

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.20 OF 2013

(Action against Distribution of Development funds by Ex-Prime Minister Raja Parvaiz Ashraf)

AND

HUMAN RIGHTS CASE NO.11504-G OF 2013

(News clipping from daily Al-Akhbar dated 25.3.2013 regarding alleged corruption of Ex-Government.)

AND

CIVIL MISC. APPLICATION NOS.2960, 3566, 3579, 3649, 3865, 4022, 4135, 4208, & 4498/2013

(Applications for impleadment as party)

For the Applicants:	Mr. Tariq Mehmood, Sr. ASC (CMA-2960 & 3566/13) Mr. M. Munir Peracha, Sr. ASC (Absent) (In CMA No.3579/13) Syed Tayyab Jaffri, ASC (Absent) (In CMA-3649/13) Syed Zafar Abbas Naqvi, AOR with Mr. Irfanullah, Adv./SVP, DBA Lucky Marwat (CMA-3865/13) Mr. Asif Fasihuddin Virdag, ASC (CMA-4022/13) Mr. M. Siddique Khan Baloch, ASC (Absent) (CMA-4135/13) Mr. Shahid Mahmood Khokhar, ASC (In CMA No.4208/13)
On Court's Notice:	Mr. Muneer A. Malik, Attorney General for Pakistan, assisted by Mr. Faisal Siddiqui, Advocate
For AGPR:	Mr. Tahir Mehmood, AGPR
For Auditor General of Pakistan:	Malik Manzoor Akhtar, D.G. Audit Rana Sahakeel Asghar, Director Audit Mr. M. Munawwar Rana, A.O.

- For M/o H & W: Mr. Sajid Ilyas Bhatti, DAG
Mr. M. S. Khattak, AOR with
Mr. Aurangzeb Marral, Deputy Secretary
- For Pak PWD: Sardar Asmatullah Khan Niazi, ASC
Mr. Sarwar Awan, D.G.
Mr. Ata ul Haq, CE
- For M/o Finance: Mr. Sajid Mehmood Butt, ASC
Mr. Arshad Ahmed, F.A. (Cabinet)
Dr. G. M. Mahmoodi, S.O.
Mr. Seerat Asghar, former SSPM/Secy NFS&R
- For Cabinet Div.: Ch. Zafar Amin JS(PWP)
Mr. Masood Ahmed , JS (NPS)
Mr. Muhammad Asif Khan,
Chief Finance & Accounts Officer.
- For SSGCL: Mr. Asim Iqbal, ASC
Mr. Asif Fateh Sheikh, GM (Legal)
Mr. Shahir Aleem, GM (Sales)
- For SNGPL: Mr. Uzair Karamat Bhandari, ASC
Mr. Arif Hameed, MD, SNGPL
- For PEPCO: Mr. Zargham Ishaq, MD, PEPCO
Mr. Amjad Manan, Chief Engr. (RE)
- For Parliamentarians: Mr. Wasim Sajjad, Sr. ASC
(On behalf of Raja Parvaiz Ashraf, Ex-PM)
- Mian Abdul Rauf, ASC
(On behalf of M/s Ghias Mela, Anwar Ali Cheema,
Ex-MNAs and Amir Sultan Cheema, Ex-MPA)
- Mr. Moula Bakhsh Chandio,
Ex-Law Minister, In person
- M/s Liaqat Ali Shabab, Muhammad Hamayat Khan
and Syed Muhammad Ali Shah Bacha, Ex-MPAs,
KPK (All in person)
- Date of hearing: 16-18 & 22.7.2013.

JUDGMENT

IFTIKHAR MUHAMMAD CHAUDHRY, CJ.- Constitution

Petitions No.20 of 2013 as well as a Human Rights Case have been initiated under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973.

2. Precisely stating facts of the case are that a news item was published in the "Daily Times" dated 14.04.2013 in which it was reported that Raja Parvaiz Ashraf, the then Prime Minister, ten days after having completed his tenure doled out billions of rupees in the form of development funds. According to the report, amongst the beneficiaries were Syed Yousaf Raza Gillani, Ali Musa Gillani, Abdul Qadir Gillani, Moonis Elahi, Ch. Shujaat Hussain, Ch. Parvez Elahi, Wajahat Hussain, Sh. Waqas Akram, Sherazi family of Sindh and others. The report claims that official documents reveal that around Rs.2.5 billion were transferred by Raja Parvaiz Ashraf to be spent in Gujjar Khan, his ancestral constituency. The office put up a note, highlighting the above news item, upon which following order was passed: -

"In the first instance information be called about the news from the Chief Editor and Reporter of Daily Times. Similarly, the Principal Secretary to Prime Minister and Secretary Ministry of Finance shall submit reports to the Registrar of this Court. Put up Reports before Registrar for 15-04-2013"

3. In compliance with the above reproduced order, three letters were received on 15.04.2013. In the letter received from Ministry of Finance duly signed by Mr. Mansab Khan Awan, Joint Secretary M/o Finance it was stated that an amount of Rs.22 Billion was allocated for People's Works Program-II (PWP-II) during financial year 2012-2013 for development schemes identified by the Parliamentarians and notables under demand No.109-Development Expenditure of Cabinet Division. Subsequently, on the direction of PM Secretariat, an additional amount of Rs.25 billion was allocated to the Cabinet Division's Demand No.109-Development Expenditure of the

Cabinet Division for PWP-II. As such, the total allocation under the said program for the year 2013-2014 comes to Rs.47 billion. It is asserted further that the releases, out of PWP-II, are made by the Cabinet Division on the directions of the PM Secretariat and that the Finance Division through its Financial Advisor (Cabinet) only endorses the sanction letters issued by the Cabinet Division, after approval by the Principal Accounting Officer (PAO) i.e. Secretary Cabinet. It has been further stated that neither the Cabinet Division issued any sanction letter for release of funds under PWP-II nor did the Finance Division endorse any such sanction after 15.03.2013.

4. Mr. Tahir Maqsood, Additional Secretary (P-I) submitted a letter on behalf of PM Secretariat stating therein that no funds were released for development schemes under PWP-II after dissolution of the National Assembly i.e. 16.03.2013. He further stated that the exact amount of funds were issued against the names appearing in the news clipping out of PWP-II during the current financial year, under the directives of Prime Minister and prior to dissolution of National Assembly was annexed with the letter.

5. Mr. Rashid Rehman, Chief Editor, Daily Times, also sent a letter in which he stated that the news clipping was a mere reproduction of publication and broadcast already made public by "Dunya" Newspaper and Satellite TV Channel. The original source of news clipping in question are the column, story and talk on a number of shows by Mr. Rauf Klasra of Dunya Newspaper & Satellite TV Channel. He has further stated that the Monitoring Desk of Daily Times had been following the issue, and the very same was taken from Mr. Klasra's revelations.

