

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT.**

(Original Jurisdiction)

Before:

Mr. Justice Rana Muhammad Arshad Khan, Chief Judge.
Mr. Justice Raja Jalal-ud-Din, Judge.
Mr. Justice Muzaffar Ali, Judge.

**SMC.No. 02/2013
(COMPLAINT AGAINST CIVIL SUPPLY).**

Present:

1. Advocate General Gilgit-Baltistan.
2. Malik Shafqat Wali Sr. Advocate alongwith Muhammad Sharif Advocate on behalf of petitioner.
3. Muhammad Issa Sr. advocate for NATCO alongwith Mir Ikhlaq Hussain Advocate.
4. Mr. Momin Jan, Director Civil Supplies and Transports Gilgit-Baltistan.
5. Mr. Manzoor Karim Advocate legal Advisor for Food Department GB.

Date of hearing : 07-05-2014.

Judgment

Rana Muhammad Arshad Khan, CJ: This petition for Suo Moto Notice emanates from the office note dated 07.10.2013, prepared on the basis of an application made by one Fida Hussain, calling in question the validity of the contract dated NIL, awarded to the Northern Areas (now Gilgit-Baltistan) Transport Company (NATCO), by the Food Department of Government of Gilgit-Baltistan for wheat carriage from PASSCO Centers situated in the province of Punjab and other areas to Base Godown, Islamabad and thereafter to the Gilgit-Baltistan.

2. It is pertinent to mention at the very outset that the application for Suo Moto notice was filed in the office of this Court on 27.09.2013 and the office note was prepared on the same day recommending for calling the comprehensive report from the Director,

Civil Supplies and Transport, Gilgit-Baltistan within a week. The requisite report was not submitted within the stipulated period and on 07.10.2013, the Director, Civil Supplies and Transport, Food Department, Government of Gilgit-Baltistan was summoned to appear before the Court on 10.10.2013 alongwith the report and record.

3. The Court took the cognizance of the matter in exercise of the power contemplated under Article 61 of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009. In pursuance of the orders of this Court Mr. Muhammad Ibrahim, the then Director, Civil Supplies and Transport appeared. He, while appearing sought an adjournment on the ground that neither he could examine the record properly nor he could prepare the requisite report. The case was accordingly adjourned and was refixed on 13.11.2013 when, the report was again not submitted and adjournment was sought. The case was ordered to be fixed for 21.11.2013.

4. The Director, Civil Supplies and Transport, while appearing before the court on 21.11.2013, submitted the report dated 20.11.2013 through learned Advocate General Gilgit-Baltistan raising therein certain preliminary objections and controverted the averments made in the application of the complainant. It has further been stated that the contract for carriage of the wheat for the year 2013-2014 was executed and awarded to M/S NATCO by way of "negotiated tendering" under Rule 42(d) and other related provisions of Public Procurement Rules, 2004. It has further been elaborated that since, the PASSCO had refused to allocate wheat quota to Gilgit-Baltistan for non-payment of bills to PASSCO and thereafter, on account of the intervention of the Government of Gilgit-Baltistan, PASSCO had agreed to allocate about

2,00,000 wheat bags with the condition that the allocated bags would be lifted before the commencement of the Holy month of Ramadan. It has been reiterated that the Department was left with no option but to invoke the provisions of Rule 42(d) of Public Procurement Rules, 2004. The perusal of the report is indicative of the fact that all other paras of the said application are vehemently denied and it has also been asserted that the application of the petitioner at this belated stage is not free from the element of mala fide and is an effort to cause unrest in Gilgit-Baltistan by disturbing the smooth supply of wheat.

5. In the second part of the report, it has been pointed out that the NATCO, a private limited Company, owned by the Government and reportedly, well equipped with the fleet of a number of trucks, has fulfilled all the pre-qualifications and that the people of the area also repose confidence in the working of NATCO. It has further been asserted that the NATCO is working under the control of Government of Gilgit-Baltistan and the Chief Secretary Gilgit-Baltistan is the Chairman of the Board of Directors ex officio, and the Contract has been awarded to the

NATCO in order to ensure the transparency in transportation of wheat.

