

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. D-6312 of 2019

Present:

1. Mr. Justice Syed Hassan Azhar Rizvi
2. Justice Mrs. Kausar Sultana Hussain

Arbab Ali Balkani son of Hakim Ali.....Petitioner

Versus

Province of Sindh & four others.....Respondents

Priority.

1. For hearing of Misc. No. 28016 of 2019.
2. For hearing of main case.

- Date of hearing : 20.01.2020
- Date of judgment : 19.05-2020

M/s. Shakeel Ahmed, Ghulam Akbar Panhyar and Kamran Memon,
Advocate for the petitioner.

M/s. Nehal Hashmi & Syed Bilal Hassan, Advocate for respondents
No.2&4.

M/s. Khalid Javed, Farkhanda Shaheen & Yousuf Makada, Advocate
for respondent No.5.

Mr. Abu Jalil Zubaidi, Asstt: Advocate General, Sindh.

J U D G M E N T

Kausar Sultana Hussain, J. :- Through this judgment, We intend to
dispose of the instant Constitution Petition.

2. Relevant facts necessary for disposal of instant petition are
that the petitioner is a businessman and carrying out the business of
sale and purchase of meat cattle / sacrificial purpose especially calves
purchase from interior Sindh and other part of country to be sold out
at local markets to different retailers who sell meat. The respondent

No. 1 / Secretary Local Government, Sindh issued gazette notification dated 22.7.2019 revising / increasing the rates of tax/fee on milching (milking) animals and health clearance certificate in the area of respondent No.2 District Council Karachi under Section 96 r/w Schedule-V, Part-II of the Sindh Local Government Act, 2013 r/w the Sindh Councils (Imposition, Assessment, Collection and Administration of Taxes, Rates, Toll and Fees) Rules, 2016 from Rs. 250/- to Rs.300/- in respect of milching (milking) animals and from Rs. 150/- to Rs.200/- for issuance of Health Clearance Certificate. An agreement dated 29.6.2019 for leasing out the collection rights of fee on milching animals and issuance of health clearance certificate for the year 2019-2020 executed between respondent No.2 / District Council Karachi and respondent No.5 / Hajano Khan, the Respondent No.5 had exclusive rights to collect fee on entry of milching animals and issuance of Health clearance certificate within the limits of respondent No.2 / District Council, Karachi at the rates mentioned in the prescribed schedule. From the day of execution of the said agreement dated 29.6.2019, the respondent No.5 is continuously issuing receipts/coupons to the petitioner against collection of cattle fee for meat animals / sacrificial animals while, as per agreement dated 29.6.2019 the respondent No.5 is authorized only to collect fee on entry of milching animals but the respondent No.5 has violated the terms and condition of said agreement by collecting fee on entry of meat animals / sacrificial animals. The Petitioner pointed out to respondent NO.2 and 3 (District Council Karachi and DMC Malir) that his business does not fall within the ambit of the impugned

notification dated 22.7.2019, as the petitioner is not associated in the trade of purchasing and selling of milching animals, thus not required to pay such fee as well as health clearance certificate fee to the respondent No.5, however the said respondents did not pay any heed to his request. The respondents No.2&3 are regularly awarding contract of collecting fee / tax on entry of milching animals to the different contractors by inviting tenders in the newspapers. As per Anti-Corruption Establishment (ACE) the respondents are involved in corruption and corrupt practices by awarding contract to their own fancy contractors on meager amount. The A.C.E. Malir has also lodged FIR bearing No. 60 of 2019 dated 5.8.2019 under Section 420, 467, 468/34 PPC R/W Section 5(2) Act II, 1974 against the respondent No.5 for collecting the tax/fee illegally from the people involved in the business of animals for meat purposes as of petitioner and not issuing medical certificates and proper coupon/receipts. The acts of respondents No.2 to 5 are absolutely illegal without jurisdiction as the petitioner's case is distinguishable from the said gazetted notification dated 22.7.2019. Against this arbitrary, illegal and malafide action of the respondents No.2&5, the petitioner in the above circumstances, having no any other equally efficacious speedy remedy available under the law, seeks to invoke the constitutional jurisdiction of this Court, hence this petition.

