

**HIGH COURT OF AZAD JAMMU AND KASHMIR**

- (1) Writ Petition No 3201/2023.  
Date of institution 25.11.2023.  
Date of Decision 13.09.2024.

Inhabitants of LA 29 Muzaffarabad through

1. Syed Saeed Mehmood Shah S/o Syed Mehmood Shah elected counselor Municipal Corporation Muzaffarabad from ward Domail Syedan Muzaffarabad Azad Jammu and Kashmir.
2. Raja Tahir Ali Khan S/o Raja Qamar Ali Khan elected counselor Municipal Corporation Muzaffarabad from ward Makri Muzaffarabad Azad Jammu and Kashmir.
3. Haider Suleman S/o Muhammad Suleman elected counselor Municipal Corporation Muzaffarabad from ward Ranjata Muzaffarabad Azad Jammu and Kashmir.
4. Muneeb Ishaq S/o Muhammad Ishaq elected counselor against reserved Municipal Corporation Muzaffarabad from ward Jalalabad Muzaffarabad Azad Jammu and Kashmir.
5. Muhammad Jahangir Mughal S/o Abdul Rasheed elected counselor against reserved seat for youth Municipal Corporation Muzaffarabad.
6. Mazhar ullah Chaudhary S/o Sardar Bashir ullah elected counselor against reserved seat for youth Municipal Corporation Muzaffarabad.
7. Muhammad Abid S/o Abdul Rashed Local Counselor from ward No.07 union counsel Patreend District Muzaffarabad.
8. Faisal Jamil Kashmiri S/o Jamil Anwar Kashmiri R/o Khawaja Mohalla Tehsil and District Muzaffarabad.
9. Chaudhary Zubir Younas S/o Chaudhary Muhammad Younas R/o Shoukat Line Gojra Tehsil and District Muzaffarabad.
10. Zohaib Farooq S/o Muhammad Farooq R/o Jalalabad Tehsil and District Muzaffarabad.
11. Umer Sheikh S/o Muhammad Shafi R/o Babu Mohalla Tehsil and District Muzaffarabad.
12. Muhammad Suleman S/o Muhammad Ismail R/o Babu Mohalla Tehsil and District Muzaffarabad.
13. Muhammad Munir S/o Muhammad Afzal R/o Babu Mohalla Tehsil and District Muzaffarabad.
14. Muhammad Maqbool Baig S/o Abdul Samad R/o Babu Mohalla Tehsil and District Muzaffarabad.
15. Babar Miskeen S/o Muhammad Miskeen R/o Dahrian Bambian Tehsil and District Muzaffarabad.
16. Yasir Ali S/o Muhammad Miskeen R/o Dahrian Bambian Tehsil and District Muzaffarabad.
17. Syed Irfan Hussain Shah S/o Syed Altaf Hussain Shah R/o Dahrian Bambian Tehsil and District Muzaffarabad.
18. Raja Shabir Ahmed S/o Raja Safdar Ali Khan R/o Dahrian Bambian Tehsil and District Muzaffarabad.

19. Nadeem Manzoor S/o Manzoor Ahmed R/o Dahrian Bambian Tehsil and District Muzaffarabad.
20. Haseeb Ahmed Khan S/o Raja Ali Afsar Khan R/o Dahrian Bambian Tehsil and District Muzaffarabad.
21. Zeeshan Farooq S/o Muhammad Farooq R/o Jalalabad Tehsil and District Muzaffarabad.
22. Waqar Ayub Khokhar S/o Muhammad Ayub R/o Ranjata Tehsil and District Muzaffarabad.
23. Zeeshan Naseem S/o Naseem Akhtar R/o Ranjata Tehsil and District Muzaffarabad.
24. Tufail Hussain S/o Khadim Hussain R/o Ranjata Tehsil and District Muzaffarabad.
25. Ahtisham Shoukat S/o Shoukat Hussain R/o Ranjata Tehsil and District Muzaffarabad.
26. Sohrab Ahmed S/o Sain Khan Mirza R/o Ranjata Tehsil and District Muzaffarabad.
27. Altaf Hussain S/o Muhammad Akbar Khan R/o Ranjata Tehsil and District Muzaffarabad.
28. Ahtisham Hanif S/o Muhammad Hanif R/o Ranjata Tehsil and District Muzaffarabad.
29. Fahtab Yab S/o Sher Zaman R/o Gojra Tehsil and District Muzaffarabad.
30. Muhammad Sajid Qureshi S/o Muhammad Nazir Qureshi R/o Union Council Patreen Tehsil and District Muzaffarabad.

