

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No.D-539 of 2025

Before:

Mr. Justice Zulfiqar Ali Sangi;

Mr. Justice Abdul Hamid Bhurgri.

Petitioner : Mst. Naheed Bibi alias Rozina Begum,
Through Mr.Imtiaz Ali Abbasi, Advocate.

Respondents 1to4 : Province of Sindh and others,
through Mr.Zulfiqar Ali Naich,
Assistant Advocate General Sindh.

Respondents No.5&6 : M/s RCC Consultant, Hyderabad & another
Through Mr. Rehmat Ali alias Raza Ali
Shaikh, Advocate.

Date of Hearing: 30.05.2025.

Date of Order. 30.05.2025.

ORDER

Zulfiqar Ali Sangi, J,- The petitioner who is a proprietor of M/S Reliant Trade Link having its office located at Queen's road Sukkur doing the business of construction, builders, government contracts related to allied works lines work. Petitioner also worked on a private sector filed this petition stating therein the work of construction of manhole/sewerage system, Septic Tank and pump room at deh Luqman Khairpur under respondent's department/housing cell namely Shaheed Mohtarma Benazir Bhutto housing cell as per work order No.SBBHC/DL/Add.Work/5362/2016 dated 28.09.2016, with another work for installation of electric poles and lines were given to petitioner vide permission letter dated 29.11.2017, petitioner completed the work without any complaint from any corner. The consultancy services of respondent No.5 were hired by the respondents No.2 to 4 for the purpose of smooth work. After completion of work bills were verified and they were transmitted onward to the respondents No.2 to 4 after recording of measurement in the MB book for payment to the petitioner. It is further averred in the petition that the respondent No.5 & 6 who looked after this project for execution of work on behalf of the respondents No.2 to 4 had verified the bills and forwarded to the respondent No.2 to 4 for the purpose of payment. Through letter dated

27.11.2017 the respondent No.5 shown his apprehension regarding falling down of newly constructed boundary wall consisting of 333 running field due to poor work conducted by M/S Saqib Rasheed and Co, on the same site. The petitioner was directed to work for earth filling outside of that boundary wall which he completed and respondent No.3 used to visit that area. After completion of work the petitioner submitted a final bill through invoice amounting to Rs.15,793,598/00 (One Crore fifty seven lacs ninety three thousands five hundred ninety eight rupees only) before the respondent No.5, he verified the same and forwarded to respondents No.2 to 4. The respondent No.5 approved the payment of Rs.12,449,652/- vide letter dated 07.05.2018. After completion of work the petitioner wrote letter dated 01.07.2018 to the respondents for handing over the site after verification and proper checking the site was handed over by the petitioner to the respondents project authority. The amount of Rs.7942139/66 were paid to the petitioner by respondents No.2 to 4 however, no intimation or reason were shown for non payment for remaining amount of Rs.7942139/66. That the petitioner had issued various letters for the outstanding amount to the respondents but they kept the petitioner on hopes. The respondents are malafidely avoiding the admitted claim of the petitioner despite all verification by the concerned respondents. Since the amount is admitted, the petitioner filed the instant petition with following prayers:-

- (a) *To declare the act of the Respondents No. 01 to 04 and 06 by not compliance the letter dated 07.05.2018 (Annex. "E") of respondent No. 05 and avoiding to make admitted claim of the Petitioner, is illegal, malafide and without any lawful authority.*
- (b) *To issued wire by directing to the Respondent No. 01 to 04 to make compliance of letter dated 07.05.2018 of respondent No. 05 and direct them to release the remaining amount/admitted claim of Rs.7,942,139/00, to the Petitioner, without any further delay with markup as per bank privilege rate if admissible by law from the date when the above amount for admitted payment was due till its payment by the Respondents.*
- (c) *To award the cost of this petition to the Petitioner.*

(d) *To grant any other relief in the circumstance of this case.*

2. The comments were filed by respondents No.5 and 6 which are reproduced as under:-

*"It is most humbly submitted before this Honorable Court that after going through the contents of the petition, that the Respondent No. 5 was engaged as Consultant by the Resp: No. 02 to 04 for the Execution of work for Development of Shaheed Benazir Bhutto Housing Scheme Deh Luqman Khairpur for Civil, Roads, Electrical, Water, Const: of sewerage works and construction of Boundary Wall at Deh luqman work Khairpur, therein the Petitioner M/s Reliant Trade Link Govt: Contractor Sukkur completed the works of Deh Luqman Project Khairpur and submitted the Final Bill with Approved Extra Work for Filling of Earth work outer wall of project adjacent to Rohri Canal Khairpur for protection of Wall of project, in which the petitioner claimed amount of Rs. 8335819/66 and the same was verified by us through Resident Engineer of Resp: No. 05 an amount of Rs. 7942139/66 and forwarded to the Resp: No. 03 & 04 for releasing of amount to the Petitioner through letter dated: 07/05/2018 annexure "E" of petition.
(Photo copy of Main Summary & Summary of Quantities are attached)*

It is further submitted that the releasing of payment is the duty of the Resp: No. 03 & 04 without any further enquiry or delay as the all bills were verified and scrutinized by the Resp: No. 05 & 06 as an consultant and as per work job for consultancy.

