In essence, the then District government Bannu had allocated 25% of the developmental funds amounting to Rs.26.786 Millions utilization through Citizen Community Board (CCB) in view of the provisions contained in sub-section 5 of section 109 of the Khyber Pakhtunkhwa Local Govt. Ordinance 2011, but as the same was not utilized accordingly due to non-establishment of the CCB by competent authority on account of suspension of the local government ordinance 2001 by the Provincial Govt. of Khyber Pakhtunkhwa, this amount
was lying unutilized since 2011. One new elected MPA of constituency 72 Bannu, requested the chief Minister Khyber Pakhtunkhwa for release of the above mentioned amount/ funds in order to utilize the same on the provision of drinking water facilities in PK-72 area of District Bannu.

2. The matter was processed through proper channel, in accordance with rule of business and ultimately on the approval of the Competent Authority (Chief Minister) the Finance Department of Khyber Pakhtunkhwa pleased to release the required Funds as aforesaid under the object head AO3970(001)-others to enable the Deputy Commissioner Bannu for clearance of pending liability subject to the observance of all codal formalities under the rules. In this regard letter dated 20.08.2013 was issued accordingly by the Budget Officer-XII Govt. of Khyber Pakhtunkhwa Finance Department.
3. The then Deputy Commissioner Bannu vide its letter dated 20.08.2013 placed the said Funds on the disposal of the District Development Advisory Committee Bannu for the clearance of pending liabilities subject to observance of all codal formalities required under the law.

4. The Chairman District Development Advisory Committee Bannu convened the meeting of the District Development Committee on 21.08.2013 in order to start the developmental work in district Bannu and 13 set of drinking water scheme were pin pointed. The said schemes were submitted to District Development Committee for approval, which was approved accordingly by the Deputy Commissioner Bannu, on 07.08.2013. Tender was invited for the completion of the scheme, approved by the Deputy Commissioner and respondent No.16 was awarded the contract.
5. The learned counsel for petitioner, the new elected member of the provincial assembly, contended that as, the election in PK-70 was in progress in month of August, 2013, there was no any emergency or urgency that the funds allocated to C.C.B were so urgently released and utilized by unauthorized committee in PK-70, while the Funds were released on the request of MPA 72.

6. Further submitted that public funds has been illegally utilized to acquire the goal to buy favor for the contesting candidate, launched by the ruling provincial government (Tahreek-e-Insaf); that no developmental work has so far carried on grounds, however, people were distributed cash amount out of the public funds through the contractor to buy votes for the Govt. Launched Candidates; that the very order of release of the fund and its utilization was illegal.

7. On the other hand, the learned counsel for respondents contended that, all the developmental
projects were sanctioned and carried out in accordance with law and as the petitioner had no locus standi to challenge proceeding initiated and completed prior to his taking oath as MPA, he could not challenge the decision passed by the DDAC, before his becoming member of the legislative assembly of Khyber Pakhtunkhwa. Further contended that member of an assembly shall not have any prerogative to either pin point any scheme to be completed on his initiative or on his sole discretion or approval by him, as all the developmental projects shall be discussed in the meeting of the DDAC and on approval by the committee such projects could be completed in accordance with rules.

8. We have heard learned counsel and have gone through various notifications/ documents placed on record by both the parties in view of law.

9. The provision contained in section 107 of the Local Govt. Ordinance, 2011, prescribe the
establishment of the local fund for every District Government, while the provision contained in section 109 of the same Ordinance prescribe the allocation and utilization of the same.

Subsection 5 of section 109 of the Local Government Ordinance 2001 reads as:

“(5) The development budget shall be prioritized in accordance with the bottom up planning system as laid down in section 119.

Provided that not less than twenty five percent of the development budget shall be set apart for utilization in accordance with the provisions of section 119:

Provided further that the amount referred to in the first proviso which remains unspent shall be credited under the same head in the following year’s budget in addition to the fresh allocation under the said proviso.109(5).”

10. According to rules, 25% funds were usually allocated for CCB, in order to carry out a project,
service or activity transferred to or managed by the CCB, but as the CCB was not in function, the finance Department with the approval of the competent authority (Chief Minister) released the allocated 25% Funds for CCB with clear and unambiguous direction that this Funds shall be utilized to meet out the pending liabilities for the year 2013 and 2014.

11. The Deputy Commissioner as well as the finance Department have categorically mentioned that the funds be utilized to clear the pending liability subject to observance of all the codal legal formalities.

12. In order to resolve this contentious issue as to whether the public funds were utilized thereafter observing of the legal formalities required and made mandatory thereunder the Khyber Pakhtunkhwa Establishment of District Development Advisory Committee Act, 1989.
Clause (c) of Section 2 define the committee as:

“Committee” Means the District Development Advisory Committee of the District concerned, established under section 3.”

Section 3 of the Act provides as:

3. (1) there shall be established, with immediate effect a committee to known as the district Development Advisory Committee in each District, consisting of-

   (a) all the Members of the Provincial Assembly from the District concerned;

   (b) such other elected representative as the government may specify to be taken on the committee as co-opted members; and

   (c) such heads of Attached Department at the district level as may be co-opted by the committee for their expert opinion.

(2) A co-opted member shall have no right of vote to exercise in any deliberation of the committee.
(3) the chief Minister shall appoint one of the members to be the Chairman of the committee, who shall hold office during the pleasure of the chief Minister.

