

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

CP No. D - 4523 / 2017

A / w

CP Nos. D- 1819/2017, 1905/2017, 3095/2017, 3096/2017, 3307/2017, 3308/2017, 3309/2017, 3310/2017, 3311/2017, 3312/2017, 3739/2017, 3740/2017, 3741/2017, 3778/2017, 3783/2017, 3851/2017, 3857/2017, 3858/2017, 3859/2017, 4266/2017, 4354/2017, 4393/2017, 4487/2017, 5287/2017, 5288/2017, 5289/2017, 5290/2017, 5291/2017, 5292/2017, 5293/2017, 5294/2017, 5295/2017, 5296/2017, 5297/2017, 5298/2017, 5299/2017, 5300/2017, 5301/2017, 5302/2017, 5490/2017, 6114/2017, 6117/2017, 6118/2017, 4288/2018, 6067/2018, 6778/2018, 6779/2018, 6781/2018, 331/2019, 39/2019, 5317/2019, 5318/2019, 5319/2019, 5320/2019, 5321/2019, 5322/2019, 5323/2019, 5324/2019, 5325/2019, 5326/2019, 5327/2019, 5328/2019, 7774/2019, 7775/2019, 1184/2021, 1185/2021, 1186/2021, 1187/2021, 392/2021 and 717/2021

Date	Order with signature(s) of Judge(s)
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Present: **Mr. Justice Salahuddin Panhwar**
Mr. Justice Amjad Ali Sahito

28th August 2024

APPEARANCE:-

Mr. Salahuddin Ahmed, Advocate for the Petitioner in CP Nos.D-1819, 1905, 3095, 3096, 3739, 3740, 3741, 3783, 3857, 3858, 3859, 4354, 4487, 5490 of 2017 and 6778, 6779 of 2018.

M/s Adnan Memon and Har Chand Lal, Advocate for the Petitioner in CP No.D-3306 of 2017 to 3312 of 2017.

M/s Akhtar Hussain and Muhammad Ayoub, Advocate for the Petitioner in CP No.D-5321/2019.

Mr. Ravi Kumar, Advocate for the Petitioner in CP No.D-4523 of 2017 and Respondent in CP No.D-5299 and 5302 of 2017.

M/s Ishfaq Ahmed Bughio and Mukesh Kumar Khatri, Advocates for the Petitioner in CP No.D-4393/2017.

Mr. Matiullah Gondal, Advocate for the Petitioner in CP No.D-5327/2018.

Dr. Raana Khan, Advocate for the Petitioner in CP No.D-5288 of 2017.

M/s Muhammad Ali Lakhani and Mujtaba Sohail Raja, Advocate for Bahria Town, Karachi.

Mr. Muhammad Hanif Faisal, Advocate for NHA.
Mr. Zuber Ahmed, Advocate for NHA

Raja Qasit Nawaz, Advocate

Mr. Zohaib Ahmed Korai, holding brief for Mr. Khalid Mahmood Siddiqui, Advocate

Ms. Nasima Mangrio, Advocate.

Mr. Barkat Ali Metlo, Advocate for FWO Score.

Mr. Shakeel Zai, Advocate

Ms. Ambreen, Advocate for the petitioner in CP No.D-39 and 331 of 2017.

DSP Legal Raza Mian, CPO, Karachi.

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Salahuddin Panhwar,J:- Captioned petitions pertain to various controversies with regard to **Motorway M-9, ('Karachi - Hyderabad' Motorway)**, admittedly, which was already an existing toll road as Superhighway.

2. Briefly, this road, which was functional as the only source for all purposes connecting all the Districts of Karachi, except Thatta and other Provinces, however, around **12** years back this road was converted from a Superhighway to Motorway on a **BOT** basis by Superhighway Construction Operation & Rehabilitation Engineering (Private) Ltd. (**SCORE**). Undisputedly, SCORE is collecting **taxes/fees** towards *facilities* and was bound to provide a **service road** fencing and other facilities at the completion of road. Despite its status as Motorway, this road cannot be called as Motorway, on the same pedestal as other Motorways are also existing in other parts of the country, including Motorway from Sukkur to Multan. Plea of **SCORE** is that they are unable to provide a service road, and other facilities due to present petitions filed by individuals as well as the controversy between National Highway Authority (**NHA**) and the Province of Sindh.

