

**HIGH COURT OF AZAD JAMMU AND KASHMIR**

(1)

Writ Petition No. 3350/2023.  
Date of Institution 07.12.2023.  
Date of decision. 03.07.2024.

1. Amir Jamil Abbasi S/o Muhammad Jamil Khan R/o Dichor Miran, Post Office Garhi Dupatta District Muzaffarabad.
2. Syed Zulqarnain Raza Naqvi Advocate, R/o Upper Chatter Housing Scheme Muzaffarabad.

*....Petitioners*

Versus

1. Azad Government of the State of Jammu and Kashmir through Chief Secretary Azad Govt, of the State of Jammu & Kashmir having office at New Secretariat Muzaffarabad.
2. Cabinet Azad Govt, of the State of Jammu and Kashmir through Secretary Cabinet/Chief Secretary Azad Govt, of the State of Jammu and Kashmir having office at New Secretariat Muzaffarabad.
3. Bank of Azad Jammu & Kashmir through its President having office at Bank Square Chatter Muzaffarabad.
4. President Bank of Azad Jammu and Kashmir having office at Bank Square Chatter Muzaffarabad.
5. Board of Directors Bank of Azad Jammu and Kashmir having office at Bank Square Chatter Muzaffarabad.
6. Chairman, Board of Directors, Bank of Azad Jammu and Kashmir having office at Bank Square Chatter Muzaffarabad.
7. Secretary Finance, Azad Govt, of the State of Jammu and Kashmir having office at New Secretariat Muzaffarabad.
8. Head Information Technology Division, Bank of Azad Jammu and Kashmir having office at Bank Squire Chatter Muzaffarabad.
9. M/S Consult (Pvt) Ltd. through its CEO having office at Mandeer Square, second Floor, Plot NO.12/C2, Sector G-8 Markaz, Islamabad.
10. Ehtesab Bureau of Azad Jammu and Kashmir through Chairman Ehtesab Bureau of Azad Jammu and Kashmir having office at Old Kacheri Road, Muzaffarabad.
11. Secretary Law, Justice and Parliamentary Affairs Azad Govt, of the State of Jammu and Kashmir.

*.... Respondents*

**AMENDED WRIT PETITION**

(2)

Writ Petition No. 3443/2023.  
Date of Institution 14.12.2023.

Foremost Empire (Pvt.) Ltd, a company incorporated under the laws of Pakistan, having its office at 709, 7<sup>th</sup> Floor, ISE Towers, Jinnah Avenue, Blue Area, Islamabad, through Its CEO Mr. Saadat Ali Asad, having his office at 709, 7<sup>th</sup> Floor, ISE Towers, Jinnah Avenue, Blue Area, Islamabad.

....Petitioner

Versus

1. Bank of Azad Jammu and Kashmir through its President having office at Bank Squire Chatter Muzaffarabad.
2. President Bank of Azad Jammu and Kashmir having office at Bank Square Chatter Muzaffarabad.
3. Board of Directors through Chairman Board, Bank of Azad Jammu and Kashmir having office at Bank Square Chatter Muzaffarabad.
4. Chairman, Board of Directors, Bank of Azad Jammu and Kashmir having office at Bank Square Chatter Muzaffarabad.
5. Head Information Technology Division, Bank of Azad Jammu and Kashmir having office at Bank Square Chatter Muzaffarabad.
6. Azad Govt, of the State of Jammu and Kashmir through Chief Secretary Azad Govt, of the State of Jammu and Kashmir having office at New Secretariat Muzaffarabad.
7. Secretary Finance, Azad Govt, of the State of Jammu and Kashmir having office at New Secretariat Muzaffarabad.
8. Cabinet Azad Govt, of the State of Jammu and Kashmir through its Secretary Cabinet/ Chief Secretary Azad Govt, of the State of Jammu and Kashmir having office at New Secretariat Muzaffarabad.
9. Office of the Prime Minister, Azad Govt, of the State of Jammu and Kashmir, through Principal Secretary, having office at New Secretariat Muzaffarabad.
10. M/s Consult (Pvt.) Ltd. through its CEO having office at Mandeer Square, Second Floor, Plot No. 12/C2, Sector G-8 Markaz, Islamabad.

... Respondents

WRIT PETITION

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

PRESENT:

Syed Zulqarnain Raza Naqvi, Petitioner No.2 in person and Advocate for the petitioner No.1 in writ petition No.3350/2023.

Ms. Aliya Abdul Rehman, Advocate for the petitioner foremost Empire Pvt. Ltd.  
 Barrister Maham Fadia, Advocate for respondents No.3 to 6 and 8.  
 Ch. Manzoor Ahmed Addl. A.G and Pirzada Muhammad Sajjad, A.A.G for Azad Govt.  
 Syed Asim Masood Gillani, Advocate for respondent No.9.  
 Amir Ali Awan, Legal Advisor for Finance Department.  
 Irshad Ahmed Qureshi Ex. Secretary Law of Azad Govt, of the State of Jammu and Kashmir, in person.  
 Present Law Secretary in person.

