

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present:

MR. JUSTICE AMIR HANI MUSLIM
MR. JUSTICE QAZI FAEZ ISA
MR. JUSTICE FAISAL ARAB

SUO MOTO CASE NO. 19 OF 2016

[Suo Moto action against corruption and corrupt elements working on deputation in the Sindh Coal Authority, Energy Department, Sindh]

AND

CMA NO.7135 OF 2016 IN S.M.C.NO.19 OF 2016

[Complaint against corruption in Sindh Coal Authority/Energy Department filed by Action Committee of the Sindh Coal Authority]

AND

CMA NO.150-K OF 2017 IN S.M.C.NO.19 OF 2016

[Application for impleadment as intervener in the subject proceedings challenging the appointment/selection of Chief Engineers BS-20 in Sindh Coal Authority, filed by Mr. M. Ali Memon]

AND

CMA NO.172-K OF 2017 IN S.M.C.NO.19 OF 2016

[Complaint regarding corrupt elements working on deputation in Sindh Coal Authority]

In Attendance:

Mr. Zamir Hussain Ghumro, Advocate General, Sindh
Mr. Rizwan Siddiqui, ASC
Mr. Mukesh Kumar, ASC for Intervener (in CMA.150-K/17)
Agha Wasif Abbas, Secretary Energy Department
Mr. Sohail Qureshi, Addl. Secretary, Services Department
Mr. Saeed Qureshi, Focal Person to Chief Secretary,
Sindh
Mr. Danish Saeed, Director General, Sindh Coal
Authority
Mr. Muhammad Waseem, Chairman, P & D Board

Date of Hearing: March 14, 2017

JUDGMENT

QAZI FAEZ ISA, J: Through an anonymous complaint serious allegations were made against the Sindh Coal Authority (hereinafter “**the Authority**”) and the Energy Department of the Government of Sindh. It was alleged that persons were illegally employed in the Authority and huge amounts were embezzled from the projects that were being executed by the Authority. The complaint was placed before the Hon’ble Chief Justice of Pakistan and he was

pleased to take notice of it on the judicial side under Article 184(3) of the Constitution of the Islamic Republic of Pakistan (“**the Constitution**”) and the complaint was numbered and fixed in Court. This Court issued notices to all concerned, including the Government of Sindh (“**the Government**”) and the Authority. Subsequently, some employees of the Authority also submitted complaints (CMA No. 7135 of 2016 and CMA No. 172-K of 2017) which added to the allegations made in the earlier anonymous complaint.

2. Before attending to the complaints it would be appropriate to set out the relevant provisions of the Sindh Coal Authority Act (Sindh Act No.VI of 1994) (PLD 1996 Sindh Statutes 72) (hereinafter “**the Act**”) through which the Authority was established. Section 6(1) of the Act stipulates that the, “general direction and administration of the Authority” vests in its Board.

The Board, which is constituted under section 7 of the Act, comprises of:

(i)	the Minister for Mineral Development, Sindh.	Chairman
(ii)	the Additional Chief Secretary (Dev.) Planning and development Department, Government of Sindh.	Official member
(iii)	the Secretary Mines and Mineral Development, Government of Sindh.	Official member
(iv)	the Secretary Finance Department, Government of Sindh.	Official member
(v)	the Director General, Sindh Coal Authority	Official member
(vi)	two Members of the National Assembly from Sindh to be nominated by the Assembly.	Official members
(vii)	Four Members of the Provincial Assembly to be nominated by the Assembly.	Official members
(viii)	Two non-Official Members to be nominated by the Government.	Non-official members”

The Chief Executive of the Authority is the Director General (“**DG**”), who is required to be appointed by the Authority (section 10 of the Act). The DG is also the Secretary of the Board (sub-section (2) of section 7 of the Act).

3. The functions of the Authority are set out in section 4 of the Act, reproduced hereunder:

- “(a) accelerate the pace of activities relating to coal development and shall be specifically for responsible for planning, promoting, organizing, under-taking appropriate projects in this behalf and implementing programmes for exploration, development, exploitation, mining, processing and utilization of coal;
- (b) prepare and execute schemes under this Act and take such steps as may be necessary in connection with the execution of such schemes;
- (c) advise Government in all matters connected with conservation, development, working and utilization of geology to evaluate coal deposits;
- (d) publish results of research and development activities of coal resources of the Province, from time to time, for general information;
- (e) promote joint ventures specially with foreign investors for development of coal resources of the Province;
- (f) take such steps as may be necessary or conducive to the attainment of its objects.

