

Order Sheet
IN THE HIGH COURT OF SINDH AT KARACHI
Constitutional Petition Nos.D-1051/2019, D-8911/2018, D-1951/2020, D-3367/2020, D-7505/2019, D-7208/2019, D-4056/2020, D-8511/2019 and D-5631/2018

Date	Order with signature of the Judge
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17.12.2020 :

Syed Sultan Ahmed, advocate for the petitioners in C.P. Nos. D-1951/2020, D-3367/2020, D-4056/2020, D-7208/2019 and D-8511/2019.

Mr. Danish Rashid Khan, advocate for the petitioner in C.P. No.D-1051/2019.

Mr. Muhammad Waseem Samo, advocate for the petitioner in C.P. No.D-7505/2019.

M/S Mirza Sarfaraz Ahmed, advocate for KDA and Syed Iftikhar-ul-Hassan, Law Officer KDA along with Taufeeq Ahmed Soomro, Member Finance, KDA and Qazi Abdul Qadir, Ex-Member Finance KDA.

Nasir Abbas, D.G. KDA, Asif Ikram, Ex-D.G KDA, Dr. Saif-ur-Rehman, Personal Secretary to Governor of Sindh / Ex-D.G. KDA.

Mr. Ali Safdar Depar, Assistant AG. along with Syed Najam Ahmed Shah, Secretary Local Government Government of Sindh, Shahab Qamar, Special Finance Secretary and Sikandar Hassan, Deputy Secretary (Legal) Finance, Government of Sindh.

Khair Muhammad, Assistant on behalf of the Official Assignee.

In compliance of order dated 15.12.2020, a report dated 17.12.2020 has been submitted by the Secretaries Local Government and Finance, which is taken on record. According to the above report, a meeting was held on 15.12.2020 in pursuance of the aforesaid order which was attended by the above Secretaries, the present D.G. KDA and two former D.Gs. of KDA. Following are the findings of the above report :

“ Findings :

- i. Total pensioners expected to retire in next 10 years are 1,681 (35% of total strength)
- ii. KDA revenue receipts has decreased by – 38% in last 03 years period (Rs.1,970 million FY 2017-18 to 1,231 million FY 2019-20)
- iii. Sindh Government has increased its Grant share by 26% in last 03 years period (Rs.2,263 million FY 2017-18 to Rs.2,852 million FY 2019-20)
- iv. Pension payment has increased by 59% in last 03 years period. (Rs.799 million FY 2017-18 to Rs.1,269 million FY 2019-20).
- v. KDA has kept receipts estimations in different 08 heads in last 03 years and has not received any amount other than 02 head i.e. Self-financing and Grant in aid from Sindh Government.”

In view of the above findings, following recommendations have been made in the above report by the above mentioned committee constituted by this Court vide order dated 15.12.2020 :

“ Recommendations:

- i. *Out of total pension payment / other arrears for Rs.2,496 million, Government of Sindh provided Rs.500 million. The Strategy for utilization of this amount is recommended that KDA may pay remittance category fully and other arrears as summarized below:-*

Sr. No.	Particulars	Amount due	(amount in million)	
			Amount Recommended	% paid
1	Remittance	10.612	10.612	100%
2	Pension arrears, commutation, L.P.R., Final payment	2,167	489.4	22.6%
	Total	2,177.612	500.0	

- ii. *As per the actual revenue receipts of last 05 months during current financial year 2020-21, KDA is expected to earn between Rs.1,800 million to Rs.2,200 million from own sources. Government of Sindh will provide regular Grant-in-aid for Rs.2,488 million in FY 2020-2021. Enhanced revenue can be utilized by KDA to clear pension liabilities.*
- iii. *19 out of 31 KDA Development projects which are being financed by KDA budget has 0% financial / physical progress till date and rest 12 are in process for completion. KDA may be directed to stop all new development projects and only spend between 100-150 million in its annual development program and savings of around 300 million may be used to finance pension arrears, commutation, LPR and final payment. This suggestion is subject to approval of competent authority and applicable only to the schemes funded through KDA budget and provincial ADP's scheme will not be affected.*
- iv. *KDA is also advised to pay remaining arrears in next 06 months from expected receipts of Rs.967.958 million by selling plots as mentioned in Court order sheet dated 29.10.2020.*
- v. *The attached NITs / certificates of KDA attached by the Honourable Court's Order may be returned to KDA.*
- vi. *KDA may be advised to pay fund liabilities arrears for Rs.294.931 million through pre-retirement of investment funds from total investment of Rs.822.788 million as of June 30, 2020. KDA may also be directed to ban any advance payment for the fund to its employees till all the arrears are settled.*
- vii. *Financial assistance for Rs.23.67 million may only be provided if KDA can finance it through own sources after clearing all the pension related liabilities.*
- viii. *Government of Sindh will review the progress in May, 2021 that includes actual receipts July-April, GP Fund financing from pre-maturity of funds, Development fund diversion to pay pension*

arrears and receipts from selling of plots and may consider the additional tranche up to Rs.500 million to clear all the liabilities before 30.06.2021 as bridge financing subject to overall fiscal position of Government of Sindh and approval of Competent authority.”