6. The matter was put up in Chambers on 16.04.2013, when the following order was passed: -

“A careful perusal of information collected from concerned quarters reveals that former Prime Minister Raja Pervaiz Ashraf spent/allocated/distributed various amounts. A sum of Rs.22.0 billion was allocated for People’s Works Programme-II during financial year 2012-2013 for development schemes identified by Parliamentarians and Notables under Demand No.109-Development expenditure of Cabinet Division. Furthermore, an amount of Rs.25 billions on the directions of the Prime Minister’s Secretariat, was allocated to the Cabinet Division’s Demand No.109-Development Expenditure of Cabinet Division for People’s Works Programme-II, break up of which is as follows: -

S.No.	Amount Released	Date	Remarks
1.	5 billion	06.11.2012	Though Adjustment in PSDP 2012-13
2.	5 billion	23.11.213	Though Adjustment in PSDP 2012-13
3.	5 billion	28.12.2013	Though Adjustment in PSDP 2012-13
4.	5 billion	10.01.2013	Through Supplementary Grant
5.	3 billion	07.03.2013	Through Supplementary Grant
6.	2 billion	12.03.2013	Through Supplementary Grant

Thus, the total amount of aforesaid two allocations under People’s Works Programme-II for the year 2013-14 comes to Rs.47.0 billion(Rs.22.0 billion + Rs.25 billion).

Above amounts have not only been distributed /allocated to elected representatives including MNAs, MPAs but also to notables. There are a lot of speculations about the distribution of above amounts by the Prime Minister, *prima facie*, beyond his budgetary as well as discretionary powers.

Therefore, instant proceedings be registered as petition under Article 184(3) of the Constitution and be fixed in Court on 17.04.2013 as it gives rise to a question of public importance, involving enforcement of fundamental rights of the citizens

guaranteed under Articles 9, 14, 19 A, 24 and 25 of the Constitution.

Notices to Secretary Cabinet and Secretary Finance, Government of Pakistan be issued with direction to appear and explain: -

- (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?

7. The matter was, thus, registered as Constitution Petition No.20 of 2013 and was fixed in Court on 19.06.2013. In pursuance of the order dated 16.04.2013, the Secretary; Cabinet Division, Government of Pakistan, filed requisite reply through CMA No.2222 of 2013.

8. It would be appropriate to note hereinbelow the extract of original budget and supplementary additional amounts released as well as balance of remaining budget of PWP-II for the year 2012, 2013.

S. No	Description and ID	Budget/ Supplementary Grant	Financial	Amount
1.	People's Works Programme-II (PWP-II)- ID 5511	Original Budget	2012-13	22,000,000,000
2.	People's Works Programme-II	Technical Supplementary Grant-I	2012-13	5,000,000,000
3.	People's Works Programme-II (PWP-II) – ID 5511	Technical Supplementary Grant-2	2012-13	5,000,000,000
4.	People's Works Programme-II (PWP-II) – ID 5511	Technical Supplementary Grant-3	2012-13	5,000,000,000
5.	People's Works Programme-II (PWP-II) – ID 5511	Technical Supplementary Grant-4	2012-13	5,000,000,000
6.	People's Works	Supplementary	2012-13	5,000,000,000

	Programme-II (PWP-II) – ID 5511	Grant-I		
7.	People’s Works Programme-II (PWP-II) – ID 5511	Supplementary Grant-2	2012-13	3,000,000,000
8.	People’s Works Programme-II (PWP-II) – ID 5511	Supplementary Grant-3	2012-13	2,000,000,000
Sub-Total				52,000,000,000
	People’s Works Programme-II (PWP-II) – ID 5511	Surrendered (TSG-4) Against Supplementary Grant-I	2012-13	5,000,000,000
	People’s Works Programme-II (PWP-II) – ID 5511	Surrendered (May 2013)	2012-13	4,513,501,000
	People’s Works Programme-II (PWP-II) – ID 5511	Surrendered to other Ministries	2012-13	1,258,375,000
Sub-Total:				10,771,876,000
(Released to Executing Agencies) Final Budge				41,228,124,000
Total:				52,000,000,000

It may also be noted that according to following para of the Special Audit Report by Auditor General of Pakistan, the saving identified by Economic Division were not surrendered by the respective Ministers: -

(h) Whether diversion of funds has been made into the schemes and from the schemes so approved?

The Planning Division initially made provision of Rs.22,000.00 million in PSDP budget 2012-13 for PWP-II. Later on, Planning and Development Division identified savings of Rs.15,000.00 million from the PSDP projects of various Ministries Division which were subsequently diverted to PWP-II through Technical Supplementary Grant.

Audit noted that the saving identified by the Planning and Development Division against PSDP allocation of Ministries/Divisions was not surrendered by the respective Ministries/Divisions.

Moreover, the Cabinet Division has also surrendered funds of Rs.1,258.375 million to other Ministries/Division into their demands/grants for execution of PWP-II. Detail is as under: -

S. No.	PMD No.	Sanction date	DFA endorsement date	Executing agencies	Amount
1.	72	6.9.2012	7.9.2012	FATA	50,000,000

				Secretariat	
2.	115	11.9.2012	13.9.2012	M/o Communicati on	20,000,000
3.	208	11.9.2012	13.9.2012	M/o Industries	6,500,000
4.	227	20.9.2012	21.9.2012	FATA Secretariat	100,000,000
5.	228	20.9.2012	21.9.2012	FATA Secretariat	100,000,000
6.	229	20.9.2012	21.9.2012	FATA Secretariat	100,000,000
7.	231	20.9.2012	21.9.2012	FATA Secretariat	100,000,000
8.	232	14.9.2012	18.9.2012	FATA Secretariat	100,000,000
9.	233	20.9.2012	21.9.2012	FATA Secretariat	100,000,000
10.	307	20.9.2012	21.9.2012	FATA Secretariat	100,000,000
11.	308	20.9.2012	21.9.2012	FATA Secretariat	100,000,000
12.	399	26.9.2012	26.9.2012	Ministry of National Food Security & Research, Islamabad	99,975,000
13.	2657-B	11.10.2012	11.10.2012	Ministry of Communicati on	55,000,000
14.	430	27.12.2012	28.12.2012	FATA Secretariat	50,000,000
15.	531	31.12.2012	03.01.2013	Ministry of Human Rights	2,000,000
16.	543	03.12.2012	05.12.2012	Ministry of Industries	900,000
17.	529	08.03.2013	08.03.2013	Ministry of Kashmir Affairs and gilgit Baltistan	12,000,000
18.	571	08.0.3.2013	08.03.2013	Ministry of National Food Security & Research, Islamabad	50,000,000
19.	634	27.02.2013	27.02.2013	Ministry of Defence	12,000,000
20.	997	08.03.2013	08.03.2013	Ministry of Defence	100,000,000
Total					1,258,375,000

9. As per report submitted by the Prime Minister Secretariat, the then Prime Minster, periodically sanctioned the following amounts for his own constituency:-

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
20	0953	07.02.2013	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.	7.736	Released
21	1039	15.03.2013	Additional amount for completion of on-going gas schemes in NA-51, Tehsil Gujjar 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 Gujjar Khan, District Rawalpindi.	Raja Pervaiz Ashraf, MNA, NA-51, District Rawalpindi.	40.000	Released
Total: Rs.1459.999						

