

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Present:

**Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon.**

CP. No. D- 3330 of 2017

Kishore Kumar Petitioner

Vs.

Province of Sindh & others Respondents

Mr. Vasad Thari, advocate for petitioner

Date of Hearing: 19.02.2019

ORDER

ADNAN-UL-KARIM MEMON, J. - Through the instant petition, the petitioner is asking for direction to the respondents to make him payment of Rs.1,500,000/- being due amount of expenditure incurred by the petitioner over the construction of building of GBHS Muhammad Raheem Bajeer Kharo Taluka Mithi.

2. Brief facts of the case are that the petitioner is contractor and was assigned contractual obligation of the scheme of up-gradation of middle School to High School GBHS Muhammad Raheem Bajeer Kharo Taluka Mithi which was approved vide letter dated 18.4.2009; petitioner has submitted that NT of the same was invited by the DEO education and Works Department Tharparkar wide letter dated 24.4.2009 and work was awarded to the petitioner being the lowest bidder; that that he was served with the notice for change of location, therefore the work on the aforesaid project was stopped. The petitioner demanded his due amount which was denied, compelling him to approach this Court on 24.10.2017.

3. We have asked from learned counsel for the petitioner to satisfy this Court regarding maintainability of the petition as it relates to enforcement of contractual obligations, he in reply has submitted that since the due amount of the petitioner is owed by the respondents, this petition is maintainable.

4. We have heard learned counsel for the petitioner on the maintainability of the instant petition and perused the material available on record.

5. The question involved in the matter in hand is whether any contractual dispute can be resolved through mechanism provided under Article 199 of the Constitution of Islamic Republic of Pakistan?

6. The dispute between the parties is with regard to financial liability allegedly owed by the respondents arising out of contract. In our view without recording the evidence of the parties; it is not possible for this Court to ascertain the actual amount due in fact whether there is any amount etc. It is a settled principle of law that contractual obligation cannot be enforced through writ petition as it is the mandate of the ordinary jurisdiction to interfere in the contents, variations and applicability of terms & conditions of the contract.

7. In view of above discussion, prima facie, claim of the petitioner falls within the ambit of contractual obligation and is not amenable to the constitutional jurisdiction. We are fortified with the decision rendered by the Honourable Supreme Court in the case of Nizam-ud-Din and another. Vs. Civil Aviation Authority and 2-others. (1999 SCMR 467). On the strength of above cited dictum, we are of the considered view that writ jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan is not meant for dispute relating to terms and conditions of contract.

8. We are of the considered view that if the contract between the private party and the government functionary is under realm of a private law and there is no element of public law, the normal course for the aggrieved party is to invoke the remedies provided under ordinary civil law rather than approaching this Court under Article 199 of the Constitution and invoking its extra-ordinary jurisdiction. Resultantly, this petition being devoid of any force is hereby dismissed in limine.

JUDGE

JUDGE