EXPLANATION. Planning includes studies, surveys, experiments and scientific and technical evaluation, whereas promotion, organizing and implementing programmes include setting up of infrastructure, overall environment including service facilities such as roads, water, electricity, gas, skilled and un-skilled labour, professional personnel, land development and financial facilities and ancillary facilities directly required to implement the coal development schemes and plans.”

The Government has been empowered to make rules for carrying out the purpose of the Act (section 24 of the Act) and the Authority has been empowered to make regulations for carrying out the purpose of the Act and the rules (section 25 of the Act). We have been informed that no rules or regulations have been made as yet.

4. When this case was taken up by this Court Mr. Danish Saeed was working as the DG of the Authority, Mr. Arif Hussain Leghari as its Deputy Director, Hydrogeology, Mr. Aijaz Ali Solangi as its Inspector of Coal Mines and Mr. Zahid Hussain Tunio as its Prosecuting Inspector. All these appointments were made by the Government. As these individuals were serving in different departments of the Government their appointment in the

Authority was in apparent contravention of the following judgments of this Court: Contempt Proceedings against Chief Secretary, Sindh (2013 SCMR 1752), Ali Azhar Khan Baloch v Province of Sindh (2015 SCMR 457) and Muhammad Akram v Registrar Islamabad High Court (PLD 2016 961). Specific notices were therefore issued with regard to such appointments, however, instead of justifying the appointments the Government conceded that some of the appointments were not made in accordance with the law and repatriated the officers to their respective departments. The Government, however, maintained that the appointments in the Authority of Mr. Danish Saeed as DG, Mr. Muhammad Ali Memon as Chief Engineer, and Mr. Zameer Ahmed Sheikh as Executive Engineer were in accordance with law.

5. Mr. Danish Saeed informed us that he is a graduate with a second division. He started his career on January 11, 1992 when he and three others were appointed by Jam Sadiq Ali, the then Chief Minister, who on the said date wrote:

“Four (4) posts of Assistant Commissioner may be taken out of the purview of the Sindh Public Service Commission and ad-hoc appointment of 1. Makhdoom Shakeel-uz-Zaman, 2. Mr. Danish Sayed, 3. Mr. Matanat Ali Khan and 4. Mr. Shoukat Ali Shaikh.

As Assistant Commissioner may be regularised in relaxation of rules. The condition of recommendation of Departmental Selection Committee in this case is hereby waived.

In this connection necessary notification may be issued accordingly.”

Consequently, a notification dated January 22, 1992 was issued appointing Mr. Danish Saeed, the persons mentioned above and Syed Imtiaz Ali Shah as Assistant Commissioners (BPS-17). The notification stated that these persons were appointed, “in the public interest”, however, it was not disclosed how this was in the “public interest”. The notification further stated that the normal procedure will not be followed and that these persons have been appointed “without reference to the Sindh Public Service Commission”

(hereinafter “**the Commission**”). It was not mentioned in the notification why the Commission was bypassed.

The documents disclose that for Mr. Danish Saeed and a few others Assistant Collector Departmental Examination was arranged. After about nine years of his appointment, in the month of December 2000, he took Part-I of this Examination and got 216 out of 400 marks. He then took Part-II Examination in November, 2002, and got 206 out of 350 marks. The marks obtained by him were the lowest amongst those who passed. Mr. Saeed was promoted to the post of Deputy Secretary (BPS-18) vide notification dated October 11, 2003, that is in less than a year’s time. Thereafter, he was promoted to the post of Additional Secretary (BPS-19) vide notification dated January 23, 2007 after only three years. His promotion to the post of Secretary (BPS-20) vide notification dated April 14, 2012 was to follow in five years time. He was then appointed as the DG of the Authority vide notification dated July 23, 2013.

