

Sr. No. 60

Supp. List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH

AT SRINAGAR

LPA No. 121/2023

In OWP No. 1641/2016

Union Territory of JK & Ors.

...Appellant(s)/Petitioner(s)

Through: Mr. Mubeen Wani, Dy. AG

Vs.

Mohammad Afzal Reshi

...Respondent(s)

Through: Mr. Lone Altaf, Advocate vice
Mr. Irfan Andleeb, Advocate
Mr. Shafqat Nazir, Advocate

CORAM:

HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE
HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

ORDER

04.09.2024

Per Atul Sreedharan-J (Oral)

1. This appeal has been filed by the Union Territory of J and K (hereinafter referred to as the "State"), against the Order dated 23rd September 2021, passed by the learned Single Judge in OWP No.1641/2016, clubbed with CPOWP No. 319/2018 along with judgement dated 10/05/2023 passed in RP No. 40/2022 and CCP (S) No. 142/2022.
2. The respondent herein had carried out certain civil works for the UT in the year 2015 for which an undisputed amount of ₹ 42.97 Lacs was due to him from the appellant. Part payment had been made earlier and a balance of ₹ 20.97 Lacs was outstanding, which is also undisputed. As repeated attempts by the respondent to secure the balance amount from the UT failed, he preferred OWP No. 1641/2016 before this Court. The petition was allowed by the Ld. Single Judge

vide order dated 23/09/2021 directing the appellant herein to release the balance of ₹ 20.97 Lacs along with interest @ 6% from the date on which the payment became due, within a period of two months from the date of the order. CPOWP No. 319/2018 was dismissed as infructuous. As the aforementioned order was not given effect to by the union territory, filed CCP (S) No. 142/2022 for enforcement of the order dated 20/09/2021. During the pendency of the contempt petition, the appellant filed a review petition being RP No. 40/22. By a detailed order dated 10/05/2023, the learned single judge dismissed the review petition and kept the contempt petition pending.

3. For the reasons that shall unfold, the Court deprecates the conduct of the Union Territory in filing the present appeal, the only motive being to harass the respondent for which certain precipitate orders are required to be passed so that the Union Territory in all future cases shall appreciate that there are severe consequences to be suffered for misuse of judicial process.
4. The brief facts essential to decide this Letters Patent Appeal are as follows:
5. The respondent herein was the original petitioner in OWP No. 1641/2016. The grievance of the petitioner therein was that, pursuant to the allotment of a tender by the appellants herein, in his favour for execution of Earth filling work at RB0-248 RFP for a variable length of 535 RFT (Section -1), the respondent executed the work for earth filling for the Wullar Manasbal Development Authority at the allotted cost of Rs. 26,07,750/-. After the respondent successfully executed the work, he was called upon by the appellants herein to maintain the FSL

at the average height of 98.75 meters instead of 98.0 meters, as approved by the Consultant. The additional work resulted in an increase of 0.75 meters in height for the whole area. Upon execution of the additional work, the respondent herein became entitled to the payment of Rs. 16.90 Lacs over and above the original allotted cost of Rs. 26.07 Lacs.

6. The appellants accept that the respondent completed the additional work also successfully and thereafter handed over the same to the appellants. The respondent submitted bills for payment of Rs. 42.97 Lacs (consolidated amount) and the appellants released only Rs. 12 Lacs as part payment and the balance was not paid on the ground of paucity of funds. Repeated parleys of the respondent with the appellants, yielded no result compelling the respondent to file the aforementioned original writ petition.
7. The learned Single Judge, while issuing notice to the appellants (respondents before the Writ Court) also issued a direction to the appellants to consider the claim of the respondent in accordance with rules. As the interim direction was not complied with, the respondent herein had filed a contempt petition during the pendency of the original writ petition, which was registered a CPOWP No. 319/2018. The appellants were also put on notice in the said contempt petition.
8. The Development Authority never disputed the respondent's claim of Rs. 42.97 Lacs as the total amount due to him. The appellants also admitted that they have released an amount of Rs. 12 Lacs in favour of the respondent and a balance of Rs. 29.7 Lacs was outstanding.

