

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Mohammad Ali Mazhar** and **Agha Faisal, JJ.**

CP D 2442 of 2018 : Faique Ali Jagirani
& Another vs.
The Government of Sindh
& Others

For the Petitioner : In person

For the Respondents : Barrister Jawad Dero
Additional Advocate
General Sindh

Malik Naeem Iqbal
Advocate
Mr. Khurram Memon
Advocate
(Defendants Nos. 4 to 6)

Date of hearing : 09.03.2020

Date of announcement : 16.03.2020

JUDGMENT

Agha Faisal, J. The petitioner was a contractual employee of the Sindh Revenue Board (“SRB”) and upon his termination therefrom reportedly initiated multiple legal proceedings there against. The present petition, being one such instance, is where the petitioner has challenged the engagement of private legal counsel by the SRB.

2. The petitioner argued that SRB is a department of the provincial government, hence, not entitled to retain the services of private legal counsel and instead is required by law to be represented by the office of the advocate general. Copies of *vakalatnamas* purportedly issued by the SRB were placed on record and it was alleged that sizeable fees had been received by private counsel in pursuance thereof. In conclusion it was argued that retention of services of private counsel was contrary to the observations in the *Rasheed Ahmed case*¹, hence, it was prayed that this could may declare the *vakalatnamas* issued by the SRB in

¹ Per Qazi Faez Isa J. in *Rasheed Ahmed vs. Federation of Pakistan & Others* reported as PLD 2017 Supreme Court 121.

specified cases² as being void and direct for the deposit of the fees, paid to advocates, in to the national exchequer.

3. Mr. Malik Naeem Iqbal Advocate represented the SRB and submitted at the very onset the present proceedings were *mala fide* and initiated out of a personal grudge, since SRB had engaged a private counsel to contest the proceedings filed by the present petitioner relating to the termination of his contractual employment therewith³. Learned counsel demonstrated that the *Rasheed Ahmed case* interprets the Rules of Business of the Federal Government, and not of the Government of Sindh, however, even in the relevant rules litigation concerning revenue matters⁴, has been excluded from the operation thereof⁵. It was contended that the role of the SRB with respect to the Government of Sindh is *pari materia* to the role of the Federal Board of Revenue with respect to the Federal Government. In conclusion it was articulated that the SRB is not an administrative department of the Government of Sindh⁶, hence, there is no restraint thereupon to engage legal counsel best suited to protect the revenue interests thereof. Learned counsel relied upon the judgment of a Division Bench of this court, authored by one of us *Muhammad Ali Mazhar J.*, in the *Naheed Azhar case*⁷ to bulwark his submissions and argued that the present petition merited dismissal forthwith.

The learned Additional Advocate General Sindh adopted and amplified the arguments advanced on behalf of the SRB and stressed that SRB is not a department of the Government of Sindh.

4. We have considered the respective arguments advanced before us and have considered the authority to which our attention was solicited. It is imperative to initiate this deliberation by adverting to the observations in the *Rasheed Ahmed case*⁸ wherein engagement of private counsel by the Government, in the absence of sanctioned

² CP 792 of 2013, CP 2327 of 2013 and CP 6828 of 2016.

³ CP D 792 of 2013.

⁴ Clause 7 thereof.

⁵ Serial 21 in Schedule II.

⁶ With effect from 05.08.2013.

⁷ Per *Muhammad Ali Mazhar J.* in *Naheed Azhar vs. Province of Sindh & Others* reported as 2016 PLS CS 879.

⁸ Per *Qazi Faez Isa J.* in *Rasheed Ahmed vs. Federation of Pakistan & Others* reported as PLD 2017 Supreme Court 121.

compelling reasons and / or public interest, was deprecated. It may be pertinent to reproduce the pertinent observations herein below:

“19. The Rules of Business of the Federal Government of Pakistan, made pursuant to Article 99 of the Constitution, lists the Ministries and Divisions (Schedule I) of the Federal Government and distributes business amongst its different Divisions (Schedule II). The "Information, Broadcasting and National Heritage Division" is listed at serial 16 of this Schedule and none of the subjects mentioned there under permit the engagement of private counsel. "Legal proceedings and litigation concerning the Federal Government except the litigation concerning Revenue Division" (clause 7) and "Attorney General and other Law Officers of the Federation" (clause 11) are mentioned under the "Law, Justice and Human Rights Division" (serial 21, Schedule II). There is nothing on record to show that the Information, Broadcasting and National Heritage Division of the Federal Government (the respondent in WP 1548) had been permitted by the Law Division to engage a private counsel, let alone the reason for doing so.”

