

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
(Original Jurisdiction)**

**SMC No. 01/2007
(KIU Road)**

Before: Mr. Justice Muhammad Nawaz Abbasi, Chief Judge.
Mr. Justice Muhammad Yaqoob. Judge.

Present: Advocate General Gilgit-Baltistan.
Mr. Basharatullah XEN B&R Division Gilgit.
Mr. Himmatullah Project Director KIU Road.

Date of Hearing: 02-11-2010

JUDGMENT

Justice Muhammad Nawaz Abbasi, CJ: The cognizance was taken in this matter on publication of a news item in Daily "K-2" regarding miserable condition of the Karakorum International University Road and notices were issued to the Superintendent Engineer NA PWD and Vice Chancellor KIU for the comments. In pursuance thereof, Mr. Rashid Ahmed the then XEN and Mr. Ghayyor Ahmed, Government Contractor appeared before the Court and explained the position.

- The main excuse for delay in construction of road was the shortage of funds and the settlement of the matter of escalation and rate of Prime Coat with the Department. The additional factor

of delay explained by the departmental representative was delay in the announcement of award of the private land involved in the road and the permission of NLI for construction of road in the area owned by NLI. The proceedings continued and Court passed orders on 17.06.2009, 11.08.2009 and 20.08.2009 as under: -

“ORDER DATED 17-06-2009.

The Deputy Commissioner Gilgit exercising the powers of land Collector appearing before us has stated that land in some portion of road belongs to Northern Light Infantry and without clearance of the NLI objection, the award to the extent of land of private owners also could not be issued. However, he states that the process for assessment of award is complete which will be given within six weeks. The land collector has assured the court that award will not cause any hindrance in the construction of road and the concerned department may proceed with work.

The project Director present in Court states that due to the objection of NLI and problem of shifting the water pipe line, the construction of the road even in the area not owned by NLI was not carried out. The contractor of the project voluntarily appearing in the court has submitted that since the department has withheld the payment of his claim regarding the extra work beyond the scope of contract, therefore he may not be able to continue the work of construction of road.

After hearing the Deputy Commissioner Gilgit and project Director as well as contractor, we have found that there is no serious problem or hurdle in carrying out the work on road and completion of the project, as the minor issues referred above can be solved through negotiation with concerned quarters. We have been informed that work on road from the office of IGP towards KIU and to the point of Courts on other side can be carried conveniently. At this stage the contractor has given undertaking to complete the construction of road on priority basis and will start the work forthwith if co-operation is extended by the department. In view thereof we direct that subject to the start of construction work by the constructor as per his undertaking, the Secretary Works after verifying the genuineness of his claim if it is admissible under the rule will satisfy the contractor to avoid further delay in the construction of road. The Project Director will submit progress report fortnightly to the Registrar of this Court. The case will be re-listed immediately after summer vacation.

Order Dated: 11-08-2009

The Project Director has submitted progress report, which reveals that no progress has been made in construction of road and contractor has been allowed to construct the road without Prime coat which was not as such term of contract. It appears that department instead of taking care for the completion of work at an early date with quality is watching the interest of contractor at the cost of public money, which is evident from the fact that condition of Prime coat was omitted from the contract. The contractor present in Court sates that he has already deposited price of Bitumen with Attock Oil Company for supply and expectedly bitumen will be supplied to him within 10 days. He has given undertaking in the Court for completion of ground work of road from Brgrote Hostel to RCC bridge under construction, before the supply of Bitumen to him by Attock Oil Company and immediately on receipt of supply of Bitumen he will start the work of mettling of this portion of road and will complete it before 15th of September, 2009 and that mettling of road from IGP office to KIU campus will also be simultaneously carries out which will be completed before 30th September 2009.

The contractor while placing on record a letter dated 6-7-2009 stated that Chief Engineer has constituted a board for submission of evaluation report on escalation of Bitumen by 21 August 2009 with direction to him and Mr. Maqsood Ahmed to assist the Board and has requested for direction to the department for early decision of the matter on receipt of report to avoid any further delay in completion of work. Order accordingly. The contractor has given further undertaking that he will not stop the work on account of delay in payment and since contractor has made a fair commitment therefore, the department should be completed at the earliest, however the remaining payment to the contractor will be made on completion of work. The Project Director will submit progress report weekly to the Registrar of this Court for our perusal in chamber.

The Deputy Commissioner Gilgit on the last date stated before the Court for giving the award and negotiation with NLI for the purpose of widening of road from Bagrot Hostel to RCC bridge under construction but learned A.G. states that he has no instruction as to whether the award has been given or not. The Deputy Commissioner will submit report in this behalf and will also appear in the Court on the next date to explain the progress. The case is adjourned to 20th August 2009.

Order Dated: 20-08-2009

The Additional Deputy Commissioner states that the award for acquisition of land for use of road is in process and efforts are being made to finalize it at an early date, but award has nothing to do with the

construction of road. However, he states that the contract will be made with NLI authorities for their area and that the contractor can continue the work on the road conveniently.

The XEN B & R Division Gilgit on call has explained that department has decided that cost of Prime Coat if any, will be paid to the Contractors subject to the verification of work of Prime Coat and determination of cost and in future the provision relating to Prime Coat if necessary will be made in the contracts in express words.

