

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P. No.D-320 of 2019

Present

**Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon.**

Muhammad Aqil Khan ----- Petitioner

Vs.

Province of Sindh through Secretary Local
Government Department Sindh Secretariat,
Karachi & other ----- Respondents

Date of Hearing: 25.02.2019

Ms. Asma Malik, advocate for petitioner.

O R D E R

ADNAN-UL-KARIM MEMON-J: - Through the instant constitutional petition, the petitioner is seeking direction to the respondent No.4 to implement the Resolutions of the Council and release the funds of Honoraria of the Members of the Council/ Municipal Committee Mirpurkhas as their travelling charges.

2. The main grievance of the petitioner is that the Respondent No.4 has failed and neglected to implement various public interest Resolutions passed by the Council of Municipal Committee, Mirpurkhas under the provisions of Sindh Local Government Act, 2013. That Respondents No.4 & 5 are under legal obligations to implement the approved schemes in Mirpurkhas City. That Respondent No.4 is acting contrary to the law in excess of his powers and jurisdiction. The Council in its meeting held on 19.11.2018 approved development work in different wards of Mirpurkhas City; that in each Ward the NIT of Rs.5, 000,000/- has been approved for General Councilors and Rs.2,500,000/- through Reserved Councilors and it was also resolved for immediate implementation of NIT in the different Wards. The Council also

approved that for each meeting an amount of Rs.500/- may be given to each of the Member of the Council as Honoraria. Petitioner has added that such minutes of meeting were sent to the Respondent No.4 for its implementation but he is not ready and willing to comply with the Resolutions of the Council; that there is no development work in Mirpurkhas City inspite of the fact that the Council approved for NITs of 290 million rupees for Mirpurkhas City but nothing has been done due to lethargic attitude of the Respondent No.4. Petitioner being aggrieved by and dissatisfied with the aforesaid actions of the Respondents has filed the instant petition on 16.2.2019.

3. Upon query by this Court as to how the instant Petition is maintainable against non-implementation of the Resolutions passed by the public body on the premise that it is an internal matter between the Council and the Government and there is mechanism provided under Sindh Local Government Act, 2013 and rules framed therein.

4. Ms. Asma Malik, learned counsel for petitioner replied to the query and argued that Respondent No.4 is subservient to the public body and acting contrary to law, bypassing the Respondent No.5 and ignored to implement the approved public interest development schemes; that despite issuance of repeated letters regarding highhandedness of the Respondent No.4, there is no response from the Government functionaries, therefore the public work i.e. Development work in Mirpurkhas City is suffering; that the Resolutions of minutes of meeting are not being complied with, due to bureaucratic attitude of the respondents not only the petitioner but the public of Mirpurkhas City has been victimized. She lastly prayed for allowing the instant petition.

5. We have heard learned counsel for the petitioner on the issue of maintainability of the instant petition and perused the material available on record.

6. To appreciate the contention of learned counsel for the petitioner on the aforesaid issue, it is expedient to have a glance on the scheme of Sindh Local Government Act, 2013. Firstly, we refer to Section 76 of Sindh Local Government Act, 2013, which deals with Development Plans and Council is empowered to prepare and implement development plans. Section 89 also provides that The Council may make recommendations on the issues enumerated in the aforesaid section to Government and the Government is under obligation to consider the recommendations of the Council and pass such

order as may be deemed appropriate in circumstances of the case: Provided that where Government does not accept the recommendations of the Council, it shall give reason for such refusal: Provided further that where Government proposes to take any action against any officer or person pursuant to the recommendations of the Council, however no such action is required to be taken by Government without providing opportunity of hearing to such officer or person. Section 79 deals with the Executive Powers of the Council. Section 80 provides Powers of Mayor or Chairman. Section 81 and 82 emphasizes the powers of Chief Executive of the Councils, who is Chief Municipal Officer in case of Municipal Committee. In all Section 119 provides complete mechanism for redressal of grievances of the Councils by the Provincial Local Government Commission.

7. In the present proceedings the petitioner is seeking direction to Chief Municipal Officer to implement various public interest resolutions passed by the Council of Municipal Committee, Mirpurkhas. In our view the member of the Council is a public servant having more public responsibilities than the Chief Executive Officer who is also Government/public servant in a civic body and he is liable to be recalled by the Government at any time in the exigencies of public service of which the Government shall be sole judge if he defies the command of the Government and breaches the powers entrusted to him under the Sindh Local Government Act, 2013.

8. A public authority who holds the property of the public acts as a Trustee and, therefore it has to act fairly and reasonably. The Public Trust doctrine is part of law of the land. Public Representatives are holding public money therefore, cannot use the same on their own whims and fancies. They hold the Chair of Public Office and same is founded on Public Trust and Democratic Accountability. Simultaneously Chief Executive Officer is under obligation to serve the Council in accordance with the law, since he acts administratively to deal with the public funds he has to be more careful and vigilant in exercising the powers with prior approval of the Provincial Government as provided under the Sindh Local Government Act, 2013.

9. Petitioner has failed to produce any cogent material to substantiate and prove his claim on the point involved in the matter, even otherwise the petitioner has recourse under the law to agitate his grievances, in absence of that, this petition is not maintainable under Article 199 of the Constitution, as it casts an obligation on this Court to act in aid of law and to protect the rights

within the frame work of the Constitution. This extra ordinary jurisdiction of this Court may be invoked to encounter and collide with extraordinary situation. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the object to foster justice in aid of justice and not to perpetuate injustice. However, if it is found that substantial justice has been done between the parties then this discretion may not be exercised.

10. In the light of forgoing, the powers of the Chief Municipal Officer are confined to the administrative matters and the Resolution if any is passed by the Council is to be approved first by the Government, thereafter certain directions can be given to the administrative officer to implement the directives of the Government. In our view in the financial matters the approval of Government is necessary, in absence of that no scheme can be implemented, therefore at this stage no direction can be issued by this court to the Respondents. However we may make it clear that this Court is not executing court of the Council concerned to direct Respondent No.4 to act upon the Resolution of the Council. The scope of judicial review is limited in such cases. Therefore, no case for interference is made out on the basis of preceding analysis.

11. Resultantly petition fails is accordingly dismissed along with listed application(s) in limine.

JUDGE

JUDGE

Irfan Ali