

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
MIRPURKHAS

Constitution Petition No.D-650 of 2024
(*Abdul Nasir Khan Vs. Federation of Pakistan & others*)

Constitution Petition No.D-676 of 2024
(*HCBA Mirpurkhas Vs. Federation of Pakistan & others*)

DATE	ORDER WITH SIGNATURE OF JUDGE
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Before

Adnan-ul-Karim Memon, J

Amjad Ali Bohio, J

Date of hearing & Order 12.08.2024

Mr. Kanji Mal, Advocate for petitioners in C.P No.650/2024
Mr. Mir Parvez Talpur, Advocate for petitioner in C.P No.676/2024
Mr. Nisar Abro, D.A.G, Pakistan
Mr. Sharif Solangi, A.A.G Sindh,

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ORDER

Adnan-ul-Karim Memon, J. Petitioners are seeking the following relief(s):-

- a. That this Honorable Court may be pleased to direct the respondents No. 01, and 05 to remove the cap from the Sukkur IBA University Mirpurkhas Campus and release the development funds to re-start the construction of the subject University Campus under the administrative approval and PC-1 of the project.
- b. That this Honorable Court may be pleased to direct respondents No. 06 and 07 to not nonfunctional the Sukkur IBA University Mirpurkhas Campus.
- c. That this Honorable Court may be pleased to direct the respondent No. 06 and 07 to include the Sukkur IBA University Mirpurkhas Campus in the Crash Preparatory Classes-2024, starting from May 13, 2024
- d. That this Honorable Court may be pleased to suspend the operation of the impugned decision taken under the chairmanship of Respondent No.05, dated January 05, 2024.

2. Primarily, the stance of respondents 6 and 7 is that the project to establish a sub-campus in Mirpurkhas was approved in 2020 with a 3-year timeline. However, due to factors like the COVID-19 pandemic, floods, economic conditions, and slow fund release, the project faced significant delays. It is the case of the respondent university that despite these challenges, the University has established the interim campus in

Mirpurkhas by renting buildings and equipping them with necessary facilities. Admissions have been opened, and the campus is operational with a certain number of students enrolled. As per respondents No. 6 and 7, the University has acquired land for a permanent campus through donations and internal funds. However, the project has faced hurdles in hiring and retaining staff, obtaining necessary approvals, and dealing with cost overruns, and as per the officer present in court, the university is committed to set up the Mirpurkhas campus and will continue its efforts to develop it into a full-fledged sub-campus; he added that though the project has delayed due to external factors and ongoing efforts are being made to establish the campus on permanent basis, despite challenges, the University has managed to create a functional interim campus. He next submitted that the University has faced financial difficulties, including insufficient fee collection to cover operational costs, however, the University has made progress in acquiring land for a permanent campus. In the intervening period various obstacles, such as staff turnover and cost overruns, have impacted the project's progress. Be that as it may, we are only conversed with the resolution of the matter, so the students of the Mirpurkhas may not suffer, due to the lethargic attitude of the respondents in setting up the University Campus at Mirpurkhas, as committed earlier.

3. The overall stance of the learned DAG is that the subject university project was approved in April 2020 with a budget of Rs. 1399.675 million for 36 months. Rs. 231.610 million was released, but only Rs. 229.095 million was utilized for land acquisition, boundary wall construction, and initial setup. The project is now 16% complete after the original 36-month duration. The university submitted a revised PC-1 with a 95% budget increase. The university acquired land contrary to the initial plan of using state land. There are irregularities in the procurement process and boundary wall contracts. The university's commitment to establishing a full-fledged campus is questioned for the reasons that significant funds were used for land acquisition and initial setup with minimal project progress. The project timeline has been exceeded without achieving its goals. The university's land acquisition process deviated from the approved plan. Procurement and contract irregularities exist. The need for a new campus is questionable given existing educational facilities.

4. This stance has been refuted by the learned counsel for the petitioners and argued that this Court has already passed the Order dated 14-05-2024, suspending the operation of the decision through which the Sukkar IBA University Mirpurkhas Campus had been ordered to be shifted. So far as the capping of the funding of the project due to the cost escalation and other operative reasons, they argued that this capping is illegal and liable to be reversed as this is a public sector University Campus, and no capping can be allowed. Be that as it may, generally, the HEC has serious concerns about the project's management, financial irregularities, and the overall need for the project; and, recommended as follows:

- Demanded the return of Rs. 26 million spent on land acquisition.
- Requested a compliance report on M&E Division observations.
- asked the university to reconsider the need for the campus.
- Will review the university's compliance and provide recommendations.
- Will determine the project's fate based on P&D/M&E division recommendations.
- Will withhold further funding until a decision is made.

5. Principally, the respondent university is defending the University's actions and explaining the reasons for the project's delays and challenges. They emphasize the University's commitment to the Mirpurkhas campus and its ongoing efforts to develop it.

6. We have considered the arguments of the learned counsel for the parties at some length on the subject issue.

7. In the first place, this Court is of the tentative view that impugned action on the part of the respondents No.03 to 07 can infringe on the fundamental rights of the students to get quality education as guaranteed under the Constitution, which raises serious questions of public importance, relating to the rights of the students of Mirpurkhas. The term "public importance" is one of the components to attract the jurisdiction of this Court under Article 199 of the Constitution. Moreover, this Court can examine the exercise of discretion of the competent authority of respondents, if the same is violative of the fundamental rights of the citizens, as the right to education is a fundamental right as it ultimately affects the quality of life which has nexus with other Fundamental Rights guaranteed by the Constitution under Articles 4 and 9 of the Constitution of Islamic Republic of Pakistan, 1973 for the simple reason that people cannot be free in the real

sense unless they are properly educated, which is the aim of the petitioners; therefore, they are brought the present lis before this Court.

8. Today, education is perhaps the most important function of State and Local Governments, it is required in the performance of our most basic responsibilities and it is the very foundation of good citizenship. Today, it is the principal instrument in awakening the child to cultural values, preparing him for later professional training, and helping him to adjust normally to his/her environment, therefore these petitions can be disposed of in terms of the statement made by the respondent university and it is expected that Higher Education Commission of Pakistan (HEC) will continue to check the overall will of the respondent-university to setup Sukkur IBA University Mirpurkhas Campus. Without prejudice to the stance of the HEC, it is expected that the HEC will help out in setting up the IBA University, Mirpurkhas Campus, and will not create bottlenecks in the completion of the subject project within a reasonable time i.e. within three months positively; however, the actions of the respondent University shall be subject to the policy decision of the Higher Education Commission of Pakistan, as pointed out by the learned D.A.G.

JUDGE

JUDGE

"Ali Sher"