Serial No.

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

(Through Video Conferencing at Jammu)

OWP No. 1428/2018
CM No.4920/2020
IA No.01/2018

Reserved on: 21.12.2020
Announced on: 29.12.2020

M/s Vij and Anand Associates …Petitioner(s)

Through:- Mr. Sachin Gupta, Advocate.

v/s

State of J&K and others ….Respondent(s)

Through:- Mr. F. A. Natnoo, AAG.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

1. In this petition, the petitioner on the foundation of the case setup implores the following reliefs:-

a. "To direct the respondents to the release the pending claims of the petitioner firm including the admitted claims to the tune of 91.43 Lacs .

b. To direct the respondents to process his other 2nd and 3rd stage work bills which are in the process of being
filed."

2. The backgrounds facts under the cover of which the petitioner claims the reliefs aforesaid are that the petitioner-firm came to be appointed by the

respondents as architect for preparation of detailed Architectural Plans for civil works *inter- alia* made on the following terms and conditions.

> i) To promote the complex architectural services for civil work, sanitary with specification in the satisfaction of Engineer-in-Incharge.
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> ii) These plans were to be prepared by the qualified professional in respective field. The consultancy fee of the project was fixed @ 0.50% of total cost of project on submission of plan, elevation, DPR and prospective view.
>
> iii) In the second stage a consultancy fee of (0.75+0.50) =1.25% of total cost of project on submissions of detail architectural drawing and structure detail stand the 3rd stage was (1.25+0.75) + 2% of total cost of project on submission of details architectures, structure plumbing, electrical landscaping and ancillary work. This work order was given by Directorate of Tourism, Jammu through Dy. Director Tourism, M&W, Jammu to provide architectural design for various ongoing scheme in Tourism Department of Jammu Division."

3. It is stated in the petition that vide letter dated 12.12.2015, addressed by the petitioner to respondent No. 4, a request for payment of Architectural consultancy fee was made which had become due to the petitioner on 26.11.2012. The said letter is stated to have been marked to respondent No. 1 by the Minister Incharge of the time seeking detailed report from respondent No. 2. It is further stated that the said letter had given the complete project reports/DPR and architectural details including bills

showing the number of projects, cost of project, consultancy fee as per the percentage and the amount due.

4. It is being next stated in the petition that the details reflected in the letter covers 42 projects with a total claim of consultancy fee of Rs. 91.43 lacs. An amount of Rs. 1.00 lac is stated to have been released in favour of the petitioner by the respondents as against the claim of 91.54 lacs. It is being stated further in the petition that the work order was sub-divided in three stages and it was obligatory upon the respondents to pay the first stage bill being pending with them for long time and that the petitioner was in the process of completing other two steps of work order and that the department did not generate 2nd and 3rd stage work, so as to enable the petitioner to get the percentage of fee as per work order.

5. It is further stated by the petitioner that upon failure of the respondents to release the bill amount that a letter by the petitioner came to be addressed to respondent No. 2 for release of bill amount yet the same was not released and instead a letter dated 27.03.2017 came to be addressed by respondent No. 3 to respondent No. 2 for providing additional funds for clearing the work liability on account of Architect Consultancy fee. A reference in the petition is also made to the letters dated 05.07.2017, 16.01.2018 and 04.06.2018, addressed *inter se* the respondents requesting of providing funds for meeting the liability of the petitioner concern.

6. The mute point projected in the petition by the petitioner is that the petitioner-firm came to be appointed as an architect for preparation of detailed architectural plans of civil works on various terms and conditions by the respondents whereupon the petitioner-firm executed the said works and raised bills thereof with the respondents, yet the respondents did not

release the amount claimed by the petitioner-firm and thus, in the process denied the petitioner the amount of money being its property, despite the fact that the respondents did not dispute the admitted claim made by the petitioner-firm for an amount of Rs. 91.43 lacs.

7. **Per contra**, respondents have filed objections in opposition to the writ petition, wherein the contentions raised and grounds urged in the petition have been resisted and controverted on the premise that the petitioner – agency has been found to have been engaged by respondent No. 4 for preparation of the architectural plans without following proper procedure and authority, inasmuch as, without his competence and without there being any administrative approval.