**Judgment:** -

1. ***(Justice Syed Shahid Bahar, J)*** Through the titled amended writ petition No.3350/2023 filed by Amir Jamil Abbasi and another under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, the petitioners by invoking extraordinary jurisdiction of this Court, solicited infra relief: -

"It is, therefore, most humbly prayed on behalf of the petitioners that by accepting captioned amended writ petition High prerogative appropriate writs be issued in favour the petitioners against the respondents whereby the entire proceedings conducted by the respondents in garb of the impugned advertisements may very kindly be declared null and void for being conducted in negation of the prevalent law and rules governing the subject. Moreover, the respondents may very kindly be directed to re-tender the said project by conducting the same in free, fair and transparent manner strictly in accordance with law and in larger interest of public. It is further prayed that the respondents may very kindly be restrained from carrying on with the proceedings in violation of the AJ&K PPRA rules as well as other enabling provisions of law while utilizing the money of tax payer of the State of Azad Jammu and Kashmir. It is further prayed that the respondents may very kindly be directed to act in accordance law by considering the report/opinion dated 21.11.2023 addressed by the Secretary Law, Justice and Parliamentary Affairs Azad Govt, of the State of Jammu and Kashmir. The respondent No.10 be directed to probe into the matter regarding the element of corruption and corrupt practice carried on in the respondent bank in relation to the above mentioned project."

**Saga of the Bank of AJK**

2. The Bank of AJ&K is creation of the Bank of AJK Act, 2005. The said law has been introduced to establish a bank for providing all types of commercial banking and investment banking services in AJK.
3. As per Section 4 of the Supra Act, the authorized capital of the bank shall be (ten billion Rupees divided into one billion) ordinary shares of ten rupees each, and the initial capital of the bank shall be five hundred million rupees, which shall be subscribed not less than 51% of the Govt, and up to 49% shall be subscribed by private sector, thus in this sense the AJK Govt, is major shareholder and contributor in the bank as per section 7 of the Bank of AJK Act / (hereinafter called Act) and shall hold at all times not less than 51% of the share issued by the bank.

**Factual Matrix**

4. As per section 9 of the Act, the general superintendence and direction of the affairs and business of the bank is entrusted to the board, headed by a Chairman to be appointed by the Govt, in view of Section 12 of the Act, while President of the Bank is also to be appointed by the Govt, under Section 11 of the Act.
5. In writ petition No.3443/2023, filed under Article 44 of Azad Jammu and Kashmir Interim Constitution, the petitioner Foremost Empire Pvt. Ltd, has solicited relief vide infra:-

"It is therefore, most humbly prayed on behalf of the petitioner that by accepting the instant writ petition an appropriate order may kindly be issued

In favour of the petitioner and against the respondents as under:-

- I. The respondents No.2 to 9 may very kindly be directed to consider, negotiate and approve proposal of Investment made by the petitioner for acquisition of the 49% equity shares of the respondent No.1, In terms of the Investment proposal offered by the petitioner.
- II. The entire proceeding conducted by the respondents in garb of the impugned advertisements and Notice may very kindly be declared null and void for being conducted in negation of the prevalent laws, rules and policies governing the subject matter."

6. Brief facts of the writ petition No.3350/2023 as per petitioner are that Bank of Azad Jammu and Kashmir published an advertisement and invited bids for core banking solution in order to meet the requirement of digital banking for Core, digital banking as well as hardware for the said required solution in year 2021. After procedural modalities, M/s Auto Soft Dynamics Pvt. Ltd. was successful bidder of the said project but due to reasons best known to the respondents the said bid was not finally executed by the respondent bank the same was retendered by the respondent bank in year 2022 and cut-off date for submission of the papers was fixed as 20.01.2022. The petitioner alleged that three companies participated in bidding process and respondent / Bank declared two companies as non-responsive and declared only one company namely M/s Consult Pvt. Ltd. (respondent No.9) as qualified for the said bid. The said company offered its financial proposal worth of which is 1,761,889,202/- rupees but at the same time mentioned the rates in US Dollars which is against the guidelines as set forth in the RFP as

well as advertisement. The petitioner alleged that the guidelines provided in this regard by the RFP requires the submission of financial proposal in PKR instead of any other mode which is also an essential requirement under AJ&K PPRA Rules, whereas in the case in hand the respondent company submitted its revised financial proposal by enhancing the amount from 1,761,889,202/- rupees to 2,008,204,258/- rupees and also submitted the same in USD in sheer violation of the law and rules governing the subject. The petitioner contended that the respondent No.4 without adhering the prevalent law and rules are undergoing to finalize the said matter in hasty manner by violating the mandatory provisions of law, which is evident from the letter dated 02.08.2023 addressed by the respondent No.4 to the respondent company wherein it is categorically mentioned that if the respondent company withdrew the USD component, the Board of Directors will consider its bid accordingly. The petitioner vehemently contended that the Public Accounts Committee which is the apex Committee of the Legislative Assembly for considering the financial aspect of the different departments of the State has constituted a committee to check this gross illegality on the part of the respondents and to probe the matter of re-appointment of the President of Bank of AJ&K and also addressed the letter dated 03.03.2023 to the respondent No.7 and strongly recommended that any further proceeding/finalization of the issues regarding Bank of AJ&K must be halted till the findings of the sub-committee and final recommendations of the Public Accounts

Committee but respondents without considering the same are proceeding to finalize the said bidding process, which act of the respondents is not sustainable in the eye of law. The petitioners zealously contended that the respondents have initiated the entire proceedings even in negation of the report/opinion made by the Secretary Law, Justice and Parliamentary Affairs Azad Govt, of the State of Jammu and Kashmir dated 21.11.2023 whereby the Secretary Law sent his opinion/ report to the worthy Chief Secretary to take the matter to the Cabinet pertaining to purchase of software for the Bank of Azad Jammu and Kashmir but the respondents by overlooking the same are going to complete the whole proceedings against the law and rules on the subject as well as in violation of the precedents of this Court as well as Apex Court of the State.

