IN THE PESHAWAR HIGH COURT, PESHAWAR,
[Judicial Department].

Writ Petition No.3166-P of 2017.

Quarban Ali Khan,
Member Provincial Assembly (MPA),
PK-16, Nowshera.

Petitioner

VERSUS

The Government of Khyber Pakhtunkhwa,
Through Chief Secretary Civil Secretariat, Peshawar,
And others.

Respondents

For Petitioner :-	M/S Abdul Latif Afridi and Khalid Anwar Afridi, Advocates.
For Respondents:-	Mr. Waqar Ahmad, AAG. Mr. Shumail Ahmad Butt, Amicus Curiae.
Date of hearing:	20th, 21st, 22nd, March and 12th April, 2018
Date of Decision:	**17.05.2018**

JUDGMENT

ROOH-UL-AMIN KHAN, J:- Our this common judgment, shall decide the instant writ petition and connected Writ Petition No.2525-P of 2017, both filed by Quarban Ali Khan, Member Provincial Assembly (MPA) PK-16, Nowshera ***(hereafter to be referred as the petitioner),*** as identical questions of law and facts are involved therein. The petitioner in both the writ petitions has asked for issuance of the following writs:-

> ***(i) To immediately stop allotment of funds/works to non-members of Provincial Assembly in PK-16, Nowshera, as allotment of funds to such persons is squarely illegal, unconstitutional and ineffective upon the rights of the petitioner***;

(ii) To declare the impugned notifications with regard to appointment of Nehar Muhammad as a Focal Persons for PK-16, in light of the Khyber Pakhtunkhwa Establishment of District Development Advisory Committee Act, 1989, as illegal, unlawful and without lawful authority;

(iii) To release Developmental funds to the petitioner being MPA/ the representative of PK-16, Nowhsera, as per directives of the Minister, already allocated for the aforesaid Constituency, without any discrimination and delay for its utilization by the petitioner in accordance with law;

(iv) To the impugned letter dated 26.07.2017, including the actions/decisions held in the meeting conducted by the so called representative /focal person (respondent No.9) as null and void.

(v) Any other relief, if not specifically prayed for by the petitioner, but deemed appropriate by this Court in the circumstances of the case may also be granted in favour of the petitioner."

2. As per averments in the writ petitions, petitioner is an elected Member of Provincial Assembly of the Khyber Pakhtunkhwa PK-16, Nowshera, who was earlier nominated as Chairman of the District Developmental Advisory Committee *(hereinafter to be referred as the "**DDAC")*** by the Chief Minister Khyber Pakhtunkhwa, and he remained on the said position for a period of about four years and then replaced by one Muhammad Idrees Khattak, by the order of the worthy Chief Minister dated 11.07.2016.

Grievance of the petitioner is that on the directions of the Chief Minister Khyber Pakhtunkhwa, some funds had been approved for carrying out the developmental works/projects i.e. supply/extension of Sui Gas,

Electrification, construction of street pavements, pressure pumps, roads, drains etc in PK-16 and in this regard the Deputy Commissioner, Nowhera, requested the Chairman **(DDAC)** for identification of the sites, resultantly, Identification Form-A was prepared. For the approved works/projects, the petitioner received the requisite funds; however, some portion thereof could not be utilized. Later on, for utilization of the saved portion of the fund, a notification was issued by the Chief Minister's Secretariat, and under second proviso to section 3 of the Khyber Pakhtunkhwa Establishment of District Development Advisory Committee Act, 1989 ***(****herein after to be referred as the "****DDAC Act of 1989")*****,*** it was the sole discretion and prerogative of the petitioner/MPA to select sites for the works/projects within his own quota for utilization of the aforesaid fund, but criticism of the petitioner on the actions and omissions of the government for the sake of supremacy of the law and rules, make the Chief Minister annoyed, resultantly, he through the impugned notification, appointed/notified one Nehar Muhammad as a Focal Person for carrying out the developmental works/projects. Not only this, some non-elected persons were also given the task of identification of the site for the project of electrification in District Nowshera. The petitioner alleging the aforesaid actions of the respondents as illegal, have filed the instant writ petitions

