

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ
Mr. Justice Gulzar Ahmed
Mr. Justice Sh. Azmat Saeed

Constitution Petition No.20 of 2013

[Action against distribution of Development Funds by
Ex-Prime Minister of Pakistan Raja Parvez Ashraf]

ON COURT NOTICE

For M/o Cabinet : Ms. Nargis Sethi, Secretary

For M/o Finance : Mr. Sajjad Mehmood Butt, ASC/LA
Mr. Abdul Rauf Khan, Addl. Secy (Exp)

Date of Hearing : 19.04.2013

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, CJ.—The Secretary, Cabinet Division, Government of Pakistan, filed the requisite reply (CMA No.2222 of 2013) in pursuance of the earlier order dated 16.04.2013. She has explained the procedure of allocating the funds by the Prime Minister from Peoples Works Programme-II (PWP-II). However, she stated that according to the budgetary provisions, an amount of Rs.22 billion (annual) was made available to the Prime Minister with an authority to sanction the amount in favour of the Parliamentarians and Notables for the development programmes. She further stated that being the Cabinet Secretary, she is not aware about the criteria/preferences of the Prime Minister for making allocation to different development schemes, as this subject is assigned to the Special Secretary of the Prime Minister and no sooner a

sanction letter is issued, the same is processed in the Cabinet Division for onward transmission to the Accountant General Pakistan Revenues (AGPR) and the concerned Executing Agency. Admittedly, there is no system in place for monitoring the sanctioned funds. The AGPR is required to issue cheques to Executing Agency and then ultimately, it is only the Executing Agency, which had to monitor the execution of the development schemes. For our perusal, besides offering explanation about the expenditures of the PWP-II funds, a copy of sanction letter as a sample has also been placed on record.

2. *Prima facie*, it seems that at the initial stage of sanctioning the funds from the Peoples Works Programme, no preliminary formalities were carried out about the feasibility etc. of the development programmes. It appears from the letter dated 15.04.2013, issued by Mr. Tahir Maqsood, Additional Secretary (P-I), Prime Minister's Secretariat (Public), and the list attached therewith that on the demand of the Parliamentarians or the "Notables", who somehow succeeded in approaching the Prime Minister for allocation of the funds for development from PWP, were obliged by making sanctions without following a transparent procedure nor the feasibility of the scheme for which the funds have been sanctioned was considered inasmuch as according to the list which has been furnished, not only the worthy Members of the

Parliament, the Members of the Provincial Assemblies, the “Notables” have succeeded in getting allocation of their schemes from the Prime Minister. The Prime Minister is a person who represents the Government and the citizens, therefore, in sanctioning/allocating funds for the schemes, he is bound to follow the high standard of transparency. In doing so for the well-being of the general public and for this purpose, a system has to be institutionalized following the recognized principles of exercising discretion judiciously. The Prime Minister, being elected representative, is required to follow the procedure to prove equitable distribution of funds for schemes without any discrimination in any manner. In the instant case, what we have noticed as former Prime Minister, Raja Pervaiz Ashraf sanctioned for himself the following amounts from time to time: -