7. In writ petition No.3443/2023, the petitioner contended that bidding for acquisition of IT service on expense of respondent No.1, which the petitioner has offered to invest therein, but the respondents instead of acquiring such fruitful profitable services of the petitioner are hell-bent to acquire the said services of respondent No.10, which would be great loss to the tax payers exchequer not only but also discouragement to the investment and development of the State projects, offered by the petitioner, and such acts of the respondents are not warranted under law. The petitioners vehemently contended that the acts of respondent No.1, without adhering to its communication with petitioner and criteria offered for strategic partnership to which the petitioner has a valid and solid proposal

offered and standing valid on the part of petitioner is an impression that the respondents are finalizing the said matter of acquisition of IT services, in hasty manners by violating the mandatory provisions of law. The petitioner averred that the acquisition of 49% equity of respondent No.1 requires under the applicable laws and regulatory policies of the regular i.e SBP, that the respondent No.1 must maintain a certain equity level, hence, procuring and spending on the IT services for exorbitant amount of Rs. 1,761,889,202/- rupees to Rs.2,008,204,258/- rupees (as also submitted by respondent No.10 in US dollars) would result to fail the privatization process is a deliberate and malafide attempt of the respondents for their personal financial gains, it is against the principle of fair trade and justice as envisaged under the Constitution and law. The petitioner lastly prayed for acceptance of the writ petition according to prayed relief.

8. In reply of writ petition No.3350/2023, written statement has been filed on behalf of the respondents No.3 to 6 and 8 through their counsel Ms. Maham Fadia, Advocate, wherein the version of the petitioner has been negated in detail. Respondents contended that the petitioners are not aggrieved person in the eye of law and they also did not appear in bidding process, hence, they are not entitled to invoke this constitutional writ petition, in support of the said stance, reliance have been made on 2017 SCR 1380, 2001 SCR 530 and also referred the reported judgment of this Court titled "Raja Zulqarnain Abid Khan and others vs. President of Azad Jammu and Kashmir and others" decided on 07.06.2023. They further contended that the



petitioners have failed to point out any violation of rules and law on the subject, so the writ petition filed by the petitioners is without legal backing just to frustrate the smooth functioning of bank, so liable to be dismissed too because the same has also been filed with unclean hands. The respondents further contended that question of procurement of core-banking software is a function that falls exclusively within the domain of Board of Directors of the Bank of Azad Jammu and Kashmir under Section 9 of the Bank of Azad Jammu and Kashmir, Act, 2005, the Board is independent in its functioning and is exercising its powers within the limits of law. No serious question of violation of any statutory provision of law is pointed out in the writ petition, therefore, the question of issuance of high fa prerogative writ does not apply in this case and no discretionary relief is tilting in favour of the petitioner. Finally, it has been prayed that the writ petition may be dismissed with cost.

9. Respondent No.9 through his counsel Syed Asim Masood Gillani, Advocate, filed separate written statement wherein the claim of the petitioners has been negated in toto and prayed for dismissal of the writ petition with costs.

10. In reply of writ petition No.3443/2023, written statement has been filed on behalf of respondents No. 1 to 5 through their counsel Ms. Maham Fadia, Advocate, In which the claim of the petitioner has been negated in toto and contended further that the petitioner company has no nexus with the bidding proceedings

because the petitioner has not participated in the bid process, hence, he is not aggrieved and is not entitled to file the instant petition. They contended further that the Govt, of AJ&K constituted a committee and the committee in its various meetings held for time to time discussed the proposal and resolved that financial document from the group should be obtained. Upon receipt of documents from the Group on December 04, 2017, the same were forwarded to the Section Officer, Finance Department vide letter dated 08.12.2017 and the Finance Department, Govt, of AJK vide letter No. Finance/Banks/288/2018 dated January 05, 2018 advised the Bank to analyze the financial health of the group. The bank suggested that since the matter pertained to a specialized transaction, therefore, the services of a consultant dealing with such equity investment may be acquired by the government of AJK for such purpose. Accordingly, the matter was taken up with the State Bank of Pakistan by the Finance Department, Govt, of AJ&K and a meeting was held at State Bank of Pakistan, Muzaffarabad which was chaired by Chief Secretary, Govt, of AJ&K and attended by the Secretary Finance Govt, of AJ&K, Secretary Law and Deputy Chief Manager, State Bank of Pakistan, and after the said meeting, the State Bank of Pakistan vide letter dated 28.02.2018 informed the Finance Department that the proposal was dropped altogether and did not require any further action. The respondents averred that according to applicable laws and PPRA Rules no negotiation is provided, rather open bidding for fair competition is provided, thus, the respondents opted the legal way by advertising in

the newspapers and did not keep the proceedings secret as desired by the petitioner under the garb of negotiation.

