FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Original/Appellate/Advisory Jurisdiction)

Present:
JUSTICE AMIN-UD-DIN KHAN, CHIEF JUSTICE
JUSTICE ALI BAQAR NAJAFI

Constitution Petition.64/2018 & C.M.A.4751/2019
[Matter Regarding Construction of Nai Guj Dam]

C.P.L.As.4613/2023, 2432 & 3568/2025
[against the order dated 06.10.2023, the judgment and order dated 27.05.2025 and 13.06.2025 passed by the High Court of Sindh, Karachi in Constitution Petitions No.D-4529/2023 & D-1248/2025]

Water and Power Development Authority, Lahore *[in C.P.L.As.4613/2023, 2432 & 3568/ 2025]*

...Petitioner(s)

Versus

NEIE SMADB-LILLEY-RMS, Karachi and others *[in C.P.L.As.4613/2023, 2432 & 3568/ 2025]*

...Respondent(s)

For the Petitioner(s)/WAPDA	:	Mr. Salman Mansoor, ASC Syed Rifaqat Hussain Shah, AOR Mr. Dharampal, GMP (South) Mr. Khalid, Project Director Mr. Waleed Farooqi, AD Legal
For Respondent No.1	:	Mr. Farooq H. Naek, Sr. ASC Mr. Muhammad Masood Khan, ASC Mr. Muhammad Qasim Mir Jat, AOR
For the Federation	:	Ch. Aamir Rehman, Addl. AGP
For Govt. of Balochistan	:	Mr. M. Ayyaz Sawati, Addl.AG Mr. Tahir Iqbal Khattak, Add. AG Mr. Amjad Khan Achakzai, Addl. AG
For Govt. of Sindh	:	Mr. Ahsan Hameed Dogar, AAG
For Planning Commission	:	Nemo.
For M/o Water Resources	:	Mr. Ikram Ullah, S.O Legal
For the NAB	:	Mr. Nasir Mehmood Mughal, DPG Ms. Amber, Spl. Prosecutor

Research Assistance By : Dr. Muhammad Mumtaz, *Research Officer*

Dates of Hearing : 08.06.2026 & 11.06.2026

JUDGMENT

AMIN-UD-DIN KHAN, CJ.- These petitions were initially instituted before the Supreme Court of Pakistan and, consequent upon the promulgation and enforcement of the Constitution (Twenty-Seventh Amendment) Act, 2025, stand transferred to this Court. Although arising from distinct causes and raising separate grievances, all the matters are intrinsically connected with various facets of the Nai Gaj Dam Project situated in District Dadu, Sindh, including issues relating to its implementation, ancillary works, and its hydrological integration with the restoration and rehabilitation of Manchar Lake.

2. On 24.02.2010, Mr. Fazal Hussain Jamali addressed a petition to the Supreme Court of Pakistan, drawing attention to the alarming contamination and ecological degradation of Manchar Lake, which had allegedly resulted in the destruction of agricultural lands, depletion of fish stocks, and disappearance of migratory birds, thereby causing grave environmental and socio-economic hardship to the local populace. Vide order dated 24.02.2010, the Supreme Court assumed Suo Motu jurisdiction in the matter, registered as Suo Motu Case No. 10 of 2010, in respect of the severe environmental degradation of Manchar Lake, which had given rise to widespread adverse consequences for agriculture, fisheries, biodiversity, and wildlife in Taluka Sehwan Sharif and District Jamshoro, thus raising questions of significant public importance concerning environmental protection and the sustenance of affected communities.

3. Vide order dated 30.09.2010, the Supreme Court disposed of the matter with directions to the Water and Power Development Authority (WAPDA) and the Government of Sindh to submit periodic quarterly progress reports regarding the implementation of environmental restoration measures. Subsequently, vide order dated 04.05.2011 passed in Civil Miscellaneous Application No.

1428 of 2011, the Supreme Court observed that the completion of the Right Bank Outfall Drain (RBOD I, II & III) system as well as the Nai Gaj Dam Project was imperative to ensure the regulated discharge of fresh water in the range of 50 to 100 cusecs into Manchar Lake. In view of persistent non-compliance and continued delay in the execution of the aforesaid directives, Constitution Petition No. 64 of 2018 was instituted seeking enforcement of the earlier judicial orders.

4. Meanwhile, the Water and Power Development Authority (WAPDA), in pursuance of its procurement process, issued an Invitation for Bids on 18.06.2009 for the construction of the Nai Gaj Dam at Dadu. Upon completion of the evaluation process, Respondent No. 1 (NEIE-SMADB-LILLY-RMS) was declared the lowest evaluated bidder with a bid amount of Rs. 38,792,138,330/-, whereafter a Letter of Acceptance dated 13.01.2011 was issued in its favour. Subsequently, the contractual relationship was formalized through execution of a Contract Agreement between the parties on 12.04.2011, thereby crystallizing the respective rights and obligations arising out of the said construction project.

