JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.1681 of 2020

Sardar Muhammad Ashraf D. Baloch (Pvt.) Ltd.

Versus

National Highway Authority and another

Petitioner by:	Mr. Babbar Ali Khan, Advocate.
Respondents by:	Mr. Nadeem Hasan, Advocate.
Assisted by:	Muhammad Yahya Khan Niazi and Muhammad Fahad, Advocates.
Date of Hearing:	**17.09.2025.**

INAAM AMEEN MINHAS, J.- Through the instant writ petition, the petitioner seeks declaration that the recovery made by the respondents/National Highway Authority **("NHA")** from the petitioner based on audit objection is illegal and such amount be reimbursed with immediate effect.

2. The brief facts of the instant writ petition are that the petitioner, a private limited company, participated in the bidding process conducted by NHA for the construction of the Gwadar–Ratodero Road Project (M8), Section-1, Gwadar–Turbat–Hoshab, Package IIB-9 **("Project Works")** and emerged as the lowest bidder with an amount of PKR 1,699,950,568/-, as conveyed through NHA's Letter of Acceptance dated 02.07.2004. Pursuant thereto, a performance guarantee was furnished on 27.07.2004 and a contract was executed between the petitioner and NHA on 03.08.2004. Owing to certain circumstances (which are not relevant to the present proceedings), a meeting was convened on 21.05.2013, attended by representatives of NHA, the engineers of the relevant projects, the petitioner and another contractor, in which it was decided that the petitioner would be amicably released from the

UNCERTIFIED

performance of its obligations under the Project Works in terms of clause 66.1 of the General Conditions of Package IIB of the contract. Thereafter, the petitioner received a letter dated 17.06.2013 stating that the petitioner would be released from the performance of the contract after carrying out joint measurements of the leftover work. On 02.07.2013, NHA sent another letter to the petitioner that it is now entitled to remove his equipment from the site as it has been released from performance due to unavoidable circumstances.

3. Subsequently, the Resident Engineer, vide letter dated 29.05.2014, informed the petitioner of certain audit objections and audit paras pertaining to the petitioner's section of the Project Works raised by the audit authorities. Following its release from contractual obligations, the petitioner addressed a letter dated 03.06.2014 to NHA, seeking release of the amounts due to it under the last interim payment certificate, the escalation payment certificate and the interest accrued thereon. Thereafter, the petitioner, vide letter dated 19.06.2014, intimated NHA that no recovery could be initiated on the basis of any audit report without due notice to the petitioner. Subsequently, the Resident Engineer vide letter dated 03.07.2014 informed the petitioner that an amount of Rs.177,689,513/- had been recovered from the petitioner pursuant to DAC directives issued against the audit para and that the case had been forwarded for further processing. The petitioner, vide letter dated 14.10.2019, which is stated to have remained unanswered till date, informed NHA that recoveries founded upon unilateral internal audit process are without legal authority but to no avail, hence, this petition.

4. The learned counsel for the petitioner contended that NHA's recovery, made without prior notice or any meaningful opportunity of hearing, is patently illegal and is in violation of the petitioner's fundamental rights under Articles 2-A, 4, 5, 10-A, 18 and 25 of the Constitution; that no justification was provided for the impugned recovery, in disregard of the statutory duties under section 24-A of the General Clauses Act, 1897; that the confirmed minutes dated 07.03.2014 themselves recognize that audit proceedings must remain within the contractual framework and require that contractors be informed and allowed to contest audit observations, yet NHA failed to adhere to this policy;

UNCERTIFIED

that deductions made pursuant to audit directives, without hearing the petitioner, breach the principles of natural justice and leave the petitioner condemned unheard and NHA's exclusion of the petitioner from the audit process, coupled with lack of due diligence, renders the recoveries irrational, disproportionate and suggestive of extraneous considerations; that no adequate alternate remedy exists, therefore, this writ petition may kindly be accepted and the impugned recovery may be declared illegal and without lawful authority.