3. Respondents have filed their para-wise comments, wherein they besides, raising legal and factual objections, have averred that petitioner remained as a Chairman of **DDAC** for a period of four years. During his tenure as a Chairman **DDAC**, he never showed any grievance against the respondents. Due to lack of interest of the petitioner in the developmental works/projects of the government, Mr. Nehar Muhammad was appointed as a focal person by the Chief Minister for timely completion of developmental works. In **DDAC** meeting held on 31.07.2017, schemes pertaining to Annual Developmental Projects (ADP) 2017-18 relating to PK-16, were discussed and no change was made therein. All the schemes have already been approved, identified and nothing has been spent/utilized against the law.

4. During the course of arguments, the following legal points cropped up for consideration:-

i. Whether the Developmental funds may be allocated to Members Provincial Assembly and utilization of the same is sole prerogatives of the MPAs, under the constitution?

ii. Whether the District Developmental Advisory Committee ("DDAC") excludes the Provincial Government from carrying out any developmental activity at the District directly?

iii. Whether the Chief Minister is competent under the constitution or rules of business or

> **any other law to nominate a focal person other than the representative or secretaries of concerned department for carrying out the developmental works in the Province/any District of the Province, in presence of MPAs and DDAC Act 1989**?

5. We have heard the exhaustive submissions advanced by learned counsel for the parties and Mr. Shomail Ahmad Butt, Advocate, amicus.

6. We are conscious of the fact that this Court is creation of the Constitution which envisages, inter alia, a structure of governance based on trichotomy of powers in terms of which the functions of each organ have been constitutionally delineated keeping in view the seminal concept of separation of powers. The Constitution described the responsibility of maintaining harmony and balance between the three pillars of the state, namely, the **Legislature,** the **Executive** and the **Judiciary**. The idea is to ensure that the state organs perform their respective functions within the stipulated spheres/limits and constraints. As a guardian of the Constitution, the Court is required to **"preserve, protect and defend"** the Constitution. Article 129 of the Constitution, mandates the Executive Authority of the Province to be exercised by the Chief Minister and his cabinet Members in the name of the Governor and the Executive Authority of the Province is to be regulated by the Khyber Pakhtunkhwa Rules of

Business, *(hereinafter to be referred as Rules of Business),* framed under Article 139 of the Constitution. Both the articles mentioned above are reproduced below for ready reference:-

> **Article 129. The Provincial Government.− (1)** Subject to the Constitution, the executive authority of the Province shall be exercised in the name of the Governor by the Provincial Government, consisting of the Chief Minister and Provincial Ministers, which shall act through the Chief Minister.
>
> (2) In the performance of his functions under the Constitution, the Chief Minister may act either directly or through the Provincial Ministers."
>
> **Article 139. Conduct of business of Provincial Government.−** (1) All executive actions of the Provincial Government shall be expressed to be taken in the name of the Governor.
>
> (2) The [Provincial Government] shall by rules specify the manner in which orders and other instruments made and executed [in the name of Governor] shall be authenticated, and the validity of any order or instrument so authenticated shall not be questioned in any court on the ground that it was not made or executed by the Governor.
>
> (3) The Provincial Government shall also make rules for the allocation and transaction of its business."

