

**ORDER SHEET  
IN THE LAHORE HIGH COURT, LAHORE.  
JUDICIAL DEPARTMENT**

**I. C. A. 364 of 2017.**

**M. Maqbool & Company.      Versus.      Govt.of Punjab, etc.**

Sr. No. of order/ Proceedings,	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
	27-03-2017	Sh. Naveed Shahryar, Advocate for the appellant.

Through this Intra Court Appeal, the appellant has assailed the order dated 17.02.2017 passed by learned single Judge in chamber while invoking the jurisdiction of this Court with the following payer:-

*“that the impugned order dated 17.02.2017 of learned single Judge in chamber of this Court may graciously be set-aside and writ petition, filed by the appellant be allowed.”*

2. The relevant facts arising out of this case are that the appellant entered into a contract with the respondents by the name of “Kausar Environmental Improvement Project” dated 29.07.2009 for which it carried out its work and payments were made thereunder. The grievance of the appellant started on 19<sup>th</sup> running bill, when Executive Engineer (respondent No.3) changed the agreed rates for crushed stone which is in absolute disregard of the contractual commitment.

3. The learned counsel for the appellant has argued that order dated 17.02.2017 passed by learned single Judge in chamber is not in accordance with contents of contract, wherein rate was approved as Rs.50.14 per Cft, but

respondent No.3 without any intimation/notice and against the terms of contract letter, reduced to Rs.46.19 per Cft. and ordered for the recovery of difference of the agreed rate i.e. 50.14 per Cft. He has drawn our attention towards the letter dated 29.07.2009, whereby rate of non-standardized items was approved @ of Rs.50.14. In support of his contention, learned counsel for the appellant has referred case law “M/s. Pacific Multinatioal (Pvt) Ld. Vs. Inspector General of Police Sindh Police Headquarters and 2-others” (PLD 1992 Karachi 283), “M.Asghar Ali. Vs. Secretary to the Government of Pakistan Ministry of Foreign Affairs, Islamabad and others” (1998 SC.M.R. 2022), M/s. O.K. Agencies. Vs. Chief Controller, etc.” (NLR 2000 Civil 327) and “M/s. Mehmood Textiles Mills Ltd. through General Manager Finance. Vs. Multan Electric Power Company (MEPCO through C.E.O.” (2014 MLD 1253 Lahore).

4. Arguments heard and record perused.

5. Before adjudicating upon the merits of the case, the question involved in the matter in hand is “whether any contractual dispute can be resolved through mechanism provided under Article 199 of the Constitution of Islamic Republic of Pakistan.” The dispute between the parties is the change of rate of non-standardized items mentioned in the contract. We have gone through the order dated 17.02.2017 passed by learned single Judge in chamber and operative part of said order is reproduced as under:-

*“The dispute is a contractual matter and any dispute in relation to the interpretation of contract must be settled in terms of the dispute resolution clause which provides for a comprehensive mechanism to settle all disputes. Secondly, the question as to what rate has to be paid and what rates were applicable at the time, is a factual dispute for which appropriate remedy may sought by the petitioner. Essentially, the petitioner seeks enforcement of the terms and conditions of its contract through this petition on the basis of disputed facts which cannot be done in a constitutional jurisdiction.”*

Our deep concern is on the maintainability of the writ petition. As the learned single Judge in chamber approved that question relates to the payment under contract for which the constitutional petition is not maintainable.

6. It is the case of appellant that payment is based upon breach of contractual liability, according to which rate of non-standardized items was varied and the difference in the shape of recovery was wrongly imposed upon the appellant. This being so represented, which is evident from letter relied by the appellant. Without recording the evidence of the parties, it is not possible for the Court to ascertain the actual amount or variation of the amount in derogation of the contract. Mere recital of letter dated 29.07.2009, cannot enable that the contents envisaged in the clause VI was interpreted wrongly.

7. We are unable to put any finding by distinguishing the validity of rates of standardized items with non-standardized

items. As such the matter relates to the contractual obligation and cannot be decided without recording the evidence. Hence, the learned single Judge in chamber has rightly declined the prayer of the petitioner/appellant. It is also a settled principle of law that contractual obligation cannot be enforced through writ petition as it is the mandate of the aforesaid ordinary jurisdiction to interfere in the contents, variations and applicability of terms & conditions of the contract. We have sought guidance from the case law titled **“Nizam-ud-Din and another. Vs. Civil Aviation Authority and 2-others.” (1999 SCMR 467)**, whereby the proposition in hand was discussed as under:-

*“If in every contractual matter giving rise to enforcement of contractual obligation or a dispute which can be redressed through other remedy available under the law. The writ petitions are entertained, then this would defeat that very purpose of law and which competent Courts are established and vested with jurisdiction under the law.”*

8. In view of above discussion, prima facie, claim of the appellant falls within the ambit of contractual obligation and is not proceedable under the constitutional jurisdiction. On the strength of above cited dictum, we are of the considered view that writ jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan is not meant for dispute relating to terms and conditions of contract.

Consequently we are unable to find out any illegality, jurisdictional error and defect in the order of learned single Judge in chamber, which is **upheld**.

Resultantly, this Intra Court Appeal being devoid of any force is hereby **dismissed** *in limine*.

(Amin-ud-Din Khan)  
Judge

(Abdul Rahman Aurangzeb)  
Judge

Approved for Reporting

Judge

R.Yousaf\*