5. The learned counsel for NHA contended that the relationship between the parties is purely contractual spanning from 2004 to 2013, during which external audits were conducted in 2005–2006, 2010–2011 and 2013–2014; that pursuant to 2013–2014 audit conducted by the AGPR, an observation, of which the petitioner was duly informed, kept on board throughout and provided with details of all audit paras from 2005 to 2014; that an amount of Rs.138 million was assessed as recoverable, though insufficient retention money resulted in an outstanding balance still due; that the amount stated by the petitioner as recovered is incorrect; that the petitioner issued a legal notice on 08.07.2014 alleging misconduct by NHA but it neither invoked arbitration nor initiated any legal proceedings until filing this petition in 2020; and that no stay order restraining NHA exists to date. Learned counsel also raised preliminary objections that no impugned order has been filed and no infringement of a legal right has been shown, thereby disentitling the petitioner to claim the status of an aggrieved person; that the petitioner has not alleged any violation of law, rather its grievance pertains solely to a contractual breach; that the petition is further barred by laches, as the petitioner was released from further performance under letter dated 17.06.2013 following a Board decision of NHA dated 21.05.2013.

6. I have heard the learned counsel for the parties and perused the record with their able assistance.

7. It is evident from the record that the instant matter pertains to NHA's deliberate action to effectuate the recovery from the petitioner pursuant to Audit Objection Para No. 4.4.10.7 (PDP #256) of 2013–2014. While

UNCERTIFIED

considering this background the question that arises for determination is *whether the impugned recovery is in accordance with the law?*

8. This Court shall first address the principal contention of the petitioner that the NHA effected the impugned recovery without making it a party to the audit objections, thereby violating the due process of law, which is a fundamental right guaranteed under the Constitution. While it is hard to exactly define the boundaries of due process, it can be safely said that due process embodies the fundamental rights, different rules of fair play, natural justice and other rights, which may be treated as fundamental, even though not enumerated in the Constitution. Whatever disagreement there may be as to the scope of "due process", there is no doubt that it embraces the fundamental concept of fair trial and opportunity to be heard.

9. It is settled law that every person is entitled to have due notice of proceedings, which effects his rights along with being afforded a reasonable opportunity to defend[1]. For its application, the rule does not depend upon whether the proceedings are judicial or quasi-judicial or administrative or quasi administrative. The rule applies to judicial as well as administrative bodies, especially where the proceedings taken may affect the person or his property[2].

10. It is evident from the record that the petitioner vide letter dated 19.06.2014, intimated NHA that no recovery could be initiated on the basis of an audit report without due notice to the petitioner and further reminded NHA of the instructions issued by its Chairman in the meeting held on 17.03.2014, with a delegation of the Constructors Association of Pakistan, in which among others one important factor discussed, was in relation to recoveries against the contractors based on audit reports and the fact that contractors are repeatedly left out of the loop, when audit objections directly affect recoveries against the contractors. It was decided that contractors would be made part of any audit objection and would be given a fair chance to defend any unilateral recovery made against them. The following is an excerpt from the minutes of meeting

---

[1] *Aftab Shahban Mirani vs. President of Pakistan, (1998 SCMR 1863); New Jubilee Insurance vs. National Bank of Pakistan, (PLD 1999 SC 1126)*

[2] *Rahim Shah vs. Chief Election Commissioner, (PLD 1973 SC 24); Raziuddin vs. Chairman Pakistan Airlines Corporation, (PLD 1992 SC 531)*

UNCERTIFIED

between NHA's Chairman and the delegation of the Constructors Association of Pakistan held on 07.03.2014:

> *"..henceforth contractor and consultant would be informed and taken onboard at early stage of audit objection and before admitting recovery to DAC/PAC, audit Paras would be discussed in an Internal Departmental Committee in which the concerned Contractor(s) would be given full & fair chance to defend the recovery."*

