

**PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR, ISLAMABAD**

**RAJA MUHAMMAD ZAMAN
VERSUS
CAPITAL DEVELOPMENT AUTHORITY (CDA)**

**REPRESENTATION AGAINST DECISION/ ORDER/ FINDINGS/
RECOMMENDATION OF THE Wafaqi Mohtasib DATED 04.09.2013 IN
COMPLAINT NO. I/9269/94 L/W I/5000/85**

I am directed to refer to your representation dated 27.09.2013, on the above subject and to say that the President has been pleased to pass the following orders:

2. By way of the subject Representation, the Complainant–Raja Muhammad Zaman Khan has called in question the Decision dated 4th September, 2013 passed by the Wafaqi Mohtasib Secretariat, operating part whereof is reproduced herein under_

“2. The case was placed before the competent authority who has been pleased to approve that:

The Findings of the Wafaqi Mohtasib has already been implemented by the CDA in letter and spirit as the CDA's Board after getting the case scrutinized has approved an amount of Rs.218,356/- (which was due) for payment to you”.

3. In view of the above, your case has already been implemented because there is no mal-administration involved on the part of the CDA. Therefore, no further action is required to be taken by this Secretariat. The case is closed accordingly.”

3. The present case has a chequered history. Succinctly, the above named Complainant was awarded a Contract by the Capital Development Authority (CDA) for constructing 224 Units/Flats of C-type category in Sector I-8, Islamabad (**the subject Contract**).

4. That due to some irreconcilable dispute between the parties, the Contract was rescinded on 26.05.1982 and the case Record also shows that the subject Contract though was restored but for a short period and finally it come to an end on 20.06.1982. The Complainant filed a Complaint before the then Wafaqi Mohtasib and complaint about highhandedness and oppressive attitude of the Agency towards him. The Complainant also agitated that his running bills were not cleared in time due to which he suffered financial losses and resultantly the overall schedule for completing the subject Contact was badly affected. In the said Complaint, *inter alia*, it was prayed that the security deposit available with the Agency/CDA for the partial work done should be calculated proportionately and refunded back to the Complainant, and escalation be paid on total work done by the Complainant by applying the same formula, which was applied to other Contractor–Messers Mir Aslam Khan & Co, who were executing identical type of work under the same terms and conditions. The Agency submitted its Reply and disputed the claim of the Complainant and alleged default was alleged on the

part of the Complainant/Contractor. It was also mentioned by the Agency that the escalation was paid to the Contractor in a fair manner and as per Clause of the Contract Agreement. Similarly, the Agency justified its other actions also, for instance, recovery of mobilization advance from the Complainant/Contractor.

5. That record of the case shows that a detailed investigation proceeding had taken place before the Wafaqi Mohtasib and consequently Order dated 7th September, 1988 was handed down by the learned Wafaqi Mohtasib, which is the original Decision in the present dispute. Admittedly, the Agency did not prefer any Representation before this Secretariat in terms of Section 32 of the Establishment of the Office of the Wafaqi Mohtasib (Ombudsman) - Presidential Order No.1 of 1983, but preferred to file a Review Petition before the Wafaqi Mohtasib. The Complainant side also filed a Review Petition; both Reviews were heard and decided by way of the Revised Findings dated 9th February, 1993, whereby, the Review Petition filed by the Agency was dismissed and one filed by the Complainant/Contractor was allowed and the learned Wafaqi Mohtasib (Ombudsman) also made a very strict observation about awarding compensation of Rs.50,000/- (*Rupees Fifty Thousand Only*) to Complainant. However, another Petition was submitted by the Complainant before the then Wafaqi Mohtasib, who after hearing the parties and particularly taking into account the earlier precedents of the Wafaqi Mohtasib Office, had come to the conclusion that there is an error apparent on the face of record, which needs to be rectified. Consequently, by the Order dated 14th September, 1994, the Wafaqi Mohtasib had granted a prayer for awarding the escalation to the Complainant by applying the same criteria, which was applied by the Agency to its other Contractors for making payment towards the “escalation on the basis of work done “W” on agreement rates instead of Schedule of rates which is the basis on which the first running payment of escalation was made”. This Decision was challenged before this Secretariat by the Agency, but after considering the facts and record of the case, this Secretariat was pleased to reject the Representation of the Agency by its Order dated 25.11.1994, being time barred. The matter did not end there but the parties litigated up to the Supreme Court and finally the Hon’ble Supreme Court handed down its judgment dated 20th June, 2006 in which all the issues and particularly relating to the payment of escalation was judicially adjudicated upon in favour of the Complainant/Contractor and the Civil Appeal No.1858 of 2003 filed by the Agency was dismissed. The Order of the Supreme Court is available at page 21/Cor. of the case file. Admittedly the Agency had given a categorical Undertaking before the Wafaqi Mohtasib that his afore referred Order dated 14.09.1994 for awarding escalation would be implemented in letter and spirit. This Undertaking has been reproduced under paragraph 6 of the above Supreme Court Judgment.