...Petitioners

VERSUS

1. Azad Government of the State of Jammu and Kashmir through Chief Secretary having his office at New Secretariat Muzaffarabad.
2. Additional Chief Secretary (Dev) Chairman (AKDWP) Govt. of AJK having his office at New Secretariat Muzaffarabad.
3. Secretary communication and works department (Chairman Pre-DWP) Azad Govt. of the State of Jammu and Kashmir, having his office at new Secretariat Muzaffarabad.
4. Secretary planning and development department having his office at new Secretariat Muzaffarabad.
5. Secretary Finance having his office at new Secretariat Muzaffarabad.
6. Chief Engineer AJ&K PWD Highway having his office at new district Complex Muzaffarabad.
7. Accountant General Azad Jammu and Kashmir.
8. Chief Economic appraisal (projects wing) planning development and special initiative division, government of Pakistan having office at street NO.1 H-8/1 PPMI building Islamabad.
9. Azad Jammu and Kashmir Cabinet Development Committee through its Chairman worthy Prime Minister of Azad Jammu and Kashmir having office at PM office Chatter Domail Muzaffarabad.

.....Respondents

10. Khawaja Farooq Ahmed Member legislative Assembly from LA-29 Muzaffarabad III having his office at opposition chamber legislative Assembly Building Chattar Muzaffarabad.

(Proforma-respondent)

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(2) Writ Petition No 3384/2023.  
Date of institution 08.12.2023.

Ch. Ali Shan Soni, Member Legislative Assembly Azad Jammu and Kashmir Constituency No.LA-06, Samahni, District Bhimber, Azad Jammu and Kashmir.

...*Petitioner*

VERSUS

1. Azad Govt. of the State of Jammu and Kashmir through Secretary Communication and Works, Azad Jammu and Kashmir, having its office at new Secretariat Muzaffarabad.
2. Secretary communication and works Azad Govt. of the State of Jammu and Kashmir, having his office at new Secretariat Muzaffarabad.
3. AKCDC through Additional Chief Secretary (Development), Secretary AKCDC, Azad Jammu and Kashmir, having his office at New Secretariat Muzaffarabad.
4. Additional Chief Secretary (Development) Azad Govt. of the State of Jammu and Kashmir having its office at New Secretariat Muzaffarabad.
5. AKDWP through Secretary Communication and works, Azad Jammu and Kashmir, having his office at new Secretariat Muzaffarabad.
6. Department of Planning and Development through Secretary Planning and Development Azad Jammu and Kashmir having its office at New Secretariat Muzaffarabad.
7. Secretary Planning and Development Azad Jammu and Kashmir, having its office at New Secretariat Muzaffarabad.
8. Finance Department through Secretary Finance Azad Jammu and Kashmir, having its office at New Secretariat Muzaffarabad.
9. Chief Engineer Communication and Works (South) Mipur, Azad Jammu and Kashmir.
10. Superintending Engineer, communication and works department Azad Jammu and Kashmir, Circle Mirpur.
11. Executive Engineer Communication and Works Department District Bhimber.
12. Accountant General of Azad Jammu & Kashmir, having his office at Sathra Hills Muzaffarabad, Azad Jammu and Kashmir.
13. Public at large.