11. It is manifest from the record that the Resident Engineer, vide letter dated 03.07.2014 merely informed the petitioner that the impugned recovery has been made pursuant to DAC directives, issued against the audit paras and that the case has been forwarded for further processing. This contention wholly goes against NHA since mere intimation is not enough, the principle of natural justice demands a right to be heard. It is also evident that the impugned recovery against the petitioner was made without giving it a chance to defend or present its case. Moreover, the minutes of the meeting reproduced above unequivocally acknowledge that audit proceedings relating to public expenditure cannot be divorced from the contractual framework and that contractors must be informed and afforded a full and fair opportunity to contest any audit observations before the same are processed, yet NHA has failed to adhere to its own policy commitment and the deduction of amount pursuant to departmental audit directives, without hearing the petitioner, constitutes a violation of the principles of natural justice and renders the petitioner condemned unheard. Therefore, contention of the learned counsel for NHA that the petitioner was duly made aware of the audit objections vide letter dated 03.07.2014 is misconceived and wholly devoid of merits.

12. NHA can neither deviate from the requirements of law nor exercise administrative power in a manner inconsistent with Constitutional protections since the law demands that all state authorities must act fairly, justly and without arbitrariness or caprice. This Court observes that discretion in law is never unfettered and NHAs' refusal to involve the petitioner in the audit process, defeats the very purpose of transparency in public audit. The

UNCERTIFIED

Honorable Supreme Court in the case of *Hazara (Hill Tract)*[3] categorically observed that the principle of natural justice enshrined in the maxim *audi alteram partem* is one of the most important principle and its violation is always considered enough to vitiate even most solemn proceedings. It is appropriate to reproduce the reasoning below:

> *"This principle originates from Islamic System of Justice as evident from historical episode when Iblees was scolded for having misled Hazrat Adam (p.b.h.) into disobedience of Allah's command. Almighty Allah called upon Iblees to explain his conduct and after having an explanation from him which was found untenable, he was condemned and punished for all times to come. Thus, it is held that the principle of natural justice has to be applied in all kinds of proceedings strictly and departure therefrom would render subsequent actions illegal in the eye of law."*

13. The above referred reasoning reflects the importance and threshold of the principle of natural justice, which is so deeply entrenched in our legal and constitutional framework that even the earliest sources of jurisprudential guidance underscore that no person may be condemned without first being afforded an opportunity to explain or defend their conduct. The foundational maxim of *audi alteram partem* thus stands as an indispensable safeguard against arbitrary action.

14. Dilating upon the above, in a similar case i.e. *Nazir A.M.*[4] Lahore High Court rendered its view as under:

> *"15. On the basis of the aforementioned it is evident that NHA has used the audit objection as a basis for recovering amounts from the Petitioner. An audit objection is merely an objection highlighting irregularities under the relevant finance related rules. The purpose of the audit and audit objection is to ensure that public money is spent as per rules and regulations. An audit objection requires evaluation, recommendations and settlement. Until the audit objection is settled, it is merely an observation which requires probe, after giving the relevant department an opportunity to explain its position. By itself an audit objection is merely information placed before the authority which requires looking into, to determine whether*

---

[3] *Hazara (Hill Tract) Improvement Trust vs. Mst. Qaisra Elahi, (2005 SCMR 678)*
[4] *Nazir A.M. Joint Venture vs. National Highway Authority, (PLD 2020 Lah. 801)*

UNCERTIFIED

there is breach of any finance related rule or regulation. Hence an audit objection cannot form the basis for recovering amounts from the Petitioner, that too without following due process. Furthermore in this case NHA is bound by the terms of its Construction Contract and cannot simply ignore the terms of its contract and initiate recovery without following due process and without raising the dispute before the Petitioner.

16. Under the circumstances, the Respondent NHA cannot recover the disputed amounts from the Petitioner as there are no instructions by PAC in this regard. Even otherwise PAC is a recommendatory committee which presents its recommendations to Parliament and cannot as such issue directions to NHA to initiate any recovery. Furthermore if at all there is an audit objection, that objection has to be considered and dealt with as per law where after due process must be initiated if at all recovery is to be taken of any amount from the Petitioner which means acting under the Construction Contract, giving notice to the Petitioner and obtaining a declaration from the competent forum that the Petitioner owes amounts to the Respondent NHA as amounts paid in excess under the Construction Contract."

