

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Qazi Faez Isa  
Mr. Justice Amin-ud-Din Khan

**Civil Petition No. 280-K of 2019**

*(Against the judgment dated 12.02.2019 of the High Court of Sindh at Karachi passed in Constitution Petition Nos. D-7687 and 8172/17)*

*Federation of Pakistan through its Secretary,  
Finance, Islamabad and another.* ... *Petitioners*

**Versus**

*E-Movers (Pvt.) Limited and another.* ... *Respondents*

For the Petitioners: Mr. Muhammad Khalil Dogar, ASC.  
Mr. K. A. Wahab, AOR.

For Respondent No. 1: Mr. Haider Waheed, ASC.  
Syed Mahmood Abbas, AOR (**absent**).

For Respondent No. 2: Not represented.

Date of Hearing: 30.12.2021.

**JUDGMENT**

**Qazi Faez Isa, J.** Constitution Petition No. D-8172 of 2017 was filed before the High Court of Sindh at Karachi by E-Movers (Private) Limited (respondent No. 1 herein) wherein the Federation of Pakistan, the Federal Board of Revenue, and NLC Construction Solutions (Private) Limited were respectively arrayed as respondents No. 1, 2, and 3 (petitioners No. 1 and 2, and respondent No. 2 herein). The High Court allowed the petition *vide* judgment dated 12 February 2019 which is impugned in this civil petition for leave to appeal (**'this petition'**).

2. This petition is filed by the '*Federation of Pakistan through its Secretary, Finance*' and by the '*Federal Board of Revenue, through its Chairman*' (**'the FBR'**). Mr. Muhammad Khalil Dogar, Advocate Supreme Court (**'ASC'**) who represents the petitioners, was asked how he, a private counsel, is representing the Federation of Pakistan, and why the Attorney-General for Pakistan, or any other law officer from the office of Attorney-

General, is not representing the Federation of Pakistan. Since an answer was not forthcoming we examined the original case file where there is a power-of-attorney signed by Dr. Fareed Iqbal Qureshi, Collector of Customs, Model Collectorate of Custom Preventive, Custom House, Karachi authorizing an Advocate-on-Record (**'AOR'**). The AOR nominated Mr. Muhammad Khalil Dogar, ASC, to represent the FBR (petitioner No. 2). There is also a letter dated 5 April 2019 written by Mr. Muhammad Nayyer Shafiq, Secretary (L & P), of the FBR through which the *'Federal Board of Revenue hereby authorizes Model Customs Collectorate (Preventive) Karachi to file CPLA in the Hon'ble Supreme Court of Pakistan against the subject judgment of the High Court of Sindh.'* However, there is no power-of-attorney or authorization by the Federation of Pakistan either in favour of the AOR or the ASC, nor is there any document whereby the Federation of Pakistan authorizes the filing of this petition. Therefore, this petition which purports to have been filed by the Federation of Pakistan is not maintainable to such extent. The Deputy Registrar of this Court should not have entertained this petition on behalf of the Federation of Pakistan (petitioner No. 1). However, since the FBR is also a petitioner before us (petitioner No. 2) we proceeded to hear this petition on behalf of the FBR.

3. The learned Mr. Dogar submits that a *'Request for Expression of Interest'* was published by the FBR inviting companies who could track and monitor imported cargo and ensure that the imposition of applicable customs duties and other taxes was not circumvented, and that the cargo was safely transported without going astray, being removed or pilfered along the way (**'the Project'**). The interested companies were required to be technically capable of tracking and monitoring cargo on a real-time basis, possessing requisite licenses and having the financial capability to undertake the Project. The company which had the requisite technical and technological skills, ability, and financial standing, as determined through a competitive bidding process, was to be awarded the contract to undertake the Project (**'the Contract'**). The FBR awarded the Contract for the Project to NLC Construction Solutions (Private) Limited (**'NCSPL'**). However, the award of Contract to NCSPL was successfully challenged in the High Court, and the Contract was set aside. The learned counsel says that the learned Judges of the High Court set aside the Contract but did so without

appreciating that under Rule 17 of the Public Procurement Rules, 2004<sup>1</sup> (**'the Public Procurement Rules'**) a viable third party, namely, NCSPL, had showed interest in undertaking the Project. Therefore, the FBR had issued another '*Letter of Invitation*' dated 4 November 2015 which, learned counsel says, was in accordance with the law, and that the FBR was fully entitled to award the Contract to NCSPL. He further states that the FBR, on whose behalf the Project was to be undertaken, was entitled to get the most qualified contractor for the job, which in the opinion of the FBR was NCSPL. The learned counsel states that the learned Judges of the High Court did not appreciate these points.

4. The learned Mr. Haider Waheed has filed a *caveat* on behalf of the respondent No. 1 (who was one of the petitioners before the High Court). The learned Mr. Waheed states that the impugned judgment accords with the law and the Constitution, is well-reasoned and gave cogent reasons for canceling the Contract awarded to NCSPL. He states that the Contract was awarded by violating the law, the applicable rules and through unfair means. He further submits that the Supreme Court had taken notice of the massive pilferage and avoidance of customs duties and applicable taxes and referred to the orders of this Court, including the order appointing the Federal Tax Ombudsman and directing him to submit a report with recommendations, who submitted his report (**'the report'**). The report noted that the public exchequer had been defrauded of billions of rupees in duties and taxes.

5. The report of the Federal Tax Ombudsman gave pejorative findings; how containers earmarked for transit to Afghanistan did not get there and/or the cargo in them was pilfered in Pakistan; consequently, billions of rupees in customs duties and applicable taxes were lost. These findings of the Federal Tax Ombudsman are reproduced hereunder:<sup>2</sup>

**'FINDINGS:**

(i) The quality of data held by PRAL was found to be highly unreliable. The available cross-checks within FBR were also found to be highly vulnerable to fraud and corrupt practices of various actors involved in Afghan transit trade.

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<sup>1</sup> S.R.O. 432(1)/2004 dated 8 June 2004, published in the Gazette of Pakistan, Extraordinary Part-II page 1383, 9 June 2004.

<sup>2</sup> Recorded by this Court in order dated 4 March 2013 passed in CMA Nos. 2243 & 3683 of 2012 in SMC No. 16 of 2010.

(ii) It was soon realized that the abuse was massive, though difficult to quantify with a high degree of precision.

(iii) It was estimated that at least 7,922 transit containers were pilfered within Pakistan during the last almost four years. However, this could be just a tip of the iceberg.

(iv) The estimated loss to national exchequer during 2007 - June 2010, based on 7,922 containers, was worked out at Rs.19 billion.

