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

WP(C) 2966/2024

Reserved on: 30.05.2025
Pronounced on: 08.07.2025

M/S PMT Industries
Bagh-e-Ali Mardan Khan, Srinagar
Through its Proprietor:
Mohammad Farooq Gurkhoo (Age: 60 years)
S/O Noor Mohammad Gurkhoo
R/O Lal Bazar, Srinagar

…Appellant(s)/Petitioner(s)

Through: Mr. M.M. Khan, Advocate vice
Mr. N.H. Khuroo, Advocate

Vs.

1. **UT of Jammu & Kashmir through Chief Secretary, Civil Secretariat Srinagar/Jammu.**
2. **J&K Small Scale Industries Development Corporation Limited (SICOP), Through its Managing Director, Sanat Ghar, Bemina, Srinagar.**
3. **Chief Engineer, Irrigation and Flood Control Department, Engineering Complex Rajbagh, Srinagar.**
4. **Executive Engineer, Irrigation Division, Handwara, District Kupwara.**
5. **Divisional Manager, J&K Small Scale Industries Development Corporation Limited, HQ. SICOP, Baramulla**

...Respondent(s)

Through: Mr. Jehangir Ahmad Dar, Government Advocate
Mr. Waseem Gul, Government Advocate

CORAM:
HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.

JUDGMENT

1. The petitioner through the medium of the instant petition filed under Article 226 of the Constitution of India seeks a writ in the nature of mandamus, commanding the respondents to release balance amount of Rs.6,40,960/- plus Rs.1,14,112/- in favor of the petitioner along

with interest which had fallen due to the petitioner till its final realization.

2. The brief facts leading to the filing of the instant petition are that, the petitioner is proprietor of a Small Scale Industrial Unit (SSI Unit) being operated by him under the name and style of "M/S PMT Industries", Bagh-e-Ali Mardan Khan, Srinagar, for earning his livelihood. The said unit is registered with J&K Small Scale Industrial Development Corporation (SICOP), which is engaged in allotting the various works of different nature to its registered industrial units (SSI Units), for executing works of different specifications and nature, on behalf of various Government Departments.
3. The further case of the petitioner is that, the respondent No. 5 on receipt of a request from Irrigation & Flood Control Department, through respondent No.4 vide his letter No.4050 dated 8th March 2014 for issuance of proforma bill for execution of work of "Fabrication and installation of Syphon of MS pipe 5 mm thick 250 mm dia 860 MT length including priming of approved brand and shade". The Divisional Manager- respondent No. 5, accordingly, submitted the proforma bill to the respondent No.4 vide his No. SICOP/24040 dated 10th March, 2014 and the respondent No. 4 in response to Proforma bill, placed a supply Order bearing No. 4167 dated 12th March, 2014 for supply, installation, testing of mild steel Rising Pipe 250 mm dia with 5 mm wall thickness with one coat of red oxide paint at a total cost of Rs. 30,40,960/-.
4. Ld. Counsel for the petitioner further submits that the petitioner being a registered unit holder of the respondent No. 2, was assigned/allotted the aforesaid work of "supply, installation, testing of mild steel Rising Pipe 250 mm dia with 5 mm wall thickness with one coat of red oxide paint." It is further submitted that against supplies made by the petitioner, the respondent No. 4 released an amount of Rs. 24.00 lacs in favour of respondent No. 5 vide cheque No. 058989 dated 29th March, 2014 vide his communication dated 2nd April, 2014 against the total amount of Rs.30,40,960/ of the supply order, thereby

withholding an amount of Rs. 6,40,960/- (30,40,960-24,00,000). The said release of Rs. 24.00 lacs was followed by letter dated 7th July, 2014, whereby it was stated that the petitioner had supplied 858 Mtrs. against 860 Mtrs. of M. S. Pipes and thus, the respondent No. 5 was asked to release only 75% of the total supply order in favour of the petitioner (unit holder) and the balance payment was required to be made only subject to the completion of the said work.

5. The petitioner further pleaded that the respondents have also retained an amount of Rs.1,14,112/- in addition to the aforesaid amount of Rs. 6,40,960/- already retained by the respondent No. 4.
6. The further case of the petitioner is that since he has completed the work strictly in accordance with the specification mentioned in the supply order, which fact is substantiated by the communication dated 11th December, 2021 addressed by respondent No. 5 to the respondent No. 4. Thus, the respondents were under a legal obligation qua the petitioner to have released the balance amount as well.
7. It has been urged in the instant petition that despite confirmation by the respondent No. 5 that the work has been executed completely by the petitioner, yet an amount of Rs.6,40,960/-has been withheld by the respondent No. 4 and the said amount in spite of the work executed by the petitioner, has not been released by the respondent No. 4 till date in favour of respondent No. 5 for release of the same in favor of the petitioner.
8. Being aggrieved of the inaction on part of the respondents, the petitioner served a demand notice upon the respondent No. 4 on 6th September, 2024 with copies endorsed to respondents, 2, 3 and 5, but without any response from the respondents, thereby leaving the petitioner with no other option but to approach this Court through the medium of the present writ petition, praying for release of the aforesaid amount.
9. Per contra, the respondents 3 and 4 have filed the reply, in which the respondents have taken a preliminary objection that the petitioner has not approached this Court with clean hands and has suppressed material facts. It is stated in the reply affidavit that the respondents

