

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on 09.10.2024
Pronounced on 18.10.2024**

- 1. WP(C) No. 2215/2021**
- 2. CCP(S) No. 159/2022**

1. Atul DamralAppellant(s)/Petitioner(s)
2. Atul Damral

Through: Mr. Ankush Manhas, Advocate
Mr. Madan Lal, Adv.

vs

1. Union Territory of J&K and others Respondent(s)
2. Hamesh Manchanda, Chief Engineer
and another

Through: Mr. Amit Gupta, AAG
Mr. Ravinder Gupta, AAG

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. This writ petition has been filed by the petitioner for directing the respondent Nos. 2 and 3 to release the payment of Rs. 29.85 lacs as on date along with interest @12% per annum with a further direction to the respondents to make good the loss of Rs. 9,07,345/- suffered by the petitioner on account of interest on Cash Credit Limit, due to delay caused in making the payment to the petitioner. It is stated that the respondent No. 3 vide letter dated 01.05.2019 had requested the respondent No. 4 to supply 300 wire crates of 20x4x4 Mesh 4" dimension and on the same day vide another letter No. ID/AKH/206-07, respondent No. 4 was requested to supply 300 wire crates of 20x5x5 dimension because the same were urgently required. Respondent No. 4 in terms of supply order No. 183 and

184 dated 13.05.2019 requested the petitioner to arrange the material as mentioned in the said order within a period of seven days. In para-5 of the supply order it was mentioned that the payment shall be released in favour of the petitioner, when the same is realized from the indenting department by credit to the bank account of the Manager, J&K SICOP Ltd, Jammu i.e. respondent No. 4.

2. The petitioner claims to have supplied the wire crates by five delivery consignments and all the consignments were supplied by the petitioner through respondent No. 4 to the respondent No. 3. Despite receipt of the material, the payment was not made to the petitioner as such, the petitioner vide communication dated 14.04.2020 requested respondent No. 3 to release the amount of Rs. 30 lacs against the supply of wire crates in his division. Thereafter the petitioner served a legal notice dated 15.05.2020 upon the respondent No. 3 through his counsel which was replied by the respondent No. 3 vide reply dated 20.05.2020 stating therein that when the funds are received under proper heads of the account from the Government, the payment shall be made to the concerned agency. When the efforts of the petitioner to get his payment did not yield any result, the petitioner filed the present petition. The petitioner has also placed on record the communication dated 12.08.2021, whereby the respondent No. 2 has been requested by the Divisional Manager, SICOP, Jammu to release the funds for an amount of Rs. 31,91,992/- in favour of the Executive Engineer, Irrigation Division Akhnoor, so that the same is released in favour of SICOP for its onward release to concerned SSI unit.

3. Respondent No. 4 has filed the response stating therein that it has been specifically provided in the supply order that the release of the payment shall be subject to the terms and conditions as stipulated in the supply order and as per condition-5, the payment is to be released in favour of the entrepreneur only after its realization from the indenting department and after proper scrutiny of the relevant documents through its authorized representatives. It is further submitted that the answering respondent has performed his obligation by procuring the material for the indenting department from the petitioner with the clear stipulation as provided in the supply order that the payment would be released in favour of the petitioner as and when received.
4. Respondent No. 3 has also filed the objections stating therein that the supply order was placed before the respondent No. 4 for supply of B. A. wire crates and amount of the material is to be paid by the answering respondent to respondent No. 4 and not to the petitioner as there was no privity of contract with the petitioner who is stranger to the respondent No. 3.
5. Learned counsel for the petitioner has argued that the respondents have not denied their liability, but they are only shifting the liability upon each other just to avoid the payment to the petitioner.
6. Mr. Amit Gupta, learned AAG for the respondent Nos. 1 to 3 has argued that there is no privity of contract between the respondent Nos. 1-3 and the petitioner as such, the present petition is not maintainable against respondent Nos. 1 to 3, whereas Mr. Ravinder Gupta, learned AAG for respondent No. 4 has argued that the respondent No. 4 has already

intimated respondent No. 3 with regard to the payment due to the petitioner.

7. Heard and perused the record.
8. The respondents have admitted the issuance of supply orders, and the consequent supply of wire crates made by the petitioner pursuant to the supply orders.
9. A perusal of the supply order reveals that respondent No. 4 is under obligation to release the payment in favour of the petitioner, only after its realization from the indenting department and of course after proper scrutiny of the relevant documents i.e. receipt of the material duly signed by the department's authorized representative(s). The respondent Nos. 1 to 3 have not at all denied the receipt of the material stated to have supplied by the petitioner, but they are simply objecting to the writ petition on the ground that there has been no privity of contract with the petitioner. The respondent No. 3 vide its communication dated 20.05.2020 addressed to the counsel for the petitioner, has stated that as and when funds are received under the proper head from of the Government, the payment shall be made to the concerned agency. The concerned agency in this case is respondent No. 4. Respondent No. 3 despite receipt of the material has not bothered to make the payment to respondent No. 4 for its further release in favour of the petitioner. Further the communication dated 12.08.2021 addressed by the Divisional Manager, SICOP, Jammu to the respondent No. 2 reveals that he has requested respondent No. 2 to place an amount of Rs. 31,91,992/- at the disposal of respondent No. 3 so

that the same could be released in favour of SICOP for its onward release to SSI Unit.

10. This Court has not even an *iota* of doubt that the petitioner has been deprived of the amount which is admitted by the respondents. The petitioner has claimed an amount of Rs. 29,85000/- whereas the respondent's communication dated 12.08.2021 placed on record by the petitioner reveals that an amount of Rs. 31,91,992/- has been demanded by the Divisional Manager SICOP from the respondent No. 2. The undisputed fact remains that the petitioner has not been paid the admitted amount of Rs. 29,85,000/ and the respondent Nos. 1-3 cannot claim that the funds shall be released in favour of respondent No.4 as and when the same are received.
11. For all what has been said and discussed above, the present writ petition is disposed of in terms of following directions:
- (i) Respondent Nos. 1 to 3 are directed to release an amount of Rs. 29.85 lacs along with interest at the rate of 6% per annum from the date of filing of this writ petition in favour of respondent No. 4, who in turn, would release the same in favour of the petitioner.
 - (ii) Respondent No. 3 shall also determine the entitlement of the petitioner to the differential amount of Rs.2,06,992/- in addition to Rs. 29.85 lacs as sought by the Divisional Manager SICOP from respondent No. 2, and in case the same is found to be payable, the same be released in favour of the petitioner along with interest @ 6% per annum from the filing of this writ petition till its release.

(iii) The entire excise as mentioned above shall be completed by the respondents within a period of three months from the date of receipt of this order.

12. Consequently, the connected contempt petition is also disposed of.

(RAJNESH OSWAL)
JUDGE

Jammu:
18.10.2024
Rakesh PS

Whether the order is speaking:
Whether the order is reportable:

Yes/No.
Yes/No.