The entire superstructure of the Provincial Government is based on the Rules framed under Article 139 of the

Constitution. These rules expressly provide the composition of different departments, the distribution of business amongst the departments and its relation with the government and allocation of business to attach departments. It is the domain of the Provincial Executive i.e. the Cabinet to undertake developmental activities after seeking authorization from the Provincial Legislature in the form of approval of Annual Developmental programme. In relation to the instant case, Planning and Development Department (*hereafter to be referred as P&D)* is the relevant department of the Provincial Government, inter alia, having essential task to prepare the Annual Development Plan. In pursuance of the draft, ADP, submitted by the administrative department, the P&D present it to the Chief Minister, who further placed it before the Cabinet for approval and onward submission to the Provincial Assembly with Finance bill, where the same is voted by the Members of the Provincial Assembly, after deliberation. The above Finance procedure with regard to Annual Development Plan form part of **"other expenditures"** enlisted in the Annual Budget Statement of the Provincial Government under Article 120 of the Constitution. For the sake of convenience, the Article ibid is reproduced below:-

> **120. Annual Budget Statement.−** (1) The Provincial Government shall, in respect of every

financial year, cause to be laid before the Provincial Assembly a statement of the estimated receipts and expenditure of the Provincial Government for that year, in this Chapter referred to as the Annual Budget Statement.

(2) The Annual Budget Statement shall show separately –

(a) the sums required to meet expenditure described by the Constitution as expenditure charged upon the Provincial Consolidated Fund; and

(b) the sums required to meet other expenditure proposed to be made from the Provincial Consolidated Fund; and shall distinguish expenditure on revenue account from other expenditure."

7. Similarly, Article 122 of the Constitution provides a procedure relating to Annual Budget Statement, which read as under:-

122. Procedure relating to Annual Budget Statement.− (1) So much of the Annual Budget Statement as relates to expenditure charged upon the Provincial Consolidated Fund may be discussed in, but shall not be submitted to the vote of, the Provincial Assembly.

(2) So much of the Annual Budget Statement as relates to other expenditure shall be submitted to the Provincial Assembly in the form of demands for grants, and that Assembly shall have power to assent to, or to refuse to assent to, any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Provincial Government".

The issue of fund, in case in hand, falls within ambit of **"other expenditure"** as contemplated in Article (120) (b) of the Constitution. The developmental projects, under the Rules of Business, are to be placed as demands for grants before the Provincial Assembly within the meaning of Article 122 (2) of the Constitution, for approval. Under Articles 122 and 123 of the Constitution, the Chief Minister is the sole authority to seek approval of the Provincial Assembly regarding all the developmental schemes to be executed in the Province in the financial year.

8. We deem it necessary to mention here that under a democratic dispensation, governance and development are best optimized by collective participation. The legislature which is veritable arm of government in a democracy is a catalyst of socio economic development. It's worth is measured not only by the quality of intellectual debates inside the Assembly, but also by the attraction of constituency projects such as construction of roads, provision of electricity and natural gas, establishment of Industries, Sports and Gymnasium etc. Through such activities, the Political figures achieve a platform for pavement, to help them in winning the future election for the same slot or any other portfolio. This is not an issue on Constituency base only but all over the world, politicians create platform or political parties to help them to win the

election and form a government. In this region of the world, election are not strictly conducted on the basis of well established rules and law governing the competition for election office, but for the main moto i.e. to serve the electorate of constituency. Response of the elected members as MPAs/MNAs, always remain to win the opinion of public of the Constituency through accomplishment of maximum developmental work and projects as it is always considered a useful way for the victory in next election. Potentiality of a member is adjudged by the voters on the scale of providing employment to persons on merit or against merit as well as construction of roads, streets, drains etc. These are the admirable attributes of members of parliament or Provincial Assembly towards the electorate. No doubt, the constitution clearly defines the duties of elected representatives of the people, however, unpredicted reasons, including frequent interference in democratic process at different occasions, undermine the true spirit of democracy which not only kept away the public from awareness of the significance of constitutional duties of elected representatives in all the three different tires i.e. the Parliament, Provincial Assembly and the Local Government, but also dragged the aspirant candidates for election to start their election campaign by making promises with their voters qua addressing their demands

