

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

BEFORE:

Mr. Justice Abdul Maalik Gaddi
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 390 of 2012

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| Sardar Khan and others | ----- | Petitioners |
| | VERSUS | |
| Province of Sindh & others | ----- | Respondents |

C.P. No. D- 467 of 2012

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| Khalid Hussain and another | ----- | Petitioners |
| | VERSUS | |
| Province of Sindh & others | ----- | Respondents |

C.P. No. D- 468 of 2012

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| Qurban Ali and others | ----- | Petitioners |
| | VERSUS | |
| Province of Sindh & others | ----- | Respondents |

C.P. No. D- 804 of 2012

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| Muhammad Siddique and another | ----- | Petitioners |
| | VERSUS | |
| Province of Sindh & others | ----- | Respondents |

C.P. No. D- 1304 of 2012

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| Arbab Zakauallah and others | ----- | Petitioners |
| | VERSUS | |
| Province of Sindh & others | ----- | Respondents |

Dates of hearing & decision: 17.09.2020

Mr. Parkash Kumar, Advocate for the petitioners

Mr. Muhammad Yousif Leghari, Advocate for Respondent No.5 in CP No. D- 804 of 2012

Mr. Mumtaz Sachal Awan advocate for respondent No.8 in CP No. D- 1304 of 2012

Mr. Allah Bachayo Soomro, Addl.A.G.

ORDER

ADNAN-UL-KARIM MEMON, J. The issues involved in all these Writ Petitions are common, by consent of respective counsel(s); the Writ Petitions are taken up together and are being disposed of by this common order.

2. These petitions under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, lay a challenge to the procurement process undertaken by the official respondents and the consequent award of contract/ NITs (Notice Inviting Tenders) for different constructions works.

3. Learned counsel for all the Petitioners consented that C.P. No. D-390 of 2012 may be treated as leading Petition and same may be disposed of at Katcha Peshi stage along with other connected petitions.

4. At the outset we asked learned counsel for the petitioners as to how they are aggrieved by the invitation of such tenders by the official respondents; besides how their grievances raised fall within the ambit of Article 199 of the Constitution.

5. Mr. Parkash Kumar learned counsel for the petitioners replied that this is a public interest litigation and secondly the subject NITs were issued without lawful authority, therefore, the same may be declared as such and further the works described in the NITs were never started and completed; however, huge amount under the garb of such construction work has been usurped by the official Respondents in connivance with private persons; that a contract carrying elements of public interest, concluded by the functionaries of State, has to be just, fair, transparent, reasonable and free from any taint of *mala fides*, all such aspects remaining open for judicial review; that the rule is founded on the premises that public functionaries, deriving authority from or under law, are obligated to act justly, fairly equitably, reasonably, without any element of discrimination and squarely within the parameters of law, as applicable in the given situation. Deviations, if any of substance, can be corrected through appropriate orders under Article 199 of the Constitution; that this Court can direct the official respondents to ensure that Sindh Public Procurement Rules 2010 are adhered to strictly to exhibit transparency, in order to avoid corruption. He concluded his arguments by saying that the procurement process is without lawful authority and ultra vires.

6. In reply to the above, Mr. Muhammad Yousif Leghari learned counsel for Respondent No.5 as well as learned A.A.G, representing the official respondents submitted that since all the works have been completed long ago and the present petitions have become in fructuous; that petitioners if fell aggrieved by such actions of the official respondents they are at liberty to approach redressal Committee constituted under Rule 31 of Sindh Public Procurement, 2010 and there is complete mechanism regarding formation of committees and their powers and time limits for lodging complaints.

7. Learned counsel for all the respondents in the connected Petitions adopted the arguments of Mr. Muhammad Yousif Leghari Advocate.