6. After we had heard this case, that is later in the evening, but before this judgment had been written, notification dated March 14, 2017 was issued by the Chief Secretary, Government of Sindh, removing Mr. Danish Saeed from the position of DG of the Authority. Apparently, better sense prevailed at the eleventh hour as the appointment of Mr. Saeed as the DG of the Authority was not in accordance with the Act, which stipulates that the appointment to the post of DG has to be made by the Authority and the Authority had not appointed him. Mr. Danish Saeed rose from grade 17 (BPS-17), after having passed Part-II of the Assistant Collector’s Examination in November 2002, and attained the position of Secretary (BPS-20) in less than ten years, which is quite surprising. The fact that Mr. Danish Saeed was removed by the Government as the DG of the Authority does not

conclude the matter. The Secretary, Services, General Administration & Coordination Department (hereinafter “**Services**”) is directed to examine whether Mr. Danish Saeed’s appointment and promotions were in accordance with law and applicable rules/regulations and to submit report in this regard within sixty days for our perusal in Chambers, whereafter if required further orders may be passed in Court.

7. Mr. Muhammad Ali Memon was appointed on contract as the Chief Engineer of the Authority after he retired from government service. An advertisement was published by the Secretary of the Energy Department of the Government, which invited applications to the post of Chief Engineer. The advertisement prescribed that the applicants must be “between 55-60 Years”, but later a corrigendum was issued extending the age to 65 years, probably because Mr. Memon was older than the maximum age. Mr. Memon was appointed as Chief Engineer of the Authority through a notification dated April 12, 2016 on “contract basis” for a period of two years with effect from March 28, 2016. Subsequently, on July 13, 2016 the Government issued an “order” which prescribed the terms and conditions of Mr. Memon’s “contract”. The said order stipulated that Mr. Memon would be governed by the rules/regulations that were applicable, “to other Provincial Civil Servants of his status” and that he would be “liable to disciplinary action and penalties under the Sindh Civil Servants Act, 1973”. On the one hand the Government’s stand is that Mr. Memon was appointed on “contract” but on the other hand the terms of his appointment issued by the Government are like those of a civil servant. Mr. Memon states that he completed his Bachelor of Civil Engineering degree from the Mehran University of Engineering and Technology and retired from government service after 32 years. As per the advertisement a Chief Engineer was required who could, “execute high priority infrastructure schemes for Thar Coalfield”, however, surprisingly, for

the position only a basic engineering qualification, without even specifying the minimum division or grade, was deemed sufficient by the Secretary of the Energy Department; a very low bar which could also be navigated by the aged was set despite the proclaimed “high priority” of the works to be undertaken. The criteria mentioned in the advertisement appears to be tailor made for Mr. Memon. The technical capabilities of Mr. Memon were assessed by a five member committee, of which only one was a “Technical Member”. The number of persons who had applied for the post has not been disclosed nor the methodology employed in short-listing them.

8. Mr. Memon was re-employed by the Government after his retirement. Section 14 of the Sindh Civil Servants Act, 1973, stipulates that a retired government servant shall not be re-employed unless his/her re-employment, “is necessary in the public interest”. There is nothing that indicates the necessity in re-employing Mr. Memon in the public interest, nor have the Government or Mr. Memon sought to justify this.

9. Subsequently, sub-section (3) was introduced into Section 14, through the Sindh Civil Servants (Second Amendment) Act, 2013, reproduced hereunder:

“14. Employment after retirement.-

(3) Notwithstanding anything contained in this Act or any law in force or any judgment of any court, Government shall have shall be deemed to always have had the power to appoint any retired civil servant, whose services, in view of his expertise, are required by Government in the public interest, for a period as deemed appropriate by Government.”

This Court in the case of Contempt Proceedings against Chief Secretary, Sindh (2013 SCMR 1752) held:

“We, therefore, hold that re-employment of such a nature as proposed under the amended subsection (3) of Section 14 is violative of the provisions of Act of 1973 and rules framed thereunder, besides it violates the fundamental rights of the serving civil servants, who on account of such rehiring on contract are deprived of their legitimate expectancy of promotion to a higher cadre, which is violative of the provisions of Articles 4, 9 and 25 of the Constitution.” (page 1855, paragraph 144).

“We, therefore, are clear in our mind that amendments brought in the Act of 1973 by the impugned validating instruments do not meet the standards of jurisprudence which mandate safeguard provided to the civil servants under the Constitution. The impugned legislative instruments, therefore, do not have the effect to neutralize or nullify the judgments of the Courts referred to hereinabove.” (page 1867, paragraph 173).

“We also hold that all the re-employment/rehiring of the retired Civil/Government Servants under the impugned instruments being violative of the Constitution are declared nullity.” (page 1868).