11. Separate detailed written statement has been filed on behalf of respondent No.7, wherein the claim of the petitioner has been denied by the said respondent.

12. *We have taken stock of the learned counsel for the parties as well as Ex. Secretary Law of Azad Govt, as well as present Law Secretary of Azad Govt, in person at some length and mulled over the record of the case with utmost care.*

13. The claim of the petitioners is that high prerogative appropriate writs be issued in favour the petitioners against the respondents and the entire proceedings conducted by the respondents in garb of the impugned advertisements may very kindly be declared null and void for being conducted in negation of the prevalent law and rules governing the subject. They prayed for direction against the respondents to re-tender the aforesaid project by conducting the same in free, fair and transparent manners strictly in accordance with law and in larger interest of public as well as respondents be restrained from carrying on with the proceedings in violation of the AJ&K PPRA rules as well as other enabling provisions of law while utilizing the money of taxpayers of the State of Azad Jammu and Kashmir. The respondents may very be directed to act in accordance law by considering the report/ opinion dated 21.11.2023

addressed by the Secretary Law, Justice and Parliamentary Affairs  
Azad Govt, of the State of Jammu and Kashmir.

14. As It depicts from record that the then Secretary Law, M. Irshad Qureshi (as well as member of Board) has exhibited and furnished his legal opinion pertaining to the matter and operative part of the same is reproduced as under:-

9. Foregoing in view, it is suggested that, since the GoAJ&K is the only and major shareholder of the bank, therefore, the Cabinet may be briefed about the processes, procedures and stages of selection of the vendor for the procurement of subject software in the best public interest. In case of agreement, the Prime Minister may be requested to allow to bring this matter in the next Cabinet's agenda. President/CEO of the Bank shall brief the Cabinet."

15. But subsequently the opinion of the Law Secretary was brushed aside by the Board and the law Secretary was also transferred, new incumbent of the post of Law Secretary switched over and betrayed from the previous opinion rendered in this regard. Thus, we have summoned the presently posted Law Secretary and Ex. Law Secretary M. Irshad Qureshi.

16. Ex. Law Secretary of Azad Govt, of the State of Jammu and Kashmir, when asked to justify his opinion, he apprised the Court that as per his estimation the Government is main shareholder of the AJK Bank, and Public Accounts Committee has already taken cognizance of the matter and passed the restraining order quo matter till exposing its final verdict, hence, matter was liable to be placed before the Government for appropriate orders (in this sense the Govt.

as per Article 12 means Cabinet comprising Prime Minister and Ministers).<sup>1</sup>

17. It is pertinent to highlight that the worthy Prime Minister; who is elected amongst the chosen representatives of the people, cannot exercise the powers of the Cabinet by himself. He, though, calls the shots of the Cabinet but he cannot stand in the position of the Cabinet; because the Cabinet (comprising of the Prime Minister and Ministers, not the Prime Minister alone) is, infact, the Government. This notion is tailored on the command ordained by the Allah Omnipotent that Muslims are required to decide the governance issues including formation of government and policy matters at any level through 'consultation'<sup>2</sup>. Allah commands: -

وَالَّذِينَ اسْتَجَابُوا لِرَبِّهِمْ وَأَقَامُوا الصَّلَاةَ وَأَمْرُهُمْ شُورَىٰ بَيْنَهُمْ وَمِمَّا رَزَقْنَاهُمْ يُنْفِقُونَ. <sup>3</sup>

18. It is the fundamental requirement of any consultation that all or any point of view must be brought to light through consultative process in order to reach at a just and right conclusion. This equitable and democratic way of making decisions at any level, including at the collective national level, is required by the Holy Quran in the light of the above-mentioned verse of Surah Ash-Shura. Hence, in the light of this commandment of Almighty, it was the practice of the Holy Prophet (Peace and Blessings be Upon Him and His Family)

<sup>1</sup>. Article 12 AJK Interim Constitution, 1974 + Messrs Mustafa Impex, Karachi v. The Govt, of Pakistan (PLD 2016 SC 808).

<sup>2</sup>. Surah Ash-Shura (42) verse No. 38.

<sup>3</sup>, Translation:-

"And those who have responded to their Lord and established prayer and whose affairs are determined by consultation among themselves, and from what we have provided them, they spend"

that usually He heard and sought opinions from different persons or groups before arriving at a final decision concerning the administrative affairs of the government.