which may or may not lies within the sphere of their responsibilities. When the political party based governments were not existing or the third tire i.e. local Government was not functioning, the legislature ensured the participation of elected representatives in planning and development works and projects in their respective Constituencies through enactment of District Development Advisory Committee Act, 1989, whereby the emergence of the elected representatives and participation of political personal in identification and location was ensured. Section 3 of the Act of 1989, provides for establishment of the **DDAC** i.e. an advisory forum, in each District, consisting, inter alia, all the members of the Provincial Assembly from the said District. As is manifest from its Preamble, the Act of 1989, has been enacted for the purpose of providing planning and supervision of local level developmental activities in the Khyber Pakhtunkhwa. Under section 3(3) of the Act of 1989, the Chief Minister is vested with the authority to appoint one of the members of the **DDAC** as a Chairman of the **DDAC** and under section 3(4) all the decisions by the **DDAC** shall be made by majority of votes of its members, however, the Chairman has been given the power of casting vote in case of equality of votes of the members with an exception of a quota of developmental scheme specifically allocated to a member of the **DDAC.** The political, administrative and

financial functions, power and authority of both the tires i.e. the local Government and Provincial Government in juxtaposition with the Act of 1989, was discussed and delineated by this Court in a celebrated judgment rendered in **Wali Muhammad's case (2018 CLC 134),** which is outlined as below:-

9. From the Act of 1989, though the intention of the legislature is to ensure the political participation in identifying the projects and its locations in the Province, however, the authority vested in the DDAC **is only recommendatory, as non-compliance thereof is inconsequential as having no source of effectuation.** The power of the **DDAC** was absolute until promulgation of the Khyber Pakhtunkhwa Local Government Ordinance, 2001 *(hereinafter to be referred as the Ordinance of 2001)*, having constitutional backing of Article 140-A, according to which, each Province shall, by law establish a local Government system and devolve political administrative and financial responsibility and authority to the elected representative of the local governments and elections to the local governments shall be held by the Election Commission of Pakistan. By insertion of the above referred to article, through the constitutional 18th Amendment, the Provincial Government was enable to enact, the Khyber Pakhtunkhwa Local Government Act, 2013, whereby

Political, administrative and financial authority was devolved upon the local Governments. Each organ of the local government was allocated different functions and powers, mentioned in detail in the Schedule appended to the Act of 2013. Overriding effect was given to the Act of 2013, which cannot be legally obscure the executive authority of the Province as contemplated in articles 129 and 137 of the Constitution, which empower the Provincial Government with the authority to take effective steps in carrying out developmental schemes in the province. In view of the above, the P&D Department, the local Governments and DDAC proceed with the developmental projects in the Province in harmony and in accordance with the respective laws under which they are governed and functioning viz the P& D Department according to the Rules of Business, the Local Governments under the Act of 2013 and the DDAC under the Act of 1989.

10. With utmost respect to the view taken by this Court with regard to function of **DDAC** it may be added that by insertion of Article 140-A in the Constitution through 18th Amendment Act, 2010, each Provincial Government has been given the mandate to establish a local government system and devolve the political, administrative and financial responsibility and authority to the elected representatives of the local government.

Likewise, Article 32 of the Constitution emphasized the role of Federal Government in promotion of the local government Institutions. In fact, by insertion of Article 140-A of the Constitution, the legislature have created third tier of government i.e. local government being regulated by a Provincial Statute i.e. Khyber Pakhtunkhwa Local Government Act, 2013, which provides an exhaustive mechanism for socio economic uplifting and development on gross root level. Section 4 of the Act of 1989, described functions of the Committee i.e. (i) Proposal for ADP of the district and communicating it to P&D Department (ii) Implementation of scheme under RDP (iii) Location and selection of sites in sector of education, rural health and public health engineering and location of site included in local program of ADP e.g. electrification of villages etc. In existence of the local government system envisaged under the Act of 2013, the above mentioned functions cannot be left to **DDAC**, which would definitely be in contravention of Articles 32 and 140-A of the Constitutions. Besides, The august apex Court in suo moto case reported in ***(PLD 2014 Supreme Court 131),*** has deprecated the block allocation of fund, because it is against the mandate of constitutional budget provision and Rules of Business, whereas, it has emphasized that under the rules, each

demand is required to be given item-wise. Relevant para of the judgment (supra) is reproduced below:-

