

IN THE HIGH COURT OF SINDH AT KARACHI

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

CP D 5954 of 2016 : Cosmic Resources
(Private) Limited vs.
Government of Pakistan
& Others

For the Petitioner : Mr. M. Asad Iqbal
Mr. Usman Tufail Shaikh
Advocate

For the Respondents : Mr. Ishrat Zahid Alvi
Assistant Attorney General

Mr. Jawad Dero
Additional Advocate General

Mr. S.M. Zafar Imam
Deputy Director
Marine Fisheries Department

Date of Hearing : 30.10.2019

Date of Announcement : 05.12.2019

JUDGMENT

Agha Faisal, J: The petitioner, being a private limited company, has filed the present petition seeking to set aside the minutes (“Impugned Minutes”) of the 49th meeting dated 10.08.2016 (“Meeting”) of the Inter-Ministerial Scrutiny Committee Marine Fisheries Department Government of Pakistan (“Committee”) and has further sought directions to call an emergent meeting of the Committee to consider alleged notes of dissent, preferred by the two members of the Committee, in respect of the Meeting. By way of illustration, it is considered appropriate to reproduce the prayer clause herein below:

1. “Under the above circumstances, it is most humbly prayed that this constitutional petition may kindly be allowed and a writ may kindly be issued specifically directing the Respondent No.1 to cancel, withdraw, rescind and set aside the wrongly recorded minutes and decision as un-authentic, biased, un-implementable being unlawful and being an act of the respondents as betrayal of their oath to serve the interest of the country.

2. It is further humbly prayed that on the basis of the observations/note of dissent of Respondent Nos.5 and 6 the Respondent No.1 convener of the committee and Respondent No.2 secretary of IMSC committee may kindly be directed to call an emergent meeting for the redressal of the observations of the IMSC committee members i.e. Respondent Nos.5 and 6, so as to reach a decision equally accepted to the members of IMSC committee in the best interest of the stakeholders in general and justice in particular....”

2. Mr. Usman Tufail Shaikh, Advocate commenced arguments on behalf of the petitioner, however, the director of the petitioner, through whom the present petition was filed, sought to argue the petition in person himself, with the permission of the Court.

Mr. M. Asad Iqbal submitted that the petitioner applied, on 25.11.2015, for fourteen licenses for operation of stern trawlers pursuant to the Deep Sea Fishing Policy 1995 as amended till 2009 (“1995 Policy”) of the Marine Fisheries Department, Ministry of Ports and Shipping (“Department”). It was submitted that the applications of the petitioner were considered in the Meeting and rejected. It was alleged that the Impugned Minutes, recording the Meeting, were not signed by two members of the Committee, who submitted notes of dissent instead. It was further demonstrated from the record that subsequently the 1995 Policy was superseded by the Deep Sea Fishing Licensing Policy, 2018, dated 24.04.2018 (‘2018 Policy’) and the category of stern trawlers was no longer contained therein. In summation it was argued that the denial of licenses to the petitioner, as recorded vide the Impugned Minutes, and the exclusion of the category for stern trawlers in the 2018 Policy was contrary to the law, hence, this petition.

3. Mr. Ishrat Zahid Alvi, Assistant Attorney General submitted that the 1995 Policy is no longer in the field and in any event the denial of the petitioner’s applications for the fisheries license thereunder has not been challenged in the present petition.

Per learned counsel, the 2018 Policy superseded the 1995 Policy, however, the 2018 Policy was itself presently in abeyance pending the notification of a new policy, for which the extensive consultations have been held with all the stakeholders. Learned counsel submitted that in the 2018 Policy, the category of stern trawler was no longer there and this omission was for protection of national marine resources. Learned

counsel further added that the exclusion of a category in 2018 Policy is non-discriminatory as it does not affect any particular party but that such exclusion has been effected in the interest of protecting the marine natural resources of Pakistan. In conclusion, it was submitted that prayer in the present petition is confined to the Impugned Minutes and the alleged dissention of certain members, however, such relief, even though untenable, has been rendered infructuous the moment the 2018 Policy was notified. Learned counsel submitted that present petition is misconceived and even otherwise devoid of merit, hence, ought to be dismissed forthwith.

4. Mr. S.M. Zafar Imam, Deputy Director, Marine Fisheries Department addressed the Court on the aims and objectives of the Department relevant to the present case. The officer submitted that merciless plundering of Pakistan's marine resources was rampant and that bottom trawling had been taking place with nets so fine that even a ball point nib could not pass through it, wreaking havoc upon all manner of life form in its path. It was submitted that the 2018 Policy was framed keeping in mind the sustainable growth and protection of the marine life of Pakistan and to safeguard the precious natural resources from pillage. It was stated that the re-demarcation of categories in the 2018 Policy was done pursuant to the guidelines of the Food & Agriculture Organization with the primary objective of ensuring sustainable harvesting of marine life. The officer submitted that even otherwise, the 2018 Policy was in abeyance pending conclusion of the consultation process in such regard including all the stakeholders, where after, a new policy would be notified.

