

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

CP. No. D - 4690 of 2024

Date: **Order with signature(s) of the Judge(s)**

Before:

**Salahuddin Panhwar
Amjad Ali Sahito, JJ**

09th October 2024

Mr. Fayazuddin Rajper advocate for the Petitioners a/w Ashfaque Ali Panhwar.

Mr. Mir Ahmed advocate for Respondent No.14.

Mr. Abdul Sattar Pirzada advocate for Respondent No.15.

M/s. Muhammad Aslam and Nayyar Advocates for Respondent No.16, 17 & 18.

Jahanzeb Awan [Respondent No.11], Shahan Karimi [Respondent No.12] & Siraj Alam [Respondent No.13].

Mr. Zahid Ali Abbas, Secretary, SELD.

Mr. Jawad Ali Khawaja, Focal Person, Litigation, SELD.

Mr. Abdul Jabbar But, Focal Person, DEO Primary School, Larkana.

Mr. Abdul Qadeer Ansari, AS (PDF), SELD/DG DDR.

Mr. Shafi Muhammad, DEO West Section.

Mr. Muhammad Azam, DEO East.

Mr. Ali Ahmed, Deputy Secretary STBB.

Mirza Afaque Baig, AEO, DEO Primary (LFT) MPS

Mr. Ghulam Haider Umarani, TEO.

Mr. Hussain Bux, Mirpurkhas.

Mr. Nabi Bux Gurgani, DEO (Pry) MPS.

Mr. Usman Al Mangrio, SO(Judl), College Education Department.

Mr. Iqbal Hussain Memon, DEO (ESHS), Jamshoro SELD.

Mr. Karim Bux Soomro, DEO, Primary, Tando Allahayar.

Mr. Mitho Oad, DEO, Primary, Jamshoro.

Mr. Pandhi Khan Talpur, TEO, Tando Allahayar.

Mr. Zulfiqar Ali Khaskheli,

Mr. Noor Muhammad, DEO, Thatta.

Mr. Shahryar Mahar, AAG.

Salahuddin Panhwar, J. Mr. Rajesh Kumar Khagaija Advocate has filed separate Vakalatnamas on behalf of Respondent No. 6 & 7, Mr. Jahanzeb Awan Advocate has also filed Vakalatnamas on behalf of Respondent No. 11, 12 & 13, Mr. Abdul Sattar Pirzada Advocate filed Vakalatnama on behalf of Respondent No. 15, Mr. Hassan Akbar advocate filed Vakalatnama on behalf of Respondent No. 15, 16, 17 & 18, whereas, Mr. Meer Ahmed Mangrio Advocate has filed Vakalatnama on behalf of Respondent M/s. Affairs Publishing House, same are taken on record.

2. Pursuant to order dated 01.10.2024, respondents Nos. 1, 6, 7 & 52 have filed statements, which are taken on record. Learned Additional MIT-II has submitted a compiled report with regard to the distribution of books in Government Schools. Although the reports, submitted by the learned District & Sessions Judges do not cover all the Districts of the Province of Sindh, however, the available reports reflect variations in respect of supply and availability of relevant curriculum (text) books, which shows different amount of percentage in respect of supply and availability of books regarding various districts for the students studying in the public (Government) schools across the Province of Sindh. Counsel for the publishers contends that all the books have accordingly been provided to the concerned district administration, he has further accused the concerned District Administration, as according to him, it is the failure on part of district administration, that after receiving the required curriculum (text) books, they could not distribute to concerned schools and then to the end consumers (the students).

3. Under these circumstances, learned District & Sessions Judges, across the Province of Sindh are directed to call the relevant officers of the School Education & Literacy Department, Government of Sindh, and strictly direct them to ensure that textbooks are not left lounging or loafing in warehouses, but on the contrary these books should be promptly distributed to every child, enrolled in all the public (government) schools without any further loss of time. It is imperative to recognize that access to (free) education is the fundamental right of every child, especially those from underprivileged backgrounds who rely solely on funds and resources provided by the government. The failure to promptly distribute these textbooks, deprives them (students) of the opportunity to learn, grow and break the cycle of poverty through education. Hence, the District & Sessions Judges are completely empowered to take any coercive measures against the delinquent officer(s) of the relevant department(s), who has failed to ensure the timely supply and availability of textbooks & their subsequent delivery to the desirous child (student), enrolled in government schools.