10. Besides above schemes, another scheme was added for construction at Mandra-Chakwal Road and Sohawa-Chakwal Road in the PSDP 2012-2013 vide Prime Minister's directive dated 02.08.2012 and 31.08.2012. These schemes were accorded anticipatory approval for Rs.2675.955 and Rs.3300.00 Million respectively on 08.09.2012 vide Cabinet Division's U.O dated 8.09.2012. Accordingly funds amounting to Rs.2301.00 million and Rs.3675.00 Million were released to Pak PWD on 02.10.2012 & 16.03.2013 respectively. However the Prime Minister's Secretariat vide their order dated 2.10.2012 transferred funds as well as the execution of said development project from Pak. PWD to National Logistic Cell (NLC). It is pertinent to point out that Islamabad High Court Islamabad has suspended the operation of the order dated 2.10.2012 under its order dated 10.10.2012 but inspite of said order, the said amount of funds i.e. Rs.5976 Million

were transferred to M/s NLC vide Cheque Nos. B0837/B 836966 dated 15.10.2012 for Rs.1.100 billion and B08502/B8550167 dated 30.01.2013 for Rs.1.201 billion and Cheque No.B08534/B853331 dated 16.3.2013 for Rs.3.675 billion for execution of works by them. However, the aforesaid last cheque dated 16.3.2013 amounting to Rs.3.675 billion was not cleared by the Federal treasury, Islamabad due to the said Court order. Now these funds amounting to Rs.3.675 Million were surrendered to Government vide Pak. PWD, letter dated 14.5.2-2013. However, the same was not returned to Pak. PWD by NLC despite repeated reminders. The Revised PC-I amounting to Rs.4671.337 Million and Rs.4789.404 Million in respect of said schemes were prepared by the National Logistic Cell (NLC). However, revised approval of these schemes have not so far been accorded by the competent forum i.e. ENCEC. In compliance of the directions contained in the Islamabad High Court Islamabad's order dated 28.03.2013 under which the transfer of work/funds to M/s NLC was declared illegal, M/s NLC were asked to return the funds amounting to Rs.2.301 billion to Pak. PWD, which have not been returned by them on the plea that they have filed an Intra Court Appeal in the Islamabad High Court, Islamabad against the Order of the Honorable Court as intimated by them vide their letter No.27201/MCSRP/P&A/NLC dated 26.04.2013.

10. Similarly, there are numerous other MNAs/MPAs and Senators who were obliged by granting funds from PWP-II as per following details: -

Detail of Cost of directives issued to MNAs & Senatores

Party Name	MNA			Senators			Total		
	Nos.	Nos. of Directives	Cost	Nos.	Nos. of Directives	Cost	Nos.	Nos.directives	Cost
PPPP	113	352	18,998.735	5.	11	447.803	118	363	19,446.538

PML(F)	1	1	100.000				1	1	100.000
MQM	19	19	1,900.000				19	19	1,900.00
ANP	12	29	1,252.478	2	2	100.000	14	31	1,352.478
PML(N)	11	15	993.520				11	15	993.520
MMAP	3	4	300.000				3	4	300.000
PML(Q)	27	61	3,890.400	4	4	209.500	31	65	4,099.900
IND	6	11	830.00	2	5	190.000	8	16	1,020.000
BNP(Awami)	1	1	20.000	2	2	155.000	3	3	175.000
Total	193	493	28,285.133	15	24	1,102.303	208	517	29,387.436

Detail of Cost of directives issued to MPAs and others

Party Name	MNA			Senators			Total		
	Nos.	Nos. of Directives	Cost	Nos.	Nos. of Directives	Cost	Nos.	Nos.directives	Cost
PPPP	158	149	3,942.458	25	44	2,577.762	183	193	6,520.220
PKMAP				1	2	123.000	1	2	123.000
ANP	1	1	50.000	1	1	1.500	2	2	51.500
PML(Q)	34	40	1,992.450	41	45	1,638.470	75	85	3,630.920
IND/Other	1	1	10.000	38	57	2,081.37839	39	58	2,091.378
National Alliance				1	2	80.000	1	2	8.000
JUIP				1	1	50.000	1	1	50.000
Total	194	191	5994.908	108	152	6552.11	302	343	12547.018

12. Detail of some of the Notables who were also obliged in the same manner from PWP-II is as under:-

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						
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	Mr. Mahmood	23.000	Released

			Inayatullah Khan karez, Tehsil Gulistan, District Killa Abdullah, Balochistan.	Khan Achakzai, Ex-MNA, District Killa Abdullah.		
Total: Rs.123.000						

Besides above, the funds were released to the following Notables:

Dir. No.	Dir. Date	Dir. Cost	S.No.	Name of Scheme	Executin g Agency	Amount released (in Million)	Exp. Incurred (in million)	Saving / excess (in Million)	Physical progress
			Notable						
506	30-Nov-12	40.000	1	Constructio n of PCC Streets/ Roads, Nallah, Boundary Walls & Brick Soling Streets at different Union Councils in District Chakwal		40.000	39.544	-0.456	100%
			1			40.000	39.544	-0.456	
			Notable						
507	30-Nov-12	50.000	1	Constructio n of PCC Streets/ Roads, Nallah, Boundary Walls & Brick Soling Streets at different Union Councils in District Chakwal		50.000	44.980	-5.020	85%
			1			50.000	44.980	-5.020	85%
			Notable						
508	30-Nov-12	50.000	1	Constructio n of PCC Streets/ Roads, Nallah, Boundary Walls & Brick Soling Streets at different Union Councils in District Chakwal		50.000	23.214	- 26.786	85%
			1			50.000	23.214	- 26.786	
			Notable						
509	30-Nov-12	50.000	1	Constructio n of PCC Streets/ Roads, Nallah, Boundary Walls & Brick Soling Streets at different Union Councils in District Chakwal		50.000	18.510	- 31.490	85%

			1			50.000	18.510	-	
								31.490	

13. The D.G. Pak. PWD, however, stated that Col. (R) Saleem, Malik Muhammad Amir, Mr. Faisal Majeed and Mr. Basharat Mehmood, all belonging to District Chakwal, were the Notables to whom these funds were also given. Not only this, in one of the cases for purpose of furnishing the office of Aviation Squadron/Briefing rooms, an amount of Rs.0.200 million was provided, detail of which is as under: -

Direct tive No.	Directive Date	Directi ve Cost	S.No.	Name of Scheme	Execut ing Agenc y	Amount released (in Million)	Exp. Incurred (in million)	Saving / excess (in Million)	Physical progres s
			Maj Usman Nawaz Kiyani			Dated 11.3.13			
975	11-Mar- 13	0.200	1	Renovation of Aviation Squardon Brefing Rooms.		0.200		-0.200	

15. Besides above notables and MPAs, there are numerous others of the identical status to whom funds from PWP-II were released. Details of which are available in the Audit Reports. But, no one has pointed out that what were the grounds for which Notables and MPAs were obliged by the Prime Minister. Similarly, a good number of MNAs and Senators who are entitled to identify the schemes under PWP-I, were also obliged from PWP-II as well.

18. This Court, *vide* order dated 19.07.2013, directed the Accountant General Pakistan Revenue (AGPR) to ensure that pending decision of the matter, the funds which had 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 hereinabove, were not further distributed and the payments in respect of the schemes, details of which had been furnished by the Prime

Minister's Secretariat would be stopped immediately. A compliance report was also sought to be furnished within a period of three days. Similarly, the Executing Agencies, to whom the work had been assigned or the process of assigning of work was yet to be completed, were directed not to proceed further with those schemes till further orders.