### **DEMOCRACY:-**

19. Democracy comprises of two Latin phrases i.e. "demos" meaning 'people' and 'kratos' meaning 'rule'. It is the government by the people either directly or through representatives elected by the people<sup>4</sup>. What is democracy? ...It rests on two bases. The first is the sovereignty of the Creator (Allah) to be exercised by the people through their chosen representatives via free elections, held on regular basis, in which the people choose their representatives, which in turn represent their view. This aspect of democracy is manifested in majority rule and in the centrality of the legislative body through which the people's representatives act. This is the formal aspect of democracy. It is of central importance, since without it the regime is not democratic. The second aspect of democracy is reflected in the rule of values (other than the value of majority rule) that characterize democracy. The most important of these values are separation of powers, the rule of law, judicial independence, human rights and basic principles that reflect yet other values (such as morality and justice), social objectives (such as the public peace and security), and appropriate ways of behaviour. This aspect of democracy is the rule of democratic values. This is a substantive aspect of democracy. It too is of central importance and without it, the regime is also not

<sup>4</sup>. Black's Law Dictionary, 11<sup>th</sup> Edition.

Democratic<sup>5</sup> The concept of democracy is broader than the notion of majority rule, fundamental as that may be<sup>6</sup> This internal morality of democracy consisting liberty, freedom, rule of law, supremacy of the Constitution and due process must be allowed to permeate through the corridors of public administration and be the bedrock of good governance of public institutions in our country. It has been observed by Arundhati Roy that democracy without justice is "demon-crazy."<sup>7</sup>

20. Copying with the contention of "aggrieved person" raised by the learned counsel representing respondents, it is worthwhile to note that the aggrieved person does not mean that he/she should have a strict juristic right. It is sufficient if he/she successfully establishes that he/she has an existing right to assail the order which is illegal and adversely affect his/her rights whatever they may be or he/she should establish that he/she has some interest in the case that might be a remote or slightest right.<sup>8</sup> Trite that question of 'locus standi' or 'aggrieved person' is sine qua non for invoking writ jurisdiction but where writ petition is filed by a lawyer in the larger interest of society showing violation of fundamental rights, question of locus standi can be construed liberally.<sup>9</sup> Even otherwise, in matters pertaining to Public Interest Litigation (PIL), the rule of 'standing' or 'locus standi' or aggrieved person has received a liberal interpretation and any person/citizen having "sufficient interest" (in the context of

<sup>5</sup> *The Judge in a Democracy* by Aharon Barak.

<sup>6</sup> Jacobucci, J. In *Vriend v. Alberta* [1998] SCR 493.

<sup>7</sup> *Listening to Grasshoppers* by Arundhati Roy.

<sup>8</sup> *Ajaib Hussain v. Muhammad Fazil* (1980 CLC 198) and *Ch. Ali Muhammad Chacha v. Azad Government* (2006 SCR 232).

<sup>9</sup> *Sajjad Hussain Shah v. AJ&K Council Secretariat* (PL) 2014 AJ&K 217).

larger public interest) can maintain a petition as an "aggrieved person" under Article 44 of the Interim Constitution subject to satisfying other requirements of the said Article.<sup>10</sup> The case laws relied and referred by the learned counsel representing respondents i.e. Iqbal Rashid Minhas, Fazal Mehmood Baig and Raja Zulqarnain Abid; with due respect, ratio decidendi of the superior courts laid down in the supra case-laws do not attract in the instant matter. The instant case is a gross violation of constitutionally mandated Rules of Business, 1985 and arbitrary exercise of powers particularly by a financial institution which stand on 51 percent equity in shape of shares of AJ&K Government, meaning thereby that government exchequer is directly in the matter thus in this sense, all the Subjects of the State can be held "aggrieved".

**Concept of Public Interest Litigation (PIL):-**

21. Public Interest Litigation (PIL) is judicial tool to help resurrect or jump start public institutions on the road to healthy democratic values and traditions. Unless substantive democracy takes root in our public administration and our institutions flourish with democratic maturity, court dockets will continue to be filled with PIL. However, the Courts will continue to redress public grievance, with the hope that public institutions will soon come of age. It would be a

<sup>10</sup> • Public Interest Law Association of Pakistan v. federation of Pakistan (2023 CLC 1535), Ch Munir Ahmad v. Govt, of Punjab (PLD 2022 Lahore 384); Atta Ullah Khan Malik v Federation of Pakistan (PLD 2010 Lahore 605); Khurram Khan, Advocate v. Govt, of Punjab (PLD 2009 Lahore 22); Tanq Abbasi v Defense Housing Authority (2007 CLC 1358); Moulvi Iqbal Haider v. Capital Development Authority (PLD 2006 SC 394), Javed Ibrahim Paracha v Federation of Pakistan (PLD 2004 SC 482). Ardeshir Cowasjee v Sindh Province (2004 CLC 1353) Ardeshir Cowasjee v. Karachi Building Control Authority (1999 SCMR 2883) and Province of Punjab v. Muhammad Yaqoob (1992 CLC 2065)



grave lacuna in our judicial system if a pressure group, like the federation, or even a single public spirit taxpayer, were prevented by outdated technical rules of locus standi from bringing the matter to the attention of the Court to vindicate the rule of law and get the unlawful conduct stopped.<sup>11</sup>

22. The real test in PIL is the subject-matter of the petition or the abuse of public interest complained of. Once the court assesses that breach of trust and violation of law by a public institution has taken place, the Court must immediately proceed further to rectify the breach, the identity or antecedents of the petitioner pale into insignificance. If, on the other hand, the court finds the petition to be without merit, camouflaged to foster personal disputes, such petition is to be thrown out as Public Interest Litigation should not be allowed to be "Publicity Interest Litigation" or "Private Interest Litigation."<sup>12</sup>

23. No decision or action of the State can be outside the four corners of law: it will always remain susceptible to judicial scrutiny and audit. Tom Paine made this point in 1776 when he said, "In America THE LAW IS KING. For as in absolute governments the King is law, so in free countries the law ought to be king and there ought to be no other."<sup>13</sup> Hence, with due process and fundamental rights firmly embedded in our Constitution, no State action or decision can escape judicial review by the constitutional courts including the most political of decisions.