5. The project commenced on 25.04.2012 with a stipulated completion period of three years. By 2015, only approximately 30% physical progress had been achieved, whereafter the time for completion was extended up to 17.06.2018. During the course of execution, serious irregularities were detected in respect of the performance security furnished by the contractor, comprising two guarantees allegedly issued by KASB Bank Limited ("KASB Bank") and Bank of Punjab ("BOP"). Vide verification letter dated 11.07.2018, BOP categorically confirmed that the purported guarantees were fake and forged. Consequently, WAPDA terminated the contract vide order dated 29.08.2018 in exercise of the relevant contractual stipulations and referred the matter to the National Accountability Bureau ("NAB"), while also proceeding to re-tender the remaining works on risk-and-cost basis vide notice dated 08.01.2019.

6. The dispute thereafter proceeded before the High Court of Sindh ("High Court") as well as the arbitral forum. Vide order dated 05.11.2020, the High Court referred the matter to arbitration. Subsequently, an arbitral award dated 19.02.2021 was rendered on the basis of a compromise arrived at between the parties, which was made Rule of the Court vide order dated 08.07.2021 and thereafter converted into a decree vide order dated 31.07.2021 by the High Court.

7. Pursuant thereto, the parties executed a Memorandum of Understanding dated 21.09.2021 ("MOU"), whereby the contract was revived subject to revised terms, including an extended completion schedule up to 27.10.2024 and a revised contract price of PKR 46.98 billion. The MOU further expressly stipulated that price escalation would remain frozen at August 2018 levels, in view of the established fraudulent conduct relating to submission of fake and forged performance guarantees.

8. Subsequently, the contractor sought grant of price adjustment by placing reliance upon the advisory issued by the Pakistan Engineering Council ("PEC") dated 28.02.2022. The said claim was declined by WAPDA vide order dated 30.08.2023 on the premise that the Memorandum of Understanding dated 21.09.2021, having been executed pursuant to the arbitral award and the decree of the High Court, had attained finality and was binding upon the parties. Aggrieved thereby, the contractor instituted Constitution Petition No. D-4529 of 2023 before the High Court of Sindh. Vide judgment dated 06.10.2023, the High Court allowed the petition, altered the contractual framework by restoring the entitlement to price escalation, and further restrained the National Accountability Bureau ("NAB") from proceeding against the contractor in relation to the matter.

9. Feeling aggrieved by the judgment dated 06.10.2023 passed by the High Court, the WAPDA invoked the appellate jurisdiction of the Supreme Court by filing Civil Petition for Leave to Appeal No. 4613 of 2023 ("CPLA No. 4613/2023"). During the pendency of the said petition, the parties executed Amendment No. 1 to the Memorandum of Understanding on 04.04.2024, whereby certain

modifications were incorporated into the existing contractual arrangement. However, WAPDA entered into the said amendment under protest and expressly made the same subject to the final outcome of CPLA No. 4613 of 2023 pending before the Supreme Court.

10. The contract ultimately came to an end by efflux of time on 27.10.2024, by which stage only an additional 13.5% physical progress had been achieved during the extended period. Thereafter, vide order dated 20.02.2025, WAPDA undertook a revision of the financial calculations and returned Interim Payment Certificates Nos. 93 to 97 for rectification and re-processing. Aggrieved thereby, the contractor once again invoked the constitutional jurisdiction of the High Court by filing Constitution Petition No. D-1248 of 2025. Vide judgment dated 27.05.2025, the High Court directed continuation of the Nai Gaj Dam Project, envisaged negotiations for its completion up to the year 2028, and further ordered payment of escalation and inflationary adjustments in accordance with the evaluation of the Pakistan Engineering Council ("PEC"). The High Court also initiated contempt proceedings and issued notices vide orders dated 13.06.2025 and 17.06.2025 for alleged non-compliance with its directions.

11. In response thereto, WAPDA once again invoked the appellate jurisdiction of the Supreme Court by filing Civil Petition for Leave to Appeal No. 2432 of 2025 ("CPLA No. 2432/2025") and Civil Petition for Leave to Appeal No. 3568 of 2025 ("CPLA No. 3568/2025") assailing the judgment dated 27.05.2025 and the subsequent contempt proceedings initiated vide orders dated 13.06.2025 and 17.06.2025. Consequent upon the coming into force of the Constitution (Twenty-Seventh Amendment) Act, 2025, the aforesaid petitions, along with connected matters, stand transferred to this Court for adjudication.

12. It is contended by the learned counsel for the petitioner that the High Court, through its judgment dated 06.10.2023 and subsequent order dated 27.05.2025, travelled beyond the permissible contours of its constitutional jurisdiction under Article

199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") by entertaining and adjudicating what was, in substance, a purely contractual dispute inter se the parties. It is argued that, in doing so, the High Court effectively rewrote and modified a concluded settlement embodied in an arbitral award which had already been made Rule of the Court and culminated into a decree, thereby disregarding the doctrine of finality attached thereto and the statutory embargo contained in Section 34 of the Arbitration Act, 1940 (the Act). It is further contended that the High Court acted without lawful authority in restraining and interfering with proceedings initiated by the National Accountability Bureau ("NAB") concerning the alleged submission of forged and fabricated bank guarantees, a matter falling within the exclusive domain of the competent investigative and accountability authorities.

