

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

C.P. No.D-4371 of 2020

Order with signature(s) of Judge(s)

Present

**Mr. Justice Muhammad Ali Mazhar
Mr. Justice Arshad Hussain Khan**

Syed Ghulam Mohiuddin & anotherPetitioners

Versus

Province of Sindh & others.....Respondents

Dates of Hearing: 26.11.2020, 10.12.2020 & 19.4.2021.

Mr. Osman A. Hadi Advocate for petitioners along with Mr. Sarosh Jamil advocate.

M/s. Saad Rasool & Sarfraz Ali Metlo Advocates for respondent No.3

Mr. Jawad Dero, Addl. A.G.

Nasser Effendi, Director Excise & Taxation

Adil Umer, AETO.

Muhammad Ali Mazhar, J. This petition has been brought to implore a declaration that the decision to award contract to respondent No.3 compliant to Agenda Item (3) of the Cabinet meeting is in derogation of Sindh Public Procurement Act 2009 and Rules 2010 as well as gross violation and infringement of Articles 4, 9, 18 & 25 of the Constitution of Pakistan.

2. The transitory facts portrayed in the memo of petition are as under:-

The respondent No. 1 & 2 in a Cabinet Meeting dated 22nd July, 2020, decided to award a contract to respondent No.3 for supplying RFID technology vehicle number plates for the province of Sindh without inviting tender under the provisions of Sindh Public Procurement Act, 2009 and Rules 2010. According to the petitioners, they have also capability to manufacture and supply said number plates. The respondent No.3 is an entity operating under the Ministry of Defence which is also engaged in the manufacturing of telecommunication equipment and other such products used in defence services. The petitioner No.1 in past achieved four (4) contracts for

manufacturing and supplying normal number plates for vehicles throughout the province of Sindh by bidding through proper procedure. According to Agenda Item No.3, related to a contract for security featured number plates, the Government of Sindh in its Cabinet Meeting observed that a team of persons from respondent No.3 submitted a presentation with proposal and quotation to supply respondent No.2 number plates with the feature of Radio Frequency Identification (RFID)/Global System for Mobile Tracking Communication (GSM) on turnkey basis. The cabinet in the aforesaid meeting decided to award contract to respondent No.3 and in exercise of powers conferred under Section 21, exempted this procurement from the operation of SPPA 2009 which action has been assailed by the petitioners.

3. The learned counsel for the petitioners argued that the respondents are attempting to act upon an ambiguous decision of Cabinet. The respondents No. 1 & 2 have not provided any proper rationale for invoking Section 21 of Sindh Public Procurement Act, 2009. Moreover, the concept of 'National Interest' which is required when invoking Section 21 has neither been discussed nor explained by respondents No. 1 & 2. The preamble and Section 5 of the Act, 2009 as well as Rule 4 of the Sindh Public Procurement Rules, 2010 provide for transparency and proper regulation of procurement whereas the power to exempt has been provided to the government on very specific grounds. The direct contracting would fall under Rule 16 of the Sindh Public Procurement Rules, 2010 in which stated conditions are required to be adhered. Under Section 5 of 2009 Act, it is incumbent upon the Authority to ensure proper transparency. No backing of law is spelled out for Government to Government (G2G) contract. It was further contended that by granting this contract without tendering, the Provincial Government will lose a colossal amount of money which will come out of the Public Exchequer and cause an extraordinary loss to the public at large who are the ultimate bearer of the burden. Despite the fact that Section 21 of the Act provides the Provincial Government power to exempt but it is trite law that such exemption should not be granted for illegal and mala fide acts of public officials and furthermore such exemption cannot be used to the detriment of the public funds. In case of any semblance of mala fide or non-transparent actions by the

respondents, this court may pass an appropriate order for remedying the same.