Mr. Memon was re-employed in clear breach of section 14 of the Sindh Civil Servants Act, 1973 and the aforesaid judgment of this Court. An attempt to circumvent the law and the judgment was made by re-employing Mr. Memon in the garb of a “contract”, which cannot be permitted. Mr. Memon’s appointment as the Chief Engineer of the Authority is not sustainable and it is declared to be *void ab initio* and of no legal effect.

10. Mr. Zameer Ahmed Sheikh was appointed as an Executive Engineering of the Authority through a notification dated January 8, 2016, which states that he was appointed on March 27, 2012 on contract for a specific period and after it had expired the contract was “extended upto December 2017”. No disclosure is made about Mr. Sheikh’s qualifications, abilities and the method of his appointment. Mr. Sheikh resigned on March 10, 2017 before his “contract” had come to an end.

11. The last meeting of the Board of the Authority was held on July 20, 2011. Since the DG is designated as the Secretary of the Board, we enquired from Mr. Danish Saeed, who was holding the position of DG, the reason for not calling and holding any meeting of the Board for approximately six years, but he had no answer. The minutes of the last meeting of the Board disclose that the following projects/schemes were to be executed by different departments/organizations of the Government: “(i) Thar Airport, (ii) Road Network, (iii) Provision of Water upto Thar Coalfields, (iv) Disposal of Effluent from Thar Coalfields, (v) Laying of railways link upto coalfield areas, (vi) Water Master Plan and Hydrogeological Studies and (vii) Environment, Resettlement and GIS for Thar Coalfields”.

12. We were informed that the Authority had decided to execute a number of projects/schemes without the permission, approval or sanction of the Board. Some of the same projects/schemes (mentioned above) were subsequently implemented/executed by the Authority without the sanction of the Board; infact it could be said that once the Board had specifically noted that projects/schemes were to be executed by Government departments the Authority in undertaking the same had contravened the Board’s decision. The additional projects/schemes that are being implemented/executed by the Authority include reverse osmosis water desalination plants, drilling bores and installing 250 tubewells, constructing water channels, improving and widening road networks and constructing new roads. The estimated cost of the projects/schemes being implemented/executed by the Authority is an astronomical 72,301,545,000 rupees of which an amount of 5,565,025,000 rupees has already been spent. With regard to these projects and schemes it is alleged that public funds have been embezzled and misappropriated. Whilst in these proceedings we are not in a position to determine the veracity of the allegations, what is apparent is that these projects and schemes are

being implemented/executed by/through Mr. Danish Saeed, who was illegally appointed as the DG and a coterie of retired and/or unqualified persons. By this methodology the long standing and established Government departments, which are designated under the Rules of Business of the Government of Sindh to undertake such projects/schemes, was bypassed.

13. Mr. Agha Wasif Abbas, the Energy Secretary of the Government, sought to justify the projects/schemes undertaken by the Authority by stating that the Rules of Business of the Government of Sindh had been amended to designate the Sindh Coal Authority as an “attached department” of the Energy Department and that the Act was proposed to be amended by including the Energy Secretary as a member of the Board. Merely because the Sindh Coal Authority is now an attached department of the Energy Department does not mean that the provisions of the Act can be disregarded. And as regards the proposed change to the Act, whereby the Energy Secretary would become a member of the Board, this too would be of no consequence. However, the Secretary, like everybody else, is required to abide by the law as it is, and not proceed on the assumption that it may come to be changed. These are some of basic concepts of which Mr. Agha Wasif Abbas demonstrated a complete lack of knowledge.

14. The functions of the Authority are mentioned in the Act and the Authority cannot undertake the projects/schemes which fall within the domain of different departments of the Government. The Government has a number of departments and the business of each department is mentioned in Schedule II of the Sindh Government Rules of Business, made pursuant to Article 139(3) of the Constitution. Each department has its own designated business and, consequently, the ability, skill and capacity to undertake it. Every department also acquires considerable experience and expertise over

the years. We were informed that when the projects and schemes are completed they would be transferred to the concerned regular department of the Government and these departments would assume the responsibility for maintaining them; even though such departments had neither formulated, implemented or executed these projects/schemes. These projects and schemes had nothing to do with the work of the Sindh Coal Authority or the Energy Department, but were nonetheless implemented/executed by them.