19. In view of the facts, which have been examined cursorily, it was deemed appropriate for conducting special audit of PWP-II, for which the funds have been released in the year 2012-13 or onward, keeping in view the categories of the schemes. In pursuance of the directions of the Court dated 21.05.2013, Special Audit was conducted and concise statement on behalf of Auditor General of Pakistan was filed, which pertains to the audit of following Ministry/Division/Department: -

- (i) Ministry of Housing & Works (Pakistan Public Works Department).
- (ii) Ministry of Petroleum and Natural Resources (SNGPL/SSGC)
- (iii) Ministry of Water & Power (WAPDA)
- (iv) Government of Punjab (Public Works and Local Government & Rural Development Department)
- (v) District Governments Punjab (South) Multan
- (vi) Provincial Government (Sindh)
- (vii) Provincial Government (Balochistan)
- (viii) District Governments KPK (17 Districts)

There are lengthy audit objection which has been summarized in the following table: -

Executing Agencies	No. of schemes	No. of schemes audited	Total amount audited (Rs in million)	No. of schemes in which PPRA Rules not followed	No. of schemes where releases made after ban by ECP	No. of completed schemes	No. of schemes where work progress is less than 10%	Amount placed under observations (Rs in million)
Pak PWD/NLC	6,465	5,473	21,614.399	5,473	559	3,833	994	21,614.399
Provincial Governments	1,392	1,359	2,624.718	473	80	422	362	2,745.277
District Governments	1,778	1,776	1826.441	939	57	787	63	1,450.770
SNGPL Lahore	92	51	4,195.054	51	-	3	54	1,335.440
SSGCL Karachi	85	27	185.163	27	-	12	66	63.032
WAPDA	7,343	6,467	5,879.729	0	-	2,053	876	6,207.905
Total	17,155	15,153	36,325.504	6,963	696	7,110	2,415	33,416.823

20. The material brought on record persuades the Court to infer that a criterion must have been laid down for allocation of funds for schemes under PWP-II and the Parliamentarians, Members of the Provincial Assemblies, functionaries/officers/officials, Notables and other persons who received such amounts in the name of development schemes are not required to enrich themselves from such funds; therefore, on 28.06.2013, following directions were issued: -

- (i) Notice be issued to the former Prime Minister Raja Pervez Ashraf, whose name is appearing in the list of recipients of funds from PWP-II for development works in the Constituency from where he was elected as Member of the National Assembly with a view to providing him an opportunity of hearing in the matter;
- (ii) Notices to all other beneficiaries of funds of PWP-II including the Parliamentarians, Members of the Provincial Assemblies,

Notables, etc., be also issued after obtaining the list from Malik Manzoor Akhter, DG, Audit. The latter is also required to effect service upon all of them at their addresses separately through the executing agencies, details of which are available in CMA No.3974/2013 furnished by him;

- (iii) To ensure service upon all concerned, complete list of the beneficiaries including their names and details of the funds allocated to them be uploaded on the website of Supreme Court of Pakistan (www.supremecourt.gov.pk), enabling them to respond to the notices and put forward their viewpoint/defence, if they so desire;
- (iv) Notices be also issued to Pak PWD, SNGPL, PEPCO as well as the Chief Secretaries of all the Provinces to effect service upon all the executing agencies which allegedly executed the works, after having collected the details from the office of DG, Audit in respect of the schemes executed at the Federal and Provincial levels. The representatives of the Chief Secretaries may, if need be, collect the relevant information from the office of DG, Audit;
- (v) The executive agencies, both Federal and Provincial, shall also submit the details of the status/ performance/completion or otherwise of the development schemes, which have been executed out of the funds allocated for the purpose, enabling this Court to pass appropriate orders;
- (vi) The executing agencies shall not release funds to the contractors/persons etc., who were deputed to execute such development works, etc., nor these funds shall be considered to have been lapsed on account of the close of Financial Year as it has already been ordered on 24.06.2013, pending decision of the case;
- (vii) It is stated that the idea of allocating funds to the Parliamentarians, etc. was introduced by late Dr. Mehboob-ul-Haq, a renowned Economist of his times when Members of the Parliament were elected in non-party elections. Such recommendations/report, if available, be submitted by the Planning Commission for our perusal and a copy thereof be also supplied to the learned Attorney General; and
- (viii) The Secretaries Finance and the Economic Affairs Divisions and all other concerned are directed to provide assistance to the learned Attorney General for Pakistan, so that he may assist the Court in a befitting manner.

21. In response to the notices, M/s Maula Bux Chandio former Law Minister, Senator Mushahid Hussain, Ghias Mela MNA, Anwar Ali Cheema MNA, Liaqat Ali Shabab MPA, Muhammad Hamayat Khan MPA, syed Muhammad Ali Shah MPA appeared either in person or through their counsel and put forward their respective explanations/replies,

whereas majority of the recipients did not opt to come forward and contest proceedings, despite service in the manner noted above.

22. Thereafter, all the above titled cases and Constitution Petition No.115 of 2012 were taken up together and were disposed of by common short order dated 22.07.2013. However, in the case of Abdul Raheem Ziaratwal v. Federation of Pakistan (Constitution Petition No.115/2012), separate reasons have been recorded for sake of convenience.

23. Before proceeding further it is important to note that to attend one of the questions noted in order dated 28.06.2013, namely, *"it is stated that idea of allocating funds to the Parliamentarians etc. was introduced by late Dr. Mehboob-ul-Haq a renowned Economist of his times when Members of the Parliament were elected in non-party elections, such recommendations/report, if available, be submitted by the Planning Commission for our perusal and a copy thereof be also supplied to the learned Attorney General"*, the learned Attorney General while submitting CMA 4495/13, on behalf of Economic Affairs Division stated that, *"it is not within the Division's purview to deal with the disbursement/releases of development funds to the executing agencies as it deals with the matter pertaining to external assistance from the foreign governments and multilateral agencies."* However, it is pointed out by the learned Attorney General that the "Special Local Government Programme" was renamed after 1988, and since then the nomenclature of the same kept on changing depending on the Government in power. Since the expenditure was being charged to the Development Budget, the programme remained a

component of PSDP. The Historical allocations for these programs have been shown by reproducing a table, which reads as under: -

Period	Name of Program	Allocation (Rs. in Million)
1985-1988	Special Local Government Program	3,300.000
1988-1991 & 1994-1997	Peoples Works Program	16,200.000
1991-93 & 1998-2000	Tameer-e-Watan Program	9,700.000
2002-2005	Tameer-e-Pakistan Program	7,353.727
	Total	36,553.727

Importantly, this summary also finds mentioned, with reference to the Planning Commission about the result or impact of schemes executed under PWP-I and PWP-II that no impact evaluation of PWP-II has been carried out so far.

24. It is quite surprising that aforesaid programme continuously being followed from 1985 to onward but up to the year of 2013 its impact has not been evaluated, which was necessary in the interest of general public for the reasons that, if on the one hand the tax payers’ money is being spent through PWP-II for the welfare of the society, the executive government must know about its impact as without its impact what is the justification/necessity to spend annually hundreds of thousands in the name of Development Programmes. A perusal of table reproduced above, also indicates that the names of these programmes had been changing in different eras depending upon the regime of different political parties.