.....Respondents

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(3) Writ Petition No 3551/2023.  
Date of institution 28.12.2023.

Sardar Abdul Qayyum Niazi, Former Prime Minister, Member Azad Jammu and Kashmir Legislative Assembly, constituency No.18 Abbaspur, District Poonch, Azad Jammu and Kashmir.

...Petitioner

VERSUS

1. Azad Govt. of the State of Jammu and Kashmir through Chief Secretary, office situated at new Secretariat Muzaffarabad.
2. Additional Chief Secretary (Development) Chairman (AKDWP) Government of Azad Jammu and Kashmir, office situated at New Secretariat Muzaffarabad.
3. Secretary Communication and Works Department (Chairman pre-DWP) Azad Government of the State of Jammu and Kashmir, office situated at New Secretariat Muzaffarabad.
4. Department of Planning & Development through Secretary Planning & Development Department Azad Govt. of the State of Jammu and Kashmir, office situated at New Secretariat Muzaffarabad.
5. Finance Department through Secretary Finance Azad Government of the State of Jammu and Kashmir, office situated at New Secretariat Muzaffarabad.
6. Chief Engineer Azad Jammu and Kashmir PWD Highway, having his office at New District Complex Muzaffarabad, Azad Jammu and Kashmir.
7. Accountant General of Azad Jammu and Kashmir, office situated at Sathra Hills, Muzaffarabad.
8. Chief Economic Appraisal (Projects Wing) Planning Development and Special initiative division, Government of Pakistan, having office at street No.I H-8/1 building Islamabad.
9. Azad Jammu and Kashmir Cabinet Development Committee through its Chairman worthy Prime Minister of Azad Jammu and Kashmir, having office at PM Office Chatter Domail Muzaffarabad.

.....Respondents

WRIT PETITIONS

*Before:-* **Justice Syed Shahid Bahar, J.**  
**Justice Sardar Muhammad Ejaz Khan, J.**

PRESENT:

Kh. Junaid Pandat, Raja Kashaf Azad and Sardar Muteeb Ahmed, Advocates for the petitioners.

Haider Rasheed Mughal, A.A.G and Muhammad Asad Khan, Advocate on behalf of official respondents.

Sajid Hussain Abbasi, Advocate for the applicants/interveners.

**Judgment:**

***(Justice Syed Shahid Bahar, J)*** As the identical law points and facts are involved in all the titled writ petitions, therefore, these were clubbed up, heard together and are decided through this single judgment.

Succinct facts of the writ petition No.3201/2023 filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, are that the petitioners hail from LA-29 Muzaffarabad Azad Kashmir and are aggrieved by the decision of Azad Jammu and Kashmir Development Working Party (AKDWP) for year 2023-24 and other further proceedings. The petitioners contended that Government of Pakistan announced Tameer-e-Kashmir program for construction, improvement, metaling & reconditioning of roads for all constituencies within the State of Azad Jammu and Kashmir, the main objective of program was to enhance the traveling facilities to subjects of Azad Jammu and Kashmir, hence, aforesaid program was launched. They alleged that members of Legislative Assembly of Azad Jammu and Kashmir were required to submit detail of schemes, which were to be placed under Tameer-e-Kashmir Program and all representative MLAs were required to submit schemes of worth five hundred million. Petitioners contended that LA-29 Muzaffarabad is represented by proforma-respondent who along with other MLAs submits their detail schemes before concerned authority and public at large was waiting for

