

Serial No. 124
Supp. Cause List

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

CCP(S) No. 598/2021

M/S ALLIANCE CONSTRUCTIONS

.....Petitioner(s)

Through:
Mr. Danish Majid Dar, Adv.
Ms. Ahra Syed, Adv.

Versus

SHALINDER KUMAR AND ORS.

.....Respondent(s)

Through:
Mr. Bikramdeep Singh, Dy. AG

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER
21.11.2025

1. The instant contempt petition arises out of the order/judgment dated 06.10.2021 passed by this Court in writ petition registered as WP(C) No. 1957/21, whereby the writ petition filed by the petitioner was disposed of with a direction to the respondents to release the retained amount of 10% in terms of condition No. 17.5 within a period of six weeks from the date copy of the said order was made available to the respondents, subject to the petitioner having fulfilled all terms and conditions in terms of NIT No. E-03 of 2018-19 dated 28.04.2019. As the aforesaid order was not complied with within the stipulated time, the petitioner has filed the present contempt petition, in which notice was issued way back on 20.12.2021.

2. The record reveals that the respondents have filed various compliance reports, the first on 07.04.2024, followed by another on 23.12.2024 and the latest on 14.03.2025.
3. From a bare perusal of the stand taken by the respondents in the compliance report dated 23.12.2024, shows that they have taken a specific stand, which, for facility of reference, is reproduced as under:

“8. That based on the above , a meeting regarding the subject, has been convened for consideration/deliberation of the case regarding release of bill deposit and EMD/FDR. It is respectfully submitted that it was unanimously decided that the CC 3rd bill submitted earlier will be treated as final and quantities therein may be freezed and treated as final. It is in place to mention here that the instant work was allotted to the agency/contractor for an amount of Rs. 286.00 lacs (Rupees Two Crores and Eighty Six Lacs) against the advertised cost of Rs. 344.00 lacs (Rupees Three Crores and Forty Four Lacs only) and out of which payment to the tune of Rs. 227.00 lacs (Rupee Two Crores and Twenty Severn only) stands already released. It has also been decided that the subjected case be submitted for foreclosure of contract being the pre-requisite condition of releasing the bill deposit/EMD in favour of the agency and thereafter subsequently upon foreclosure the authorities will release the retained amount of 10% in terms of condition No. 17.5. copy of the minutes of meeting bearing No. SMC/JCW/SE/6822-28 dated 20.12.2024 is appended hereto as Annexure II.

9. That as such the order dated 06.10.2021 passed in WP(C) No. 1957/2021 has been complied with and implemented in letter and spirit and, as such, the instant contempt proceedings deserve to be closed against the respondents.”

4. Thus from a bare perusal of the aforesaid stand taken by the respondents in the compliance report, it is apparently clear that a decision has been taken to submit the case of the petitioner for foreclosure of the contract, being a pre-requisite condition for releasing the bill deposit/EMD in favour of the petitioner-agency. It is further stated that upon

foreclosure, the respondent authorities shall thereafter release the retained amount of 10% in terms of condition No. 17.5 and with a view to fortify their stand, the respondents have also placed on record the minutes of the meeting bearing No. SMC/JCW/SC/6822-28 dated 20.12.2024.

5. The stand taken by the respondents in the aforesaid compliance report was rejected by the Court on 24.12.2024 in a detailed order passed by this Court. While doing so, the Court observed that the compliance projected by the respondents was not in conformity with the directions sought to be complied with. Consequently, the compliance report filed by the Commissioner, Srinagar Municipal Corporation was rejected.
6. In the aforesaid backdrop, last and final opportunity of four weeks was granted to Commissioner, Srinagar Municipal Corporation, to file compliance report strictly in conformity with order dated 06.10.2021, failing which the Commissioner, Srinagar Municipal Corporation, was directed to remain present in person or through virtual mode on the next date of hearing. In compliance with the said order, a fresh compliance report was filed by the respondents on 14.03.2025, wherein they have taken a revised stand inconsistent with the order/judgment passed by this Court. It is specifically pleaded therein that, pursuant to the Court's directions, the Assistant Executive Engineers have submitted their report, which has been

placed on record as Annexure II to the fresh compliance report, wherein the Committee has observed as follows:

9. "That it is respectfully submitted that based on the said order the Assistant Executive Engineers submitted their report the said report is annexed herewith as Annexure-II wherein the committee has observed the following:-

- a. Total length of 435M of Walk-way has been executed against the proposed length of 1600M.*
- b. About 79% of the allotted cost has been utilized in developing of 435M length of Walk-way as against proposed length of 1600M.*
- c. NON-BOQ items worth 22.74% of the work done amount has been executed.*
- d. Either the work has not been executed as per the DPR and/or DPR has not been prepared as per the site conditions/requirements.*
- e. The committee cannot ascertain the under surface and quality/strength/grade of concrete and other allied used items at this stage of time.*
- f. Presently the work is damaged at various spots/places.*
- g. At this stage of time there is no further scope of work as the Srinagar Smart City Limited has already taken up the left out portion of the Walk-way."*

7. The respondents, while filing the fresh compliance report, have further pleaded that upon perusal of the enquiry report submitted by the Committee so constituted, it has surfaced that only 435 meters of Walk-way has been executed against the proposed length of 1600 meters and that 79% of the allotted cost has already been released for development of merely 435 meters. According to the respondents, this clearly indicates that the contractor has not completed the allotted work and, despite that, has already received 79% of the sanctioned cost.

8. The respondents while filing the aforesaid compliance report have further taken a stand that since the contractor has failed to perform his contractual obligations, and as the payments already released are far in excess of the work actually executed. Thus, no liability remains outstanding against the Corporation. They maintain that, in view of the findings recorded in the enquiry report submitted by the Committee regarding the execution and performance of the contract, no amount is payable to the petitioner by the Corporation.

9. Heard learned counsel for the petitioner and also the learned counsel appearing on behalf of the respondents. The Court has also examined the stand taken by the respondents by way of various compliance reports submitted from time to time. The directions passed by the learned writ court were to release the retained amount of 10% in terms of condition No. 17.5, provided that the petitioner has fulfilled the terms and conditions of the NIT dated 28.04.2019. In the light of the stand taken by the respondents in the fresh statement of facts filed on 14.03.2025, the respondents have placed on record the details of the work executed, based on the enquiry report submitted by the concerned Executive Engineers. Upon perusal of the said enquiry report submitted by the constituted Committee, the respondents have filed an affidavit asserting that only 435 meters of the Walk-way has been executed and 79% of the allotted cost has been released in developing 435 meters as against the

proposed length of 1600 meters which makes it clear that the contractor has not completed the required work as allotted to him, more particularly when the contractor has already taken 79% of the allotted cost.

10. As per the stand taken by the respondents, the contractor has failed to fulfil the contractual obligations, and the amount already released is in excess of the work actually executed. Consequently, according to the respondents, no liability remains pending or is otherwise required to be released in favour of the petitioner in view of the findings recorded in the enquiry report submitted by the constituted Committee.

11. In view of the stand taken by the respondents and in light of the order/judgment passed by the writ court, this Court is of the considered opinion that the direction forming the subject matter of the present contempt petition stands complied with. Accordingly, the contempt proceedings are closed.

12. Rule, if any, shall stand discharged. However, the dismissal of the present contempt petition shall not preclude the petitioner from assailing the stand taken by the respondents or the findings recorded by the committee afresh, by initiating appropriate proceedings, if so advised, and by taking all available grounds

(WASIM SADIQ NARGAL)
JUDGE