

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

BEFORE:

Mr. Justice Syed Arshad Hussain Shah, Chief Judge

Mr. Justice Wazir Shakeel Ahmed, Judge

CPLA No.138/2020

(Against the judgment dated 10.09.2020 passed by the Gilgit-Baltistan
Chief Court in C.F.A. No. 35/2019)

1. Prov. Government GB through Chief Secretary
2. Secretary Works, Gilgit-Baltistan
3. Deputy Commissioner, District Ghizer
4. Executive Engineer B&R Division District Ghizer
5. Tajwar Khan, Chief Engineer Planning Gilgit Division

Petitioners

Versus

Naveed Enterprises through Manager Haji Abid Hussain,
Shahra-e-Quaid Azam, Jutial Gilgit

Respondent

1. Muhammad Wali Ex. Sub-Engineer B&R Division District Chizer, resident of Khur Tehsil and District Gilgit
2. Abdul Majeed Qureshi, House No. 223, Street 45, Sector F-11/3, Islamabad

Proforma Respondents

PRESENT:

For the Petitioners: Advocate General, Gilgit-Baltistan

Date of Hearing: **11.03.2021**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:-This judgment shall dispose of the instant Civil Petition for Leave to Appeal directed against the judgment dated 10.09.2020 passed by the learned Gilgit-Baltistan Chief Court in C.F.A. No. 35/2019, whereby Civil First Appeal filed by the present petitioners was dismissed.

2. Brief facts forming background for institution of the instant civil petition for leave to appeal are that the present respondent instituted Civil Suit No. 134/2015 against the present petitioners before the learned Senior Civil Judge Punial/Ishkoman for recovery of an amount of Rs. 746,000/- (rupees seven lac forty six thousand) with interest on account of supply of explosives/accessories. The learned Trial Court vide judgment dated 26.03.2019 decreed the suit of present respondent in the sum of Rs. 710,000 (seven lac ten thousand) with interest. The petitioners challenged the judgment passed by the learned Trial Court before the learned Gilgit-Baltistan Chief Court by means of Civil First Appeal No. 35/2019. The learned Chief Court, after hearing the parties, dismissed the civil first appeal and maintained the judgment/decrees passed by the learned Trial Court. The judgment passed by the learned Chief Court in the above civil first appeal has now been impugned before this Court by way of the instant civil petition for leave to appeal.

3. The learned Advocate General GB argued that the learned Gilgit-Baltistan Chief Court erred in law and facts to maintain the judgment/decrees of learned Trial Court as the judgment passed by the learned Court was defective of various factual and legal grounds and passed the judgment arbitrarily, ex-parte, one sided and in hasty manner without hearing the petitioners, as such is not maintainable. It was next argued by the learned Advocate General that the suit of the present respondent before the learned Trial Court was false and frivolous on the ground that first, no tender was called for supply of the alleged explosive items; secondly no supply order was issued by concerned authorities of Works Department, Ghizer in favour of the present respondent for

supply of the alleged explosive items; and thirdly no explosive items were received by the petitioner No. 4 (XEN Ghizer) from the present respondent. The learned Advocate General next argued that the respondent No. 2 (Mr. Muhammad Wali, the then Sub-Engineer Ghizer) who claimed to have received and handed over the alleged explosive items to then Sub-Engineer Mir Jahan Shah filed and recorded false statement before the Court and that he also failed to shatter the evidence of Mir Jahan Shah to whom he claimed to make the alleged delivery of explosive material. The learned Advocate General next contended that the learned Chief Court as well as the learned Trial Court wrongly relied upon the false and fabricated statement of the respondent No.2 (Muhammad Wali, the then Sub-Engineer Ghizer) inasmuch as the statement recorded by the respondent No. 2 before the learned Trial Court was without permission of the concerned department and prayed for setting aside the impugned judgment passed by the learned Gilgit-Baltistan Chief Court.

4. Arguments advanced by the learned Advocate General, Gilgit-Baltistan have been heard. We have also perused the case record and gone through the impugned judgment of the learned Chief Court and judgment/decrees passed by the learned Trial Court as well.

