

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.

Raja Saeed Akram Khan, J.

Civil Appeal No.201 of 2019

(PLA filed on 07.11.2018)

Chaudhary Abdul Latif s/o Chaudhary Imam Din r/o
Mustimba, Tehsil Chakar, District Hattian Bala
(Contractor of Tanallian Bridge), Dhirkot.

.....APPELLANT

VERSUS

1. Azad Government of the State of Jammu & Kashmir through its Chief Secretary, having his office at New Secretariat Complex, Lower Chatter, Muzaffarabad.
2. Secretary Local Government & Rural Development, having his office at New Secretariat Complex, Lower Chatter, Muzaffarabad.
3. Director General Local Government and Rural Development Department, having his office at Lower Chatter (Thori), Muzaffarabad.
4. Assistant Manager Local Government & Rural Development Department, Markaz Dhirkot, District Bagh.
5. Assistant Director Local Government and Rural Development Department, District Bagh.

6. District Accounts Officer, District Bagh.

.....RESPONDENTS

7. Ombudsman, Azad Jammu & Kashmir,
Muzaffarabad.

.... PRFORMA-RESPONDENT

[On appeal from the judgment of the High Court
dated 12.09.2018 in writ petition No. 1691 of 2016]

FOR THE APPELLANT: Sardar M. R. Khan,
Advocate.

FOR RESPONDENTS No.1-3: Raja Inamullah Khan,
Advocate-General.

Date of hearing: 14.01.2020

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.– The captioned appeal by leave of the Court has been filed against the judgment of the High Court dated 12.09.2018, whereby, the writ petition filed by the appellant, herein, has been dismissed.

2. The brief facts of the case are that the appellant, herein, filed a writ petition before the High Court alleging therein that he was awarded the

project for Construction of Tanallian Bridge/ approach Road, Tehsil Dhirkot. It was further alleged that the appellant completed the project for construction of approach Road and the construction of bridge was under process when due to some personal clashes of local community the construction work was forcibly stopped. The Department of Local Government & Rural Development (Agency) entered into an agreement with the local community according to which the site plan of the bridge was shifted to another location. It was claimed that the change of site plan caused him loss of Rs.15,00,000/-. In this regard, the appellant moved an application before the Ombudsman of Azad Jammu & Kashmir. The learned Ombudsman, after inquiring into the matter, vide order dated 01.09.2015 ordered Secretary Local Government to pay the appellant Rs.15,00,000/-, but the respondents have failed to act upon the aforesaid order. The writ petition was

contested by the respondents by filing written statement. The learned High Court after necessary proceedings has dismissed the writ petition through the impugned judgment, hence, this appeal by leave of the Court.

3. Sardar M. R. Khan, Advocate, the learned counsel for the appellant after narration of necessary facts submitted that the learned High Court has failed to apply proper judicial mind and dismissed the writ petition after a period of three years' proceedings which resulted into miscarriage of justice. The learned High Court has declined to redress the grievance of the appellant mainly on the ground that there is no violation of law and factual propositions have been raised which cannot be resolved in writ jurisdiction. Both the conclusion drawn appears to be result of non-application of judicial mind. The appellant who is an aggrieved person and deprived of his rights by mal administration of the agency has rightly approached

the High Court. He submitted that the Ombudsman, who is a statutory body under the statutory provisions of Establishment of the Office of Mohtasib (Ombudsman) in Azad Jammu and Kashmir Act, 1992 (*hereinafter to be referred as Ombudsman Act, 1992*) after conducting the required proceedings has recorded the findings on 01.09.2015. These findings have attained the finality because the agency has not challenged the same by way of filing the representation under section 32 of Ombudsman Act, 1992 but despite passage of years' time the findings of Ombudsman have not been complied with. Thus, the appellant was forced to file the writ petition. The learned High Court has not properly appreciated the matter. He referred to the findings of the Ombudsman dated 01.09.2015 and submitted that the same have been issued under the statutory provisions and non-compliance of the same is violation of law. The learned High Court has not examined the matter

from this angle, therefore, the impugned judgment is not maintainable.

4. Conversely, Raja Inamullah Khan, the learned Advocate-General appearing on behalf of respondents No.1 to 3 opposed the appeal on the ground that the impugned judgment is quite in accordance with law. The appellant has got no locus standi. The writ petition is not competent. The learned High Court has rightly dismissed the same. The matter relates to private persons. The appellant himself submitted that the progress of the project and implementation was hampered due to public nuisance, therefore, the agency cannot be blamed, however, he conceded that against the findings of the Ombudsman the agency has not filed any representation etc.

