

Judgment Sheet
IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH
JUDICIAL DEPARTMENT

Writ Petition No. 683-A/2021

JUDGMENT

Date of hearing.....06.11.2025.....

Petitioner (Najum Sohail Tanoli) By Mr. Sohail Ayub Tanoli,
Advocate.

Respondents (Govt: of Khyber Pakhtunkhwa & others)
Respondents No.1 to 3 By Mr. Shoaib Ali, Assistant Advocate
General and
Respondent No.4 Malik Masood ur Rehman Awan, Advocate.

AURANGZEB, J.- Through instant constitutional petition
filed under Article 199 of the Constitution of Islamic Republic
of Pakistan, the petitioner seeks the following relief:-

“It is, therefore, most humbly prayed that on acceptance of the instant writ petition, the impugned act of respondents in not paying the whole amount to the petitioner may kindly be set aside and respondents may kindly be directed to forthwith pay remaining amount Rs.6,54,530/- to the petitioner forthwith. Any other relief deemed fit and proper in the circumstances of the case.”

2. Brief facts of the case are that the respondents, on 12.04.2015, published a tender notice in the newspaper inviting sealed bids under ADP Scheme No.1119/140711 (2014-15) titled “Improvement of Municipal Road, Urban Area, Khyber Pakhtunkhwa.” The petitioner participated in the bidding process and, being the lowest bidder, was awarded the contract for blacktopping the road from Mohallah Gujrat

to Army Post Havelian for a total contract price of Rs.2.798 million. After fulfillment of all codal formalities, a work order was duly issued on 04.05.2015. The petitioner executed and completed the assigned work strictly in accordance with the approved specifications. Subsequently, due to certain discrepancies noticed in the measurement of the executed work, the petitioner applied for re-measurement. In response, a committee comprising technical staff was constituted, which, after conducting a detailed spot inspection, submitted its report confirming that an amount of Rs.654,530/- had been deducted in excess from the petitioner against the work actually completed. Despite repeated representations and reminders, the legitimate claim of the petitioner has not been redressed, and the outstanding amount remains unpaid. Though some correspondence was made by the respondents in this regard, no practical relief was provided. Left with no alternative remedy, the petitioner has invoked the constitutional jurisdiction of this Court through the instant writ petition. Comments were accordingly called from respondent No.4, who has submitted the same.

3. We have considered the submissions learned counsel for parties as well as learned Assistant Advocate General and have gone through the record.

4. After examining the record available on file, it transpires that the controversy involved in the present writ petition arises out of a contractual relationship between the

petitioner and the respondent department, established under ADP Scheme No.1119/140711 (2014-15) titled "Improvement of Municipal Road, Urban Area, Khyber Pakhtunkhwa." The tender for the said project was published in the newspaper on 12.04.2015, inviting sealed bids from eligible contractors. The petitioner participated in the bidding process and, being the lowest bidder, was awarded the contract for blacktopping of the road from Mohallah Gujrat to Army Post Havelian at a total cost of Rs.2.798 million. After fulfillment of all codal formalities, a work order was issued on 04.05.2015, and the petitioner duly completed the assigned work in accordance with the approved specifications and within the prescribed time frame.

5. Subsequently, during the process of measurement and assessment of the completed work, certain discrepancies were noticed by the department. The petitioner, alleging that deductions from his final bill were made in excess of the actual measurements, approached the competent authorities for re-measurement. In response, a committee comprising technical staff was constituted, which conducted a detailed inspection in the presence of the petitioner and submitted its report, available at page No.34 (Annexure-A) of the respondents' comments. The said report reflects that the petitioner had agreed to withdraw the case from the Court and, upon a compromise being effected, the disputed amount was accordingly paid to him. The relationship between the

parties is governed by a contractual arrangement, the terms and obligations whereof have been duly acted upon in accordance with law. It is a settled principle that matters arising out of contractual obligations cannot ordinarily be agitated or challenged in constitutional jurisdiction under Article 199 of the Constitution. In this regard reliance is placed on the judgment of august court delivered in case titled **Pakcom Limited and others versus Federation of Pakistan others (PLD 2011 Supreme Court 44)**, wherein it was held that:-

