

SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, CJ
MR. JUSTICE MUSHIR ALAM
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE QAZI FAEZ ISA
MR. JUSTICE IJAZ UL AHSAN

C. M. A. NO.490 OF 2021

IN

CONSTITUTION PETITION NO.20 OF 2013

(Action against Distribution of Development Funds to MNAs/MPAs by Prime Minister)

IN ATTENDANCE:

- For the Federation : Mr. Khalid Jawed Khan,
Attorney General for Pakistan
Mr. Sohail Mehmood, Addl. AGP
- For Govt. of Punjab : Barrister Qasim Ali Chohan,
Addl. A.G. Punjab
Khalid Mehmood,
Addl. Secretary Finance, Punjab
Shehbaz Ahmed Sheikh,
Law Officer, Finance, Punjab
- For Govt. of KPK : Mr. Shumail Ahmed Butt, A.G., KP
Mr. Aftab Ali Khan, Addl. A.G., KP
Atif Rehman, Secretary Finance, KP
Amir Sultan Tareen,
Secretary, P&DD, KP
- For Govt. of Balochistan : Mr. Arbab Muhammad Tahir,
A.G., Balochistan
Mr. Muhammad Fareed Dogar,
Assistant A.G., Balochistan
- For ICT : Mr. Niaz Ullah Khan Niazi,
A.G., Islamabad
- For Govt. of Sindh : Mr. Salman Talib ud din, A.G., Sindh
(via video link from Karachi) Saeed Ahmed Qureshi,
Focal Person to Chief Secretary,
Sindh
Sikander Hassan,
D.S. Finance, Sindh

Date of Hearing : 11.02.2021

ORDER

GULZAR AHMED, CJ.— The learned Attorney General for Pakistan has filed a report by way of CMA No.751 of 2021, signed by the Secretary, Finance Division, Government of Pakistan, Islamabad. The above report, *inter alia*, submits as follows:

“iii) There is no discretionary allocation at the disposal of the Prime Minister, Federal Minister, Parliamentarian, or any other person, under the existing budgetary system. As such, expenditures incurred are never person specific. Rather they are Demand-specific, duly approved by the National Assembly.”

It was observed in Court that the Prime Minister enjoys protection for his person under Article 248 of the Constitution, nevertheless he has in deference to our last order also signed the above report with the following endorsement:

“It is submitted that no public funds are being distributed to Parliamentarians by the Federal Government and any report to the contrary in media is incorrect. No money will be handed over to the legislators to carry out development schemes.”

2. The learned Additional Advocate General, Punjab, has also submitted a report by way of CMA No.719 of 2021, signed by the Finance Secretary and the Chief Secretary, Government of the Punjab, where responding to query (b) in para 4 of the order of this Court dated 03.02.2021, it is stated as follows:

“Public funds are allocated by the Provincial Assembly in terms of Articles 120 to 124 of the Constitution of the Islamic Republic of Pakistan. Expenditure against aforesaid budgetary allocations is made in accordance with the rules made under Article-119 of the Constitution. There is no provision in the rules ibid to hand over funds to legislators. The Government of Punjab has neither handed over funds to legislators, nor is it in the process of handing over funds to legislators, and nor does it intend to hand over funds to legislators. Under the Annual Development Program 2020-21 prepared by the Planning & Development Board, Government of Punjab, no funds have been allocated at the sole disposal / discretion of the Chief Minister or Provincial Minister or any member of the Provincial Assembly. The execution of various development schemes is made by the respective authorities mentioned in the above referred rules, which empower the concerned authorities mentioned therein to incur expenditure up to the limits prescribed under these rules. Furthermore, the development schemes are project specific and no person specific.”

whether the Federal and provincial governments had handed over or intended to hand over monies to the legislators and/or carry out development works identified by them."

3. The learned Advocate General, Sindh, while appearing through video link from the Supreme Court Branch Registry, Karachi, has informed that the Government of Sindh has also filed its report by way of CMA No.750 of 2021, signed by the Secretary Finance as well as the Chief Secretary, Government of Sindh, in response to the order of this Court dated 03.02.2021. The response of the Government of Sindh to the query (b) of para 4 of the order of this Court dated 03.02.2021, it is stated as follows:

"In response to query at Para-4(b) of the Order dated 03.02.2021 passed by the Honourable Supreme Court of Pakistan, it is submitted that the Government of Sindh has not allocated/disbursed any Development funds to any MNA/MPA or notable in the Annual Development Plan (ADP-2020-21).

It is further submitted that the Government of Sindh will make all allocations in accordance with the provisions of Constitution of Islamic Republic of Pakistan and the guidelines provided by this Honourable Court in its judgment (action against distribution of Development Funds by the Ex-Prime Minister, PLD 2014 Supreme Court 131) referred to in the order dated 03.02.2021."

4. In our order dated 10.02.2021, we have noted that the Government of Khyber Pakhtunkhwa by way of CMA No.568 of 2021 so also the Government of Balochistan by way of CMA No.613 of 2021, have already submitted their replies where the categorical statements have been made that no development fund is going to be given to any of the MPAs/Ministers/Notables of their respective Provinces and that the development funds shall be used and spent as per the constitutional mandate and the rules framed by the respective Governments for utilization of the development funds, provided in their annual budget.

5. The report of the Federal Government (CMA No.751 of 2021) submitted by the learned Attorney General for Pakistan in Court today, the relevant paras whereof have been reproduced above, amply demonstrate that none of the development funds shall be

handed over to any of the Federal Ministers, Parliamentarians or any other person under the existing budget and that whatever budgetary provisions have been made in the annual budget, the same will be utilized in the manner, as is provided in the Constitution and other applicable laws and regulations. The reports of the Government of the Punjab so also Government of Sindh, in specific terms, have responded that no development fund is going to be given to any of the MPAs/Ministers/Notables of their respective Provinces and that the development funds shall be used and spent as per the constitutional mandate and the applicable rules framed by the respective Governments for utilization of the development funds provided in the annual budget.

6. At this stage one of us (*Qazi Faez Isa, J.*) sought to place on record photocopies of certain documents statedly received by him from some anonymous source through a WhatsApp message. Copies of such documents were handed over by the Hon. Judge to other Hon. Members of the Bench. A copy was also handed over to the learned Attorney General for Pakistan. The Hon. Judge also stated that he was unsure if the documents were genuine. The learned Attorney General for Pakistan submitted that since the authenticity of the documents was questionable, the same may not be taken on record. He further submitted that in any event the Hon. Judge would become a complainant in the matter and in that capacity it would not be appropriate for the Hon. Judge to hear the matter. The Hon. Chief Justice of Pakistan, therefore, observed that in these circumstances it would not be proper for the Hon. Judge to hear the matter considering that he had already filed a petition against the Prime Minister of Pakistan, in his personal capacity. Therefore, to uphold the principle of un-biasness and impartiality, it would be in the interest of justice that the Hon.

Judge should not hear matters involving the Prime Minister of Pakistan.

7. In view of the above position on record, it appears that the queries raised by this Court in the order dated 03.02.2021 have been responded/addressed by all the respective Governments and thus, we see no reason to further proceed with the matter. Accordingly, the Civil Miscellaneous Application No.490 of 2021 in Constitution Petition No.20 of 2013 is disposed of.