

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-2071 of 1994

Date	Order with signature of Judge
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Present:

Mr.Justice Muhammad Ali Mazhar
Mr.Justice Abdul Maalik Gaddi

St. Michael's Convent Society.....Petitioner

Versus

The Province of Sindh & others.....Respondents

1. For Regular Hearing.
2. For hearing of CMA No.2239/2015.

Date of Hearing: 23.01.2017

Mr. Ikram Ahmed Ansari, Advocate for Petitioner.

Syed Jameel Ahmed, Advocate for Respondent No.4.

Mr. Sabtain Mehmood, AAG.

Ms. Farkhunda Mangi, State Counsel.

None present for other Respondents.

Muhammad Ali Mazhar, J: This petition has been brought to challenge the order dated 4.5.1994 passed by the Governor of Sindh on the representation moved by the petitioner under Section 32 of the Establishment of the Office of Ombudsman for the Province of Sindh Act 1991.

2. The petitioner is a Society registered under Society Registration Act, 1860 established for Educational Charitable Non-commercial purposes on 27.2.1988. The petitioner made an application to KDA for allotment of amenity Pot No.ST-6, Block 7, Scheme No.5, Kehkashan,

Clifton, Karachi for school and also filed requisite no objection certificate issued by the Director of Education, Karachi Region. After complying with all requisite formalities the plot was allotted and the possession of the plot in question was handed-over to the petitioner on 11.8.1991. A complaint was filed on 14.12.1991 by respondent No.3 since deceased in which he alleged that amenity plot allotted to the petitioner was earmarked for the construction of monument and park therefore it was unlawfully allotted to the petitioner's society.

3. The complaint was disposed of on 14.05.1992 with the directions that the allotment of plot in question to the petitioner society should be cancelled immediately and the plot be restored to its original purpose. It was further directed that the plot should be earmarked for monument and park to provide recreational facilities to the people of the area and the agency was warned not to indulge in such kind of mal-administration in future. On 12.03.1994, petitioner filed representation before the Governor of Sindh under Section 32 of the Establishment of the Office of Ombudsman for the Province of Sindh Act 1991 together with an application supported by an affidavit and other relevant documents for maintenance of status-quo till the decision of the representation. Since the representation was not decided to an early date therefore two reminders were sent on 11.04.1994 and 07.06.1994.

4. The learned counsel for the petitioner argued that after allotment of the plot and receiving the possession, the petitioner started removal of the existing structure on which a complaint was made to the Ombudsman. The decision of the Ombudsman dated 10.02.1994 is

based on hearsay and misreading of the record. It was further averred that the Chief Minister has powers under KDA Disposal of Land & Estate Rules, 1971 to relax any rule. The Chief Minister while doing so (relaxing Rules) could not be deemed to be acting within the jurisdiction of the Provincial Ombudsman. There was no violation of Disposal of Land & Estate Rules, 1971, in as much stated earlier the Chief Minister allotted the plot and granted permission for construction thereon in relaxation of the KDA Disposal of Land & Estate Rules, 1971 under Rule (15) read with Circular dated 21.11.1983. He further argued that without providing any opportunity of hearing to the petitioner or issuing any notice, the petitioner was informed by the Section Officer for Secretary to Governor of Sindh on 04.05.1994 that the representation filed by the petitioner was examined and considered and rejected by the competent authority. On filing representation it was obligatory upon the competent authority to examine the propriety of the order passed by the Ombudsman and after providing ample opportunity of hearing to the petitioner representation should have been decided but in this case neither any notice was issued after filing representation nor any opportunity of hearing was provided to the petitioner but representation was dismissed.

5. The learned AAG is also of the view that the order passed on the representation cannot be construed a speaking order and in his view this is a fit case for remand. At the same time learned counsel for the respondent No.4 has also conveyed the same feelings that the order conveyed by the Section Officer to the petitioner does not show any application of mind.

6. We have examined the order passed on the representation moved by the petitioner which on the face of it does not seem to be in accordance with law. For the ease of reference, the order conveyed to the petitioner is reproduced as under:-

**“No:GS/39-16/94(SO-II)/919
Dated 4th May, 1994.**

**To
Mrs. Elaine Paul
W/o H. Paul
250 Garden West
Karachi.**

**SUBJECT: REPRESENTATION BY MRS. ELAINE PAUL,
GENERAL SECRETARY U/S 32 V/S PROVINCIAL
OMBUDSMAN SINDH DECISION.**

I am directed to refer to your representation dated nil on the subject noted above, was examined, considered and rejected by the competent authority.

**(MUHAMMAD HUSSAIN PARIO)
SECTION OFFICER
for Secretary to Governor Sindh**

No:GS/39-16/94(SO-II)/ Karachi, dated 4th May, 1994.

A copy is forwarded for information to the Provincial Ombudsman Sindh with reference to his letter No.PCS/36/92-14434, dated 19th April, 1994.

**(MUHAMMAD HUSSAIN PARIO)
SECTION OFFICER
for Secretary to Governor Sindh”**

7. We called the matter twice with intervals but nobody appeared for the other respondents. The order dated 10.3.2016 shows that the counsel appearing for respondent No.11 informed the court that since respondent No.11 has passed away, no instruction has been received from legal heirs of respondent No.11 who have been brought on record as per amended title. He was directed by the court to seek instructions but he has chosen to remain absent today.

8. The filing of representation against the order of Ombudsman under Section 32 of the Establishment of the Office of Ombudsman for the Province of Sindh Act 1991 is a statutory remedy which is almost equivalent to the right of appeal provided under the law. So in our view the right or remedy of such representation and its decision should not be taken so lightly or causally. On the contrary when any such representation is moved to avail statutory remedy it is incumbent on the concerned authority to decide the same with proper application of mind and in accordance with the law. The impugned order on the face of it seems to be against the norms and principles of natural justice. It is also not clear whether this order was passed by the worthy Governor of Sindh or his Section Officer. No reasons have been assigned in the impugned order for affirming or maintaining the impugned order but the order appears to have been passed in a slipshod manner.

9. As a result of above discussion, the impugned order allegedly passed by the Governor Sindh on the representation of the petitioner is set aside and the matter is remanded back to decide the representation afresh within two months. Till such time the representation is decided, no adverse action shall be taken against the petitioner in relation to the plot in question. The petition is disposed of accordingly with pending application. Copy of this order may be transmitted to the learned A.A.G for compliance.

Judge

Judge