

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 5523 of 2019

Syed Muhammad Iqbal Kazmi

Versus

Mayor of Karachi & others

Date of hearing: 29.08.2019

Date of Order: 29.08.2019

Syed Muhammad Iqbal Kazmi, Petitioner present in person.

ORDER

Petitioner claims to be a nominee for Human Rights Commission for South Asia and has invoked the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 by impugning the order dated 27.8.2019, whereby Mr. Waseem Akhter, Mayor, Karachi has suspended the services of Syed Mustafa Kamal as Voluntary Project Director Garbage.

2. We queried from the Petitioner under what law he has called in question the order dated 27.8.2019 passed by Mayor Karachi. Petitioner, who is present in person, has submitted that this is a public interest litigation, as such he has no any personal interest in the matter, however, he emphasized that Syed Mustafa Kamal since has shown his willingness to clean the city of Karachi, therefore, the impugned suspension order dated 27.8.2019 passed by the Mayor Karachi is against the voice of public at large. We put another question to him whether he has submitted any document which may show his membership for Human Rights Commission for South Asia (HRCSA) to institute a Writ Petition before this Court. Petitioner has failed to reply the query; however, he submitted that he can agitate relief on his behalf as well as on behalf of public at large on the premise that State functionaries have failed to perform their duties relating to welfare of public at large under the law. In support of his submissions, he relied upon Articles 4, 8, 25, 27 and 37 of the Constitution and added that the case in hand pertains to the basic right of the citizens of Karachi and this Court can take cognizance of precarious condition of Karachi city and an appropriate direction may be issued to the Competent Authorities to perform their duties relating to welfare of public at large, more particularly, by cleaning the city of Karachi from filth and garbage, which is causing nuisance for the public at large. He lastly prayed for allowing the instant Petition.

3. We have heard the Petitioner who is present in person on the point of maintainability of the captioned petition and perused the material available on record.

4. We have noticed that Mayor of Karachi vide letter dated 26.8.2019 designated Syed Mustafa Kamal as Project Director Garbage on voluntary basis till further order and subsequently the same order has been suspended on the ground that he acted beyond jurisdiction and authority that created unrest. Petitioner has heavily relied upon the powers of Mayor as provided under Section 80 of Sindh Local Government Act, 2013 and submitted that the Mayor can only exercise power in case of emergency to direct the execution or stoppage of any work or the doing of any act which requires the Powers of Mayor or Chairman. Sanction of Government or the Council, and the immediate execution or stoppage or doing of which is, in his opinion, necessary for the service or safety of the public and the action so taken shall forthwith be reported to Government or, as the case may be, to the Council at its next meeting; provided that he shall not act under this clause in contravention of any provision of the Act-2013 or order of the Council or Government. But in the present case, he has suspended the notification dated 26.8.2019 without holding an inquiry into the allegations and failed to issue Show Cause Notice to the Respondent No.2 to reply, therefore, the impugned order is nullity in the eyes of law. We are not impressed with the submissions of the Petitioner for the simple reason that the impugned suspension order explicitly show that on certain allegations the voluntary services of Syed Mustafa Kamal as Project Director Garbage has been dispensed with. In our view, Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protect the rights within the frame work of the Constitution. This extra ordinary jurisdiction of the High 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. Reliance is placed on the case of *Muslim Commercial Bank Ltd. through Attorney Vs. Abdul Waheed Abro and 2 others* (2015 PLC 259).

5. Petitioner, in the present proceedings, has failed to place on record any substantial material to substantiate his contentions. Mere suspension of notification in no way construes any violation of fundamental right of Petitioner. This petition is devoid of merits and is accordingly dismissed in *limine* along with pending application[s].

6. These are the reasons of our short order dated 29.8.2019, whereby we have dismissed the captioned petition in *limine*.

JUDGE

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