have entered into a formal contract with the petitioner for the supply, installation and testing of 250 mm diameter mild steel rising pipe, wall thickness of 5 mm and coated with iron oxide paint, through SICOP. Pursuant thereto, SICOP, in compliance with the relevant regulations, awarded the contract to the petitioner. The terms of the contract explicitly provide that supply, installation and testing was required to be done by the petitioner, which has not been done, with the result, the aforesaid amount has been withheld by the respondents. A specific stand has been taken by the respondents that the petitioner failed to fulfill the installation and testing requirements, thereby breached the contract. The payment was required to be released in terms of the agreement only in the eventuality if all the three ingredients/components i.e. supply, installation, and testing was fulfilled by the petitioner. Notably in the instant case, the Executive Engineer, I&FC Division, Handwara, vide communication dated 7th July, 2014 had instructed the Divisional Manager, North SICOP, Baramulla, to release only 75% of the supply order on account of the petitioner's failure in installation/testing of syphon pipes as per contract and taking cognizance through communication dated 15th July, 2014, directed the petitioner to complete the installation within 15 days, failing which, it was conveyed that the department would arrange for the installation at the petitioner's expense. The respondents while filing the reply affidavit, have also placed the requisite communication, evidencing the factum of what has been pleaded in the reply affidavit.

10. The further stand of the respondents is that due to petitioner's non-compliance and failure to install the pipes, in conformity with the agreement, the respondents were compelled to engage other agencies/contractors to complete the installation process, which was necessary to safeguard public interest at large and prevent loss to the Government exchequer, which appears due to inaction on part of the petitioner, whereby the petitioner breached the contractual obligations.

11. The record further reveals that since the pipes were supplied, but not installed and tested within the stipulated completion period, which compelled the respondents to arrange for installation through other agencies to safeguard public interest and prevent further loss to the Government exchequer and rightly so, payment in question was released in conformity with the terms and conditions of the agreement arising out of the contract.
12. In rebuttal, Mr. M. M. Khan, learned counsel appearing vice Mr. N. H. Khuroo, learned arguing counsel for the petitioner has drawn the attention of the Court to the communication addressed by the Divisional Manager SICOP, Baramulla, way back in the year 2021 to the Executive Engineer, I&FC Division, Handwara, whereby request has been made for the release of 25% of the retained amount out of Rs. 24.00 lakhs amounting to Rs.1,14,112/-.
13. The learned counsel for the petitioner has drawn the attention of the Court to another communication issued by the Manager SICOP, Baramulla, a perusal whereof reveals that the respondents have admitted that an amount of Rs.6,40,960/- is payable to the petitioner and accordingly, a request has again been made by the Manager, SICOP, Baramulla to the Executive Engineer, I&FC, Division Handwara on 5th June 2024 for release of the balance amount of Rs.6,40,960/-.
14. Heard learned counsel for the parties and perused the material on record.
15. The record reveals that the petitioner- proprietor of a Small Scale Industrial Unit, under the name and style of "M/S PMT Industries, Bagh-i-Ali Mardan Khan, Srinagar was allotted the work through supply order bearing No.4167 dated 12th March 2014 for supply, installation, testing of mild steel Rising Pipe 250 mm dia with 5 mm wall thickness with one coat of red oxide paint at a total cost of Rs.30,40,960/-
16. The petitioner's stand is that he has executed the aforesaid work strictly in accordance with the terms and conditions of the supply order, at a total cost of Rs.30,40,960/- out of which an amount of

Rs.6,40,960/- plus Rs.1,14,112/- has been withheld by the respondents without any reason. However, the respondents in their reply has submitted that they have not at all violated any fundamental, constitutional, statutory or any legal rights of the petitioner. Learned counsel for the respondents in his reply has stated that the terms of the contract explicitly encompassed supply, installation and testing of mild steel Rising Pipe 250 mm dia with 5 mm wall thickness with one coat of red oxide paint but the petitioner has failed to fulfill the installation and testing requirements, thereby breaching the contract and due to this reason the Executive Engineer I&FC Division Handwara, vide communication No.849-50 dated 07.07.2014 has instructed the Divisional Manager, North SICOP, Baramulla to release only 75% of the supply order due to the petitioner.

17. Taking cognizance of the matter, the Divisional Manager, North SICOP, Baramulla, vide communication No.SICOP/DM(N)14-15/97-98 dated 15.07.2014 directed the petitioner to complete the installation within 15 days, failing which the Department would arrange for the installation at the petitioner's expenses, but due to the petitioner's non-compliance and failure to install the pipes, the department was compelled to engage other agencies (contractors) to complete the installation.