8. This court, in view of the divergent versions of the parties, vide order dated 22.10.2019 appointed the Additional Registrar of this Court as Commissioner to inspect the sites mentioned in the subject NITs and submit report with regard to present status of the subject works allegedly carried out. Accordingly, the Additional Registrar visited the site and submitted his report. An excerpt of the report is reproduced as under:-

INSPECTION REPORT

"1. It is respectfully submitted that under the order dated 22.10.2019 passed in the above said Constitutional Petitions by this Court, whereby the undersigned has been appointed as Commissioner to inspect all the sites mentioned in the subject NITs and to submit such report to this Hon'ble Court regarding present status of the subject works. In compliance of the Hon'ble Court's order, the undersigned left the office on 22.11.2019 at 9:00 a.m. for the requisite purpose and reached at Mithi at 1:00 p.m. and started inspecting the following different sites in question along with M/S Partab, Muhammad Ayoob Qaimkhani and Allah Bux Panhwar, the Assistant Ex. Engineers of Buildings Division Tharparkar. Before submission of the site inspection report, it is necessary to submit details of the works/scheme which were ordered to be inspected as under:-

| C.P No.D-1304 of 2012 | | |
|------------------------------|-----------------------------------|--------------------------|
| Sr. No. | N.I.T. Number with date | Quantity of works/scheme |
| 1 | TC/G-55/1577 dated 06.06.2012 | 88 |
| 2 | TC/G-55/1578 dated 06.06.2012 | 107 |
| 3 | TC/G-55/1708 dated 25.06.2012 | 07 |
| 4 | TC/G-55/1719 dated 26.06.2012 | 07 |
| 5 | TC/G-55/1726 dated 27.06.2012 | 06 |
| Total | | 215 |
| C.P No.D-390 of 2012 | | |
| 1 | TMA/NPK/210 dated 10.02.2012 | 324 |
| C.P No.D-467 of 2012 | | |
| 1 | TMA/Chach/203 dated 22.12.2012 | 377 |
| C.P No.D-467 of 2012 | | |
| 1 | No.(D)TMA/DPL/63 dated 11.02.2012 | 274 |
| C.P No.D-804 of 2012 | | |
| 1 | TMA.608 dated 27.03.2012 | 248 |
| Grand Total | | 1438 |

2. Despite of issuance of notice to the counsel for the petitioners in C.P No.1304/2012 none has participated the inspection process. On the directions of undersigned and with the assistance aforementioned officials, the sites were cursory inspected where works were to be undertaken. During inspection of the works under NIT No.TC/G-55/1578 dated 06.06.2012, mentioned in C.P No.1304/2012, the position of the work was found as under:-

| Sr. No. | NIT as per newspaper along with date | Name of work/place/village | Payment made to contractor in (%age) | Present Status of work done by contractor in (%age) | Remaining work. |
|---------|--------------------------------------|---|--------------------------------------|---|-------------------------------------|
| 1. | 47 | Vocational Centre village Hakam Junejo Tobhario (65-k.m.from Mithi) | 40% | 90% | Flooring and coloring. |
| 2. | 93 | Vocational Centre Wali Muhammad Lund Umar Lund Paro (14-k.m. from the above mentioned scheme) | 60% | 20% | Roof, Plaster, flooring & coloring. |
| 3. | 100 | Vocational Centre Village Ahmed Khan Lund (49-k.m. from the above | 60% | 50% | Roof, Plaster, flooring & |

| | | | | | |
|----|-----|---|-----|-----|-------------------------------|
| | | mentioned scheme) | | | coloring. |
| 4. | 104 | Vacational Centre Sharif Ji Dhani Alaf Paro (41-k.m. from the above mentioned scheme | 90% | 40% | Plaster, flooring & coloring. |
| 5. | 105 | Vocational Centre Village Khorooro Late Hassan Pasayo (31 k.m. from the above mentioned scheme. | 40% | 90% | Plaster, flooring & Coloring. |

3. It is worthwhile to mention here that the above inspection was made surprisingly and found the above situation. Further, during inspection Ex: Zila Nazim of District Tharparkar @ Mithi namely Mr. Arbab Anwar, appeared along with petitioners in C.P No.D-468/2012 & 804/2012 and stated that the work carried out by Works & Services Department through Annual Development Program-2012 [A.D.P.] are satisfactorily and was undertaken upto the payment level to the contractors, but the same are not still completed and stopped. However, he stated that the petitions were filed by the petitioners on his advice. The officials of Work & Services Department also endorsed the same version and stated that due to stay order dated 12.07.2012 passed by this Hon'ble Court in C.P No.D-1304 of 2012, the remaining work in respect of Vocational Centers could not be completed. Mr. Arbab Anwar further stated that the irregularities in the development work are made by the Taluka Municipal Administration authorities in the works under N.I.Ts mentioned in C.P No.D-390/2012, C.P No.D-467/2012, C.P No.D-468/2012 & C.P No.D-804/2012.

