

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, CJ
MR. JUSTICE JAWWAD S. KHAWAJA
MR. JUSTICE SH. AZMAT SAEED

CONSTITUTION PETITION NO.115 OF 2011

Abdul Raheem Ziaratwal and another

...Petitioners

Versus

Federation of Pak. etc.

...Respondents

For the petitioners: Syed Iftikhar Hussain Gillani, Sr. ASC
Mr. M. S. Khattak, AOR, assisted by:
Barrister M. Saad Buttar, Advocate

For Rspdt. Nos.1-4: Nemo.

For Rspdt. Nos.5-6: Kh. Haris Ahmed, Sr. ASC
Mr. Arshad Ali Chaudhry, AOR

For Rspdt. Nos.7-8: Mr. Shakeel Ahmed Baloch, A.G. Balochistan.

Date of hearing: 16-18 & 22.7.2013.

JUDGMENT

IFTIKHAR MUHAMMAD CHAUDHRY, CJ.- Constitution

Petition No.115 of 2012 has been initiated under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973.

2. Abdul Rahim Ziaratwal, General Secretary along with other office bearers of Pashtoonkhwa Milli Awami Party (PMAP), filed this petition, highlighting the poor living conditions of the people of Balochistan. It was averred in the petition that the Government of Balochistan (GoB) conducts an annual development program

throughout the Province of Balochistan called the "Public Sector Development Program" (PSDP), which covers all development schemes, both ongoing and newly commenced. In this regard, the government follows the Manual for Development Projects (MDP) prepared and designed by the Planning Commission of Pakistan (PCP). In pursuance whereof, five programs were prescribed for preparation and implementation of the development schemes. As per the Development Manual, the Planning Division/Planning Department directs departments of the Provincial Government during the months of October/November to provide details of the proposed projects for inclusion in the PSDP after obtaining feasibility report, etc. The information so provided is then placed before a Committee of the Planning Department, which is supposed to scrutinize each and every scheme and approve all information for inclusion in the PSDP. The grievance in this case is that no such process has been adopted by the Planning Department and the PSDP was prepared in a very mechanical manner; therefore, public money was plundered by the holders of public office who were not open to any accountability. A number of schemes in various sectors of the PSDP were earmarked with 100% allocation; however, all such schemes were unapproved. According to the Petitioners, the government had been making public statements from time to time to the effect that they had spent 100% amount of PSDP for the year 2011-2012, whereas the fact remains that no amount had been spent in about 154 schemes and the government functionaries had embezzled and misappropriated an amount of Rs. 6171.00 million. The non-development expenses were brought under the umbrella of development schemes, which is a clear violation of all

settled norms of planning. Moreover, every MPA/Minister of the Province had been allocated an unprecedented amount of funds to the tune of Rs.300.00 million. The schemes against the allocated funds were selected by the MPA/Minister concerned without consent of the administrative departments to which the said schemes pertained. With the exception of a few parts of the province, the Petitioners contend, the MPAs have been provided excess funds but without any tangible development outcome. The Petitioners averred that there were many schemes in PSDP which were specific to individuals, rather than being designed and launched to benefit the community at large. The Petitioners believe that such schemes have been included to lure the prospective voters to vote in favour of these benefactors. Therefore, the Petitioners claim that public money was being spent in violation of the constitutional provisions and various laws enacted thereunder, including the General Financial Rules (GFR) of the Federal Government as well as MDP designed by the PCP. Lastly, it was prayed to declare as under: -

- (a) That the respondents are under obligation to spend the public money fairly, honestly and in accordance with constitutional guarantees to safeguard the interest of general public.
- (b) Due to shortage of water, priority of new schemes allocation should be given for water storage dams.
- (c) That the Government of Balochistan and its departments may be restrained from spending any amount shown in the PSDP of 2012-13.

3. On 22.10.2012, when the matter came up for hearing before this Court, learned counsel for the Petitioner as well as the Advocate General, Balochistan were asked to examine the matter to

the extent of development work *vis-à-vis* the public funds which had been spent on the same, by getting them verified by involving a third party belonging to the Province of Balochistan including experts/engineers from the University of Balochistan, University of IT, Agricultural University, etc. In compliance of the said order, two notifications dated 25.10.2012 and 30.10.2012 were placed on record. However, learned counsel for the Petitioner expressed reservations in respect of notification dated 30.10.2012 and stated that in order to ensure transparency, the official persons i.e. the Chairman CMIT and Member Technical CMIT should be excluded. In light of this, the Government was asked to issue a revised notification. The committee was required to exercise their discretion to select schemes of a specific area. Furthermore, at least 25 projects/schemes in respect whereof the amount has been paid since formation of the government till that time were to be examined and report thereof to be submitted to the Court. By means of the same order, it was directed that allocated amounts would not be distributed with regard to unapproved schemes identified in PSDP 2012-2013 till further orders.

4. On 04.12.2012, the learned counsel for the GoB filed a reply stating therein that in compliance of the order dated 02.11.2012, the departments had stopped work on the approved and unapproved schemes. However, it was requested that the aforementioned order may be withdrawn. On 06.12.2012 the Court, after hearing both sides, passed the following order: -

- (1) The Government of Balochistan is allowed to utilize the funds for the schemes, which have already been identified in PSDP 2012-2013 and after completion of the process, now have been

approved by the Planning and Development (P & D) Department against the budgetary allocation.

- (2) The amount shall be spent only to the extent of the budgetary allocation without making any increase in the same.
- (3) Similarly, the departments, which have indentified the schemes, shall be responsible to execute the same and no scheme shall be transferred from one department to another department at the behest of any Minister or political functionaries.
- (4) As reportedly, there is no Provincial Public Accounts Committee, therefore, we direct the Chief Secretary, Government of Balochistan to implement this order and ensure that no rule is violated and the schemes are properly executed to the extent of the budgetary allocation, which have been made, till the final disposal of this petition.
- (5) As this matter is of an important nature, therefore, parties' counsel are required to exchange their pleadings, enabling this Court to dispose of the same on the next date of hearing.
- (6) It has been informed by Mr. Saleem Raza, Chairman of the Committee, constituted to ascertain as to whether funds have been utilized against the development schemes or otherwise, that primarily sufficient time is required for the completion of the task.

5. The Inspection Committee undertook inspection of 55 projects/schemes situated in various parts of the province and submitted report by means of CMA No.136/2013, which was made public vide order dated 11.01.2013. The GoB filed scheme-wise reply/comments on the report.