6. Despite all this, the Agency did not settle its dispute with the Complainant and after a lapse of few years, the Complainant again preferred a Complaint before this Secretariat, which was referred back to the Wafaqi Mohtasib as the matter pertained to the implementation of earlier Decisions. Eventually, upon submission of a Report by the Agency, the aforementioned impugned Order was passed, which is now being challenged in the present Representation and by virtue of which the escalation amount as calculated by the Agency comes to Rs.218,000/- (*Rupees Two Hundred Eighteen Thousand Only*), which the Complainant has earlier refused to accept and kept on agitating the matter with vehemence.

7. Record of the proceeding was perused and during such examination it transpired that the Agency had earlier calculated the escalation amount payable to the Complainant/Contractor by applying two different formulae;

- (i) the amount which the Agency is liable to pay to the Complainant by applying the rational formula, comes to Rs.4,618,805.20 (*Four Million Six Hundred Eighteen Thousand Eight Hundred Five and Twenty paise only*), and

- (ii) by applying the formula as mentioned in the agreement the Complainant is entitled to receive a sum of Rs.3,917,947.20. (*Three Million Nine Hundred Seventeen Thousand Nine Hundred Forty-Seven Point Twenty Only*). This calculation was made by the Agency way back in June 1996 and has been mentioned in one of its missive dated 16th June, 1996 addressed to the Wafaqi Mohtasib Secretariat and is available at page 127/Corr of the case file. That in view of the above discussion, it is apparent that the escalation figure of Rs. 218,000/- (*Rupees Two Hundred Eighteen Thousand Only*) as mentioned in the impugned Order is *ex facie* unreasonable and also contrary not only to various decisions already given in the matter, but, the earlier calculation made by the Agency and communicated to the Wafaqi Mohtasib Advisor vide their above letter dated 16th June, 1996.

8. In view of the above discussion it appears that the impugned Order is passed in a slipshod manner and calls for interference by this Appellate Authority. Consequently, the case is remanded to the Wafaqi Mohtasib with directions to carry out the exercise of calculating the escalation by adopting and applying the same criteria and formula which was applied to other Contractors and which has been mentioned herein above (Order dated 14th September 1994) and the same was also endorsed by the Hon'ble Supreme Court. Since the matter is too old and the Agency is trying to avoid payment to the Complainant by adopting different uncalled for measures, it would be just and proper that the Wafaqi Mohtasib should take assistance of some experts, including a Chartered Account Firm for calculating the quantum of escalation and once it has been determined the same should be paid/disbursed to the Complainant by the Agency forthwith, and if the same is not paid/disbursed within a fortnight from the date the amount has been determined, then the Wafaqi Mohtasib is directed to initiate contempt proceedings against the Top Officials of the CDA/Agency for committing such contumacious disobedience.

9. Accordingly, the President has been pleased to dispose of the subject Representation in the above terms.

(Zulfiqar H.Awan)
Director (Legal)

Raja Muhammad Zaman
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Rawalpindi

No. 411/WM/2013 dated 01st July 2015

Copy for information to:-

1. The Secretary, Wafaqi Mohtasib (Ombudsman)'s Secretariat, Islamabad.
2. The Chairman, Capital Development Authority (CDA), Chairman's Secretariat, Khayaban-e-Suharwardi, Sector G-7/4 , Islamabad

(Zulfiqar H.Awan)
Director (Legal)