> "The above analysis of the provisions of the Constitution read with the Rules of Procedure, 2007 clearly indicate that qua :other expenditures" there is no provision which mandates the demand for block allocation of funds, inasmuch as, under the rules each demand is required to give items-wise detail. Importantly, if the Budge Statement includes demand for grant for use/allocation of funds to MNAs/MPAs/Notables, it would necessarily be a demand for block allocation, as it involves request for placing at the disposal of the MNAs/MPAs/Notables a certain sum of money as grant to be utilized by or at their request as and when they may identify the schemes of development required for their constituency. Such a demand, if included in the budget, appears to be contrary to the constitutional provisions, which require that each expenditure to be specified with sufficient particularity, in the Annual Budget Statement, so that it can be considered and voted upon by the National Assembly. Besides, it is also in derogation of rules framed by the National Assembly which require demand for each grant to be specified along with detailed estimates items-wise. "

From bear reading of the above quoted Para, it is manifest that the august Supreme Court has shown its displeasure on block allocation of fund to a particular Constituency. In light of the new legal development viz judgment of the august Supreme Court and the Local Government Act,

2013, literal construction of section 4 of the Act of 1989, will cause hardship, futility and absurdity, but as it has neither been repealed nor strike down by any Court, therefore, is carrying the status of a valid Statute. This Court is not vested with the jurisdiction to alter the material which the Act is woven, but at least, can iron out the creases. It is settled law that where any hardship or absurdity arise regarding existence of any statute or clause of a Statute, the Court propound the doctrine of ***"reading down"***, which is used for saving a Statute from being struck down on account of its unconstitutionality. It may be added that object of the doctrine of **"reading down"** is to keep the operation of Statute within the purpose of the Act and constitutionally valid. From the above discourse, it can be safely held that sections 4 and 5 of the Act of 1989, have become un-functional after insertion of Article 140-A in the Constitution and promulgation of the Act of 2013, however, they can be saved under the doctrine of **"reading down".**

11. Be that as it may, since subject matter of the instant petitions is scheme pertains to electrification; therefore, section 4(4) may be relevant in this regard, under the garb of which the petitioner is agitating his rights. Section 4 of the Act of 1989 speaks about the function of the Committee. Sub-clause (iv) of section 4 of

the Act ibid, is relevant to the instant case, which read as under:-

> "(iv) Locations or sites for such other development projects in other sectors as may be included in local programme of ADP including electrification of villages".

The expression **"may be"** employed in section 4 (iv) is of worth significance, from which it can be inferred that it is the discretion of the existing forums of execution, authorization and implementation of the development scheme and to put any developmental scheme in the purview of the local programme of ADP for DDAC or not. The relevant forum for execution is the Provincial Executive and for its authorization is the Provincial Legislature. Under the Act of 1989, a scheme may be entrusted to DDAC by the Provincial Government or Legislature or the PDWP for location of sites etc, but it is equally within their domain not to entrust any such schemes to the forum of DDAC. The words "all other schemes included in the ADP, which are subject to the approval of Advisory Committee" contemplated in section 5 of the Act of 1989, mean that all the scheme in ADP need not be subject to the advice of the Committee. Thus, when section 4(iv) and section 5 of the Act of 1989, coupled with preamble of the Act, are read in conjunction with each other, one would come to the conclusion that the

Act does not aim at excluding the powers of the Provincial Executive for carrying out any developmental Act in any District directly or through the forums and implementing authorities chosen by them. By now it is settled principle that an ordinary legislation can neither exclude nor limit or abridge a constitutional power or jurisdiction in any manner. The Act does not aim at excluding the power of the Provincial Executive to undertake any developmental activity in any part of the Province. Even if the Act had said so in express words the same cannot be given any effect for the reason that the powers given to the Provincial Executive by the Constitution cannot be excluded by an ordinary legislation. The Provincial Legislature itself is not constitutionally authorized to disturb the scheme of tricotmy of power by abridging the constitutionally granted power of the judiciary or the Executive.