“It seems proper here at this juncture to mention that the contractual rights, commitments, undertakings and obligations have to be enforced through courts of ordinary jurisdiction which should not be interfered with by the High Court while exercising its Constitutional jurisdiction especially in those matters arising out of a contractual obligations. (Millat Tractors E.T. v. Govt. of Pak (PLD 1992 Lah. 68), Ahmad Hassan v. Pakistan Machine Tools Factory (1990 CLC 2007)) Sufi Muhammad Ramzan v. Secretary, Local Government and Rural Development Department, Punjab, Lahore (PLD 1987' Lah. 262), Pakistan Mineral Development Corporation Ltd. v. Pak. WAPDA (PLD 1986 Quetta 181). In such like eventualities the normal remedy to law being a suit for enforcement of contractual rights and obligations would be availed instead of invocation of Article 199 of the Constitution merely for the purpose of enforcing contractual obligations. The said view finds support from the dictum laid down in the following authorities:

Ahmad Hassan v. Pakistan Machine Tools Factory (1990 CLC 2007), Lutfonnessa Ibrahim v. Province of East Pak. (PLD 1969 Dacca 779), Mohd. Din and Sons v. Province of West Pak (PLD 1969 Lahore 823), Muzaffar-ud-Din v. Chief Settlement Commissioner (1968 SCMR 1136), Miajan Ali

v. Province of E.Pak (22 DLR 235), Momin Motor Co. v. R.T.A. Dacca (PLD 1962 SC 108), Chandpur Mills Ltd. v. District Magistrate Tippera (PLD 1958 SC 267), The State of Pakistan v. Mehrajuddin (PLD 1959 SC 147), Raghavendra Singh v. State of Vindhya Pradesh (AIR 1952 Vindh Pra. 13).”

Further reliance is placed on the judgment of Honourable Supreme Court of Pakistan rendered in case titled **Cantonment Board, Peshawar, Peshawar Cantt: through Executive Officer and another versus Messrs Raco Adventures and another (2023 SCMR 2027)**, wherein it was held that:-

“It is a well settled exposition of law that disputed questions of fact cannot be entertained and adjudicated in writ jurisdiction. The learned High Court in the impugned judgment observed that it cannot assume the task of recording evidence regarding what amount was collected by the Cantonment Board during the period under dispute in the constitutional jurisdiction, but despite that the High Court remanded the case in writ jurisdiction for de novo arbitration. The extraordinary jurisdiction under Article 199 of the Constitution is envisioned predominantly for affording an express remedy where the unlawfulness and impropriety of the action of an executive or other governmental authority could be substantiated without any convoluted inquiry. The expression "adequate remedy" signifies an effectual, accessible, advantageous and expeditious remedy. In the case in hand, the remedial provisions provided under the Arbitration Act could be invoked which set out an appropriate and alternate remedy as *remedium juris*, being more convenient, beneficial and effective and the Writ Petition to upset the award rendered by the arbitrator pursuant to the arbitration clause in the Agreement was not maintainable.”

6. Upon a closer examination of the record and the contractual documents, it is revealed that the contract executed between the parties contains an express arbitration clause, Clause 25, providing a complete and mandatory mechanism for the resolution of disputes arising out of or in connection with the contract. The said clause, inter alia, stipulates that in the event of any disagreement or difference between the parties, the matter shall first be referred to the Superintending Engineer for decision, who shall render a written decision within three months of such reference. In case the contractor is dissatisfied with the said decision or if the decision is not given within the stipulated period, he may, within twenty-eight days of receipt or expiry of the decision period, invoke arbitration in writing, clearly setting forth the cause of action, material facts, and relief sought. The clause further provides that if no such reference to arbitration is made within the prescribed time, the decision of the Superintending Engineer shall become final, binding, and conclusive, and the contractor shall be deemed to have waived his right to raise any further claim in respect of the same dispute. The clause also lays down the procedure for appointment of arbitrators by the Chief Engineer and the contractor, depending upon the value of the claim, and declares the award of the arbitrators or umpire as final and binding upon both parties.