Further order of this Honorable court shall be complied forthwith.

3. The respondent No.3 also filed his comments in which he admitted the claim of petitioner. Regarding amount which has been paid to the petitioner, the respondent No.3 in his comments had stated that the amount has been released however, at the relevant time he was not posted as such he is unaware about the payment of petitioner's bill amount which according to him, the respondent No.3 and 4 had not recorded the measurement.

4. Heard learned counsel for parties. Petitioner's counsel stated that the claim is admitted by the respondents, they are ready to pay the amount subject to the condition that petitioner will not claim any further payment or payment on account of future amount over the verified bill. He stated on

behalf of petitioner that in case the respondents are ready to pay the amount within a reasonable time they will not claim the same. In the end he prayed that in view of admitted position this petition may be allowed.

5. Learned Assistant Advocate General though conceded that the claim is admitted but he relied upon the judgment of Honourable Supreme Court of Pakistan passed in Civil Petitions No.654-K along with other connected petitions. His contention was that the factual dispute cannot be decided in constitution petition hence, petition is liable to be dismissed.

6. We have heard learned counsel and perused the material and gone through the Judgment of Honourable Supreme Court of Pakistan relied upon by the learned Assistant Advocate General.

7. The amount is admitted by the respondent No.3 in his comments. In para No.7 of his reply, the respondent No.3 stated regarding already paid amount that MBs were not recorded by the respondents No.3 and 4. As per the petitioner the recording of measurement was the job of respondents No.5 and 6 which they have done and after that they issued a letter dated 07.05.2018 to the official respondents for release of the amount hence, the contention of respondent No.3 that amount was not verified by the respondents No.3 and 4 is misconceived for the reason that it was duty of respondents No.5 and 6 and after recording of MB's they have issued a letter for release of amount and for seven years the respondents failed to pay the admitted amount.

8. Now adverting into the point raised by learned AAG regarding the maintainability of the petition on the ground that these are contractual obligations and factual controversies are involved in the petition and in this regard he relied upon the judgment of Honourable apex Court mentioned supra.

9. We have gone through the judgment of August Supreme Court of Pakistan, the relevant para No.4 of the judgment is reproduced as under:-

“4. In this view of the matter where the factual controversy has arisen as to whether the work has executed or otherwise it is settled position in law that such matter involving factual controversy cannot be decided in exercise of writ jurisdiction. The learned bench of the High Court erred in overlooking the

comments and denial by the respondents regarding completion of the work in respect of the respondent before this Court. In such like matters merely obliging statement either of concerned officer or law officer should be viewed with caution when in reply to paragraphs No.2 & 4 of the petition it was specifically denied that "It is submitted that the petitioner started the work at the level of earth work, thereafter the donor agency freeze the funds as such the remaining construction work is lying abandoned", therefore, the impugned judgment cannot be sustained. Accordingly, all these petitions are converted into appeals and allowed".

10. From the perusal of above para it is clear that in the above petition the respondents have denied the assertions and submitted that the petitioner started the work at the level of earth work thereafter donor agency frozen the funds as such remaining work is lying abandoned, therefore, the impugned judgment was set aside. In the present matter this is not the situation where the respondents have denied the claim of petitioner. This is an admitted claim and in case law relied upon by the learned AAG, the respondents have denied the claim of the petitioner and further raised some factual controversies hence, in our humble view the ratio of above judgment does not apply to the facts of this case as the facts of this case are different.

11. In view of the admitted portion of the liability and in the absence of any dispute regarding the execution of the work, there appears no justification to drive the petitioner to cumbersome and time consuming process of civil litigation merely to recover admitted dues. Such a course would not only burden the courts unnecessarily but also amount to unjust enrichment on the part of the public authority if payment is late without lawful justification.

12. It is settled principle that where there is liability admitted, the government is expected to act as a model litigant and honour its obligation without compelling citizens to seek redress through protracted legal proceedings. It is also worth to mention that it is likely that in case the petitioner approached the civil court he might claim the damages or interest over the admitted amount and the official respondents might be burdened upon the interest on the admitted amount. It will be even in the interest of government to pay the admitted amount without any further

liability in order to avoid such situation and save the public exchequer. This Court is, therefore, of the view that the admitted portion of the claim should be paid forthwith. Directing the petitioner to approach the civil court to recovery an acknowledged liability would be contrary to the settle principle of justice, equity, and good governance.

13. In view of the above the petition is allowed. The respondents are directed to ensure the payment of admitted amount of Rs.79,42,139/- to the petitioner within 60 days.

The petition is disposed of in view of the above terms.

Judge

Judge

ARBROHI