4. The learned A.A.G argued that the Excise, Taxation & Narcotics Control Department is responsible for registration of all types of motor vehicles under Motor Vehicles Ordinance 1965 and Motor Vehicles Rules 1969. At present standardized number plates are being issued at the time of registration of vehicles. In view of the security situation, theft, snatching and other anti-social activities the Automatic Number Plate Recognition (ANPR) technology is being increasingly used by Government law enforcement agencies, safe city authorities and private sector operators to enhance the policing skills, identifying and monitoring criminal activities to counter terrorism all over Pakistan. In this regard a team of respondent No.3 working under the Ministry of Defence Production, Government of Pakistan approached Government of Sindh and delivered presentation for supply of number plates with the feature of Radio Frequency Identification (RFID)/Global System for Mobile Communication (GSM) Tracking and Storage products on turnkey basis. The matter was placed before the provincial Cabinet for Government to Government (G2G) arrangement which was approved by invoking Section 21(1) of Sindh Public Procurement Act, 2009. It was further contended that the petitioners have no right to challenge policy decision of Government to opt for preferred technology in the larger public interest.

5. The learned counsel for the respondent No.3 argued that respondent No.3 is a corporate body carrying out its functions under the administrative control of the Ministry of Defence, Government of Pakistan. It was further contended that there is no centralized database for the management and ready access of domestically manufactured number plates in the province of Sindh or across Pakistan. It is often reported that vehicles with fake, foreign, non-standard, duplicate, 'Applied for Registration' or personalized number plates are being used in the organized

crimes. It was further averred that respondent No.3 is the only entity in Pakistan that has requisite machinery and technical expertise for manufacturing the number plates, with the necessary security and technical features in Pakistan. Such procurement from abroad, would necessarily result in huge foreign currency payment by respondent No. 2 to an entity outside of Pakistan. The current project under the Government to Government (**G2G**) arrangement would not only safeguard the integrity of sensitive data and information but would also prevent the outflow of foreign exchange reserves. The respondent No.3 has state of the art facilities for production of number plates and it is the only entity in Pakistan that is authorized partner of the German manufacturer EHA Hoffman International GmbH, Germany, a leading international number plates manufacturer. The respondent No.3 has entered into a Memorandum of Understanding with the Excise and Taxation Department, Islamabad, Government of Baluchistan has also entered into a contract for similar purpose and a case for exemption was also placed before the Board of Management of the Punjab Public Regulatory Authority which was approved and on similar pattern, the discussion with KPK government is underway. He concluded that entire process for awarding contract to the respondent No.3 was in accordance with law.

6. Heard the arguments. The entire controversy is itinerant and roaming around implication and aftermath of Section 21 of the Sindh Public Procurement Act, 2009, wherein Sindh Government has been conferred powers to grant exemption to the procurement of an object or class of objects in the national interest from the operation of Sindh Public Procurement Act, 2009 or any other law or the rules or regulations regulating the public procurements. The solitary heated discussion is rather than granting exemption under the aforesaid provision, whether the Government of Sindh was obligated to invite tender under the provisions of SPPA 2009 for the procurement of Security Featured Registration Number Plates for motor vehicles by

replacing present number plates and whether the decision drawn to award contract to the respondent No.3 by the Sindh Government after invoking exemption clause was consistent with law or not? For the ease of reference, Section 21 of the Sindh Public Procurement Act, 2009 is reproduced as under:-

“21. Power to exempt:- Notwithstanding anything contained in this Act or any other law and rules or regulations made thereunder, for the time being in force Government shall have the power to grant exemption to procurement of an object or class of objects in the national interest from the operations of this Act or any other law or rules or regulations made thereunder regulating public procurement.

(2) The Authority may also, for reasons to be recorded in writing, recommend to Government that the procurement of an object or class of objects in the national interest be exempted from the operation of this Act or any other law regulating public procurement and Governments on such recommendations may, if it deems fit, exempt the aforesaid objects or class of objects from the operation of such laws and rules and regulations made thereunder.”

7. In order to thrash out the issue in the right perspective, it would be expedient to explore and analyze the provisions enabling and empowering the exemptions in the procurement laws applicable to federal capital and other provinces from the operation of procurement laws and rules in the event of any exigency. Complementary to Sindh procurement laws, certain provisions with regard to exemption are likewise integrated and incorporated in the Public Procurement Regulatory Authority Ordinance, 2002, Punjab Procurement Regulatory Authority, Act 2009, Balochistan Public Procurement Regulatory Authority Act, 2009 and Khyber Pakhtunkhwa Public Procurement Regulatory Act, 2012. For the ease of reference, the relevant provisions of the aforesaid central and provincial piece of legislations are reproduced are under:-

“Public Procurement Regulatory Authority Ordinance, 2002

21. Powers to exempt.--The Authority may, for reasons to be recorded in writing, recommend to the Federal Government that the procurement of an object or class of objects in the national interest be exempted from the operation of this Ordinance or any rule or regulation made thereunder or any other law regulating public procurement and the Federal Government on such recommendations shall exempt the aforesaid objects or class of objects from the operation of the laws and rules and regulations made thereunder.

