JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 4274/2025

Irfan Majeed

Versus

Ministry of Housing & Works, through its Secretary, etc.

Petitioner by:	Mr. Shaharyar Tariq, Saad Abdullah Bhatti and Muhammad Tayyib, Advocates.
Respondents by:	Mr. M. Asif Jadoon and Asia Batool, AAGs. Mr. S. M. Yawar, Advocate for respondent No.7/NESPAK. M. Iqbal Tareen, Assistant Chief (T&C) MOPD&SI. Malik Sherbaz Khan, SDO, Highways Chakwal Communication & Works Department.
Date of Hearing:	24.06.2026.

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KHADIM HUSSAIN SOOMRO, J: Through this Constitution Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking issuance of an appropriate writ directing the respondents to release and pay the admitted and verified contractual amount of Rs.211,160,436, being the outstanding liability arising out of the execution of the Dhudial Bypass Project, District Chakwal.

2. It is averred in the petition that the petitioner, Fast Track Construction (Pvt.) Limited, is a company duly incorporated under the laws of Pakistan and registered with the Securities and Exchange

Commission of Pakistan. The present petition has been instituted through its duly authorized representative. It is pleaded that Respondent No. 4, Pakistan Public Works Department (Pak PWD), invited bids through advertisements published on 29.10.2020 for the construction of the 6-kilometer Dhudial Bypass in District Chakwal. The petitioner participated in the procurement process and, having emerged as the successful bidder, was awarded the contract at a cost of Rs.329,205,290/- subject to the terms and conditions of the agreement and the escalation provisions prescribed under the Pakistan Engineering Council guidelines. It is further averred that the technical and financial bids were opened at Islamabad, where-after the agreement was executed and the petitioner commenced execution of the project. Under the contractual arrangement, Respondent No.4 was responsible for verification of the work executed and certification of payments, whereas Respondent No.7, NESPAK, was entrusted with supervision and verification of the quality and quantity of the work. It is further pleaded that the work executed by the petitioner from time to time was duly inspected and verified by NESPAK as well as the concerned officials of Pak PWD, on the basis whereof Interim Payment Certificates (IPCs) Nos.2, 3 and 4 were issued and the corresponding payments were released. The petitioner asserts that after issuance of IPC No.4, it completed the remaining work where-after the final bill was prepared. According to the petitioner, the completed work was duly verified by the competent

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engineer and the concerned respondents, who assessed and determined an outstanding liability of Rs.211,160,436/- in favour of the petitioner. It is further asserted that Respondents Nos.4 to 6 acknowledged and verified the said liability, while the Chief Engineer, Pak PWD, also recognized the obligation to make payment, subject to the availability of funds.

3. The petitioner further claims that it completed the entire project and handed over the same to Respondent No.4 prior to the proposed abolition of Pak PWD. It is also averred that the petitioner fulfilled its contractual obligation of maintaining the project for the stipulated period of one year, which concluded in October, 2024. Despite completion, verification and acceptance of the work, the outstanding amount has allegedly remained unpaid for more than two years. It is pleaded that the petitioner repeatedly approached Respondent No.4 for clearance of the final bill but was advised to pursue the matter with Respondents Nos.1 and 3. Although the concerned Ministries allegedly acknowledged execution of the work, no payment was released. Feeling aggrieved by the continued withholding of the verified contractual dues, the petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution and seeks a direction to the respondents to release the outstanding amount of Rs.211,160,436/-.

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4. Learned counsel for the petitioner submits that the petitioner completed the entire contractual work relating to the Dhudial Bypass strictly in accordance with the agreement and the prescribed technical specifications. The work was inspected, measured and verified by NESPAK as well as the competent officers of Pak PWD, and no defect or deficiency in its execution was ever communicated to the petitioner. It is argued that the earlier Interim Payment Certificates were duly honoured on the basis of the same verification mechanism; therefore, the respondents cannot adopt a different position in respect of the final bill. Learned counsel further contends that the outstanding amount of Rs.211,160,436/- is neither disputed nor unverified. The liability was assessed and acknowledged by the concerned engineering authorities, including Respondents Nos.4 to 6, while the Chief Engineer also recognized the obligation to release the amount, subject only to availability of funds. Once the work has been completed, accepted and utilized by the respondents, withholding the certified contractual payment is stated to be arbitrary, unreasonable and contrary to the petitioner's right to be treated in accordance with law. It is submitted that the petitioner not only completed the project but also performed the stipulated maintenance obligation for one year, which expired in October 2024. Despite this, the petitioner has been made to approach one department after another for more than two years. According to learned counsel, the proposed abolition or restructuring of Pak PWD cannot extinguish an