4. No work was carried at any place out of 324 schemes / works under N.I.T. No.TMA/NPK/210 dated 10.02.2012 mentioned in C.P No.1304/2012 for the reason that neither Work Order was issued by the T.M.A. Nangarparkar nor any fund was released as reported by Mr. Partab Rai, Sub-Engineer, Town Committee, Nangarparkar and in this respect, he also issued such certificate.

5. During inspection of the schemes / works under NIT No.TMA/Chach/203 dated 22.12.2012, mentioned in C.P No.467/2012, Mr. Qamaruddin Rahimoon, Chairman, Town Committee Chachro and Mr. Mumtaz Ali Sangi, the then Engineer, Town Committee Chachro were accompanied, while petitioner Khalid Husain also joined us. The position of some of the schemes / works was found, as under:-

| Sr. No. | NIT as per newspaper date | Name of work/place/village | Payment made to contractor in (%age) | Present Status of work done by contractor in (%age) | Remarks |
|---------|---------------------------|--|--------------------------------------|---|---|
| 1. | 131 | Construction of Community Center @ Village Arnro Lal Muhammad Mangrio Paro. | 100% | 100% | Nil |
| 2. | 138 | Construction of Community Center @ Village Mithrio Meghwar Anoopo Meghwar Paro | 100% | 100% | Nil |
| 3. | 135 | Construction of Two Community Centers @ Village Kantio Mukhi Murli Dhar Paro. | 100% | 100% | In this village there are two Community Centers together, which were construction during the year 2008 & 2012. Out of these two, one Community Centre is rented out by Mukhi Murli Dhar to some N.G.O since long, as reported by the villagers. |
| 4. | 134 | Construction of Community Center @ Village Kantio Naraen Paro. | 100% | 100% | This Community Center is under occupation and use of only one police constable namely Naraen as reported by villagers. |
| 5. | 136 | Construction of Community Center @ Village Kantio Gaju Meghwar | 100% | 100% | Nil. |

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|-----|-----|---|------|------|------|
| 6. | 139 | Construction of Community Center @ Village Mithrio Mor Jan Muhammad Malhio. | 100% | 100% | Nil. |
| 7. | 373 | Construction of Community Center @ Village Valasaro Kumbhar Wali Muhammad Kumbhar. | 100% | 100% | Nil. |
| 8. | 01 | Construction of CC Road @ Village Chachro Muhammad Siddique Gaju Charitable Hospital. | 100% | 100% | Nil. |
| 9. | 07 | Construction of Musafir Khana @ Village Gaju Farm Dr. Deedar Gaju Farm. | 100% | 100% | Nil. |
| 10. | 13 | Construction of Community Centre @ Chachro City Bhamar Lal Bhojak Mahraj Paro. | 100% | 100% | Nil. |

6. As per Chairman, Town Committee Chachro and petitioner Khalid, the mostly works/schemes in the jurisdiction of Taluka Chachro have been completed.

7. During inspection of the works under NIT No.(D)TMA/DPL/63 dated 11.02.2012, mentioned in C.P No.468/2012, Mr. Manesh, the Office Superintendent, Town Committee Diplo and petitioner Qurban Ali Samejo were accompanied. Mr. Manesh informed that the record of the Town Committee Diplo is in possession of NAB authorities in Reference No.06/2017. However, he delivered a copy in respect of the above said N.I.T. On direction of undersigned the said simple copy got attested from him and a seal of Town Committee Diplo was affixed thereon in the office of Chairman, Town Committee, Diplo before the undersigned. The position of some of the work was found, as under:-