5. We have heard the learned counsel for the parties and gone through the record. According to the admitted facts as depicted from the pleadings of the parties, the appellant was awarded a contract

for construction of Bridge/approach Road by the respondents/agency. The appellant invested a huge amount for execution of the project, however, subsequently due to some public agitation the agency caused the delay in execution of the project and also changed the site of the project, which caused huge loss to the appellant. The controversy arisen among the parties has been brought on record and the loss caused was also assessed. Ultimately, the appellant approached the Ombudsman by filing a complaint. The learned Ombudsman after following the due process of law and conducting the inquiry finally decided the complaint on 01.09.2015 in the following manner:-

"لہذا حالات و واقعات مندرجہ بالا کی روشنی میں ایکٹ 14 مجریہ 1992ء کی دفعہ 11 کے تحت ایجنسی کے پرنسپل آفیسر (سیکرٹری لوکل گورنمنٹ و دیہی ترقی) کو ہدایت کی جاتی ہے کہ وہ پراجیکٹ لیڈر کے بقایاجات مبلغ -/1500000 روپے (پندرہ لاکھ روپے) (جس کی تصدیق ڈائریکٹر جنرل لوکل گورنمنٹ و دیہی ترقی نے اپنے مکتوب نمبر ن ال گ 2012/2942ء مورخہ 19-04-2012 میں بھی کی ہوئی ہے) ادائیگی کرتے ہوئے اندر دو ماہ ادارہ ہذا کو مطلع کریں۔"

Since then the appellant is running from pillar to post but all the efforts remained useless.

Neither the respondents/agency filed any representation under the statutory provisions of law nor assigned any reason for non-compliance of the direction of the Ombudsman. Consequently, the appellant filed a writ petition before the High Court. The learned High Court has dismissed the writ petition on the grounds that there is no violation of law apparent on the face of record and some question of facts have also been raised which require recording of evidence. The respondents in their written statement before High Court have admitted the findings of the Ombudsman. It is also admitted that the respondents/agency participated in the inquiry proceedings. If they were aggrieved by the findings of the Ombudsman they should have filed a representation before the President under section 32 of Ombudsman Act, 1992, but they failed to do so, hence, the findings of the Ombudsman have attained finality. According to sub-section (2) of section 11 of the Ombudsman

Act, 1992 the respondents/agency was bound to inform the Ombudsman within the specified time about the action taken on the recommendations/findings of the Ombudsman or the reasons for not complying with the same but nothing has been brought on record that they have ever implemented the recommendations within the specified time or informed the Ombudsman about the reasons for not complying with the same. Thus, the respondents have clearly violated the provisions of sub-section (2) of section 11 of Ombudsman Act, 1992, whereas, under the provisions of section 22 the award of cost and compensation by the Ombudsman are recoverable as arrear of the land revenue from the public servant, functionary or agency. In our considered view the opinion of the High Court that no apparent violation of the law has been pointed out appears to be misconceived as the respondents have clearly violated the statutory mandatory provisions of sub-section (2) of section

11 and section 22 of the Ombudsman Act, 1992. In this state of affairs, the writ petition cannot be thrown out on the sole ground that there appears no violation of law.

6. The other reason advanced in the judgment that some questions of facts have been raised also appear to be misconceived. The writ petition has not been filed for determination of the compensation, loss etc. but simply for the implementation of the findings of Ombudsman, which have attained finality. Under the provisions of Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974 if any person performing functions in connection with the affairs of the Azad Jammu and Kashmir or local authority fails to do what is required by the law to be done; the extraordinary jurisdiction of the High Court is always there to remove the mischief and redress the grievance of the aggrieved person.

7. In view of the above stated facts, the respondents/agency neither filed any representation before the President against the final recommendations/findings of the Ombudsman nor assigned the reasons for not complying with the same within the specified time of two months, thus, the final recommendations/findings of the Ombudsman have attained finality and under the statutory provisions of enforced law the respondents/agency has failed to do what was required by the law to be done. In this state of affairs, the appellant is an aggrieved person who has successfully established that the person performing the functions in connection with the affairs of the Azad Jammu and Kashmir or local authority has failed to do what was required by the law to be done, thus, under the provisions of Article 44 of the AJ&K Interim Constitution, 1974 it was enjoined upon the High Court to exercise the

extraordinary writ jurisdiction for redressal of his grievance.

8. Consequently, while accepting this appeal and recalling the impugned judgment the writ petition filed by the appellant is accepted and a writ of mandamus is issued to the respondents to implement the findings/recommendations of the Ombudsman dated 01.09.2015 in letter and spirit.

This appeal is accepted in the above terms with no order as to costs.

Mirpur,
28.01.2020

CHIEF JUSTICE

JUDGE

Ch. Abdul Aziz VS Azad Govt. & others

ORDER:

The judgment has been signed. It shall be announced by the Registrar, after notifying the learned counsel for the parties.

Mirpur,
28.01.2020

CHIEF JUSTICE

JUDGE