

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Const. Petition No.D-1347 of 2009

Date of hearing	Order with signature of Judge.
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For Directions

For hearing of CMA 7733/23(C/A)

Before:

Mr. Justice Zulfiqar Ali Sangi

Mr. Justice Riazat Ali Sahar

Mr. Sohail Ahmed Khoso, Advocate for the Petitioner.

M/s Mukesh Kumar G. Karara and Sheeraz Fazal, Advocates for contractor Imdad Ali Mangi.

Mr. Ali Raza Baloch, Additional A.G-Sindh along with Sarmad Ali Shah, Executive Engineer, Provincial Highways, Khairpur.

Mr. Mujeeb-ur-Rehman Soomro, Special Prosecutor, NAB, Sukkur.

Date of Hearing: 24-09-2025

Date of Decision: 24-09-2025

ORDER

RIAZAT ALI SAHAR J., This matter was previously disposed of by this Court through an order dated 25-11-2015. At that time, directions were issued to the respondents to ensure that the already-approved public scheme, which had been initiated but was subsequently suspended due to non-allocation of funds by the Finance Department, Government of Sindh, should be resumed within a reasonable period. The purpose of such directions was to avoid unnecessary revisions of the scheme which, in turn, escalate costs and result in wastage of public funds. The Court further observed that the Services and Works Department was under a legal and moral obligation to ensure completion of all public schemes strictly in accordance with the original plan, within the prescribed timeframe and cost estimates. It was underscored that adherence to this principle would not only safeguard the public exchequer from losses but also reduce the opportunities for corruption, thereby serving the interests of the general public who are the ultimate

beneficiaries of such projects. Relevant abstract of the order dated 25.11.2015 is reproduced as under:

“Accordingly, instant petition is being disposed of with directions to the respondents to ensure that already approved scheme, which according to learned counsel for the petitioner, was commenced and has been suspended on account of non-allocation of funds by the Finance Department, Government of Sindh, shall be resumed within a reasonable time to avoid revision of such scheme, which increases its cost and there is loss of public exchequer. It is expected that Services and Works Department shall ensure that all schemes relating to public works shall be completed as per original plan, without sending the same to revision on account of non-allocation of funds, within the prescribed time so that there shall be no loss of public exchequer, whereas, all the public schemes shall be completed within stipulated time as per original cost, which will not only eliminate the corruption but will also facilitate the public at large, who are the ultimate beneficiaries of such public scheme. The respondents will further ensure that the budget already sanctioned for any public scheme shall be utilized for such public scheme within the given time frame and shall not lapse, so that the scheme may not be sent for revision”.

2. Despite the aforesaid directions, compliance was not forthcoming from the respondents. Consequently, the petitioner was constrained to file a contempt application, whereupon notices were issued to the alleged contemnors. On 16-03-2021, the Executive Engineer, Provincial Highways Division, Khairpur (Respondent No.5), appeared and submitted that permission was being sought to revise the scheme, and that completion would be ensured within one year thereafter. Subsequently, on 25-03-2021, the Chief Engineer, Provincial Highways, Sukkur, tendered an undertaking both on his behalf and on behalf of the Secretary, Works and Services Department, Government of Sindh (Respondent No.3), affirming that the scheme required revision but assuring that execution of the project would be finalized within one year without further delay.

3. Thereafter, on 28-02-2023, this Court directed Respondent No.3 to ensure release of funds upon completion of all codal

formalities, with a further command that no delay be occasioned and that the project be completed within eight months. Despite this, on 31-10-2024, Respondent No.5 submitted a detailed report attributing the delay to the contractor's default. It was further represented that, owing to escalation in costs, an additional sum of Rs.172.441 million was required to complete the scheme, whereas Rs.425.338 million had already been expended. Upon examination, however, this Court determined that the delay was attributable not to shortage of funds but to the negligence of the executing agency. Consequently, notice was issued to the contractor.

4. On 14-01-2025, Respondent No.5 filed statement and submitted that the scheme had not been completed due to the apathy and lethargic attitude of the contractor. Accordingly, Respondent No.5 was directed that if the contractor failed to expedite the work, his contract should be cancelled and security forfeited. Subsequently, on 15-04-2025, this Court noted that Respondent No.5 had earlier disclosed, through a statement dated 18-02-2025, that the contract awarded to M/s Imdad Ali Mangi & Co. had indeed been rescinded pursuant to office letter dated 17-02-2025 in consequence of the Court's earlier order. However, on 15-04-2025, Respondent No.5 produced yet another statement, accompanied by site photographs, showing that the same contractor had resumed operations and was close to completing the outstanding works.

5. In these circumstances, this Court deemed it appropriate to direct the Director General, NAB Sukkur, to undertake an inquiry. The NAB authorities were specifically mandated to verify the relevant official record, to assess the actual physical progress achieved at the site, to examine the payments already released to the contractor, and to determine whether the scheme in question had been formally revised at any stage. They were further required to evaluate whether any financial detriment had been occasioned to the public exchequer as a consequence of negligence, omission, or wilful

misconduct on the part of either the contractor or the responsible government functionaries.

6. In compliance with the aforesaid directions, NAB submitted a progress report dated 02-09-2025. In the said report, it was inter alia disclosed that the contractor, actuated by mala fide intent, had deliberately procrastinated the execution of the project, thereby causing escalation in the overall cost and inflicting avoidable loss upon the exchequer. It was further noted that a sum of Rs. 307 million had already been disbursed to the contractor, notwithstanding that deficient and non-compliant materials had been utilised in the sub-base and base course, which inevitably led to the premature deterioration of the road structure.