13. On the other hand, it is contended by the learned counsel for the respondents that the Nai Gaj Dam Project constitutes a public welfare initiative intrinsically connected with the enforcement of fundamental rights under the Constitution, particularly those relating to life, dignity, and environmental protection, as the same is integrally linked with the restoration and sustainability of Manchar Lake. It is further submitted that, owing to unprecedented inflationary pressures and changed economic circumstances, execution of the remaining works at frozen 2018 price levels have become commercially and practically unworkable, thereby rendering performance of the contractual obligations illusory and inequitable. It is, therefore, urged that the High Court has exercised its constitutional jurisdiction within permissible limits, with the object of safeguarding a vital public infrastructure project from stagnation or abandonment, ensuring its continuity and completion in public interest, and maintaining a balance between contractual sanctity and the constitutional imperative of environmental protection and public welfare.

14. We have heard the learned counsel for the parties at length and have carefully examined the record of the case.

15. The present dispute emanates from the execution of the Nai Gaj Dam Project, a versatile public infrastructure project undertaken by WAPDA on the Gaj River in the gorge area at the edge of the Kirther Mountain Range, approximately 65 kilometers north-west of Dadu City in District Dadu, Sindh. The Project was conceived to provide irrigation facilities to the rain-fed plains of Kachho and Kohistan, augment the water supply to Manchar Lake, generate approximately 4.2 MW of hydroelectric power and bring nearly 28,800 acres of agricultural land under cultivation. Owing to its strategic importance for water conservation, agricultural development and regional socio-economic uplift, the Project was treated as one of the major public sector development schemes.

16. The environmental significance of the Nai Gaj Dam Project also came under consideration before the Supreme Court of Pakistan in proceedings arising from the deteriorating condition of Manchar Lake. On 24.02.2010, a constitutional petition concerning the contamination of Manchar Lake, resulting in the degradation of agricultural lands, fisheries and the natural habitat of migratory birds, was converted into Suo Motu Case No. 10 of 2010. During the proceedings, the Supreme Court examined the causes contributing to the environmental degradation of the lake and identified, inter alia, the reduced inflow of fresh water from the River Indus, the discharge of saline and polluted effluent through the Main Nara Valley Drain (MNVD), the use of toxic chemicals for fishing, the silting of canals and watercourses, and the prolonged drought conditions prevailing in the area. The Court observed that these factors had severely affected the ecological balance of the lake and had adversely impacted the livelihood of the local population dependent upon agriculture and fisheries. The Supreme Court disposed of the proceedings on 30.09.2010 after issuing comprehensive directions to WAPDA and the Government of Sindh to undertake effective remedial measures for the restoration and rehabilitation of Manchar Lake. The authorities concerned were further directed to submit periodic progress reports before the Court regarding the implementation of the remedial measures and the progress achieved in addressing the environmental concerns. These proceedings underscore the public importance of projects,

including the Nai Gaj Dam, aimed at restoring the inflow of fresh water to Manchar Lake and mitigating the environmental degradation affecting the region.

17. Meanwhile, WAPDA invited competitive bids for the execution of the Project through a notice published on 18.06.2009, requiring the submission of bids by 02.07.2010. Upon completion of the procurement process, respondent No.1 was declared the lowest evaluated bidder, having submitted a bid in the sum of Rs.38,792,138,330/-. Consequently, a Letter of Acceptance bearing No. GM(P)S/DS-18/40 dated 13.01.2011 was issued in favour of respondent No.1, which was accepted without qualification. Thereafter, on 12.04.2011, the parties executed a formal Contract Agreement incorporating the General Conditions of Contract based upon the FIDIC Conditions, the Particular Conditions of Contract, the Priced Bill of Quantities, the completed Appendices to Bid, the technical specifications, drawings and all addenda forming part of the bidding documents. Thus, the rights and obligations of the parties became governed by the contractual framework mutually agreed upon.

18. One of the essential conditions of the Contract required respondent No.1 to furnish valid and enforceable performance guarantees as security for the due and faithful performance of its contractual obligations. In purported compliance with this requirement, respondent No.1 submitted two separate bank guarantees. The first guarantee, bearing No.0002/01954 dated 17.02.2011, was issued by KASB Bank Limited in the amount of Rs.1,163,764,150/-. The second guarantee, bearing No.0002/00264 dated 19.02.2011, purportedly issued by the Bank of Punjab, was in the amount of Rs.2,715,549,683/-. Both guarantees were furnished to secure the performance obligations undertaken by respondent No.1 under the Contract.