18. The record reveals that in the year 2014 the Divisional Manager (N) HQ SICOP Baramulla vide his communication No.SICOP/DM(N)14-15/97-98 dated 15.07.2014 advised the petitioner to expedite the installation of M.S.Pipes at the site within a period of fifteen days. However, in a recent communication bearing No. SICOP/DM/B/222-23 dated 11.12.2021 followed by communication No.SICOP/ MB/2024-25 dated 05.06.2024 the said Divisional Manager (N) HQ SICOP Baramulla, has certified that the concerned SSI unit has executed and completed the assignment strictly in accordance with the specification mentioned in the supply order. For ready reference the communication No. SICOP/DM/B/222-23 dated 11.12.2021 is reproduced as under:

> *"your attention is invited to this office order No. SICOP/Bla/365-67 dt. 29.03.2015 placed with one of our registered and associated SSI unit namely P.M.T Industries for the execution of above job. The concerned SSI unit executed the job strictly in accordance of the specification mentioned in the supply order.*
>
> *In this connection this office has received payment of Rs.24.00 lacs vide your letter No.8 dated 02.04.2014, out of the said amount of Rs.24.00 lacs this office has released 75% of the total order, as recommended vide letter No.849-50 dated 07.07.2014 and retains 25% which comes under Rs.1,14,112/- .*
>
> *The concerned SSI Unit has time again approached to this office for release of balance payment, but due to the non receipt from your department, this office could not entertain his genuine claim. As you are well aware of this fact that an SSI unit cannot afford to this payment for such a long time owing to the fact that he has invested his working capital for the execution of job after raising financial assistance from the JK Bank at the prevailing bank interest rates. Thus the interest component on the block funds is piling up by every passing day and SSI unit has been put to suffer for none of his fault.*
>
> *In order to overcome the suffering being faced by the SSI Unit, it is once again requested to release the balance amount of the total supplies or return back the supplies to the tune of amount laying with your department and also issue the letter for the release of 25% retained out of Rs.24.00 lacs amounting to Rs.1,14,112/-."*

19. The respondents have not placed on record any material to contradict the certification or to show that the work was left incomplete. In the absence of any such material, the petitioners claim that all contractual obligations were fully carried out stands confirmed.

20. The Hon'ble Supreme Court has consistently held that arbitrary withholding of payment for completed work amounts to an unreasonable and unfair act violative of Article 14 of the Constitution. **In Rajasthan State Industrial Development and Investment Corporation v. Diamond & Gem Development Corporation Ltd., (2013) 5 SCC 470, it was observed**:

> *" 9. A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself."*
> *Where a party to a contract has acted in a manner causing prejudice to the other party and failed to fulfill its obligations without justification, it would be violative of Article 14 of the Constitution if payments lawfully due are arbitrarily withheld."*

21. Further, as observed by this Court in **Karamat Ullah Malik v. Union Territory of Jammu and Kashmir reported as 2024 AIR J&K 147,** it has been held that:

> *"In matters of contractual disputes with the State and its instrumentalities, there is no absolute bar to the exercise of writ jurisdiction, and the High Court should take a holistic view and make a determination as to whether it would be proper to exercise its writ jurisdiction."*

In the facts of the present case, where the respondents have withheld the petitioner's legitimate dues despite certification of completion, the Court finds that the exercise of writ jurisdiction is warranted to secure the ends of justice.

22. Further this court observed in **Mukhtar Ahmad Andrabi Vs UT of J&K & Ors. 2023 LiveLaw (JKL) 55.**

"33. The underlying principle is that "in matters of contractual dispute with the State and its instrumentalities there is no absolute bar to exercise the writ jurisdiction and the High Court should take a holistic view and make a determination as to whether it would be proper to exercise its writ jurisdiction."

The judgment makes it clear that if there is no genuine dispute about liability and the dues are withheld arbitrarily, the High Court can exercise writ jurisdiction to address the grievance.

23. Further, Reliance is also placed on the decision of this Court in **M/S Guchu Ram Contractor vs UT Of J&K and Others WP(C) No.2784/2022, decided on 10.07.2024,** wherein it has been held that the execution of work and the liability to pay stand admitted, the respondents cannot deny payment merely on the ground of non-fulfillment of codal formalities, particularly when such compliance was the responsibility of the respondents themselves.

CONCLUSION

24. Thus keeping in view the above discussions and the documents placed on record, this court is of the view that the petitioner has executed the work strictly in accordance with the specifications mentioned in the supply order. Therefore, the respondents are under legal obligation to release the withheld payment with regard to the work executed by him.

25. Accordingly, the writ petition is allowed and disposed of with a direction to the respondents to release the withheld amount of Rs.6,40,960/- plus Rs.1,14,112/- in favour of the petitioner within a period of six weeks from the date copy of the order is provided to them. It is made clear that in case the payment is not so released in favour of the petitioner within the stipulated time period, the

petitioner will be entitled to interest @ 6% on the said amount from the date the same was payable and denied by the respondents.

21. Disposed of in the manner indicated above.

(Wasim Sadiq Nargal)
Judge

Srinagar:
08.07.2025
G. Nabi/ Secy

i. Whether the Judgment is Reportable: Yes/No

ii. Whether the Judgment is Speaking: Yes/No