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accrued and verified contractual liability of the Federation, nor can administrative arrangements be used to deny payment for work already executed and accepted. Learned counsel argues that the respondents, being public functionaries, are bound under Article 4 of the Constitution to act fairly, lawfully and without arbitrariness. Their failure to release an admitted and verified amount, despite repeated requests, amounts to an unlawful omission warranting constitutional intervention. It is further contended that the petitioner is not seeking adjudication of a disputed contractual claim or determination of disputed questions of fact; rather, it seeks enforcement of an acknowledged liability already verified by the competent authorities. Lastly, learned counsel submits that the petitioner has no other adequate and efficacious remedy for securing immediate payment of the admitted dues. He, therefore, prays that the respondents be directed to release Rs.211,160,436/- to the petitioner without further delay, along with any other relief deemed just and appropriate in the circumstances.

5. Learned counsel for Respondent No.7 submits that NESPAK was engaged only in a supervisory and technical capacity for inspection of the work executed at site, verification of the relevant Interim Payment Certificates and allied data, and submission of recommendations to Pak PWD. It is contended that Respondent No.7 neither awarded the contract nor assumed any financial liability

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towards the petitioner and, therefore, had no authority to sanction, release or clear the final bill or any outstanding amount. The contractual relationship was between the petitioner and Pak PWD, whereas the role of Respondent No.7 remained confined to technical verification. It is, therefore, prayed that no direction for payment be issued against Respondent No.7.

6. The Finance Division, Respondent No.3, has controverted the assertion that the petitioner ever approached it or that it acknowledged the claimed liability. Its representative submits that the project was funded through the Public Sector Development Program and that the mandate regarding allocation and release of project funds lay with the Ministry of Planning, Development and Special Initiatives, in consultation with the sponsoring Ministry of Housing and Works. It is maintained that the Finance Division had no role in the sanction, release or disbursement of funds for the project or in settlement of the contractor's bill and was, therefore, merely a proforma party.

7. On behalf of Respondent No.2, Ministry of Planning, Development and Special Initiatives, it is submitted that its statutory and administrative role is confined to scrutiny, appraisal and processing of development projects and coordination of the Public Sector Development Program, whereas execution and settlement of contractual liabilities remain within the domain of the sponsoring

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and executing agencies. The project was sponsored by the Ministry of Housing and Works and executed by Pak PWD. The revised project cost was approved on a cost-sharing basis between the Federation and the Government of Punjab. The record further shows that, after the winding up of Pak PWD, the project was transferred to the Government of Punjab under the approved transition arrangement, and an amount of Rs. 220 million allocated in PSDP 2024-25 was released to the Government of Punjab through its Finance Department. It is, therefore, contended that the claim for payment is to be dealt with by the sponsoring Ministry and the Government of Punjab in accordance with the approved transfer arrangement.

8. Respondent No.6, Executive Engineer, Pak PWD, has substantially admitted the petitioner's case regarding award and execution of the contract, verification of the work, release of earlier payments and the pendency of the contractor's liability. According to the comments, the liability remained unpaid due to non-availability of funds until 25.10.2024, where-after the work was stated to have been transferred to the Communication and Works Department, Government of Punjab, pursuant to Notification No.1(1)/2024-P&D dated 06.09.2024 and a handing-over process dated 25.10.2024. Respondent No.8, Executive Engineer, Highway Division, Chakwal, however, disputes that a complete and lawful transfer took place. He asserts that the complete project record, vetted joint measurements and contractual documents were not delivered despite repeated

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reminders, and that no novation or valid assumption of past contractual liabilities was effected in favour of the Communication and Works Department. According to Respondent No.8, liabilities arising during execution by Pak PWD cannot be fastened upon the provincial department until the project is duly handed over with complete record and lawful transfer of obligations.

