

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
R.A. No. 130 of 2017

Date	Order with signature of Judge
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Present:- **Salahuddin Panhwar,J**

1. For order on office objection.
2. For hearing of CMA No. 10283 of 2017.
3. For hearing of main case.

03rd February 2020.

Mr. Abdul Jalil Zubedi, A.A.G.
Mr. Muhammad Azhar Mehmood, advocate for respondent.

Heard learned counsel for the respective parties.

Learned counsel for the applicants contends that as per in question agreement mechanism of DRIP and SPRINKLER in irrigation system was introduced by the Federal and Provisional Governments with the partnership of farmers, whereby Federal Government was required to pay the 60% of the cost and remaining 20% and 20% were to be paid by the Provincial Government and farmers respectively. Admittedly, project in question was completed, the Provincial Government and farmers paid their liabilities whereas partial amount of Federal Government was not paid to the respondent, hence, respondent filed suit for recovery of amount, that was decreed against which appeal was dismissed by the appellate Court. According to learned A.A.G, the plaintiff was required to array Federal Government being necessary party, though he contends that they are in correspondence with regard to recovery of that amount for payment to the respondent (plaintiff) with Federal Government.

2. On the other hand the counsel for the respondent strongly opposed and maintained that the findings of two courts below are proper; there is no denial to the work assigned as well satisfactory execution thereof hence the applicant is not legally justified to avoid legal obligations on plea of stoppage of payment by Federation which (*Federation*) has never been a party to the contract. Here, to make

things clear a reference is made to case of RTS Flexible Systems Ltd. V. Molkerei Alois Muller 2012 SCMR 1027 (SC UK) which states as:-

“45. The general principles are not in doubt. Whether there is a binding contract between the parties and, if so, upon what terms depends upon what they have agreed. It depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations. Even if certain terms of economic or other significance to the parties have not been finalised, an objective appraisal of their words and conduct may lead to the conclusion that they did not intend agreement of such terms to be a pre-condition to concluded and legally binding agreement”.

3. *Prima facie*, the instant *lis* arose out of a contract / agreement wherein, *nowhere*, the applicant claimed *itself* as ‘**agent**’ of the Federation rather *independnatly* acted therefore, the applicant legally cannot avoid the liability, owned by itself, as an *independent* entity. The contract, stood defined in the case of Alleged Corruption in Rental Power Plants etc. 2012 SCMR 773, as:-

44..... Whereas, a contract being a bilateral document has to be reduced into writing by means of an agreement enforceable by laws between the person who had made the proposal and the one who had accepted the same, or those who had made an offer to do a particular thing and accepted the same. Reference in this behalf may be made to section 2(g) of the Contract act, 1872 which provides that an agreement enforceable by law is a contract.

4. There has never been any denial to the execution of the contract and contents thereof, therefore, applicant is not justified in taking a plea, not legally tenable. Be that as it may, if the applicant takes a *specific* plea, it was *its* mandatory obligation to prove such plea *least* bring some material on record in proof of such claim or own consequence of failure thereof. To see, if there came any such thing on record, it would be conducive to refer the adjudication of appellate court on Point No.1 which is that:-

“POINT No.1

It has been admitted by both the sides that the respondent was engaged by Ministry of Agriculture Sindh and Project Directorate, Water Conservation and Productivity Enhancement on contractual basis for installation and commissioning of DRIP and SPRINKLER irrigation system. **That the Project Directorate gave 12 work orders to the respondent for commissioning the said task who installed the project upto the satisfaction of the appellants. The total cost of the project was agreed to be cleared in four installment.** The respondent had received only 20% mobilization advance and 40% of material supplied while remaining amount which comes to Rs.24,39,681/-- has not yet been paid by the appellant despite several request made in this regard. The appellant contends that they have been made as misjoinder party to the suit as they are not liable to pay the same. Originally Federal Government used to pay the cost of the said project and now they have been ordered to stop the same after passing of 18th Amendment in the Constitution of Pakistan 1973. Perusal of R&S of brought before this Court includes the letters issued from appellants to the respondents wherein all the correspondence was made between the appellants and the respondents, **none was made between Federal Government and the respondent** clearly indicating that **the Provincial Government was executing the said project by allocation of work to the respondent. A letter dated 02.07.2011 written by Project Director to release payment against completed projects in favour of Jaffar Brothers is also on record which shows that the Provincial Government was responsible for such payments.** None of the documents has been produced before this Court by either side which could indicate that **any payment was made directly from Federal Government to the respondent.** Hence this point is answered as negative as such it is Provincial Government who is liable to pay the balance amount to the respondent.

5. *Prima facie*, the findings, nowhere, indicate that conclusion so drawn was / is against the available material rather the *liability* of the applicant with regard to payment is evident from the contract / agreement *itself*. It would be conducive to reproduce Clause 2.6 of payments as per agreement which states that:-

“2.6) Payments

In consideration of the service performed by the companies under this contract, **the provincial authorities shall arrange to make the companies such payments** and in such manner as per Annexure-A.”

as well clause 6.1 is that:-

“6.1 SPECIAL CONDTIOINS

Full payment for the assignment shall be made to the contractor by respective **provincial authorities in Pakistani rupees** on the completion of the assignment, handing over to the farmers and verification by the consultant Payment procedure has been given at **Annexure-A.**”

The above *specific* clauses are sufficient to *safely* conclude that the provincial authorities *themselves* take *unambiguous* responsibilities to make payment to the contractor. Once, taken such responsibility, the executant *legally* can't take any exception. Here, it may also be added that after 18th amendment, the *Provincial*

Authorities are legally believed to be acting independently, therefore, such plea was not tenable in law unless *specifically* detailed in the document and agreed by the other side.

6. The sole count that Federal Government stopped the payment because of 18th Amendment though there has not been any such reference in the contract. Needless to mention that execution of agreement in the shape of work at the site and payment to the respondent was prime duty of the Province of Sindh when admittedly work order was issued by the Province of Sindh. Further it is also admitted position that all payments were made to the respondent through applicant/ Province of Sindh and not by the Federal Government though claim of the applicant is that such amount was received through Federal Government as per agreement. Hence, at this juncture when there is 18th Amendment and clause clarifies that this was the duty of Province of Sindh to pay the amount with regard to a project which falls within territory of Province of Sindh. The claim of province against federation needs to be dealt independent by respective sides which, *legally*, cannot be an excuse to deny what the province *itself* owned by entering into a clear and unambiguous document. Accordingly, Provincial Government shall sort out the issue and ensure that payment is made to the respondent . Consequently, the revision Application is dismissed.

JUDGE