

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-2442 of 2014

Shaikh Aadil JamilPetitioner

Versus

The Federation of Pakistan & others Respondents

Date of hearing: 14.03.2018

Mr. Sohail Hameed, Advocate for the Petitioner

Mr. Jamshed Ahmed Malik, Advocate for Respondents No.1 and 10

Mr. Asim Iqbal, Advocate for Respondents No.2, 3, 6, 8 and 9

Mr. Shaikh Liaquat Hussain, Assistant Attorney General for Respondents No. 4 and 5

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- Through the instant Petition,

the Petitioner has sought the following relief(s):-

- a) Declare that the act of respondents 2,3 & 5 of not issuing shares to the Employees of Sui Southern Gas Company under the Scheme Sui Southern Gas Company Employees Empowerment Trust Registered on 21.10.2009 under Benazir Employees Stock Option Scheme approved by Federal Government is illegal, void and of no legal effect.***
- b) Declare that the act of respondents 2 and 3 to issue shares arbitrarily, and with discrimination under scheme of Benazir Employees Empowerment trust to their few favorites Employees is in colorable exercise of power and authority and therefore illegal, without lawful authority void and of no legal effect.***

c) Declare the respondents 2, 3 and 5 to act and Empower the Employees of Sui Southern Gas Company and issue shares from 12% Government of Pakistan Shares in SSGC to all Employees of Sui Southern Gas Company under Benazir Employees Stock option Scheme approved by Federal Cabinet.

d) Direct the respondent No.4 to take action according to law against Respondents No. 2 and 3 for malafidely failing to issue shares to Employees of Sui Southern Gas Company under the Benazir Employees Stock option Scheme approved by Federal Government.

2. Brief facts of the case as per averments of the parties are that Petitioner is the President of Sui Southern Gas Company Jafakash Union, which is a registered Union under the Provision of Industrial Relations Act, 2012. The Petitioner has claimed that he represent 1180 workers of Sui Southern Gas Company Ltd. (SSGC) /Respondent-Company to agitate the malpractices, corrupt practices and discriminatory attitude of the Respondent-Company towards its employees. The Petitioner has submitted that the Federal Cabinet decided to empower the employees of the Federal Government Departments and Autonomous Bodies/Companies by transferring its 12% shares to their employees Trust established under Benazir Employees Stock Option Scheme (BESOS) and the Sui Southern Gas Company Empowerment Trust was established under this concept. The Petitioner has submitted that the Respondent No.1 vide letter dated 15.06.2010 directed the Respondent-Company to expedite the process to transfer 12% shares to the Respondent-Trust followed by reminders dated 16.06.2010 and 30.11.2010 issued to the Respondent-Company;

but to no avail. The Petitioner has further submitted that the Respondent Company/SSGC informed the Privatization Commission of Pakistan (PCP) and Security Exchange Commission of Pakistan (SECP) that it had fully complied with the directives of Respondent No.1 and transferred 12% share-holding of Government of Pakistan in the SSG Company i.e. 48,672,023 shares in the names of S.S.G.C Employees Empowerment Trust under Folio No. 19166422 dated 05.09.2010 and they cannot be held responsible for any inaction by the trustees. The Petitioner has further submitted that the Petitioner-Union has been consistently demanding for transfer of the aforesaid shares in the Trust for onward transmission in favour of employees of SSGC but of no avail and the representation was also made to the concerned Federal Ministry, as well as, the President of Pakistan and the Prime Minister of Pakistan for their indulgence; but, to no avail. The Petitioner being aggrieved by and dissatisfied with this inaction on the part of Respondent Company/SSGC has filed the instant petition on 19.04.2014.

3. Upon notice, the Respondents No.1, 2, 3, 4,6,8,9 and 10 filed para-wise comments and denied the allegations.

4. Mr. Sohail Hameed, learned Counsel for the petitioner argued that the Respondent-SSGC acted in violation of Law to deprive employees of S.S.G.C of 12% shares of Government of Pakistan through their registered Trust duly approved by the Federal Cabinet, thus failed to discharge its obligations under the Trust Deed. He further stated that the Respondent No. 2, 3 and 5

issued the shares to their favorite employees only and made wrong narration that the shares were issued to all deserving and legally entitled Employees of SSGC, which is not correct contention as per the Petitioner's Counsel. The learned counsel for the petitioner in support of his contention relied upon the case of Mian Fazal Deen Vs. Lahore Improvement Trust and another (PLD 1969 SC 223) and Messrs. Gadoon Textile Mills and others Vs. WAPDA & others (1997 SCMR 641). Having explained his case, he prayed that the Petition may be allowed.