<sup>11</sup> Inland Commissioner National Federation of Self-Employed and Small Business Limited [1982] AC. 617,

<sup>12</sup> Ashok Kumar Pandey v. State of West Bengal (AIR 2004 SC 280).

<sup>13</sup> Common Sense by Thomas Paine.

24. As per rule 15(D) of the AJK Rules of Business, 1985 constitutionally mandated rules, the legal opinion of the law department on all legal questions arising out in any case is mandatory, although no specific rule is in field which provides review of the opinion or for that matter powers of any authority qua overturning such opinion is existing, even then proprietary demands that in such like eventuality the Government (Prime Minister and Cabinet) can overturn the opinion with reasoning.

25. It is an astonishing state of affairs that after transfer of the then Law Secretary Irshad Ahmed Qureshi, the new law Secretary has taken a U-turn and betrayed from the previous opinion at random.

26. All the civil servants are burdened with heavy duty to perform their duties honestly, justly as per roadmap of the AJK Rules of Business, instead of obeying the supra Law directive, subsequent stance of the law department amounts to go with the flow. The law department seemingly becomes tool qua brushing aside and defusing the verdict/orders of the Public Accounts Committee, which may lead to misconduct as well.

27. As adumbrated, it depicts from the record that matter was taken up and dealt with by the apex fora of Legislative Assembly i.e. Public Accounts Committee (PAC) and the aforesaid committee vide letter dated 03.03.2023 listed with the writ petition No.3350/2023 as (Annexure "PE") wherein It has categorically been ordered on behalf of PAC that Contract of worth Rs. 2 billion for

computerization and digitalization of Bank of AJK may not be finalized till the findings of the Sub Committee and final recommendations of Public Accounts Committee (PAC). It is useful to reproduce the said letter as under:-

Secretariat  
Legislative Assembly of AJ&K  
Muzaffarabad

No./PAC/656-63/LA/2023.

Dated: 03.03.2023

To:

Secretary Finance,  
Azad Govt, of the State of Jammu & Kashmir, Muzaffarabad.

Subject: Issues Regarding Bank of AJK.

Sir,

In continuation of Secretariat letter No.PAC/1211- 16/LA/2023 dated 27.01.2023 on the subject cited above, the undersigned has been directed to inform you that a Sub Committee of Public Accounts Committee was constituted to inquire the following issues of BAJK.

1. Re appointment of President of BAJK.
2. Contract of worth Rs. 2 billion for computerization and digitalization of BAJK.

As the matter is being under consideration in the Sub Committee of Public Accounts Committee headed by Co. (R) Mr. Waqar Ahmed Noor MLA/ Member PAC.

It is therefore strongly recommended that any further proceedings/ finalization of the issues regarding BAJK pending in the Sub Committee of PAC may not be finalized till the findings of Sub Committee and final recommendations of Public Accounts Committee.

The matter requires your special and urgent personal attention.

Regards,

(Amjad Latif Abbasi)  
Additional Secretary  
Cell:- 0300-5209902

C.C. forwarded for Information to:-

1 ..... to  
7 ..... "

28. At the outset, it transpires from the record that stricto sensu compliance of PPRA rules is lacking in the proceedings taken in

the matter, particularly violation of Rule 31 and Rule 38-A of AJ&K Public Procurement Rules, 2017. But the case of the official respondents is not covered the Rule 42 of AJK PPRA, Rules, as well. It is useful to reproduce both Rules, i.e. Rule 31 and 38-A vide infra: -

**AJK Public Procurement Rules, 2017**

31) **Clarification of Bids.** - (1) No Bidder shall be allowed to alter or modify his Bid after the Bids have been opened. However, the Procuring Agency may seek and accept clarifications to the Bids that do not change the substance of the Bid.

32) Any request for clarification in the Bid, made by the Procuring Agency shall invariably be in writing. The response to such request shall also be in writing.

**38A Single Responsive Bid in Goods, Works and Services: -**

(1)The procuring agency shall consider single bid in goods, works and services if it-

- (a) meets the evaluation criteria, ensures compliance of specifications and other terms & conditions expressed in advertisement or bid solicitation documents;
- (b) is not in conflict with any provision of the Act;
- (c) conforms to the technical specifications;
- (d)has financial conformance in terms of rate reasonability: provided that except unsolicited proposal, in case of pre-qualification proceedings single bid shall not be entertained.

(2) The procuring agency shall make a decision with due diligence and in compliance with general principles of procurement like economy, efficiency and value for money."

