

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 21.10.2021
Pronounced on: 27.10.2021

WP(C) No.1836/2021
CM No.6129/2021

ASHIQ HUSSAIN & CO. ...PETITIONER(S)

Through: - Mr. N. A. Ronga, Advocate.

Vs.

UT OF J&K & OTHERS ...RESPONDENT(S)

Through: - Mr. M. A. Chashoo, AAG

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) Through the medium of instant writ petition, the petitioner has sought the following reliefs:

- a. *A writ of certiorari, quashing the impugned communication to the extent it directs laying of OFC on the aforesaid road on its extreme edge.*
- b. *A writ in the nature of Mandamus commanding the respondent No.1 to allow the petitioner to lay OFC and other installations required for the execution of the work allotted to him by the respondents 3 – 4 on the alignment of the work already done by him to the extent of 70% of the allotted work.*
- c. *A writ in the nature of mandamus commanding the respondent No.1 to stop macadamization work of the left over road for 15-20 days till the petitioner completes the allotted work of laying OFC and other connected material on the same*

alignment as has been done by him in the 70% of the allotted strip/road.

2) According to the petitioner respondents No.3 and 4 have allotted a contract to the petitioner for execution of work of installation and laying of OFC etc. in respect of the area from Malangam to Malangam Gujer Basti and Peerbuthoo Chandji strip located in District Bandipora. It is averred that pursuant to the aforesaid allotment of work, the petitioner has started execution of contract work and has completed almost 70% of the work. It is further averred that at the time when the work was allotted to the petitioner, the road from Malangam to Malangam Gujer Basti and Peerbuthoo Chandji strip located in District Bandipora had not been widened but after the completed 70% of work, the respondents No.1 and 2 started widening of the aforesaid road and they also started macadamizing the same, as a result of which, the alignment of the work which was executed by the petitioner fell in the middle of the widened road. It is the further case of the petitioner that respondents No.1 and 2 vide their communication dated 07.09.2021 have advised him to take up the work of laying of OFC on the aforesaid road after ten days of completion of macadamization of work by manual trenching method on extreme edge of road in consultation with field engineers of the department. Petitioner goes on to submit that in case he would execute the work of laying of OFC on the extreme edge of the road, it would cause huge loss to him as it would involve change of alignment, as a consequence of which he would have to remove OFCs and other related installations which he has already laid. It is

contended that if respondents No.1 and 2 would stop macadamization work of the left-over patch just for 15-20 days, the petitioner would complete the work of laying OFC on the remaining portion and the same would save him from huge losses. In the backdrop of these facts, the petitioner has challenged the communication dated 07.09.2021 issued by respondent No.2.

3) Respondents No.1 and 2 have contested the writ petition by filing a reply thereto. In their reply, said respondents have raised a preliminary objection with regard to maintainability of the writ petition on the ground that the work of laying OFC has been allotted to respondents No.3 and 4 and not to the petitioner, as such, he has no locus or cause of action against the official respondents.

4) On merits, it is averred that Reliance JIO Infocom had approached the official respondents for seeking permission for laying of JIO Optical Fiber Cable from the road of Pearbothoo to Chandji, in response to which vide letter dated 10.04.2021, permission was granted for road cut and for laying of OFC in favour of JIO Digital Fiber Pvt. Ltd with certain conditions as contained in the said letter. One of the conditions in the said letter was that whole of the operation would be carried with proper care and without causing any un-necessary damage to the road. It was further provided that the excavation of pits/open trenches, wherever necessary, should be beyond the hard shoulder and on the extreme edge of the road without causing any damage to the road protection works.

5) It is contended that the executing agency i.e., petitioner violated all these conditions with impunity and started digging in the centre of the road during night hours without proper consultation and permission from the official respondents thereby exposing the department to huge loss. According to the official respondents, these issues were raised by officers of PMGSY department and even an FIR was lodged by the official respondents in terms of letter No.PMGSY/SDB/56-58 dated 04.04.2021, wherein it was complained that instead of laying OFC on the edge of the road, the vendor has laid the same towards centre of the road. The official respondents have denied that because of widening of road the alignment of the work executed by the petitioner is falling in the middle of the road. It is further averred by the official respondents that in view of onset of winter season, the department cannot execute macadamization for rest of portion and, as such, the vendor is at liberty to complete balance portion strictly in accordance with the conditions of permission.

6) Heard and considered.

7) Petitioner is aggrieved of impugned communication dated 07.09.2021 issued by respondent No.2 on two counts. One that he has been asked to stop the work of laying OFC till macadamization work on the road is complete. As per the said communication, the macadamization would be complete within a month and till ten days thereafter, laying of OFC should not be undertaken. The other condition contained in the said letter of which the petitioner is

aggrieved, is that manual trenching should be undertaken on the extreme edge of the road strictly in consultation with the Field Engineers of the department.