The Punjab Procurement Regulatory Authority Act 2009

23. Exemption.—(1) The Board may, for reasons to be recorded in writing, recommend to the Government to exempt any public

procurement from the application of any rule or regulation made under this Act.

(2) The Government may, on the recommendation of the Board and by notification, exempt application of any rule or regulation made under the Act in any public procurement by specifying alternate mode of the public procurement.

(3) The notification under subsection (2) shall immediately be published in the official Gazette and on the websites of the Government and the Authority

The Balochistan Public Procurement Regulatory Authority Act, 2009.

20. Power to exempt.- The Authority may, for reasons to be recorded in writing, recommend to the Government that the procurement of an object or class of objects in the national interest be exempted from the operation of this Act or any rule or regulation made thereunder or any other law regulating the public procurement and the Government on such recommendation may exempt the aforesaid objects or class of objects from the operation of the laws and rules and regulations made thereunder.

The Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012.

14. Responsibility of procuring entity.—(1) Each Procuring Entity shall be responsible for carrying out public procurement subject to the provisions of this Act, and the rules, the administrative instructions and the standard bidding documents made thereunder:

Provided that:

(i) Government on a specific request of the procuring entity or in public interest may exempt a procuring entity from some or all of the provisions of this Act for which reasons shall be recorded in writing. Government may seek comments of the Authority, if so required;

(ii) for District Governments, the procuring entity may route a justifiable case for exemption to the Government by the District Coordination Officer, through Secretary Local Government Department;

(iii) Government may exempt the procurement of an object or a class of objects, in national/public interest, from some or all provisions of this Act, for which reasons shall be recorded in writing; and

(2) Government shall notify the exemption and publish the same for public consumption in the print media.”

8. The learned AAG as well as learned counsel for the parties also pointed out minutes of Cabinet meeting, Government of Sindh convened on 22.07.2020. For the ease of reference, the Agenda item No.3 of the aforesaid meeting along with decision is reproduced as under:-

“Minutes of the cabinet meeting, Government of Sindh held on 22nd July, 2020

3. AGENDA ITEM-03: SECURITY FEATURED NUMBER PLATES IN THE PROVINCE OF SINDH.

3.1 The Secretary, Excise, Taxation & Narcotics Control Department, Government of Sindh stated that the Excise, Taxation & Narcotics Control Department registers all types of Motor Vehicles, issuance of registration books and standardized registration Number Plates to Motor Vehicles under Motor Vehicles Ordinance 1965 and Motor Vehicles Rules, 1969. At present, standardized Number Plates are issued at the time of registration of Vehicles.

3.2 The Secretary articulated that a team of National Radio and Telecommunication Corporation (NRTC) an entity of Ministry of Defence Production visited the Excise, Taxation & Narcotics Control Department on 07.11.2018 and delivered presentation about their proposals and submitted the same with quotation for supply of License Plates and Radio Frequency Identification (RFID)/Global System for Mobile Communication (GSM) Tracking and Storage products on turnkey basis.

3.3 Responding to the query of the Chief Secretary Sindh regarding the time frame for provision of these New Number Plates, the Secretary Excise & Taxation assured that for New Vehicles these Number plates would be available from November 2020 and for Existing registered Vehicles, the new Number Plates would be available by next year. The Minister Excise, Taxation & Narcotics Control also endorsed the statement of the Secretary ET&ND.

3.4 The Secretary Excise, Taxation & Narcotics Control placed the following proposals before the Provincial Cabinet for consideration and approval:

1) Introduction of the security feature number plates having Ajrak logo replacing the present number plates by amending Rule 32 of the Sindh Motor Vehicle Rules-1969

2) Allocation of Rs.500.00 (Five Hundred) Million.