| S.No. | Dir No. | Issue date | Subject | Beneficiary | Amount Approved | Released / stuck Up |
|-------|---------|------------|--|---|-----------------|---------------------|
| 13 | 0007 | 27.07.2012 | Supply of gas to villages/localities in NA-51, Tehsil Gujjar Khan, District Rawalpindi. | Raja Pervaiz Ashraf, MNA, NA-51, District Rawalpindi. | 200.000 | Released |
| 14 | 0130 | 30.08.2012 | Supply of gas to villages/localities in NA-51, Tehsil Gujjar Khan, District Rawalpindi. | Raja Pervaiz Ashraf, MNA, NA-51, District Rawalpindi. | 433.365 | Released |
| 15 | 0148 | 30.08.2012 | Provision of gas to forty (40) villages / seventeen (17) Union Councils for on-going projects in NA-51, District Rawalpindi. | Raja Pervaiz Ashraf, MNA, NA-51, District Rawalpindi. | 49.000 | Released |
| 16 | 0776 | 30.11.2012 | Supply of gas to Jungi Dam, Bains & Popur Khurd (enroute villages of operational line) in Tehsil Gujjar Khan, District Rawalpindi. | Raja Pervaiz Ashraf, MNA, NA-51, District Rawalpindi. | 29.895 | Released |
| 17 | 0810 | 14.12.2012 | Completion of on-going gas supply schemes in 17 Union Councils and 40 villages of NA-51, Gujjar Khan, District Rawalpindi. | Raja Pervaiz Ashraf, MNA, NA-51, District Rawalpindi. | 50.003 | Released |
| 18 | 0846 | 04.01.2012 | Supply of gas to villages in NA-51, Tehsil Gujjar Khan, District Rawalpindi. | Raja Pervaiz Ashraf, MNA, NA-51, District Rawalpindi. | 300.000 | Released |
| 19 | 0848 | 04.01.2012 | Provision of electricity to the villages of NA-51, Tehsil Gujjar Khan, District Rawalpindi. | Raja Pervaiz Ashraf, MNA, NA-51, District Rawalpindi. | 50.000 | Released |

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|--------------------|------|------------|---|---|---------|----------|
| 20 | 0953 | 07.02.2013 | Supply of gas to Jungi Dam, Bains & Popur Khurd (enroute villages of operational line) in Tehsil Gujar Khan, District Rawalpindi. | Raja Pervaiz Ashraf, MNA, NA-51, District Rawalpindi. | 7.736 | Released |
| 21 | 1039 | 15.03.2013 | Additional amount for completion of on-going gas schemes in NA-51, Tehsil Gujar Khan, District Rawalpindi. | Raja Pervaiz Ashraf, MNA, NA-51, District Rawalpindi. | 300.000 | Released |
| 22 | 1040 | 15.03.2013 | Provision of electricity to the villages of NA-51, Tehsil Gujar Khan, District Rawalpindi. | Raja Pervaiz Ashraf, MNA, NA-51, District Rawalpindi. | 40.000 | Released |
| Total: Rs.1459.999 | | | | | | |

In this manner, the above mentioned amount has been allocated for the constituency which he represents himself.

3. Similarly, there are so many other Parliamentarians as well as the Members of the Provincial Assembly of the Punjab and “Notables” not representing any constituency who were obliged by granting funds for the purpose of *inter alia* the following development schemes: -

| S.No. | Dir No. | Issue date | Subject | Beneficiary | Amount Approved | Released / stuck Up |
|-------------------|---------|------------|---|---|-----------------|---------------------|
| 185 | 0377 | 12.09.2012 | Provision of gas to villages & adjoining abadies in District Rawalpindi. | Mr. Muhammad Basharat Raja, MPA, PP-05. | 71.000 | Released |
| 186 | 0378 | 12.09.2012 | Execution of misc. development schemes in District Rawalpindi. | Mr. Muhammad Basharat Raja, MPA, PP-05. | 19.000 | Released |
| 187 | 0149 | 31.08.2012 | Execution of development schemes (roads/pcc/drains) in PP-110, District Gujrat. | Mr. Moonis Elahi, MPA, PP-110, District Gujrat. | 250.000 | Released |
| 188 | 0150 | 31.08.2012 | Execution of development schemes (roads/pcc/drains/saim nala) and soling in PP-118, District Mandi Bahauddin. | Mr. Moonis Elahi, MPA, PP-110, District Gujrat. | 250.000 | Released |
| Total: Rs.590.000 | | | | | | |

