

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.

Ghulam Mustafa Mughal, J.

Civil Appeal No. of 259 of 2018

(PLA filed on 22.06.2018)

Inhabitants of village Prenia through:-

1. Hafeez Ahmed s/o Muhammad Shafi, caste Abbasi,
2. Haji Muhammad Azam s/o Ali Bahadar, caste Gujjar,
3. Haji Muhammad Nazir s/o Faqar Muhammad, caste Abbasi,
4. Muhammad Imran s/o Ameer Hussain,
5. Subidar Muhammad Ayyub s/o Haji Ghulam Din, all residents of village Prenia, Constituency Baluch, Tehsil Pallandri, Distric Sudhnuti, Azad Kashmir.

.... APPELLANTS

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir through its Chief Secretary having his office at New Secretariat, Muzaffarabad.
2. Minster for Communication & Works, Azad Govt. of the State of Jammu & Kashmir, having his office at Minsters Block, New Secretariat Complex, Chatter, Muzaffarabad.

3. Minister for Finance/Planning & Development Department, Azad Govt. of the State of Jammu & Kashmir, having his office at Ministers' Block, New Secretariat Complex, Chatter, Muzaffarabad.
4. Secretary Communication & Works, Azad Govt. of the State of Jammu & Kashmir, having his office at New Secretariat Complex, Lower Chatter, Muzaffarabad.
5. Secretary, Planning and Development Department, Azad Govt. of the State of Jammu & Kashmir, having his office at New Secretariat, Complex, Muzaffarabad.
6. Mr. Tahir Farooq, Member Constituency Baluch/Deputy Speaker Assembly, having his office at Azad Jammu & Kashmir Assembly Secretariat, Lower Chatter, Muzaffarabad.
7. Chief Engineer, Public Works Department, Highways Division (North), Azad Govt. of the State of Jammu & Kashmir, having his office at New District Complex, Saheli Sarkar, Muzaffarabad. ‘
8. Superintending Engineer, Works Department, (Highways Division), Rawalakot, Azad Kashmir.
9. Executive Engineer Works, Department (Highways Division), Sudhnuti, Pallandri, Azad Kashmir.
10. Mr. Aslam Chaudhary & Company, at Kahutta Haveli, Government Contractor for the Construction of Road Gujjan Ghogra Dhara to Deveta Prenia Road, Phase-II (7.84 k.m.).

..... RESPONDENTS

(On appeal from the judgment of the High Court dated 24.04.2018 in Writ Petition No.141 of 2017)

FOR THE PETITIONERS: Ch. Shoukat Aziz,
Advocate.

FOR OFFICIAL RESPONDENTS: Raja Ikhtlaq Hussain,
Additional Advocate-
General.

FOR RESPONDENT NO.5: Mr. Ashgar Ali
Malik, Advocate.

Date of hearing: 01.10.2018.

ORDER:

Ghulam Mustafa Mughal, J.— The captioned appeal by leave of the Court has been directed against the judgment dated 24.04.2018, passed by the Azad Jammu & Kashmir High Court in writ petition No.141 of 2017.

2. The precise facts forming the background of the captioned appeal are that the appellants, herein, are resident of village Pernian, constituency Baloch, Tehsil Pallandri, District Sudhnuti. They filed a writ petition before the Azad Jammu &

Kashmir High Court on 20.01.2017, alleging therein, that in 2008 on demand of the peoples of the locality, the Government of the time approved a development scheme of improvement, metaling & black topping of Gajan-Gora-Dhary-Dewta Pernian road Sudhnuti (16.20 k.m.). The matter remained pending before Planning & Development Department till 2015 and in the meantime, link roads were constructed from Gajan Bazar to Dewta Pernian and from Gora Dhary Cross to Tatta Pani Kotli. In 2015, PC-1 for construction of Gajan-Gora-Dhary-Dewta Pernian road, District Sudhnuti, was prepared and according to PC-1 cost of the project was estimated as Rs.228.731 million. It was stated that a meeting of Azad Jammu & Kashmir Cabinet Development Committee (AJKCDC) was held on 21.12.2015 and after detailed discussion, scheme for construction of road in question was approved. It was further stated that the Azad Jammu & Kashmir Govt. notified this scheme through