S. #	Name of Schemes	Observations Raised by Supreme Court Inspection Committee (SCIC)	Comments by Various Executing Agencies
1	Construction of Road from N-50 to Murgha Faqirzai (99 Km). ID No. Z2003.1153	I. The scheme has been revised five times by adding new link roads which is not a good practice and has affected the completion of the scheme since last 10 years.	I. Scheme was originally approved during FY 2003 -2004, later on during execution of work; scheme road length was increased at different stages, so that

	<p>Executing Agency: C&W Deptt. Implementatio n Status: Ongoing</p>	<p>II. Before completion of the assigned works, the flood damages contracts of the same road have been awarded.</p>	<p>scheme can be concluded with a logical end.</p> <p>a. Link roads were added to the scheme, for the reason, to extend better road communication network facilities to nearby villages falling in the vicinity of the road alignment, which was also demand of general public since long. This inclusion of link roads has facilitated general public of the area.</p> <p>b. Delay in completion of scheme is due to insufficient releases during course of scheme implementation. The releases against scheme are not proportionate with the approved cost of scheme. If required level of funding i.e. Rs 100.000 Million additional funds during CFY 2012-2013 are provided and Rs 142.946 Million during FY 2013 — 2014, are provided then the scheme can be completed by 30th June 2014.</p> <p>II. During Execution of work, flash flood was encountered, which damaged already complemented components of the scheme. Since under contract agreement there is no provision that flood damaged work on ongoing scheme will be reflected by the contractor, since being a natural disaster. Therefore flood damages contract was awarded to reflective</p>
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		<p>the damaged components and to ensure that damages are not repeated during floods.</p> <p>a. Work on damaged components could not be left unattended as scheme completion could not be achieved and remaining road components could not be carried out.</p> <p>b. If damages were not reflected, there were ample of room that in any future flash floods, already damaged portion could be severely damaged and reflection cost could be increased by many folds.</p> <p>III. Neither planning nor execution in a professional way has been carried out.</p> <p>IV. The works are in progress. Discrepancies were observed in dimension of the road as the width varied at different places. This omission should be removed by adopting a uniform alignment and payments be adjusted in the Final Bill.</p>	<p>the damaged components and to ensure that damages are not repeated during floods.</p> <p>a. Work on damaged components could not be left unattended as scheme completion could not be achieved and remaining road components could not be carried out.</p> <p>b. If damages were not reflected, there were ample of room that in any future flash floods, already damaged portion could be severely damaged and reflection cost could be increased by many folds.</p> <p>III. Scheme was planned for completion within three years and the same was approved, but funds were not released in the approved manner as specified in approved PC - I. Due to insufficient releases the planning schedule has been revised repeatedly.</p> <p>a. Rate of funds releases have a direct bearing over physical progress, due to less releases and increase in scope of work, scheme is under execution since FY 2003 — 2004. Under the said circumstances, fund releases dominate the planning.</p> <p>IV. Dimension of road various depending of traffic volume. However the width of road should not have been varied on main trunk road. This discrepancy will be addressed by the</p>
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			<p>department.</p> <p>a. To adopt uniform width on main truck road, estimates are to be reviewed. Apparently uniform width on alignment cannot be adjusted in final bill as approved estimates are as per approved scope and item rates are as per CSR 1998. In case revision of scheme is required due to adoption of uniform width, revised PC — I will be submitted to competent authority for consideration and approval.</p>
2	<p>Pitav Valley Development Project Qilla Saifullah. ID No. Z2004-0915 Executing Agency: BDA. Implementation Status: Ongoing</p>	<p>I. The drilling of 160 tube wells has been completed.</p> <p>II. Only 49 tube wells have been installed with machines and energized.</p> <p>III. The stake holders complained about silting up sizeable number of tube wells, and demanded for thorough probe in to the matter through some investigating agency.</p> <p>IV. The QESCO has informed that 33 tube wells for which the Demand Notes have been deposited will be energized by 15th February, 2013.</p>	<p>Out of 160 tube wells, only 49 tube wells have been energized. These tube well were drilled in 2006- 2007. Since 2007, BDA is requesting QESCO for providing connection, but they delayed. Due to this reason the already drilled tube wells got silted at minor level. Furthermore, the soil texture of Dolatzai, Ghabzai, Santozai and Batozai is sandy zone according to geologist report. The demand note of remaining 78 no.s tube wells is not submitted by QESCO, whereas; the minutely silted portions of Tube Wells would easily be cleaned through compressor testing.</p>
3	<p>Construction of Zhob Mir Ali Khel Road. ID No: Z2010-0845 Executing Agency: Initially C&WD but transferred to BDA by the P&DD Implementation Status: Ongoing</p>	<p>i. Original contract being one package was awarded to M/s. Hasnain Cotex Ltd., who proceeded with the works at snail's pace and hardly achieved some 30% progress till complete suspension which led to abandoning of the Contract on 18-12-07.</p> <p>ii. Following withdrawal of ADB from the Project the BDA entered in the scene critically and reviewed the scope of works resulted in gigantic increase in the cost instigating the executants to split the contract into three distinct packages duly approved by the</p>	<p>The scheme after clearance by the relevant approving forum may be started as recommended by the committee.</p>

		<p>P&DD with the cost allocation as under:</p> <p>a. Rs. 4.521 Billion b. Rs. 2.816 Billion c. Rs. 3.669 Billion Total : Rs. 11.006 Billion</p> <p>iii. It was utmost surprise of the Committee that despite of mammoth increase in the cost of the Project (i.e. Rs. 1.447 billion to Rs. 11.036 Billion) it was somewhat binding upon the Executing Agency to get it approved by the CDWP/ECNEC but this could not happened which is considered to be a serious omission and currently being investigated by NAB, Balochistan and the construction works have been put to halt.</p> <p>iv. Although, the scheme was not inspected by the Committee yet one of its members (Engr. Usman Babai) inspected the works at different time and shared his knowledge about the scheme with other Committee members.</p> <p>v. The Scheme was initially split up into two packages vis: Road and Bridges awarded to M/s. NPI and M/s. MN Construction. Respectively. Later on, a further split in the road package emerged but the number of contractors remained two.</p> <p>vi. The scheme may be got approved at the appropriate forums so that it can be implemented as soon as possible</p>	
4	<p>Construction of Roads & Drainage System Zhob Town City Area PSDP No. 428 — 2004-05 Executing Agency: BDA Implementation Status: Ongoing</p>	<p>i. The works have not been executed in professional manner and the scheme is still in progress even after 8th year of its implementation starting from 2004-05</p> <p>ii. Bituminous surface of these roads was found worn out at various locations.</p> <p>iii. Drainage channels in some area are not functioning in an efficient manner. Major lengths are choked and without required</p>	<p>I. The work has been executed by professional engineers who are regular employees of BDA. In respect of delay in completion of the project, it is due to piece meal provision of funds to the executing agency.</p> <p>II. The deficiencies pointed out will be rectified at the risk and cost of contractor.</p> <p>III. Drainage channel is 100% complete and functioning properly. Garbage and refuse is</p>