25. It may be noted that such like schemes are not applicable in our country alone as identical programmes have been introduced in India by the name of “Members of Parliament Local Areas

Development Scheme” in the year of 1993 and Guidelines have also been issued, according to which the general public approach the Members of the Parliament for providing certain basic facilities including the community infrastructure in the area and according to these guidelines, the Members of Lok Sabha can recommend works for their respective constituencies. Elected Members of the Rajya Sabha can recommend for implementation of work for one or more districts as they may choose in their States of elections anywhere in the country. Under the guidelines there is a comprehensive mechanism to monitor the execution and implementation of the schemes. Similarly, such programme has also been introduced in various countries i.e. India, Kenya, Malaysia, Philippine, Sudan, Tanzania, Uganda, etc. In Kenya, the types of projects that may be funded from the development fund are clearly defined in policy or law, while in some other countries including Sudan and Malaysia, there is no restriction on choice of such projects. In India, as long as some basic guidelines are followed, the choice of projects is entirely at the discretion of individual legislators; however, local administrative authorities are responsible for implementing the chosen projects. In Kenya and Uganda, committees constituted by legislators make the decisions. In Tanzania the composition of committees is prescribed by law but the legislator chairs his or her constituency’s committee. In most of the countries, development fund spending is usually subject to the regular national auditing processes. Audit reports may be reviewed by the legislature, and in some cases the law requires that information about projects and their implementation be made public. In countries with access to

information legislation there is generally greater transparency and, therefore, greater accountability for the use of CDF money.

26. It is to be noted that on 10.12.2002 and 7.02.2003 the Ministry of Local Government and Rural Development circulated a well defined course of action for smooth implementation of the Programme, contents whereof are reproduced hereinbelow: -

Formalities for the Special Local Development Programmed:

- (i) On receipt of the schemes (suggested) by the Parliamentarians (as detailed on a prescribed proforma) from the Ministry of Local Government & Rural Development the concerned Ministry shall get the feasibility / cost estimates / PC-I prepared from its executing department and accord Administrative Approval to the schemes as per procedure in vogue.
- (ii) Then return the approved scheme to the Ministry of Local Government & Rural Development within 20 days of its receipt.
- (iii) The Ministry of Local Government & Rural Development shall release funds to the concerned Ministry / Department within 7 days of the receipt of approved scheme, for implementation.
- (iv) Total cost of schemes selected for each constituency must not exceed the allocation of funds to each MNA. This is to ensure that work taken in hand will be completed within the allotted funds.
- (v) Each executing department/agency will follow its codal formalities for execution of the schemes for ensuring transparency.

27. Above formulations were applicable both on PWP-I and PWP-II. However, it may be noted that according to the plea, which has been placed on record by the government of Pakistan Cabinet Division through CMA 2222/13, after passing of 18th Constitutional Amendment, in pursuance whereof the subject of Local Government

and Rural Development has been transferred to Provincial Government, therefore, this Programme was assigned to the Cabinet Division in December, 2010 and according to the prevailing practice, the Prime Minister's directives are followed by priority lists issued to Cabinet Division for release of certain funds for development schemes identified by the Parliamentarians and other notables. The Cabinet Division prepares the sanction letter and submits its findings to the Finance Division (FA Office) for approval/endorsement. After approval/endorsement of Finance Division, sanction letter is issued to AGPR as well as to the relevant executing agencies e.g. PWP, SNGPL, SSGPL, Balochistan Development Authority, etc., *ipso facto*. The AGPR releases the funds to the assignment accounts of the relevant executing agency.

The responsibility to ensure the transparent release of these funds in accordance with the PEPPRA rules rests with executing agency and their administrative Ministries/Divisions, Provincial Government and such conditions are clearly mentioned in the sanctioned letter.

28. It would be appropriate to note that according to order passed by the Prime Minister for release of the funds under People's Works Programme-II during financial year, 2012-13 it has been left at the discretion of the executing agency to use funds in accordance with their departmental procedure/rules by fulfilling the codal/legal formalities. Unfortunately, nothing has been done to follow the PEPPRA Rules. It seems that for such reasons in the Special Audit Report, contents whereof have been reproduced hereinabove, it has been observed that without prior feasibility study/report or following PEPPRA

Rules, amount allocated by the executive agencies has been used, essentially in a non-transparent manner. One can understand at a glance after going through the detail of the schemes, which has been reproduced hereinabove from the audit report that PEPRA rules were not followed in all the schemes i.e. 6963.

29. On 16.07.2013 learned Attorney General for Pakistan, M/s Wasim Sajjad, Iftkhar Hussain Gillani, Khawaja Haris Ahmed and Asif Fasihuddin Vardag, learned senior counsel, formulated the following questions for determination by this Court: -

- (1) Whether the National Assembly can assent to a grant which is to be utilized by the Executive at its discretion? If the answer is in the affirmative, whether such discretionary grant can be spent at the absolute discretion of the Executive or is the discretion to be exercised in a structured manner?
- (2) Whether or not the Constitution permits the use/allocation of funds to MNAs/MPAs/Notables at the sole discretion of the Prime Minister or the Chief Minister? If yes, what has been or should be the procedure/criteria for governing allocation of such funds for this purpose?
- (3) Whether such funds can be provided by way of supplementary grant?
- (4) Whether such funds can be allocated by way of reappropriation?
- (5) Whether a bulk grant can be made in the budget without giving detailed estimates under each grant divided into items and that every item has to be specified?
- (6) That if the amounts as approved in the budget passed by the National Assembly are utilized within the permissible limits of the budget, whether such expenditures are justified?

30. It is to be noted that Articles 80 to 84 of the Constitution deal with the Budget and Supplementary Grants. For reference, said Articles are reproduced herein below: -

- 80. Annual Budget Statement.** (1) The Federal Government shall, in respect of every financial year, cause to be laid before the National Assembly a statement of the estimated receipts and expenditure of the Federal Government for that year, in this Part referred to as the Annual Budget Statement.
- (2) The Annual Budget Statement shall show separately-

- (a) the sums required to meet expenditure described by the Constitution as expenditure charged upon the Federal Consolidated Fund; and
- (b) the sums required to meet other expenditure proposed to be made from the Federal Consolidated Fund; and shall distinguish expenditure on revenue account from other expenditure.

81. Expenditure charged upon Federal Consolidated Fund.

The following expenditure shall be expenditure charged upon the Federal Consolidated Fund:-

- (a) the remuneration payable to the President and other expenditure relating to his office, and the remuneration payable to-
 - (i) the Judges of the Supreme Court and the Islamabad High Court;
 - (ii) the Chief Election Commissioner;
 - (iii) the Chairman and the Deputy Chairman;
 - (iv) the Speaker and the Deputy Speaker of the National Assembly;
 - (v) the Auditor-General;
- (b) the administrative expenses, including the remuneration payable to officers and servants, of the Supreme Court, the Islamabad High Court, the department of the Auditor-General, the Office of the Chief Election Commissioner and of the Election Commission and the Secretariats of the Senate and the National Assembly;
- (c) all debt charges for which the Federal Government is liable, including interest, sinking fund charges, the repayment or amortisation of capital, and other expenditure in connection with the raising of loans, and the service and redemption of debt on the security of the Federal Consolidated Fund;
- (d) any sums required to satisfy any judgment, decree or award against Pakistan by any court or tribunal; and
- (e) any other sums declared by the Constitution or by Act of Majlis-e-Shoora (Parliament) to be so charged.

