

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Constitution Petition No.D-354 of 2024
(Old C.P. No.D-1808/2016/Hyderabad)
(Mumtaz Ali Vs. Province of Sindh & others)

Constitution Petition No.D-507 of 2024
(Ghulam Nabi Meo Vs. Province of Sindh & others)

Constitution Petition No.D-288 of 2024
(Mir Tarique Khan Talpur Vs. Province of Sindh & others)

DATE ORDER WITH SIGNATURE OF JUDGE

Before:

Adnan-ul-Karim Memon, J.

Amjad Ali Bohio, J.

Date of hearing & Order 23.09.2024

Petitioner Mumtaz Ali Jarwar advocate in person

Petitioner Ghulam Nabi Meo advocate in person

Petitioner Mir Tarique advocate in person

Mr. Abdul Rauf Arain, advocate for respondents No.08 to 10 (C.P No.507/2024) & respondents No.2 to 10 (C.P No.354/2024)

Mr. Jamshed Locus Khokhar & Muhammad Ali advocates for intervener Shafique Ahmed (C.P No.507/2024)

Mr. Riazat Ali Sahar, advocate for interveners Khateeb Ahmed & Tanweer Ahmed in (C.P No.507/2024)

Mr. Nisar G. Abro, Deputy Attorney General Pakistan

Mr. Niaz Hussain Mirani, Special Prosecutor NAB a/w Deputy Director/Investigation officer NAB

Mr. Ayaz Ali Rajpar, Additional A.G Sindh a/w Fahad Karim Assistant Engineer, Assistant Commissioner Mirpurkhas (on behalf of Deputy Commissioner and Commissioner Mirpurkhas) & Safdar Shah Assistant Engineer, Public Health Engineering, Mirpurkhas.

ORDER

Adnan-ul-Karim Memon, J.

The petitioners have brought the captioned petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 seeking directions to official respondents to ensure proper drainage & sewerage, lift garbage, repair roads/streets, and in all, develop the Mirpurkhas Municipal Corporation and details of the budget/funds, either received or generated and utilized for last six years over development/improvements or repair (s) of schemes. The petitioners also seek directions to the respondents for the reconstruction of Walkart-Mir Sher Muhammad Khan Talpur road. They also seek direction to the official respondents to complete the Mirpurkhas Mega Project for a permanent sewerage/drainage system for Mirpurkhas

to avoid damage/loss of the public at large and of their properties and other ancillary issues.

2. Learned counsel for the petitioners inter alia contends that the Municipal Corporation Mirpurkhas is failing to fulfill its legal responsibilities, leading to a Mirpurkhas city engulfed in garbage and overflowing drainage. This contamination has forced residents to drink polluted water due to interconnected drainage and water lines. Despite being a divisional headquarters, Mirpurkhas has suffered from mismanagement of allocated funds, resulting in public inconvenience and hardship. Local officials are not adhering to legal procedures.

3. The petitioners seek a writ of mandamus to compel the Municipal Corporation Mirpurkhas to provide basic amenities to the Mirpurkhas city's residents. It alleges that the Mirpurkhas Municipal Corporation has failed to fulfill its legal obligations, resulting in a significant deterioration of the city's infrastructure and living conditions. The petitioners submitted that the right to basic amenities is a fundamental right of all citizens, and this Court should not hesitate to issue orders to compel authorities to perform their duties and take accounts of the funds used by the public functionaries, but the same has been misused and misappropriated to cause loss to the public exchequer and illegal gain to themselves. They also request an investigation by the National Accountability Bureau (NAB) into the allocation and utilization of funds allocated to Mirpurkhas Municipal Corporation, over the past decade, suspecting potential misuse or corruption by the official respondents in the discharge of their respective duties and this was the reason this court vide order dated 26.03.2024 directed NAB to submit its report and in pursuance of the aforesaid directions, the investigating officer has filed a progress report from time to time and the last report, which reads under;

PROGRESS REPORT

1. **Laboratory Testing of Materials Used:** The undersigned has engaged representatives from Mehran University of Engineering and Technologies Jamshoro Sindh and they have collected onsite samples of the concrete cores from RCC Nala, a Sample of core from Roads, and a sample of Pever form Road. The representative of Mehran University, Mr. Samar Hussain, Asst. Professor Civil Engineering Department has requested one week for the submission of the Laboratory Testing Report.(Annex1)

2. Independent Detail Report from Office of Assistant Engineer, Public Health Engineering Department (PHED): Syed Safdar Ali Shah, Asst. Engineer PHED has submitted his detailed report wherein he has identified that works amounting to Rs. 458.013 million mentioned in PC-1 but work has not been done on-site. (Annexure-ii). Details of these works are as follows:

Detail Of Component In Pc-I But Not Work Done At Site	
1. Disposal Work	
A.	
A. Khipro Chowk (O.B.P) Rs:15.707(M)	
B. Nawab Colony Rs:4.589(M)	
C. Comprehansive Disposal Rs:48.912(M)	
Total Rs: 69.208(M)	
2. Raising Main	
a. 630 MM P.E PIPE Rs: 117.633(M)	
b. 560 MM PE PIPE Rs: 162.248(M)	
Total Rs: 69.208(M)	
3. Land acquisition Rs: 11.250(M)	
4. Semi Covered S/Drain Rs:7.770(M)	
5. Railway Crossing Rs: 7.770(M)	
6. Grit Chamber Rs:12.584(M)	
7. Hesco Connection Rs: 4.000(M)	
8. 2% Contingencies Rs: 21.999(M)	
9. 1% 3 Rd Party Validation Rs: 21.999(M)	
Total Rs: 458.013(M)	

3. Independent Report from Mr. Imran Shams, Ex-Engineer-Pakistan Works Department (PWD): NAB-k has initiated a letter to the Chief Engineer-PWD requesting for final submission of the report. The office of PWD has replied through their letter dated 13 September 2024 that, the final report will be submitted after incorporation of the results of Material testing.