19. Subsequently, following the merger of KASB Bank Limited with Bank Islami Pakistan Limited, respondent No.1 replaced the first guarantee by furnishing another guarantee bearing No.00040/2015 dated 11.08.2015, purportedly issued by the Bank of Punjab for the same amount, namely Rs.1,163,764,150/-. The

replacement of the guarantee prompted WAPDA to undertake verification of the performance guarantees from the issuing bank in order to satisfy itself regarding their authenticity and enforceability. In pursuance thereof, WAPDA addressed a series of communications to the Bank of Punjab seeking confirmation regarding the genuineness of the guarantees furnished by respondent No.1. In response to these communications, the Bank of Punjab unequivocally informed WAPDA that it had never issued the purported performance guarantee bearing No.0002/00264 dated 19.02.2011, nor any amendment thereto, nor any verification letter in respect thereof. The Bank expressly disowned the document relied upon by respondent No.1 and denied the existence of any corresponding banking transaction. The correspondence exchanged between WAPDA and the Bank of Punjab, therefore, established that one of the performance guarantees submitted by respondent No.1 was not a genuine banking instrument but a forged and fabricated document. Since the furnishing of a valid performance guarantee constituted a fundamental contractual obligation and was intended to secure the employer against the risk of non-performance, the submission of a forged guarantee was considered by WAPDA to amount to a serious breach going to the root of the Contract. Such conduct undermined the contractual relationship and deprived WAPDA of the security to which it was contractually entitled. Consequently, the respondent No.1 (the Contractor) had committed a fundamental breach of the Contract by furnishing a fake performance guarantee and thereby committed material mistake towards the substantive contractual requirement which resulted in termination of contract by WAPDA by exercising the powers available to it under the Contract through its letter dated 29.08.2018. Then, WAPDA initiated fresh bidding process on 08.01.2019 for the completion of leftover works on Contractor's risk & cost basis.

20. The record further reveals that, following the termination of the Contract on 29.08.2018, respondent No.1 challenged the action of WAPDA by instituting Suit No.319 of 2019 along with CMA No.2693 of 2019 before the High Court of Sindh at Karachi

on 19.02.2019, assailing the legality of the termination of the Contract. Subsequently, respondent No.1 also filed H.C.A. No.188 of 2019 on 16.04.2019 challenging the fresh bidding process initiated by WAPDA. On the other hand, WAPDA invoked the arbitration clause contained in the Contract by filing an application under section 34 of the Arbitration Act, 1940, being CMA No.4025 of 2019, on 08.03.2019, seeking reference of the disputes to arbitration in accordance with the agreed contractual mechanism.

21. The High Court of Sindh, through its order dated 19.04.2019, permitted WAPDA to proceed with the submission and opening of bids in the fresh procurement process; however, it restrained the authorities from making any final award of the contract or passing any conclusive order until the pending disputes were resolved. Owing to the pendency of the litigation and the non-approval of the Second Revised PC-I (2018), the fresh bidding process was ultimately annulled by WAPDA on 09.06.2020.

22. We have noted that, upon consideration of the contractual stipulations governing dispute resolution, the High Court of Sindh, by order dated 05.11.2020 passed in Suit No.319 of 2019, referred the disputes between the parties to arbitration in terms of the arbitration clause incorporated in the Contract. Pursuant thereto, arbitral proceedings were conducted before the learned Arbitrators, who rendered their Arbitral Award on 19.02.2021.

23. Thereafter, the parties mutually settled the modalities for implementation of the Award by executing Draft Terms and Conditions dated 25.05.2021. The Arbitral Award together with the agreed Draft Terms and Conditions was presented before the High Court of Sindh in Suit No.555 of 2021 for being made a Rule of the Court. The High Court accepted the Award and made it Rule of the Court by order dated 08.07.2021, whereafter a decree in terms of the Award was passed on 31.07.2021.

24. In compliance with the decree passed by the High Court, WAPDA and respondent No.1 executed a Memorandum of Understanding (MoU) on 21.09.2021, whereby the parties agreed to

revive the contractual relationship in accordance with the terms embodied in the Arbitral Award and the approved Second Revised PC-I of the Project. Consequently, the execution of the Project recommenced with effect from 28.10.2021, with a stipulated completion period of three years, making the contractual date of completion 27.10.2024.

25. We have noted with great concern that the contractor did not stop the litigation and again filed writ before high court of Sindh and tried to obtain favour beyond the agreed terms of award and MOU mentioned above. After the MOU, the contractor was under obligation to complete his work with the time frame but with ulterior motive his work was reflected as very slow. Here the question arises whether the contractor was in default in honoring the contractual obligations and subsequent MOU. As the Award was made rule of court and in consequence the MOU signed between the parties. The signing of MOU indicates the consent of contractor towards the award. The contractor was bound to follow the award and MOU accordingly but he tried to complicate the matter under the garb of litigation which was not the act, towards the contractual obligations on the part of the contractor as per MOU dated 25-05-2021, the following was agreed with respect to non-escalation of price of the Project:

> "The contractor shall complete all the remaining works of the contract already quoted Bid Rates as per Contract Provisions in 03 years from the date of re-commencement of work. Escalation shall freeze at Cost indices on the date of termination (Aug-2018) for next 03 years from the re-commencement of works. If the work is not completed within 03 years due to default of the Employer, it will be dealt as per Contract Provisions for the extended period beyond 03 years."