4. At this juncture, the Secretary, Schools Education & Literacy Department, Government of Sindh has submitted a report regarding officers appointed in the Education Department on ad-hoc or deputation basis. The report reflects that Gulzar (PA & AS) BS - 19 belongs to the Pakistan Audit & Accounts Services,

Government of Pakistan. *However*, he has been posted as Additional Secretary PAC/Grant in AID. *Whereas*, Mr. Ashiq Hussain, Deputy Director, an employee of the Ministry of Commerce, Government of Pakistan is appointed as Senior Director, Directorate of Public Private Partnership (PPP Node) and he is also holding the additional charge of Additional Secretary (Primary). Mr. Abdul Haleem Soomro, Assistant Director (BS-17), is basically an employee of the Population Welfare Department, Government of Sindh but has been posted as Assistant Director, Sindh Secondary Education Improvement Project (SSEIP), School Education & Literacy Department, Government of Sindh and further he is also allowed to work as Private Secretary to the Minister of Education, Government of Sindh. This report reflects that all three postings are in complete defiance and negation to the various judgments of this court, as well as the judgments passed by the Hon'ble Apex Court in this context. *Hence*, the Chief Secretary Sindh *shall ensure* that all these officers are sent back to their parent departments *with immediate effect without fail*. Such compliance report shall be submitted within ten (10) days through the learned Additional MIT-II.

5. The Secretary, Schools Education & Literacy Department, present in Court was further inquired about the provisions and availability of E-Books and E-Exams, as it has also come on record that, the Province of Sindh had signed certain *MoU* with a foreign donor agency/bank, agreeing thereby to receive **82 Million Dollars** to launch this project in 2020 up to 2024. They have received **20 Million Dollars**, out of which, **12 Million Dollars** have been utilized. *Besides*, there are other projects under the name of RSU/Soft Project, wherein they received **42 Million Euros** from the *European Union*, as well as funds from JICA (Japan International Cooperation Agency) with regard to the construction of schools through one Maqbool, *a contractor*. It has also come on record that a NAB Officer working with NAB has been posted as Project Director of the Education Department. It is shocking that a *NAB officer* has been entrusted with the role of a **Project Director** for a project *involving foreign funds amounting to Millions of US Dollars*. The appointment of an individual from the Accountability Bureau to such a highly responsible and a departmental oriented (post) role is highly *questionable*, as it *encompasses* a clear conflict of interest. NAB Officers, whose primary responsibility is to investigate & prosecute cases of corruption and misappropriation of public funds, should not be placed in positions where they may be directly involved in the administration,

management and disbursement in projects stemmed from the public exchequer. This creates an inherent risk of impartiality and could compromise the integrity of any future enquiries, investigations, or other proceedings, particularly in cases of financial embezzlement or misappropriation, where in usual circumstances the matters could eventually be referred to NAB itself. *In situations*, where cases of embezzlement or misappropriation of public funds are reported, the standard practice is to refer such cases to the investigative agencies or bodies specially created for this very purpose, such as NAB or the Anti-Corruption Establishment. Having a NAB officer *directly* involved in the management of the project would severely undermine the objectivity required in such investigations and could potentially obstruct in fair justice. *Furthermore*, the role of Project Director, particularly in projects that affect the education sector and involve foreign funding, demands the appointment of an individual, having undisputed track record, who not only possess strong administrative capabilities but must also possess a clear and in-depth understanding of the local challenges and dynamics surrounding the execution of such public project.

6. *Ideally*, the position holder should have substantial knowledge of essential elements surrounding the project, across the province and at the same time he must be well-acquainted with the Education sector and the dire and specific need for the project implementation. *Most importantly*, the appointed individual should possess a genuine concern for the welfare of children (students), especially those from **neglected and remote areas**, where access to education remains a significant and pivotal issue. Such an individual would be far more suitable and effective to oversee and execute the project as per its requirement, ensuring that its objectives are met and that the benefits reach the most vulnerable sections and the lowest stratum of society.