(v) It was gathered that the Customs procedural framework being highly porous suffered from serious vulnerabilities.

(vi) While responsibility in general terms has been fixed, the individuals involved in various mega scams of recent years are to be identified through criminal investigation for which a mechanism is provided under Section 17 of the FTO Ordinance.

(vii) One-Customs manual clearance system was found particularly prone to huge transit scams.

(viii) The senior management of Customs failed to take necessary steps to put in place appropriate countermeasures against repeatedly occurring scams.

(ix) The Investigation of four mega scams of containers in past few years indicates a clear pattern. The phenomena of pilferage is not new, neither are the glossing over efforts by senior officers to provide cover up through creating hindrances in investigations, manipulation of record and data, diverting focus by 'fact finding committee.' Deliberate attempts to diffuse focus of investigation against corrupt and influential officials through 'fact finding committee' were clearly discerned.

(x) In Lunar case the Collector who had failed to prevent wrong clearance of 52 containers laden with liquor was made part of the 'fact finding committee'. To frustrate the course of investigation by Director General (Intelligence and Investigation).

(xi) The leadership of Customs rather than initiating appropriate disciplinary/criminal proceedings against the real culprits repeatedly tried to put a different gloss on these scams.

(xii) The modus operandi in these mega scams remains the same; fake/forged documents, primitive and manual clearance and processing systems, wide discretion in the hands of unscrupulous customs officials, lack of transparency and effective accountability, involvement of seniors otherwise responsible for oversight.

(xiii) The picture that emerges is of gross inefficiency, maladministration and corruption in an organization that is

geared to further principally individual and communal self-interest of a few individuals at the cost of Pakistan and her people.

(xiv) This report is an exploratory start-up to. Although it provides some answers, it raises many more questions. The report identifies the work that needs to be done in future and provides a good roadmap for the way forward.'

The Federal Tax Ombudsman's report also made recommendations, including that the containers carrying cargo should be live-monitored through satellite navigation and monitoring through the Global Positioning System ('GPS'). The Recommendations are incorporated in the report, as under:

**'RECOMMENDATIONS:**

(i) Customs clearance and cross border certification and reconciliation procedures need massive improvement, consolidation and rationalisation.

(ii) Cross checks need to be upgraded, diversified and externalized.

(iii) Transport system used for ATT needs to be organized on competitive basis, and transporters given a level-playing field.

(iv) Only bonded carriers should be allowed to transport ATT cargo. The vehicle fleet used for the purpose must be upgraded in terms of technology input for safe transportation of transit cargo.

(v) Security of cargo needs immediate enhancement through RFID seals, and live monitoring through GPS.

(vi) ATT cargo should bear bar code embeddings for ease of detection, and to minimise the chances of its smuggling back into Pakistan.

(vii) ISAF/UN/NATO should adopt the same technology and transport precautions as are being used by US Forces (e.g. RFID seals and effective tracking/monitoring through GPS)

(viii) Collusion by and corruption of Customs Officials be effectively discouraged and deterred in a sustainable manner.

(ix) A specialized and dedicated Collectorate needs to be created to deal exclusively with the entire cargo in transit to Afghanistan.

(x) The definition of smuggling should be broadened to include in its purview any enroute pilferages of transit goods.

(xi) The Directorate General (Intelligence and Investigation) needs to be suitably upgraded to act as an effective deterrent

against actual and potential tax evaders and their accomplices within the Customs Department.

(xii) For better administration, FBR should be split into two Boards, one dealing exclusively with Customs matters and the other dealing with taxes like income tax, sales tax and federal excise duty. If that is not found appropriate at this stage, a competent and honest senior officer of Pakistan Customs Service may be appointed as deputy chairman FBR. The measure will provide better focus on matters relating to management of Customs.'

6. That as a consequence of the astronomical loss suffered by the exchequer, which was noted in the report of the Federal Tax Ombudsman the Tracking and Monitoring of Cargo Rules, 2012<sup>3</sup> (**'the Rules'**) were enacted. The Rules envisaged a licensing procedure whereby those companies able, licensed and qualified to track and monitor imported, transit or transshipped cargo could be considered for the award of a contract to undertake the licensed services. The two approved bidders who held requisite licenses under the Rules were not awarded the contract, and instead NSCPL, which did not have a license, was awarded the Contract for the Project of tracking and monitoring of cargo.

7. To appreciate the respective contentions of the learned counsel it would be appropriate to set out certain important and relevant facts in chronological order. A *'Request for Expression of Interest'* was published by the FBR inviting expression of interest from companies licensed under the Rules and possessing requisite technical and financial capabilities to submit their proposals by 15 April 2015, as under:

#### 'REQUEST FOR EXPRESSION OF INTEREST'

1. Federal Board of Revenue (FBR) Safe Transportation Environment Project was launched in May 2013 covering Afghan forward transit cargo. FBR now intends to enhance the project to cover the entire spectrum of bonded cargo transportation, including but not limited to Afghan forward and retro cargo, inter port movement, Transshipment to and from dry ports and transit cargo, from Customs point of entry to Customs point of exit, maintain enroute integrity of cargo on real-time basis. Implementing agencies of this project shall be the FBR and the tracking company/s and the same shall be partners of this project. In this Project no GOP funds are involved. Investment is to be made by the service provider and cost to be borne by Bonded Carriers and owners of cargo.

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<sup>3</sup> S.R.O 413(I)/2012, published in the Gazette of Pakistan, Extraordinary, Part II, dated 25 April 2012, made pursuant to section 219 of the Customs Act.

2. The Services to be provided by the company/s, qualification required and documents to be submitted are prescribed in Tracking and Monitoring of Cargo Rules, 2012 available on FBR's website and in the office of the undersigned. The company/s must provide a system based solutions on the basis of GSM/GPRS/Satellite Communication or other modern technology for monitoring and tracking on real time basis having the features as prescribed in the above Rules. The tracking company shall be required to demonstrate safe recovery in case prime mover, vehicle or the container is hijacked, separated or towed away.

3. A Central Control Room and Regional Monitoring Rooms shall be designed, furnished and made operational by the company/s in the Model Customs Collectrates as deemed appropriate by FBR. To operate the system, the company/s shall arrange comprehensive technical and operational training for the Customs/IT staff and carry out quarterly appraisal review of the efficacy and functioning of the system through FBR. The FBR shall have propriety ownership of the data developed by the selected company/s and the system forensic audit. The selected company/s shall undertake to upgrade, as per the new technological requirements, the installed IT structure related software, communication equipments etc. as and when required. The company/s shall accommodate their system within the premises as desired by respective Collectors of Customs and the company/s will dovetail their systems to synchronize with Customs Computerized System and other selected companies. The company/s shall ensure a back-up Disaster/Business Recovery and Business Continuation System. The company/s must specify the expected delivery and implementation time.