3. **NHA** has filed a petition *challenging* the **cancellation** of the Notification issued by the Province of Sindh, whereby this road was handed over to **the NHA** to build the motorway. In a similar fashion, there is controversy that the Sindh Government has reduced the limits of **ROW**, which has created multiple issues. As per AAG, **NHA** has failed to provide **compensation** to the Province of Sindh.

4. The rest of the petitions are filed by different **Gas-Fuel Stations**, owners of the lands and new societies availing the access to this Motorway, which were already availing the same, since the status back then of this present so-called motorway was actually superhighway.

5. Multiple litigations are the main cause of the **conversion** of already existing road to Motorway. In a similar manner, **GT-Road** from Pindi to Lahore was converted into a motorway; there are chances of same controversy over **ROW** and demolition of various properties, including areas of the cities. The best option was to build a new motorway having the same standard like other motorways, providing actually, in addition one more access towards a capital city of the province, which is a economical hub city of a country, but the Province of Sindh and **NHA**, have miserably failed to provide so. Accordingly, on the last hearing, **NHA** was directed to submit

any proposed scheme with regard to a **new motorway** of the same standard as available in other parts of the country. A statement is filed by the **NHA**, which read as follows:-

"I, do hereby most humbly submit on behalf of the Petitioner (NHA) before this Honorable Court, that this Honorable Court has passed Order Dated: 7th August, 2024, wherein the Petitioner (NHA) was directed to submit two kinds of categoric statements, wherefrom, it would be more appropriate to reproduce the relevant portion of the said 1st direction of this Honorable Court in order herein for the most convenient of this Honorable Court.

➤ **FIRST DIRECTION OF THE ORDER REGARDING "ISSUANCE OF LEASES"**

"Accordingly, NHA shall submit details of properties within the limits of Motorway from Hyderabad to Karachi along-with categorical statement whether any lease is given by NHA or SCORE to any petrol pump/hotel or other activities?"

IN RESPONSE TO FIRST DIRECTION OF THE ORDER AS ABOVE, it is most humbly submitted that as per record the List of requisite details of leases granted by NHA is filed herewith and marked as Annexure "A", wherefrom it is appeared that NHA has granted 26 numbers of Leases within ROW, out of which from Serial No.1 of the Annexure enclosed herewith and marked as "A", ***is out of Motorway (M-9) jurisdiction*** and the leases from the **Serial No.2 to 20 of the Annexed List** have already been **"TERMINATED" *in the year of 2015 by the NHA prior the commencement of Concession Agreement*** and one lease at Serial No.21 of the Annexed List is already **"under litigation"** before this Honorable Court which is not connected with the present petition. Another lease at **Serial No.22** has already been **"expired" in the year of 2010, *whereas 4 further leases from the Serial No.23 to 26 are operational within jurisdiction of Motorway (M-9).***

FURTHERMORE; the Concessionaire i.e. M/s. Score Pvt Limited has neither granted any lease nor he is competent to do so in accordance with the provision of the concession agreement.

➤ **SECOND DIRECTION OF THE ORDER REGARDING "NEW MOTORWAY SCHEME"**

"FURTHER NHA shall file categorical statement without going to this controversy with regard to new motorway scheme from Jamshoro to Karachi and in similar like type to Multan to Sukkur and Islamabad to Peshawar by providing all basic facilities and state of art road.

IN RESPONSE TO SECOND DIRECTION OF THE ORDER AS ABOVE, it is further most humbly submitted that another Motorway Scheme from Karachi to Hyderabad is under consideration and the joint feasibility study (**Consultants from Pakistan and China**) is yet to be started.