		<p>joints.</p> <p>iv. The poor quality/below specification works attributed to the gross negligence on part of the supervisory staff which needs to be rectified soon and the remaining works should be completed expeditiously.</p>	<p>thrown in the channel which adversely affects its functioning. The town committee is responsible for its cleaning.</p> <p>IV. The work is still in progress. Defects will be removed.</p>
5	<p>Construction of Additional Class Rooms at Various Schools, P8-19. PSDP No 600 Implementing Agency: BDA Implementation Status: Out of 144 class rooms to be construction 104 have been completed.</p>	<p>i. 02 schools in Zhob town were inspected and the quality of works was found far below the acceptable level.</p> <p>ii. Doors and Windows erected were found below specifications</p> <p>iii. Flooring was also found below specification.</p> <p>iv. The remaining schools included in the project require detailed inspection and the defects found in the executed works should be rectified at the risk and cost of the Contractors concerned.</p>	<p>I. The building was completed 4 to 5 years age and still there are no cracks in roof, walls and other structures; however the deficiencies will be removed accordingly.</p> <p>II. Doors are made of pine wood (Chalghoza) which is locally available and windows are made of Z angle iron by local manufactures which though do not give good finishing but are durable.</p> <p>III. Flooring will be repaired at the risk and cost of contractor.</p> <p>IV. Noted for compliance.</p>
6	<p>Musa Khail to Drug Road Dakian-Walwasta Project KM 10.80 to KM 20.8 (10KM) ID No. Z2003.0074/30 (2008-09) Executing Agency: C&WD Implementation Status: Ongoing</p>	<p>i. More or less all the structures have failed. Payment for 10 KM road Premix work has been made, but on site hardly 1 KM length of road was found premixed. Despite the inquiries already conducted, the field staff has not been punished. Opportunity has been provided to get the Premix carpeting work done now, but they were hardly able to complete 01 KM premix work only.</p>	<p>I. Scheme from start runs into implementation problems. Firstly a Departmental inquiry team was held regarding said scheme in March 2010. The finding of the inquiry team were that "work done at site be got measured and deducted from the total cost, the balance amount be recovered from the contractor, officers and staff involved in making the payments may be reverted and not posted in future for assignments involving financial matters". Said inquiry report was processed for</p>

		<p>ii. Observations made by the Inquiry Committee must be implemented in letter and spirit and defective structures should be reconstructed at the risk and cost of the Contractor/Supervisory Staff.</p>	<p>approval of competent authority.</p> <p>a. P&D Department asked CMIT to carry out inquiry of subject road. CMIT submitted report in August 2011. CMIT recommended that within four months scheme be completed.</p> <p>b. Concerned field staff was given time to complete the scheme as per CMIT recommendations. But concerned staff took considerable time to start work and are presently carrying out work as reported by supervisory staff.</p> <p>c. NAB (B) is conducting an inquiry or subject road from August 2012. Relevant documents are provided to NAB(B). Outcome of NAB(B) inquiry is awaited.</p> <p>II.32 Culverts including pipe culverts were constructed under the project as per approved scope. Some of culverts were damaged as indicated in CMIT and Departmental inquiry reports.</p> <p>a. Defective structures will be demolished and reconstructed at the risk and cost of the contractor / supervisory staff.</p>
7	<p>Establishment of Women Hospital in Zhob. ID No Z2010-0692/961 Executing Agency: C&WD Implementation Status:</p>	<p>i. The works are in progress in a satisfactory manner.</p> <p>ii. Should some sincere efforts are poured this vital project can be made functional even within this financial year.</p>	<p>I. Department will make efforts to sustain & gain work momentum, so that project is completed within allowed time frame.</p> <p>II. Department realizes the importance of this public utility project and is making genuine efforts for early</p>

			<p>completion of the hospital, but since being a building work, requiring time for curing and settlement, work items are interlinked and cannot be squeezed being time bound work items. Secondly six months of CFY 2012 — 2013 have already passed and remaining approved scope cannot be completed in remaining six months.</p> <p>a. Hospital can be completed by 30th June 2014, in all respect, if additional funds to the tune of Rs 20.000 Million are provided during CFY 2012 — 2013 and balance completion funds i.e. Rs 21.397 Million are provided during FY 2013 - 2014.</p>
8	<p>Development Plans of Loralai PSDP No. 1417-2011-12 Executing Agency: BDA Implementation Status: Ongoing</p>	<p>i. Out of 16 Flood Protection Schemes one namely Shah Karez costing Rs. 2,108,889/- was inspected and found completely damaged.</p> <p>ii. The Executing Agency/BDA, however, failed to produce detailed design/drawings of the Scheme.</p> <p>iii. Out of 31 number bores, 3 were checked. Bore at Shah Karez was found operational for individual agriculture use. Stone masonry circular water tank was neither completed nor connected. The other 2 bores were not operational/energized.</p> <p>iv. Out of 5 Community Halls, 2 were inspected. The one at Circuit House Loralai was of acceptable quality whereas the second one at Killi Khan Karez was found in A-1 condition. The beneficiary has invested his</p>	<p>I. The scheme with its appropriate scope of work stands complete. But damages caused by catastrophic floods of August, 2012. According to Pakistan history last year's rains and floods broke records of 15 years.</p> <p>II. The requisite information is available with the department and can be furnished to any authority as and when required.</p> <p>III. Noted for Compliance.</p> <p>IV. The executing agency i.e. BDA accepts the observation of the committee; however, it is assured by the department that these community halls will be</p>

		<p>own money here. This Hall will be in use of hardly 2 - 3 families.</p> <p>v. Dispensaries and Boundary Walls of Schools etc: A Dispensary and a Boundary Wall was inspected, and found ok, keeping in view the non workable CSR of 1998. Transformers and Electric poles were found installed,</p> <p>vi. Change of executing agency has caused the above mentioned problem which could have been avoided if the line department was involved in implementation process.</p> <p>vii. The shortcomings observed and pointed out by the Inspection Team in the executed works should rectify in adequate manner at the risk and cost of the respective contractors and the site supervisory staff involved in execution process.</p>	<p>used for the benefit of general public/community.</p> <p>V. No comments are required in this regard.</p> <p>VI. Noted for future compliance</p> <p>VII. Noted for future compliance</p>
9	<p>Construction of 50 Bedded Hospital at Mach. ID No. Z2009-0333 Executing Agency: C&WD Implementation Status: Ongoing</p>	<p>i. The quality of works was not at acceptable level.</p> <p>ii. The contract comprises the specifications in executing such works.</p> <p>iii. The Supervisory staff should redouble their vigilance to ensure quality works.</p>	<p>I. Matter regarding quality of work has been seriously viewed by the Department. Chief Engineer, Sibi Zone and Superintending Engineer Kachhi will be directed to carry out detailed inspection and rectify all works which are not as per required approved specifications.</p> <p>II. Field Staff is being directed to vigilantly supervise the work and approved / laid down specification must be followed at all cost and quality of work should not be compromised at any cost.</p> <p>III. The SCIC observation is well taken and Department will be strictly following the same.</p> <p>a. Department will ensure that Field Staff will be extra vigilant to ensure quality of work and Department internal monitoring system</p>