6. The learned Advocate General Gilgit-Baltistan has appeared on behalf of Food Department, Government of Gilgit-Baltistan and strenuously argued that the present petition/complaint is not maintainable on the ground that the jurisdiction of this court under Article 61 of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 cannot be invoked for the benefit of an individual or a group of people, except if, the Court considers that the question raised is of general public interest and that too with reference to the enforcement of any fundamental right. The learned Advocate General Gilgit-Baltistan

has made further submissions, on instructions, that the contract has been awarded to NATCO in view of the provision of Rule 42(d) of the Public Procurement Rules, 2004 for the transportation of wheat from PASSCO Centers located at different places in Punjab to Base Godown Islamabad and thereafter from Islamabad to different parts of Gilgit-Baltistan. He vehemently emphasized that the contract has been awarded to NATCO, a government controlled organization, being fully equipped with full arrangement of transportation as the NATCO organization fulfill all the requisite requirements of pre-qualification with a fleet of more than 155 trucks for the carriage and supply of allocated wheat from down country to this area and the supply of wheat as per contract is being carried out satisfactorily. He submits further that no other contractor including the complainant possesses the pre-qualification for the instant contract. He empathetically argued that the department did not feel necessary to undergo the exercise of inviting the tenders vide publication in the news papers, in terms of Rule 12 of Public Procurement Rules, 2004, to award the aforesaid contract, whereas, the NATCO was awarded the contract for the carriage of wheat, for the year 2013-2014, by negotiation under the Public Procurement Rules, 2004 on account of **emergency**. The learned Advocate General submitted further that since, the start of contract period i.e. from 01.07.2013 till date, the department has received no complaint, whatsoever, against the government controlled organization with regard to its performance or any misappropriation of wheat during the transportation.

7. Conversely, it has been argued by the learned counsel appearing on behalf of the complainant with full vehemence that the wheat supply carriage contract, having been executed and awarded in

violation of Public Procurement Regulatory Authority Ordinance, 2002 and Rules framed thereunder i.e. Public Procurement Rules, 2004, is not only illegal but is also not transparent. Argues further that the mere fact so as to the NATCO, being a government controlled organization, is in a better position to perform the contract efficiently, can hardly be a reason for award of contract in violation of the law on the subject. The main thrust of the learned counsel for the complainant is that the rate offered by the complainant for the carriage of wheat from Islamabad to Gilgit-Baltistan was much less to the rate on which afore-referred contract was awarded to NATCO and in this view of the matter the award of contract was not in the public interest because the payment for the carriage of wheat is to be made from the public exchequer and it is the duty of the concerned department/public functionaries to see as to whether the public money is not being wasted and the same is being utilized in a fair and proper manner. He argued further that the department has failed to perform its duty fairly, justly and in accordance with law and consequently, the huge amount of public money has been wasted, so the instant case is not for the benefit of the individual and a group of individuals rather it relates with the question of general public importance on account of involvement of billion of rupees from the public money which was to be utilized for the welfare and betterment of the public at large.

8. We have heard the learned Advocate General and the learned Counsel for the complainant at full length and have also perused the documents brought on the file by both the parties very carefully.

9. In pith and substance, the case of the complainant is that the whole transaction has been carried out by the officials of the Food

Department of Gilgit-Baltistan in such a manner which rendered the transaction illegal and unlawful while causing a huge loss to the public exchequer. The preliminary objection has been raised by learned Advocate General with regard to the maintainability of the present petition under Article 61 of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 with a view that there is no issue of involvement of any question of general public importance and enforcement of fundamental rights conferred by Part II of the aforesaid Order. We feel no hesitation to observe that the jurisdiction of this Court has not evolved within the short span of time, rather the same has slowly and steadily expanded through successive judgments rendered by this Court as well as the superior courts of Pakistan. This all has been evolved so that the people may become aware of their rights to keep a watch on the loss of public money of which they are the owners and this is why the rule of locus standi has been relaxed with the passage of time in order to guarantee protection of rule of law to the general public through public interest litigation. Reliance can safely be placed on the judgments in the cases of Miss Benazir Bhutto v. Federation of Pakistan and another (PLD 1988 SC 416), Mian Muhammad Nawaz Sharif v. President of Pakistan and others (PLD 1993 SC 473), Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others (2012 SCMR 455) and Muhammad Yaseen v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others (PLD 2012 SC 132) rendered by the Hon'ble Supreme Court of Pakistan.