4. The company/s shall run and manage the system under proper warrantee and maintenance during the contract period for 3 years extendable further on satisfactory performance of the company. FBR reserves the right to terminate the contract without notice at any time during the period of the contract and no liability whatsoever shall accrue to FBR on this count.

5. Short-listed companies shall be required to give practical demonstration of the project requirements as per EOI/Terms of Reference taking into consideration physical/environmental criteria (extremes of heat/cold).

6. Interested companies are encouraged to obtain information regarding Terms of Reference as notified by FBR vide SRO 413(I)/2012 dated 25.04.2012, "Tracking and Monitoring of Cargo Rules, 2012" available on FBR's website [www.fbr.gov.com](http://www.fbr.gov.com) or from the office given below between 0900 hours to 1600 hours on any working day. Expression of Interest showing technical and financial proposals for delivery of afore-mentioned services must be delivered to the office of the undersigned not later than 15<sup>th</sup> April, 2015.

SANAULLAH ABRO

Secretary (Law & Procedure)  
Federal Board of Revenue  
Room No. 223, FBR House, G-5, Constitution Avenue,  
Islamabad.  
Ph: 051-9218248, E-mail: [anti.smuggling@fbr.gov.pk](mailto:anti.smuggling@fbr.gov.pk)

8. Thereafter, a '*Letter of Invitation*' dated 29 October 2015 was issued by the Government of Pakistan, Model Customs Collectorate of Preventive, Custom House, Karachi (hereinafter referred to as '**the first Letter of Invitation**'), to two companies fulfilling the requisite criteria, and they were called upon to submit in sealed envelopes their respective technical and financial proposals. The first Letter of Invitation is reproduced hereunder:

GOVERNMENT OF PAKISTAN  
MODEL CUSTOMS COLLECTORATE OF PREVENTIVE  
6<sup>TH</sup> FLOOR, CUSTOM HOUSE KARACHI  
Ph: 021-99214183 Fax:021-99214200

Dated: 29-10-2015

**Letter of Invitation**

Subject: STANDARD BIDDING DOCUMENT / RFP  
REGARDING EXPRESSION OF INTEREST FOR  
PROVIDING SERVICES FOR TRACKING OF CARGO  
UNDER THE TRACKING AND MONITORING OF  
CARGO RULES-2012

The Federal Board of Revenue, Islamabad, Government of Pakistan hereby intends to procure, under National Competitive Bidding (NCB) providing technical solution and licensing services for tracking and monitoring of cargo / container security under the Tracking and Monitoring of Cargo Rules-2012 under Single Stage Two Envelop bidding through Merit Point Evaluation methodology under Federal PPRA Rules 2004.

2. This assignment aims to license service providers for performing the functions of tracking and monitoring of cargo under the Tracking & Monitoring of Cargo Rules 2012. Details on the software, hardware and related services to be acquired are provided in the Standard Bidding Documents (attached).

3. The Licensing Committee has therefore identified probable solution integrator / solution providers by short listing the Expressions of Interest (EOIs) received from firms that have stated in their EOIs related track record with large scale solution implementations for the monitoring of cargo. You are among the said shortlisted [*sic*] firms.

4. This Request for Proposal (RFP) has therefore been communicated to the following shortlisted [*sic*] solution integrators / solution providers/Technology Consultants:



**M/s United Track System (Pvt) Ltd,**  
**M/s Falcon-i (Pvt) Ltd,**

5. It is not permissible to transfer this Invitation to any other firm.

6. A firm will be selected under Single Stage Two Envelop bidding through Merit Point Evaluation Methodology under Rule 36(b) of the PPRA Rules 2004 and under Monitoring and Tacking Rules 2012 wherever applicable, to ensure selection of Solution Providers / Solution Integrators / Technology Consultants for providing a high quality container tracking and monitoring solution and services at the most economical cost.

7. You are required to submit your Technical and financial proposals in sealed envelopes separately as per the enclosed Request For Proposal Document by **Thursday 19.11.2015 positively at 11 am** in Conference Room, 5<sup>th</sup> Floor, Custom House, Karachi. Proposal opening will held in the MCC Conference Room at 11.30 am on the same date. Late submission of Proposals will render the bidders as non-responsive. The extension of time for submission of bids has been done under Rule 27 of Public Procurement Rules, 2004 due to the reason recorded in para-3 above.

8. A Pre-Proposal Conference will be held on **Tuesday 10.11.2015 in Conference Room, 5<sup>th</sup> Floor, Custom House, Karachi at 10.30 am.** The Bidders are highly encouraged to attend in person the said Pre-Proposal Conference or send their representatives well-versed with the RFP Documents.

9. The bidders are requested to submit their best and final price, as no negotiations on price are allowed.

Encl: As above.

(Syed Muhammad RazaNaqvi)  
Assistant Collector (HQ-I)  
MCC Preventive, Karachi  
(Secretary to the Licensing  
Committee)

9. However, just seven days after the issuance of the first Letter of Invitation a '*Revised*' '*Letter of Invitation*' was issued on 4 November 2015 (**'the second Invitation Letter'**). The second Invitation Letter added NCSPL to the already listed two companies which had already been issued the first Invitation Letter.

10. NCSPL is stated to be fully owned by the National Logistics Cell (**'NLC'**). And, NLC itself is owned by Federal Government and is operated by

Army personnel.<sup>4</sup> As regards to what NCSPL does, is revealed on its website:<sup>5</sup> *'is a concrete products manufacturing plant including blocks, pavers and kerb stones.'* And, that it *'is committed to meet the growing needs of concrete blocks, pavers and kerb stones. Its daily production capacity is one of the biggest in the region. The products are in demand and use of multiple commercial and domestic clients.'* NCSPL, a manufacturer of *blocks, pavers and kerb stones*, and which had no experience in the tracking and monitoring of cargo was awarded the Contract by the FBR, and this was done after the cut-off date for the submission of bids.

11. The learned Mr. Dogar, representing the FBR, mostly relied on rule 17 of the Public Procurement Rules, 2004<sup>6</sup> to justify the belated introduction of NCSPL into the bidding process, and subsequent grant of the Contract to NCSPL. The Public Procurement Rules, 2004 were made pursuant to section 26 of the Public Procurement Regulatory Ordinance, 2002<sup>7</sup> (respectively, **'the Procurement Rules'** and the **'the Procurement Ordinance'** and collectively **'the procurement laws'**). The Procurement Ordinance was enacted *'for regulating public procurement of goods, services and works in the public sector'*.<sup>8</sup> And to ensure that the public procurement of goods and services is done in accordance with the applicable *'laws, rules, regulations, policies and procedures'*.<sup>9</sup> Rule 17 of the Procurement Rules enables a procurement agency to require from a potential contractor *'to provide information concerning their professional, technical, financial, legal or managerial competence.'* In this case the procurement agency was the FBR.

