

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. ***D – 7292*** of 2018

Date	Order with signature of Judge
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Present:

**Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Zulfiqar Ahmad Khan**

Priority

1. For hearing of CMA No.31989/2018.
2. For hearing of Main Case.

29.11.2018:

Mr. Salahuddin Ahmed, advocate for petitioner.

Mr. Mir Hussain, Asstt. Attorney General
a/w Iftikhar Rasheed Rana, Section Officer,
Ministry of Interior, Govt. of Pakistan.

O R D E R

Through instant petition, the petitioner, who claims to be a US based Global Non-Profit Organization (INGO) has impugned the order dated 02.10.2018 passed by the INGO Special Committee, whereby, the representation filed by the petitioner against the order of INGO Committee has not been approved, whereas, the petitioner has been declined registration of its INGO.

2. Learned counsel for the petitioner submits that petitioner is a non-profit organization registered under Section 451 of the Companies Ordinance, 1984 and also registered with the Income Tax Department since 2013 and engaged in various projects with the Federal and Provincial Governments for the purposes of family planning and other allied matters including HIV/AIDS prevention and care etc. Per learned counsel, in view of revised policy issued by the Ministry of Interior/respondent No.2 vide Notification No.6/34/2015-PE-III dated 01.10.2015, petitioner was required to apply for re-registration, whereafter, petitioner applied for re-registration on 16.11.2015, while complying with the terms of the revised policy as detailed in Memorandum of Understanding [MoU] between the Government

of Pakistan and the petitioner. However, according to learned counsel, without providing any opportunity of being heard, the application of the petitioner for re-registration was dismissed vide order/letter dated 27.11.2017, wherein, no reason whatsoever has been assigned [copy of available at Page: 195 as Annexure 'K']. Per learned counsel, petitioner being aggrieved, filed a representation under Clause 7.2 of the INGO Policy before the INGO Special Ministerial Committee of Ministry of Interior, Government of Pakistan on 08.01.2018, however, such representation of the petitioner has also been dismissed vide impugned order/letter dated 02.10.2018 once again without assigning any reason, whereas, petitioner was never confronted with any adverse material nor there has been any allegation whatsoever against the petitioner's activity, which could justify the rejection of re-registration of petitioner's NGO. Per learned counsel, through impugned order, petitioner has been directed to windup its operation/activities within 60 days', whereas, petitioner has been allowed to re-apply for registration after six months' from the date of the impugned order, which means that after expiry of 60 days', petitioner's projects will come to a halt. It has been contended by the learned counsel that petitioner has already sought permission and approval from the concerned Ministry in respect of ongoing projects, however, through impugned order, after expiry of 60 days', even those projects will also come to a halt. It has been prayed that impugned order(s) may be set-aside and petitioner may be allowed to carry on its projects till decision afresh on the application for re-registration in accordance with law and policy/MoU in this regard.

3. Notice of instant petition was issued to the respondents as well as to the DAG for 01.11.2018, whereas, respondents were directed to bring the relevant record on the next date of hearing in respect of petitioner INGO along with material on which the impugned order has been based. However, on 01.11.2018, except learned Asstt. Attorney General, nobody appeared on behalf of the respondents nor any comments were filed, and the matter was adjourned to 08.11.2018 with the directions to the respondents to file comments. On 08.11.2018, no one shown appearance

on behalf of the respondents, nor comments were filed, whereas, learned Assistant Attorney General requested for further time to file comments. Learned counsel for the petitioner, however, expressed urgency in the matter and submitted that time period allowed to the petitioner to discontinue its operation is expiring shortly, whereas, it was further argued that petitioner is even willing to sign the revised MoU issued by the Ministry of Interior, Government of Pakistan and also to comply with all the codal formalities. Per learned counsel, in the impugned order, the petitioner has been directed to re-apply for registration after six months, therefore, according to learned counsel for the petitioner, during these six months, the petitioner's projects would be delayed and financial losses would occur.

4. Keeping in view hereinabove submission of the learned counsel, and no response whatsoever having been submitted by respondents inspite of repeated opportunities, following order was passed:-

“08.11.2018.

No one has shown appearance on behalf of the respondents nor any comments have been filed.....

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We have observed that in most of the cases, where Federal Government and its departments are party, despite repeated notices, neither any comments are filed nor any response is received in time. Similarly no proper assistance is provided to the Court on behalf of Federation or Attorney General officer, even in the cases, wherein, vires of any law have been challenged. Keeping in view the poor response of Federal Government and its departments as well as performance of Attorney General office, we would direct the learned Attorney General of Pakistan as well as to the worthy Minister, Law & Parliamentary Affairs, Government of Pakistan, to look into the matter and make necessary arrangements to ensure that notices issued by the Court are promptly responded and comments, if required, are filed without wastage of time so that the legal

instance of the Federal Government and its departments may come on record and the matters may be decided expeditiously in accordance with law.

Let copy of this order may be communicated to the Ministry of Interior, Government of Pakistan to depute some responsible officer, well conversant with the facts of the instant case, to appear in Court on the next date of hearing alongwith comments, if any.

Copy of this order shall be sent to the Attorney General of Pakistan as well as to the Chief Secretary, Government of Pakistan to ensure that in all Court's matters, proper comments shall be filed and response shall be made on priority to avoid delays.

To come up on 15.11.2018 at 12:00 noon. Copy of this order may be supplied cover-in-hand to learned Assistant Attorney General, as requested, for onward transmission to the concerned Authorities.”