12. So far as the stance of the petitioner with regard to allocation of fund to him is concerned, suffice it to say that the Constitution does not provide allocation of fund to the elected members for the developmental programmes of the Province, rather MPAs/MNAs besides performing responsibility of legislation, are under laden responsibility to manage the matters of the province through Provincial Consolidated fund and further to keep check over the executive branch through control over financial matters. The function and authority of public representative are not

limited to the traditional role of law making, which only would not be sufficient to good governance. The legislature is not just simply a law making body, but indeed, including many others, it has a duty to oversight the financial matter of the Province, as it is a mouth-piece, spokesmen and voice of the electoral, who shall check that public function is well managed and also to ensure the rapid socio economic development by attracting such as roads, hospitals, schools, and colleges and so many other. For the above purpose, the MPAs shall provide the sketch of developmental plan to the P&D Department and in case of deletion and excision by P&D the member, shall raise voice in the budget sessions of Provincial Assembly. When the schemes in a Constituency are once approved by the Assembly in terms of Articles 120 to 123 of the Constitution, then the Government is bound to implement it, however, the Government, in fact, has no authority to allocate fund to any Member Provincial Assembly, as grants and projects are area specific and not person specific. The practice of allocation of quotas to MNAs and MPAs or notables has strongly been deprecated and declared unconstitutional by the Hon'ble Supreme Court in suo muto constitutional Petition No.20 of 2013 **(PLD 2014 SC 131)** in Para No.40, and 52 (2), which read as under:-

> "40. With regard to question as to whether or not the Constitution permits the

use/allocation of funds to MNAs/MPAs/Notables at the sole discretion of the Prime Minister or the Chief Minister; if yes; what has been or should be the procedure/criteria for governing allocation of such funds for this purpose, it is to be noted that under the Constitution there is no provision whatsoever that permits to use allocation of funds at the discretion of the Prime Minister/Chief Minister. However, as discussed herein above, with regard to supplementary grants, the Federal Government which includes the Prime Minister and the Ministers has the power to authorize expenditure from the Federal Consolidated fund. Further, there is also no provision in the Constitution that mandates use/allocation of funds to MNAs/MPAs or notables. In fact, the very use of the term "Notables" is abhorrent to the Islamic ethos, both the Holy Quran and last Sermon (Khutba) of the Holy Prophet Muhammad (PBUH), which envisages that all distinctions on the basis of cast, race and colour stand abolished and the only distinction which remains is that of piety."

"52 (2) The constitution does not permit the use/allocation of funds to MNAs/MPAs/Notables at the sole discretion of the Prime Minister or the Chief Minister. If there is any practice of allocation of funds to the MNAs/PMAs/Notables at the sole discretion of the Prime Minister/Chief Minister, the same is illegal and un-constitutional. The Government is bound to

establish procedure/criteria for governing allocation of such funds for this purpose."

13. The above quoted authoritative declaration of the Hon'ble Supreme Court is clear then crystal, having binding force on each Organ of the State to be obeyed under Article 189 of the Constitution and its disobedience would amount to commission of contempt of Court punishable under Article 204(a) of the Constitution.