3. The Petitioner through filing present Petition prays that (i) declare the impugned notification dated 22.07.2019 issued by respondent No.1 is not applicable on the Petitioner (ii) Direct the

respondents No.2 and 5 not to charge fee, taxes on animals i.e. dry/meat purposes as the notification dated 22.7.2019 is in respect of milching (milking) animals (iii) Restrain and prohibit the respondents No.2 and 5 from collecting fee, charges and taxes on animals brought for meat purpose by the petitioner to sell within the area / jurisdiction of respondents No.2 and 3 as the same does not fall within the ambit of notification dated 22.7.2019.

4. After receiving notices of the instant Petition, Respondent No.2, 4 and 5 have submitted their respective objections / comments to the Petition. The Respondents No.2 and 4 have admitted in their joint reply that through impugned Notification dated 22.7.2019, the Respondent No.1 revised / increased the rate of tax / fee on milching (milking) animals and health clearance certificate within the area of Respondent No.3. However, they have further submitted that the Petitioner has a remedy, provided under Section 143 of the Sindh Local Government Act, 2013 (SLG Act, 2013) according to which, Petitioner may file appeal before the Authority, if aggrieved by any order passed under this Act (SLG Act, 2013).

5. The relevant provision of law i.e. Section 143 of the SLG Act, 2013 is reproduce here for ready reference.

Section 143 Appeals:- Any person aggrieved by an order passed under this Act or the rules or by-laws may appeal to such Authority in such manner and within such period as may be prescribed, and the order passed in appeal shall be final.

6. The Respondent No.5 Hajano Khan in his para-wise comments, has denied the allegations levelled by the Petitioner in his Petition and submitted that prior to the present Petition, Petitioner had filed a Suit No.1222/2019 against the same official respondents of this Petition on identical issue having been raised by the Petitioner in instant Petition, therefore, this Petition is not maintainable and liable to be stayed as provided under Section 10 of CPC, which says that :

"Stay of Suit. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in Pakistan having jurisdiction to grant the relief claimed, or in any Court beyond the limits of Pakistan established or continued by the Central Government and having like jurisdiction, or before the Supreme Court."

7. The Respondent No.5 has further submitted that the Petitioner is not an aggrieved person, hence failed to establish his legal right to invoke the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The Respondent No.5 has further stated that after acceptance of his bid, the official Respondents issued a letter No. **DCK/T.O/222/2019 dated 28.6.2019** to him for leasing out the exclusive collection rights of fee on milching animals and issuance of health clearance certificate at the entry points within the area of District Council Karachi for the year 2019-2020. In respect of rates of fee being collected by the

Respondent No.5, he stated that as per Government Schedule vide Government Letter dated 28.6.2019, which has subsequently been gazetted in the Sindh Government Gazette dated 22.7.2019, he is collecting / charging fee at such rates fixed by the Competent Authority on entry of milching animals and also charging fee for issuance of health clearance certificate at entry point for which, he deployed qualified Doctors and Staff to stop entry of dead and seriously ailing animals to secure the health of the people of Karachi. The Respondent No.5 has denied alleged violations of the Contract as mentioned in the Petition.

8. After hearing arguments and perusal of the record as well as relevant laws, we are of the view that per contents of the Petition, the Respondent No.5 is collecting fee and issuing health clearance certificate on entry points of animals brought by several persons from interior Sindh and other parts of the country for the purpose of trading in Karachi. The grievance of the Petitioner is that the Respondent No.5 is collecting fee / tax against issuance of health clearance certificate and also on entry of animals being brought by him for the purpose of sacrifice as well as slaughtering in order to supply meat in market while as per Contract executed between the Respondents, the Respondent No.5 is authorized to collect fee to the extent of entry of milching animals and on issuance of health clearance certificate after medical checkup of such animals. The Respondent No.5 in his reply admitted the Contract dated 29.6.2019 executed by him with Respondents No.2 for exclusive rights to collect