5. It is the case of the present respondent that he delivered the disputed explosive material to the petitioner No. 4 (the then XEN District Ghizer) through respondent No. 2 (Muhammad Wali, the then Sub-Engineer). From perusal of judgment/decrees of the learned Trial Court it transpired that to this effect, the learned Trial Court framed as many as 12 issues. Out of these issues, onus of proof regarding 4 issues was placed on the present respondent (plaintiff before the

learned Trial Court) and all the 04 issues stood proved which included the issue relating to relief. Contrarily, burden of proving 6 issues was placed on the petitioners and all these 6 issues held unproved. In addition to this, the significant aspect of case which almost led to decreeing suit in favour of the present respondent was filing of conceding statement as well as statement recorded before the Court by respondent No.2 (Muhammad Wali, the then Sub-Engineer Ghizer) to the effect that he purchased the explosive material from the respondent No.1 on verbal directions of the then XEN Ghizer for carrying out emergency rehabilitation work in District Ghizer and handed over the same to Mir Jahan Shah, Sub-Engineer and remained stuck to his stance throughout the trial. It is pertinent to mention here that if a subordinate staff of Executive Engineer B&R Ghizer filed and recorded false statement(s) before the learned Trial Court against interest of the State which caused loss to the public exchequer, an inquiry should have been conducted against him and if it was proved in the inquiry that he actually recorded false statement before the Court, he was liable to be penalized strictly in accordance with the law. This view of ours is further strengthened by a judgment of the Hon'ble Supreme Court of Pakistan in a case reported as Commissioner Faisal Division, Faisalabad Vs. Allah Bakhsh 2020 PLC (CS) 276.

The relevant part whereof is reproduced as under:

"It is pertinent to note that the Government properties and the Government funds are not be doled out by the Government officials, either to private persons or to themselves, and such conduct amounts to fraud upon the Government and person(s) committing fraud or embezzlement of the Government property or money could, in no circumstances, be treated leniently in disciplinary proceedings and in

appropriate cases, be allowed to continue in the service”

If the department was sure that the respondent No. 2 had recorded false statement before the Court, an immediate disciplinary action was required to be initiated against him, but record available with the case in hand lacks any proof or any verbal statement by concerned officers of Works Department which could indicate that disciplinary action was taken by the authorities of Works Department, Gilgit-Baltistan against the sub-engineer. This simply shows that in fact the explosive material was received and delivered by the respondent No. 2, otherwise what were the compelling circumstances which did not allow the Works Department to take disciplinary action against the said sub-engineer. As far as contention of the learned Advocate General that the respondent No. 2 (Muhammad Wali, the then Sub-Engineer) record statement before the learned Trial Court without permission/authority of authorities of Works Department is concerned, the submissions by the learned Advocate General GB to this are not tenable because being party to the suit, presence of the respondent No. 2 before the Trial Court was essential. Even otherwise, the learned Trial Court could summon for presence of the respondent No. 2, being claimant to have purchased and delivered the explosive material to Works Department Ghizer, as his statement was essentially required to be recorded before the Court and in this way, no permission or authority of the department was required for the respondent No. 2 for making his appearance before the Trial Court.

6. So far as contentions of the learned Advocate General that no tender was called and participated by the

respondent and that no supply order for supplying the disputed explosive material was issued in favour of the present respondent are concerned, it is made clear that it was the legal and procedural responsibility of the concerned department to undertake not by the respondent. Hence, commission of procedural and legal lapses by the authorities of concerned department could not be rest on the shoulders of the respondent to deny him his payment against explosive material provided by him. The stance of department regarding non-supplying the explosive material by the respondent is further negated by a letter dated 19.09.2012 addressed to the Chief Engineer Works Department, Gilgit Region by the respondent containing request for payment of explosive accessories. This letter was duly marked by the Chief Engineer concerned to the XEN B&R Ghizer with the remarks "*For necessary action as desired pl*". When the said letter was delivered to the Executive Engineer B&R Ghizer, he wrote his remarks on the said letter in these words: "*The explosive received by Mr. Wali Sub-Engineer during the month of August 2010, so pl complete the codal formalities*". The invoices issued by the respondent in this regard also carry the dates of August, 2010. This is a fact of worth consideration that if the explosive material was not received by the Works Department at all then why the Chief Engineer Works and Executive Engineer B&R entertained this letter and put their respective remarks on it. Therefore, in view of what has been stated above, it can safely be held that the petitioners tended to use tactics to deprive the respondent from his lawful right of payment against the explosive material.

7. Foregoing in view, we did not find any illegality or infirmity in the impugned judgment. Therefore, leave in the

above CPLA 138/2020 is refused. The impugned judgment dated 10.09.2020 passed by the learned Gilgit-Baltistan Chief Court in C.F.A. No. 35/2019 is maintained. These were the reasons for our short order dated 11.03.2021, which is reproduced below:

“The learned Advocate General Gilgit-Baltistan has been heard at length. He could not point out any material irregularity, illegality or infirmity in the impugned judgment passed by the learned Gilgit-Baltistan Chief Court. Therefore, for the reasons to be recorded later, leave in the above CPLA No. 138/2020 is refused. The impugned judgment dated 10.09.2020 passed by the learned Gilgit-Baltistan Chief Court in C.F.A No. 35/2019 stands maintained”

Chief Judge

Judge

Whether fit for reporting (**Yes / No**)