

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**WRIT PETITION NO. 1492 OF 2020**

**M/S NOMAN ENGINEERS THROUGH NOMAN UL HAQ  
(SOLE PROPRIETOR), GOVERNMENT CONTRACTORS,  
ISLAMABAD.**

**Vs.**

**FEDERATION OF PAKISTAN THROUGH SECRETARY, M/O  
HOUSING & WORKS, GOVERNMENT OF PAKISTAN,  
ISLAMABAD.**

**Petitioner:** **Dr. G.M. Chaudhry, Advocate.**

**Respondent No.1:** **Ms. Ruqia Sami, AAG.  
Mr. M. Siddique, SDO, Pak PWD.**

**Date of Decision:** **02.09.2020**

**LUBNA SALEEM PERVEZ, J.** Petitioner has invoked the constitutional jurisdiction of this court by way of filing instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan seeking direction to the Respondent Nos. 3 & 4 for release of balance of funds amounting to Rs. 1,986,234/- in lieu of work carried out by them i.e. Construction of new secretariat block constitution Avenue, Islamabad (Partition works for Ministry of Maritime Affairs).

2. Brief facts of the case are that after winning a tender with tendered amount of Rs. 72,19,920/- petitioner completed the partitioning work in New Secretariat (Kohsar Block), Ministry of Maritime Affairs, Islamabad, which conveyed to them by the Respondent No.3, vide letter No. EE/PCD-II/AB/967 dated 11.04.2019. They completed the further partitioning work formally communicated to them vide letter No. EE/PCD-II/W-30(13)/1867, dated, 03.07.2019. Respondent No.3, after completion of all the work conveyed the compliance report to Respondent No.4 with the request to allocate the balance of the fund of Rs. 19,86,234/-, vide letter No. EE/PCD-II/W-30(12)/1600 dated 02.06.2020, yet the Respondent No.4 has not disbursed the balance amount despite several reminders of Respondent No.3.

3. Learned counsel for the petitioner submitted that the partitioning work on the allocated space for Ministry of Maritime Affairs at new secretariat, Constitution Avenue, Islamabad was assigned to the petitioner through Respondent No.3; that they completed all the work as per specifications to the satisfaction of Respondents; that to date no objection in relation to the work done was communicated to the petitioner; that since the construction work was assigned to him by Respondent No. 3, therefore, several reminders were issued to Respondent No.3 but the final settlement of dues has been delayed; that Respondent No.3 has also communicated to Respondent No.4 regarding completion of work by petitioner with the request to release the balance amount of Rs. 1,968, 234/- legitimate dues of the petitioner but till date no action has been taken for settlement of balance dues of the petitioner.

4. Comments filed by Respondent Nos. 2 & 3 have been perused. It has been contended that admittedly an amount of Rs. 1,986,234/- is due to the contractor/petitioner; that so far no funds have been released by Respondent No.4; that final settlement/due of the petitioner would be settled after receipt of funds by Respondent No.4.

5. The learned AAG submitted that entire fund of Rs. 10.486 million allocated for construction of partition for Ministry of Maritime Affairs have been released to PWD/Respondent No.3, therefore it is now liability of the Respondent No.3 to clear balance liability of the petitioner; that, therefore, no amount is due from the Respondent No.4 for construction work done by the petitioner.

6. From the divergent pleading of the parties it has transpired that the main dispute between the parties relates to release of funds by the Respondent No.4 in lieu of work carried out by the Petitioner. In this regard, the stance of the Respondent No.4 is that they have paid Rs. 10.486 million to Respondent No.3, vide sanction letter dated 24.04.2019 for the partitioning work carried out by the petitioner. Later vide letter dated 26.06.2019 Respondent No.3 informed them that all the partitioning work has been completed but upon checking the premises, it revealed that no doors were installed in offices and Respondent No.3 was instructed to install doors in the offices, which work was later on carried out by the petitioner and Respondent No.3 forwarded another bill

amounting to Rs. 2.263 million in this regard, whereas, Respondent No.4 were under the impression that earlier estimation conveyed by the Respondent No.3 was inclusive of glass doors. Moreover, out of total funds of Rs. 10.486 million an amount of Rs. 1,427,044/- have lapsed and surrendered into Federal Treasury Office (FTO) by the Respondent No.3, hence, any instance of deviation from established procedure remains the responsibility of Pak-PWD as they should have made maximum efforts at their end to clear dues of contractor and Respondent No.4 is not responsible for that as according to them all the contract amount has been released in favour of Respondent No.3 for payment to the contractor/petitioner. Whereas, the stance taken by the Respondent No.3 is that the earlier estimation of Rs. 10.846/- million conveyed to Respondent No.4 regarding the assigned work did not include the glass doors. Thus, the question whether the earlier estimation conveyed to the Respondent No.4 for the requisite work was inclusive of the glass door charges or not, and the correctness of stance of Respondent No.4 regarding release of funds of Rs. 10.486 million to Respondent No.3, give birth to a purely factual controversy requiring recoding of evidence which exercise cannot be carried out by this Court while exercising powers under the writ jurisdiction. The scope of constitutional jurisdiction though is discretionary, however, at the same time is very limited and it is not open for resolution of factual controversies between the parties, which purely fall under the domain of Civil Courts where disputes of facts are determined through proper examination of evidence. Moreover, it has now been established and consistently held that controversial and disputed facts cannot be decided by the High Court in constitutional jurisdiction. Reference can be made to judgment of the Hon'ble Supreme Court passed in case of *Lahore Development Authority Bashir A. Malik (2014 SCMR 1849)* and *Ahmed Developers Vs. Mohammad Saleh (2010 SCMR 1057)*, wherein, it has been held that contest on factual controversy could only have been determined through civil suit and not in constitutional jurisdiction by the High Court.

7. Main cause of non-payment of petitioner's outstanding dues and determination thereof is the above said controversy between Respondent Nos. 3 & 4 which is purely of factual nature and cannot be resolved without recording of evidence. Moreover, as far as dues of the petitioner are concerned, I am of the considered view that an alternate efficacious remedy is available to the petitioner before the proper forum. Reference in this regard is made to the case

law reported as *Khalid Mehmood Vs. Collector of Customs, Customs House, Lahore (1999 SCMR 1881)*, *Pakistan WAPDA Employees Pegham Union Vs. Member, NIRC, Islamabad and other (2015 PLC 45)*, *M/s Associate Industries Ltd. Vs. Federation of Pakistan through Secretary Economic Affairs, and 2 others (2014 PTD 552)* and *Sajjd Vs. The State and others (2019 PCr. LJ 1205)*.

8. For the foregoing reasons, in my estimation present petition is not maintainable in view of the settled principle of law that matters, where factual controversies are involved, required appreciation of evidence, are out of the domain of constitutional jurisdiction under article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Hence, instant writ petition is accordingly dismissed.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

*Adnan/\**