fee / tax on entry of milching animals and issuance of health clearance certificate within the limits of Respondent No.2. We have also gone through the contents of the subject agreement dated 29.6.2019 and found that it was executed between the Respondents No.2 and 5 for the purpose of collecting fee on entry of milching animals only and issuance of health clearance certificate, therefore, it is very much clear that Respondent No.5 was not authorized to collect fee on entry of cattle brought for various purposes except milching animals. The Respondents No.1 & 2, being competent authority are directed to take appropriate action against the respondent No.5 as agreed by the Respondent No.2&5 under Clause 12 of the agreement dated 29.6.2019. Clause 12 of the said agreement is reproduced here as under:-

CLAUSE-12 :-

"that any amount charged in excess or wrongly by the lessee / their employees or by the council staff working under their control shall be refunded by the lessee and the lessee shall be liable to penalty of ten times of the excess / wrongly charged amount as is in the case of tax evader and such a penalty would be credited to council funds".

9. Accordingly, in our view the petitioner is rightly claiming that the respondent No.5 is not authorized to collect fee on entry of the animals which he brought for slaughtering / meat purposes.

10. The plea of the Respondent No.5 that the remedy of appeal under Section 143 of Sindh Local Government Act 2013 was available

to the Petitioner, if he had a genuine grievance against him, is not liable to be considered as Section 143 specify for the purpose of challenging the order passed under this Act, Rules and Bye Laws but the Petitioner is not aggrieved with any such order passed under the Act, Rules or By-laws by the concerned authority, on the contrary, he is aggrieved with the unauthorized act of Respondent No.5 regarding collection of fee on meat animals, which do not fall within the definition of milching animals as per subject agreement dated 29.6.2019.

11. Preliminary legal objection raised by the Respondent No.5 in his comments and argued by the learned counsel for the Respondent No.5 that the instant Petition is liable to be stopped / stayed under Section 10 of CPC as prior to filing present Petition by the Petitioner, the Respondent No.5 had filed a Civil Suit bearing No.1222/2019 before this Court regarding same lease hold rights against the same official Respondents. The Respondent No.5 has attached a copy of the plaint of said Suit No.1222/2019 along with his comments as annexure-P. We have gone through the contents of the said plaint and found that through filing Suit No.1222/2019, the Respondent No.5 sought relief against the impugned Notice / Letter No.DCK/T.O228/2019 dated 26.7.2019 issued by the official Respondents, whereby, the Respondent No.5 (Plaintiff in that Suit) was restrained from collecting Health Clearance Certificates Fee for the period from 1st Zil Haj to 13 Zil Haj (13 days) at all the posts / sites. The Respondent No.5 has filed Suit No. 1222 of 2019 for

cancellation of said Notification and declaration of his entitlement to collect fee during the period of Ist-13 Zil Haj, therefore, the issues raised by Respondent No.5 in his suit as well as raised by the Petitioner in his Petition are quite different.

12. The Petitioner has also shown his further grievance against the Respondent No.5 that he is collecting fee on issuance of Health Clearance Certificate from the Petitioner at entry point of animals. The plea of Respondents in this regard is that at entry points, medical checkup of animals through qualified Doctors and Staff is essential to stop entry of ailing animals in the city to protect the health of the people. In this regard, we have gone through the relevant laws and directions of the Government issued by them time to time.

13. The learned counsel for the Respondent No.5 has produced copy of "The animals (Registration, Sale & Control) By-laws 2006 (herein after referred to as By-laws 2006) alongwith his reply. Section 2 sub-clause (i) of the By-laws 2006 provides definition of Animals as under:-

"Animals, means domestic and wild animals such as beast, birds, cattle, crawlers, mammals and water animal"

14. All types of animals, including milching animals fall within the definition of animals. We have also gone through the By-laws approved by the defunct City District Government, Karachi in exercise of the powers vested in it under Section 39 and 192 read with item No.10 (Part-II) of V Schedule of Sindh Local Government Ordinance, 2001.