5. Mr. Jamshed Malik, learned Counsel for the respondent No.1 and 10 contended that the Petition is not maintainable as the subject matter does not fall within the purview of Article 199 of the Constitution of Islamic Republic of Pakistan 1973; that the Petitioner is claiming to be a union cannot hold brief on behalf of employees of SSGC, being not (CBA) thus cannot invoke the Constitutional jurisdiction of this Court. He has further contended that the Petition is not maintainable as the Petitioner is seeking the enforcement of an Act, which is ultra vires to the Constitution and he has not produced copy of the purported Trust Deed to claim 12% shares; that 12% shares of Government of Pakistan cannot legally be transferred in the account of Respondent-Trust without fulfilling the necessary requirements of Article 154 of the Constitution of the Islamic Republic of Pakistan 1973. He further contended that the Council of Common Interest (CCI) has not accorded permission for the creation of so called "Benazir Employees Stock Option Scheme" and Trust; therefore any such

scheme or creation of Trust is against the law. He has further contended that the payment, if any, so far received by the Petitioner-union or Employees of SSGC be recovered and returned to the Federal Government as it is not just and proper —and contrary to the Provisions of the Constitution, 1973 and the directions passed by the Federal Government for holding the Scheme in abeyance till final decisions are taken in accordance with the law and Constitution as the Federal Government cannot continue with violation of the Constitution without placing the matter before the Council of Common Interest, a competent Constitutional Body to authorize, supervise and control any such scheme and that there is no violation of any Provision of the Constitution, 1973. He continued and stated that those employees of SSGC were performing their duties for which they were paid; therefore, the Petitioner or other employees are not entitled to these Additional Benefits in absence of the Council of Common Interest (CCI) decision. Learned Counsel in support of his contention has relied upon the un-reported judgment dated 03.01.2018 passed by this Court in the case of Muhammad Arif Akhtar and others Vs. Federation of Pakistan and others and argued that the similar issue involved in the present matter has already decided by this Court. Having explained his case, he prayed for dismissal of the instant Petition.

6. Mr. Asim Iqbal, learned Counsel for the Respondents No. 2, 3, 6, 8 and 9, contended that the Respondent Company/SSGC is a self-Funded Public Limited Company incorporated under the

Companies Ordinance, 1984; that it has no “Statutory Rules of Service” neither it is connected with the affairs of the Federation nor the Province or a Local Authority, thus the instant Petition is not maintainable under Article 199 of the Constitution, 1973. He further contended that the Respondent-Company/SSGC does not get any fund from the Federal Government or its Divisible Pool for its operations; hence, the instant Petition is not maintainable and the Petitioner has not produced any cogent documentary evidence along with the petition to substantiate his claim; that the Petitioner-Union is equating its Association with the CBA Union, which is functioning in accordance with the Provisions of Industrial Relations Act, 2012; that the Petitioners’ Union/ Association cannot perform the same functions, which said CBA Union is performing under the said Law, therefore, no question of discrimination or violation of the Constitution arises as alleged by the Petitioner; that frivolous and vexatious litigation has been started by the Petitioner against SSGC. He prayed for dismissal of the instant Petition.

7. Mr. Shaikh Liaquat Hussain, learned Assistant Attorney General representing the Respondent No.5 adopted the arguments of learned Counsel for Respondents No.1, 10 and Respondent-Company/SSGC.

8. We have heard the learned Counsel for the parties, perused the material available on record and case law cited at the bar.

9. In view of the contention of the learned counsel for the Respondents, we consider it proper to first decide the objections as to the maintainability of the instant Petition on the ground as to whether Petitioner is an “aggrieved party” as envisaged under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 or not and could competently make a recourse to this Court under its Constitutional jurisdiction.

10. We, firstly take up the issue of maintainability of the instant Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973.

11. Article 199 (1) of the Constitution of Islamic Republic of Pakistan, 1973, which reads,

“A High Court may if it is satisfied that no other adequate remedy is provided by law:-

(a) On the application of any aggrieved party make an order—

(i) Directing.....

(ii) Declaring.....”

12. The above referred Article lays emphasis (i) on the satisfaction of the Court about the absence of any adequate remedy available under the law to the person/party invoking the jurisdiction of this Court under the said Provisions of the Constitution and (ii) that the party is to be an aggrieved one which conditions have not been prescribed under sub-clause (b) of clause (1) of Article 199 of the Constitution. It is sine qua non for invoking the jurisdiction of this Court through a Writ Petition, under the clauses referred to above under which the instant writ lies. The

word aggrieved person/party has not been defined in the Constitution, but, from time to time it has been interpreted by the Superior Courts in the given circumstance of each case.

13. The learned counsel for the petitioner could not advance convincing reasons to prove that the Petitioner is an aggrieved party to approach this Court under Article 199 of the Constitution, 1973 or the legal justification to seek transfer of 12% shares of Government of Pakistan to S.S.G.C Employees.

14. The issue raised by the parties, discussed above, has already been decided by this Court in the case of Muhammad Arif & others Vs. Federation of Pakistan and others vide judgment dated 3.1.2018, wherein it was held that:-

“16. on merits, we have also noticed that the Petitioners were performing their duties against which they were paid their salaries; therefore, the question of additional benefits does not arise.

Article 154 of the Constitution 1973 provides as under:-

“154. Functions and rules of procedure.—(1) The Council shall formulate and regulate policies in relation to matters in Part II of the Federal Legislative List and shall exercise supervision and control over related institutions.”