7. This arbitration clause, in its scope and language, embodies the clear intention of the contracting parties to exclude the intervention of ordinary civil or constitutional forums in matters arising purely from the contract and to resolve such disputes through the internal dispute-resolution mechanism provided therein. Where parties have voluntarily entered into a contract containing a self-contained dispute-resolution clause, they are bound by its terms and cannot bypass the agreed procedure by directly invoking the constitutional jurisdiction of this Court.

8. In the instant case, the petitioner, despite being a party to a contract containing Clause 25, has chosen to bypass the agreed mechanism and directly approached this Court without first referring the dispute to the Superintending Engineer or invoking arbitration as prescribed therein. The petitioner has neither shown that he made such a reference within the stipulated period nor demonstrated that the arbitration process failed or was refused by the respondents. In these circumstances, the petitioner's conduct reflects disregard of the contractual obligations voluntarily undertaken by him, and this Court cannot, in exercise of its constitutional jurisdiction, rewrite or override the contractual stipulations to provide a remedy inconsistent with the contract itself. In this regard reliance is placed on the judgment of apex court rendered in case titled **Messrs Sprint Oil and Gas Services Pakistan FZC, Islamabad versus Oil and Gas**

Development Company Limited (OGDCL), Islamabad

(2024 SCMR 117), wherein it was held that:-

“The petitioner, however, faced other hurdles in invoking the High Court’s constitutional jurisdiction under Article 199 of the Constitution which could only be invoked when ‘no other adequate remedy is provided by law’. In the instant case the petitioner had other adequate remedy, either by invoking the arbitration clause in the contracts or by filing a suit.”

9. In addition to the above, the record further discloses that the petitioner had previously filed a civil suit before the learned Civil Judge on the same subject matter, seeking recovery of the same alleged outstanding amount. The said civil suit, however, was dismissed for non-prosecution on 11.05.2017. The petitioner, while filing the instant writ petition, has failed to disclose this material fact. Such concealment of previous proceedings constitutes deliberate suppression of material information, which disentitles the petitioner to any relief under Article 199 of the Constitution. A litigant seeking equitable and discretionary relief must approach the Court with clean hands, as suppression of material facts undermines the integrity of judicial proceedings. In this regard reliance is placed on the judgment of this court rendered in case titled **Shafiullah Jan versus Govt: of Khyber Pakhtunkhwa through Secretary Small Industrial Estate, KPK Peshawar and 06 others (2018 CLC Note-17 Peshawar Bannu Bench)**, wherein it was held that:-

“Perusal of the contents of the writ petitions reveals that the petitioners have not disclosed about the filing of earlier suits which amounts to concealment of facts from the Court. Relief under section 199 of the Constitution, being discretionary, therefore, the Court considering the conduct of the petitioners, holds that they have not come to the Court with clean hands and do not deserve the relief sought in the writ petitions. In this respect we respectfully follow the case "Water and Power Development Authority/Lahore Electricity Supply Company Limited through Sub-Divisional Officer, Sheikhpura v. Messrs Bhatti Ice and Rice Mills, Buchiki through Proprietor and another" (2004 YLR 1263) and "Muhammad Ayub Khan Tanoli v. Secretary of Industries, Government of N.-W.F.P., Peshawar and 3 others" 2004 CLC 1500).”

Further reliance is placed on the judgment of Lahore High Court delivered in case titled **Azeem Khan and another versus Government of Punjab through Secretary Mines and Mineral Punjab Secretariat, Lahore and 06 others (2023 MLD 1611 Lahore Rawalpindi Bench)**, wherein it was held that:-