3) Procurement of the Number Plates from NRTC, an organization working under the Ministry of Defence, Government of Pakistan, i.e. from Government to Government (G2G) procurement basis on the analogy of the government of Sindh Information Science and Technology Department in case of its scheme namely “Installation of Surveillance Cameras at Worship places of minorities” by invoking Section 21 (1) of the SPPRA Act, 2009 (Amended 2019).

3.5 Decision:-

The Cabinet considered the proposal of the Excise, Taxation and Narcotics Control Department for introducing the New Number Plate and approved the proposal of the department with the following observations:

- i. The cost of the new number plate must be negotiated.
- ii. The features of tracker integrated in RFID must be vetted by well reputed Tracking Services Providers so that the tracker features of new number plate could be more effective and up to current needs.
- iii. The amount requested i.e. 500.00 Million must be placed before the Sub Committee of Financial Matters for due deliberation and decision.
- iv. All the Law Enforcement Agencies must be consulted for improvised and standard Number Plate.
- v. All the legal and administrative aspects of Government to Government (G2G) must be followed in letter and spirit.
- vi. The proposed Section 21 (1) of the SPPRA Act, 2009 (Amended 2019) is exempted subject to finalization of G2G contract with NRTC.
- vii. New Number Plates must be made available in November for new vehicles and in next year for existing registered vehicles.”

9. The learned counsel for the respondent No.3 also depicted a Memorandum dated 04.04.2020 issued by Cabinet Division, Cabinet Secretariat, Government of Pakistan with regard to autonomous bodies of the Division. The name of respondent No.3 is mentioned at Serial No. 17 which seems to be attached and under the administrative control of defence production division. What deciphered from the record that the respondent

No.2 earlier also invited tenders for procurement of standardized Security Featured Registration Number Plates but there was no centralized database for the management and ready access of domestically manufactured number plates in the province of Sindh or across Pakistan and the purpose of G2G arrangement is essentially required only for the reason that the respondent No.3 is the only entity in Pakistan that has requisite machinery and technical expertise for manufacturing the number plates with the necessary security and technical features in Pakistan as this procurement from abroad would result in payment of huge foreign currency whereas G2G arrangement would safeguard the integrity of sensitive data and information and will also prevent the outflow of foreign exchange reserves. According to the company profile represented by the learned counsel, the respondent No.3 is also engaged in design, development and manufacturing of sensitive telecommunication and surveillance equipment in Pakistan and has facilities for the production of number plates being authorized partner of the German manufacturer EHA Hoffman International GmbH, Germany. The respondent No.3 has entered into a MOU with the Excise and Taxation Department, Islamabad and the Government of Baluchistan has also entered into a contract for the supply of similar number plates. The approval of MOU between Excise and Taxation Department, Islamabad and the respondent No.3 for the supply of RFID number plates and smart card was conveyed on 07.10.2019 by the Section Officer (ICT-II), Ministry of Interior, Islamabad to Chief Commissioner, ICT, Islamabad. Whereas, contract for production, pricing and supply of Security Featured Motor Vehicles Retro Reflective number plates dated 13.06.2019 executed between the Government of Balochistan and the respondent No.3 is on record. In exercise of powers contained under Section 23 of the Punjab Procurement Regulatory Authority Act, 2009, the Governor of Punjab on the recommendation of Board of Management, Punjab Procurement Regulatory Authority granted exemption from the

application of Punjab Procurement Rules, 2013 for procuring Retro Reflective number plates by the Excise, Taxation and Narcotics Control Department through a modality of G2G basis with respondent No.3. The notification dated 20.05.2020, issued by Chief Secretary, Government of Punjab, Services and General Administration Department is on record. The learned counsel for respondent No.3 stated at bar that the negotiations with KPK Government are underway in similar pattern for entering into G2G contract.

