

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -646 of 2021

M/S Al-Kauser Drinking Water

Versus

Province of Sindh and 05 others

Date of hearing

& order : 28.01.2021

Mr. Sajjad A. Bapar, 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 Karachi Water and Sewerage Board (KW&SB) to grant him license to continue his business for supplying Brackish water via Pipe Line from Subsoil/boring to National Refinery and other industries in Karachi.

2. The Petitioner-company is primarily engaged in Supplying drinking and subsoil water for commercial purposes to its consumers; and, in the year 2017, the petitioner-company applied to the office of KW&SB for issuance of No Objection Certificate for digging out the soil to get brackish water to supply to the National Refinery through the pipeline, but failed to achieve the target, compelling it to approach the learned Provincial Ombudsman for direction to the respondent- KW&SB for issuance of the license, which was allowed vide order dated 07.03.2018. Petitioner-company being aggrieved by the inaction on the part of respondents has filed the instant petition.

3. Mr. Sajjad A. Bapar learned counsel for the petitioner argued that the petitioner established his business of supply of brackish water through Pipe Line from Subsoil/boring 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 competent authority 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 his business for supplying groundwater be allowed in the city. He submitted that the petitioner applied to the respondent for issuance of the license for such extraction of brackish water which has not yet

been issued; about the maintainability of the instant petition, he has argued that the law does not declare proprietary rights of the brackish water with the respondents, thus this petition is maintainable under Article 199 of the Constitution as his fundamental right to business is involved.

4. At this stage we asked him that such extraction of huge quantity of brackish water for commercial use which will harm the aquifer, which is a national asset/resource and is to be utilized for the benefits of all and sundry, will be damaged and further it will also ruin the environment of the area. He emphasized that there is no such law for the time being enforce prohibiting from using the sub-soil water in the quantity, they need to extract and supply through pipelines to industries. Learned counsel dilated upon the meaning of brackish water and argued that extraction of water will not have its adverse effect, which could be caused to the aquifer. Learned counsel relied upon the decision of the water commission on the subject issue for regularization of Subsoil water under the Sub Soil Water (Extraction and Consumption) Regulation 2018 framed by the respondent- KW&SB. He prayed for allowing the instant petition.

5. We have noted that the level of subsoil water has dropped to a dangerous level over the years and the whole irrigation system is now on the verge of collapse; and, excessive extracting of Brackish/subsoil water, as well as lifting of Minerals i.e. reti, bajri, Sand and gravel, are being excavated in large quantities daily but no one from the government side is taking interest to curb such atrocity. Brackish water is water that is more saline than fresh; and, is also the primary waste product of the salinity gradient power process. For us, the extraction of alleged brackish water from the aquifer by the petitioner, if allowed in such huge quantities under the garb of Sub Soil Water (Extraction and Consumption) Regulation 2018, will certainly disturb the aquifer and environment of the concerned area and it is for the competent authority to look into the gravity of the situation and take remedial measures under the law; and, it is an admitted fact that natural source of water for the aquifer is rain and raining is negligible and highly insufficient; and, even it has been reported that groundwater level is falling a meter every year mainly due to groundwater extraction; and, that due to bad water management. The Honorable Supreme Court in its judgment in the Shahab Usto case directed the government to regulate and price groundwater be it industrial or agriculture use. "There seems less energy or homework to do the needful. The government must

assemble a body of expert to bring new legal framework, it is as important as fixing the economy.”

6. This being the position of the case, at this stage, we are not inclined to subscribe to the request of the petitioner because no right of the petitioner to extract minerals/brackish water has been established and prima-facie under the garb of this petition he has attempted to continue such an activity illegally.

7. This being the legal position of the case, this petition, therefore, being misconceived is hereby dismissed in limine, along with the pending application(s).

J U D G E

J U D G E

Nadir*