12. The law does not absolve either NCSPL or NLC from the public procurement laws. Rule 17 also does not permit a company, in this case NCSPL, who had not participated in the bidding process, to be invited, and without meeting the stipulated criteria in the *Expression of Interest* to be awarded the Contract. And, rule 17 certainly does not permit a company which did not possess requisite technical skills and ability to undertake a

<sup>4</sup> Notification No.120/19/78-Min., dated 12 August 1978, of the Cabinet Division, Government of Pakistan, had set up the National Logistic Board ('the Board'). 'The day to day working of the Board would be through the National Logistic Cell (NLC) headed by the Quartermaster General...' as per the order dated 5 March 1979 of the Chief of Army Staff. These facts were noted in the reported judgment of the Sindh High Court in the case of *Muhammad Aslam v Incharge N. L. C. Centre* (PLD 2001 Karachi 135).

<sup>5</sup> <https://nlc-construction-solutions-pvt.business.site/>

<sup>6</sup> S.R.O. 432(I)/2004 dated 9 June 2004, published in the Gazette of Pakistan, Extraordinary, Part II, 9 June 2004, at pages 1383 to 1404.

<sup>7</sup> Ordinance No. XXII of 2002, published in the Gazette of Pakistan, Extraordinary, Part I, 15 May 2002, at pages 177 to 187.

<sup>8</sup> Ibid, preamble.

<sup>9</sup> Ibid, section 5(2)(a).

project and to award it a contract for the same. The objective of the procurement laws is to prevent wrongdoing and ensure transparency. Instead the FBR cites it to advocate wrongdoing and opaqueness. This does not behoove the FBR.

13. The FBR also disregarded the legal precedents pertaining to procurement laws. In *Shaheen Construction Co. v Pakistan Defence Officers Housing Authority*<sup>10</sup> it was held that:

‘The change in the prequalification criteria was not only discriminatory but against the spirit of section 3 of the Public Procurement Regulations 2008 and even the process for asking the prequalified contractors to go through prequalification process afresh and that too without any plausible or lawful justification was also without lawful authority.’<sup>11</sup>

‘Taking up the most stressed objection regarding balance of inconvenience, I am of the view that in cases where the allegations are against public functionaries for violating the rules which they are bound to follow while discharging their functions, then balance of inconvenience hardly matters as it is the bounded duty of the Court to ensure that the public functionaries while discharging their functions should act strictly in accordance with the rules and therefore, cannot ignore such violation while weighing the balance of convenience. In number of cases it has been observed that the power vested in government functionaries is a sacred trust and they are bound to exercise such powers and perform their duties as trustees in a most transparent manner and in cases where the decisions of the State functionaries are either mala fide or contrary to law, the same are liable to be struck down. In the instant case violation of Public Procurement Rules, 2004 as well as Public Procurement Regulations, 2008 has been sufficiently established and any procurement in violation of the Rules is not only ultra vires of the Procurement Committee but is termed as misprocurement as defined in Section 2(h) of the Public Procurement Regulatory Ordinance, 2002 and in such circumstances, balance of inconvenience is hardly of any importance.’<sup>12</sup>

14. In the instant case the FBR did not plead State security in awarding the contract to NCSPL. However, assuming that this was pleaded then too the award of the contract to NCSPL would have been illegal. In the case of *Mujahid Muzaffar v Federation of Pakistan*<sup>13</sup> State security was pleaded. However, this Court held that State security would not permit the contract awarding agency to disregard the law:

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<sup>10</sup> PLD 2012 Sindh 434.

<sup>11</sup> Ibid, page 446.

<sup>12</sup> Ibid, page 448.

<sup>13</sup> 2012 SCMR 1651.

'42. This Court is not insensitive to the fact that we live in difficult times, when compulsions of State Security may require to be taken into account. It is to safeguard the said compelling interest of the State that Rule 14(a) of the Public Procurement Rules, 2004 has been framed, which reads as under:

"14. Exceptions.- It shall be mandatory for all procuring agencies to advertise all procurement requirements exceeding [prescribed financial limit which is applicable under sub-clause (i) of clause (b) of rule 42]. However under following circumstances deviation from the requirement is permissible with the prior approval of the Authority.

(a) the proposed procurement is related to national security and its publication could jeopardize national security objectives;"

43. An analysis of the aforesaid Rule reveals that it commences with a declaration that it is mandatory to advertise all procurement requirements exceeding a specified amount, whereafter an exception has been created permitting a deviation. It has been noted that the said Rule does not perceive of an exemption from the Rules and the necessity of public advertisement but only a deviation. Like all exceptions, it must be construed strictly keeping in view the proportionality of the requirement for such deviation.<sup>14</sup>

'55. The upshot of the above discussion is that the Contract dated 29-12-2009 is illegal and invalid having been executed in violation of the mandatory provisions of the Public Procurement Rules, 2004, as the exemption therefrom purportedly granted under Rule 42(c)(v) *ibid* was based on extraneous and irrelevant reasons and therefore of no legal effect or consequence. The entire transaction was carried out in a non-transparent manner and for a cost which appears to be inflated. Consequently, the respondent-Government is directed to reinstate the process for the procurement of the required equipment, software and services in a fair, just, rational and transparent manner, strictly in accordance with the provisions of the Public Procurement Rules, 2004 and the law.<sup>15</sup>

15. That when it came to light that shipping containers were going astray, imported goods were being removed or pilfered from the containers, and as a consequence the exchequer was being deprived of billions of rupees of applicable duties and taxes, the Rules were enacted. The Rules were made in exercise of powers conferred by section 219 of the Customs Act, 1969. The Rules provided the mechanism on how to track and monitor *transit cargo*,<sup>16</sup> *petroleum, oil and lubricants exported to Afghanistan*,<sup>17</sup>

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<sup>14</sup> *Ibid*, page 1675.

<sup>15</sup> *Ibid*, page 1678.

<sup>16</sup> Rule 2(a) of the Tracking and Monitoring of Cargo Rules, 2012.

