

ORDER SHEET  
IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD

C.P No.D-115 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
1.	For orders on office objection(s)
2.	For orders on M.A No.909/2020
3.	For hearing of main case
<u>18.02.2020</u>	

Mr. Imamuddin Chandio, advocate for petitioner

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The petitioner has filed the subject petition with following prayer:-

- "a. *In view of the submission made above, it is therefore prayed on behalf of the petitioner above named that this Honorable Court may be pleased to direct the respondent No.3 to release total due payment amounting to Rs.37.000 Million (Rupees Thirty Seven Million only) to the respondent No.4, so that respondent No.4 could clear the due payment to petitioner in respect of completion of the Tender for repairing / maintenance of the breach of Rohri Main Canal at RD-275 I/P Side.*
- b. *Any other equitable relief which this Hon'ble Court may deems fit & proper may also be granted."*

2. Mr. Imamuddin Chandio, Advocate, has argued by referring to various paragraphs of the petition that Petitioner is a Government contractor and has completed many projects successfully. The present dispute relates to the period of May 2012, when tenders were invited in relation to repair breach that was occurred in 'Rohri Main Canal at RD-275 I/P Side'. The said work claimed to have been successfully completed by Petitioner by installing heavy machinery, Dumpers and Loaders at the site, but till date the bills of the Petitioner in respect of above work amounting to Rs. 37.000 Million were not paid. It is further contended that many reminders were sent to Respondents, but it did not resulted in resolution of Petitioner's grievance and his huge amount remained outstanding, which also resulted in financial loss to Petitioner.

3. To a specific query, it was replied that now the funds have been transferred from Respondent No.2 to Respondent No.3, as is evident from the official letters dated 14.01 2020 and 13.01.2020 exchanged between the Respondents, and appended with the petition as Annexure-'A' to 'A/1'. It is also contended that since the Respondents are all officials and they should have paid the outstanding dues of Petitioner long time back, which they did not, thus they have failed to perform official functions as required by law, hence the subject petition.

4. Arguments heard and record perused.

5. The subject matter of this petition is a contract for civil works, which according to Petitioner was awarded to him way back in the year 2012, *inter alia*, for closing breach in 'Rohri Main Canal at RD-275 I/P Side'. The afore referred official correspondences have been considered, wherein it is stated that funds have been released for payment to the business concern of Petitioner, but subject to codal formalities. It is quite surprising that only correspondence from the side of Petitioner to Respondents is Annexure-'A/3', which is of 30.01.2020, although the dispute is quite old. **Secondly**, the contention of Petitioner's counsel, that the Respondents have not disputed the claim, loses significance in the light of the Decision of the Hon'ble Supreme Court handed down in Civil Petitions No.654-K, 655-K, 679-K, 684-K to 695-K of 2018 preferred by Government of Sindh against different Government Contractors, in which the Apex Court did not agree with the decision of this Court that for recovery of outstanding amount a Constitution Petition can be maintained. The relevant portion of the order is reproduced herein under:-

*"4. ....In such like matters merely obliging statement either of concerned officer or law officer should be viewed with caution when in reply to paragraphs No.2 & 4 of the petition it was specifically denied that "It is submitted that the petitioner started the work at the level of earth work, thereafter the donor agency freeze the funds as such the remaining construction work is lying abandoned", therefore, the impugned judgment cannot be sustained. Accordingly, all these petitions are converted into appeals and allowed.*

*5. Needless to say that the respondents will be at liberty to file civil proceedings for recovery of the amount proportionate to the work done in accordance with law."*

**[Underlined for emphasis].**

6. In view of the above, present petition is not maintainable and is accordingly dismissed, with no order as to costs. However, Petitioner would be at liberty to seek redressal of his grievance at any forum.

JUDGE

/ JUDGE