

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

CP No. D- 52 of 2016

[ Indus Development Consultant (Pak) v. Government of Sindh & Others]

**BEFORE:** **MR. JUSTICE MUHAMMAD SALEEM JESSAR**  
**MR. JUSTICE NISAR AHMED BHANBHRO**

Petitioner:

Indus Dev. Consultant Through, Mr. Irfan Ahmed Qureshi, Advocate

Respondents:

Govt. of Sindh & others Mr. Rafiq Ahmed Dahri, Asstt: A.G.

Date of hearing:

& Decision: 16.10.2025

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**ORDER**

**NISAR AHMED BHANBHRO, J -** The Petitioner through instant Petition has claimed the following relief:

- i. That, this Honorable court may kindly be pleased to pass order and thereby issue direction to the respondents to issue the bill in the sum of Rs.PKR.20095300/- which is outstanding dues against the respondents, after completion the project successively.*

2. When confronted as to the maintainability of the instant Petition seeking indulgence of this Court under its writ jurisdiction for enforcement of contractual obligations against the respondent, learned counsel for the Petitioner argued that the petitioner did not seek the enforcement of contractual obligations; but Petitioner challenged the action of Respondents withholding the payment against the work done by the Petitioner; that respondents had withheld the amount without due course of law; that amount was admitted; that the respondents are government department and provisions of Arbitration Act 1940 did not apply against the government; that respondents were under an obligation to pay the outstanding amount to the petitioner; that respondents were a person within the meaning and definition of article 199 of the Constitution; that respondents performed

functions in connection with the affairs of province of Sindh; that actions on the part of respondents fell within the dominion of this court to exercise the powers of judicial review; lastly he prayed for allowing this petition.

3. Mr. Rafiq Ahmed Dahri learned Asstt. A.G. opposed this Petition and contended that the Petition is not maintainable as the Petitioner entered into a contract with the respondent department, to provide consultancy services to conduct study on impacts of Climate Change in Sindh including Flood & Rains 2010-12;; that Petitioner was awarded contract on 06.06.2014 but he failed to execute the contract per its terms and conditions; that Petitioner committed irregularities and illegalities and violated the terms and conditions of contract; that Petitioner was denied the payment of amount as it failed to complete the requisite work assigned under the contract; He, therefore, prayed for dismissal of the petition as disputed questions of law and fact were involved.

4. Heard arguments, and perused the material made available before us on record.

5. Meticulous perusal of the record revealed that the Petitioner is an NGO; Petitioner undertakes study on Climate Change; Petitioner entered into a contract of consultancy services to conduct study on the impact of climate change in Sindh. The contract between the parties was signed on 06.06.2024. Per para-13 of the contract an understanding was reached between the parties to address any dispute arising out of the contract through arbitration. Para-13 of the contract agreement reads as under:

***“13. Dispute Resolution:** Any dispute arising out of this Contract, which cannot be amicably settled between the parties, shall be referred to adjudication / arbitration in accordance with the Arbitration Act of 1940.*

6. Per terms and conditions of the contract, in case of any dispute the parties will refer the matter for arbitration under the provisions of Arbitration Act 1940. The Petitioner claims to have performed its part of the contract and further claims that on execution of the contract an amount of Rs PKR.20095300. (Two Crore, Ninety Five Thousand and Three Hundred) was outstanding against the respondent department, which respondent department specifically denied. On the contrary department has stated that the Petitioner committed the offences of corruption and corrupt practices

which constituted an offence within the meaning and definition of the Prevention of Corruption Act, 1947 and a reference was sent to the Anti-Corruption Department to initiate appropriate proceedings against the Petitioner. The respondent department in its reply to para-8 of the petition has stated as under:

*“ It is specifically denied, It is submitted that petitioner submitted the inception report which was dissatisfactory. The Environment department during the course of the inspection of the contractual work found that whatever, schedule of work was settled between petitioner and Respondent No.2 was not fulfilled by the petitioner. The monitoring and planning cell MEC after conducting regular monitoring found that no work was done as per agreement. In this regard, sector Monitoring Officer MEC subsequently, filed monitoring report before Respondent No.2 which shows that petitioner failed to perform work as per terms and conditions of agreement. (Photocopy of field monitoring visit report is filed as annexure a annexure A), it is further submitted that Respondent No.2 directed to the Anti Corruption Establishment through Director Admin Finance to conduct an enquiry into the matter with regard to committing misappropriation in the said scheme. The Director Admin finance EPA made such complaint to the ACE and such Enquiry is pending before ACE the officer/officials of Environmental Department Karachi and others (P/s letter enquiry is filed as ann-B)”.*

7. In the said eventuality, when respondent department denied the execution of contract, Petitioner ought to have sought the appointment of arbitrator for dispute resolution per terms and conditions of the contract. If there was any dispute for appointment of arbitrator the right course available to the parties was to seek assistance of the Civil Court. The contention of learned counsel for the petitioner that respondents were government department and provisions of arbitration Act did not apply thereto, was without force, as section 45 of the Act envisaged that the provisions of the Act shall be binding on the Government, section 45 reads as under:

**45. Government to be bound.** *The provisions of this Act shall be binding on the Government.*

8. It is enunciated under section 46 of the act that the provisions of the Act, to the exclusion of sub-section (1) of section 6 and section 7, 12, 36 and 37, shall apply to every arbitration under any other enactment for the time being in force, except in so far as the provisions of the Act were inconsistent with that other enactment or with any rules made thereunder. The intent and wisdom of the legislation was made further clear by incorporation of section 47 in the Act, which enunciated that the provisions of the Act shall apply to all arbitrations, even in the matters when compromise was reached between

the parties outside the provisions of the Act may be made the rule of the Court if consented by the parties. Section 47 reads as under:

*47. Act to apply to all arbitrations. Subject to the provisions of section 46, and save in so far as is otherwise provided by any law for the time being in force, the provisions of this Act shall apply to all arbitrations and to all proceedings thereunder: Provided that an arbitration award otherwise obtained may with the consent of all the parties interested be taken into consideration as a compromise or adjustment of a suit by any Court before which the suit is pending.*

9. This Petition, therefore, was bad under the law on two counts; firstly, the contract agreement itself provides a platform for resolution of any dispute arising out of the contract; if any dispute as to the nonpayment of any amount had arisen between the parties, it was for them to get award by the arbitrator, secondly, the contractual liability was not admitted by the respondent department, as such it became a disputed question of fact. It is settled law that this court cannot engage in factual controversies as the matters pertaining to factual controversy can only be resolved after thorough inquiry and recording of evidence in a civil court, it is for the petitioner to establish his claim before the appropriate forum.

10. The issue of entertaining the writ petition for enforcement of contractual obligations was discussed in detail by Learned Apex Court in the case of PAKCOM LIMITED and others Versus FEDERATION OF PAKISTAN and others reported as P L D 2011 Supreme Court 44, wherein it was held that contractual rights and commitments have to be enforced through courts of ordinary jurisdiction and not under the writ jurisdiction of High Court. The excerpts from the judgment are reproduced below for the ease of reference:

*47. It seems proper here at this juncture to mention that the contractual rights, commitments, undertakings and obligations have to be enforced through courts of ordinary jurisdiction which should not be interfered with by the High Court while exercising its Constitutional jurisdiction especially in those matters arising out of a contractual obligations.*

*In such like eventualities the normal remedy to law being a suit for enforcement of contractual rights and obligations would be availed instead of invocation of Article 199 of the Constitution merely for the purpose of enforcing contractual obligations.*

*48. It hardly needs any elaboration that violation of a contract or failure to abide by the terms and conditions mentioned therein or to*

*honour obligations arising out of an agreement cannot be decided in exercise of Constitutional jurisdiction and such controversies should be resolved by approaching the appropriate forums provided by law.*

*The superior Courts should not involve themselves into investigations of disputed question of fact which necessitate taking of evidence. This can more appropriately be done in the ordinary civil procedure for litigation by a suit. This extraordinary jurisdiction is intended primarily, for providing an expeditious remedy in a case where the illegality of the impugned action of an executive or other authority can be established without any elaborate enquiry into complicated or disputed facts. Controverted questions of fact, adjudication on which is possible only after obtaining all types of evidence in power and possession of parties can be determined only by courts having plenary jurisdiction in matter and on such ground constitutional petition was incompetent."*

11. This Court, under its writ jurisdiction was not a panacea to all the sufferings. No doubt the respondents were officials of a government department and performed functions in connection with the affairs of province of Sindh, thus any action on their part was amenable to writ jurisdiction of this Court. But this proposition will not hold good when the enforcement of contractual obligations as to the payment of amount was sought. For the purpose of adjudication of claims of the parties under contract, the statutory forums were made available that too to the exclusion of writ jurisdiction of this Court. This court under its constitutional jurisdiction cannot embark upon the disputed questions of facts in terms of the bar contained under Article 212 of the Constitution.

12. Reliance in this regard is placed on the dictum laid down by Honorable Supreme Court of Pakistan in the case of WAQAR AHMED and others Versus The FEDERATION OF PAKISTAN through Cabinet Secretariat, Establishment Division, Islamabad and others reported as 2024 SCMR 1877, wherein it is held that:

*The extraordinary jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"), is destined to dispense with an expeditious remedy in cases where the illegality or impropriety of an impugned action can be established without any exhaustive inquisition or recording of evidence, but if some convoluted or disputed question of facts are involved, the adjudication of which can only be determined by the Courts of plenary jurisdiction after recording evidence of the parties, then incontrovertibly the High Court cannot embark on such factual controversy.*

13. For the aforementioned reasons no case for exercise of the powers of judicial review under Article 199 of the Constitution was made out.

Consequently; this Petition fails and is accordingly dismissed along with pending applications. The Petitioner may avail its remedy provided under the law, if so advised.

JUDGE

JUDGE

Karar\_Hussain/PS\*

Approved for reporting

Hyderabad

16.10.2025