10. If, the public funds or any public property is to be dealt with by the executive authorities for the benefit of the people, the public authority is required under the law to examine the use of funds in

accordance with law, keeping in view the constitutional rights of the citizens. Since, the people are real owners of the public exchequer, so the public functionaries are under legal obligation to execute the contracts justly, fairly, legally and in a transparent manner in order to avoid misuse of the public money and must avoid any element of arbitrariness. Thus, in such like cases, the court would not hesitate to exercise its jurisdiction of Judicial Review conferred by Article 61 of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 to scrutinize the matter where the public money is being used or expended. It is duty of the public functionaries to ensure that the transaction are undertaken and contracts are executed lawfully, fairly, equitably and without any element of arbitrariness by ensuring transparency. It is now well-settled that the Court is to act through a Judicial Review of the decision making process carried out by the executive authorities in the matters of expending of public money and if, on scrutiny, it is found tainted with the element of unreasonableness and arbitrariness, the intervention of the court is justified while keeping in view the larger interest of the public. It has also been held in *Suo Moto Case No. 13 of 2009 (PLD 2011 SC 619)* which reads as follows: -

“24. It is well-settled that in matters in which the Government bodies exercise their contractual powers, the principle of judicial review cannot be denied. However, in such matters, judicial review is intended to prevent arbitrariness or favouritism and it must be exercised in larger public interest. It has also been held by the Courts that in matters of judicial review the basic test is to see whether there is any infirmity in the decision making process. It is also a well-settled principle of law that since the power of judicial review is not an appeal from

the decision, the Court cannot substitute its decision for that of the decision maker. The interference with the decision making process is warranted where it is vitiated on account of arbitrariness, illegality, irrationality and procedural impropriety or where it is actuated by mala fides.”

11. It has further been held which reads follows: -

“..... The Government bodies are invested with powers to dispense and regulate special services by means of leases, licences, contracts, quotas, etc., where they are expected to act fairly, justly and in a transparent manner and such powers cannot be exercised in an arbitrary or irrational manner. Transparency lies at the heart of every transaction entered into by, or on behalf of, a public body. To ensure transparency and fairness in contracts, inviting of open bids is a prerequisite. The reservations or restrictions, if any, in that behalf should not be arbitrary and must be justifiable on the basis of some policy or valid principles, which by themselves are reasonable and not discriminatory.”

12. The principle laid down in the Judgments of the Supreme Court of Pakistan has been made abundantly clear that the public functionaries are deriving their authority and power from, or under the law and they are obliged to act equitably, reasonably and in a manner that there should not be any element of discrimination, favouritism, nepotism and unfairness, as everybody is to be dealt with according to the mandate of law and that too keeping themselves within four corners of law. If the executive authorities do not comply with all the aforesaid conditions, the matter will be open for Judicial review to correct the

errors committed by the public functionaries while executing and awarding the contract, without showing favour to any of the party on account of any consideration other than the public benefit. Our view is further fortified by the dictum laid down in a case titled Muhammad Yasin v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others (PLD 2012 SC 132), wherein, it has been held that the authorities “*cannot be allowed to exercise discretion at their whims, sweet will or in an arbitrary manner; rather, they are bound to act fairly, evenly and justly. By now, the parameters of the Court’s power of judicial review of administrative or executive action or decision and the grounds on which the Court can interfere with the same are well settled, indisputably, if the action or decision..... has been arrived at by the authority misdirecting itself by adopting a wrong approach or has been influenced by irrelevant or extraneous matter, the court would be justified in interfering with the same.*”

13. Undoubtedly, the Public Procurement Regulatory Authority Ordinance, 2002 and the Rules framed thereunder would be applicable in Gilgit-Baltistan as all proceeding for the award of contract of transportation of wheat are carried out under the aforesaid laws. The award of contract in derogation of legal provisions or in violation of law would be open for judicial review by this Court in its original jurisdiction conferred upon it under Article 61 of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009. The Hon’ble Supreme Court of Pakistan in a case titled M/s Ramna Pipe and General Mills (Pvt) Limited versus M/S Sui Northern Gas Pipe Lines (Pvt) Limited and others (2004 SCMR 1274) held as under:

“*A contract carrying element of the public interest is open for judicial review. A contract carrying elements of public*

interest, concluded by functionaries of the State has to be just, fair, transparent, reasonable and free of any taint of mala fides, all such aspects remaining open for judicial review. The rule is founded on the premises that public functionaries, deriving authority from or under law, are obligated to act justly, fairly equitably, reasonably, without any element of discrimination and squarely within the parameters of law, as applicable in a given situation. Deviation if of substance, can be corrected through appropriate orders under Article 199 of the Constitution such behalf even where a contract, pure and simple, is involved, provided always that public element presents itself and the dispute does not entail evidentiary facts of a disputed nature, redress may be provided.”