10. The learned counsel for the petitioners made much emphasis that exemption could only be granted in the national interest. A meticulous analysis of analogous provisions incorporated in the Federal as well as Provincial procurement laws (*supra*) unambiguously expresses that in the Federal law, exemption may be granted in the national interest, whereas, in the Punjab law, the board may, for reasons to be recorded in writing, recommend to the government to exempt any public procurement from the application of any rule or regulation made under the Act. While in KPK laws, the word public interest is mentioned under the relevant section. However, in Balochistan law, the word national interest has been mentioned alike Sindh law for consideration of the competent authority to grant exemption from the operation of their procurement laws. According to Rule 4 of the Sindh Public Procurement Rules, 2010, it is obligated that while procuring goods, works or services, procuring agencies shall ensure that procurements are conducted in a fair and transparent manner and the object of procurement brings value for money to the agency and the procurement process is efficient and economical. Creation of an independent provision for granting exemption by the legislature does not mean that the purpose and objective of law to maintain transparency in the procurement should be defeated or compromised but only in the emergent situation or exigency, the exemption may be allowed in the national interest. In the present case it elucidates that the government of Sindh

consonant to Cabinet decision resolved to award contract to respondent No.3 by invoking exemption segment in line with the decision of Federal Capital and other provincial governments. It is across the world recognized right of each state to secure its national interests which means by and large a long term and continuing purpose which the state, the nation, and the government all see themselves as serving. National Interest is what a nation senses to be indispensable to its security and welfare. The primary interests of each state are self-preservation, security and wellbeing of its citizens. The record reflects that the contract to supply RFID number plates from respondent No.3 is already in field with federal government and other provincial governments therefore the Government of Sindh as a policy decision in their own wisdom and prudence considered it in the national interest that Sindh should also contract out RFID number plates task to respondent No.3 to maintain harmony amongst all federating units so that similar technology should berth across-the-board to lend a hand for one window operation and all-embracing monitoring and surveillance task and their decision seems to be rational in the national interest without any element of bias, nepotism or any discrimination.

11. The learned counsel for the petitioners pointed out Rule 16 of the 2010 Rules in which alternate methods of procurement are provided in different heads such as “request of quotation”, “direct contracting”, “force account”, “petty purchases” and “repeat orders”. According to him, instead of exempting the application of SPPA 2009 as provided under Section 21, the government should have adopted an alternate method of procurement and could have asked the quotations for comparing price from at least three suppliers in order to ensure competitive process. He further added that even in case of emergency, it was the responsibility of the authority to declare situation of emergency on force account in writing. In our sight, the alternate method provided under the aforesaid Rules of

2010 and niceties of Section 21 of the Act, 2009 both are distinct pathways with poles apart physical characteristics. If the government decides to exempt the application or provisions of the Act under Section 21 then obviously after said decision there shall be no occasion or possibility to apply other provisions in contrast for that particular procurement. Much apprehensiveness and disquiet has been shown by the learned counsel for the petitioner that if such tendency is allowed to keep on, it will grant a license to Sindh Government to exempt each and every procurement by invoking Section 21 of the Act and work orders will be issued to their favorites without inviting tender under Sindh Public Procurement Rules 2010. No doubt, under the Act, it is mandatory to take such measures and exercise powers for improving governances, management, transparency, accountability and quality of public procurement Rules, service and works in the public sector as well as in collaboration of private sectors and detail procedure is also provided in order to maintain transparency to safeguard public fund and procurement/ acquisition of goods, services, financed wholly or partly out of public fund including projects of public/private partnership and also ensure that no incident of misprocurement is done which means the procurement in contravention of the Sindh Public Procurement Act, 2009 and Rules and Regulations made thereunder. It is well settled exposition of law that each case is to be decided on its own peculiar facts. At this stage we cannot presume that in routine or every time exemption will be allowed by Sindh cabinet in the procurements allegedly to circumvent or evade the law. On the contrary, if any such situation is ensued and brought into the knowledge, this court has ample powers to judicially review the validity of such future contracts if any entered into to commit any corrupt and fraudulent practices as defined under clause (q) of Rule 2 of Sindh Public Procurement Rules but at this moment in time, the apprehension or anxiety of the petitioners is irrational and speculative. In the instant matter, while granting

exemption by the Sindh Cabinet, they have taken care of many factors sagaciously which are mentioned in their decision to ensure the transparency in the procurement of Retro Reflective number plates and in their own wisdom and prudence/competence decided that in the same manner and pattern wherein other provinces and the Federal Capital decided to procure the Retro Reflective number plates from respondent No.3 they feel it appropriate in the national interest that the same company should be awarded G2G contract so that the entire purpose of initiating Retro Reflective number plates should be harmonized and bring into line in a uniform pattern across the board.