8. It is being stated in the objections that a Committee of five members was constituted under the Chairmanship of respondent No. 1, in the matter after the petitioner-consultant agency raised claims of money and the said Committee while noticing the facts that the petitioner-consultant agency had been engaged by Dy. Director, Tourism-/respondent No. 4 herein without following proper procedure and authority and without there being any administrative approval and that the petitioner-consultant agency had prepared 42 DPRs out of which only 08 were put to execution amounting to Rs. 3142.78 lacs.

9. It is further stated in the objections that as per the allotment made by respondent No. 4 only 0.5% out of the total cost of the project was to be paid to the petitioner on submission of the plan, elevation, DPR and perspective view and as per the calculation made by respondent the amount of consultancy fee in respect of 08 projects amounted to Rs. 3142.78 lacs.

10. It is being stated in the objections that the Committee after deliberations, resolved and decided that the petitioner-consultant agency is entitled to an amount of Rs.15.71 lacs for the actual work done in respect of 08 projects which had been put to execution and that the claim lodged by the petitioner for an amount of Rs.91.43 lacs is incorrect and is denied.

11. It is significant to mention here that during the pendency of the petition, petitioner filed a supplementary affidavit while laying a motion seeking placing on record various letters addressed *inter se* the respondents dated 06.01.2016, 11.01.2016, 08.02.2016, 08.03.2016, 17.052016, 06.12.2016, 27.03.2017, 05.07.2017, 16.01/2018, 1406.2018, 04.06.2018, 20.08.2018, 31.08.2018,20.10.2018, 05.11.2018, 08.11.2018, 27.11.2018 and 22.12.2018, wherein it is stated that the documents are necessary for the just decision of the case and supplement the pleadings of the petitioner-firm.

12. Responding to the said supplementary affidavit respondents in their reply filed in opposition there to have stated that the communications referred to by the petitioner in the supplementary affidavit relates to the period prior to the constitution of the five member Committee and decision taken thereof by the said Committee on 14.01.2019, where under the Committee approved release of an amount of Rs. 15.71 lacs payable to the petitioner- agency as consultancy fee. It is also stated that in terms of the above decision of the Committee the petitioner–consultant agency had been paid for 08 projects @ 0.5% of the total cost of the project which comes to Rs. 15.71 lacs and as against the said amount the petitioner-consultant agency has been paid an amount of Rs. 24.35 lacs i.e., in excess to what the petitioner-consultant agency was found to be entitled to and thus, the respondents does not owe any amount of money to the petitioner- agency.

13. **Heard learned counsel for the parties.**

14. The learned counsel for the parties reiterated their respective submissions in line with and tune with their respective pleadings.

15. What transpires and emerges from the pleadings, the record appended thereto and the respective submissions of the learned counsel for the parties is that the petitioner-agency upon being appointed as an architect for preparation of detailed architectural plan of the civil works by the respondent No. 4, prepared 42 DPRs out of which 08 projects came to be put to execution and that the petitioner-agency as per the allotment became entitled to 0.5% of the total cost of the project amounting to Rs. 15.71 lacs, against which the petitioner-agency received an amount of Rs. 24.35 lacs, admittedly in excess to the amount the petitioner-agency was found entitled to by the respondents after a five member Committee was constituted for the purpose and which Committee took various decisions including the aforesaid after noticing that the petitioner-agency had been engaged by respondent no. 4 without any competence and jurisdiction and without following proper procedure and authority as also without there being any administrative approval. The respondents admittedly deny and dispute the rest of the claim lodged by the petitioner-firm and instead have found that the petitioner has drawn an excess amount than the petitioner was found entitled.

16. That in view of the aforesaid position, the facts and circumstances serious and complicated disputed questions of fact of complex nature arise in the matter which may for their determination require oral evidence to be taken and as such, the said issues/disputes may not appropriately be tried by this Court in exercise of its extra ordinary writ jurisdiction.

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17. Viewed thus, the petition entails dismissal and is, accordingly, dismissed.

18. Dismissed along with connected CM(s).

19. Nothing hereinabove shall be construed to be expression of any opinion about the entitlement or otherwise of the petitioner qua the amount claimed by the petitioner against the respondents and dismissal of the instant petition shall not stand in the way of the petitioner for instituting appropriate proceedings available and if permissible under law to the petitioner for the purpose.

(JAVED IQBAL WANI)
JUDGE

Jammu
29.12.2020
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HIGH COURT
JAMMU & KASHMIR

Whether the order is speaking: Yes/No.
Whether the order is reportable: Yes/No.

BIR BAHADUR SINGH
2020.12.29 13:43
I attest to the accuracy and
integrity of this document