9. Before the learned Single Judge, the consistent stand of the appellant Development Authority was that the balance amount of Rs. 29.7 Lacs could not be paid to the respondent herein due to non-availability of funds. The appellants herein further submitted before the learned Single Judge that the matter was taken up by the Development Authority with the Administrative Department which is Department of Tourism & Culture, for release of funds, and that the response of the Administrative Department was awaited.
10. Thereafter, the learned Single Judge records in the impugned order that the work in question was allotted to the respondent herein way back in the year 2013 and it was completed by the end of the year 2015, and that since the year 2015, the respondent has been clamouring for payment due to him on account of execution of the aforesaid work. The learned Single Judge also took into consideration that the non-payment could be understood if the respondent was guilty of breach of contract for not completing the work on time and that this could have been the reason for the appellants herein to withhold his payment. However, the learned Single Judge takes note of the fact that in the case before him, the execution of the work was never disputed by the appellants herein and neither any dissatisfaction relating to the quality of work executed by the respondent was ever sounded by the appellants.
11. The learned Single Judge has also noted that in the statement of facts filed by the appellants herein in the contempt petition, the appellant Authority had fairly conceded that the amount of Rs. 29.07 Lacs is still payable to the respondent herein and that the reason for denying

this payment to the respondent herein for more than 6 years was only the non-availability of the funds. Thereafter, the learned Single Judge with much concern records **“I do not know how many years the Administrative Department will take for arranging and releasing the requisite funds in favour of the Development Authority for discharging the liability towards the petitioner/respondent herein. It pains me to notice that this is not a solitary case of denial of due payments of a contractor who has successfully executed his work for the Government, but I am confronted with such cases every day. The contractors filed petitions to get their payments which are admittedly due to them on satisfactory completion of the works allotted to them by the various government departments and the agencies. Respondents though admit their liability, but take shelter to the plea that there is paucity of funds. One fails to understand that if the Government department or its agency does not have sufficient funds at its disposal, how could it tender the works and allot them to the contractors”**. This Court shares the anguish of the Ld. Single Judge and concurs with its observation hereinabove.

12. Thereafter, in paragraph 7 of the impugned judgment, the learned Single Judge disposed of the petition by directing the appellants herein to release the balance payment in favour of the respondent to the tune of Rs. 20.97 Lacs alongwith interest @ 6% per annum from the date it has become due, within a period of two months from the date a copy of the order is served upon the appellants herein. In

addition thereto, for all future cases, the learned Single Judge passes further directions which reads as under:

- i. “That the Chief Secretary of the Union Territory shall examine this issue after getting inputs from all the departments and the agencies of the Government which get their works executed through contractors and deny them their due payments citing paucity of funds as impediment. He shall ensure that these matters are settled by the government at its own level without constraining the aggrieved contractors to approach this court. This would avoid unnecessary litigation and piling up of cases in this court.**
- ii. That the Chief Secretary is well advised to constitute a high empowered committee consisting of administrative Secretary of the concerned department, Secretary Finance and a senior Chief Accounts Officer, to examine these claims of the contractors and wherever claims are found genuine, the concerned department will make the payments without any further wastage of time, based on the recommendations of the aforesaid Committee.**
- iii. Should there be any delay in the settlement of admitted claims of the contractors, the amount shall be paid along with the interest at the lending rate of interest of the bank, so that the contractors are not made to face starvation and financial crisis.”**

- 13.** The directions *supra* are adopted by this Court in totality and they shall now constitute the order of the Division Bench of this Court. As the said order passed by the learned Single Judge was not complied with, the respondent in this appeal, files contempt petition being CCP (S) No. 142/2022. During the pendency of said contempt petition, the

appellants herein filed a Review Petition being RP No. 40/2022, which was dismissed by the Ld. Single Judge vide judgment dated 10/05/2023.

14. In the review petition, the appellants herein took a stand that the additional work carried out by the respondent herein was not authorized by the appellants. In other words, the case put up in the Review Petition was that the Authority, without seeking prior approval, got the additional works executed and created an additional liability of Rs. 16.9 Lacs and, therefore, it was not possible for the appellants herein to disburse any further payment to the respondent-Contractor.
15. After having heard both the sides the learned Single Judge in paragraph 2 of the judgement dated 10/05/2023, holds **“...I am of the view that this Review Petition too is amongst the frivolous litigation which the babus in the Government file to stultify legitimate rights of the citizens. The respondent no. 1 is a Contractor by profession and was allotted the works of earth filling at an allotted costs of Rs. 26,07,750/- which the respondent-contractor completed successfully. While the contractor was due to finish his allotted work, he was called upon by the appellants herein to maintain FSL at the average height of 9.875 meters instead of 9.800 meters as approved by the Consultants. This resulted in increase of 0.75 meters in height for the entire area and the respondent-contractor had to execute the additional work to the tune of Rs. 16.9 Lacs. The contractor completed the entire work including the additional one successfully and handed over**

the same to the appellants herein. He accordingly submitted the bills for the payment of Rs. 42.97 Lacs. An amount of Rs. 12.00 Lacs as part payment was initially released and rest of the amount was not paid due to paucity of funds.”