14. So far as appointment of the focal person as supervisor for developmental work by the Government/ the Chief Minister is concerned, suffice it to say that such nomination by the Chief Executive is quite alien to the scheme of procedure provided for regulating the developmental projects. In democratic set up, the elected representatives are answerable to the electorate. Rule of nobility is envisaged in the system of Aristocracy only. In the democratic system "will" of the people is always supreme and person elected by the people is considered most "Nobel" and in presence/ existence of the provincial or the national level elected members, the Chief Minister is not vested with authority to nominate a non-elected person for utilization of any developmental fund or supervision of any project. Such act would definitely frustrate the essence of democracy. In the judgment (supra) ***(PLD 2014 Supreme Court 131),*** the Hon'ble Supreme Court has held that:-

> "As far as the question that since there is no specific prohibition in the Constitution qua allocation of funds to MNAs/MPAs/Notables etc, hence, the same is permissible, is concerned, it is to be noted that the language employed in the above referred provisions of the Constitution i.e. Articles 80 to 84 ibid, implicitly excludes such person-specific allocations."

Similarly, in the judgment (supra) ***(PLD 2014 Supreme Court 131),*** the Hon'ble Supreme Court while dilating upon the issue of exercising discretionary powers by the Chief Executive of the State was please to observe as under:-

> "So far as the actual exercise of discretionary powers, if any, of the Prime Minister are concerned, even if they be presumed to exist, they cannot be exercised for personal or for parochial benefit, rather they are to be exercised in the light of his oath as incorporated in the Third Schedule to the Constitution as well as Article 38, which mandates the State to promote social and economic well being of all the people/citizens of Pakistan and no just and segment or community thereof".

We searched the Constitution, Rule of business and the Act of 1989, but could not find any role of a focal person, that too of a non-elected representative, in developmental

work in a Constituency. The Chief Executive of the Province is bound by the mandate of Constitution, therefore, he cannot be permitted to travel beyond the powers enumerated by the law and Rules.

15. The net shell of the above discussion is;-

i) The Constitution does not permit the allocation of developmental fund to the Chief Minister, Ministers and MPAs. They have responsibilities, besides legislation, to manage the financial matters of the Province through Provincial consolidated fund by identifying developmental scheme in their constituencies before preparation of Annual Budget. The executive authority is vested in government, but it shall be exercised without any discrimination viz irrespective of the affiliated of member with any political party. When the scheme, identified by any member is approved by the Provincial Assembly in the budget session, then the government is bound to execute it through concern government department in letter and spirit.

ii. By insertion of Article 140-A in the Constitution, the Provinces are given the mandate to develop political administration and financial responsibilities and authority to the elected representatives of the local government, for which purpose the Province of Khyber Pakhtunkhwa has enacted Local Government Act, 2013, providing mechanism for local development. On the other hand, the august Supreme Court has deprecated the block allocation being contrary to the constitutional provision, which require sufficient particularity of each expenditure in the Annual Budget

statement. In the above stated eventualities, sections 4 and 5 has lost its efficacy and applicability and can only be saved by reading it down.

iii. There is no constitutional or legal provision enabling the Chief Minister to nominate an elected or non-elected person as focal person for supervision of developmental work in a Constituency. The Chief Minister being the Chief Executive of the Province and head of the Provincial government is confined by bond of his oath to promote social and economic well being of all the citizens of the Provinces, irrespective of their parties affiliation. If there is any practice of allocation of funds to MPAs or focal person at the sole discretion of the Chief Minister, the same is illegal and un-constitutional.

16. In view of the above, the impugned notification vide which a focal person for PK-16 has been nominated in light of KP Establishment of District Development Advisory Committee Act, 1989, is declared as illegal and void ab initio, hence, is hereby set-aside.

The prayer of the petitioner to release funds to him being the member of Provincial Assembly, having no constitutional backing is hereby turned down.

With the above observations both the writ petitions are disposed of accordingly.

Announced:
17.05.2018
Siraj Afridi P.S.

JUDGE

JUDGE

DB of Mr. Justice Rooh-ul-Amin Khan and Mr. Justice Ikramullah Khan.