5. It is apparent from the foregoing the honorable Supreme Court has laid down the law with regard to engagement of private counsel by the Government, including its ministries and divisions. It is an admitted position that the SRB is not a ministry or a division of the Government of Sindh and the petitioner has himself filed copies of the relevant documentation⁹ in such regard. The distinctive identity of the SRB had come before an earlier Division Bench of this court in the *Naheed Azhar case*¹⁰ and it had been illumined as follows:

“12.....on 22.7.2013 forwarded a summary to the Chief Minister Sindh for de-Notification of the status of administrative department of SRB. The paragraph (4) of the summary reads as under:-

"04. Being a Board as well as an Administrative Department, SRB has to follow the Rules of Business of Sindh Government as well as the provisions of the SRB Act. For this reason, SRB is facing problems in regularizing its employees although the Committee, appointed by the Government for regularization of SRB employees, has already submitted its recommendations. In order to remain as Administrative Authority within the mandate of in SRB Act, 2010, it is requested that Hon'ble Chief Minister may be pleased to approve de-notification of the status of 'Administrative Department' in respect of Sindh Revenue Board and declared the "Board" under the SRB Act, 2010. For disposal of its business requiring the approval of the Government, the Board shall continue to report directly to the Chief Minister, Sindh.

.....

The above summary culminated with the following note of the Secretary (I&C)

"SUBJECT: DE-NOTIFICATION OF THE STATUS OF "ADMINISTRATIVE DEPARTMENT"

6. In this connection it is informed that as per amendment carried out in the Sindh Government Rules of Business, 1986, vide this Department's Notification dated 22-07-2013 (Annexure-"A"), Sindh Revenue Board is no longer an Administrative Department, but will be working under the Administrative control of the Chief Minister's Secretariat through the office of the Chief Secretary, Sindh.

Sd/- 5.8.2013"

⁹ Summary for Chief Minister Sindh dated 22.07.2013; Notification dated 05.08.2013;

¹⁰ Per Muhammad Ali Mazhar J. in *Naheed Azhar vs. Province of Sindh & Others* reported as 2016 PLS CS 879.

13. The aforementioned sequential unambiguously postulates that Sindh Revenue Board is under the administrative control of Chief Minister's Secretariat through the office of Chief Secretary Sindh”

6. The observations of the honorable Supreme Court, in the *Rasheed Ahmed case*¹¹, also record a distinctive status in so far as the litigation pertaining to the revenue division is concerned. The petitioner was singularly unable to distinguish the *pari materia* application of the exception to provincial revenue matters as well.

7. We are constrained to observe that the petitioner has failed to dispel the notion, pleaded in writing by the respondents, that the present petition is actuated by a private grievance. The honorable Supreme Court has consistently maintained¹² that matters of public importance were restricted to issues that affected and had repercussions upon the public at large and public interest litigation could not be resorted to in order to settle individual or private grievances. This Division Bench had maintained in the *TCS case*¹³ that the court has to guard against frivolous petitions as it is a matter of common observation that in the garb of public interest litigation, matters are brought before the court which are neither of public importance nor relatable to enforcement of a fundamental right or public duty. It has been held that public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely mindful and determine whether behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It was observed that some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity¹⁴.

8. It is an admitted position, manifest from the documentation relied upon by the petitioner himself, that SRB is not a division of the provincial government. The private legal counsel, *vakalatnamas* issued in respect

¹¹ Per Qazi Faez Isa J. in *Rasheed Ahmed vs. Federation of Pakistan & Others* reported as *PLD 2017 Supreme Court 121*.

¹² Per Qazi Faez Isa J. in *Human Rights Case 18877 of 2018* reported as *PLD 2019 Supreme Court 645*.

¹³ Per Muhammad Ali Mazhar J. in *TCS (Private) Limited & Others vs. Federation of Pakistan & Others* reported as *PLD 2019 Sindh 69*.

¹⁴ Reliance was placed upon *Dr. Akhtar Hassan Khan & Others vs. Federation of Pakistan* reported as *2012 SCMR 455*.

whereof are sought to be declared void and fees sought to be recovered, have not even been arrayed as parties hereto. No case has been made out by the petitioner to demonstrate any restraint upon the SRB to engage the services of private legal counsel. It is *prima facie* manifest that no case for entertaining this petition in the public interest is made out.

9. In view of the reasoning and rationale herein contained, we are constrained to observe that the present petition is misconceived and even otherwise devoid of merit, hence, this petition, along with pending applications/s, is hereby dismissed.

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