29. It is trite that when a thing is required to be performed in a specific manner same cannot be done otherwise and if so performance of the same is contra jus; transparency and fairness in such like matter should strictly be observed by the relevant authority. Particularly, where money is regularly being spend from the National

Exchequer and the Government is the trustee of the public money thus, any act in guise of urgency by portraying AJK Bank as an independent entity cannot be allowed to take any decision in isolation by brushing aside the Government.

30. It is an admitted fact that thereafter neither the matter was taken up by the committee of PAC nor any subsequent order qua reversal of the order dated 03.03.2023 has been placed on record and resultantly findings of the order of the PAC is holding the field regarding halting the process and Contract of worth Rs. 2 billion for computerization and digitalization of BAJK, that too, even the matter has not been placed before the Government for consideration and approval by any way as well as no necessary steps seemingly have been taken by the relevant quarter in order to expedite the proceedings for the purpose of getting prompt decision upon the matter. Thus, in this view of the matter, the order or tentative findings of the PAC are very much holding the field at the moment. Therefore, proper recourse in the matter is that Government should take steps to ensure the functioning of Public Accounts Committee (PAC) by constituting the same under the umbrella of the Constitution and thereafter in light of the findings of the PAC the matter at hand requires to be placed before PAC and in light of the findings of the PAC/ the Government, the main shareholders of AJK Bank shall take up the matter expeditiously qua finalizing the same within reasonable time by ensuring the stricto sensu compliance of the Azad Jammu and

Kashmir Public Procurement Regulatory Authority Rules, 2017, expeditiously and within shortest possible time.

31. Under part G Rule 38 of the AJK Rules of Business 1985 (constitutionally mandated rules) it is mandatory requirement that the departments in the conduct of the Assembly business shall comply with the rules of procedure and standing orders of the Assembly, Public Accounts Committee is an esteemed fora of the Assembly and when a matter was assigned to the Public Accounts Committee by the Assembly and thereafter cognizance of the matter was also taken by the PAC and passed injunctive direction, thus any progress in the matter without prior permission and sanction of the PAC speaks that something is fishy in the bottom. It amounts to transgression of powers as well as militates against the doctrine of trichotomy of powers.

32. As per rule 41(4) Assembly Secretariat duly informed the respondent bank to stay their hands from the transaction till the matter is finally being decided by the PAC but instead of regulation its action accordingly the respondent bank carried on the process. It is useful to reproduce the Rule 41 (4) of the AJ&K Rules of Business, 1985 vide infra-

**41. General provisions regarding Assembly Business.-**

(1) ..... (2) ..... (3)

(4) The Assembly Secretariat shall advise the Department as soon as it is known that a nonofficial bill, resolution, motion, or question has been admitted in its final form or not admitted, so

that the Department may regulate its action accordingly.

33. **Seemingly, the entire proceedings are not fair enough and arbitrary, particularly no reason at all has been furnished as to why the bank authorities took refuge from the Public Accounts Committee (an esteemed fora of Assembly) even otherwise counsel for the respondent when controverted upon this point has miserably failed to assign any reason or to bring on record in black and white to show that prior to initiating instant proceedings; Public Accounts Committee was at least duly intimated and any permission or sanction was accordingly given in this regard.**

34. Now coming back to the constitutionally mandated rules i.e. AJ&K Rules of Business (Revised) 1985 it transpires that the list of cases which are required to be placed before the Cabinet have been tabulated as infra:-

- (25) Manner of submissions of cases to Cabinet: (1) In respect of all cases to be submitted to the Cabinet, the Secretary of the Department concerned shall transmit to the Chief Secretary a concise and lucid memorandum of the cases (hereinafter referred to as the "Summary") giving the background and relevant facts, the points for decision and the recommendations of the Minister.
- (2) The Summary shall be self-contained as far as possible and may include as appendices such relevant papers as are necessary for the proper appreciation of the case.
- (3) In case of proposed legislation to which approval in principle is sought the Summary shall bring out clearly the main features of the legislation.
- (4) Where a case concerns more than one Department, the Summary shall not be forwarded to the cabinet unless the case has been considered by all the Departments

concerned. In the event of a difference of opinion, the points of difference between them shall be clearly stated In the Summary, a copy of which shall be sent by the sponsoring Department to the other Department concerned simultaneously with the transmission of the Summary to the Cabinet.

(5) No summary containing a proposal involving financial Implications shall be submitted to the Cabinet unless the Finance Department has been consulted and its views Incorporated in the Summary.

(6) All Draft Bills, Ordinances or Orders having the force of law shall be submitted to the Cabinet after the same have been vetted by the (Law Justice and Parliamentary Affairs Department).

(7) No case for inclusion in the agenda shall be accepted unless it reaches the Chief Secretary at least four clear days in advance of the meeting:

Provided that if the case is urgent, the Secretary concerned may approach the "Chief Secretary for its inclusion in the agenda, and if he agrees, a notice shall be sent for circulation to the Cabinet showing how the case is urgent and why it could not be submitted in time.

(8) The Services and General Administration Department shall satisfy itself that the papers submitted by a Secretary are complete and in appropriate form. It shall ordinarily return a case which does not meet with the requirements of these Rules [or any other instructions on the subject).