			will be beefed up to have checks over quality of works and counter ensure that executed works are of required specification and quality
10	Construction of Government Girls Intermediate College Mach ID No. Z2003-0763 Executing Agency: C&WD Implementation Status: Ongoing	<div>i. The quality of works was not at acceptable level.</div> <div>ii. The contractor is compromising the specifications in executing of such works.</div> <div>iii. Top floor roof work is simply not acceptable.</div> <div>iv. Since the scheme is ongoing, the defective works may be got rectified at the risk and cost of the Contractor</div>	<div>I. Matter regarding quality of work has been seriously viewed by the Department. Chief Engineer, Sibi Zone and Superintending Engineer Kachhi will be directed to carry out detailed inspection and rectify all works which are not as per required approved specifications.</div> <div>II. Field Staff is being directed to vigilantly supervise the work and approved / laid down specification must be followed at all cost and quality of work should not be compromised at any cost.</div> <div>III. Chief Engineer, Sibi Zone and Superintending Engineer Kachhi will be directed to carry out detailed inspection of the top floor roof and suggest rectify work, in case it is beyond rectification, top floor roof will be dismantled and roof slab will be relayed at the cost of contractor.</div> <div>V. Chief Engineer, Sibi Zone and Superintending Engineer Kachhi will be directed to carry out detailed inspection and rectify all works which are not as per required approved specifications at the risk and cost of the contractor.</div>
11	Construction of Community Hall at Kurd Camp, Dhadar. Executing Agency: C&WD Implementation	<div>i. Extremely poor works. Structural cracks in the bath room.</div>	<div>I. Chief Engineer, Sibi Zone and 1 Superintending Engineer Kachhi will be I directed to carry out detailed</div>

	n Status: Ongoing	<p>ii. Bath room drainage work hopeless.</p> <p>iii. Boundary wall has been constructed by one beneficiary, and may take possession of this community hall.</p> <p>iv. Steps needs to be taken by the Administrative Department to avoid trespassing.</p>	<p>inspection of the Community Hall at Kurd Camp Dhaddar and suggest rectify work, in case it is beyond rectification, bath rooms will be dismantled and reconstructed at the cost of contractor.</p> <p>II. Bath room drainage work will be relayed at the risk and cost of contractor.</p> <p>III. Field Staff of the Department will make a reference to District Administration Dhaddar, in this reference.</p> <p>IV. SCIC observation will be forwarded to District Administration for implementation.</p>
12	Construction of Community Hall for Shah Sahiban, Dhadar. Executing Agency: Local Government Department Implementation Status: Ongoing	<p>i. The structure work has been completed and fixtures and finishing works left un-attended. Fate of completion could not be ascertained.</p> <p>ii. District Administration may be directed to get the remaining works done</p>	Considering the important nature of task, the Deputy Commissioner Kachhi has been directed to follow the observations of SCIC and submit compliance report within 15 days positively.
13	Construction of Bit Road Nighari to Kot Kahl, Dhadar. 08 Km Length and Arif Bridge 650 Rft. Executing Agency: C&WD Implementation Status: Ongoing	i. Social unrest due to tribal rivalry coupled with non availability funds has remained a cause of the slow progress and these issues must be resolved to ensure smooth and un-interruptible implementation process leading to timely completion of the Scheme	<p>I. District Administration is in picture and tribal rivalry has to be resolved by District Administration.</p> <p>II. Funds are not being released as work is not in progress and is stopped.</p> <p>III. If tribal disputes are resolved by District Administration, work can be resumed by the Department and if required funds are provided project can be completed by 30th June 2014.</p>
14	Construction of	i. The quality of works is not up to	I. Chief Engineer, Sibi

	<p>B/T Road linking NHA Road to Khair Wah via Shan Gola Wah Tehsil Lehri (14 KM length). Executing Agency: C&WD Implementation Status: Ongoing</p>	<p>the mark.</p> <p>ii. Instead of fetching soils from the specified borrow area located at a distance of 100ft distance the Soil available just adjacent to the alignment of the road is being used for embankments, inviting flood water to develop channels which is the root cause of the damages to the road.</p> <p>iii. Works are in progress as such the defects pointed out can easily be rectified through the contractor engaged for implementation of the contract</p>	<p>Zone and Superintending Engineer Sibi will be directed to carry out detailed inspection and rectify all works which are not as per required approved specifications at the risk and cost of the contractor.</p> <p>II. Observation has been taken. The Department Material testing Field Laboratory staff will be deployed to check the material condition of borrow area at 100 ft as pointed out by SCIC, whether it is fit to be used as borrow area or not, if found suitable, the same will be used for remaining embankment works.</p> <p>a. Material taken for embankment adjacent to road alignment is not acceptable, but since road traverses through cultivated fields and as such land owners do not allow for borrowing material from there. Under said condition material for earthwork / embankment has to be taken from road's right of way. However, field staff will be directed to fill the channel along the road alignment with suitable material and carry its compaction, so that flood water is not channelized through it and road is not damaged due to flood water.</p> <p>III. Chief Engineer, Sibi Zone and Superintending Engineer Sibi will be directed to carry out detailed inspection and rectify all works which are defective through engaged contractor.</p>
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15	Drainage & Sewerage System at Dera Murad Jamali Executing Agency: BDA Implementation Status: Ongoing	<p>i. The works have been shown completed, but the Manholes covers were found missing at a number of points and stagnant water is visible all around.</p> <p>ii. The Pumps were operated and found in order.</p> <p>iii. As reported in the field that the Sewage of 03 days collected in the Sump can be emptied in 01 hour operation of the Pumps.</p> <p>iv. In this Project the control of the invert levels is of prime importance. Therefore a thorough Probe is required to be carried out in this project.</p>	The manholes covers have been stolen by the inhabitants of the area. The project has already been scrutinized by the NAB, CMIT and IGDP Balochistan. However, the said deficiencies will be removed at the risk and cost of the contractor.
16	Drainage of 400 acres of Dar-ul- Ulma Madressa/Masjid, Hairdin area. Executing Agency: Irrigation Department Implementation Status: Completed	i. Against the allocated/released funds to the tune of Rs. 10.00 million, the works with designed/approved scope of works were completed in satisfactory manner with good quality at a cost of Rs. 3.60 million. The unspent funds have been surrendered by the Irrigation Department.	Work already stands completed and the remaining funds have already been surrendered.
17	Construction of Flood Protection of Sohbatpur Town, Executing Agency: Irrigation & Power Department. Implementation Status: C&WD	i. The scheme with its approved scope of works stands completed but the damages caused to the structures by the catastrophic floods of August 2012 persist and need to be repaired to make the scheme operational.	Work completed. However damages caused to the structures by the catastrophic flood of 2012 are proposed to be restored.
18	Construction of 06 KM Road in Sohbatpur Area, Executing Agency: BDA Implementation Status: Completed	i. Works claimed to have been completed in a road width of 24 feet, but on many points it was hardly 14-18 feet wide. This aspect needs to be further probed.	Noted for compliance. The deficiencies will be investigated by the CMIT.
19	Construction of Detoxification Center Goth Ishfaq Gola-Sohbatpur, Executing Agency: BDA. Implementation Status: Ongoing	<p>i. Poor quality and below specifications works were found in progress.</p> <p>ii. Defective works need to be dismantled and reconstructed strictly in accordance with laid down specification and conceived</p>	Noted for compliance.