| Sr. No. | NIT as per newspaper | Name of work/place/village | Payment made to contractor in (%age) | Present Status of work done by contractor in (%age) | Remarks |
|---------|----------------------|---|--------------------------------------|---|--|
| 1. | 03 | Construction of Community Center @ Village Abdul Rehman Otho, Diplo | 80% | 100% | Nil |
| 2. | 06 | Construction of Community Center @ Village Poonjo Meghwar Nanjo Colony Diplo. | 70% | 100% | Nil |
| 3. | 13 | Construction of Community Center @ Village Geeta Meghwar Colony Diplo. | 80% | 100% | This Community Center seems to be in use of only for one namely Geeta Meghwar. |
| 4. | 15 | Construction of Community Center @ Village Motatio Colony Diplo. | 55% | 90% | In this Community Center still flooring, installation of doors and color remain to be completed. |
| 5. | 55 | Construction of Community Center @ Village Ghazi Paro Sobhiar Diplo | 75% | 95% | Only color remains to be made on this Community Centre. |

8. The Petitioner Qurban Ali Samejo stated that no work as per N.I.T. has been done, on which, he was directed to show such places; and, on his pointation the undersigned visited the Fouji Habib Bajeer Muhalla in Village Jalal-Ji-Wandhi and Meean Bajeer Paro Village Sobhiar, where no work of any scheme as N.I.T. was found. However, subsequently, Mr. Manesh, Office Superintendent, Town Committee Diplo informed that no work orders for

these villages were issued but the schemes in the said villages were excluded. He further informed that out of 274 schemes only work orders for 132 schemes were issued.

9. During inspection of the works under NIT TMA.608 dated 27.03.2012, mentioned in C.P No.804/2012, M/s. Zulfiquar and Vikram, AXEN and Sub-Engineer of Town Committee, Mithi and petitioner Muhammad Siddique were accompanied. According to the AXEN and Sub-Engineer, the record of the work as per aforesaid NIT is in possession of NAB authorities. The position of some of the work was found, as under:-

| Sr. No. | NIT as per newspaper | Name of work/place/village | Payment made to contractor in (%) | Present Status of work done by contractor in (%) | Remarks |
|---------|----------------------|--|-----------------------------------|--|---|
| 1. | 70 | Construction of Community Center @ Village Saghrori Muhammad Rahim Paro. | 00% | 90% | This Community Center seems to be in design as House but not like Community Center. |
| 2. | 65 | Construction of Community Center @ Village Layari Junejo Muhammad Wasil Junejo Paro. | 00% | 95% | Only color remains to be made. |
| 3. | 56 | Construction of Community Center @ Village Bakhoo Nawaz Junejo Paro. | 00% | 10% | There is only plinth level construction. |

10. M/s. Zulfiquar and Vikram, presently posed as AXEN and Sub-Engineer of Town Committee, Mithi informed that out of 248 schemes / works only work order for 31 schemes were issued.

11. There are total 1438 schemes/works questioned in above mentioned petitions, which are situated throughout District Tharparkar @ Mithi, which is the largest District of Sindh province by land area having about 22,000 Sq. k.m. However, on the pointation of aforesaid officials and petitioners the undersigned inspected the pointed schemes/works and narrated the present status against each work/scheme. The undersigned visited the aforesaid places which was consisted on about 600 k.m. while 400 kms from Hyderabad to Mithi and Mithi to Hyderabad. It is further stated that mostly the distance of one scheme to another is about 40 to 50 kms (the undersigned spent the period of two days and two nights during inspection process in District Tharparkar on 22.11.2019 & 23.11.2019.

12. From the inspection, the undersigned found that the government fund of billions has been ruined out due to improper planning and construction of schemes at improper places without fruitful result to the public, but mostly schemes seem to have been built [incomplete] for individuals on political gains and the majority of community centers are being used as house by specific person(s) in the jurisdiction of TMA Taluka Diplo and Chhachro. It is also observed that since the allocated funds of the schemes, for which no Work Orders were issued despite issuance of N.I.Ts., therefore, a question arises as to where is such allocated amount, which is accountable.

13. The photographs were also taken at the above said sites in question, which are enclosed herewith as **Annexure B & B/1 to B/12.**

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The report is respectfully submitted, as desired for kind perusal.