35. While in succeeding rule i.e. Rule 26 a method of disposal of the cases by the Cabinet is mentioned. Vis-a-vis in Rule 28-32, procedure regarding Cabinet decisions is articulated. No geometric progression is required in the matter as to whether it was to be placed before the Cabinet or not when the Secretary Law initially in his legal opinion opined to do so and thereafter in open Court when he was confronted upon the point as to why a contradictory legal opinion was furnished by the Secretary Law previously; he straightforwardly and



categorically alleged that the instant matter was liable to be placed before the Cabinet as per his estimation, thus in this vista of the matter, the matter even otherwise was required to be mulled over by the Cabinet. As per Rule 19(d) of the Rules, 1985, (supra) in case of arising out of legal questions in any case, consultation with Law Department is sine qua non, that too, in a matter where esteemed fora of Assembly (i.e. PAC) had already taken cognizance of the matter and final verdict of the esteemed fora is yet to be exposed.

36. In this vista of the matter, all the proceedings impugned herein cannot be endorsed or allowed to progress sans pondering and consideration of Cabinet by taking into consideration the proceedings of the esteemed fora of the Legislature (i.e. PAC) and it is more desirable that PAC be intimated about the matter at the eve of considering the matter, thus in this sense, a special meeting of Cabinet in view of Rule 29(1) of the Rules, 1985, is required to be convened.

#### **SQUEEZED ANALYSIS:-**

37. 03 companies participated in bidding process and 2

Companies have been declared non-responsive while the respondent's company i.e. M/S Consult (Pvt.) Ltd. was declared qualified brushing aside that the said Company offered its financial proposal amounting 1,761,889,202/- rupees but simultaneously mentioned the rate in US dollars which runs counter to the RFP as well as condition imposed in the advertisement (as per PPRA laws), thus such dents itself were suffice for reversal of the bidding process even otherwise Finance

department respondent No.7 straightforwardly admitted the stance of the petitioners quo bypassing the orders of PAC, it is useful to reproduce the narrative of the Finance department as under;

**Reply of Para (6).**

6- یہ کہ ضمنی نمبر 6 میں پیشتر زکا اختیار کردہ موقف کی بابت تحریر ہے کہ پیبلک اکاؤنٹس کمیٹی کی سطح سے جاری کردہ کتبہ محررہ 03.03.2023 (ضمیمہ RC) کا تفصیلی جواب ملکہ مالیات سے جاری کردہ کتبہ محررہ 08.05.2023 (ضمیمہ RD) میں دیا جا چکا ہے۔ جس میں تحریر کیا گیا ہے کہ بورڈ آف ڈائریکٹرز کی 63 ویں میٹنگ جو کہ 30.03.2023 کو منعقد ہوئی PAC نے ریسپانڈنٹ کو پرائیویٹ پر عملدرآمد سے روکنے کیلئے کہا جس کو روکا گیا لیکن آزاد جموں و کشمیر بینک کی کپیڈرا نزیبہ کو ایک خاص مدت تک روکنا درست نہ ہے۔ مزید ریسپانڈنٹ نمبر 7 نے سیکرٹریٹ PAC کو تحریر کیا جلد از جلد بینک کے معاملہ کو ٹیکس کیا جائے اس طرح بورڈ آف ڈائریکٹرز نے ریسپانڈنٹ نمبر 2 کو ہدایت کی کہ وہ پیبلک اکاؤنٹس کمیٹی کو مطلع کریں کہ BOD سے ہے کہ بینک کے معاملات بورڈ کی سطح سے حل کیے جائیں گے۔

38. **Thus, in light of the above admission on part of the respondents it is now crystal clear that respondents have deliberately bypassed, neglected and impliedly discarded the direction of PAC, that too without placing the matter before the Cabinet. Now it can safely be held that it is a glaring violating of law and transgression of powers.**

The matter at hand was under consideration by the PAC and the PAC has already issued a restraining order to the relevant quarters qua staying their hands from further proceeding into the matter. But this aspect of the matter was brushed aside by the relevant quarters. The incumbent Secretary Law in the open Court endorsed the previous legal opinion qua placing the matter before the Cabinet. Impugned proceedings and disposal of the matter is seemingly hasty and arbitrary attempt in a sense to override and bypass the constitutionally mandated rules i.e. Rules of Business, and to overturn the orders of PAC (esteemed fora of Legislature). Thus, a

negative presumption can safely be drawn that there was something fishy in the bottom.

40- In our considered opinion, impugned proceedings are not sustainable in the eyes of law requiring a fresh look into the matter by the relevant quarters.

41- For the above multiple reasons, the supra titled writ petitions are accepted. All the proceedings impugned herein are overturned. The relevant quarters are directed to place the matter in a special meeting of the Cabinet immediately in view of Rule 29(1) of the AJ&K Rules of Business, 1985, simultaneously informing the Public Accounts Committee as well. Needful is required to be done in this regard within 01 month and its compliance report shall be submitted before the Registrar of this Court.

Therefore, petitions at hand are accepted in the above indicated manner.

File be kept in archive.

Muzaffarabad,  
03.07.2024.

JUDGE  
(S)

JUDGE  
(E)

JUDGE  
(K)

Approved For reporting

JUDGE  
(S)

JUDGE  
(E)

JUDGE  
(K)