	n Status: In progress	design/drawings at the risk and cost of the Contractor.	
20	Community Hall Goth Ishfaq Gola-Sohbatpur, Executing Agency: Local Government Department. Implementation Status: Not known	<p>i. Scheme was inspected on request of the potential beneficiaries.</p> <p>ii. Total wastage of Public money. Scheme has been left incomplete and was giving a deserted look.</p> <p>iii. Works should be completed at the risk and cost of the Contractor concerned and the Site Supervisory Staff deployed at the site of works.</p>	The remaining work of the scheme will be completed within a month's time and compliance report will be submitted by the executing agency.
21	Construction of BIT Road from Main Chattan Patti to Shahi Wah including Link Road (16.5 KM). Executing Agency: C&WD Implementation Status: Completed	<p>i. The road although recently completed but portrays a gloomy picture.</p>	<p>I. Scheme was approved at a cost of Rs 74.165 Million against which 16.50 KM of road was to be constructed. Scheme was started in FY 2005 — 2006 and was completed in June 2010 except for a portion / reach of 2.5 KM were only Premix carpeting was not allowed by inhabitants of area due to dispute over alignment.</p> <p>a. After completion the subject road was hit by unprecedented flood of 2010 (August I September). The road was also exposed to massive flood of 2012 (June). Both floods left permanent marks on the roads by destruction. It is also pointed out that road remained submerged in flood water for months during both above said floods.4KM of road was damaged during said floods.</p> <p>b. Dispute over alignment has been resolved now and work on remaining 2.5 KM for Premix carpeting has been started / resumed. Withheld amount of Rs 4.000 Million lying with the Department as</p>

		<p>ii. The beneficiaries available at site stated that the flood events of 2010 badly damaged the incomplete road and no longer in use of public.</p> <p>iii. 4 KM of out of 10 KM of road has been included in the Flood Damages Programme but no funds received so far.</p> <p>iv. Contractor claimed that the people are not allowing to proceed with construction works and an FIR has been lodged with the Sohbat Pur Police Station.</p> <p>v. Contractor's Security of Rs. 4.0 million lying with the</p>	<p>security is sufficient for completion of remaining work.</p> <p>II. As indicated above that road was seriously damaged and remained submerged for months, therefore road was not a utility for public but in a stretch of 4 KM which was damaged by floods, remaining 10 KM i.e. minus 2.5 KM uncompleted road.</p> <p>III. During floods of 2012, road was further damaged and as such estimates were prepared and forwarded to competent authority by the Department through an umbrella project for flood damages restoration. The project stands approved by PDWP & PC-I submitted to Federal Government for approval.</p> <p>IV. As already indicated above inhabitants of area due to dispute over alignment in a portion / reach of 2.5 KM stopped the work for Premix carpeting, although embankment had been prepared and base course laid. Rs 4.000 Million were withheld from contractor bill for Premix carpeting in a reach of 2.5 KM.</p> <p>a. Now the dispute over alignment has been resolved and work on remaining 2.5 KM for Premix carpeting has been started / resumed. Withheld amount of Rs 4.000 Million lying with the Department as security is sufficient for completion of remaining work.</p> <p>V. Noted for compliance.</p>
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		<p>Department and has been retained till satisfactory completion of the repair/ restoration of flood damages.</p> <p>vi. District Administration may intervene to get the works done.</p>	<p>VI. Noted for compliance.</p>
22	<p>Construction of 43 KM Road from Jhal Magsi — Kot Maasi Road to Mithazai to Abad Waryam to Mut Banglani (43 KM), Executing Agency C&WD. Implementation Status: Ongoing</p>	<p>i. The work is in progress but in a clumsy manner with unacceptable quality.</p> <p>ii. Timely funds have not been made available.</p>	<p>I. Observation has been taken. The Department Material testing Field Laboratory staff will be deployed to check quality of work throughout length of road and unacceptable reaches will be removed and relayed as per required specification.</p> <p>a. After start of scheme from FY 2005 -2006, subject road has been hit I exposed by flood of 2007, unprecedented flood of 2010 (August / September) and massive flood of 2012 (June). Said three floods left a permanent marks on the roads by destruction.</p> <p>b. Estimates for floods damages were prepared and forwarded to competent authority by the Department through an umbrella project, but funds have not been released for flood damages ratification. Some restoration works have been carried out by the Department to keep the road functional, but payments to contractor has not been made, which will be cleared once funds are received.</p> <p>II. Scheme is ongoing from FY 2005 — 2006. Releases of funds do not tally with requirement. If balance completion</p>

