

Variation of Contract by Counsel

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ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P No.D-6465 of 2020

Date

Order with signature of Judges

PRIORITY

1. For orders on CMA No.2831/22
2. For orders on CMA No.7047/21
3. For orders on CMA No.5817/21
4. For hearing of CMA No.4621/22
5. For hearing of CMA No.4084/22
6. For hearing of CMA No.6792/21
7. For hearing of CMA No.27772/2020
8. For hearing of main case

27.03.2023.

M/s. Shumail Sikandar and Zulfiqar Ali Langha,
Advocates for Petitioner.

Mr. Omer Memon, Advocate for Respondent No.3

Mr. Ghulam Akbar Uqaili, Assistant Advocate General.

Mr. Sohail Ahmed Qureshi, Secretary, Irrigation

Department, Government of Sindh, Mr. Pritam Das, MD,
SIDA and Naeem Akhtar Memon, Director Nara canal.

Muhammad Karim Khan Agha, J. This is a long running dispute whereby the petitioner entered into an agreement with the Government of Sindh to carry out certain works by way of a contract. Petitioner was not paid his bills for the work which he had purportedly carried out. Respondent No.3 was appointed by the petitioners and the Government of Sindh as an independent Surveyor in order to verify the bills of the work carried out by the petitioners that the work had been carried out satisfactory and upto the required standard. Respondent No.3 submitted first portion of the amount which he certified to be paid to the petitioner in respect of the work and later submitted the portion of remaining amount which he certified was to be paid to the petitioner vide his report dated 02.03.2022. The first payment that he certified to be due to the petitioner was Rs.585,114,921/- The Government of Sindh objected to the payment of bills on the basis that the method of calculation being the GRP had not been the method which had been set out in

the contract between the parties. After a detailed hearing of the case on this aspect this Court passed order dated 28.04.2022 after thoroughly considering the arguments of both the parties and the record found that the Government of Sindh as indicated by the relevant order sheets had made variations/amendments to the contract with the petitioner by mutual consent by varying the method of calculation to be carried out by GRP and hence the initial amount of Rs.585,114,921/- was directed to be paid by the Government of Sindh to the petitioner. We had also ordered that any balance amount which might be payable to the petitioner also be retained by Government of Sindh as the Government of Sindh had informed this Court that it intended to challenge the order dated 28.04.2022 before the Supreme Court of Pakistan as such we did not pass directions to pay the second tranche as if the Government of Sindh was successful before the Supreme Court in challenging our order the calculation method of second tranche would not be much consequence.

The Government of Sindh approached the Hon'ble Supreme Court of Pakistan against the order dated 28.04.202, however, the petition of Government of Sindh was subsequently dismissed by the Supreme Court of Pakistan vide its order dated 12.01.2023. Consequently Government of Sindh has confirmed through learned Addl. Advocate General Sindh that it has made payment of first tranche of the total amount to the petitioner as per order of this Court. The second tranche of payment is now long overdue as per the report of Respondent No.3. The Addl. Advocate General Sindh on behalf of the Government of Sindh states that the Government of Sindh will pay this amount to the petitioner but needs some time. Government of Sindh is hereby directed to make the payment to the petitioner of Rs.465,394,625/-

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being the second tranche prior to the next date of hearing keeping in view that the order of this Court dated 28.04.2022 has attained finality and the method of calculation using GRP method has been accepted by the Government of Sindh. The aforesaid payment shall be made by the Government of Sindh to the petitioner prior to the next date of hearing.

Copy of this order shall be sent through facsimile to Chief Secretary, Secretary Finance and Secretary Irrigation, Government of Sindh for information and compliance.

To come up on 10.04.2023 at 08:30 a.m. at Sr. No.1 when the Government of Sindh shall file its compliance report.