6. According to **NHA**, there is a scheme for a new road (*motorway*) and yet it is to be worked out by the Engineers. Since there is a *serious* need of

more *access* to **Karachi**, which is a port city and generating huge revenue for the nation and this country, therefore, the Chairman of National Highway Authority (**NHA**) shall ensure that within **three months**, they shall prepare a feasible report and place such *scheme* before the concerned quarters and ensure that such scheme is **approved**. Accordingly, the capital of this province, being a metropolitan city, shall be connected by a motorway of same standard with other parts of the country, enabling all the citizens, *businessmen* and other **stakeholders** to have safe access.

7. With regard to the **controversy** by the Sindh Government and reduction of **RWO**, Province of Sindh and the Federation shall form a committee and resolve this controversy including **compensation**, within **three months**. Needless to mention, that **SCORE** shall continue its mandate for the rest of the period, as half of the period they have already enjoyed collecting taxes/fees, as they are charging, undisputedly though this road cannot be called or considered as **Motorway**, in the actual and true sense of the word. However, according to **SCORE**, the scope of work to be carried out is as under:

1. Rehabilitation of the Superhighway and construction of one additional lane and shoulder on inner side of the existing carriageway (*each side*). However, the placement of additional lanes shall be as per the Approved Detailed Design;
2. The Motorway shall be designed and constructed in a manner that both directional roads as well as all lanes at each decision would be homogeneous having 3.65 m of each lane width, while inner shoulders shall be 1.0 m and outer shoulders shall be 3.0 m;
3. The Motorway Service Areas, with state of the art facilities shall be provided on both-sides at least as per the standards of the Islamabad-Lahore Motorway ("M-2"). The minimum area shall not be less than 260mx350m (25% covered area). The following facilities must be provided in each of the Motorway Service Areas:
 - (a) Restaurants/Food Courts/Fast Food;
 - (b) Toilet(s) Blocks;
 - (c) Fuel Filling Stations with Tuck Shops;
 - (d) Medical Care: medical point having first aid facilities;
 - (e) Children Play Area;
 - (f) Mosque (to accommodate gents and ladies);
 - (g) Parking Area for (bus, cars and trucks separately);
 - (h) Mini workshop with recovery facility;
 - (i) Aam Sarai and Dhaba (with Trucks/Buses Parking);
 - (j) Internal Roads, Sewerage, Water Supply and Electric supply with electricity backup and Gas Supply;
 - (k) Business center with fax, internet, photocopying facility and ATM machines shall be installed;
 - (l) NHA office and guest room facility;
 - (m) Motorway police offices;

4. State of the art, fully automated (Electronic Toll Collection system) Toll Plazas shall be established with multimodal and express lanes; it is envisaged that the Main Toll Plazas will have 24-bays in total (12 lanes for each direction), subject to the Approved Detailed Design. It shall be supported by, inter alia, an administration building and uninterrupted power;
5. Eleven (11) new weigh stations shall be provided;
6. The Motorway shall be fenced facility which is mandatory requirement covering maximum possible width to secure the future extension of the roadway, except that the urbanized area at either end of the Motorway shall only be fenced to the extent required and possible;
7. The Concessionaire shall also be responsible for providing any additional future lanes for the Motorway whenever the level of traffic justifies it as per Highway Capacity Manual (latest version);
8. Service road (TST) outside the Motorway fence shall be provided. The Service Road shall be of 6.1m carriageway with 1.0 m shoulders at either side. The Service Road shall crisscross the Motorway using available substructures. However, on the opposite of the sub-base earthen embankment shall be made. Ultimately the Service Roads shall be converted to TST on both sides, when elements/traffic requirements justify. The total length of the Service Road to be provided during the Construction Period is 185 kilometres and remaining future conversion is 90 kilometres in the middle of the Concession Period;
9. Auxiliary Lanes;
10. Interchanges as per **Schedule P [Interchanges]** shall be established by the Concessionaire;
11. The Concessionaire shall also facilitate any future development requirements of any additional Interchanges in accordance with the mechanism specified in this Agreement. Further, the Concessionaire is responsible for rehabilitation of the two (2) existing interchanges of Karachi Northern Bypass (KNB) and Kathore (Steel Mill N-5 Link);
12. Installation of state-of-the-art electronic Toll, overloading fine and police fine collection system (E-System) & Automatic Vehicle Classification (AVC), Automatic Vehicle Identification, Automatic Number Plate Recognition with necessary hardware, software and back-up support. The E-system shall have automatic vehicle card, E-tag, Fleet Cards with multimodal transaction facility i.e. cash, contact-less smart card, etc. The Toll collection system shall operate through a Central Clearing House (CCH) on the Motorway which shall be linked to an operations centre at NHA Headquarters, Islamabad in the twelfth (12th) year of the Concession Period;
13. Centralized Operation Centre: Smooth traffic flow is to be ensured through the installation of a system for closer