And the “Notables” who perhaps are not elected representatives, as the number of their constituency is not mentioned against their names include the following: -

| S.No. | Dir No. | Issue date | Subject | Beneficiary | Amount Approved | Released / stuck Up |
|-------------------|---------|------------|--|----------------------|-----------------|---------------------|
| 208 | 0567 | 12.10.2012 | Electrification schemes in NA-19, District Haripur. | Sardar Mushtaq Ahmed | 77.245 | Released |
| 209 | 0567 | 12.10.2012 | Electrification schemes in NA-19, District Haripur. | Sardar Mushtaq Ahmed | 50.000 | Released |
| 210 | 0568 | 12.10.2012 | Execution of misc. development schemes in NA-19, District Haripur. | Sardar Mushtaq Ahmed | 16.025 | Released |
| 211 | 0569 | 12.10.2012 | Provision of gas to two (02) villages of NA-19, District Haripur. | Sardar Mushtaq Ahmed | 6.730 | Released |
| 213 | 0945 | 31.01.2013 | Village electrification schemes in District Haripur. | Sardar Mushtaq Ahmed | 85.000 | Released |
| Total: Rs.235.000 | | | | | | |

| S.No. | Dir No. | Issue date | Subject | Beneficiary | Amount Approved | Released / stuck Up |
|-------------------|---------|------------|---|---|-----------------|---------------------|
| 214 | 0857 | 08.01.2013 | Village electrification schemes in District Killa Abdullah, Balochistan. | Mr. Mehmood Khan Achakzai, Chairman, PKMAP. | 100.000 | Released |
| 215 | 0845 | 04.01.2012 | Supply of gas to village Inayatullah Khan karez, Tehsil Gulistan, District Killa Abdullah, Balochistan. | Mr. Mahmood Khan Achakzai, Ex-MNA, District Killa Abdullah. | 23.000 | Released |
| Total: Rs.123.000 | | | | | | |

4. It is informed by the Additional Secretary, Finance Division that a further sum of Rs.25 billion were allowed to be expended over and above the budgetary allocation of Rs.22 billion. Out of Rs.25 billion, Rs.15 billion are diverted funds from the PSDP originally allocated for Diamer Basha Dam, High Education Commission, Lowari Tunnel, FATA and Saving Schemes etc. (emphasis provided), whereas Rs.10 billion are three supplementary grants (Rs.5 + Rs.3 + Rs.2 billion), sanctioned by the Finance Division. The Secretary, Cabinet Division further stated that Rs.42.486 billion have already been released whereas balance amount of about Rs.4.5 billion is still available with the Cabinet Division. She informed that there were certain sanctions were made by the former Prime Minister on completion of the tenure of the Government but she declined and they were not processed.

5. It may be noted that in pursuance of an article published in the daily news "*Al-Akhbar*", Islamabad, dated 25.03.2013, under the caption سبکدوش ہونے والی حکومت کی پری پول دھاندلی an application was registered as HRC No.11504-G/2013, and the Secretary Planning and Development Division has filed comments by offering the following explanations: -

"Sub: REPORT IN HRC NO.11504-G/2013-APPLICATION: THE DAILY NEWS AL-AKHBAR, DATED 25TH MARCH, 2013, ISLAMABAD (REGARDING CORRUPTION OF EX-GOVERNMENT

The daily Al-Akhbar has reported in the editorial of its publication of 25th March, 2013 that the former Government in its last days has diverted Rs.5 billion from important projects for the schemes of Members of National Assembly and powerful Ministers to facilitate their success in the forthcoming elections. The paper has reported that funds have been diverted from Diamer Basha Dam, Higher Education Commission, Lowari Tunnel, FATA, Saving Schemes along with other important projects and a total of Rs.43 billion have been provided to them (Annex-I)

2. While the contents of the newspaper clipping are not specific, these appear to allude to allocations made for schemes under the Peoples Works Programme-II. Allocation for Peoples Works Programme-II (PWP-II) is kept in Public Sector Development Programme (PSDP) as a block provision in the Demand of Cabinet Division. Funds from the block provision are released by the Cabinet Division on the directives of the Prime Minister issued by the Prime Minister's Secretariat to the executing agencies for implementation of schemes/projects directly without involvement of Planning and Development Division. An allocation of Rs.22 billion was kept for PWP-II in the PSDP 2012-13.