Pursuant to the Arbitral Award having been made Rule of the Court and the subsequent execution of the Memorandum of Understanding (MOU) dated 21.09.2021, the parties mutually agreed upon the revised contractual framework governing the execution of the Project. The MOU, executed with the free consent of both parties, embodied the terms settled in implementation of the Award and constituted the binding instrument regulating their respective rights and obligations. In terms thereof, respondent

No.1 accepted the contractual conditions and recommenced the execution of the Project with effect from 28.10.2021, with an agreed completion period of three years ending on 27.10.2024.

Notwithstanding the aforesaid arrangement, respondent No.1 instituted C.P.-D No.4529 of 2023 before the learned High Court of Sindh seeking, inter alia, the release of escalation in accordance with the guidelines of the Pakistan Engineering Council (PEC), notwithstanding the terms embodied in the Arbitral Award and the subsequently executed MOU. The High Court entertained the petition and granted relief in favour of respondent No.1, thereby giving rise to the present controversy.

It is well settled that where parties have voluntarily agreed to resolve their disputes through arbitration and the resultant award has subsequently been made Rule of the Court, such award attains a degree of finality and binds the parties in the same manner as a decree of the Court. The jurisdiction of the Court while examining an arbitral award does not extend to re-appraisal of the merits of the dispute or to rewriting the contractual bargain voluntarily entered into by the parties. Judicial interference is ordinarily confined to cases where the award suffers from patent illegality, jurisdictional defect, misconduct on the part of the arbitrator, or is otherwise contrary to law or the material available on the record.

The settled principle is that an arbitrator, chosen by the parties themselves, acts in a quasi-judicial capacity and is the final judge of both facts and law arising within the scope of the reference. Consequently, the Court does not sit in appeal over an arbitral award, nor can it substitute its own view merely because another interpretation may be possible. Unless a manifest error resulting in miscarriage of justice is demonstrated, the award is entitled to due deference and ought not to be lightly disturbed. These principles have consistently been recognized in Mian Corporation v. Lever Brothers of Pakistan Ltd.[1] wherein it was held that the Court's interference with an arbitral award is of a limited nature and that

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[1] (PLD 2006 SC 169),

an arbitrator, being the forum chosen by the parties, is ordinarily the final arbiter of the disputes referred to him.

Likewise, the Memorandum of Understanding executed pursuant to the Award represents a consensual arrangement voluntarily entered into by the parties for implementation of the arbitral settlement. Such an agreement cannot ordinarily be disregarded or modified in a manner that alters the contractual rights and obligations consciously accepted by the parties, save in accordance with law or on grounds recognized for setting aside or avoiding such an agreement. By instituting fresh proceedings after accepting the Award, obtaining a decree in terms thereof and executing the MoU, respondent No.1 sought to secure contractual benefits beyond those mutually agreed upon, thereby giving rise to successive rounds of litigation which delayed the execution of the Project. We are convinced that the resulting delays adversely affected the timely completion of the Nai Gaj Dam Project, a public welfare undertaking of considerable national importance involving substantial public expenditure and intended to serve the larger public interest.

26. We believe that upon the Award being made Rule of the Court and a decree being passed in its terms, the rights and liabilities of the parties stood crystallized in accordance with the Award and the decree. The subsequent execution of the Memorandum of Understanding (MoU) dated 21.09.2021 was not an independent or unrelated arrangement but constituted an instrument executed in implementation of the Award and the decree of the Court. The contractual relationship between the parties was thus revived upon mutually agreed terms, leaving no ambiguity as to their respective obligations.

27. Admittedly, the respondent No.1 accepted the benefits flowing from the Award and the MoU without any reservation and recommenced execution of the Project in terms thereof. Having accepted the contractual framework and resumed performance under the revived Contract, respondent No.1 was expected to discharge its contractual obligations in accordance with the agreed schedule and conditions. Prima facie, the subsequent institution of

independent proceedings seeking contractual benefits not contemplated by the Award or the MoU raises a question as to whether such claims were maintainable after the parties had consciously settled their disputes through arbitration and thereafter acted upon the settlement.

28. It is also evident from the record that the arbitral Award was never set aside, modified or declared unenforceable in proceedings competent under (the Act). Likewise, neither the decree passed by the High Court making the Award Rule of the Court nor the MoU executed in pursuance thereof was challenged on any legally recognized ground. Consequently, all three instruments continued to regulate the contractual rights and obligations of the parties.