14. If, any order passed or decision is taken by the public functionaries and the same is shorn of any procedural flaw or substantive transparency and if, the same is found also tainted with the element of unfairness, illegality and is passed on unreasonable and irrelevant consideration, which may have result of improper exercise of jurisdiction bestowed on a public authority and is found from the record adverse to the public interest, cannot be immuned from judicial review by the court. In such like cases, no exception can be taken to the well settled principle of law in public interest case that if, there is any element of partiality or undue favour or there is any substantial irregularity found on the surface of record which may create a serious doubt in the mind of common man with regard to the transparency in execution and award of public contract or any other transaction lacking transparency, the court may not hesitate to interfere in the matter and the court may in exercise of power of judicial review declare the transaction illegal.

15. Article 18 of the constitution of Islamic Republic of Pakistan provides that subject to the limitation imposed in a lawful manner, everybody has a right to enter upon a trade for lawful purpose and business. The laudable object of this provision can only be used, if the

transaction entered between parties, is transparent and based on element of fairness, which is lacking in the in hand case. The fashion in which the contract has been awarded, that the provision of contract did not contain any condition for the execution of the contract, speaks volume against the conduct of executing agency. In such a situation, the exercise of power can be corrected by this Court on the anvil of judicial review. This appears to be an arbitrary exercise of power offending against offence.

16. In view of foregoing circumstances, the argument advanced by the learned Advocate General with regard to the maintainability of the present application/complaint is held without any substance and the same is declined.

17. The case in hand pertains to a contract awarded to NATCO for the Transportation of wheat from PASSCO Centers situated at different parts of Punjab to Islamabad and thereafter to Gilgit-Baltistan, which is supplied and partly funded by the Federal Government. Since, the Public Procurement Regulatory Authority Ordinance, 2002 and the Public Procurement Rules, 2004 are certainly applicable in Gilgit-Baltistan and the contract in question relating to wheat carriage is definitely a public procurement contract under the legal provisions as envisaged in PPRA Ordinance, 2002 and Public Procurement Rules, 2004. It would be convenient to understand the legal proposition in the light of relevant definition clause contemplated in Section 2 of Public Procurement Regulatory Authority Ordinance, 2002 which reads as follows.

“Section 2.

(e) “goods” means articles and objects of every kind and description including raw materials, products, equipment, machinery, spares and commodities in any form and includes services incidental to installation, transport, maintenance and similar obligations related

to the supply of goods if the value of these services does not exceed the value of such goods;

(o) “service” means any object of procurement other than goods or works;”

18. The mere examination of aforesaid definitions makes it abundantly clear that the transportation of wheat from Islamabad to Gilgit-Baltistan will be termed as “service” and wheat is “goods”. It is pertinent to point out here that the wheat is supplied to Government of Gilgit-Baltistan by the Federal government on subsidy. The perusal of the record reveals that a meeting with regard to the “tender policy for transportation of wheat” was held under the chairmanship of the then Chief Secretary in his office on 19.07.2013 in which the policy of Food Department, Government of Gilgit-Baltistan was purportedly discussed and certain decisions were taken which, for convenience, are reproduced as follows:

- a) *Transportation work of wheat from PASSCO Centers to Base Godown Islamabad and from Base Godown Islamabad to all stations of Gilgit-Baltistan will be continued by NATCO in terms of Para-42 sub clause c (iii) of PPRA rules till 30-03-2014 with the same terms & conditions for the year 2012-2013. Payment will be made on the approved rates for the year 2012-2013 and no escalation will be paid for the year 2013-2014.*
- b) *Transportation work of wheat within Gilgit-Baltistan will be awarded to private contractors through proper pre-qualification followed by tenders.*
- c) *The conditions for pre-qualification of the contractors for transportation of wheat within Gilgit-Baltistan are hereby amended as under:*
 - i) *For Category A contractors work limit fixed at Rs. 150 million.*
 - ii) *The clause for having 25 trucks having 30 tons capacity is deleted.*
 - iii) *For Category B contractors work limit enhanced from Rs. 10 million to Rs.20 million.*

iv) Rest of all the conditions for pre-qualification will remain the same. ”