7. Learned Prosecutor representing NAB submitted that in the discharge of their public duty and in obedience to the order of this Court, the Bureau had undertaken a comprehensive and painstaking inquiry, devoting their efforts to presenting a factual and accurate picture of the scheme. The report so submitted, therefore, represents the reality of the matter as uncovered by NAB.

8. Today, learned counsel for the contractor submits that, due to unavoidable and compelling circumstances, the contractor had been unable to achieve timely completion of the project. It is, however, contended that a substantial portion of the work had been executed and only the final layer of asphaltting remained outstanding. The contractor sought permission to resume and finalize the remaining tasks within two months, subject to the withdrawal of the letter dated 17-02-2025, whereby his contract had been rescinded by Respondent No.5. When confronted with the report of the NAB authorities highlighting the use of deficient and non-compliant material in the sub-base and base course, which has resulted in premature deterioration of the road and consequent loss to the national exchequer, learned counsel for the contractor submits that the contractor shall rectify the same prior to completion of the remaining work at the site.

9. Learned Additional Advocate General, appearing along with the officer in attendance, submits that the contractor has willfully delayed the execution of the scheme, resulting in an escalation of the contract cost and causing loss to the public exchequer. He further submits that a substantial amount of Rs.307 million was paid to the contractor for the deficient and non-compliant materials, used in the sub-base and base course, which led to the premature deterioration of the road.

10. Learned counsel for the petitioner, however, submits that the scheme has remained pending for an inordinate long time, which has adversely affected both the timely completion of the project and the public interest at large. He emphasizes that the scheme is of significant importance and is currently ongoing; therefore, it must be brought to its logical conclusion without any further delay, so as to avoid additional cost escalation and further hardship to the intended beneficiaries.

11. Having given anxious consideration to the submissions advanced on either side, and bearing in mind that the scheme in question is presently subsisting and yet to reach fruition, we are persuaded to hold that its abrupt disruption at this juncture would run counter to the broader dictates of public interest. The guiding maxim *salus populi suprema lex*—that the welfare of the people is the supreme law—compels this Court to prioritise the completion of a project conceived and financed for the benefit of the community at large. It must, therefore, be underscored that the latitude extended to the contractor is not intended as an act of personal indulgence or concession to his defaults, but arises as a necessity demanded by the higher cause of safeguarding the welfare of the intended beneficiaries and avoiding further waste of public funds. The relief accorded thus stands firmly anchored in the paramount interest of the public, and not in any claim of entitlement on the part of the contractor.

12. It must also be underscored that schemes executed out of the public exchequer are not mere contractual ventures but constitute a trust reposed in the State by its citizens. The doctrine of public trust obliges all organs of the Government, as well as contractors engaged therein, to ensure that such projects are completed with due diligence, transparency and fidelity to the original design and cost. Any deviation, negligence, or misuse of funds not only burdens the treasury but also offends the constitutional guarantees of good governance and accountability enshrined in Articles 4 and 5 of the Constitution of 1973. Hence, strict adherence to timelines, quality standards, and financial discipline is imperative, failing which both the executing agencies and the contractor shall render themselves responsible.

13. Since the subject scheme is ongoing, we are not inclined to disrupt it in the interest of the general public. Accordingly, Respondent No.5 is directed to forthwith withdraw his office letter dated 17-02-2025, whereby the contract of M/s Imdad Ali Mangi & Co. was rescinded, and to permit the said contractor to resume and complete the remaining works at site. The contractor shall complete the scheme within two months, without any further delay, and after rectifying the deficiencies highlighted by the NAB authorities in their report dated 02-09-2025 regarding the use of deficient and non-compliant material in the sub-base and base course, as undertaken by him. It is made abundantly clear that no payment shall be released until completion of the entire scheme. Upon such completion, Respondent No.5 shall inspect the work, and payment shall only be released upon satisfaction as to its quality and conformity with specifications, strictly in accordance with law and for the work actually executed. Furthermore, it is directed that, if deemed necessary, the site may be subjected to third-party inspection for independent verification. It is also made clear that the scheme shall not be revised.

14. At the same time, it is imperative to emphasise that the responsibility for timely and proper execution of public schemes does not rest upon the contractor alone. The concerned government functionaries are duty-bound to exercise vigilant supervision and to ensure that the work is carried out strictly in accordance with the specifications and within the prescribed timeframe. Any future lapse, negligence, or connivance on the part of such officials shall expose them to strict departmental action, and in appropriate cases, to proceedings for contempt of Court, as this Court cannot allow public interest to be jeopardised through inaction or collusion by those entrusted with safeguarding it.

15. Before parting with the observations regarding NAB's inquiry, it is apposite to clarify that although the pecuniary jurisdiction of NAB has been curtailed by virtue of recent statutory amendments, this Court, while exercising its plenary constitutional jurisdiction under Article 199 of the Constitution, remains fully empowered to call for reports and seek assistance from any agency or authority wherever the utilisation of public funds and the rights of citizens are involved. The inquiry conducted by NAB in the present case is, therefore, not to be viewed through the narrow prism of statutory competence, but rather as a fact-finding exercise undertaken pursuant to the directions of this Court in aid of justice, so that a true and fair picture of the scheme may be brought on record. Accordingly, the NAB's inquiry may be undertaken at an appropriate stage, subsequent to the completion of the work by the contractor and upon submission of reports by Respondent No.5 and the contractor.

16. In view of the above, pending Miscellaneous Application (CMA 7733 of 2023) is **disposed of**. The compliance reports shall be submitted by Respondent No.5 as well as the contractor after expiry of two months through Additional Registrar of this Court.

JUDGE

JUDGE

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