15. These projects/schemes are also not within the designated business of the Energy Department in the Sindh Government Rules of Business. A Secretary of the Government ought to know better than to disregard the Rules of Business, undertake business which his department is not authorized to do and so encroach on the domain of other departments. It is the responsibility and duty of a secretary to the Government to draw the attention of the Chief Secretary and/or the Chief Minister, if the Rules of Business are contravened and to record in writing his objections when this happens. Mr. Agha Wasif Abbas, the Energy Secretary, didn't do this. On the contrary he facilitated the execution of different projects and schemes by circumventing Government departments which were responsible to implement and execute them. Moreover, specific persons were illegally appointed or inducted in the Sindh Coal Authority and it was through these persons that projects/schemes worth billions of rupees were implemented/executed. In such a scenario, in the absence of a functioning Board where all decisions were taken without the authorization of the Board, the DG and Energy Secretary become all the more responsible and accountable. A parallel system of government or a government within the Government is not envisaged by the Constitution and the Rules of Business made thereunder. The business of each department of the Government has been designated and such business has to be undertaken by it.

16. During the hearing of this case we were informed that some of the projects and schemes were being implemented/executed by the Special Initiative Department, which was a new “department” created by amending the Sindh Government Rules of Business on May 13, 2015, by adding to its Schedule I the Special Initiative Department at Serial No. 35-A. The Rules of Business, however, did not designate any “business” to this new department, but nonetheless its Secretary brazenly, and without any legal sanction, proceeded to undertake the said projects and schemes. This anomaly was specifically taken note of by this Court and the Government was called upon to address this issue, and the purpose of creating the Special Initiative Department. The relevant extract from the order of this Court dated January 11, 2017 is reproduced hereunder:

“We have further been informed that besides Sindh Coal Authority some other RO plants were installed by the Special Initiative Department of the Government of Sindh across Sindh. The Additional Secretary Services Department states that the Special Initiative Department was recently created through an amendment made in the Sindh Government Rules of Business. We, therefore, inquired from the Additional Secretary Services about the functions/business of the Special Initiative Department as earmarked in the Rules of Business but he was not able to assist us in this regard. We, therefore, direct the Advocate General, Sindh to appear along with the Secretary Special Initiative Department to assist us on: (1) the functions assigned to the Special Initiative Department under the Rules of Business, (2) whether the functions/business assigned to the Special Initiative Department are not already carried out by pre-existing departments, and if they are, (3) how will the overlap between them be resolved/addressed, (4) whether matters will not be complicated if the same functions are to be carried out by two different departments whether such a Department could be created, and (5) under which ministry does the Special Initiative Department to file a list of the projects which this Department has undertaken or is undertaking with a brief description thereof and the amount paid/earmarked for it.”

The reply submitted by Mr. Ejaz Ahmed Khan, the Secretary of the Special Initiative Department, to the aforesaid queries is reproduced:

“3. The Special Initiative Department is entrusted with the task of conception, implementation and execution of various projects particularly assigned to this department by the Government of Sindh. Since this Department has a focused approach therefore different projects of Civil Works, Health and Water Treatment for drinking purpose are assigned by Government of Sindh from time to time.

4. At present this department has different projects in hand headed by Project Directors. The reply with reference to Para 6 of the above Order in the annotated form is give below alongwith brief of projects which this department has undertaken or is undertaking:

S. NO.	COURT ORDER	REPLY OF THE DEPARTMENT
1	The functions to the Special Initiatives Department under the Rules of Business.	The Special Initiative Department which is placed at No. 35-A in the Sindh Government Rules of Business, 1986 is basically responsible for conception, execution and implementation of the projects assigned by the Government of Sindh from time to time.
2	Whether the functions/ business assigned to the Special Initiatives Department are not already carried out by pre-existing departments, and if they are,	The functions / business assigned to the Special Initiative Department is being carried out by different other departments also.
3	How will the overlap between them be resolved/addressed	Till this time no any overlap between different departments has ever occurred as schemes are allotted different Annual Development Programe numbers.
4	Whether matters will not be complicated if the same functions are to be carried out by two different departments whether such a department could be created, and	It may be submitted that till this time no any complication has ever been reported and by creation of Special Initiative Department, which was a Federal subject previously, the approach of this department is focused for timely completion of the projects.
5	Under which ministry does the Special Initiatives Department come	The portfolio of this department is with Chief Minister, Sindh.

The answers given to the above questions were woefully inadequate.