8) So far as the first part of the communication, whereby M/S Reliance JIO Infocom has been asked to stop the execution of work till the macadamization of the road is complete, is concerned, the said prohibition, in view of the stand taken by the official respondents in their reply, is no longer applicable as the official respondents have clearly stated in para (5) of their reply that they are not undertaking macadamization of road on account of onset of winter. They have made it clear that the vendor is at liberty to complete the balance portion of work in accordance with the conditions of no objection granted in favour of the vendor.

9) That takes us to the second part of the impugned communication whereby the vendor has been asked to undertake work of laying of OFC on the extreme edge of the road. Petitioner is aggrieved of the said condition as according to him, the decision to widen the road was taken by official respondents when he had already completed 70% of the work and in case, he is asked to change the alignment of work, it would entail huge loss to him because he will have to remove the installations for changing the alignment of work. This fact has been vehemently disputed by the official respondents in their reply. According to the official respondents, petitioner, during night hours, executed the work of laying OFC in the middle of the road which compelled them to

approach the police authorities. The stand of the official respondents in this regard is borne out from the communications, copies whereof have been placed on record by the official respondents. On the other hand, petitioner has not placed on record any material that would even remotely suggest that the official respondents have undertaken the process of widening of road in question after he had already executed major portion of the work. Therefore, it cannot be stated that change of alignment in execution and installation of OFC has occurred due to the reasons attributable to the official respondents.

10) The petitioner has placed on record copy of communication dated 10.04.2021 of respondent No.2 whereby NOC has been issued in favour of M/S Reliance JIO Digital Fiber Pvt. Ltd. for road cut and laying of OFC on certain conditions. These conditions are reproduced as under:

1. The company shall have to carry the excavation of pits/open trenching whatever the case may be beyond hard shoulder on extreme edge of the road without causing damage to the road protection works/drainage in consultation with field Engineer of this Department.

(emphasis supplied)

- 2. The excavation of pits shall not hinder the movement of traffic whether vehicular or pedestrian in any way.*
- 3. The company shall be responsible for any type of accident caused due to laying of OFC by excavation of pits of open trenching.*
- 4. The company shall make sure the whole operation is carried out with proper care to save the road from unnecessary damage and is completed within shortest possible time without any delay.*
- 5. The excavation of trenches/pits shall be carried out in stretches and after completion of one stretch not exceeding 500 Mts, the adjacent stretch shall be*

excavated and the trenches excavated should be filled back before the excavation of next stretch.

- 6. That the existing electric infrastructure does not get affect. However, in case of any damage to electric network, the agency has to bear responsibility and costs.*
- 7. That if any damage occurs to pipeline work, the same will be restored on ward footing basis without any fail.*

11) Condition No.(1) quoted above, clearly obliges the vendor to carry out the excavation of pits/open trenches beyond hard shoulder on extreme edge of the road in consultation with field engineer of the department. Thus, permission for digging of road for the purposes of laying of OFC was given to the vendor only on the condition that such digging work is carried out towards the edge of the road and not in the middle of the road. The road which is property of the official respondents can be dug or any other activity can be undertaken in the vicinity of the road only with the permission of the department and not otherwise. Any such permission will be contingent upon and subject to the conditions as may be imposed by the department. The agency laying cables or any other infrastructure in the vicinity of the road cannot undertake such work without consent of the official respondents and against the conditions of the consent given by said respondents. Thus, petitioner or for that matter respondents No.3 and 4, to whom the contract of laying OFC has been awarded, do not have any legal right to undertake the execution of the work in violation of the consent/NOC granted in their favour.

12) Apart from the above, there is no privity of contract between petitioner and the official respondents. The NOC has been granted by

the official respondents in favour of respondents No.3 and 4 and not in favour of the petitioner who is only a sub-contractor of respondents No.3 and 4. If at all official respondents are creating any hindrance in execution of work, it is for respondents No.3 and 4 to take remedial measures. The petitioner has no cause of action against the official respondents. Petitioner at best can inform his principals about the obstacles in execution of the work and he has no right to maintain an action against the official respondents who have granted NOC in favour of respondents No.3 and 4 and not in his favour. On this ground also, the writ petition is not maintainable.

13) For the foregoing reasons, I do not find any merit in this writ petition. The same is, accordingly, dismissed along with connect CM.

14) No order as to costs.

Srinagar
27.10.2021
"Bhat Altaf, PS"

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