(4) The committee shall take all decisions by consensus of opinion, but where such consensus is not achieved, the matter shall subject to the provisions of sub-section (2) be decided by majority of votes;

Provided that in case of equality of votes, the chairman shall have a second or casting vote;

Provided further that where a quota has been allocated to a Member in the development schemes of the Province or the schemes approved are to be divided quota-wise, then there shall be no need for obtaining consensus of opinion regarding the allocation of projects or selection of sites, as the case may be, and it shall be the sole discretion of the member concerned to select sites or allocate projects, as the case may be, within his own quota.

(5) No act or proceeding of the committee shall be invalid by reason only of the existence of a vacancy in, or defect in the establishment of the Committee.
13. In presence of the instruction of Govt. of Khyber Pakhtunkhwa the Assistant Director Local Govt. and RDD Bannu, notified the following committee on 16.08.2013.

1. **Malik Shah Muhammad Khan Wazir**  
   Chairman  
   MPA PK-70.

2. **Malik Riaz Khan**  
   Member  
   MPA PK-73

3. **Fakher Azam Wazir**  
   Member  
   MPA PK-1

4. **Concerned Head of Departments**  
   Co-opted Member

5. **Assistant Director, LG&RDD Bannu**  
   Secretary.

But the disputed scheme was sanctioned by the Committee termed as district Development committee, no where mentioned in the District Development Advisory Committee Act, 1989 or local govt. Ordinance, 2001, which was convened on 21.08.2013, while the district Development Advisory committee was already notified on 16.08.2013.

14. On one hand, the Deputy commissioner was member of the so called district Development committee while on other hand, he was the authority to
accord administrative approval of schemes, which itself is illegal.

15. Section 5 of the Act, 1989 prescribe the procedure for Administrative approval and implementation of schemes.

“5. All other schemes included in the annual Development Programme, which are subject to the advice of the committee, shall be administratively approved and implemented by the Government Departments concerned in accordance with the prescribed procedure of the Department or as may be directed by Government.

Provided that the District Local Fund shall not be included in the purview of the District Development Advisory Committee.”

The second proviso attached to the section 3 of the Act, 1989 reads as:

“(2) A co-opted member shall have no right of vote to exercise in any deliberation of the Committee.”
16. The record reveals that the petitioner was shown as member of the provincial assembly on 10.09.2013, while he was notified as a member of the District Development Advisory committee on 14.10.2013 and as all the disputed schemes were sanctioned in his constituency, then in view of the proviso attached to section 3 ibid, it was the legal right of the petitioner to select sites or allocate projects, as the case may be, within his own quota.

17. In this regard, the resolution passed by the Khyber Pakhtunkhwa Assembly and in light of the recommendation of the worthy speaker the remaining scheme where works were not commenced shall be carried out on the selection of spot on the direction of the petitioner, being the member of the committee and the funds are also allocated to his constituency as per resolution of the so called Committee held on 21.08.2013.
18. As, the funds so utilized was District Local Fund, such Fund also could not be included in the purview of the District Development Advisory Committee. On one hand the committee so constituted was illegal, while on other hand in view of the proviso, attached to section 5, such Funds could not be included in the purview of the District Development Advisory Committee Act. All the disbursement of Funds, particularly during the period when bye election was in progress in PK-72, its approval and utilization were carried out by persons having no legal authority in this regard.

19. The contention of the learned counsel for respondents that in past other government, in order to gain similar benefits, had released similar funds to the contesting candidates launched by respective governments is not tenable as all policies against the public interest could not be legalized, being carried out by previous government, in the garb of policy.
20. In case of Constitutional petition No.30 of 2013, decided on 06.06.2013, the apex Court is held that:

“(1) **Integrity:**
Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties.

(2) **Objectivity:**
In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choice solely on merits.

(3) **Accountability:**
Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

(4) **Openness:**
Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict
information only when the wider public interest clearly demands.

(5) **Honesty:**

*Holder of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.*

(6) **Leadership:**

*Holders of public office should promote and support these principles by leadership and example.*

21. Insofar the objection of learned counsel for official respondents that the petitioner may invoke the jurisdiction of the competent authority in view of the provisions contained in section 2 of Powers, Immunities and Privileges Act, 1968 is misconceived.

22. The privileges of a member are defined in part III of the same Act, but the matter in hand does not fall within the purview of Part III of the Act.

23. The contention of the private respondent, the contractor that he has completed the development
work, while he was legally authorized to participate in any proceeding for awarding contract of any civil work, being an authorized Govt. Contractor and thus he is entitled for the compensation of the work he had already carried out, is appealable to the prudent mind.

24. No doubt that, there is a gross illegality conducted by the official respondents in disbursement and approval of the developmental disputed scheme but the private respondent, who had contested the tender and he was awarded the contract by an authorized authority, could not be penalized for the work, in which he had shared no any malafide. So, the Deputy Commissioner Bannu is directed to appoint a committee, which shall carry out an inquiry, in order to determine on ground, that how much development work had already been completed by the contractor/respondent, prior to order of this Court dated 23.10.2013, and the contractor/respondent would be
entitled to receive and collect, according to the rules in vogue, the amount of works he had already completed.

With this observation, this writ petition is allowed.

**Announced.**  
10.03.2015.  

**J U D G E**

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