82. Procedure relating to Annual Budget Statement.

(1) So much of the Annual Budget Statement as relates to expenditure charged upon the Federal Consolidated Fund may be discussed in, but shall not be submitted to the vote of, the National Assembly.

(2) So much of the Annual Budget Statement as relates to other expenditure shall be submitted to the National Assembly in the form of demands for grants, and the Assembly shall have power to assent to, or to refuse to assent to, any demand, or to assent to any demand subject to a reduction of the amount specified therein;

Provided that, for a period of ten years from the commencing day or the holding of the second general election to the National Assembly, whichever occurs later, a demand shall be deemed to have been assented to without any reduction of the amount specified therein, unless, by the votes of a majority of the total membership of the Assembly, it is refused or assented to subject to a reduction of the amount specified therein.

No demand for a grant shall be made except on the recommendation of the Federal Government.

83. Authentication of schedule of authorised expenditure.

(1) The Prime Minister shall authenticate by his signature a schedule specifying-

- (a) the grants made or deemed to have been made by the National

Assembly under Article 82, and

- (b) the several sums required to meet the expenditure charged upon the Federal Consolidated Fund but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the National Assembly.

(2) The schedule so authenticated shall be laid before the National Assembly, but shall not be open to discussion or vote thereon.

(3) Subject to the Constitution, no expenditure from the Federal Consolidated Fund shall be deemed to be duly authorised unless it is specified in the schedule so authenticated and such schedule is laid before the National Assembly as required by clause (2).

84. Supplementary and excess grants.

If in respect of any financial year it is found-

- (a) that the amount authorized to be expended for a particular service for the current financial year is insufficient, or that a need has arisen for expenditure upon some new service not included in the Annual Budget Statement for that year; or
 - (b) that any money has been spent on any service during a financial year in excess of the amount granted for that service for that year;
- the Federal Government shall have power to authorize expenditure from the Federal Consolidated Fund, whether the expenditure is charged by the Constitution upon that Fund or not, and shall cause to be laid before the National Assembly a Supplementary Budget Statement or, as the case may be, an Excess Budget Statement, setting out the amount of that expenditure, and the provisions of Articles 80 to 83 shall apply to those statements as they apply to the Annual Budget Statement.

31. A plain reading of the aforementioned provision of the Constitution makes it abundantly clear that although in terms of Article 84 of the Constitution the Federal Government has the power to authorize the expenditure to meet the contingency noted therein, however, it is obligatory upon the Federal Government to lay before the Nation Assembly the supplementary Budget Statement so that it is subjected to the same scrutiny and procedure as is applicable to the Annual Budget Statement in terms of Articles 80 to 83 *ibid*. it is to be noted that there is nothing in Article 84 *ibid*, which suggests that such a Supplementary Budget Statement shall only be placed before the National Assembly at the time of consideration of the Budget for the next financial year rather the use of the word "and" before the word

“shall” as well as use of the phrase “Supplementary Budget Statement” makes it abundantly clear that the supplementary Budget Statement, in the normal course, is to be placed before the National Assembly during the currency of the same financial year, if the Federal Government has decided to authorize such expenditure. Since the provisions of Article 84 of the Constitution make the provisions of Article 80 to 83 specifically applicable to the Supplementary Budget Statement as well, the incurring of expenditure by the Federal Government without going through the procedure provided in Articles 82 and 83 of the Constitution would be tantamount to nullifying the said provisions of the Constitution.

32. So far as the question, as to whether the Constitution provides for the Prime Minister exercising any discretionary powers in the matter of supplementary and excess grants, etc., is concerned, it is to be noted that there is no such provision in the Constitution which confers any such discretionary power on the Prime Minister. Contrary to it, with regard to supplementary grants, it is the Federal Government which has the power to authorize expenditure from the Federal Consolidated Fund. As per Article 90 of the Constitution, the Federal Government includes the Prime Minister and the Federal Ministers. The said Article stipulates that the executive authority of the Federation shall be exercised in the name of the President by the Federal Government, consisting of the Prime Minister and Federal Ministers.

33. The Article 97 of the Constitution deals with the extent of executive authority of the Federation. It provides that subject to the

Constitution, the executive authority of the Federation shall extend to the matters with respect to which *Majlis-e-Shoora* (Parliament) has power to make laws, including exercise of rights, authority and jurisdiction in and in relation to areas outside Pakistan, provided that the said authority shall not extend in any Province to a matter with respect to which the Provincial Assembly has also power to make laws. Similarly, Article 129 *ibid* stipulates that the executive authority of the Province shall be exercised in the name of the Governor by the Provincial Government, consisting of the Chief Minister and the Provincial Minister which shall act through the Chief Minister. Reference may also be made to Article 164 *ibid*, which apparently extends the executive authority of the Federation or a Province to make grants for a purpose which may not be one with respect to which *Majlis-e-Shoora* (Parliament) or as the case may be, the Provincial Assembly may make laws. However, this provision is to be read with Article 97 *ibid* insofar as executive authority vested in the Federation or the Province is concerned. Be that as it may, it is noteworthy that here too, it is the Federation or the Province, which is authorized to make the grants referred to therein and not the Prime Minister or the Chief Minister, as the case may be, on his own.

34. Now the question arises as to whether, and if so, what is the criterion laid down by the law for allocation, sanctioning and disbursement of supplementary grants and monitoring of works that may be undertaken pursuant thereto. In this regard reference may be made to Article 78 *ibid* which provides that all revenues received, all loans raised and all moneys received by the Federal Government in the repayment of any loan shall form part of a consolidated fund to be

known as the Federal Consolidated Fund, while all other moneys received by or on behalf of the Federal Government, or received by or deposited with Supreme Court or any other court established under the authority of Federal Government, shall be credited to the Public Account of the Federation. Whereas, Article 79 *ibid* stipulates that the custody of the Federal Consolidated Fund, the payments of the money into that Fund, the withdrawal of moneys there from, the custody of other moneys received by or on behalf of the Federal Government, their payment into, and withdrawal from, the Public Account of the Federation, and all matters connected with and ancillary to the matters aforesaid, shall be regulated by the Act of *Majlis-e-Shoora* (Parliament) or until provision in that behalf is so made, by rules made by the President. Apparently, there is no Act of *Majlis-e-Shoora* enacted in terms of Article 79 of the Constitution. However, there are GFR, which though were issued pre-independence but continued to be operative by virtue of Indian Independence Act, 1947 and later were adapted by means of Article 268 of the Constitution of 1973. Paragraph 1 of Chapter-I of the GFR provides that "the rules contained in this volume, which are essentially executive orders of the President describe primarily the financial powers of different authorities subordinate to the Federal Government and the procedure prescribed by the President which should be followed by them in the securing and spending of the funds necessary for the discharge of the functions entrusted to them. Departmental authorities should follow these rules, if any, continued in their departmental regulations and other special orders applicable to them".