7. *In conclusion*, the appointment of a NAB officer to such a sensitive and critical role is highly inappropriate, not only due to the conflict of interest but also because it fails to align with the requirements of the position as usually provided in such approved project manuals. Therefore, it is essential to appoint someone who is equipped with both, the expertise and the commitment necessary to carry out and address the needs of the education sector, particularly for the children from the deprived areas and backgrounds. *At this juncture*, it would be conducive to refer to a judgment of the Hon'ble Apex Court in the case cited as **2017 SCMR 683**, *wherein* it was held that:

["The matters noted herein are of immense public importance involving the Fundamental Rights of the people. The Fundamental Right to life (Article 9) includes the right to adequate and safe drinking water and basic health care to which a large number of these projects/schemes pertain. The Fundamental Right to live a life with dignity (Article 14) would be meaningless if the people are deprived of the benefit of projects and schemes that are paid out of the public exchequer. The Fundamental Rights of the people are adversely affected when scarce resources are wasted, when there is unnecessary duplication of work, when responsibility is shirked by those executing public works and when it would be very difficult to hold anyone accountable as a result of implementing and executing projects/schemes through an entity or department which the law does not sanction."]

Hence, in view of the above facts & circumstances & by taking guidelines from the aforementioned Judgment, the Chief Secretary, Government of Sindh and the Secretary, Schools Education Department shall ensure that the NAB officer is *repatriated* to his parent department within ten (10) days, *without fail*. It is further directed that the vacant post be filled by an officer of impeccable integrity, specifically a **CSS officer**, being well-acquainted with the education sector, & should possess a thorough understanding of the unique challenges faced by Sindh's Education Sector, including but not limited to regional disparities in educational access, literacy rates and infrastructure development. The compliance report shall be submitted before the next date of hearing through learned Additional MIT-II without fail, else the delinquents will expose themselves for the proceedings against them for the willful defiance of this Court's order, as per relevant contempt of court laws.

8. It is also pertinent to mention here, that within the Education Department, there is a separate wing of Education Works Department. *Despite this*, all JICA projects have been assigned to Contractor Maqbool. Hence, the record shall be placed before this Court with regard to the tendering process of the subject works awarded to the contractor for the buildings under the JICA scheme and the participation of Contractor Maqbool within the SPPRA Rules. Needless to mention here, that this court has already given such directions at its Sukkur Bench, while hearing a constitutional petition, bearing C. P. No. D-372 of 2023, vide order dated 13-03-2023, that all public works will be procured through *e-tendering process* in future, the relevant part of the order is reproduced herewith;

"After hearing learned counsel for the parties, learned counsel for the petitioner is satisfied that if Chief Secretary Sindh is hereby directed that

all departments of Province of Sindh with regard to e-tendering and e-bidding process/system including Public Health Engineering Department and Local Government and they shall switch from manual to e-Tendering and e-bidding as adopted in Khyber Pakhtun Khuwah and Punjab.

*On this learned Additional Advocate General Sindh agreed. Accordingly, this petition is disposed of and Secretary Public Health Engineering Department and Secretary Local Government, **Secretary, Education (Works) as well as Chief Secretary Sindh** shall ensure mechanism of e-tendering and e-bidding system in upcoming all projects / contracts as within the same spirit as applied in Khyder Pakhtun Khuwah and Punjab. Office is directed to communicate copy of this order to learned Additional Advocate General Sindh as well as Chief Secretary, Government of Sindh for compliance."*

9. It has further come on record that the soft project is meant for digitization and monitoring. However, despite receiving millions of Dollars and Euros, the Education Department is unable to compile a computerized record or develop any computer applications. *Candidly*, to circumvent the law, rules and due process, the entire Education hierarchy has been bypassed by creating different projects, running in parallel to the Education Department for all such foreign funded projects and purposes. Therefore, Judicial propriety demands that a complete record of the last eight years shall be audited by the Auditor General of Pakistan and the Secretary, Schools Education Department shall provide complete details of funds received and utilized for the last eight years in all such foreign funded projects to the Auditor General of Pakistan within one month from the date of this order. *Further*, the Secretary Education shall submit the reasons necessitated to opt for separate projects, while bypassing the Education Works and other Education hierarchies by the officers who have no nexus with the Education Department as millions of dollars, euros and Japanese currency have been left at their mercy and apparently there is no fruitful result so far achieved of these projects. Therefore, the Chief Secretary Sindh shall refer this matter to CMIT-I, headed by Dr. Shireen Narejo, who shall examine the illegalities and irregularities committed, in the said projects, in accordance with law and shall refer the matter to the concerned authority as per the mandate of the CMIT. A report shall be submitted before this Court as well. **This exercise shall be completed within two months positively.**

10. The Project Director of RSU contends that they have initiated several programs to establish digital natives. *Accordingly*, complete details of breakup shall be provided with regard to laptops distributed in the whole Sindh in the

last ten (10) years. The Secretary, School Education shall also place a breakup of laptops provided by the Province of Punjab in the last ten years.