notification dated 11.01.2016. As per condition No. 5 of the notification dated 11.01.2016, a separate scheme connecting village Pernia with Tatta Pani was included against share of District Poonch to provide alternate and all-weather connectivity between Sudhnuti and Tatta Panni. It was contented that the site plan was also prepared along with PC-1 keeping in view all the relevant factors. The Communication and Works Department after bids issued the work order in favour of respondent No.10, herein, who started work on the spot, however, up-till-now, the work could not be completed due to political intervention. It was further contended that the road which was to be constructed from Gora Dhary Cross towards Indrote Syedan to Tatta Pani (2.9 k.m.), has been constructed only 1.9 k.m. and the remaining 01 km has to be constructed in other constituency namely Abbaspur. It was claimed that respondent No.6, in order to get the political benefit, stopped the

construction work of that 1 k.m. road in Abbaspur and wants to shift the same in opposite side alongwith 205 km road which heads from Dewta Pernian to Thandi Kassi. It was further claimed that now respondent No. 6, by using the political pressure, wants to change the site plan and the road is planned to be diverted from Dewta Pernian to Khawas village which act of the respondents is illegal. It was prayed that the respondents may be restrained to alter/amend the approved scheme of construction of Gajan-Goara-Dhary-Deweta Prenia Road (16.20 k.m.) and may be directed to complete the construction work according to the work order dated 17.05.2016.

3. The respondents contested the writ petition by filing written statement, whereby, they refuted the claim of the petitioners/appellants, herein, and submitted that site plan is being changed keeping in view the necessity of the people and population of the area in order to facilitate the more

population within the allocated budget. The learned High Court after necessary proceedings disposed of the writ petition with the direction to the respondents to accommodate the people who are affected from change in the site plan and provide them facility of road.

4. Ch. Shoukat Aziz, the learned Advocate appearing for the appellants, argued that PC-1 of the scheme namely improvement, metaling and black topping of the road in question was prepared by the Public Works Department and subsequently placed in the meeting of the AJKCDC held on 21.12.2015. He added that the said scheme was approved by the AJKCDC as per approved plan. It was next argued by the learned Advocate that vide notification dated 11.01.2016, the scheme was approved and subsequently after due process, the work order was issued in favour of respondent No.10, herein. The learned Advocate further argued that on political intervention and with *mala fide* intention, the

respondents tried to change the survey/site-plan of the scheme, whereupon, the appellants, herein filed a writ of prohibition before the Azad Jammu & Kashmir High Court. The learned Advocate further argued that the learned High Court without considering the case law on the subject, has disposed of the writ petition while allowing the respondents to change the survey/site-plan of the scheme. The learned Advocate submitted that the scheme was approved by the Planning and Development Department, therefore, the Public Works Department (Highways) cannot change or alter the survey/site-plan. The learned Advocate further submitted that the action of the respondents is violative of law as well as politically motivated, therefore, the learned High Court should have issued the writ of prohibition while restraining the respondents to change the approved site-plan/survey of the road in question.

5. Conversely, Sardar Karam Dad Khan, Advocate-General and Mr. Asghar Ali Malik, Advocate, appearing on behalf of the respondents, argued that the intended change in the survey/site-plan of the scheme is in the public interest and the appellants are not being deprived of from the facility of road rather adjustment is made for benefit of more population of the area and to meet the allocation of budget and annual development program of different districts. It was lastly argued by the learned counsel that the dispute in view of its nature cannot be challenged in writ jurisdiction. They relied on the case reported as *Watan Party and another vs. Federation of Pakistan and others* [PLD 2013 Supreme Court 167].

6. Mr. Tahir Farooq, MLA Constituency Baloch, respondent No.6, herein, also addressed the Court and refuted the allegation of the appellants and supported the intended change in the survey/site-plan of the scheme.

7. We have heard the learned Advocates for the parties and have gone through the record of the case. It may be stated that this Court seldom interferes in the policy decisions of the Government provided that those are not violative of law on the subject and fundamental rights of the State Subjects given in the Constitution. Another ground on which the intervention can be made by Courts is that where administrative authorities act in an arbitrary or capricious manner while dealing with the claims of the State Subjects. In *Watan Party's* case, referred to by the learned Advocate-General, the same principle of law is laid down and the same has also been approved by this Court in numerous case. Some of them can be referred to herein below: -

- i. *Sardar Attique Ahmed Khan and another vs. Azad Govt. & 7 others* [2017 SCR 1327].
- ii. *AJ&K Government & 2 others vs. Ch. Abdul Majeed and another* [2002 SCR 24].