29. The legal effect of an arbitral award, once made Rule of the Court, is materially different from that of an ordinary contractual arrangement. Such an award merges into a decree of the Court and acquires enforceability accordingly. The scope of judicial interference thereafter remains confined to the parameters recognized by law and does not ordinarily extend to varying or enlarging the substantive rights settled by the Award except in accordance with statutory provisions. There is no doubt that the Project of construction of Nai Gaj Dam is not a private commercial venture but a major public infrastructure project intended to serve significant public purposes, including irrigation, rehabilitation of Manchar Lake, agricultural development and water conservation. The execution of such a project necessarily involves substantial public funds and the larger public interest. Consequently, disputes affecting its implementation cannot be viewed merely from the perspective of private contractual rights, but must also be examined in light of the public consequences flowing from prolonged delays in its execution.

30. The chronology of events placed on record further indicates that the Project has remained embroiled in successive rounds of litigation, including challenges to the termination of the Contract, the fresh procurement process, arbitral proceedings, implementation of the Award, and subsequent proceedings questioning matters allegedly settled under the Award and the

MoU. The cumulative effect of these proceedings has been repeated interruptions in the execution of a project of national importance, resulting in substantial delays extending far beyond the originally stipulated completion period. After the revival of the Contract pursuant to the Award and the MoU, the parties were expected to devote their efforts towards timely completion of the Project in accordance with the revised contractual arrangements. Instead, further disputes arose regarding matters allegedly covered by the settlement, thereby giving rise to additional litigation.

31. We therefore observe that the arbitration is founded upon the principle of party autonomy. Once parties voluntarily choose arbitration as their forum for dispute resolution, participate in the proceedings without objection, accept the Award, secure its recognition by the Court, and thereafter execute a consensual MoU for its implementation, the sanctity of that dispute resolution process assumes considerable legal significance. Any subsequent attempt to revisit matters already settled through that process necessarily falls to be examined in light of the principles governing the finality of arbitral awards, sanctity of contracts, and certainty in commercial transactions. Viewed, in this context, the controversy in the present case extends beyond a mere claim relating to contractual escalation. It raises questions concerning the binding nature of an arbitral award made Rule of the Court, the legal effect of a consensual MoU executed in implementation thereof, the limits of judicial intervention in arbitral matters, and the balance to be maintained between enforcement of contractual rights and the timely completion of public infrastructure projects undertaken in the larger public interest.

32. The present matter involves a project of immense public importance undertaken with public funds for the purposes of irrigation, rehabilitation of Manchar Lake, agricultural development and water conservation. While the contractual rights of the parties deserve due protection, the Courts are equally required to ensure that disputes relating to such projects are resolved in a manner that does not unnecessarily impede their timely completion or adversely affect the larger public interest. Protracted litigation over matters already settled through

arbitration has the potential to delay projects of national importance, escalate public expenditure and postpone the realization of the benefits intended for the community at large.

33. We are persuaded that the binding force of the Arbitral Award, the decree passed in terms thereof, and the Memorandum of Understanding executed for its implementation must be respected and enforced in accordance with law. Any departure therefrom can only be justified upon establishing grounds recognized under the Arbitration Act, 1940, or other applicable law, and not merely on the basis of a subsequent claim seeking contractual advantages inconsistent with the settlement already accepted by the parties. The Arbitral Award dated 19.02.2021, having been made Rule of the Court under section 17 of (the Act) by the High Court of Sindh through order dated 08.07.2021, merged into the decree subsequently passed by the Court. Consequently, the rights and obligations of the parties ceased to be governed merely by the Award or the underlying Contract and became enforceable in terms of the decree of the competent Court. Such decree attained finality, there being no material on record to suggest that it was ever set aside, modified or varied in any proceedings recognized by law. There is no doubt that the parties voluntarily executed the Memorandum of Understanding dated 21.09.2021 and recommenced the execution of the Project in accordance with the revised contractual framework embodied in the Award and the MoU. The parties thus acted upon the decree and regulated their subsequent conduct on the basis thereof. The legal consequences flowing from the decree and the MoU, therefore, became binding upon both parties.

34. The scope of judicial intervention stood considerably narrowed. The jurisdiction exercised by the High Court under Article 199 of the Constitution is undoubtedly wide; however, it cannot ordinarily be invoked to alter, vary or rewrite rights which have already been conclusively determined by a decree passed by the same Court in exercise of its statutory jurisdiction under section 17 of (the Act). To hold otherwise would permit the exercise of constitutional jurisdiction in a manner inconsistent with the

principle of finality attaching to judicial determinations and would render the statutory framework governing arbitration nugatory.