35. Rule 2(vii) of GFR defines "Controlling Officer" to mean a head of a department or other departmental officer who is entrusted with the responsibility of controlling the incurring of expenditure and or the collection of revenue by the authorities subordinate to the department. Rule 2(viii) *ibid* provides that all revenues received by the Federal Government all loans raised by that Government and all money received by it in repayment of any loan shall form part of a consolidated fund to be known as the Federal Consolidated Fund. All other money received by or on behalf of the Federal Government; or received by or deposited with the Supreme Court or any other court established under the authority of the Federation; shall be credited to the Public Account of the Federation. Similarly, rule 2(xviii) *ibid* defines "re-appropriation" to mean the transfer of funds from one unit of appropriation to another such unit. The Standards of Financial Propriety expected to be observed by every public officer in the matter of expenditure and payment of moneys, are provided in rule 10 of GFR. The said rule mandates, *inter alia* that "every public officer is expected to exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money" and that "public money should not be utilized for the benefit of a particular person or section of a community unless the amount of expenditure involved is insignificant, or a claim of the amount can be enforced by the court of law, or the expenditure is in pursuance of a recognized policy or custom".

36. It is to be noted that the principles governing the Standards of Financial Propriety to be observed by the public officers

associated with the various Ministries/Divisions, Attached Departments and Subordinate Offices of the Government, generally as also with respect to matters pertaining to Supplementary Grants and Re-Appropriation, are also provided in the System of Financial Control and Budgeting introduced by the Finance Division, Government of Pakistan, Islamabad through an Office Memorandum dated 13.09.2006. In terms of para 3 of the said Memorandum, the predominant onus to observe these standards of financial propriety rest squarely on the shoulders of the Principle Accounting Officer of the Ministry/Division, etc. Similarly, the Rules of Business, 1973 provide that the Secretary of the concerned Ministry/Division/Department shall be its Principal Accounting Officer, and "shall ensure that the funds controlled by him are spent in accordance with the rules laid down by the Finance Division". It is in this manner that the provisions of the aforementioned System of Financial Control and Budgetary mandatorily apply to him. As regards the duties and responsibilities of the Principal Accounting Officer and Financial Advisor, same are enumerated in paras 4 and 9 of the said Memorandum. Amongst the responsibilities and duties of Financial Advisor and Deputy Financial Advisor, in respect of Ministries/Divisions to which they are attached, include Proposal for Supplementary Grant in respect of Unexpected Expenditure, which are to be dealt with by the Financial Advisor concerned as per the instructions contained in Annexure-II to the said Office memorandum and re-appropriation of funds, as set out in Annexure-I of the Office Memorandum.

37. It is of significance to note that para 2 of the Annexure-II stipulates that "the request for a supplementary grant should be made

in a summary to be signed by the Principle Accounting Officer". The summary should contain the information as indicated in the enclosed Performa. It is also noteworthy that the information solicited in appendix to Annexure-II requires, *inter alia*, that the detailed information offering reasons for the demands for supplementary grants must include reasons why provisions were not made in the original budget, reasons as to why the proposed expenditure can be postponed to a subsequent year, and the detailed justification of the proposal.

38. Reference in this behalf may also be made to rules 94 to 96 of GFR which deal with the principles governing surrender of anticipated savings, rules 99 to 101 which deal with the principles and procedure governing re-appropriation of funds, and rules 102 to 104 which govern Supplementary Grants. Rule 104 *ibid* stipulates "expenditure on a new service, in the technical sense, and on new items, such as, new buildings new roads, etc. for which no provision exists in the budget, may be incurred in the middle of the year only in exceptional cases". The said rule, in unequivocal terms, asserts that the Government is indisposed on general principles to admit such demands in the course of year. In case, however, the necessity to incur such expenditure is urgent, the administrative department should explain clearly why it was not provided for in the original budget and it cannot be postponed for consideration in connection with the next budget, and that the cases which involved the supplementary grant will normally be accepted by the Ministry of Finance only if they relate to the matters of real imperative necessity, or to the earning or safe-guarding the revenue. In such cases the demand for supplementary grant, or for a token grant in respect of a new service if

the expenditure can be met by re-appropriation, will be presented to the legislature as soon as practicable after the need arise.

39. Reference may also be made to the Assembly Debates of the National Assembly of Pakistan held on Thursday, March 22, 1973 with respect to Article 87 of the Draft Constitution at pages 1787 to 1793 (culminating in a brief summing-up of rationale for the provisions of Article 84 by Dr. Mobashar Hassan, the then Finance Minister), wherefrom it is evident that the wisdom of the framers of the Constitution was that moneys by way of supplementary grants would only be provided in exceptional circumstances. It is pertinent to mention that in the concluding paragraph of his debate, Dr. Mobashar Hassan, has referred to the Parliamentary Practice in other countries to apparently represent that the supplementary budgetary statements prepared in terms of Article 84 *ibid* are to be laid before the national Assembly in the Budget Session of the following year. It may be also be noted that in terms of Article 84 *ibid* such a course may be permissible, but it is not imperative. In this regard reference may be made to rule 104 of the GFR as well as rule 197 of the Rules of the Procedure, 2007. In fact, rule 197 indicates that in the case of supplementary grants, the assent of the National Assembly is to be obtained before these funds are made available.

40. With regard to question as to whether or not the Constitution permits the use/allocation of funds to MNAs/MPAs/Notables at the sole discretion of the Prime Minister or the Chief Minister; if yes, what has been or should be the procedure/criteria for governing allocation of such funds for this purpose, it is to be noted that under the Constitution there is no

provision whatsoever that permits to use allocation of funds at the discretion of the prime Minister/Chief Minister. However, as discussed hereinabove, with regard to supplementary grants, the Federal Government, which includes the Prime Minister and the Ministers, has the power to authorized expenditure from the Federal Consolidated Fund. Further, there is also no provision in the Constitution that mandates use/allocation of funds to MNAs/MPAs or Notables. Infact, the very use of the term 'Notables' is abhorrent to the Islamic ethos, both Holy Quran and Last sermon (Khutba) of the Holy Prophet Muhammad (PUBH), which envisages that all distinctions on basis of caste, race and colour stand abolished, and the only distinction which remains is that of piety.

41. Article 80 of the Constitution provides for the Annual Budget Statement whereby, for each financial year the Federal Government is required to cause to be laid before the National assembly a statement of the estimated receipt and expenditure of the Federal Government for that year. This Statement, insofar as expenditure is concerned, is required to show separately funds required to meet expenditure charged upon the Federal Consolidated Fund and funds required to meet 'other expenditure' proposed to be made from the federal Consolidated Fund. While Clause (2) of Article 82 of the Constitution stipulates that so much of the Annual Budget Statement as relates to "other expenditure" shall be submitted to the National Assembly in the form of demands for grants, and the Assembly shall have power to assent to, or to refuse to assent to, any demand, or to assent to any demand subject to a reduction of the amount specified therein. Significantly, Clause (3) of Article 82

specifically mandates that “no demand for a grant shall be made except on the recommendation of the Federal Government”. As to how a demand for the grant is to be made is provided, *inter alia*, in rule 183 of the Rules of Procedure and Conduct of Business in National Assembly, 2007, which reads as under: -

“183. **Demands for grants:** (1) A separate demand shall be made in respect of the grant proposed for each Ministry or Division:

Provided that the Government may cause to be included in one demand, grant proposed for two or more Ministries or Divisions or a demand to be made in respect of expenditure, which cannot readily be classified under a particular Ministry or Division.