“Leaving aside above aspect, it is observed that a person seeking indulgence of this Court in constitutional jurisdiction is supposed to approach the Court with clean hands. It is expected from such person that on the basis of principle of equity, he will not conceal any material fact from the court but the position here is totally different. The petitioners have though instituted a civil suit for declaration and injunction before the learned Senior Civil Judge, Lahore where the matter is sub-judice but they have purposely concealed this material fact while filing the present petition. It is quite strange that in the first instance they opted to approach the Principal Seat of this Court at Lahore but in short span of time after withdrawal of their first writ petition, they

approached this Court in a very dubious manner and even without appending the copy of the order. Concealment of material fact from the court not only tantamount to thwart but to hoodwink the process of law, which cannot be allowed in any eventuality. It is high time to curb such tendency on the part of litigants. The constitutional jurisdiction is a discretionary relief, which depends upon the satisfaction of the Court. The petitioners since have not come with true facts and instead withheld necessary information on extraneous reasons, so they do not deserve any equitable relief. Concealment of material fact from the Court contemplates serious consequences. The petitioners cannot pick the forum of their own choice in order to get a relief in their favour, thus circumventing the ordinary jurisdiction of the Court at the whims of a party would mean to obstruct the normal process of law and to show a distrust on the working of Sub-ordinate Courts, which is never the object of law. It can be held without any hesitation that the petitioners were obliged to disclose the pendency of litigation, while filing the instant petition. It appears that the disclosure about the pendency of suit was purposely withheld which sole circumstance is sufficient to disentitle the petitioners from claiming the discretionary relief in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. This Court in the case of Muhammad Amir v. Umer Hayat and 5 others (2010 CLC 1798), while dealing with the issue in hand held as under :-

"3. Without dilating upon the merits and demerits of the case it is pointed out that prior to filing of this writ petition for setting aside the orders dated 21-10-2009, 12-5-2008, 29-12-2006 and 26-2-2003 respectively the petitioner Muhammad Ameer filed a civil suit on 18-11-2009 in the court of learned Senior Civil Judge, Sahiwal assailing the same orders which are assailed in this writ petition. Muhammad Ameer petitioner did not disclose in this writ petition the filing of the same which is serious concealment of facts. Relief under Article 199 of Constitution of Islamic Republic of Pakistan 1973 is always a

discretionary relief. The petitioner should approach this court with clean hands. This material concealment of facts not disclosing the filing of civil suit before the learned Senior Civil Judge, Sahiwal by the petitioner is sufficient ground for refusing the relief sought for in this writ petition. The petitioner cannot avail two remedies simultaneously. He is bound to choose either to avail the remedy of filing civil suit or filing this writ petition. At a time petitioner has availed both the remedies.”

10. The concealment of the earlier civil suit and its dismissal for non-prosecution clearly reflects lack of candour on part of the petitioner. It also demonstrates that the petitioner had already availed an alternate civil remedy on the same subject matter but failed to pursue it diligently. The doctrine of constructive *res judicata* also comes into play, preventing re-agitation of the same cause through successive proceedings before different forums.

11. When viewed cumulatively, three distinct grounds emerge for non-maintainability of the instant petition: firstly, the existence of a valid and enforceable arbitration clause providing an adequate alternate remedy; secondly, the contractual nature of the petitioner’s claim which falls outside the ambit of Article 199 of the Constitution; and thirdly, the concealment of material facts regarding prior litigation, amounting to abuse of the process of the Court.

12. It is further noteworthy that the dispute does not involve any element of violation of fundamental rights, lack of jurisdiction, or mala fide exercise of authority on part of the

respondents, grounds upon which constitutional jurisdiction may ordinarily be invoked. The entire claim rests upon alleged wrongful deductions and demands for payment arising out of contractual execution, which, even if true, are matters of factual and technical determination best suited to arbitration or civil adjudication, not to constitutional proceedings.

13. In light of the foregoing discussion, this Court is of the considered view that the instant writ petition is misconceived and not maintainable. The petitioner, having entered into a binding contract containing a dispute-resolution clause, cannot circumvent the same and seek relief under Article 199 of the Constitution. The failure to disclose prior civil litigation further undermines the petitioner's bona fides and disentitles him to any discretionary relief.

14. Accordingly, this writ petition stands dismissed as not maintainable on the following grounds:

- (i) Existence of a valid and enforceable arbitration clause (Clause-25) governing the dispute;
- (ii) Availability of an adequate alternate remedy under the contractual mechanism;
- (iii) Contractual nature of the claim which does not involve any constitutional question; and
- (iv) Concealment of the prior civil suit on the same subject matter, dismissed for non-prosecution on 11.05.2017.

Announced.
06.11.2025

JUDGE

JUDGE