5. On 15.11.2018, the matter could not be taken up for hearing as the same was discharged as the Court's work was suspended on account of death of some senior Advocate, whereas, urgent application was filed by the petitioner and matter was adjourned to 23.11.2018 with the direction to the learned Assistant Attorney General that some responsible officer of respondent No.2, well conversant with the facts of the case will be in attendance and comments shall be filed with advance copy to the learned counsel for the petitioner before the next date. On 23.11.2018, when the matter was taken up for hearing, learned Assistant Attorney General filed a statement dated 23.11.2018 along with report and parawise comments on behalf of Ministry of Interior, Govt. of Pakistan/respondent No.2, wherein, it was stated that the representation of petitioner, seeking registration has not been approved by the INGO Special Committee, mainly in view of adverse report from the Security Agency and for working against the cultural sensitivities of Pakistan, however, neither the report of Security Agency nor any adverse material was annexed along with parawise comments filed on behalf of the respondent No.2. Learned counsel for the petitioner argued

that petitioner is willing to submit response to any query or the allegations against the petitioner regarding national security provided the respondents may confront the petitioner with such adverse material/report and to provide an opportunity to petitioner to explain its position. It was further argued by the learned counsel for the petitioner that petitioner will be satisfied and will not press instant petition if the matter is remanded back to the INGO Special Committee with the directions to decide the representation of the petitioner afresh, and to pass appropriate order in accordance with law, however, learned Assistant Attorney General requested for further time to seek instructions and to call some responsible officer from the Ministry of Interior along with relevant record and adverse material, if any, available against the petitioner, on the next date and on his request, the matter was adjourned to 29.11.2018 at 12.00 noon.

6. Today, one, Iftikhar Rasheed Rana, Section Officer, Ministry of Interior, Government of Pakistan, has shown appearance along with learned Assistant Attorney General, who was required to produce the relevant record and to show adverse material against the petitioner or the report of the Security Agency, if any, upon which the INGO Special Committee has based the impugned decision, however, nothing has been placed on record, whereas, it has been contended by the learned Assistant Attorney General that registration of the petitioner NGO has been declined in view of adverse report by the Intelligence Agency, whereas, petitioner is engaged in activities, which are against cultural sensitivities of Pakistan.

7. We have heard the learned counsel for the parties and examined the relevant record with their assistance. It will be advantageous to reproduce the impugned order dated 02.10.2018 issued by the Section Officer, Ministry of Interior, Govt. of Pakistan, intimating the order of the INGO Special Committee, Ministry of Interior, Govt. of Pakistan, whereby, the representation filed by the petitioner INGO against the order dated 27.11.2017 of INGO Special Committee, which reads as follow:-

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F. No. 6/214/2016-PE-III
GOVERNMENT OF PAKISTAN
MINISTRY OF INTERIOR
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Islamabad, the 02nd October, 2018

From: Muhammad Asghar Gondal
 Section Officer (PE-III)
 Tel. 051-9207494

To: Dr. Tabinda Sarosh
 Country Representative
 M/s.Pathfinder International, USA
 Plot No. 40-C, 3rd Floor,
 Main Khayaban-e-Bukhari,
 Phase – VI, DHA, KARACHI.

Subject:- **APPLICATION FO REGISTRATION**

Reference this Ministry's letter of even number dated 27.11.2017 on the subject and representation of Pathfinder International, USA dated 08/01/2018.

2. It is informed that representation filed by **Pathfinder International, USA**, an INGO, against orders of INGO Committee, was considered but has not been approved by the Special Committee.

3. It is requested to wind up operations / activities of above said INGO within 60 days. You may re-apply for registration of Pathfinder International, USA in the light of revised MoU after six months from the date of this letter (Copy of revised MoU enclosed)

4. This issues with the approval of Competent Authority.

Sd/-
(Muhammad Asghar Gondal)
 Section Officer (PE-III)

Encl: **As above**

8. From bare perusal of hereinabove impugned order, it is evident that application of the petitioner for registration of INGO has been declined, however, without assigning any reason, whereas, even purported reason as disclosed after notice to the respondents in their comments has not been mentioned in the impugned order. Moreover, the petitioner has not been confronted with any adverse material or report, whereas, no reasonable opportunity appears to have been provided to the petitioner to explain its position and to rebut such allegations. It is a settled legal position that every order, judicial or administrative, shall contain reasons, whereas, reasonable opportunity of being heard has to be provided before passing adverse order or taking any adverse action against any person. We are of the opinion that the impugned order has

been passed in violation of Section 24-A of the General Clauses Act, 1897, and Article 10-A of the Islamic Republic of Pakistan, 1973, hence not sustainable in law.

9. Accordingly, instant petition is allowed by setting-aside the impugned order dated 02.10.2018, whereas, the matter is remanded back to the INGO Special Committee to decide the representation of the petitioner afresh, after providing opportunity of being heard, and in case there is some adverse material, or report against petitioner, the petitioner shall be confronted with such material/report, and thereafter, speaking order may be passed, preferably, within a period of three weeks from the date of this order. In the meanwhile, petitioner may continue its operations in accordance with law and as per INGO Policy. It may however, be clarified that while setting aside the impugned order we have not dilated upon the merits of the case which will be considered by the INGO Special Committee as per facts and material available in the case of petitioner, in accordance with law and the policy.

Petition stands disposed of in the above terms along with listed application.

Let copy of this order be supplied cover-in-hand to the learned Assistant Attorney General for onward transmission to the respondents to ensure compliance.

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