of limitation. Time spent during the pendency of this writ petition will not be read in limitation against the petitioner whenever the petitioner would resort to appropriate legal course.

28. Writ petition **dismissed.**

(Rahul Bharti)
Judge

SRINAGAR
07.08.2025
Bisma Jan.

Whether the order is reportable: (Y/N)