		<p>iii. Earthen embankment constructed from the borrow material available just adjacent to the road, Inviting flood water to develop flood channel along the road which has badly damaged the road embankment.</p> <p>iv. Scheme being in progress, more vigilance is required on part of supervisory staff and damages got repaired at the risk and cost of the Contractor.</p>	<p>funds are made available by providing additional release to the tune of Rs 81.208 Million, the scheme can be completed.</p> <p>III. Subject road traverses through cultivated fields and as such land owners do not allow for borrowing material from there. Under said condition material for earthwork / embankment has to be taken from road's right of way.</p> <p>a. Nearest borrow pit is approximately 50 to 60 KM from the site of work. In approved PC — I, lead for borrow material has not been provided.</p> <p>b. The subject road has been time and time again tested during three unprecedented floods and road withstood the floods even with material borrowed from road sides.</p> <p>IV. The SCIC observation is well taken and Department will be strictly following the same.</p> <p>a. Department will ensure that Field Staff will be extra vigilant to ensure quality of work and Department internal monitoring system will be beefed up to have checks over quality of works and counter ensure that executed works are of required specification and quality.</p> <p>b. Chief Engineer, Sibi Zone and Superintending Engineer Nasirabad will be directed to carry out detailed inspection and rectify all works</p>
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			which are defective through engaged contractor at his risk and cost.														
23	Construction of Agriculture Model Research Farm with Residential Quarters, Goth Miral Khan at Sohbatpur. Executing Agency BDA Implementation Status: Ongoing	<p>i. The Construction work has not reached the Plinth level.</p> <p>ii. Progress at site does not commensurate with expenditure incurred.</p> <p>iii. Agriculture Department has not started so far the procurement of fixtures and furniture. Needs further probe.</p>	The progress of work is slowed down due to bad law and order conditions, however the observations raised by the committee have been noted and will be referred to the CMIT for detail probe.														
24	Extension of Lai Minor (Remaining Portion) in Jhal Magsi area, Executing Agency: Irrigation Department (PID) Implementation Status: Ongoing	<p>i. The work claimed as completed but, in fact, lot of work was found incomplete.</p> <p>ii. Money is being spent for extension of Lal Minor, which will become operational upon completion of Patfeeder Extension Project whilst fate of completion of this Project is not known.</p> <p>iii. The quality of work is not up to the mark.</p> <p>iv. There is a lot of room to improve both quality and pace of progress.</p> <p>v. Works should be completed at the risk and cost of the Contractor and Supervisory Staff</p>	Noted for compliance. The rectification process is already been initiated.														
25	Construction of Black Topping road at Jungle Pir Alizai Quetta Chaman Road to Killi Kutab Gul Muhammad, Killi Khamat, Haji Abdul Qayyum Street Length: 13.73 km) ID No. Z2005-0618 Executing Agency: BDA Implementation Status: Ongoing	<p>i. The following PSDPs were discussed in detail with Mr. Qahar Wadan the Petitioner and his colleagues on January 06th 2013 and two other occasions.</p> <table><tr><td>Z2009-0046</td><td>Rs. 55.00 M</td></tr><tr><td>Z2011-0381</td><td>Rs. 115.00 M</td></tr><tr><td>Z2009-0184</td><td>Rs. 40.00 M</td></tr><tr><td>Z2005-0618</td><td>Rs. 94.291 M</td></tr><tr><td>Z2010-0552</td><td>Rs. 60.00 M</td></tr><tr><td>Z2012-0069</td><td>Rs. 30.00 M</td></tr><tr><td>Z2012-0129</td><td>Rs. 30.00 M</td></tr></table> <p>ii. During Inspection of Gulistan, Black top Road of Killi Ahmed Khan Ghaibizai (04 Km) was inspected, and found out of the jurisdiction of the MPA Engr. Zamrak Khan i.e. PB-12.The road work was found in order except the berms which required further improvement.</p>	Z2009-0046	Rs. 55.00 M	Z2011-0381	Rs. 115.00 M	Z2009-0184	Rs. 40.00 M	Z2005-0618	Rs. 94.291 M	Z2010-0552	Rs. 60.00 M	Z2012-0069	Rs. 30.00 M	Z2012-0129	Rs. 30.00 M	Noted for compliance. The shortcomings will be removed at the earliest.
Z2009-0046	Rs. 55.00 M																
Z2011-0381	Rs. 115.00 M																
Z2009-0184	Rs. 40.00 M																
Z2005-0618	Rs. 94.291 M																
Z2010-0552	Rs. 60.00 M																
Z2012-0069	Rs. 30.00 M																
Z2012-0129	Rs. 30.00 M																

		iii. Jungle Pir Alizai road had already been inspected in the capacity of member CMIT, and the position was the same as explained for Killi Ahmed Khan Ghaibizai road. Since this is on-going work, therefore shortcomings can be removed without any problem.	
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6. Vide order dated 10.04.2013, the learned counsel for GoB was asked to furnish the statement containing reply to the following questions: -

- (i) list of persons against whom both criminal and civil proceedings have been initiated for alleged misappropriation of the funds on receipt of the Inspection Report;
- (ii) As the Inspection Report has covered only 25% of the development schemes and whether GOB on its own has got prepared the reports in respect of 75% development schemes;
- (iii) What action has been initiated against the persons/officers etc. responsible for the alleged misappropriation in the development schemes.

The learned counsel was also asked to furnish the details in respect of: -

- (i) The amount received from National Finance Commission (NFC) from the year 2008 to 2013;
- (ii) The receipt of other amounts during this period;
- (iii) Year-wise statements about the expenditures out of above sources on development and non-development schemes;
- (iv) Approximate status of completion and the masses who have or likely to have the benefits and the amounts spent for development or their welfare etc.

7. It is important to note that after constituting a Committee to evaluate and inspect at least 25% of the development schemes, the

P&D Department notified a committee on 15.04.2013 in the light of the order of the Supreme Court comprising the following: -

- 1. Haji Muhammad, (Chairman)
Chief Economist, P & D Department
- 2. Manzoor Ahmed Sarparah, (Member)
Director General (M&E) P&D
Department
- 3. Barkatullah Khan, (Member)
Director General (Implementation),
P&D Department

The terms of Reference of the Committee were as follows: -

- 1. To visit important/problematic development schemes all over the province.
 - 2. The process of Monitoring will continue as regular function, however, team will have to present its preliminary report within fifteen days.
 - 3. The concerned departments shall ensure regular monitoring and progress reporting of all development projects/schemes executed by them.
8. The Committee held a series of meetings to discuss different schemes. Agendas of the meetings were as follows: -
- 1. To discuss problematic schemes.
 - 2. To give recommendations (Slash/protect) for the schemes in PSDP 2012-13.
 - 3. Any other important issue.

The Committee discussed 125 schemes with cost of Rs.3.325 billion and allocation of 2.211 billions. A detailed summary of each section along with recommendations are provided in CMA No. 4387/13. Details of some of the projects are reproduced hereinbelow for reference: -

LIST OF SCHEMES TO BE SLASHED FROM PSDP 2013-14

S. No.	PSDP ID District	Name of Scheme	Cost	Allocation 2012-13	Recommendation
Culture Sector					

5.	105 Z2012.0732 Kohlu	Various Culture Activities In Different Areas In District Kohlu	5.000	5.000	Various components of the project were discussed in details with the authorities concerned of the department and finally decided that the scheme may be slashed. However final responsibility rests on the authorities concerned i.e. Additional Chief Secretary (Dev;).
PP&H Sector					
6.	149 Z2012.0036 Quetta	Construction / Establishment of Women and Juvenile Jail at Quetta	30.000	30.000	-do-
Communication Sector					
16	474 Z2012.0542 Gwadar	Cutting of Kanddasore Road, Gwaddar (UP&D)	90.000	10.000	-do-
BDA Sector					
22.	624 Z2012.0676 Quetta	Const of various roads, Drains & PCC Street at PB-6 Quetta.	16.000	16.000	-do-
Irrigation Sector					
24.	669 Z2012.0105 Khuzdar	Complete local bore for Agriculture Purpose Near Khalq Jhalawan District Khuzdar.	2.500	2.500	-do-
25.	680 Z2012.0181 Kech	Extension of Sami Bund in PB-49 District Turbat.	1.000	1.000	-do-

9. In response to above referred directions, report was filed on 19.07.2013 through CMA No.4387/13, under the signatures of M/s Dostain Khan Jamaldin, Secretary Finance, Government of Balochistan and Aslam Shakir Baloch, Additional Chief Secretary (Dev.), stating therein that in the light of findings of Inspection Report, the concerned departments have been asked to submit initial findings so that future course of action can be decided. It has been further stated that GoB has not prepared any report on its own regarding the remaining 75% of the development schemes. However, periodic inspections are being

carried out. During previous inspection visits conducted by different departments, some cases of misappropriations/negligence were pointed out. Consequently, preliminary departmental inquiries were referred to NAB and action was initiated against concerned officers.