9. I have heard learned counsel for the petitioner, the learned Assistant Attorney General, learned counsel for Respondent No.7 and the representatives of Respondents Nos.6 and 8, and have perused the material available on the record.

10. The first question is whether the petition involves a disputed contractual claim incapable of exercise of writ jurisdiction. Ordinarily, disputed rights arising purely from a contract are not enforced through a writ petition. It has been argued that the relationship between the parties is purely contractual in nature, governed by the terms and conditions of the Lease Agreement. Any alleged breach thereof gives rise to a civil dispute for which the petitioner has an adequate and efficacious remedy before the competent civil forum or in accordance with the dispute resolution mechanism provided in the agreement itself. There is no cavil with the proposition that, as a general rule, a writ petition for the enforcement of a purely contractual obligation is not maintainable. This is so because enforcement of a contract ordinarily involves the determination of disputed questions of fact, factual inquiry, and

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appreciation of evidence, which fall within the domain of courts of original civil jurisdiction. The constitutional jurisdiction is neither designed nor intended to supplant ordinary civil remedies available under the law. However, this principle is not absolute. The superior courts have, in exceptional circumstances, interfered in matters arising out of contractual relationships where the contract is sought to be enforced against the Government or a statutory body, as in the instant case. In this context, let's have a glance at the case laws developed over the years. In the case of M.H Abidi V/S The State Life Insurance Corporation, reported 1990 MLD Page No 563, the Honourable Sindh High Court observed as under:-

> *"However, where rights are based on statutes law or rules framed thereunder or when an obligation or duty vests in a public functionary as a statutory body, performing functions in relation to the affairs of the Federation or a Province or a local authority Constitutional jurisdiction can be attracted. In such and allied situations even contractual rights and obligations may be enforced in Constitutional jurisdiction. This, however, is subject to the important rider of corresponding absence of an adequate remedy. In point are the decisions in Estate Officer v. Tahir Hussain PLD 1962 SC 75, Anjuman-e-Ahmadiya v. Deputy Commissioner, Sargodha PLD 1966 SC 639, Muniruddin Kidwai v. K.D.A. PLD 1972 Kar. 521, Rashid A. Khan v. West Pakistan Railway Board PLD 1973 Lah. 733 and Masjid-i-Intizamia Jama Masjid v. Secretary, Government of West Pakistan because a contract is involved in a Constitution petition is not by itself sufficient to oust the Constitutional jurisdiction under Article 199 of the Constitution."*

11. The present case, however, stands on a different footing. The contract, execution and satisfactory completion of the work, verification by the supervising consultant, release of earlier Interim

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Payment Certificates and the pendency of the contractor's liability have been substantially admitted by Pak PWD itself. The controversy is not about measurement, quality, breach or entitlement under the contract, but about which public authority must discharge an accrued liability after the winding up of the executing department. The petition, therefore, seeks redress against prolonged administrative inaction and conflicting governmental positions rather than adjudication of a contested private contractual claim. In *United International Associates v. Province of the Punjab* (1999 MLD 2745), it was held that, ordinarily, a writ petition for enforcement of a contractual obligation is not maintainable, as enforcement of a contract necessarily involves inquiry into disputed questions of fact, which falls within the exclusive domain of a court of plenary civil jurisdiction. However, an exception to this general rule has also been recognized, namely, that where the resolution of the controversy does not require recording of evidence and where the law does not provide a remedy equally adequate and efficacious as a writ petition, the High Court may, in appropriate cases, exercise jurisdiction under Article 199 of the Constitution. In *Saad Muhammad Shaheen Al-Soofi v. Principal and Chairman, Academic Council, Sindh Medical College, Karachi* (1982 CLC 805), the Hon'ble High Court of Sindh, authoritatively observed as follows:-

> "*There is no cavil to the proposition that the disputed questions of fact cannot be gone into by the High Court in exercise of the Constitutional jurisdiction under Article 199 of the Constitution. However, each case has*

