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Regular

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

WP(C) 2940/2022
C/w
WP(C) No. 2724/2026

ABDUL HAMID WANI ….. Petitioner (s)

Through: Mr. Sheikh Mushtaq, Adv.

V/s

UNION TERRITORY OF J AND K AND ORS. ….. Respondent(s)

Through: Mr. Jahangeer Dar, GA

Coram:

Hon'ble Mr. Justice Sanjay Dhar, Judge

ORDER (ORAL)
04.11.2026

WP(C) No. 2940/2022:

1. Through the medium of present petition, the petitioner is seeking a direction upon the respondents to release the amount of Rs. 4,27,172/- along with 10% deposit lying with the respondents which according to the petitioner is due to him. Interest on the aforesaid amount has also been sought by the petitioner.

2. As per the case of the petitioner, respondents had authorized him to complete the work of "Construction of testing and

successful commissioning of 0.50 lac Gallons OHT staging height of 20 Mtrs W.S.S Karawa Astanapora OHT". It has been submitted that said project has been executed and completed by the petitioner as per the terms and conditions of the allotment within stipulated time but outstanding amount of Rs. 4,27,172/- and 10% deposit amount have been withheld by the respondents without any justification. The petitioner has also placed on record the photocopy of the allotment order. According to the petitioner, despite approaching the respondents and serving legal notice dated 11.10.2022, the amount has not been released by the respondents. Hence the present writ petition.

3. The respondents have filed reply to the writ petition. In their reply the respondents while admitting the allotment of work to the petitioner and its execution by him, have submitted that the grievance projected by the petitioner arises purely out of contractual obligations and specific terms and conditions of the allotment order, therefore, the writ petition is not maintainable. It has been submitted that the writ

petition raises disputed and contentious questions of fact which include delay in execution of work, admissibility of excess claims, non-return of departmental material and non-compliance with contractual conditions. These issues, according to the respondents, cannot be adjudicated without detailed examination of records and evidence. Thus, the writ petition is not maintainable.

4. On merits, it has been submitted that the work in question was tendered for an amount of Rs. 56.89 lacs and it was allotted to the petitioner for a total amount of Rs. 66,36,244/- subject to terms and conditions of the allotment order. It was explicitly stipulated that cost of work shall in no case exceed the allotted amount. Thus, amount beyond the cost allotted is not admissible as per GFR/Financial Rules. It has been further submitted that the petitioner was required to complete the allotted work within a period of six months but he failed to adhere to agreed time schedule and delayed execution of the work by approximately two years and four months which constitutes a clear breach of terms

and conditions of the contract. It has been submitted that the petitioner has submitted a final work done claim amounting to Rs. 69.28 lacs which is beyond the sanctioned cost as such the claim of the petitioner is not admissible. The respondents have further raised the issue that the petitioner has retained 2.93 quintal of departmental steel and he has not returned it to the department which is clear violation of the terms and conditions of the contract. It has been submitted that non return of departmental steel by the petitioner amounts to misutilization of Government property regarding which the petitioner is liable to be proceeded against strictly in accordance with the terms of the agreement.

5. Heard learned counsel for the petitioner and perused the record.

6. There is no dispute between the parties with regard to allotment of the work by the respondents to the petitioner. It has been admitted by the respondents that the work has been executed by the petitioner. However, it is being

claimed that the work was allotted to the petitioner for an amount of Rs. 66,36,244/- and an amount of Rs. 65.09 lacs stand released in his favour which is within the sanctioned and allotted cost. The stand of the respondents is that the petitioner cannot be paid balance cost of the work executed by him because the same is beyond the sanctioned cost. Learned counsel for the petitioner has disputed this assertion of the respondents by contending that additional cost of the work was duly sanctioned by the respondents.

7. The other contention that has been raised by the respondents is that the petitioner has overshot the time schedule for completion of the work which amounts to breach of terms and conditions of the contract. Yet another contention that has been raised by the respondents is that the petitioner has retained 21.93 quintals of departmental steel which he is not returning despite issuance of a number of notices to him in this regard.

8. In the face of aforesaid rival claims of the parties, the question that falls for determination is as to whether in the facts of instant case writ petition is maintainable.

9. It is settled position of law that High Court in exercise of its powers under Article 226 of the Constitution of India would be well within its jurisdiction to direct the State and its functionaries to release the amount of liability in favour of the petitioner, if the State or public authority has unequivocally admitted the liability and there is no defence available. In such cases, the action of the State in withholding the outstanding liability would be arbitrary violating Article 14 of the Constitution. Thus, a writ petition would be maintainable in such cases. However, if the liability is not admitted and the defence raised relates to breach of contract where facts are contested the High Court would normally relegate the petitioner to civil court.

10. In the present case, the respondents have raised issues with regard to breach of terms of contract and wrongful retention of the material supplied by the respondents to the petitioner.

These issues are required to be adjudicated upon by leading evidence and by detailed examination of relevant documents This can be done only in a civil suit and not by this Court in exercise of its powers under Article 226 of the Constitituion of India.

11. For the foregoing reasons, the writ petition is held to be not maintainable. The same is dismissed accordingly leaving it open to the petitioner to approach the civil court by way of a suit. While filing the suit, it shall be open to the petitioner to seek exclusion of the time spent by him before this Court in prosecuting the present writ petition in the light of the provisions contained under Section 14 of the Limitation Act.

12. The petition stands disposed of accordingly.

<u>WP(C) No. 2724/2026:</u>

13. The petitioner, through the medium of present petition, has challenged order No. 125/JSD/Estt of 2026 dated 31.08.2026, passed by respondent No. 2 whereby his contract registration card has been revoked with immediate

effect and his name has been struck off from the registered list of approved contractors. Certain other punitive actions have also been taken against the petitioner vide the said order

14. I have heard learned counsel for the parties on the question of grant of interim relief.

15. The basis of the impugned order is non-return of 21.93 quintals of steel by the petitioner to the respondents. The issue as to whether the petitioner had actually retained the aforesaid quantity of steel while executing the work allotted to him by the respondent Department pursuant to e-NIT No. 01 of 25/2018 dated 10.05.2018 is subject matter of adjudication before this Court in connected writ petition which has been disposed of today. In the said writ petition, the petitioner has taken a stand that he has not retained any steel and that utilization certificate had been issued by the respondent Department, which fact is being seriously disputed by the respondents. Without adjudicating this issue particularly when the issue was sub judice, prima facie it

was not open to the respondents to take drastic action of cancellation of the contractor card of the petitioner.

16. In view of the above, a case for grant of interim indulgence is made out

17. Accordingly, subject to objections of other side and till next date of hearing, the impugned order dated 31.08.2026 passed by respondent No. 2 shall remain in abeyance.

18. Reply to the writ petition be filed by next date of hearing.

19. List on 16.12.2026.

(Sanjay Dhar)
Judge

SRINAGAR
04.11.2026
Aasif

Whether the order is speaking Yes/No

Whether the order is reportable Yes/No