*trans-shipment cargo*<sup>18</sup> and of the *safe transportation*<sup>19</sup> of these cargoes throughout the journey from port of entry to the port of exit or from one warehouse to another, on real time basis<sup>20</sup> and envisaged *licensing of companies for tracking and monitoring of cargo*. The Rules stipulated that *no company shall carry out tracking and monitoring of cargo unless it has obtained a license under these rules*,<sup>21</sup> and prescribed the *criteria for grant of a license*.<sup>22</sup> The Rules mandated the *monitoring and tracking, on real time basis, of containers and vehicles carrying the cargo*<sup>23</sup> and required the use of latest technology to prevent the massive loss of revenue and theft.

16. The Rules spelt out that companies seeking licenses there under must have the following components of tracking and monitoring:<sup>24</sup>

- ‘(3) The system based solution offered by the applicant must have the following features, namely:
  - (a) container, vehicle synchronization;
  - (b) alert on deviation from specified or designated routes;
  - (c) location, direction and GPS speed data for containers and vehicles;
  - (d) container doors monitoring (unauthorized opening, unhinging, tampering, intruding, etc.) alerts;
  - (e) route time monitoring;
  - (f) unauthorized stoppages (include stoppages which cannot be reasonably excused by the relevant customs officials or as elaborated by the Collector of customs concerned through a Public Notice) reporting;
  - (g) electronic geo-fencing;
  - (h) theft incidence and reaction;
  - (i) data analysis and communication results thereof to Central Control Room (CCR) and Regional Control Room (RCR); and
  - (j) must be stable, fault-tolerant, secured, and can be accessed only by authorized username and password as authorized by the customs.

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<sup>17</sup> Rule 2(b) of the Tracking and Monitoring of Cargo Rules, 2012.

<sup>18</sup> Rule 2(c) of the Tracking and Monitoring of Cargo Rules, 2012.

<sup>19</sup> Rule 2(d) of the Tracking and Monitoring of Cargo Rules, 2012.

<sup>20</sup> Rule 2 of the Tracking and Monitoring of Cargo Rules, 2012.

<sup>21</sup> Rule 4 of the Tracking and Monitoring of Cargo Rules, 2012.

<sup>22</sup> Rule 6 of the Tracking and Monitoring of Cargo Rules, 2012.

<sup>23</sup> Rule 7 of the Tracking and Monitoring of Cargo Rules, 2012.

<sup>24</sup> Sub-rule (3) of Rule 7 the Tracking and Monitoring of Cargo Rules, 2012.

And, that these companies must be able to perform the following functions:<sup>25</sup>

- (4) The system based solution offered by the applicant shall be able to perform the following functions, namely:
  - (a) monitoring capability on real-time basis of a minimum of 3000 containers or trucks from CCR;
  - (b) monitoring and tracking of vehicles and containers throughout the journey from Customs point of entry to Customs point of exit on real time basis;
  - (c) geo-fencing and creating buffer zones around a certain route or area;
  - (d) generate detailed journey reports that include stop points and durations, start and end points, area names, etc.;
  - (e) the ability to configure the tracking unit remotely;
  - (f) the system should work on Client Server basis so that adding and removing users and their privileges could be done efficiently;
  - (g) the system must be capable of sending alert messages and trigger alarms (visible and audible) in case of occurrence of abnormal event such as route deviation, stoppages in risky zones and tampering with the tracking unit or cargo etc (different alarms to be shown by different colored icons on the map. Clicking the icon of any vehicle should enable the operator to access the vehicle data base);
  - (h) the system shall be able to assign containers and vehicles of one licensee to another licensee for tracking containers and vehicles;
  - (i) container and vehicle locations on the map and screen should be represented by icon or symbol;
  - (j) in case of absence of one communication network coverage the tracking unit of the system must be able to switch over to another network so as to ensure real time tracking without interruption or break;
  - (k) the system should be capable to assign more than one route for one destination and geo fencing for all routes;
  - (l) the software package of the system must *inter alia* include,-
    - (i) transit and fleet management application; and
    - (ii) mapping and graphical application to display position of the vehicle and container on digital map of the country;

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<sup>25</sup> Sub-rule (4) of Rule 7 the Tracking and Monitoring of Cargo Rules, 2012.

- (m) the system should be flexible enough to interface with other international databases, if required;
  - (n) the availability of extra tools to measure distance, meter scale, change coordinate system, change symbol colours, etc.;
  - (o) the ability to assign specific alerts to specific pins (relays) in the tracking unit and the ability to monitor tracking operations through a web page;
  - (p) the ability to enter data into the system through electronic media (barcode reader, etc.);
  - (q) the system reporting should be capable to filter and process the trip data for statistical and analytical purposes;
  - (r) the system must include replay function and allow sharing of information with remote client station;
  - (s) the licensee should ensure secure data storage and archiving of data for five years from its generation or recording;
  - (t) ability to use Palm-held Devices (PDA's, etc) for reading and writing data into the system at regional sites;
  - (u) ability to assign Unique load identifier (ULI) which should contain information about unit number of tracking device (GPS, etc.), Goods Declaration (GD) No. and date, carrier name, vehicle number, location etc.;
  - (v) the Communication media should cover all the geo-fenced routes across the country; and
  - (w) all Electronic Data Interface (EDI) communication should be encrypted to ensure secure communications.
- (5) The applicant shall also submit a complete list of operations and maintenance required to operate the system based solution.
- (6) The applicant shall specify the expected delivery and implementation time, which shall not exceed four months from the date of issuance of license. The applicant shall also undertake to meet these timelines.'

Nothing was brought on record before the High Court, or even before this Court, to show that NCSPL fulfilled the abovementioned criteria and had the ability to undertake the Project, let alone to do so competently. NCSPL manufactured blocks, pavers and kerb stones, which had no nexus with what was required to be done by the FBR, that is, the tracking and monitoring of cargo. NCSPL had never undertaken any of the Project works, the performance of which it had to establish, and did not have the ability and wherewithal to carry them out.

17. To obtain a license under the Rules the following preconditions were prescribed:<sup>26</sup>

- '(2) An application under sub-rule (1) shall be accompanied by all the supportive and relevant documents including the following, namely:
  - (a) a comprehensive profile of the company;
  - (b) brief about managerial and technical personnel indicating name, position, qualification and experience;
  - (c) total number of current employees;
  - (d) list of major clientele;
  - (e) documents showing relevant experience in tracking and monitoring of vehicles and containers;
  - (f) complete history of activities undertaken and synopsis of the projects done;
  - (g) current commitments and status of in-hand projects;
  - (h) valid license obtained from the PTA for the activity or category approved for;
  - (i) incorporation Certificate under the Companies Ordinance 1984;
  - (j) National Tax Number (NTN) Certificate;
  - (k) audited accounts of the last three financial years;
  - (l) Income Tax returns for the last three years;
  - (m) registration with Sales Tax Department, if required;
  - (n) computerized National Identity Cards (CNICs) of the Directors of the company; and
  - (o) undertaking that the company has never been blacklisted by any Government or private department or organization and has not been involved in confirmed cases of fiscal fraud including that specified in section 32A of the Act.'