In the case cited as serial No.ii, while dealing with the same proposition, at page 29 of the report, it was observed by this Court as under:-

“5. We have given due consideration to the arguments raised at Bar. It may be stated at the very outset that there is hardly any quarrel with the proposition that it is for the appellants to prepare development schemes and a citizen or for that matter a member of the Legislative Assembly has no vested right to insist that a particular development scheme submitted by him should be included in PC-I or implemented. However, it may be observed that the Government or for that matter its functionaries are bound to perform their functions within the four corners of the law. Thus, if it is shown by an aggrieved person that an act of the executive authority is tainted with mala fides or for that matter the same offends against law, such an act is open to review by the superior Courts in exercise of writ jurisdiction. It hardly needs any authority that an executive order, if shown to be violative of law, it cannot be protected on the ground that the authority concerned had the jurisdiction to pass the same and, thus, is immune from challenge by invoking the writ jurisdiction. The learned counsel for the appellants, during the course of his arguments, has frankly conceded that apart from the Cabinet decision, the Government or for that matter its functionaries are bound to

prepare the development schemes according to law. The budgetary allocations for development schemes are to be met on the basis of personal liking or disliking of the Government or its functionaries but according to the principles of justice and fair play. For instance, if a budgetary allocation is made for the construction of roads for the whole of the State but the Government chooses to spend whole of such allocation in one district on the pretext that it was in the public interest, that cannot be approved until and unless it is shown as to how it is in the public interest; mere ambiguous statement that an act was performed in the public interest would not suffice to protect an act which on the very face of it is discriminatory.....”

In a case titled *Azad Govt. & others vs. Inhabitants of village Baghar* [2016 SCR 696], facts of the case were that 15 k.m. road was approved for each constituency by the Government including the disputed road therein. The then Prime Minister ordered for shifting the scheme to some other place. This Court held that the Prime Minister has no power to shift the scheme. In another case reported as *Ch. Latif Akbar & 261 others vs. Azad Govt. & 10 others*

[2017 SCR 305], at page 324 of the report it was observed as under:-

“15.No doubt it is the prerogative of the Government to take administrative steps and formulate the policy but while formulating the policy the Government cannot ignore the public interest and rights accrued to the state subjects or beneficiaries of any enforced policy. The authority of the Government to shift the posts, establish the institutions, organize the departments or reorganize the same is provide under the Statute. In this regard this Court has already enunciated the principle of law in the case reported as *Muhammad Akhtar and others vs. Azad Govt. & others* [2016 SCR 853] that the Courts are not supposed to interfere in the domain of other institutions.....”

Judging the present controversy in light of the rule of law down in the above cases, it may be stated that PC-1 of the scheme in question was prepared by the AJ&K PWD (Highways) and the same was subsequently placed in the meeting of the AJKCDC. The scheme was approved vide notification dated 11.01.2016. After advertisement of the scheme and completion of the bidding process, the work order was issued in favour of respondent No.10, herein,

meanwhile, on the move of political designatries, the Executive Engineer concerned proposed a change in the approved scheme. The appellants, herein, approached the Azad Jammu & Kashmir High Court by filing writ of prohibition in the terms that the respondents may be restrained from changing the scheme which has been approved by the competent authority in the larger interest of the public. The learned High Court has disposed of the writ petition through the impugned judgment. As stated above, this Court cannot act as appellate authority over the administrative decision of the public authorities who are responsible for carrying out the public projects duly approved in accordance with law. However, so far as the case in hand is concerned, we are of the view that change cannot be made by a subordinate functionary except with the approval of PND/CDC. In such circumstances, an obsolete writ of prohibition cannot be issued rather a direction can be given to the respondents

not to change the scheme without approval of Planning and Development Department and AJKCDC.

The upshot of above discussion is that this appeal is accepted and the impugned judgment of the High Court dated 24.04.2018 is hereby vacated. The writ petition stands disposed of in the manner indicated above.

JUDGE

CHIEF JUSTICE

Muzaffarabad.
03.10.2018.