

**THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P No. D- 280 of 2004

Before:-

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Petitioner : Through Mr. Jhamat Jethanand, Advocate.

Respondents : Through Mr. Aslam Pervaiz Khan, Deputy Attorney General for Pakistan.

Date of hearing : 03.12.2019

Date of decision : 03.12.2019

For hearing of M.A No.5885 of 2019.

ORDER

The instant petition was disposed of by this Court vide order dated 21.4.2005 with the following observations:-

“In the above circumstances, we direct the respondents to issue an allotment order/license in favour of petitioner in respect of stall No.15 at platform No.1 Hyderabad Railway Station with effect from 01.6.2005, as Muhammad Aslam, Station Superintendent the respondent No.4 has stated that the Stall No.15 shall be vacated with effect from 31st May 2005. The petitioner is directed to deposit the amount of Rs.29, 000/- for which he had given bid in respect of Stall No.2 within fifteen days from today. Initially the license shall be issued to the petitioner for a period of two years and on commencement of second year, there shall be increase of 10 percent.

Before parting with this order, we would like to observe that the respondents No. 1 and 2 are expected to take a policy decision and provide a quota for disabled persons so that all such persons in the country may earn their livelihood in a respectable manner.

The petition is allowed as above.”

2. On 22.7.2019, the applicant filed listed application for initiation of contempt proceedings against the alleged contemnors on account of their willful, intentional and deliberate act of disobeying the order dated 7.3.2019.

3. We queried from learned counsel that applicant's earlier contempt application (MA 576 of 2005) along with two others miscellaneous applications were dismissed by this Court vide order dated 7.3.2019, which was assailed before the Honorable Supreme Court of Pakistan in CPLA No.388-K of 2019 and the same was dismissed vide order dated 30.8.2019. He replied that the order passed by this Court has still not been complied with by the alleged

contemnors and the same needs to be enforced. He next submitted that the respondents 1 and 2 are required to comply with the judgment and orders passed by this Court in letter and spirit by framing policy of providing quota to disabled persons throughout Pakistan; that the auction proceedings of stall No. 15 Railway Station Hyderabad initiated by the respondents are not in consonance with the aforesaid orders; that the respondents are required to restore the stall No. 15 to the petitioners in its original position. He lastly prayed for direction to the alleged contemnors to comply the orders passed by this Court in its letter and spirit.

4. Learned Assistant Attorney General of Pakistan has contended that he would only confine his arguments to the extent of maintainability of instant application as the alleged contemnors have complied with the orders passed by this court and relied upon the letters dated 6th April, 2019 and 9th April, 2019 and argued that the auction of the aforesaid stall was held amongst disabled persons in compliance of the orders passed by this Court. He next submitted that petitioner participated in the auction proceedings amongst other disabled persons, however, Mst. Jannat Begum(disabled) was declared highest bidder; that process of leasing the subject stall through open auction has been completed, handing and taking over process shall be completed within a short span of time. He lastly prayed for dismissal of listed application. We queried him whether the direction contained in paragraph No.11 of the order dated 7.3.2019 has been complied with or otherwise. He replied that the quota has been fixed. At this stage, Mr. Jhamat Jethanand learned counsel for the applicant intervened and submitted that policy decision and provision of quota for disabled persons has not been reserved as directed by this Court vide order dated 21.4.2005.

5. We have heard learned counsel for the applicant on the listed application and perused the material available on record.

6. In view of the above averments, the question before us is as to whether we can enlarge the scope and allow the parties to argue the matter on merits of the case in Contempt Proceedings? The answer is not in affirmative.

7. It is also observed that the Honourable Supreme Court vide order dated 30.8.2019 has already dismissed the petition of the applicant with the following observation:-

“This petition is barred by 03 days. No application for condonation of delay has been filed. Even otherwise, we find that the impugned judgment does not suffer from any illegality, perversity or impropriety for that the learned counsel has admitted that the deceased husband of the petitioner was a licensee of the stall and has got the same on quota of

disabled persons. He stated that the widow is also a disabled person. If that be that case, the petitioner has the opportunity to participate in the auction for obtaining the stall on license on the disabled persons' quota and such aspect too has been mentioned by the High Court in the impugned order. The petition is, therefore, dismissed as time-barred.

8. In our view the order dated 7.3.2019 passed by this Court is merged in the order dated 30.8.2019 passed by the Honourable Supreme Court, therefore, this Court cannot take contrary view.

9. Prime facie the earlier contempt application filed by the applicant has already been dismissed and second contempt application cannot be entertained on the similar facts and grounds. The explanation offered by the Respondents is tenable in law on the premise that the applicant participated in the auction proceedings as directed by this Court vide order dated 7.3.2019 wherein she could not succeed and Mst.Jannat (disabled) was declared as the highest bidder.

10. In view of the facts and circumstances of the case and for the reasons alluded hereinabove, we are satisfied with the explanation offered by the respondents that substantial compliance of orders dated 21.4.2005 and 7.3.2019 passed by this court has been made in its letter and spirit. Therefore, at this juncture, prima facie, the applicant has failed to make out a case for initiating contempt proceedings against the alleged contemnors. Therefore, the listed application bearing (M.A No.5885 of 2019), is dismissed.

JUDGE

JUDGE

Fahad Memon