(2) Each demand shall contain a statement of the total grant proposed and a statement of the detailed estimate under each grant divided into items.”

42. The above referred rule shows that each demand for a grant should contain “details of estimate” and, furthermore, the demand should also show “the various items comprising the subject of the grant”. In other words, item-wise estimate of the grant is required to be placed before the National Assembly for discussion in terms of rule 186 *ibid*. When the above-cited rules are read in juxta position with rules 186 to 193 and especially rule 194 *ibid*, it become quite evident that discussion and voting on the demands for grants in the Budget cannot take place unless the details of each grant in terms of its items-wise estimate is included the demand. It is to be noted that these rules are made under Article 67 of the Constitution and, as such, have the status of law deriving direct mandate form the constitution.

43. The above analysis of the provisions of the Constitution read with the Rules of Procedure, 2007 clearly indicate that qua "other expenditures" there is no provision which mandates the demand for block allocation of funds, inasmuch as, under the rules each demand is required to give items-wise detail. Importantly, if the Budget Statement includes demand for grant for use/allocation of funds to MNAs/MPAs/Notables, it would necessarily be a demand for block allocation, as it involves request for placing at the disposal of the MNAs/MPAs/Notables a Certain sum of money as grant to be utilized by or at their request as and when they may identify the schemes of development required for their constituency. Such a demand, if included in the budget, appears to be contrary to the constitutional provisions, which require that each expenditure to be specified with sufficient particularity, in the Annual Budget Statement, so that it can be considered and voted upon by the National Assembly. Besides, it is also in derogation of rules framed by the National Assembly which require demand for each grant to be specified alongwith detailed estimates items-wise.

44. As regards the question whether any such discretionary funds can be placed at the disposal of the Prime Minister/Chief Ministers for use of/allocation to the MNAs/MPAs/Notables, neither the Constitution provides for the same nor the Rules of Procedure indicate that such a course for demanding a grant from the National Assembly is open to the Prime Minister. In fact, if any discretionary funds are allowed to be placed at the disposal of the Prime Minister by the National Assembly in the Annual Budget Statement, it shall be *ultra*

virus the provisions of the Constitution in the same manner as in the case of MNAs,/MPAs/Notables, discussed in the previous paragraph.

45. It is pertinent to mention here that the very propose of preparing the Annual Budget Statement is to know and apprise the National Assembly beforehand as to what expenditure is to be incurred during the ensuing financial year and the precise purpose/schemes insofar as development fund is concerned to which such expenditure relates. For that matter, to leave or earmark any amount of money to be used/allocated at some subsequent stage during the financial year at the discretion of the Prime Minister/Chief Minister is also repugnant to the very concept and connotation of the Annual Budget Statement.

46. In fact, expenditure envisaged to be incurred under the Constitution is not "person specific", rather it is "grant specific", that is to say, the Constitution envisages provisions of funds for expenditure to be specified in the Annual Budget Statement vis-à-vis "Schemes for Development" and not for placing these funds in the hands of any person (be the Prime Minister or MNA/MPA/Notable or any other) for purpose of expending as per his whims and wishes.

47. In this regard it is to be noted that a policy or practice may have been adopted by the parliamentarians to place funds in the hands of the Prime Minister to be used/allocated at his discretion to MNAs/MPAs/Notables. However, if any such policy/practice is in existence, it too is repugnant to the aforementioned provisions of the Constitution.

48. It is, however, another matter if prior to the preparation of the Annual Budget Statement the MNAs/MPAs/NGOs and/or any other

person from the constituencies throughout the country are called upon to identify schemes or expenditure that may be required for effecting necessary development in their area of concern. Such an exercise, however, will have to be across the board, irrespective of the political party or parties (when there is coalition) that may be in power. Moreover, it shall be carried out much before the preparation of the Annual Budget Statement so that if the relevant scheme or expenditure is to be included in the Annual Budget Statement, it would have passed through the process of due consideration by the Planning Commission for purposes of ascertaining its necessity and efficacy and conducting its appraisal, technical analysis, feasibility and economic cost before it is included as a demand for grant in the Annual Budget Statement. However, there is no constitutional provision which permits inclusion of any such scheme or expenditure at the behest or any MNA/MPA/Notable/any other person during the currency of a financial year, unless it is necessitated by a totally unforeseen contingency arising out of extraordinary circumstances which needs to be met on urgent basis.

49. As far as the question that since there is no specific prohibition in the Constitution qua allocation of funds to MNAs/MPAs/Notables etc. hence the same is permissible, is concerned, it is to be noted that the language employed in the above referred provisions of the Constitution i.e. Articles 80 to 84 *ibid*, implicitly excludes such person-specific allocations.

50. So far as the actual exercise of discretionary powers, if any, of the Prime Minister are concerned, even if they be presumed to

exist, they cannot be exercised for personal or for parochial benefit, rather they are to be exercised in the light of his oath as incorporated in the Third Schedule to the Constitution as well as Article 38, which mandates the State to promote social and economic well being of all the people/citizens of Pakistan and not just any segment or community thereof.

51. so far as the question if the amounts as approved in the budget passed by the National Assembly are utilized within the permissible limits of the budget, whether such expenditures are justified, it is to be noted that in the light of the declaration made hereinabove that funds cannot be placed at the sole discretion of Prime Minister/Chief Minister as the expenditure envisaged to be incurred under the Constitution is grant specific and not person specific, the allocation of funds for development schemes has to be made following the procedure provided in Articles 80 to 84 of the Constitution and the rules/instructions noted hereinabove.

52. For the foregoing reasons it is held as under: -

- (1) The National Assembly, while giving assent to a grant which is to be utilized by the Executive at its discretion, has to follow the procedure provided in Articles 80 to 84 of the Constitution as well as the Rules of Procedure, 2007. However, such discretionary grant can not be spent at the absolute discretion of the Executive and the discretion has to be exercised in a structured manner;
- (2) The Constitution does not permit the use/allocation of funds to MNAs/MPAs/Notables at the sole discretion of the Prime Minister or the Chief Minister. If there is any practice of allocation of funds to the MNAs/MPAs/Notables at the sole discretion of the Prime Minister/Chief Minister, the same is illegal and unconstitutional. The government is bound to establish procedure/criteria for governing allocation of such funds for this purpose;

- (3) Though funds can be provided for development schemes by way of supplementary grant but for that purpose procedure provided in Articles 80 to 84 of the Constitution and the rules/instructions noted hereinabove has to be followed strictly;
- (4) Funds can be allocated by way of re-appropriation but the procedure provided in the Constitution and the rules has to be followed in its true perspective;
- (5) No bulk grant can be made in the budget without giving detailed estimates under each grant divided into items and that every item has to be specified?
- (6) The amounts as approved in the budget passed by the National Assembly have to be utilized for the purpose specified in the budget statement. Any re-appropriation of funds or their utilization for some other purpose, though within the permissible limits of the budget, are not justified. In such circumstances, the supplementary budget statement has to be place before the parliament following the procedure provided in Articles 80 to 84 of the Constitution and the rules/instructions noted hereinabove.

53. Petition stands disposed of in view of the findings given hereinabove.

Chief Justice

Judge

Judge

Announced in open Court
on 5.12.2013 at Islamabad

Chief Justice

Approved For Reporting