Important questions do not go away by brushing them aside or by

nonsensical responses and banalities. The people expect better from their Government.

This case was next heard on February 16, 2017 when, on the same subject, the following order was passed:

“We have gone through the report submitted by the Secretary, Special Initiative Department Government of Sindh, who claims that he is occupying the position of the Secretary of the said Department on Additional Charge basis. He states that he is Commissioner, Karachi, since 08 months and during his posting as Commissioner has been further assigned the additional charge for the Secretary Special Initiative Department.”

“2. We have gone through the report of the Secretary and refrain from commenting upon the same for the time being. We confronted the Advocate General, Sindh, as to how the additional charge of the post of Secretary can be assigned to Commissioner, Karachi, which is a field posting. In response to this, the learned Advocate General has failed to offer any plausible explanation. We further enquired from the Advocate General, Sindh, to inform us as to how the newly created Special Initiative Department (hereinafter referred to as the Department), by amending the provisions of Sindh Government Rules of Business, 1986, [is functioning] without assigning any function [to it]. He failed to provide a satisfactory answer even to this question. The provisions of clause 3 of Article 139 of the Constitution, authorize the Provincial Government to make rules for allocation and transaction of its business. The Sindh Government Rules of Business, 1986, have been framed pursuant to the said Article of the Constitution. Rule 2 Sub-Rule (iv) defines the term “Business”, which means all work done by the Government. The Government under Rule 7, through different departments, regulates its business. The new created Department has not been allocated any business specified in the amending notification dated 13.05.2015, issued by the Government of Sindh, Services and General Administration and Co-ordination Department (Regulation Wing). We inquired from the Secretary how can he head a department which has not been allocated business. He states that he runs the Department under the directives of the Chief Minister. We do not find any such term in the Rules of Business to regulate a Department, as these powers to regulate business are subject to the provisions of the Rules of Business, framed under Article 139 of the Constitution.”

“3. Under these circumstances, we are constrained to hold that the Department created without any business or functions cannot be allowed to continue on the directives of the Chief Minister. All the schemes which have been assigned to this Department at times by the Chief Minister shall be transferred to the concerned departments to whom such

functions have been allocated under the Rules of Business. A parallel hierarchy cannot be created within the government departments to overlap the functions of each other.”

“4. We have noticed that different schemes which are supervised by this Department are the schemes which, *prima facie*, have been carved out from the domain of different departments which even if allowed to be completed would be maintained by the concerned department on regular basis.”

“7. For the aforesaid reasons, we direct the Chief Minister, Sindh to immediately review the amendment made in the Sindh Rules of Business, creating this newly Special Initiative Department, as such amendment is contrary to the scheme of Rules of Business and will lead to multiple problems within the Government besides the business allocated to the departments having infrastructure and capability, would lose their authority assigned by law.”

Mr. Ejaz Ahmed Khan, Secretary of the Special Initiative Department, provided brief particulars and the cost of the projects/schemes being implemented/executed by the Special Initiative Department. The cost of these projects/schemes is 33,605,395,000 rupees and they cover different sectors, including water supply, drainage, construction of roads, improvement/rehabilitation of roads, establishment of the campus of an educational institution and health. We are also at a complete loss to understand how a newly created department, which has no designated business or functions under the Rules of Business, has no expertise, capacity or experience would be able to undertake these multifarious projects/schemes.

17. Mr. Ejaz Ahmed Khan is the Commissioner of a Division and has been given the additional charge of the Secretary of the Special Initiative Department; his holding of an additional or dual charge negates the importance of these schemes and exposes the myth of their importance. It is also against the rules to designate a Commissioner as a Secretary of a department.

18. In pretending to activate a moribund organization like the Sindh Coal Authority or by creating a new department like the Special Initiative Department and then routing projects and schemes through them erodes good governance and accountability. Virtually every Government department states that it has insufficient funds but money is miraculously found for new favourites. Projects and schemes, which established departments are geared to implement and execute, were instead given to inexperienced novices to implement and execute, apparently because of their high value. And we were told that, after the Authority and this new Department have executed the projects and schemes these will be handed over to the regular departments of the Government for operation and maintenance; departments which had no hand in either formulating or executing them would assume the entire responsibility for ensuring they are operating properly and periodically maintained, and without providing money to do this. And then, one supposes when it emerges, that a project/scheme is deficient, dysfunctional and/or badly executed the blame charade will commence. The Authority or the new Department, as the case may be, which implemented and executed it would contend as, it usually happens, that a well designed for purpose project/scheme was executed and in fully functioning state it was handed over to the department, however, the department would lament its design, complain about the quality of materials used and express regret about the workmanship. This scenario would be in respect of those projects/schemes which have at least been installed. It is also quite common for a project/scheme to be found only in a secret file which has been closeted away. It becomes difficult, if not impossible, to fix responsibility when a water desalination plant, tubewell, road or health unit either does not exist, doesn't serve its purpose or doesn't work. The people suffer. Their money is squandered. And it is they who bear the brunt of bad governance. The people at the political and bureaucratic helm of Government must remember that