The above findings of the committee clearly show that the affairs of KDA, particularly the finances, have not been / are not being managed in a proper manner. In the order passed on 29.10.2020, it was observed by this Court that *“These facts alone are sufficient to show the pathetic state of affairs and management in KDA. Thus, it is apparent that the officials of KDA do not have the competence to comply with the orders of this Court, nor do they have any intention to do so ; hence, they cannot be trusted.”* Accordingly, **recommendations made in paragraphs (iii) and (vi) above are made rule of the Court.**

The Director (Finance & Accounts) KDA has submitted a proposal dated 17.12.2020 for settlement of the subject liability of post-retirement benefits payable to retired employees of KDA. In view of the orders passed earlier, the request for grant of further time of six months made by KDA in paragraph 7 of this proposal is hereby **rejected**. The proposal / requests made by KDA in paragraphs 8(a) and 8(b) of this proposal for monthly grant, waiver and grant-in-aid may be considered by the Government of Sindh, and a report in this behalf be submitted before this Court on the next date of hearing by the Secretary Local Government and Secretary Finance, Government of Sindh. **The following proposal made by KDA in paragraph 8(c) of the above proposal is made the rule of the Court :**

“ C. If at all the above options are not considered then the investment made by KDA in shape of TDR, NIT & DSC amounting to Rs.821,788,754.00 (approximately), which the Honourable Court has already attached, may be encashed (though it would be a huge loss to KDA and may raise audit objections), but at least 50% payment of the post retirement dues as mentioned at Para-6, would be cleared and the rest 50% amount will be cleared after conducting of auction of plots, within next six months.”

On 08.12.2020, following order was passed :

“As the deadline viz. 31.12.2020 for settling the long outstanding liability of pension is approaching fast and the possibility of grant of loan by the Government of Sindh to KDA is still uncertain, we do not have any other choice except for ordering that all the amounts invested by KDA in NIT Units and National Saving Certificates hereby stand attached with immediate effect. Learned Official Assignee is directed to ensure that the said units and certificates are liquidated and the proceeds thereof are appropriated towards the subject liability of pension before the above mentioned deadline.”

We have been informed by the Assistant of learned Official Assignee that the latter has been tested positive for Covid-19. Therefore, the MIT-II of this Court shall continue with the above exercise in terms of order dated 08.12.2020 in the absence of learned Official Assignee by liquidating the attached TDRs, NIT units and Defence Saving Certificates amounting to Rs.821,788,754.00 mentioned in the above-quoted proposal submitted by KDA, or for any other amount, and by adjusting the proceeds thereof towards the subject liability of pension. Till the resumption of his duties by learned Official Assignee, the MIT-II shall perform all such functions and exercise all such powers as were granted to learned Official Assignee vide orders passed by this Court on 29.10.2020, 20.11.2020 and 08.12.2020, particularly in terms of paragraph 9 of order dated 29.10.2020. The sale / auction of properties of KDA, already ordered by this Court in view of the proposal submitted by KDA, shall now be conducted under the supervision of learned Official Assignee, and in his absence, by MIT-II.

Vide orders dated 25.08.2020 and 29.10.2020, it was clarified that if the post-retirement benefits of retired employees are not settled on the dates mentioned in the said order i.e. 10% by 30.09.2020 and remaining 90% by 31.12.2020, salary of the present employees starting from the top shall be stopped and properties / assets of KDA shall be attached and sold in order to satisfy the claim of retired employees ; and, in paragraph 9 of order dated 29.10.2020, learned Official Assignee was directed to take over the salary account(s) on 01.01.2021 and to ensure that the amounts lying or deposited therein are utilized only to settle the subject liability. This exercise shall also be undertaken by MIT-II in the absence of learned Official Assignee. At the joint request made by the Secretaries of Government of Sindh and the Director General KDA, the above order is modified with the direction that for the time being the salary of the officers in Grade-17 and above shall be stopped with effect from 01.01.2021, if the post-retirement benefits of retired employees are not settled by 31.12.2020. No posting or transfer of any officer / employee shall be made by KDA / competent authority without permission of this Court. The learned Official Assignee and/or MIT-II, as the case may be, shall submit compliance report in the above terms before this Court on the next date of hearing. Office is directed to immediately communicate this order to them for compliance.

To be listed on **19.01.2021 at 11:00 a.m.**

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