monitoring of traffic situations in both centralized operation, maintenance and control centre;

14. Implementation of emergency assistance system including, but not limited to:
 - (a) mobile workshops;
 - (b) traffic patrol surveillance system equipped with cameras, radios and speed monitoring devices;
 - (c) ambulance fully equipped with medical facilities;
 - (d) fire fighting equipments;
 - (e) towing vehicles;

15. Road furniture design and road structure safety features including, but not limited to, the following:
 - (a) Reflectorized land markings;
 - (b) Emergency parking areas;
 - (c) Rumbles strips;
 - (d) Motorway signage and Gantries as per the international motorway standards;
 - (e) Installation of urban road lighting and reflectorized lane marking along the strategic locations as well as interchanges and Toll Plazas as per NTRC Standard Manual for Pakistan;

 - (f) Raised pavement markers shall be fixed as per international standards;

 - (g) Informative and other road signage shall be as per M-2 standards;

16. Lighting of the Motorway Interchanges and critical areas, Toll Plazas, weigh stations, both sides along the Motorway, underpasses, and pedestrian bridges etc.;

17. Flyovers/Underpasses and pedestrian bridges (with ramp facility for motorcyclist) at appropriate locations throughout the length of the Motorway will be provided by the Concessionaire for smooth movement of people/cattle in the vicinity of Motorway;

18. Provision of utility ducts along the carriageway and crossing of future utilities like OFC, sui gas pipeline, water pipelines etc;

19. Horticulture and landscaping at the Toll Plazas, rest areas, Motorway Service Areas, Interchanges (new and existing), islands between main carriageway, slip roads and beautification at start and end of the Motorway;

20. The additional third lane, with shoulders may be added on the inner side, separated by new-jersey barrier throughout with anti-glare screen at curves. Transition may have to be provided at about 1:50 ratio before and after all bridges (if required, as per addition of bridge lanes at site on outer side);

21. Trauma centre equipped with 100% facilities compared to any developed country's motorway. Trauma centre shall be functional round the clock;

22. The Concessionaire, in addition to the ITS applications mentioned in this Schedule, shall upgrade the ITS services in a phased manner to ensure 100% ITS enablement within the view of converting the Motorway into a smart motorway within a ten (10) year period commencing on the Take-Over Date;
23. The Concessionaire shall ensure time based recovery system. Time based maintenance system shall be evolved along with manuals and standard operating procedures. Recovery shall be approved/ carried out once a month to be witnessed by the NHA Representative;
24. The maintenance practices shall be time bound with pre-developed modules, timelines supported by standard operating procedures and manuals;
25. The Concessionaire will also ensure provision of following facilities and will maintain them in a good working condition throughout the Concession Period from such time as such facilities are to be provided in accordance with the Approved Detailed Design or the O&M Manual, as applicable:
 - (a) Provision of breakdown and accident response system;
 - (b) Provision of vehicle fitness checking system on applicable international standards;
 - (c) Provision of solar fog lighting system for vehicular guidance in identified area of fogs; (d) Deployment of Variable Message Signs (VMS) with latest technology, that provide motorists with useful updates on the traffic situation and other helpful information along the Motorway;
 - (e) Emergency call service for motorists requesting assistance in case of accidents and other emergencies;
 - (f) Provision of uninterrupted power supply, where required, for the above mentioned equipment;
 - (g) Installation of a comprehensive accident management and rescue recovery system with necessary infrastructure;
 - (h) Installation of an emergency call system based on latest technology General Packet Radio Services (GPRS) for distress messaging and accident locator system;
26. Relocation/Shifting of Public Utilities: The Concessionaire shall, at its own effort, coordinate and implement the shifting of Public Utilities only in such circumstances as are specified in Section 9.1.5 of this Agreement;
27. The Concessionaire shall provide such office and transportation facilities to NHA, and arrange for such training of the officials of NHA, as specified in Sections 4.4.1(s) and 4.4.1(e), respectively;
28. **OTHER TRAININGS:**