There was nothing on record before the High Court, nor was any material submitted before this Court, to show that NSPCL complied with or fulfilled any of the abovementioned preconditions. The Rules also stipulated the following additional preconditions for obtaining a license, but NCSPL did not produce any evidence that it met any of these conditions:<sup>27</sup>

- '(2) The applicant shall possess the following qualifications to be considered for issuance of license, namely:

<sup>26</sup> Sub-rule (2) of Rule 6 the Tracking and Monitoring of Cargo Rules, 2012.

<sup>27</sup> Sub-rule (2) of Rule 7 the Tracking and Monitoring of Cargo Rules, 2012.



- (a) it shall be a company duly incorporated under the Companies Ordinance, 1984 (XLVII of 1984);
- (b) it shall have relevant experience and past performance in vehicles and containers tracking;
- (c) it shall be in a financial position to undertake the project – minimum turnover of rupees 350 million or financial worth of rupees 200 million; and
- (d) it shall have appropriate managerial capacity to execute and run the project.'

18. NCSPL did not possess the requisite license under the Rules, nor was it compliant with the requirements of the Rules. NCSPL also had no experience in the tracking and monitoring of cargo. However, despite these blatant violations of the Rules, NCSPL was awarded the Contract to undertake the Project. The learned Judges of the High Court<sup>28</sup> had observed and found the following discrepancies and violations of the law, the Rules and the applicable procedure:

- *the National Logistic Cell ("NLC") having lost 28,000 containers entrusted into its custody for safe transit upon arrival in Pakistan;*
- *the belated parachuting in of NCSPL in the tender process;*
- *the criteria for evaluation of the bids was subsequently altered and by way of a novel accounting methodology, alien to the bidding documents, employed to completely change the priority and ranking of bids;*
- *It is thus manifest that the criteria for pricing of bids contained in the bidding documents did not place NCSPL in the category of the successful bidder and on the contrary deemed NCSPL to be the least qualified to be awarded the Contract;*
- *The subsequent modifications in the pricing criteria, inspired a stranger to the proceedings and upon the request of NCSPL itself, cannot be considered to be transparent or tenable;*
- *The evaluation criteria prescribed in the bidding documents was required to be adhered and that belated setting out of new specifications, alien to the bidding documents, could not be approved as such conduct was commensurate to abuse of the procurement process;*

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<sup>28</sup> Muhammad Ali Mazhar, J (prior to his elevation to the Supreme Court) and Agha Faisal, J who authored the impugned judgment,

- *The respondents have been unable to justify the modification of the pricing criteria, post opening of the bids. Such modification is further unmerited as not only was it undertaken upon the express request of the least qualified bidder [NCSPL] but that it was the sole reason for the least qualified bidder, albeit belated, to have been awarded the Contract;*
- *The earlier letter of invitation, dated 29.10.2015, makes no reference to NCSPL being a contender at all, despite the subsequent letter stating that the relevant documents were submitted by NCSPL on 21.10.2015;*
- *NCSPL did not even possess the requisite license to undertake the Project;*
- *During the three month period, encompassing the respective dates of hearing herein, FBR and NCSPL failed to show any document to corroborate their stance of being original bidders;*
- *We had specifically asked the respective learned counsel for the respondents to place before us the original bid/s of NCSPL or copies thereof so as to put the controversy of the belated parachuted entry to rest, however, no such documentation was ever shared with us;*
- *It is an admitted position that the relevant provisions of the procurement laws were squarely applicable to tender process culminating in the award of the Contract, and it is our considered opinion that adherence thereto could not be demonstrated before us.*

19. The abovementioned shortcomings, discrepancies, and illegalities have not been rebutted. The Contract awarded to NCSPL by the FBR was set aside by the High Court by holding that:

'23. In view of the reasoning and rationale contained herein, we are constrained to observe that the belated unjustified parachuting of NCSPL into the tender process; the manner adopted for modification of the evaluation criteria post opening of bids; and the implementation of such modification cannot be considered to be transparent and / or in the public interest. The tender process culminating into the Contract is hereby determined to be in manifest violation of the law, hence, the Contract is hereby set aside. The respondent No. 2 may initiate a de novo tendering process in accordance with the law for the award of the Contract, preferably within a period of one month, in which all eligible parties may participate.'

The learned Judges of the High Court gave a number of substantial legal reasons for setting aside the Contract which the FBR had awarded to NCSPL, none of which the learned counsel representing the FBR rebutted. He was also not able to justify the award of the Contract to NCSPL. Nor could he show that the applicable laws had been complied with in awarding the Contract to NCSPL.

20. There is also a significant and unfortunate aspect of this case. NCSPL would be considered to be the *aggrieved* party because the Contract awarded to NCSPL was set aside. However, NCSPL did not challenge the judgment of the High Court. Instead the FBR took it upon itself to do so. This is a further indication of complicity between officers of the FBR and NCSPL, and severely undermines the credibility and standing of both.

21. There is another important aspect to consider. NCSPL is stated to be a fully owned subsidiary of NLC, and NLC claims to be the single largest transporter of cargo in Pakistan. NLC apparently is the alter ego of the Federal Government therefore NCSPL would constitute NLC's alter ego. This raises the question of whether NLC (an alter ego of the Federal Government) could itself own a company. However, this aspect was not raised before the High Court, nor was it considered by it, and as such it may not be appropriate to comment on it. But what is apparent is that granting the Contract to NSCPL, an entity fully owned by NLC, constituted a momentous conflict of interest. The Rules were made to ensure that cargo disembarked at its proper destination and the vehicles carrying it were tracked and monitored throughout their journey, and to ensure that containers were not opened before reaching their destination and cargo removed or pilfered there from. In granting the Contract to the largest transporter of containers in the country, the very purpose of the Rules was negated. And, all the more so when seriously documented allegations were noted against NLC. The Federal Tax Ombudsman had also found that, '*The picture that emerges is of gross inefficiency, maladministration and corruption in an organization that is geared to further principally individual and communal self-interest of a few individuals at the cost of Pakistan and her people.*' The report of the Federal Ombudsman was accepted by this Court.

22. Therefore, to hand over the responsibility of the tracking and monitoring of cargo to a fully owned subsidiary of NLC removed the necessary distinction, which had to be maintained, between carrier and the tracking-monitoring company. What the Rules prohibited, the FBR facilitated. The Rules mandate punitive action to be taken if there was collusion between the carrier with the tracking-monitoring company, as under:

**'30. Liabilities of the licensee.** (1) Without prejudice to the action that can be taken under Chapter IV of these rules, the licensee shall be liable to punitive action under the Act and rules made there under, in cases of its willful collusion with the transport operator or carrier for violation or contravention of any of such provision.