Summary of Actions			
	Action initiated	Remarks	
1	Laboratory Testing Materials Used:	The representative has requested one week time to submit the report	Annexure-1
2	Independent Detail Report from Office of Assistant Engineer, Public Health Engineering Department (PHED)	Assistant Engineer has submitted his report highlighting a loss of Rs.458.013 Million where the work was mentioned in PC-1 but not executed on-site	Annexure-2
3	Independent Report from Mr. Imran Shams, Ex-Engineer-Pakistan Works Department (PWD): Mr. Imran	Executive Engineer has requested time for submission of his report	Annexure-3

	Shams	based on the findings of Laboratory Testing	
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5. Mr. Riazat Ali Sahar, advocate representing interveners, argues that this court should be cautious of frivolous Public Interest Litigation (PILs) that are not truly in the public interest or related to fundamental rights. PIL should be a tool for social justice, not a weapon for personal gain or publicity, as portrayed by the petitioners. The court must ensure that petitioners are acting in good faith and not for personal motives. Frivolous petitions should be rejected with exemplary costs. Learned counsel argued that the present petitions do not disclose any valid cause of action and appear to be nothing more than an attempt to seek publicity. So far as the role of NAB is concerned, he argued that the present petitions cannot proceed, and, no direction could be issued to NAB because the National Accountability Bureau (NAB) is not the party in the present proceedings. He emphasized that this court cannot order an investigation based on purported allegations in the petitions without NAB being a party. The learned counsel argued that courts have no power to determine if government actions are lawful. Learned counsel submitted that there is a difference between judicial review (checking if actions follow the law) and judicial overreach (exceeding legal authority). Judicial overreach happens when courts encroach on the executive's domain. As per learned counsel, this case falls within that ambit, if directions continue to happen. On the role of the investigating officer, he has stated that the Investigating Officer (IO) mainly collects evidence and presents it to the court. He is not an expert in the field, like issues involved in the present case. So, his opinion might not be admissible in court for matters requiring specialized technical knowledge, which he failed to collect to date. Therefore, the direction to the Investigating Officer NAB to hold an inquiry into the Megaproject of Mirpurkhas was/is unclear, as it might influence his independent investigation. However, he agrees that an independent inquiry is necessary, without being influenced by the court's orders. In support of his contention, he relied upon the case of Mian Irfan Bashir Versus Deputy Commissioner Labore [PLD 2021 SC 571], Rana Shahid Ahmed Khan Vs. Tanveer Ahmed [2011 SCMR 1937], Hidayatullah Versus Deputy Inspector General of

Balochistan 2021 P.Cr.L.J 1079, Abdullah Jumani Vs. Province of Sindh [2024 SCMR 1258] and Muhammad Shoaib Vs. The State [2022 P.Cr.L.J 1564]. He prayed for the dismissal of these petitions as being not maintainable under the law.

6. We have heard learned counsel for the parties on the subject issue and perused the record with their assistance and case law cited at the bar.

7. There is no cavil to the proposition that this court has no jurisdiction to take suo moto action under Article 199 of the Constitution. However, the Supreme Court of Pakistan held in the case of Divisional Superintendent, Postal Services, Gujranwala and another vs. Muhammad Arif Butt (2021 SCMR 1033) that any government servant who misappropriates public money, regardless of the amount, has breached the trust and confidence placed in them. This is considered dishonesty and misconduct, and such an employee has no place in government service. It is well-settled that based on sheer technicalities, the persons cannot be exonerated from serious charges of misappropriation and fraud, if any, and that needs proper inquiry and investigation by the investigating agency to unearth the truth for placing the same before the competent Court of law. Therefore the titled Constitution Petitions are maintainable on various accounts, Articles 9 (security of person), 14 (inviolability of dignity of man), 24 (protection of property rights), and 25 (equality of citizens) of the Constitution and affecting the public at large because unlawful diversion of State resources from public development projects to private use leads to poverty, declining quality of life and injustice, as such these petitions can be heard and decided on merits.

8. However, in this public interest case, NAB does not need to be a party in the proceedings as there are no allegations against them and this court can direct investigations into public funds misuse as the High Court is the guardian of fundamental rights of the citizens of the country and can order investigative agencies to probe such matters if there appears something fishy on the part of public functionaries. Besides amendments to the NAB Ordinance aim to ensure accountability for elected personnel and public servants by moving investigations and inquiries to the specific nature of the alleged offense and the rank of the accused. This approach aims to prevent undue prejudice to the interests of those involved while allowing investigations to proceed to their logical conclusion. Therefore,

the interveners' submissions are rejected as we do not find any judicial overreach on the subject issue, or interference in the domain of the executive, as portrayed by the interveners.

9. The investigating officer present in Court is given a final two-week extension to conclude the inquiry, identify responsible persons for the scam, if any, and submit findings to the appropriate authority for appropriate action as per law. The earlier orders passed by this Court in the subject petitions shall remain operative and compliance be made accordingly; and, such reports shall be filed by the concerned departments through the Additional Registrar of this Court for our perusal in chambers.

10. In view of the above, these petitions stand disposed of with directions to the Investigating Officer to independently probe the allegations as discussed in the preceding paragraphs, and submit his report accordingly, without being influenced by the observations of this Court. Let the copy of this Order be communicated to all concerned for compliance.

JUDGE

JUDGE

"Ali Sher"