9. In order to resolve the controversy; this Court deems it appropriate to frame the constitutional moot point whether the Grievance Redressal Committee is appropriate forum to redress the grievances of the parties under the law and Rules? Or an independent committee be formed to look into the state of affairs of present procurement process.

10. To appreciate the aforesaid proposition, it is necessary to have a look at Rule 31 of The Sindh Public Procurement Act, 2009 & the Rules,

2010 which deals with redressal of grievances of bidders. It enjoins the procuring agency to constitute a committee having odd number of persons with proper powers and authorization to address the complaints of bidder occurring before enforcement of the procurement contract. The main object of Procurements is that a procuring agency, while making any procurement, shall ensure that the procurement is made in a fair and transparent manner, the object of procurement brings value for money to the procuring agency and the procurement process is efficient and economical.

11. We have noticed that the tenders were invited in the year 2012 for different works at different union councils of TMA Nagarparkar for establishment of vocational centers. The main objection of the petitioners is that the respondents were not competent to call tenders for the works. It has been alleged that the subject NIT's were issued without lawful authority therefore the same be declared as such on the premise that the works of subject NIT's were never started or completed, resultantly public suffered colossal loss in respect thereof as the funds of billions of rupees have been usurped by the respondents by showing disbursement for the work.

12. We have heard learned counsel for the parties at length and have also perused the available record.

13. We, on the basis of contentions of the parties with the material produced before us, have reached to the conclusion that a detailed report submitted by the commissioner prima-facie suggest that the matter requires thorough probe and this court cannot travel into the intricacies of present matters without recording evidences and it is for the competent forum to look into the matter and take appropriate measures in accordance with law for the simple reason that since the terms of invitation to tender cannot be open to our scrutiny in writ petition, because the invitation of tenders is in the realm of contract. The decision to accept the tender or award the contract is reached by process of negotiations through several tiers. Such decisions are made by experts, in view of nature of the work, the qualifications or eligibility criteria prescribed by the regulatory authority under Sindh Public Procurement Act, 2009 & the Rules 2010.

14. Prima-facie, the entire case is based upon factual controversy which cannot be gone into by this court in exercising of its constitutional jurisdiction. However, since public money is involved, therefore, a Committee is required to be constituted by the Chief Secretary to Government of Sindh, consisting of fair, impartial and sufficiently senior officers including officials of regulatory authority under Sindh Public Procurement Act, 2009 & the Rules 2010 within seven days from the date of receipt of this order, which shall hold its first

meeting within 15 days and thereafter shall individually scrutinize the subject public procurement, after granting a meaningful hearing to all concerned. It is further directed that while deciding the grievance petition of the petitioners, the Committee will take into consideration the Technical Evaluation Report, if any, and all the other documents which the petitioners places before the Committee as well as inspection report for decision on merits. In case any of the public procurement made in favour of the beneficiaries then found to be illegal against the Sindh Public Procurement Act, 2009 & the Rules 2010 shall be annulled by the competent authority with speaking order and may proceed against the delinquent officials and beneficiaries as per law for recovery of public money unduly had and received. The Committee shall conclude the aforementioned exercise within a maximum period of 90 days from the date of its first meeting and submit compliance report through Additional Registrar of this Court for our perusal in chamber within the aforementioned timeframe. Due action is also then to be taken against any persons found to be complicit in making of illegal procurement, if any. All the Petitioners shall appear before the competent authority within a period of seven days of the date of this Order and provide their current addresses and contact details for the purpose of being summoned to appear before the Committee.

15. Before parting with this order, we have noticed that vide order dated 22.10.2019 the Additional Registrar was appointed as Commissioner to inspect all sites mentioned in the NITs and to submit his report and the fee of Commissioner was ordered to be decided on the next date after submission of his Report. Since the Report has been submitted as reproduced above and the case has been disposed of. Accordingly, the fee of Commissioner is fixed at Rs. 50,000/- (Rupees fifty thousand only) which shall be shared by the Petitioners and shall be paid directly to the Commissioner.

16. In view of what has been discussed above, these writ petitions along with pending applications are disposed of in the above terms.

Let a copy of this order be communicated to the Chief Secretary to Government of Sindh for information and necessary compliance with the stipulated time.

JUDGE

JUDGE