(2) The licensee shall also be liable to deposit duty and taxes along with surcharges and penalties under the Act and the relevant rules, where it is established through proceedings under the Act, after providing an opportunity of being heard, that the licensee has colluded with the carrier or transport operator resulting in damage or pilferage or loss of cargo specified in these rules.

(3) In case of loss of synchronization of container tracker with the fixed tracking device installed on the vehicle, appropriate penal action shall be taken against the licensee, if no explanation to the satisfaction of customs authorities is made.<sup>29</sup>

**'31. Functioning of Mobile Enforcement Units.** To check and verify any of the eventualities enroute, the customs squad of MEUs shall patrol the designated routes on which transit and transshipment cargo is plying. The mobile squad may check a vehicle in case it receives authentic information or has reasons to believe that the goods have been pilfered or lost. The squad shall report the eventuality to the nearest RCR. The Mobile Squad shall make endorsement of the action taken with regard to cargo, the transport unit etc, by feeding the information in the system.<sup>30</sup>

23. The FBR violated the Rules and the *Expression of Interest* which it had itself made. Binding legal precedents, expounding on the procurement laws, were also disregarded by the FBR. The FBR also contravened the bidding procedures. NCSPL was brought in through the proverbial backdoor without having participated in the bidding process. NCSPL had no experience to track and monitor cargo nor did it have the requisite technical skills. The material bidding terms were changed, diluted and

<sup>29</sup> Rule 30 of the Tracking and Monitoring of Cargo Rules, 2012.

<sup>30</sup> Rule 31 of the Tracking and Monitoring of Cargo Rules, 2012.

retailored for NCSPSL and this was done to enable the FBR to award it the Contract. The FBR is supposed to safeguard the interest of the exchequer and of the citizens but it subverted them to benefit a highly conflicted company.

24. The Constitution of the Islamic Republic of Pakistan (**'Constitution'**) is the fountainhead of the rule of law in Pakistan. *'To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen.'*<sup>31</sup> The rule of law constitutes the bedrock of governance. When the law stipulates that something has to be done in a particular manner that is how it should be done. And any person who exercises authority must do so in accordance with law. The right to be *treated in accordance with law* was invigorated and bolstered when the Constitution was amended to provide an additional Fundamental Right by adding Article 10A to the Constitution stipulating that, *'For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.'*<sup>32</sup> The *due process* requirement must be met in the determination of rights and obligations. The Constitution does not define *due process*. Therefore, it would not be appropriate to limit its scope by defining it. But this does not mean that the *due process* requirement is a meaningless concept. Rather *due process* incorporates universally accepted standards of justice and is not dependent upon any law or laws. It is an all encompassing expression which may not be curtailed with reference to particular laws. *Due process* is to be understood holistically by keeping in mind the entire Constitution, which excludes arbitrary power, authoritarianism and autocratic rule.

25. The High Court had exercised jurisdiction under Article 199 of the Constitution in setting aside the Contract. Though the FBR did not challenge the power of judicial review vesting in the High Court, it would be appropriate to attend to this aspect of the case. The Supreme Court has considered the scope and power of judicial review of executive action. As far back as 1961 it had explained the scope of applicable writs which could be issued to redress such grievances. In the case of *Faridsons Ltd.*<sup>33</sup> the Court considered whether there could be a challenge to the act of the Chief

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<sup>31</sup> Article 4(1) of the Constitution of the Islamic Republic of Pakistan.

<sup>32</sup> Section 5 of the Constitution (Eighteenth Amendment) Act, 2017 which added Article 10A to Chapter 1 of Part II of the Constitution of the Islamic Republic of Pakistan.

<sup>33</sup> *Faridsons Ltd. v Government of Pakistan* (PLD 1961 Supreme Court 537), decided by A. R. Cornelius, CJ, S. A Rahman, Fazle-Akbar, B. Z. Kaikaus and Hamoodur Rahman, JJ.

Controller of Imports and Exports who had revoked certain licences. It would be useful to reproduce the following extract from the said judgment:

'It is unnecessary to multiply authorities on this question, for, they have been exhaustively reviewed in the decision referred to earlier but what can be gathered from them is that the duty to 'act judicially may arise in widely different circumstances which cannot be defined either exhaustively or with any degree of precision. The consensus of judicial opinion, however, is in favour of the view that if upon an administrative body has been cast the duty to decide rights after ascertaining facts concerning specified matters and not merely on consideration of policy or expediency, then it is under an obligation to act judicially even though there is not, in the strict sense, any lis before it and even though it is not called upon to administer oath or examine witnesses or grant an oral hearing as if it were holding, a trial. In other words, the view generally accepted is that whenever an executive authority is given the power by some law to decide upon and affect the rights of subjects for specified reasons and in a specified manner then there is a duty cast upon it to decide objectively as to whether those reasons exist or not in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice, unless that law leaves the decision to the absolute discretion of the authority concerned or permits it to be based on considerations of policy or expediency or other extraneous circumstances. The question whether or not there is such a duty in a given case must depend upon the circumstances of that case and the construction of the statute under which the authority purports to act.'<sup>34</sup>

This Court had also held in the case of *Karachi Electric Supply Corporation*<sup>35</sup> that '*any action of any authority which is taken otherwise than in accordance with law as duly construed, would necessarily fall within the authority reserved to the superior courts to declare the law.*'<sup>36</sup> The award of the Contract to NCSPL was an act '*done or taken without lawful authority and of no legal effect*' in terms of Article 199(a)(ii) of the Constitution, and as such by exercising its power of judicial review of executive action the High Court could, and was justified, to undo the Contract.<sup>37</sup>

26. More recently, in 2014, in the case of *Habibullah Energy Limited*<sup>38</sup> the Supreme Court at length dealt with the power judicial review. The following

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<sup>34</sup> Ibid, page 571.

<sup>35</sup> *Karachi Electric Supply Corporation Limited v Karachi Electric Supply Corporation Ltd. Labour Union* (PLD 1967 Supreme court 513) decided by a by a three-member Bench of the Supreme Court, comprising of A. R. Cornelius, CJ, Fazle-Akbar and Muhammad Yaqub, JJ.

<sup>36</sup> Ibid, at page 514.

<sup>37</sup> Article 199(a)(ii) of the Constitution of the Islamic Republic of Pakistan.