Other than the training referred to in the preceding paragraph, formal and on job shall be an important component of this Project. Other than hiring the trainee engineers at the Project, the Concessionaire shall also provide training to the NHA engineers staff on the latest developments in the construction of highways and bridges and integrated transport systems. The Concessionaire shall train the NHA staff in the following fields:

- (a) Latest Survey Techniques;
- (b) Preparation of Job Mix Formula;
- (c) Introduction of Refusal Density Tests to check the air voids of Asphalt at refusal;
- (d) Pre-Stressing operations;
- (e) Piling operations;
- (f) Contract Administration;
- (g) Other areas that may be identified by NHA;

29. The Concessionaire can propose any business ideas for the approval of NHA, which may improve the traffic numbers or can facilitate the road user. These should not be in conflict with the safe and steady flow of traffic. Such business ideas shall also not violate international motorway definition or standards;

30. The Concessionaire shall be responsible for maintenance of the Project and its allied facilities including inter alia the Toll Plazas, weigh stations, Motorway Services Areas, trauma center, ITS field devices, sign boards, gantries, poles and all other structures etc.

31. Riding Quality:

The roughness of the pavement level (riding quality) for the Concession Period, in terms of International Roughness Index (IRI - m/km), over any one (1) kilometer length of any single lane shall be as follows, with tolerance of +/-10% (the said tolerance shall not be applicable during the Operations Period):

- | | |
|---|--------------------------|
| (a) Upon Construction Completion | IRI less than 1.5 |
| (b) During the Operations Period | IRI less than 3.5 |
| (c) On the Transfer Date | IRI less than 2.5 |

The above riding quality standards, among other, shall be major performance criteria of the Concessionaire's performance failing which shall be considered as a Material Breach of the Concessionaire and may result in Termination of this Agreement in accordance with the terms of this Agreement;

32. At the end of the Concession Period, the Project Assets and all other assets and facilities specified in this Agreement shall be returned to NHA in compliance with the Handback Requirements, all in accordance with the terms of this Agreement.

8. Be that as it may, until the controversy between the Province and the Federation is resolved and a new road scheme is launched, all parties shall

maintain status quo and **SCORE** would be competent to receive the tax from all the users of this road. However, they will not increase the amount, as it is an **admitted** fact that they have *failed* to provide basic facilities on the motorway as **undertaken** by them, underlined above.

9. With regard to residents of Bahria Town, Karachi, and other new societies, including **DHA City**, all residents would be liable to pay the tax as per mileage, and **SCORE** shall manage to provide access without going into the controversy of **ROW** by installing different toll plazas. They would be competent to receive the fees with the condition that they shall maintain the existing road and provide **ambulances** and other **safety** measures, including **rescue** services.

10. Moreover, they shall also sign the **MoU** with the Province of Sindh and shall restore forthwith the Trauma Center at Nooribad to save the lives of innocent citizens from horrors of untoward incidents/accidents. All the petitioners shall not be competent to raise further pucca structures as per the limit of **ROW** applied by **NHA** and shall maintain the status quo until the next date of hearing.

11. To come up on **28th November 2024**, when Chairman National Highway Authority shall be in attendance. Office to **de-tag** C.P. Nos.D-5288/2017, 3778/2017 and 3783/2017 from the above captioned matters. However, the latter two petitions (*i.e. CP.Nos.D-3778/2017 and 3783/2017*) shall not be placed before a Bench of which one of us, namely, Amjad Ali Sahito J., is a member.

Sd/-
JUDGE

Sd/-
JUDGE

Sajid