19. The plain reading of the detail of minutes of meeting transpires that the NATCO would continue the transportation work of wheat from PASSCO centers to base godowns Islamabad and from there to all stations of Gilgit-Baltistan till 30.06.2014 in accordance with terms and conditions of the contract for the year 2012-2013. The perusal of Para (a) and (b) of the minutes, if read in juxtaposition, makes it quite clear that Para (a) and (b) are self contradictory. The Para (a) of the Minutes of Meeting denotes that the transportation/carriage of wheat, from PASSCO Centers to Base Godown Islamabad and from there, to all stations of Gilgit-Baltistan, shall be continued by the NATCO in terms of Rule 42 (c)(iii) of Public Procurement Rules, 2004 and the terms and conditions were also kept similar to that as in a contract for the year 2012-2013. On the other hand Para (b) says that the work of wheat carriage within Gilgit-Baltistan will be awarded to other contractors keeping in view the prequalification, if, both the Paras are to be read together, it makes sufficiently clear that the public functionaries held the meeting on 19.07.2013 in such a manner that they did not even bother to apply their mind to the facts and circumstances of the transaction. These minutes were made the basis for the execution of the contract in question and awarding the same to NATCO. It smacks a volume of favouritism, arbitrariness and is not free from the element of unfair, unjust and unreasonableness. The Public exchequer cannot be doled away in such a manner which is allocated to be used for the welfare and betterment of the public at large.

20. The survey of the record indicates that it is an admitted position that the departure from an open bidding was undertaken while invoking the exemption purportedly under Rule 42 (c)(iii) of Public Procurement Rules, 2004 without assigning any reason whatsoever or mentioning any circumstances for which wheat carriage contract was awarded to NATCO without publication for inviting the tenders. The provision under Rule 42 (c)(iii) of Public Procurement Rules, 2004 do not attract to the facts and circumstances of the case and renders the whole exercise carried out by the public functionaries illegal and unjust. For convenience sake it would be appropriate to reproduce Rule 42(c)(iii) of Public Procurement Rules, 2004 under which an exemption was granted.

The said rule reads as follows: -

"42. Alternative methods of procurements.-

(c) direct contracting.-

A procuring agency shall only engage in direct contracting if the following conditions exist, namely:-

- (i)*
- (ii)*

(iii) where a change of supplier would oblige the procuring agency to acquire material having different technical specifications or characteristics and would result in incompatibility or disproportionate technical difficulties in operation and maintenance:

Provided that the contract or contracts do not exceed three years in duration;"

21. The exemption has been granted to the NATCO while awarding the contract for carriage of wheat from Islamabad to Gilgit without any basis and the same has been done on extraneous consideration and without valid and proper reasons. Suffice it to say that the exemption given in Rule 42 (c)(iii) of aforesaid Rules is of no legal effect or consequence which shows that the process of execution of a contract has not been done in a fair, legal and transparent manner.

22. The next contention of learned Advocate General was that the aforesaid contract was awarded, in terms of Public Procurement Regulatory Authority Ordinance, 2002 and rules framed thereunder, to NATCO for the carriage of wheat for the year 2013-2014 while invoking the provisions of emergency as envisaged under Rule 42(d)(iii) of the Public Procurement Rules, 2004. When, the contracts are awarded through open bidding process, the scheme and course of action for award of contract is to be exhaustively given in the publication through largely circulated newspapers but in the case in hand, the departure from open bidding process was made by invoking the provision of an exemption envisaged under Rule 42 (d) (iii) on account of emergency and the emergency, as it has been shown, in the report filed by the Food Department Gilgit-Baltistan, was that the PASSCO authorities had allocated 0.2 Million wheat bags with an agreement that the allocated bags would definitely be lifted before the commencement of Holy Month of Ramadan. If, it is to be taken as such, it is pertinent to reproduce the relevant provisions of Public Procurement Rules, 2004 hereunder.

23. The definition of the word 'emergency' is given in Rule 2 (g) of the Public Procurement Rules, 2004 which reads as follows: -

"(g) "emergency" means natural calamities, disasters, accidents, war and operational emergency which may give rise to abnormal situation requiring prompt and immediate action to limit or avoid damage to person, property or the environment;"

24. Rule 42 (d)(iii) of the aforesaid Rules, 2004 provides an exemption from publishing the tenders in the major newspapers on account of emergency which reads as under: -

"42. Alternative methods of procurements.-

(d) negotiated tendering.-

A procuring agency may engage in negotiated tendering with one or more suppliers or contractors with or without

prior publication of a procurement notification. This procedure shall only be used when,-

- (i)
- (ii)

(iii) for reasons of extreme urgency brought about by events unforeseeable by the procuring agency, the time limits laid down for open and limited bidding methods cannot be met. The circumstances invoked to justify extreme urgency must not be attributable to the procuring agency:

Provided that any procuring agency desirous of using negotiated tendering as a method of procurement shall record its reasons and justifications in writing for resorting to negotiated tendering and shall place the same on record.”