12. The petitioners have not challenged the vires of Section 21 of 2009 Act but confined to the plea that decision to grant exemption under Section 21 of the Act was not fair and transparent. If the petitioners were providing plain number plates to Excise and Taxation Department, Government of Sindh, this does not create any vested right in their favour that for RFID number plates, the exercise of powers to grant exemption of procurement laws could not be invoked. In order to defend the cabinet decision, the learned AAG made much emphasis that in view of the security situation, theft, snatching and other anti-social activities, the Automatic Number Plate Recognition (ANPR) technology is being used by law enforcement agencies to enhance the roads identity and monitoring criminal activity in counter terrorism all over Pakistan. Radio Frequency Identification (RFID)/Global System for Mobile Communication (GSM) Tracking and Storage product is basically a prime need of era to opt advance technology in order to combat with the crimes and to improvise the system of monitoring criminal activities all over Pakistan, therefore, this decision was taken in the national interest as well as in the interest of public at large.

13. The learned counsel for the petitioner referred to a judgment rendered by the Apex Court in the case of **Raja Mujahid Muzaffar & others v. Federation of Pakistan (2012 SCMR 1651)**. In this case the Apex Court dilated upon Rule 14-(a) and Rule 43 of Public Procurement Rules, 2004 and held that it shall be mandatory for all procuring agencies to advertise all procurement requirements, however, under some circumstances deviation may be made for proposed procurement relating to national security and its publication could jeopardize national security objectives, whereas, Rule 42 relates to the alternative method of procurement. In the peculiar facts and circumstances of the case, the hon'ble Supreme Court held that the project had been conceived about three and half years before the contract in question, thereby excluding the possibility of an emergent situation, therefore, provisions of Rule 42(c)(v) of Public Procurement Rules, 2004 not attracted to the facts and circumstances of the case. It was further held that inviting proposals publically for surveillance systems was a common practice followed internationally. The procuring agency, Ministry of Interior could have tailored its public advertisement for the project so as to not compromise security considerations. It was further held that Rule 14 of Public Procurement Rules, 2004 did not perceive of an exemption from the rules and the necessity of public advertisement but only a deviation like all exceptions, said rule must be construed strictly keeping in view the proportionality of the requirement for such deviation. In our wisdom, the aforesaid judgment is quite distinguishable to the facts and circumstances of the case in hand. Here neither the application of Rule 14 (a) nor application of Rule 42 is in issue but the nucleus of the case is whether the powers conferred under Section 21 of the Sindh Public Procurement Act, 2009 have been lawfully exercised by the Sindh Government or not. Whereas in the case of **A.R. Khan & Sons v. Federation of Pakistan (2010 CLD 1648)**, the learned division bench of this court held that alternative method of direct contract contained in clause (c) has seven situations envisaged

by it are disjunctive, i.e. if any one of the situations is found to exist, then the procuring agency may take recourse to the direct contracting method of procurement. Secondly, it is to be noted that the provisions of Rule 42 are discretionary and not mandatory inasmuch as the word used there is "may" and not "shall". In this cited judgment also we are of the firm view that the ratio of the judgment is altogether different with the facts and circumstances of the case in which no issue of alternate method of procurement is involved but the case of exemption pleaded by the Government of Sindh hence it is also found distinguishable. The learned counsel for the petitioner also relied on the case of **Mrs. Humera Imran v. Government of Pakistan, Ministry of Defence and Production through Secretary and 3 others (PLD 2019 Sindh 467)** in which also the controversy was altogether different. The court held that a bare perusal of R.14 (a) of the Rules demonstrated that it contained no blanket exemption from the operation of the Ordinance and/or the Rules and it was further held that no approval of the authority was obtained to seek the benefit of R.14 (a) hence the contract was not exempted from the operation of the Ordinance and the Rules by virtue of the national security exception contained in R.14 (a). In the case of **Habibullah Energy Limited and another v. WAPDA through Chairman and others (PLD 2014 Supreme Court 47)**, the apex court held that all public functionaries must exercise public authority, especially while dealing with public property, public funds and assets in a fair, just, transparent and reasonable manner, untainted by mala fide without discrimination and in accordance with law keeping in view the constitutional Rights of the citizens and the same would hold true even in absence of any specific statutory provisions setting forth the process in such behalf. While exercising its jurisdiction, Superior Courts neither sit in appeal over administrative actions nor interfere on account of inconsequential deviations however, where Administrative Authority acted in a discriminatory manner and action failed the