3. On a request from the Prime Minister's Secretariat, a summary was moved by the Finance Division on 11th October, 2012, proposing provision of additional funds of Rs.10.00 billion for PWP-II during fiscal year 2012-13. The proposal was approved by the then Prime Minister. Pursuant to the approval of the Prime Minister, Finance Division advised Planning and Development Division on 15th October, 2012 for making necessary adjustments within the allocations of PSDP 2012-13 while ensuring that the overall size of PSDP does not increase beyond its existing size as a result of this supplementary grant (Annex-II). Consequently, the Planning and Development Division issued adjustments letters on 6th November, 2012 and 23rd November, 2012 to allocate Rs.5 billion each (Rs.10 billion) by diverting funds from other PSDP projects, with the approval of the then Finance Minister (Annex-III, IV).

4. The above adjustments included diversion from allocations to Diamer Basha Dam, Lowari Tunnel, FATA & Higher Education Commission. However, on the request of Governor, Khyber

Pakhtunkhwa, the amount of Rs.4 billion was subsequently recouped to FATA by reducing the equivalent allocation of other PSDP projects on 27th December, 2012 (Annex-V).

5. The Finance Division, after having been conveyed verbal directions for approval of additional allocation of Rs.10 billion by the then Prime Minister, moved a summary on 24th December, 2012 proposing another supplementary grant of Rs.10 billion for PWP-II through internal adjustment in the PSDP 2012-13 by the Planning and Development Division, which was approved by the then Prime Minister. Planning and Development Division carried out an exercise and adjusted Rs.5 billion only instead of Rs.10 billion, by reducing the allocations of other PSDP projects with the approval of the then Finance Minister (Annex-VI). As such a total Rs.15 billion was allocated to PWP-II through adjustments during the fiscal year 2012-13.

6. In addition to above internal adjustments in the PSDP 2012-13, Finance Division has also approved an additional allocation of Rs.10 billion for PWP-II through supplementary grant, over and above the existing size of the PSDP 2012-13. Resultantly, allocation for PWP-II increased from Rs.22 billion to Rs.47 billion."

6. It is interesting to note that along with the report, an Office Memorandum of the Government of Pakistan, Planning Commission, Planning and Development Division, dated 06.11.2012 is appended, under the subject "SUPPLEMENTARY GRANT FOR PEOPLES WORKS PROGRAMME-II (PWP-II) WITHIN THE EXISTING SIZE OF PSDP 2012-13". It finds mention in the letter that the Federal Minister for Finance, Revenue and Planning & Development has been pleased to accord approval for the provision of additional funds of Rs.5.0 billion through adjustment in PSDP 2012-13, proposed by the Planning & Development Division, to divert it to PWP-II. The approved funds would be surrendered by the concerned Ministries/Divisions in favour of Cabinet Division for

PWP-II. This document is available on the file of HRC No.11504-G of 2013 as Annexure-II, which is hereby directed to be clubbed with the instant case. For convenience, the names of the Ministries/Divisions, who were directed to divert the funds in favour of the Cabinet Division for PWP-II, are noted herein below: -

- i. States and Frontier Regions Division;
- ii. Capital Administration and Development Division;
- iii. Communication Division;
- iv. Education & Training Division;
- v. Finance Division;
- vi. Higher Education Commission;
- vii. Interior Division;
- viii. Ministry of Narcotics Control;
- ix. Railways Division; and
- x. Water & Power Division (Water Sector)

7. It is true that there were savings as the Ministry/Division indicated in the above Memorandum but the question arises that instead of spending these amounts on any other Public Development Programme, the same have been diverted in favour of the Cabinet Division for PWP-II for the purpose of allocating/distributing these funds to the Parliamentarians and the "Notables" knowing fully well that budgetary allocations of Rs.22 billion under this Head has already been exhausted, therefore, *prima facie* inference could only be drawn that the object and the purpose was the same as has been captioned in the news item of daily "*Al-Akhbar*" noted herein above, particularly, knowing well that there is no monitoring system in *stricto sensu* to ensure the expenditure of PWP-II funds in a transparent manner. It is also to be noted

that under the New System of Financial Control and Budgeting in order to maintain the financial disciplines, certain instructions were issued from time to time to be followed including with regard to the power of sanctioning projects, etc.

