

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D –5723 of 2020

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Abdul Qayoom

Versus

Province of Sindh and 09 others

Date of hearing & order : 19.11.2020

Mr. Zafar Ali Abro, advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan has been filed by the petitioner with the prayer to direct the respondents to allow him to continue his business to supply water in Karachi through his water tankers / business.

2. We asked learned counsel as to how this petition is maintainable in view of the decision of the Honourable Supreme Court, directing the relevant authorities to immediately shutdown all hydrants operated by the Karachi Water and Sewerage Board (KW&SB) and to issue their fresh tenders within five (05) weeks; previously the Honorable Supreme Court had also ordered strict action against illegal hydrants operating in the city of Karachi; and, upon acting the orders of Honorable Supreme Court (KW&SB) closed down 12 out of the 24 of its hydrants in the city.

3. Learned counsel for the petitioner argued that the petitioner established his business of supply of water through water tankers for industrial and commercial use by way of huge amounts of investments. He has drawn our attention to the various correspondence between him and KW&SB and stated that Commissioner Karachi in consultation with the Karachi Water Tankers Owners Welfare Association framed a guideline for the supply of groundwater to industries and operation to be regulated through proper policy by way of permit / license and until the same is forthcoming the operation of the Tankers supplying groundwater be allowed in the city. He submitted that the petitioner applied to the respondent for issuance of the license which has been issued ; petitioner has route permit to supply hydrant; the police officials are creating hurdles in the smooth functioning of his business which has triggered the cause of action to approach this Court; they have registered number of FIRs against the drivers of the vehicles of the petitioner and the learned trial Court had discharged them from

the said cases; and, he is facing hardship in the matter. About the maintainability of the instant petition, he has argued that this petition is maintainable under Article 199 of the Constitution as his fundamental right to security and business is involved. He prayed for allowing the instant petition.

4. We have heard the learned counsel for the petitioner on the maintainability of this petition and perused the material available on record.

5. We have noticed that it is the basic duty of the Karachi Water & Sewerage Board to supply water to the citizens of Karachi. When Karachi Water & Sewerage Board was / is unable to meet the water needs of the city of Karachi, a water tanker mafia had sprung up in Karachi. During the argument, we have been informed that there is certain direction of the Hon'ble Supreme Court for the closing of illegal hydrants from Karachi city. Prima-facie, the Management of KW&SB has failed to remove illegal hydrants operating in the city despite Honorable Supreme Court directions. Moreover, the Honorable Supreme Court of Pakistan had directed the Management of KW&SB to focus upon their core operations to provide portable water via a regular distribution network. Even, if hydrants are needed, there should be a rational and scientific study to evaluate the need for hydrant services in water-scarce areas. The hydrant services preferably should supply water to improvised population. On the aforesaid proposition, this Court has already settled the issue in the case of Muhammad Rafique Sia vs Province of Sindh and others, **2016 CLC 170**. Besides that, the Hon'ble Supreme Court of Pakistan in HRC No.28963/2014 directed the respondents to take action against illegal and unauthorized hydrants.

6. As a result of the discussion made above, we find no substance in the instant petition because the petitioner has failed to show permission or license for operating such a business.

7. This being the legal position of the case, this petition is not maintainable under Article 199 of the Constitution, which is hereby dismissed in *limine*, along with the pending application(s) leaving the petitioner at liberty to avail the remedy as provided under the law.

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Shahzad*