Detail of the same is reproduced hereinbelow: -

1.	Road Barchore-Toba Kakari, Road Baroshore-Khanozai and Road Kut Muhammad Shah – Killa Haji Khan (Case No.5034)	NAB (B) Case
2.	PRP – Construction of Local Bore for Killi Azamabad, Tehsil Bori District Loralai (Case No.6926)	-do-
3.	Construction of Community Hall Building Union Council Kharos Wah Tehsil Tamboo District Naseerabad (Case No.7063)	-do-
4.	Complaint against Mr. Abdul Aziz, XEN and Haji Javed, SDO, C&W Department (Non-Payment & Liabilities) (Case No.7023)	-do-
5.	Complaint against B&R Provincial-II Quetta (Case No.6976)	-do-
6.	Construction of Road Musakhail – Drug (Dakian – Wahwasta Portion) Case No. 6970	-do-
7.	Construction of Kuchlak Bypass Project	-do-
8.	Construction of Road Harnai Bazar – Bazo Bungalow	-do-
9.	Scheme executed by B&R District Harani (Case No.6635)	-do-
10.	Sports Ground Kohlu (Case No.7056)	-do-
11.	13 Schemes executed (Mr. Jaffar George) through MPAs Fund	-do-
12.	10 Schemes executed through MPAs Funds (Mr. Sana Ullah Zehri) (Case No.7040)	-do-
13.	Schemes executed by Provincial B&R Kohlu during 2011-2012 and 2012-2013 (Case No.6855)	-do-
14.	Technical Education (Civil Works) only	-do-
15.	Construction of Road from Main Chattan Patti to Shabi Wah (Case No.5036)	-do-
16.	Preliminary Inquiry Cont: of Road Shahrag to PMDC and Road Kach to Harnai	Chief Minister Directive
17.	Inquiry “Construction of Road from N-50 to Balozai Khanozai Town Dilsora, Tora Khula, Walgai and Balaniganda via Surkhah Road District Pishin	SCIC Report
18.	Inquiry “Various Roads in Punjgur”	-do-
19.	Department Committee for inspection of Development Schemes.	-do-
20.	Complaint against Embezzlement of funds & Sub Standard construction District Kachhi (Mr.Mohammad Saleem Harifal) (B-18)	S&GAD
21.	Inquiry of Mekhtar Chamalang Road District Loralai	CMIT

22.	Disciplinary Proceeding against Mr. Sabir Ali Baloch Ex-XEN Dera Bugti	Departmental Inquiry
23.	Financial Irregularities in B&R Khuzdar	Case finalized
24.	Registration of case in Anti Corruption Establishment against Saddaruddin Buladi	Anti Corruption
25.	Inquiry No.8/Q/2011 against Niamat Ali XEN and Anwar SDO C&W Department Musakhail	Anti Corruption
26.	Conducting of inquiry against Mr. Abdullah Khan Mandokhel Ex-XEN B&R District Zhob	Departmental
27.	Payment to Jomezai Petroleum Service Loralai amounting to Rs.1,261,695/-	Departmental
28.	Cost: /Cutting/Blasting/Black topping of Musakhel to Drug Road Dakian Walwasta Project Km 10.8 to 20.8 (10Km) Embezzlement/ Misappropriation of funds.	Departmental

10. It has been further stated in the reply that after receipt of Committee’s report, no such action has been taken because reports from concerned departments are still awaited. The report also contains the detail of funds transferred under NFC Award, which is reproduced hereinbelow: -

Federal Transfers under NFC Award

2008-09	2009-10 (Actual) Last year of 6 th NFC)	2010-11 (Actual) (First year of 7 th NFC)	2011-12 (Actual) (2 nd year of 7 th NFC)	2012-12 (estimated)
48.050	54.855	83.121	94.963	114.206

11. In addition to above said amount, the Government of Balochistan also received Rs.12.00 billion annually as arrears of Gas Development Surcharge claims made prior to 1991 and for the period 2003-09. Year-wise statement of the expenditures has also been provided in the said report, which is reproduced as under: -

Budget	2008-09	2009-10 (Last year of 6 th NFC)	2010-11 (First year of 7 th NFC)	2011-12 (2 nd year of 7 th NFC)	2012-12 (estimated)
Non-Development	55.446	77.534	112.755	129.35	144.112
Development	12.745	13.618	26.491	33.918	35.819
Total	68.191	91.152	139.246	163.268	179.931

12. It is to be noted that despite directions of the Court and receipt of the aforementioned report vide CMA No.136 of 2013, no action has been initiated against any of the delinquent persons responsible for the commission and omission of illegalities, irregularities as well as criminal negligence. Inasmuch as, no action has been taken regarding left over 75% projects and schemes. A solitary scheme matter was referred to NAB for initiating proceedings but no final report has been submitted and the payment to the executing agencies involved in the development programme had not been made.

13. As per overall findings of the Inquiry Committee, the progress of development projects seems to be unsatisfactory. However, without undertaking a thorough probe by a competent law enforcing agency, both civil and criminal liabilities cannot be fixed, as such judicial restraint is being exercised lest it should hamper/bring to a standstill the development activities in the Province. We are cognizant of the fact that these development activities are being carried out at very slow pace because *prima facie* we are of the opinion that despite availability of considerable funds, reference of which has been made hereinabove, no visible development proportionate to the same has taken place in the province of Balochistan; particularly, relating to enforcement of Fundamental Rights of the general public to provide them basic amenities of life, including education, health cover, infrastructure, etc., Most importantly, a major portion of the population is not getting clean drinking water, as is evident from the data provided by both the sides

to justify their respective claims. However, it is admitted that the criteria known as Project Management Life Cycle (PMLC) has not been followed, although the government had taken specific stand in this regard. As a result, considerable public money has been wasted due to corruption and corrupt practices during the last five years i.e. 2003 to 2008.

14. There is yet another painful aspect of the matter, namely, the Provincial Government under PWP-I allocated an amount of Rs.30.00 million per year for each MPA. This constituted a hefty budgetary provision, which was to be spent strictly in accordance with the guidelines for Project Management issued by P&D Department, Government of Balochistan, under which a PMLC comprising five distinct phases had to be completed, which included:-

1. Project Identification and Preparation (PC-II)
2. Project Proposal and Approval (PC-I)
3. Project Authorization
4. Project Implementation (PC-III)
5. Project Completion of Closer of PC IV and V.

However, as per the material available on record, such amount was spent by the departments in a non-transparent and illegal manner. In some of the cases, as is evident from the contents of the report, concerned authorities entrusted the funds of PSDP or those arising out of the fund/budget allocated to MPAs to the Departments or the executing agencies of their choice without any justification.

15. On having gone through all the material brought on record in respect of allocation of funds and expenditures incurred on the projects/schemes, it is *prima facie* held that the poor citizens of the

Province of Balochistan are being deprived of the fundamental right to life as envisaged under Article 9 of the Constitution. It is pertinent to note that the present situation also runs contrary to Article 3 of the Constitution, which provides that the State shall ensure the elimination of all forms of exploitation.