In Section 3 (1), (2), (3) and (4) of said Act, the detailed procedure of Medical Checkup of animals at entry points has been provided as under:-

1. *Any owner intending to sell his animals within the territorial limits of City District of Karachi shall produce his animals at entry point before the Controlling Officer for medical checkup for ascertaining whether any animal is healthy and not suffering from any contagious disease.*
2. *After thorough check up of the animal the Controlling Officer shall issue health clearance certificate on payment of prescribed fee.*
3. *In case any animal is found suffering from any contagious disease such animal shall be separated from other animals and placed under quarantine for treatment or destroyed as the case may be.*
4. *In case the owner is aggrieved by the finding of the Controlling officer he may request for constitution of medical board to re-examine the animal and such board shall be constituted at the expense of the owner whose decision shall be final.*

15. The procedure provided for medical checkup of animals mentioned above shows that it would be applicable generally to all type of animals. The rationale behind such law / practice is very much obvious that no dead or ailing animal could come / enter in the City from any entry point as health of general public is always a paramount consideration of the Government / Authority, which cannot be compromised or evaded, therefore, in our view to the extent of collection of fee for issuing of health clearance certificate, the Respondent No.5 is legally bound to do so, as per prevailing laws and

contents of the subject agreement dated 29.6.2019. Particularly condition No.5 of the said agreement, which stipulates that rates will be charged in accordance with schedule notified by the Government of Sindh dated 26.10.2017. Petition is therefore, allowed partly with directions to the Respondent No.5 not to collect fee from the petitioner on meat cattle at entry points while the Petition is partly dismissed with direction to the respondent No.5 to collect fee / tax from the petitioner for issuance of Health Clearance Certificate as per settled rate in accordance with Notification dated 26.10.2017 mentioned in condition No.5 of the subject agreement dated 29.6.2019. There shall be no order as to costs.

16. Before parting with this judgment we would like to discuss here same very important points noticed by us, while perusing the relevant documents available on record with due care and caution. It is noticed by us that on **28.6.2019**, *vide letter No. DCK/T.O/222/2019* (annexure P/2 page No.43) enclosed by the Respondent No.5 alongwith his comments, Taxation Officer, District Council Karachi, issued a letter to M/s. H.K. Enterprises (respondent No.5) intimating the Firm for the acceptance of Bid for leasing out collection rights of Fee from milching animals and issuance of Health Clearance Certificate in the area of District Council, Karachi and also on the same day issued a letter to Local Government Department for the revision / increase of rates / fee on milching animals and Health Clearance Certificate (as referred in Gazette Notification dated 22.7.2019) available at page-73 as annexure P/8 alongwith comments of respondent No.5),

whereupon Local Government Department revised / increased the rates vide letter dated 18.7.2019, which was subsequently notified in Official Gazette on 22.7.2019 (annexure P/8). It is also important to mention here that upon issuance of letter of acceptance of Bid dated 28.6.2019, subject agreement was signed on 29.6.2019 between Respondent No.5 and District Council Karachi through its Chairman on non-judicial stamp papers each valuing Rs. 25,000/- (in total Rs.250,000/-) all issued on 11.6.2019 and 12.6.2019 well before the letter of acceptance by the District Council, Karachi and in condition No.5 of the said agreement it is specifically mentioned that the Contractor shall not charge Fee / Tax on higher rates than the rates shown in the schedule notified by the Government of Sindh, vide No. **SOV/LG/34-13/2017 dated 26.10.2017**. From the above mentioned condition No.5 of the subject agreement it is clear that the Contractor / Respondent No.5 can charge fee only in accordance with letter dated 26.10.2017, while letter dated 18.7.2019 notified in Gazette dated 22.7.2019 is silent about the applicability of the said Gazette notification viz; retrospective / prospective / current or immediate effect. Moreover, the language of Official Gazette is also suspicious as apparently letter issued to District Council, Karachi was also got published in the Official Gazette and it cannot be termed as "Notification".

17. The Chief Secretary Sindh is accordingly directed to get an in depth and transparent enquiry conducted into the whole affair of

auction and take necessary legal action as may be required subsequent to outcome of such enquiry.

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Faheem/PA