final approval of schemes as condition of roads in all over Azad Kashmir and specially in Muzaffarabad (capital territory) are bad, hence, the project i.e. Tameer-e-Kashmir program was a big hope for the people of local vicinity. The petitioners averred that after submission of schemes, the official respondents proceed into matter and conduct pre Azad Kashmir Development Working Party (AK DWP) meeting on 12.11.2023. The matter finally was to be presented before Azad Jammu and Kashmir Cabinet Decision Committee (AKCDC) but on publication of minutes of meeting of AKDWP it came into knowledge of petitioners that schemes of LA-29 Muzaffarabad has been withdrawn from agenda on unexplained reasons, despite the fact that schemes of LA-29 Muzaffarabad were placed at agenda item No.33. The petitioners vehemently contended that the respondents are duty bound to act in accordance with law but in present case, respondents act otherwise and had withdrawn the schemes of LA-29, Muzaffarabad from agenda of DWP. Petitioners averred that public at large cannot be penalized only on the basis of political or on the ground that their representative is sitting on opposition benches in present case exclusion of schemes of capital territory on un explained, unjustified reasons is based on political victimization which is bad in eye of law, hence, respondents are liable to be directed to include schemes of LA-29 Muzaffarabad under Tameer-e-Kashmir program and place the same before AK CDC meeting and AK CDC may kindly be directed to approve schemes of LA-29 Muzaffarabad under Tameer-e-Kashmir program as submitted by proforma respondent.

In writ petition No.3384/2023, the petitioner Ch. Ali Shan

Soni, prayed as infra:-

“It is, therefore, very humbly prayed on behalf of the petitioner that by accepting the instant writ petition appropriate writs may kindly be issued in the following manners:

- (i) Direct the respondents jointly and severally to approve and notify the projects identified the petitioner for LA-06 Samahni District Bhimber against the “Tameer-e-Kashmir Program for construction, improvement, metalling and reconditioning of Roads”
- (ii) Restraining the respondents from preparing PC-1 or approving projects against the “Tameer-e-Kashmir Program for construction, improvement, metalling and reconditioning of roads: on identification of any other person by ignoring the projects already submitted by the petitioner.
- (iii) Any other relief which this Court deems fit may also be granted in favour of petitioners in the interest of justice.”

In writ No.3384/2023, the petitioner averred that the respondents has approved a project for construction of roads namely **“Tameer Kahsmir Program for construction, improvement, metalling and reconditioning of roads”** and allocated Rs.500.000/- million per constituency. In this regard according to government notification and plicy respondents sought proposal from the MLAs elected from the constituencies of Azad Jammu and Kashmir, the MLAs of all constituencies of Azad Jammu and Kashmir including petitioner submitted their proposals and identified the projects. The meetings of AKDWP has held on 15.11.2023 wherein, projects of roads pertaining to constituency of the petitioner’s LA-06 have been included in agenda item No.11, but AKDWP dropped the agenda item No.11 and did not

clear the schemes for consideration of the AKCDC. The meeting of AKCDC was conducted on 16.11.2023 wherein projects of roads of all other constituencies have been approved except constituency No.LA-VI, LA-VII, LA-XVIII, LA-XIX and LA-XVIX. That after the approval of AKCDC the government has notified the roads of 23 constituencies. The petitioner has taken stance that after dropping of the projects of roads submitted by the petitioner now respondents want to include the projects of roads on the identification of some unelected persons just to victimize the petitioner on the direction of the worthy Prime Minister, hence, respondents are liable to be directed to approve the projects of roads submitted by the petitioner which have been withdrawn/dropped in the meeting of AKDWP and respondents are liable to be restrained from approving projects of roads against the “Tameer-e-Kashmir Program for construction, Improvement, Metalling and Reconditioning of Roads”.

In writ petition No.3551/2023, the petitioner, Sardar Abdul Qayyum Niazai, [Ex-Prime Minister of Azad Jammu and Kashmir) through this petition is seeking following direction against the respondents:-

- I. “Direct the respondents jointly and severally to approve and notify the projects identified the petitioner for LA-18 Abaspur District Poonch against the “Tameer-e-Kashmir Program for construction, improvement, metalling and reconditioning of Roads.
- II. Restrained the respondents from preparing PC-1 or approving projects against the “Tameer-e-Kashmir Program for construction, improvement, metalling and reconditioning of roads” on identification of any other person



by ignoring the projects already submitted by the petitioner.