<sup>38</sup> *Habibullah Energy Limited v WAPDA*, PLD 2014 Supreme Court 47.

relevant paragraphs are reproduced from the decision in the *Habibullah Energy Limited* case:

'26. The nature, scope and extent of the power of judicial review by the superior courts of administrative actions and the grounds on the basis whereof such actions can be set aside has evolved with the passage of time and its contours stand clearly defined especially in the context of the award of the contracts by the State or its instrumentalities. In the case, reported as *Messrs Airport Support Services v. The Airport Manager, Quaid-e-Azam International Airport, Karachi and others* (1998 SCMR 2268), the following was held:

"Further 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. Deviations, if of substance, can be corrected through appropriate orders under Article 199 of the Constitution. In 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." <sup>'39</sup>

'The aforesaid judgment was noted and followed by this Court in the case reported as *Messrs Ramna Pipe and General Mills (Pvt.) Limited v. Messrs Sui Northern Gas Pipe Lines (Pvt.) and others* (2004 SCMR 1274).<sup>'40</sup>

27. This Court, in the case reported as *Raja Mujahid Muzaffar and others v. Federation of Pakistan and others* (2012 SCMR 1651), has held as under:

"31. Public funds, public property, licenses, jobs or any other government largesse is to be dealt with by public functionaries on behalf of and for the benefit of the people. Public authority must necessarily be examined in accordance with law keeping in view the Constitutional Rights of the citizens. Thus, this Court has not hesitated in the exercise of its jurisdiction of judicial review ...".<sup>'41</sup>

'28. An overview of the judgments reproduced or referred to herein above leaves little room for doubt that it is now a well-settled principle of law that all public functionaries must exercise public authority, especially while dealing with the public property, public funds or assets in a fair, just, transparent and reasonable manner, untainted by mala fide without discrimination and in accordance with law, keeping in

<sup>39</sup> Ibid, pages 62-63, from the judgment of Sh. Azmat Saeed, J.

<sup>40</sup> Ibid, page 63, from the judgment of Sh. Azmat Saeed, J.

<sup>41</sup> Ibid, page 63, from the judgment of Sh. Azmat Saeed, J.

view the Constitutional Rights of the Citizens. This would hold true even in the absence of any specific statutory provisions setting forth the process in this behalf.<sup>42</sup>

‘4. ... In *Muhammad Yasin v. Federation of Pakistan* (PLD 2012 SC 132), we held that “holders of public office are first and foremost fiduciaries and trustees for the people of Pakistan and when performing the functions of their Office, they can have no interest other than the interests of the honourable People of Pakistan.” The basis of fiduciary relations is the exclusive benefit principle, according to which the fiduciary has a duty to act solely in the interests of the beneficiary. Fiduciary obligations depend on the complete commitment of the fiduciary to act in the best interest of the principal.

5. It is important to note that a fiduciary obligation is not merely an ethical precept. As a legal imperative, fiduciaries must act in the best interests of the principal, performing their functions with care and complete fidelity.<sup>43</sup>

‘12. In conclusion, I would reiterate that the basis of discretionary power of state functionaries is the delegation of authority by the principal, the people of this country. The State's legal authority is derived from this fiduciary relationship. If the State or its instrumentalities deviate from their fiduciary obligations, the underlying authority of the State to administer and enforce the law is thereby eroded. If this happens, the citizens, as legal subjects of the state, can no longer be expected to obey the law since the state itself has reneged on its public fiduciary duties. We, therefore, cannot condone violations of public fiduciary duties, because doing so will lead to an erosion of the basis of the state's legal authority and the rule of law.<sup>44</sup>

27. The Federal Board of Revenue Act, 2007<sup>45</sup> which set up the FBR states that the primary duty of the FBR is ‘*to enhance the capacity of the tax system to collect due taxes through application of modern techniques...*’.<sup>46</sup> Unfortunately, the facts of the instant case show that the FBR was uninterested in ensuring the integrity of the cargo and that applicable customs duties and taxes thereon are not evaded. The FBR is also required to apply *modern techniques*.<sup>47</sup> The tracking and monitoring mechanism of cargo through GPS, as envisaged in the Rules, constituted application of *modern techniques*. If the FBR had followed the Rules and had awarded the contract to an independent party it would have prevented cargo being

<sup>42</sup> Ibid, pages 65-66, from the judgment of Sh. Azmat Saeed, J.

<sup>43</sup> Ibid, pages 68-69, from the concurring note of Jawwad S. Khawaja, J.

<sup>44</sup> Ibid, page 72, from the concurring note of Jawwad S. Khawaja, J.

<sup>45</sup> The Federal Board of Revenue Act, 2007, published in the Gazette of Pakistan Extraordinary (Part I) on 2 July 2007, at pages 517 to 526.

<sup>46</sup> The first preamble to the Federal Board of Revenue Act, 2007.

<sup>47</sup> Ibid.



removed without the payment of the applicable duties and taxes. However, the officers of the FBR decided to select an unqualified, inexperienced and highly conflicted party (NCSPL) and awarded it the Contract. The FBR is also required to operate in an '*autonomous*' manner and to comply '*with tax related laws.*' And, to do so by '*upholding values of integrity, professionalism, teamwork, courtesy, fairness, transparency and responsiveness.*' The facts disclose that the FBR did not act autonomously in the award the Contract to NCSPL nor complied with the applicable laws. Unfortunately, one is also constrained to observe, that the FBR ignored the stated *values of integrity, professionalism, fairness and transparency.* The FBR contravened the law, the law whereby the FBR was set up, and the Rules made by it. And in doing so, the interest of the people of Pakistan was disregarded. The officers of the FBR took it upon themselves to pursue the interests of NCSPL instead of those of the FBR and of the people of Pakistan, which in the instant case were the same. Therefore, the Government is well advised to initiate an inquiry to ascertain the officers who were responsible and complicit in this, and take appropriate action against them in accordance with law, which accountability dictates and goes towards forestalling future misdoings.

28. The impugned judgment concluded by calling upon the FBR to '*initiate a de novo tendering process in accordance with the law for the award of the Contract, preferably within a period of one month...*'. Needless to observe that the said direction of the High Court must be implemented, and all the more so when it is eminently in the public interest. We therefore expect that the FBR will comply with the said observation, if not already done so.

29. For the aforesaid reasons, leave to appeal is declined and consequently, this petition is dismissed with costs throughout. Copy of this judgment be sent to all the members of the Board of the Federal Board of Revenue and to the Secretary, Ministry of Law and Justice, Government of Pakistan for information and compliance.

Judge

Judge

*Bench-I*  
Karachi:  
30.12.2021  
(M. Tauseef)

Approved for Reporting