16. Undisputedly, the Authority also admitted that they have so far paid an amount of Rs. 20 Lacs to the respondent-Contractor and a balance of Rs. 20.97 Lacs were outstanding. The only reason which was put forth for non-release of balance payment in favour of the respondent herein was paucity of funds. The learned Single Judge also held that the appellants herein who were review petitioners have not denied the execution of works on the spot but has only taken an exception that the additional work got executed by the Authority was without prior administrative approval from the department.
17. The learned Single Judge dealt with the submission by holding that the grant of administrative approval or completion of any other codal formality is a matter that concerns the Administrative Department for which the contractor cannot be penalized. It further held that the respondent-contractor invested his men and money to complete the additional work at the same rates as the original work, and that the appellants herein “review petitioner” failed to appreciate the gesture of the respondent-Contractor who agreed to execute the additional work on the same rates. Thereafter, it held that the review petition was nothing but an attempt to gain more time so that the demand for balance amount raised by the respondent herein was frustrated. Resultantly, the review petition was dismissed. However, while passing the order in the contempt petition, the learned Single Judge

recorded the submission put forth by the learned Dy. AG to accord one last and final opportunity of four weeks to be granted to the respondents/appellants herein to release the balance payment in favour of the petitioner/respondent herein in terms of the judgment passed by the learned Single Judge earlier, failing which the Commissioner Secretary to Government Tourism Department along with Chief Executive Officer Rural Development Authority shall remain present in person. Thereafter, the contempt petition was directed to be listed on 14.06.2023.

- 18.** In the present appeal before this Court, it is the same symphony that was played before the learned Single Judge has been replayed before this Court; that the additional work was carried out without administrative sanction. This is most painful to the ears of this Court. Despite this Court having passed several decisive orders in the past in contempt petitions, the Union Territory continues to play hide and seek with the orders of this Court.
- 19.** Under the circumstances, this Court feels that an order needs to be passed in this particular Letters Patent Appeal which is exemplary and deterrent in nature to prevent the Union Territory from filing such frivolous cases and delaying the relief granted to the litigants. In this particular case, the respondent herein has been kept waiting for nine (9) years from the year 2015 for the payment of his just dues which are not disputed. He was compelled to file writ petition only because his admitted dues were not being paid by the Union Territory for six long years on the grounds of paucity of funds which excuse is abominable and condemnable in the strongest words. The UT

government is part of the Union Government which is the repository of the lion's share of the wealth generated in this country in the first instance and thereafter distributed to the states. It shocks the conscience that we tout ourselves as the fifth largest economy in the world, aspiring to be the third largest soon, but do not have the funds to pay the legitimate dues of the respondent amount to Rs. 20.97 Lacs, which denigrates and puts to doubt the lofty claims of the economic prowess of the country.

- 20.** Furthermore, the filing of the present Letters Patent Appeal is motivated by malice and intent to deprive and harass the respondent herein further from receiving his rightful dues. This Court is of the opinion that exemplary costs should be imposed. Therefore, a cost of one lakh rupees from the year 2015 for every year of delay, till the passing of this order shall be paid to the respondent herein, totalling Rs. 9.00 Lacs as on date, shall be paid to the respondent forthwith. This Cost shall be recovered from the salary of the Officer who initiated this misadventure of filing of the present LPA knowing fully well that there is no reasonable cause at all.
- 21.** The payment of this cost of Rs. 9 Lacs shall be in addition to the payment of the balance amount due to the respondent herein, along with interest @ 6% per annum, as imposed upon the appellants herein by the learned Single Judge in the principal order.
- 22.** Learned counsel for the respondents informs this Court that harried by the Government of Jammu and Kashmir for so many years, the respondent has died on 5th July, 2024, without getting an opportunity to savour the results of his hard work. This amount shall be paid to the

legal heirs of the respondent, the details of the legal heirs shall be furnished to the appellants as soon as possible. The same shall be given to the Advocate General's Office, who shall place the same before the Government of Jammu & Kashmir to ensure compliance.

23. The order passed herein shall be complied with within two weeks from the date of this order being signed and uploaded, failing which the respondent herein is at liberty to file fresh contempt petition for the enforcement of this order.
24. In view of above, the Letters Patent Appeal (LPA) stands dismissed with exemplary costs of Rs. 9 Lacs.

(MOHD YOUSUF WANI)
JUDGE

(ATUL SREEDHARAN)
JUDGE

SRINAGAR
04.09.2024
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