25. On perused of the minutes of meeting held on 19.07.2013 as well as the document of contract, it is astonishing that no mention, whatsoever, with regard to any natural calamity, disaster, accident, war or operational emergency, has been made, so much so, there is even no mention of the word “emergency” itself, either in the document of contract or in the minutes of meeting dated 19.07.2013, which is said to be the basis for the award of contract in question. If, at all, two lac wheat bags were required to be lifted within shortest possible time in emergency, the tender through negotiations could only be given to that extend only, but for the remaining bags the scheme of law was to be adopted to make it more transparent. Further, the Department has failed to state appropriate fora having the authority to declare emergency and the public functionaries also could not show from the record to have declared the same. The word ‘emergency’, in its absence in said minutes of meeting and the document of contract, is startling and the perusal of record makes it crystal clear that the contract period is from 01.07.2013 to 30.06.2014, whereas, the meeting for award of contract was held on 19.07.2013. It is essential to point out that no date of execution of

contract has been given nor any amount of security required to be deposited by the contractor was mentioned in the agreement deed in order to ensure the compliance of the conditions of the contract. These two things were the essence of the contract which are missing and such like agreement deed/contract remains not sustainable in law. The only date available on the Agreement Deed, alongwith the signature of one of the witnesses Gulzar Ahmed, Manager OPS, is 26.09.2013 i.e. after lapse of a period of about 2 months from the date of start of execution of contract, therefore, the whole exercise emerges to be farcical. The further examination of the contract shows that the signatures of the contracting parties have been obtained but no such name and address of the parties have been given. There is yet another question which agitates the mind while reading the paragraphs of the contract in challenge that the signatures of the witnesses have been obtained but neither the address nor their designations are mentioned, consequently, the contract has been drafted and signed by the parties in such a casual manner which cannot be said to be a contract sustainable in law. It is now well settled position of law that when one is vested with a power under law to do a certain thing in a certain manner, it must be done in that manner or it should have not been done at all. All other methods of performance of that act are necessarily forbidden. We are, therefore, of the irresistible view that no emergent situation, whatsoever, was available to award the contract under Rule 42 (d)(iii) and the provisions of Rule 42(d)(iii) ibid also does not attract to the facts and circumstances of the case in hand by any stretch of the imagination. This being a court of equity and

conscious cannot sit as distant spectators, therefore, we are left with no other option but to strike down the above transaction.

26. These are the detail reasons for the short order dated 07.05.2012 and the same is made part of this judgment as under: -

"For the reasons to be recorded later, in sequel to the facts and circumstances of the case in hand, the contract awarded to NATCO, for the wheat carriage, for the period from 01.07.2013 to 30.06.2014 is illegal, invalid and the same having been executed in violation and contravention of the mandatory provisions of Public Procurement Regulatory Authority Ordinance, 2002 as well as the provisions of Public Procurement Rules, 2004 and the exemption, granted under Rule 42 (c) (iii) of aforesaid Rules, is based on extraneous consideration and for irrelevant reason. In this view of the matter, it carries no legal effect or consequence. The entire process of execution of Contract was carried out in a manner which was not fair and transparent. Consequently, the Food Department of Gilgit-Baltistan is directed to reinitiate the de-novo process to award the contract for the transportation of wheat from the base godowns of PASSCO to Islamabad and thereafter to Gilgit-Baltistan in a fair, just, reasonable, rational and in a transparent manner and that too strictly in accordance with the provisions of the Public Procurement Regularity Authority Ordinance, 2002 and the Public Procurement Rules, 2004 framed thereunder after observing all other legal formalities as per requirement of law. The Department shall afford sufficient opportunity to all the interested parties who qualify to participate in the afresh contract awarding process and all efforts shall be made in order to lessen the burden on public exchequer. The respondent company shall also be eligible and at liberty to

participate in anew process. The Food Department, Government of Gilgit-Baltistan shall also take necessary steps to finalize the de-novo contract process as early as possible, so that it may not cause any hindrance to the transportation of wheat.”

27. This Suo Moto Case stands disposed of accordingly.

Chief Judge

Judge

Judge