11. It has further come on record that there are stipends to the girl students up to the matriculation level but they are not connected with NADRA. Though, this Court at Sukkur Bench in C. P. No. D-42 of 2023, while passing order dated 26-01-2023 has already issued such directions to the Education Department. The relevant paragraphs of the said referred order are reproduced here:

“Secretary, Education and Literacy Department, Government of Sindh, present contends that they do not have computerized records of all schools as there are about 4.7 million students. In our opinion the reason put forth by the Secretary Education and Literacy Department, Government of Sindh, showing his inability to update the record is a lame excuse. Non-availability of infrastructure is also a wrong statement on his part. It is wrong because there are various channels from where the exact computerized record of all schools and students can be obtained. And if it is so then the element of ghost schools, ghost teacher and ghost students cannot be eliminated because the funds (SMC Funds), maintenance funds of schools, salaries of the teachers and the funds in different heads including the funds for the students are allocated and released. It is very simple that the computerized record of the schools can be obtained from District Accounts Officers.

The Secretary Education further contends that they don't have infrastructure to update the record. This contention of the Secretary Education is again wrong and a lame excuse. It is beyond our mind that what kind of infrastructure is required to him for updating the record especially when the Education Department is equipped with modern devices. Besides this, the Education Department Government of Sindh, in every district introduced a system of monitoring the schools through Monitoring Officers, Monitoring Assistants headed by Chief Monitoring Officers and this system is still going on. Through these monitoring officials the education department can collect the required data within one visit of the schools. The Education Department has allocated a SEMIS Code to every school and through this code actual required data can be collected.

On administrative side, the education system in the province is dealt with/managed in the following manner.

- At school level (Primary, Elementary, Secondary & Higher Secondary) by Head Masters/Head

Mistress and Principals.

- Supervisors control some of the schools.
- TEOs are the controlling authority of the schools at Taluka level.

At District level.

- Assistant District Education Officer (Primary & Secondary)
- Deputy District Education Officer (Primary & Secondary)
- District Education Officer (Primary & Secondary)

At Division level.

- Assistant Director
- Deputy Director.
- Additional District.
- Director.

At province level.

- Deputy Secretary.
- Additional Secretary.
- Secretary.

If all the above officers & officials up to the Director level shall work on this issue sincerely, honestly and efficiently then this task can be completed hardly within a month. In the offices of District Education Officers and Directors, modern devices are available, and if by using these modern devices the data is transferred to Secretary level, the compiling of data of students is not a hard task and this practice will make the Secretary Education enable to submit the same before this Court on next date of hearing.

The Secretary Education Department is strictly directed to collect the data of all schools and the enrolled students through Monitoring Officers or the officers of the Education Department at District and Divisional level within a month and submit positive report. He is informed that no lame excuse will be acceptable in this regard.

The Secretary Education has further contends that there is difficulty as major of the students or their parents are not in a position to provide B-Forms and unless B-Forms are available with the school administration to maintain the computerized record wherein survey of actual pupils and to

check out duplication, same cannot be compared with education provided by the SEF. While pointing out such a difficulty, the Secretary Education has completely eliminated the G.R. Registers, because at the time of admission of students an admission form is filled up by the parents or the Head of the school. This admission form contains different information but no one took pain to maintain the proper record of the students and whatever oldest admissions forms are still being used for admissions of the students in the schools. Besides this every citizen is having his CNIC and in such a situation preparation of B Form is not a hard task. It is not clear whether any effort has been taken to collect the B Form from the parents. If it is demanded, we think more than half of the parents or students shall submit the B Form immediately and it will be helpful for maintaining the computerized record and survey of the actual pupils. This practice will also eliminate the duplication of the students in the Government schools and SEF."

Hence, in view of the above, the Secretary Schools Education is again strictly directed to comply with the directions and ensure that from **January-2024** all stipends shall be provided with the name & parentage of the students in the account of the parents of all the girl students and such MoU shall be signed with the NADRA. This exercise shall be completed within two months without fail.

12. *Being a part heard*, to come up on 23rd November 2024 at 11:00 a.m. for further hearing.

13. The *learned Additional MIT-II* shall ensure compliance with the order in letter & spirit.

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