8. We have also issued notice to the Secretary Finance for the purpose of answering the questions, which have been framed in the order dated 16.04.2013, and are reproduced herein below: -

- i. As to whether the funds belonging to public exchequer have been allocated/distributed to MNAs/MPAs/ Notables in accordance with the Constitution and the law?
- ii. What is the phenomenon or procedure to monitor the spending of amount and as to whether the details of such developments are available?
- iii. Whether the contracts were granted to the contractors by following the PPRA Rules?

No reply has been filed except contending that in HRC No.11504-G of 2013, reply was filed. The Finance Division is directed to file the reply of the above forthwith.

9. After having taken into consideration the above-noted facts along with the viewpoint put forward by the Secretary, Cabinet Division, it is necessary to issue notice to the Special Secretary to the Prime Minister to submit SOPs, TORs or any instructions on the basis of which the Prime Minister is persuaded to allocate funds from PWP-II and as to whether there is any system in place for subjecting the schemes to technical scrutiny before allocating funds or it is left for the Prime Minister to exercise his discretion, without

adhering to the Rules of Business and without sanction of the Cabinet, the Prime Minister alone enjoys unfettered powers to make allocations from the programmes on the request of the public representatives, including the Members of the Provincial Assemblies and the "Notables" and if it is so what is the justification available with the Special Secretary or the Prime Minister to accommodate any person being a representative or otherwise, etc.

10. The Accountant General Pakistan Revenues, is hereby directed to put up the details in respect of each development scheme, which finds mention in the list appended with letter dated 15.04.2013, copy of which shall also be supplied to the AGPR along with the names of the Executing Agency to whom the amounts have been allocated for spending for the execution of the schemes. Similarly, each of the Executing Agency in whose favour the cheques were issued, shall submit reply through the AGPR about feasibility of the scheme and also to disclose as to whether the PPRA Rules were followed in order to ensure transparency in the execution of the schemes and to what extent schemes have been executed alongwith details of funds so far utilized for each scheme separately.

11. Apparently, it seems that funds were diverted from the most important projects, like Diamer Basha Dam, Higher Education Commission, Lowari Tunnel, FATA, Saving Schemes

etc noted herein above to the tune of Rs.22 billion, which in fact should not have been so done because of the importance of those projects, which undoubtedly have national importance and if are completed, the same being in the interest of the economic development of the country, ultimate benefit will pass on to the whole Nation. The manner in which the Finance Division and the Planning & Development Division had diverted these funds to the Cabinet Division to increase the budgetary allocation to PWP-II from Rs.22 billion also seems to be non-transparent because in such like situation, when an amount has already been spent for the purpose, the preference should have been given for completion of the projects of national importance, instead of allocating this budget for execution of small schemes, which are meant only for the benefit of individuals and not for the whole Nation.

12. In view of the above, we direct the AGPR to ensure that pending decision of the instant petition the funds which have already been released to the Executing Agencies, including for the schemes enumerated in the list appended with the letter dated 15.04.2013 referred to herein above are not further distributed and the payments in respect of the schemes, details of which have been furnished by the Prime Minister's Secretariat shall be stopped immediately and a compliance report shall be sent to the Registrar of this Court by the AGPR for our perusal in Chamber within a period of

three days, after receipt of this Order. Similarly, the Executing Agencies to whom the work has been assigned or the process of assigning of work is yet to be completed shall not proceed further with these schemes, till further orders passed by this Court.

Similarly, notice to the Secretary, Planning & Development Division, Government of Pakistan, be issued for filing reply of the facts and consideration which have already been noted in the order dated 16.04.2013 as well as in the instant order. Notice to the learned Attorney General for Pakistan be also issued for the next date.

13. Let this case be fixed on 30.04.2013.

CJ.

J.

Islamabad
19.04.2013

*Hashmi**

J.