5. We have heard the arguments advanced before us and have also considered the documentation to which our surveillance was solicited. The primary point for determination before us is whether the petitioner has been able to demonstrate infringement of any fundamental rights to merit the indulgence of this Court in the exercise of its Constitutional jurisdiction.

6. The petitioners applications for licenses were admittedly rejected, however, not a single such decision, out of fourteen, has been placed or assailed before us. The pleadings before us seek to set aside the

Impugned Minutes, merely on the premise that the same are wrongly recorded.

7. Minutes of a meeting are a representation of what transpired there at and the veracity thereof is an issue between the participants of the said meeting. It is inapt to expect this Court to delve into the factual dispute to determine what did or did not transpire at a specific meeting. The purported copies of the notes of dissent, filed by the petitioner, contained general allegations of fact which in any event may not be verified by this Court in the exercise of its Constitutional jurisdiction. The alleged dissenters have also not been made a party hereto and even otherwise the record filed by the petitioner is silent as to whether the alleged notes culminated in the amendment of the Minutes or otherwise.

In any event the prayer for setting aside the Minutes does in itself merit no benefit to the petitioner as the challenge thereto is purely on the basis of the same being wrongly recorded and there is no challenge to the actual decisions manifest therein. The alleged dissention with respect to the Impugned Meeting is also an issue to be thrashed out between the purported authors of the notes and the Committee itself and there is no justification for this Court to delve into such controversy in the present facts and circumstances. It is *prima facie* apparent that the prayer clause in the present petition is entirely misconceived and does not merit any further indulgence by this Court.

8. The petitioner's demonstrated intent, through this petition, is to obtain fishing licenses pursuant to a policy, being the 1995 Policy, that is no longer in the field. While the petitioner claims to be aggrieved by the omission of a category in the subsequent policy, being the 2018 Policy, no prayer to the said effect is contained in the present petition and further that no permission of the Court was ever solicited to amend the petition suitably. In this context, it is apparent the once 2018 Policy was notified the reservations of the petitioner, with respect to the dismissal of its applications pursuant to 1995 Policy, became redundant.¹

¹ *Jahanzaib Malik vs. Balochistan Public Procurement Regulatory Authority & Others* reported as 2018 SCMR 414.

9. It has been demonstrated before us that the 2018 Policy was made with a view to safeguard the precious national natural resources and that the realignment of categories of licenses was a policy decision in furtherance of the said objective. While the Court retains the jurisdiction to examine a policy, however, such jurisdiction may only be exercised provided that it is demonstrated that the said policy was / is either arbitrary, discriminatory or in violation of any fundamental rights.² In the present circumstances the petitioner has not been able to raise any cogent objection with respect to the 2018 Policy necessitating the intervention of this Court.

10. Notwithstanding the foregoing, even the 2018 Policy is stated to be in abeyance pending notification of a new policy, for which the views of the all stakeholders have admittedly been solicited. The Deputy Director of the Department had placed before us a meeting notice dated 15.03.2019 issued by the Ministry of Maritime Affairs to discuss and finalize the new deep sea fisheries policy. The object of placing this notice was to demonstrate before us that the views of all stakeholders, including those of the Deep Sea Fishing Operations Association Karachi of which the petitioner claims to be a member, are being considered in such regard.

The other invitees to the meeting, in addition to the officials, included the Fishermen's Cooperative Society Limited Karachi, Sindh Trawler Owners Fishermen Association Karachi, Pakistan Sea Food Exporters Association Karachi, Native Islander & Fishermen's Association Karachi, Visionary Group Bona fide Fishermen Community Baba Island Karachi, Pakistan Fisher Folk Forum Karachi and reputable individuals representing the fishing industry from Gwadar to Karachi. It is *prima facie* gleaned from the aforesaid that the new policy under finalization includes the input of all possible stakeholders and, therefore, there appears to be no question of any disenfranchisement whatsoever.

11. The petitioner has failed to demonstrate any vested right in the first instance for the grant of the relief sought. The prayer clause as framed in itself is entirely misconceived. The reservations with regard to the 2018 Policy are alien to the pleadings and no efforts was ever made

² *Shahid Pervez vs. Ejaz Ahmed* reported as 2017 SCMR 206.

by the petitioner to amend the memorandum of petition suitably. In any event, the petitioner has failed to demonstrate any discrimination, lack of jurisdiction and/or partiality on behalf of official respondents, hence, there was no occasion to merit the exercise of Constitutional jurisdiction by this Court. In view of the reasons and rationale contained herein, the present petition is determined to be misconceived and even otherwise devoid of merit, hence, this petition, along with pending application/s, is dismissed with no order as to costs.

JUDGE

JUDGE

Khuhro/PA