35. We are, therefore, of the considered view that, once the Arbitral Award had been made Rule of the Court and a decree had been drawn in terms thereof, the High Court, while exercising its constitutional jurisdiction under Article 199 of the Constitution, could not indirectly achieve what could not be done directly, namely, vary, enlarge or modify the substantive rights and obligations finally settled by the decree, in the absence of any jurisdiction conferred by (the Act) or any other enabling provision of law. Any direction having the effect of altering the contractual and financial obligations embodied in the Award, the decree and the Memorandum of Understanding would, in substance, amount to modification of the decree itself, which falls outside the permissible scope of constitutional review. The settled principle of law is that constitutional jurisdiction is intended to ensure that public authorities act within the bounds of law; it is not a substitute for appellate or review jurisdiction over a decree which has attained finality. The exercise of jurisdiction under Article 199 must, therefore, remain subject to the statutory finality attached to an arbitral award made Rule of the Court. Any contrary approach would undermine the certainty of arbitral adjudication, defeat the legislative intent underlying (the Act), and erode the sanctity of decrees passed in accordance therewith. The impugned exercise of constitutional jurisdiction, insofar as it had the effect of varying or supplementing the terms embodied in the Award, the decree dated 08.07.2021 and the Memorandum of Understanding executed pursuant thereto, was without lawful authority and cannot be sustained.

36. The main assertion of the respondent No.01 before high court was that the Pakistan Engineering Council (PEC) Guidelines entitled it to claim escalation dehors the Contract, the Arbitral Award and the decree passed thereon is equally without substance. We therefore observe that neither the Contract nor the Arbitral Award incorporated any stipulation conferring upon respondent No.1 an unrestricted right to seek revision of the agreed contractual terms solely on the basis of the PEC Guidelines

after the disputes had already been finally resolved through arbitration. It is a settled principle that contractual rights and obligations are primarily governed by the terms voluntarily agreed upon by the parties. Where such rights have subsequently been adjudicated through arbitration and embodied in a decree of a competent Court, their legal character is elevated beyond that of a mere contractual arrangement. In such circumstances, executive instructions, administrative guidelines or professional standards, unless having the force of statute or expressly incorporated into the Contract, cannot operate to vary or supersede the contractual obligations finally settled by the parties and affirmed by judicial determination. The Pakistan Engineering Council (PEC) Guidelines dated 21.08.2023 could not have been applied retrospectively to the Contract executed between the parties on 12.04.2011. The Contract in the present case was executed in the year 2011 and expressly provided a complete contractual mechanism governing adjustment of prices and escalation. The parties consciously negotiated and accepted the contractual allocation of risks relating to fluctuations in prices, and those rights and obligations were subsequently examined in arbitral proceedings, embodied in the Arbitral Award, made Rule of the Court under section 17 of (the Act), and thereafter implemented through the Memorandum of Understanding dated 21.09.2021. The contractual framework, therefore, stood finally settled long before the issuance of the PEC Guidelines dated 21.08.2023. In our considered view, where parties have expressly agreed upon a contractual mechanism for dealing with escalation and have thereafter resolved all disputes through arbitration, culminating in a decree of a competent Court, it is not open to the Court to substitute that agreed mechanism by importing subsequently issued administrative guidelines. Such an exercise would amount not merely to interpreting the Contract but to rewriting its substantive terms, contrary to the settled principles governing commercial contracts and arbitral finality. Accordingly, we observe that the PEC Guidelines dated 21.08.2023 had no retrospective application to the Contract executed in 2011, nor could they be invoked to displace the contractual provisions governing price adjustment or to confer additional benefits inconsistent with the contractual bargain, the Arbitral Award, the decree passed thereon, and the Memorandum of Understanding executed by the parties in implementation thereof.

37. We observe that the learned High Court failed to appreciate that the Chairman, WAPDA, was not vested with any statutory or contractual authority to enter into a contract, award a contract, or to vary, amend, substitute, or rewrite the terms and conditions of a concluded contract between the parties. Any modification of the contractual terms could only be effected in accordance with the contract itself and the applicable law. Consequently, the direction issued by the learned High Court requiring the Chairman, WAPDA, to alter or substitute the terms of the concluded contract is wholly without jurisdiction, beyond the scope of his lawful authority, and therefore unsustainable in law.

38. The learned High Court also gravely erred in assuming jurisdiction over the inquiry initiated by the National Accountability Bureau (NAB) regarding the alleged submission of a forged bank guarantee. The said inquiry constituted a separate and distinct cause of action, independent of the contractual disputes forming the subject matter of the writ petition. In the absence of NAB and other necessary parties before the Court, no lawful adjudication could have been made in respect of such proceedings. The impugned judgment is conspicuously silent on the nature, scope and legal consequences of the allegations relating to the forged bank guarantee. The High Court proceeded to quash the notice and the inquiry without recording any findings on the relevant facts or the applicable law. Such an approach is legally untenable, particularly where the allegations pertain to the procurement of a public contract for the construction of a mega dam project through the alleged use of a forged bank guarantee. The matter involved serious questions of public interest and alleged criminality, which could not have been disposed of summarily in the exercise of constitutional jurisdiction. The impugned judgment further suffers from the fundamental infirmity of being a non-speaking and unreasoned order. It is now a well-settled principle of law that every judicial order affecting the rights and liabilities of the parties must disclose the reasons which have persuaded the Court to arrive at its conclusions. Recording