they are accountable. Good governance is not a favour to be bestowed on the people; it is their right.

19. We had expected the Government to make amends once these issues were pointed out, but sadly matters have not been righted. The Sindh Coal Authority was established to explore, develop, process, mine and utilize coal in the Province of Sindh, however, instead of undertaking what the law mandates it to do, it undertook activities which the Act does not permit, and that too without the approval of its Board. The Special Initiative Department, to which the Rules of Business have not designated any business, is merely a department in name or an empty shell, nonetheless it has embarked upon undertaking a number of projects and schemes for which it has absolutely no mandate or ability. The Sindh Coal Authority and the Special Initiative Department together are implementing and executing projects and schemes worth 105,906,940,000 rupees. A small clique of persons is put in charge of these massive funds, avoiding established methods of checks and balances and circumventing the prescribed manner of implementing and executing of projects/schemes; which is a matter of grave public concern.

20. That though no one has questioned this Court's jurisdiction under Article 184(3) of the Constitution in respect of these matters there can be no doubt that this Court has jurisdiction. The matters noted herein are of immense public importance involving the Fundamental Rights of the people. The Fundamental Right to life (Article 9), includes the right to adequate and safe drinking water and basic health care to which a large number of these projects/schemes pertain. The Fundamental Right to live a life with dignity (Article 14) would be meaningless if the people are deprived of the benefit of projects and schemes that are paid out of the public exchequer. The Fundamental Rights of the people are adversely affected when scarce

resources are wasted, when there is unnecessary duplication of work, when responsibility is shirked by those executing public works and when it would be very difficult to hold anyone accountable as a result of implementing and executing projects/schemes through an entity or department which the law does not sanction.

21. For the aforesaid reasons, we:

- (a) Declare that without a functional Board the Sindh Coal Authority is dysfunctional;
- (b) Declare that the Sindh Coal Authority can only implement and execute such projects and schemes which are mentioned in the Sindh Coal Authority Act;
- (c) Declare that by adding the prefix 'coal' to a project or a scheme or otherwise juggling words, a project or a scheme cannot be executed by the Sindh Coal Authority which is not mentioned in the Sindh Coal Authority Act;
- (d) Direct that the projects and schemes which have been implemented / executed or those which are being implemented by the Sindh Coal Authority, which are not in respect of exploration, development, processing, mining or utilizing of coal in the Province of Sindh, be immediately transferred to the concerned Government department in terms of Schedule II of the Sindh Government Rules of Business;
- (e) Direct that the projects and schemes which have been implemented / executed or those which are being implemented by the Special Initiative Department be immediately transferred to the concerned Government department in terms of Schedule II of the Sindh Government Rules of Business;

- (f) Direct that the projects and schemes which have been transferred pursuant to sub-paragraphs (d) and (e) above are examined, inspected and photographed by the department to which they have been transferred and all wrongdoings and/or deficiencies therein be brought to the notice of the Chief Secretary Sindh, who shall incorporate the same in his proposed report submitted pursuant to sub-paragraph (g) below; and
- (g) Direct that an inquiry be conducted by the Chief Secretary Sindh with regard to all the projects / schemes that were undertaken by the Sindh Coal Authority and the Special Initiative Department inline with the observations made in this judgment. The Chief Secretary shall within two months from the date of the communication of this judgment submit his proposed report, which shall be put up for our perusal in Chambers, where after further orders would be passed by this Court.

22. This case and the listed applications are disposed of in terms of the above mentioned paragraphs 6, 8 and 21.

Judge

Judge

Judge

Bench-I
Karachi
March 24, 2017
(*M. Tauseef*)

APPROVED FOR REPORTING

Announced by me.

Judge