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> *to be considered on its merits and before this principle is applied it has to be considered whether disputed questions of facts are involved in it. Merely because a certain assertion has been made and denied by the other party does not ipso facto make it a disputed fact. In order to establish that a fact is a disputed question of fact, the party making such allegation has to make out a prima facie case or place on record certain material from which it may be possible for the Court to determine that the dispute involves controversial question of fact or that the controversy will require evidence and investigation."*

12. The material placed before this Court shows that Respondent No.7 performed a technical and supervisory function. It inspected the work, verified the relevant certificates and found the execution satisfactory, but it was neither the employer nor the authority competent to sanction or disburse public funds. No financial liability can, therefore, be imposed upon NESPAK merely because it certified the work. Similarly, the Finance Division has not been shown to be the project executing, sponsoring or disbursing authority. The claim for payment cannot be enforced against Respondents Nos.3 and 7, though the technical verification furnished by Respondent No.7 remains relevant evidence of satisfactory execution.

13. The comments of Respondent No.2 and Respondent No.6 materially alter the premise that no transfer instrument or funding arrangement existed. Respondent No.6 relies upon Notification No.1(1)/2024-P&D dated 06.09.2024 and the handing-over process dated 25.10.2024, while Respondent No.2 confirms that the project was included among the schemes transferred to the Government of Punjab under the approved transition modalities and that Rs.220

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million was released to the Government of Punjab through its Finance Department during fiscal year 2024-25. At the same time, Respondent No.8 has specifically placed on record that the project file, vetted measurements and contractual documents were never completely handed over and that past contractual liabilities were not lawfully novated or expressly assumed by the provincial department. Thus, the existence of an administrative transfer is asserted, but the completeness of the transfer and the allocation of pre-existing liabilities remain unresolved.

14. The above inter-departmental divergence cannot be allowed to prejudice the petitioner. Pak PWD was the executing agency, accepted the work and has admitted that the contractor's liability remained pending. The sponsoring Ministry and the authorities managing the transition were required to ensure that, upon winding up Pak PWD, its pending contractual liabilities were identified, reconciled and assigned to a competent successor authority. Conversely, the Government of Punjab cannot reasonably be required to discharge an unverified historic liability without receiving the complete project record, measurements and contractual documents. The lawful course is, therefore, not to fasten liability conclusively upon one department on the basis of incomplete transfer material, but to compel the concerned federal and provincial authorities to complete reconciliation and discharge the admitted liability within a fixed period.

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15. Public authorities cannot accept and utilize completed public works and thereafter leave the contractor without payment merely because the executing department has been abolished or because the successor authorities dispute the completeness of the record. Administrative restructuring does not extinguish an accrued liability of the State. The sponsoring Ministry, the former executing agency and the successor department are under a corresponding public law duty to preserve the record, reconcile the liability and ensure payment by the authority upon whom the liability has lawfully devolved. Failure to do so for an indefinite period is arbitrary and inconsistent with the obligation of public functionaries to act fairly and in accordance with law.

16. Consequently, the instant petition is **disposed of** with a direction to Respondent No.1, Ministry of Housing and Works, being the sponsoring Ministry, to take up the matter with Respondent No.2 and the competent authority of the Government of Punjab and, on the basis of the available record, determine the authority responsible for discharge of the outstanding contractual liability of the petitioner. The entire exercise shall be completed within forty-five days from the date of this judgment. The petitioner shall not be made to suffer on account of any inter departmental issue relating to transfer of the project, record, allocation of funds or administrative responsibility. Upon such determination, the amount found duly verified and payable to the petitioner shall be released by the authority found

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responsible, without any further delay. In case any part of the claimed amount is found not payable or requires further verification, the admitted and verified amount shall nevertheless be released, while reasons in respect of the remaining amount shall be recorded and communicated to the petitioner through a speaking order within the same period. There shall be no order as to costs.

(KHADIM HUSSAIN SOOMRO)
JUDGE

Announced in open court on 18-09-2026.

JUDGE

Zahid

APPROVED FOR REPORTING

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