16. The functionaries of Province of Balochistan, *prima facie*, are responsible for spending the huge funds contrary to the guidelines issued by the P&D Department, Government of Balochistan, thus are accountable, as the money which was spent has clearly not proved beneficial to the inhabitants of the far flung areas of Balochistan. Even according to the petitioner, who represents one of the political parties, there is no impact of such development out of PWP-I or from PSDP on the poor condition of general public. The report of the Committee as mentioned hereinabove categorically supports the case of the petitioner.

17. It may not be out of context to note that the Chief Minister of the Province also sanctioned specific funds for the purpose of using PWP-II. Reportedly, funds meant for this programme had also not been used in a transparent manner and a thorough inquiry is also called for in this behalf.

18. On having thoroughly examined all the aspects of the case it has been noticed that the Petitioner has brought a case of serious irregularities, illegalities and alleged misappropriation of funds mainly for the reasons that incidentally all the political parties or individual Members of the Provincial Assembly of Balochistan had joined the treasury benches, so there was no effective opposition except one or two

Members. This fact is evident from the information provided on official website of the Balochistan Assembly, which is as under: -

Party Affiliation			
Government Alliance		Opposition Alliance	
<u>Pakistan People's Party</u>	15	<u>Independents</u>	2
<u>Parliamentarians</u>		<u>(Opposition)</u>	
<u>Like Minded Group</u>	13	<u>Belongs to Pakistan</u>	1
<u>Jamiat-e-Ulema Islam</u>	10	<u>Muslim League (Q) Opted</u>	
<u>Balochistan National Party</u>	7	<u>Opposition Benches</u>	
<u>(Awami)</u>		<u>Total</u>	
<u>Independent</u>	6		
<u>Pakistan Muslim League (Q)</u>	5		
<u>Awami National Party</u>	3		
<u>Pakistan Muslim League (N)</u>	1		
<u>National Party</u>	1		
<u>Jamiat-e-Ulema Islam</u>	1		
<u>(Ideological)</u>			
<u>Total</u>	62		

Consequently, there was no Provincial Public Accounts Committee, primarily responsible to undertake scrutiny of the public funds from time to time being spent by the Government of the time.

19. It is to be noted that as per Rules of Procedure of the Balochistan Assembly a comprehensive mechanism has to be evolved to ensure that funds belonging to public exchequer/taxpayers are not misappropriated by way of corruption or corrupt practices. However, for any reason, with reference to the province of Balochistan, in view of the circumstances narrated hereinabove, no Public Accounts Committee was constituted to have oversight, particularly on development schemes, both approved and unapproved. To this effect, the provisions of Articles 169, 170 and 171 of the Constitution read with sections 8 and 12 of the Auditor-General's (Functions, Powers and

Terms and Conditions of Service) Ordinance, 2001, (which pertains to the functioning and powers of the Auditor General) have to be strictly invoked.

20. Learned counsel appearing for the parties, however, had no objection on utilization of funds for the development purposes in a transparent manner and on adopting any mechanism to avoid corruption and corrupt practices during execution of such projects/schemes. We are of the opinion that to achieve such a noble cause and to ensure that the funds are being utilized for the protection of fundamental rights of the citizens ensured in the Constitution, a heavy burden has to be shouldered by the Executive/Government itself, because the Chief Minister and the Cabinet have the first and foremost duty to ensure that the funds are used to promote the welfare of the citizens strictly in accordance with the Constitution and the law.

21. In the instant case, as noted hereinabove, an independent Committee was constituted pursuant to the order of this Court, which submitted its report through CMA No.136/2013. The reaction to the same has also been shown by filing of CMA No.533/2013. Therefore, further proceedings are required to be initiated by the Executive/Government. It is incumbent upon the Executive/Government to examine/evaluate left over schemes i.e. 75% of the total, and if it is found that schemes/projects meant for community development have instead provided a golden opportunity to the respondent officials/officers/representatives to misappropriate the

public money by indulging into corruption and corrupt practices, then the Government must proceed against them in accordance with law.

22. It is to be noted that in the meanwhile, after the General Elections held on 11.5.2013, the Petitioner's political party i.e. *Pakhtoonkhawa Mili Awami Party* is one of the collation partners of the Provincial Government of Balochistan. Therefore, we feel that it has become all the more necessary for the Petitioners and their political parties to cooperate with other components of the coalition Government to check each and every scheme in the light of relevant rules, regulations and instructions issued by the Planning Commission of Pakistan and the Provincial Government to ensure the protection of Fundamental Rights of the citizens. Ultimately, the whole exercise is to be undertaken to ensure that the funds which were provided to the representatives annually for the purpose of identifying schemes through concerned departments are spent in transparent manner, without indulging in corruption and corrupt practices.

23. Thus, the Provincial Government of Balochistan, being the executive authority, must, under the law, undertake an exercise to ensure forensic audit of leftover 75% projects/schemes. On receipt of the audit report, the matter should be taken up with the civil and criminal law enforcing agencies to ensure that delinquents, who have allegedly indulged in corruption and corrupt practices, are dealt with strictly in accordance with law so that it may serve as a deterrent for such like minded persons in future as well.

24. The order 10.4.2013 has already been modified because of the disposal of this petition; however, any other restraining order operating against the Provincial Government, is hereby withdrawn.

25. These are the detailed reasons, with regard to Constitution Petition NO.115 of 2012, of short order dated 22.07.2013, passed jointly in Constitution Petition No.115 of 2012 and Constitution No.20 of 2013, contents whereof are reproduced hereinbelow: -

“As far as the judgment in listed Constitution Petition No.115 of 2011 instituted by petitioner Abdul Rahim Ziaratwal and connected Constitution Petition No.20/2013 on the subject “Action against Distribution of Development Funds by Ex-Prime Minister of Pakistan Raja Parvez Ashraf”, is concerned, the same is reserved.

2. However, in the meanwhile, with regards to the Schemes initiated out of the funds allocated to the PWP-II, the Executing Agencies are directed to undertake an exercise and examine across the board all the Schemes so as to ascertain as to whether the PEPRA Rules have been strictly followed and whether the development works were assigned to the Contractors in a transparent manner keeping in view the recognized standards for award of execution of such works; and whether the said schemes were based on feasible reports. If such Schemes are found to be in accordance with the conditions and observations made hereinabove the payments to the Contractors may be released to the extent of the work already completed.

3. As far as the left over work is concerned, it should be examined as to whether the same is in the public interest and is feasible to continue execution of the said schemes. If such schemes are found not to be in the public interest or feasible, the same shall be abandoned subject to the approval of the Competent Authority i.e. on whose behalf the Schemes were initiated; and the funds so made available shall be deposited with the public exchequer. The said Competent Authority shall also examine the possibility of proceeding further against such persons or agencies, who had allowed the execution of the works/schemes contrary to the PEPRA Rules, proper feasibilities or without following a transparent manner; before the Forums having jurisdiction to deal with such issues both civil as well as criminal, as the case may be.

Chief Justice

Judge

Judge

Announced in open Court on 5.12.2013
At Islamabad

Chief Justice

Approved For Reporting