In view thereof, there is no dispute regarding the payment of cost of Prime Coat and construction of road for reason of non payment of cost of Prime Coat must not be stopped. The contractor stated that supply of bitumen has been received by him and the work will be completed as per his commitment.

The contractor has repeatedly given assurance for completion of work within specified time without any progress, therefore we direct that Project Manager and XEN B & R concerned will be responsible if the work on road is not completed by the target date. The Additional Deputy Commissioner need not to appear on the next date. Adjourned to 07.09.2009.”

- Despite permission given by NLI authorities for construction of road, the Contractor did not fulfill his commitment of completion of work without any further delay, the Court on 19.11.2009 passed the Order as under: -

“The Contractor without giving any reasonable explanation for non-completion of the construction of the road as per his commitment within the target date states that metaling of the road during the winter season is not possible, which will be done in March 2010 and during the winter season he will complete ground work for metaling of the road. He stated that due to the leakage of water pipe line on a portion of the road near the Court the groundwork will also suffer. The Chief Engineer present in court states that the defect in water pipe line will be removed on priority for which word order will be issued immediately either to the Contractor of the road or to the approved Contractor of WASA (PHE) as the case may, and road will be cleared for ground work within a week.

In view of the undertaking given by the Contractor as well as Chief Engineer the case is adjourned to a date on reopening of the Court after

winter vacation with direction to the XEN B & R Division to ensure that work is done as per commitment made by the contractor.”

- The matter remained pending without any progress and the Court directed the Department not to make payment to the Contractor without completion of work and subsequently on 09.06.2010, 20.09.2010 and 13.08.2010 passed Orders as under: -

“Order Dated 09-06-2010

Project Director and XEN B&R Division Gilgit on the basis of undertaking given by the Contractor before this court on 22/04/2010 for completion of metaling work on the road before 30th June have given assurance to the court that work will be done accordingly. Today we have been informed that the position is standstill and no progress has been shown and further the work done is also substandard. The Project Director has not been able to give any explanation about substandard work which would seriously reflect upon his official conduct. This is noticeable that Project Director by making wrong statement has misled the court therefore he is directed to Show Cause as to why he be not proceeded against for contempt of court.

The reply of Project Director should reach within three days and case shall be relisted for hearing in the next week.

The Contractor states that due to technical reasons he has not been able to complete the work and has given assurance that the leftover work will be completed without further loss of time. In view of the undertaking given by the contractor and the official of the department we adjourn this case to a date in the next week.

Order Dated: 20-09-2010

The Project Director and contractor stated at bar that due to non-availability of K-2 Oil in local market, which is necessary for heating of the bitumen, and other unavoidable circumstance, the metting work of the project could not be completed within given time. They however informed the court that except a portion of 1 ½ K.M. the road has been metted. They are directed to accelerate the pace of work without wastage of further time. The Chief Secretary Gilgit-Baltistan was directed on 16-06-2010 to hold an inquiry about the deletion of prime coat from the project in question and other ongoing projects but the desired report has not been submitted as yet.

The learned Advocate General submitted that in compliance of the order of this court the Chief Secretary Gilgit-Baltistan has constituted a committee headed by the Chairman Inspection team to conduct an inquiry

in the matter but due to heavy load of work the committee has not been able to furnish their report as yet. We direct the Advocate General to submit the report of the said committee to the Registrar of this Court within a period of fortnight positively.

The Project Director Mr. Himmatullah further went on saying that beside the above mentioned reason one another cause of delay is release of funds allocated for the project. Let the Secretary Finance or his representative explain the situation on next date.

The Secretary works and Chief Engineer shall also attend the court on next date. The case is adjourned to a date to be fixed by the office.

Order Dated: 13-10-2010

The XEN B & R Division states that due to the extraordinary situation in Gilgit-Baltistan, the work could not be completed and contractor has given undertaking to complete the remaining work by 30th of this month. The contractor present in person stated that required material is available and he will start the work by tomorrow to complete it by 30th October 2010. The completion report will be submitted to the department under intimation to the Registrar of this Court.

In view of the position explained by the XEN and the contractor, the case is adjourned to 2nd November, 2010. The Deputy Secretary Finance states that the required funds shall be provided in due course of time for completion of work of the project.”

- Mr. Basharat Ullah, XEN PWD B&R Division on 02.11.2010, stated before the Court that the work on the road as per contract will be completed before 15th November 2010 and in consequence thereto with close of further proceedings final Order was passed as under: -

“Mr. Basharatullah XEN B & R Division states that the work on road as per contract will be completed before 15th November 2010 and completion report will be submitted to the Registrar of this court for perusal of the court.

In view of the statement made by the XEN B & R Division there is no need to further keep this matter pending and same for the detail reasons to be followed stands disposed of.”

- The matter involved in this Sua Moto Case related to public project of Construction of KIU Road leading to the courts and because of intervention of this court, the road work has been completed within the contract period without extra burden on the exchequer The efforts made by Mr. Basharat Ullah, XEN PWD B&R Division for completion of the project are appreciateable and Contractor also cooperating with the Department without claiming extra charges has discharged his contractual obligation in terms of the Contract within time. The proceeding in this Sua Moto Case has already been closed and same is accordingly disposed of.

Chief Judge

Judge