17. The Council of common interest is responsible to formulate and regulate the matters in relation to the business mentioned in Part II of the Federal Legislative List and shall supervise and control the related institutions. Item No.3 in Part II of the then Federal Legislative List provided for the, Development of industries where development under Federal control is declared by Federal law to be expedient in the public interest institutions establishments, bodies and corporations administered or managed by the Federal Government immediately before the commencing day including the (Pakistan Water and Power Development Authority and the

Pakistan Industrial Development Corporation) all undertakings, projects and schemes of such institutions establishments bodies and corporations industries projects and undertakings owned wholly or partially by the Federation or by a Corporation set up by the Federation.

18. We have further noticed that a great loss to a public exchequer has been caused by creation of the subject Trust and the public money has been influxed in the trust in order to give benefits to the employees of State Owned Entities. Apparently the Council of common interest has not accorded any permission for creation of such trust under the law.

19. We are of the considered view that the Petitioners have neither authority nor title to claim amount, which is public money. We believe that the shares of State Owned Entities held in the Trust by the Federal Government cannot be transferred to a selected group of employees. The Petitioners have received ill-gotten gain throughout their service tenure, therefore all the persons, who have created such Trust and have received benefits out of the public money are liable to be accounted for in law and the public money accumulated in the trust must be returned to public exchequer account forthwith, in accordance with law.

20. We have also noticed that the employees of PPL and representative of Ministry of Petroleum namely Muhammad Afzal Chaudhary Section Officer was not competent to execute instrument by the name of Pakistan Petroleum Limited Employees Empowerment Trust Deed on 14.09.2009, which is ex-facie against the mandate of Article 173 of the Constitution of Islamic Republic of Pakistan 1973 read with Rule 7 of the Rules of Business, 1973, which provides as under:-

“7. Orders and instruments, agreements and contracts

- 1. Subject to Article 173, all executive actions of Government shall be expressed to be taken in the name of the President.**
- 2. The officers listed in Schedule IV may authenticate by signature all orders and other instruments made and executed in the name of the President.**

Provided that in certain cases an officer may be so authorized for a particular occasion by order of the Prime Minister

- 3. Instructions regarding the manner of authentication of orders and instruments in connection with the representation of Pakistan in foreign countries or at international conferences and of international agreements and treaties shall be issued by the Foreign Affairs Division.***
- 4. Instructions for the making of contracts on behalf of the President and the execution of such contracts and all assurances of property, shall be issued by the {Law and Justice Davison}***

21. We are of the view that the action of a Chief Executive of the Federation and the Province has to be within the fore corner of the Constitution and law framed there under. These authorities cannot overlook their competence by entrusting public money to any other persons nor could they confer a right to any person or organization or organizations without complying with the legal sanction. We have noticed that transferring 12% share-holding in PPL by the Federal Government, which benefits only selected group of employees is in violation of Articles 154 and 173 of the Constitution, and therefore such a transfer is nullity in the eyes of law.

22. We are further of the view that the contractual obligation cannot be enforced by invoking constitutional jurisdiction of this Court. Besides the subject matter in these proceedings is a policy matter and Privatization Commission has issued letter dated 11th October 2012 whereby it has directed the State Owned Entities restraining them to disburse the 50% dividend to the employees of PPL, which is correct approach in the given circumstances of the case, therefore does not warrant interference by this Court under its Constitutional jurisdiction, for the reasons already given herein above.

23. In the light of the above facts and circumstances of the case the Respondent Company has erroneously created the Trust and gained the benefits out of the public money without any justifiable reason, therefore the Respondent No.2 has rightly restricted the payment of the dividend to the Petitioners. These petitions for the above reasons are misconceived, and are accordingly dismissed.”

15. Reverting to the plea taken by the learned counsel for the Petitioner that this Court vide judgment dated 03.01.2018 passed in the case of Muhammad Arif Akhtar and others supra has not dilated upon and discussed the case of Messrs. Gadoon Textile Mills and others Vs. WAPDA & others (1997 SCMR 641), regarding question to the interpretation of Article 154 of the Constitution of the Islamic Republic of Pakistan 1973. In our view the decision given in the case of Messrs. Gadoon Textile Mills Ltd is quite distinguishable from the facts and law agitated in the instant Petition, hence, we do not agree with the proposition of the learned Counsel for the Petitioner, for the simple reason that Article 154 of the Constitution is quite clear and no further deliberations on this issue are required. We, therefore, reject the objection raised by the learned counsel for the Petitioner, and concur with the decision already given by a Division Bench of this Court in the case of Muhammad Arif Akhtar supra.

16. As held above, the Petitioner is not an “aggrieved person” and has no locus standi to invoke Constitutional jurisdiction of this Court and seek transfer of 12% shares of Government of Pakistan to SSGC Employees.

17. In result of foregoing discussion, we do not find any merit in the instant Petition, which is hereby dismissed along with the listed application.

Karachi.
Dated:- 19.03.2018

JUDGE

JUDGE