reasons is an indispensable component of the administration of justice, as it demonstrates due application of judicial mind, enables the parties to understand the basis of the decision, facilitates meaningful appellate scrutiny, and ensures transparency, fairness and accountability in the exercise of judicial power. In the present case, the learned High Court neither examined the relevant statutory provisions governing the controversy nor adverted to the contractual stipulations, the jurisdictional objections raised by the respondents (in high court) , or the settled principles regulating the exercise of constitutional jurisdiction. The conclusions recorded in the impugned judgment are unsupported by any analytical discussion of the pleadings, evidence or applicable law. Such an omission strikes at the very foundation of the judicial process and renders the impugned judgment legally unsustainable.

39. A careful reading of the impugned judgment reveals that the learned High Court failed to determine the material questions of fact and law arising in the case. It neither addressed the jurisdictional objections raised by the respondents nor examined the effect of the contractual dispute resolution mechanism, the pending arbitration proceedings, and the independent accountability proceedings. The relief granted is unsupported by any discussion of the pleadings, the applicable statutory provisions, or the settled principles governing the exercise of constitutional jurisdiction. Such a failure to identify and determine the real controversy demonstrates a lack of judicial application of mind and renders the impugned judgment legally unsustainable.

40. The learned High Court further misdirected itself in law by failing to appreciate that the contractual disputes, the statutory powers of WAPDA, and the proceedings initiated by the National Accountability Bureau were governed by separate and distinct legal regimes. By treating these independent matters as part of the same controversy and interfering with the NAB inquiry in the absence of the necessary parties, the High Court travelled beyond the scope of the writ petition and exercised jurisdiction not vested in it by law. It is well settled that the jurisdiction of the High Court under Article 199 of the Constitution cannot be invoked to rewrite

contractual obligations, bypass the agreed mechanism of arbitration, interfere with independent statutory proceedings, or compel a statutory authority to act beyond the powers conferred upon it by law. The impugned judgment overlooks these settled principles and thereby exceeds the constitutional limits of judicial review, resulting in a manifest miscarriage of justice.

41. In view of the above, this Court, while expressing dissatisfaction with the manner in which the proceedings were conducted and with the repeated writ petitions instituted by the contractor (respondent No.01) before the High Court of Sindh, nevertheless considered it imperative to adopt a pragmatic course to secure the completion of the Nai Gaj Dam Project. Recognizing that recommencement of the dispute de novo would frustrate the timely completion of the project, the Court decided to fix a definitive benchmark for the future conduct of the parties.

42. It is expected that both the parties shall honour and will proceed in accordance with the original contract. The arbitral award was made Rule of the Court and decree passed; the parties signed Memorandum of Understanding (MoU) and thereafter were required to proceed accordingly keeping in view the terms and conditions of the contract. The Court observe that these documents collectively constituted the governing framework regulating the parties' rights and obligations. To ensure uninterrupted execution of the project, we therefore further direct that no judicial proceedings or intervention by any court would be permissible until completion of the dam, except in accordance with the dispute resolution mechanism contained in the original contract. The clear object of this direction is to prevent further litigation from impeding the execution of an important public infrastructure project.

43. We further direct WAPDA to consider and decide, within fifteen days of the receipt of any request made by the contractor, provided such request is submitted within one week of the receipt of this judgment, expressing its unequivocal willingness to resume and complete the project strictly in accordance with the original Contract Agreement, the arbitral Award, the decrees dated 19-02-

2021 and 31-07-2021, and the MoU dated 21-09-2021. While deciding such request, WAPDA shall assess the nature and extent of the remaining works and determine a reasonable extension of time strictly in terms of the contractual provisions governing extension of the construction period. It is, however, made unequivocally clear that the grant of any such extension shall not confer upon the contractor any entitlement to any further escalation of the contract price, additional compensation, or any other financial benefit whatsoever beyond that already crystallized and finally determined under the arbitral Award, the decrees of the competent Court, and the MoU. Conversely, if the contractor fails to submit such request within the stipulated period or declines to execute the remaining works strictly in accordance with the aforesaid Contract, arbitral Award, decrees, and MoU, WAPDA shall be at liberty to re-tender the remaining works on a risk-and-cost basis in accordance with law and the terms of the Contract.

44. In view of the foregoing, the titled civil petitions are converted into appeals and are accordingly allowed. Consequently, the impugned judgment dated 27.05.2025 and impugned orders dated 06.10.2023 and 13.06.2025 are hereby set aside. Constitution Petition No.64/2018 and all pending applications stand disposed of. The parties are directed to proceed strictly in accordance with the directions contained herein.

CHIEF JUSTICE

JUDGE

Announced in Open Court at Islamabad on 13/07/2026.

Approved for reporting

RajaAhsan/-