15. The above referred reasoning rightly states that an audit objection is merely a preliminary observation requiring evaluation and explanation, to recover amounts and any recovery must follow the lawful procedure, including addressing the audit objections, invoking the contractual dispute mechanism, giving notice to the petitioner and obtaining a determination from the competent forum that any excess amount is actually owed. However, NHA has acted in a manner wholly inconsistent with these settled principles by treating an unsettled audit objection as a conclusive basis for recovery, bypassing the contractual dispute resolution mechanism, denying the petitioner an opportunity of hearing and proceeding without any declaration from a competent forum. Such action is not only contrary to law but also amounts to a violation of due process, rendering the impugned recovery unsustainable.

16. As far as the contention of the learned counsel for NHA that the instant petition is barred by laches is concerned, the record clearly demonstrates that no recovery was in fact effected from the petitioner until 07.02.2020, as duly recorded in NHA's own measurement book. NHA's letter dated 29.04.2014 was, at best, an intimation conveying the details of the audit paras pertaining to

UNCERTIFIED

the petitioner's segment of the Project Works and cannot be construed as constituting any actionable recovery or as giving rise to a cause of action. Consequently, the plea of laches is misconceived, since the impugned recovery was not made until 2020, where-after this writ petition was filed.

17. With respect to the contention that the present matter constitutes a "contractual dispute," it is sufficient to note that the Hon'ble Supreme Court in the case of *Messrs Airport Support*[5] has held that where a statutory body has failed to adhere to the contractual framework, has acted in violation of the principles of natural justice, or has otherwise committed an illegality, its actions become amenable to judicial review. Moreover, this Court observes that the dispute arises from the decision of NHA to effect recovery from the petitioner on the basis of audit paras, an action that does not emanate from nor is governed by the terms of the underlying contract and therefore does not fall within the scope of the contractual dispute resolution mechanism. Similar view has been expressed by this Court in the case of *Sambu Construction*[6] and by the Lahore High Court in the case of *Nazir A.M. (Supra)*. Accordingly, the contention is without merit. Even otherwise the present writ petition has been entertained by this Court in view of the violation of the fundamental rights and it bears reiteration that it is the constitutional duty of this Court to safeguard and enforce such rights.

18. Lastly, NHA's contention that the recovered amount cannot be refunded in writ jurisdiction is misconceived. It is trite law that a Court has to deprecate and discourage withholding of a citizen's money by a public functionary, especially when the impugned action is illegal and without jurisdiction. Reliance is placed on the cases of *Ghulam Abbas*[7], *Kohinoor Industries*[8] and *Sambu Construction (Supra)*. Moreover, it goes against the settled principle that every man is entitled to what is his and that the State functionaries under the guise of administrative action cannot retain monies to which, they have no legal entitlement.

---

[5] *Messrs Airport Support Services vs. The Airport Manager. Quaid -e-Azam International Airport, Karachi, (1998 SCMR 2268).*
[6] *Sambu Construction Co. Ltd. etc. vs. National Highway Authority, etc. (W.P. No. 391 of 2017).*
[7] *Ghulam Abbas vs. Member (Judicial), Central Board of Revenue, (1994 CLC 1612).*
[8] *Kohinoor Industries Ltd. vs. Ministry of Finance, (1994 CLC 994).*

UNCERTIFIED

19. In view of the above discussion, this writ petition is **allowed**. The impugned recovery is declared to be without lawful authority and of no legal effect. NHA is directed to refund the amount to the petitioner recovered pursuant to the audit paras. This, however, shall not prejudice the right of NHA to initiate or pursue any recovery proceedings afresh, strictly in accordance with law after fulfilling all legal requirements, if so advised.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 03.12.2025.

JUDGE

M. Yahya Khan Niazi, L.C.

UNCERTIFIED