test of reasonableness, transparency and or was otherwise unjust and unfair or suffered from mala fide, the courts not only were vested with the jurisdiction to set aside such actions but any failure in such an eventuality to exercise power of Judicial Review, when invoked, would make the court a party to such unreasonable, unfair, mala fide and illegal action. Whereas in the case of **Asaf Fasihuddin Khan Vardag v. Government of Pakistan and others (2014 SCMR 676)**, the honourable Supreme Court held that transactions involving public money must be made in a transparent manner for the satisfaction of the people, who were the virtual owners of the national exchequer, which was being invested in the projects. Court had the duty to ensure that relevant laws were adhered to strictly to exhibit transparency.

14. The compass and magnitude of judicial review of governmental policy is now well settled and defined in which neither we can act out or represent as appellate authority with the aim of scrutinizing the rightness, fittingness and aptness of a policy nor may act as advisor to the executives on matters of policy which they are entitled to formulate. The extensiveness of judicial review of a policy is to test out whether it violates the fundamental rights of the citizens or is at variance to the provisions of the Constitution or opposed to any statutory provision or demonstrably arbitrary or discriminately. This can be sought on the grounds that a decision arises when a decision-maker misdirects itself in law, exercises a power wrongly or improperly purports to exercise a power that it does not have, which is known as acting ultra vires. A decision may be challenged as unreasonable if it is so unreasonable that no reasonable authority could ever have come to it or a failure to observe statutory procedures. The dominance of judicial review of the executive and legislative action must be kept within the precincts of constitutional structure so that there may not be any incidence to give thought to misgivings concerning the role of judiciary in

outstepping its bounds by uncalled-for judicial activism. (**Reference. Judgment authored by Muhammad Ali Mazhar-J in C.P.No.D-2526/2021- Shumaila Salman Shah & others v. Federation of Pakistan & others.**) The decision to award contract by Sindh Government to respondent No.3 cannot be considered a transaction based on misprocurement nor it can be considered the violation or infringement of Article 4, 9, 18 & 25 of the Constitution of Pakistan. The line of reasoning of petitioners that since they were supplying plain/standard number plates to Excise Department, Government of Sindh under the contract hence they should also be considered for the supply of RFID number plates on invitation of tender is a misconceived notion in the present circumstances and not sufficient to challenge the raison d'etre of cabinet decision.

15. Neither the petitioners succeeded to substantiate any mala fide intention or ulterior motives on the part of Sindh Government that exemption was granted to provide any preferential treatment or favoritism nor established that while granting exemption to enter into a contract on fulfillment and ensuring certain conditions, the Sindh Government was somewhat engaged or committed any corrupt and fraudulent practices as defined under clause (q) of Rule 2 of Sindh Public Procurement Rules 2010. In fact under the G2G contracts, the monitoring task or audit exercise to ensure transparency and fairness or repressing any corrupt and fraudulent practices is more easygoing and comfortable from both the sides with sheer commitment to religiously fulfill their contractual obligations due to restraint of double check command in the affairs on government to government level. In the present case, though the respondent No.3 is an autonomous body but it is under the administrative control of Ministry of Defence Production, Government of Pakistan. On the face of it, this is a Government to Government contract and according to the decision taken in the minutes of meeting, the Sindh Cabinet considered the

proposal of Excise, Taxation and Narcotics Control Department for introducing new number plates and according to the decision, the case of new number plates is to be negotiated, the features of tracker integrated in RFID must be vetted by well reputed tracking service providers so that the tracker features of new number plates could be more effective. It was further decided that all law enforcement agencies must be consulted for improvised and standard number plates and all legal and administrative aspects of G2G must be followed in letter and spirit and in the end exemption was granted by the cabinet under Section 21 of SPPA 2009 which cannot be declared illegal or contrary to the powers conferred by the statute.

16. In the wake of above discussion, the constitution petition is dismissed along with pending application.

Karachi:-

Dated.29.6.2021

Judge

Judge