

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

C. P. No. D – 8030 of 2017

Date	Order with signature of Judge
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Before:
Mr. Justice Aqeel Ahmed Abbasi.
Mr. Justice Aziz-ur-Rehman.

For orders as to maintainability

H.W B & Company
Vs.
Province of Sindh and others

Petitioner: *Raja Jawaid Ali, Advocate.*

Respondents; *Nemo for the respondents*

Date of Hearing: 09.03.2018.

Date of Order: 09.03.2018.

Aqeel Ahmed Abbasi, J: Instant petition has been filed by a contractor, who claims to have been awarded two government contracts for construction of roads from Illahi Bux Khoso Bridge to Village Abdul Latif Gashcore, Taluka Tangwani I/S Cheel about "6.00 Km" for the year 2017-2018 and W/R construction of road Thull Unar to Mari Sher Mohammad Khan Bijarani U/C Qureshi Taluka Tangwani, whereafter, according to petitioner, petitioner started development work, whereas, the payments were released by the respondents to the petitioner on quarterly basis. However, according to petitioner, on account of delay in respect of quarterly payment, the petitioner started facing hardship and approached the Deputy Commissioner, Kashmore at Kandhkot, who was pleased to release the bill of the petitioner after verification to the District Accounts Officer, Kashmore. However, the District Accounts Officer, Kashmore, informed that the Chief Officer, District Counsel has no power as Drawing and Disbursing Officer (DDO) and the said powers are lying with the Executive Engineer (XEN). Thereafter, the petitioner reportedly written letters to the concerned officials for release of his running bills, however having failed to receive any favourable response, the petitioner has filed instant petition with the following prayer:-

1. *That this Honorable Court may be pleased to declare that the chief officer has the Drawing and Disbursing Officer and the petitioner is entitled to the payment as per his pending bills.*
2. *That the notification dated 31.10.2017 of Local Government, Rural Development PHE & HTP Department, Government of Sindh based on letter No. FD(DEV-VI)2(340)/LG/2016-17 Dated 26.10.2017 has no any concern and effect to the case of the petitioner.*
3. *That this Honorable Court may be pleased to declare that the notification dated 06.09.2016 issued by Local Government & Town Planning Department, Government of Sindh is still in field.*
4. *That any other relief deems fit and proper may be awarded to the petitioner.*
5. *That any other relief, which this Honorable Court deems fit and proper may be awarded to the petitioner.*

2. From perusal of the relief(s) sought through instant petition, it appears that petitioner has expressed his grievance regarding delay in release of amount by the respondent to the petitioner in respect of his running bills, whereas, it has been further agitated that in view of some dispute regarding authority of DDO and interpretation of Notification dated 31.10.2017 issued by the Local Government, Rural Development, PHE & HTP Department, Government of Sindh (available at page 47 as Annexure 'E') and another Notification dated 06.09.2016 issued by the Local Government and Town Planning Department, Govt. of Sindh (available at page 49 as Annexure 'F'), delay is being caused by the respondents in clearance of the running bills of the petitioner.

3. Prima-facie, it appears to be a dispute between petitioner and the respondents towards performance of contractual obligation, whereas, period of such contract has not expired yet and the contract has not been terminated. Recently, in similar petitions, we have held that enforcement of contractual obligations or its enforcement cannot be sought by filing constitutional petition, as it involves disputed facts and requires evidence, therefore, learned counsel for the petitioner was put on notice to satisfy this Court as to maintainability of instant petition vide order dated 26.03.2018. However, today when the learned counsel was asked to assist the Court on subject, he could not submit any reasonable response, and has contended that petitioner wants a declaration to the effect that respondents are required to make payment to the petitioner pursuant to Notification dated 06.09.2016 issued by the Local Government and

Town Planning Department, Govt. of Sindh, and to further declare that Notifications dated 31.10.2017 is not applicable to the facts of petitioner's case.

4. From perusal of Notification dated 06.09.2016 issued by the Secretary to Govt. of Sindh, Local Govt. and Town Planning Department, it appears that said Notification has been issued in supersession of all earlier Notification/Orders etc. issued in this behalf and according to such notification, the accounts of Local Councils established under Sindh Local Government Act, 2013, are required to be operated and maintained in accordance with the arrangement given therein, according to which, for District Council, Chairman/Chief Officer has been authorized to operate and maintain the local funds jointly. Whereas, perusal of Notification dated 31.10.2017, reflects that XEN, Highway Division, Khairpur, has been authorized as DDO to operate funds of A.D.P. Scheme 1575/2017-2018 pertaining to Local Govt., whereas, Department letter dated 14.06.2017, regarding declaration of DDO to Chief Officer, District Council, Khairpur, was withdrawn. Both the aforesaid Notifications have been issued by the Secretary to Govt. of Sindh, which prima-facie, appears to be separate and distinctive in their effect and application, whereas, the petitioner has not challenged the legality or otherwise of the aforesaid Notification in the instant petition, therefore, we are not inclined to examine the same in the instant petition. Moreover, learned counsel for the petitioner has not been able to refer any document in the petition, which may otherwise suggest that respondents intend to withhold or deny the final claim of the petitioner relatable to his contract. Accordingly, we are of the opinion that no cause of action or valid ground has been disclosed in the instant petition, which may require this Court to issue writ of mandamus under Article 199 of the Constitution, whereas, the matter pertains to enforcement of contractual obligation between petitioner and the respondent, which cannot be agitated by filing a constitutional petition as it requires determination of rights and obligations by Court of civil jurisdiction.

5. Reference in this regard can be made to the recent orders passed by this Court in several petitions under similar circumstances, including orders dated 02.02.2018 passed in C.P.No.D-6762/2017, dated 14.02.2018 passed in C.P.No.D-7208/2016, dated 19.02.2018 passed in C.P.No.D-1192/2018 and C.P.Nos.D-3834 to 3836 of 2017.

6. Accordingly, we do not find any substance in the instant petition, which was dismissed along with listed application vide our short order dated 09.03.2018 passed in the morning and these are the reasons for such short order.

7. However, before parting with the order, we may observe that the petitioner will be at liberty to approach the relevant forum/authority for redressal of his grievance, whereas, respondents are required to ensure to fulfill their contractual obligations strictly in accordance with law, and not to create any hindrance towards performance of contractual obligation by the petitioner and release of amount in respect of running bills, if agreed in the contract, whereas, in case of any dispute regarding interpretation of terms of contract or application of any Notification in this regard, the same shall be resolved amicably in accordance with law.

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Nadeem