- III. Any other relief which this Hon'ble Court deems proper may also be granted to the petitioner."

Written statement have been filed on behalf of official respondents No.2, 4 and 9 in the titled petitions, wherein the claim of the petitioners have been negated and contended that the impugned schemes were included and existed in agenda /meeting of AKDWP dated 15.11.2023 but later on due to some technicalities the said schemes of the petitioners were dropped, but it does not mean that the schemes of the development program mentioned above will not be included again, however, the same can be placed before the competent forum for approval after improving the same, thus, the petitions in hands are not maintainable which are liable to be dismissed.

We have heard the learned counsel for the parties as well as the learned A.A.G and gone through the case with due care.

Through the titled petitions, the petitioners claimed that the act to withdraw/ drop the schemes of LA-29, Muzaffarabad (Tameer-e-Kashmir program), project identified by the petitioner for LA-06 Samahni, district Bhimber as well as projects identified by the petitioner for LA-18 Abbaspur district Poonch, may be declared against the law as well as against the spirit of scheme. They prayed that the respondents may be directed to include the schemes/projects of the petitioners in the aforementioned project i.e. *Tameer-e-Kashmir program* and same may be placed before Cabinet meeting (AKCDC) for approval.

Perusal of record reveals that the matter relates to the development program known as “Tameer-e-Kashmir Program for construction, improvement, metalling and reconditioning of Roads”. For completion of said program an amount of Rs.500.000 million, for each constituency has been allocated.

After hearing learned for the parties at considerable length and perusal of record we are of the considered opinion that sanction and allocation of schemes are being carried out and dealt with upon the proposals, basis upon wisdom of the representatives or the will of the people as well as relevant quarters. Such like matters should have been brought and discussed at the floor of the House as it pertains to the policy matter, however, the elected representatives of the local bodies should have been associated in the process of such like welfare schemes and approval as they are also chosen representatives of the people, thus, their mandate should also to be respected and to be given due weightage.

The matter at hand requires no geometric progression at all as by taking up the same controversy, the Hon’ble Supreme Court in the case titled “***Sardar Attique Ahmed Khan & another Vs. Azad Govt. & 7 others***”, reported in 2017 SCR 1327 ordained as under:-

“In view of the above, we intend to dispose of this appeal with the direction to the Secretary and Director General, Local Government to adhere to the provisions of *Dastoor* in letter and spirit and all the Members of the Legislative Assembly irrespective of political affiliation shall be treated in the light of the findings recorded by the learned High Court in

paragraph 12 of the impugned judgment, reproduced hereinabove. Furthermore, if the appellants identify any of the scheme to be executed or under execution which are prepared against the public interest merely on the basis of political and party affiliation they may approach respondents No.2 to 8 and also furnish the details of such scheme to the Registrar of this Court. As the paramount consideration is the public interest, therefore, respondent No.2 to 8 are directed that if any identified scheme is found against the public interest or executed merely on the basis of political or party affiliation, against the public interest, the same shall immediately be revisited and in this regard shall submit the compliance report quarterly before this Court through Registrar.”

Thus, in paralance of above direction of the Hon’ble Supreme Court of Azad Jammu and Kashmir, it transpires that paramount consideration in such like matters is the public interest and political or party affiliation cannot be preferred over public interest. Therefore, the matter at hand requires relook and revisit by the relevant quarters in order to bring all the approvals of the schemes strictly in conformity with the above referred judgment of The Hon’ble Supreme Court and *Dastoor-ul-Amal* (policy chalked out by the respondents themselves) and finalize the matter in accordance with scheme and spirit of the supra judgment of the Hon’ble Supreme Court.

The titled writ petitions stand disposed of in the manner indicated above. File shall be kept in archive.

Muzaffarabad,  
13.09.2024.

**JUDGE**  
(S)

**JUDGE**  
(E)