

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-2655 of 2023

Before: *Yousuf Ali Sayeed,
Mohammad Abdur Rahman, JJ*

Date: Order with signature of Judge

- 1.For orders on CMA No.12780/2023.
- 2.For orders on CMA No.12781/2023.
- 3.For orders on CMA No.12782/2023.
- 4.For hearing of Main Case.

30.05.2023:

ORDER

Mr. S.M. Azad, Advocate for the Petitioner

MOHAMMAD ABDUR RAHMAN,J: This petition, under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has been instituted seeking directions from this court to compel the respondents to pay to the Petitioner a sum of Rs.14,600,474.48 in respect of dues for services purportedly rendered by the Petitioner to the Respondents involving the placement of advertisements by the Petitioner in the print media.

2. Counsel for the Petitioner submits that the petitioner is a publisher of a newspaper known as the "Daily Veer Times", claiming to have wide circulation all over Pakistan. He further contends that pursuant to an order dated 17 August 2020 passed by this Court in Criminal Miscellaneous Application No. 284 of 2018, the Respondent No. 1 (b) was directed to publish a list of certain "proclaimed offenders" in national, provincial and local newspapers in the Sindhi, Urdu and English languages. He further contended that by a notification dated 30 August 2021 issued by the Respondent No.1(a), the Respondent No.2, which is a private limited company, carrying on the business of advertising, was engaged by the Respondent No 1(a) to publish the requisite information in twelve newspapers including the Petitioner's newspaper. It is submitted, that the Respondent No. 2 thereafter placed the advertisements in the Petitioner's newspaper and against which an invoice has been raised by the Petitioner

on 8 September 2021 against the Respondent No. 2 for a sum of Rs.14,600,474.48 and which was not cleared by the Respondent No. 2. This led to a series of communications as between the Petitioner and the Respondent No. 2 culminating in a letter dated 22 November 2022 that was addressed by the Petitioner to the Respondent No.2 and in reply to which the Respondent No. 2 in his handwriting has on that letter stated as under:

“ After adoption of payment policy of 25% media payment and 15% Agency commission the liability of this bill is due on M/s Information Department, Government of Sindh. We will also forward this letter to them.”

3. Counsel for the Petitioner contends that this amount is due and payable by the Respondent No.1 (a) and the Respondent No.2 and which payment has been withheld for last two years and has prayed following relief before this Court:

“ 1. Direct the respondents to pay to the petitioner a sum of Rs.14,600,474.48 being the advertisement expenses in its newspaper for publication of list of proclaimed offenders/ absconders...”

4. We have heard the Counsel for the petitioner and perused the record. It is apparent that the petitioner is seeking the recovery of monies on the basis of a contractual relationship that exists as between him and the Respondent No. 2 which is admittedly a private limited company carrying on the business of an advertising agency. The jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is a summary jurisdiction does not allow for an order in the nature of a writ of mandamus to be issued to allow us to enforce contractual rights.¹

In **Vice-Chancellor, Bacha Khan University Charsadda, Khyber Pakhtunkhwa** 2021 SCMR 1995 it has been held by the Supreme Court of Pakistan that:

¹ See **Messrs Momin Motor Company vs The Regional Transport Authority, Dacca** PLD 1962 SC 108; **Nizamuddin vs. Civil Aviation Authority** 1999 SCMR 467; **Lahore Cantonment Cooperative Housing Society Limited, Lahore Cantt vs. Dr. Nusrat ullah Chaudhry** PLD 2002 SC 1068; **Pakcom Limited vs. Federation of Pakistan** PLD 2011 SC 44; **Vice-Chancellor, Bacha Khan University Charsadda, Khyber Pakhtunkhwa** 2021 SCMR 1995,

“ ... 10. Forcing an institution to act as per the whims and wishes of certain employees is not only burdensome, but is also a transgression of the powers vested with the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan. Even otherwise, it is settled law that contractual terms and conditions can neither be enforced, nor a contract be extended or renewed under Article 199 of the Constitution.”

The Supreme Court of Pakistan in **The State of Pakistan vs. Mehrajuddin**² has clarified the exception to this rule wherein it was held that:³

“ ... A right founded purely on private contract, however clear it might be, is not enforceable by mandamus. These statements regarding the nature of the writ of mandamus have been borrowed from a valuable monograph on the subject, entitled "Extraordinary Legal Remedies" by Ferris. (Thomas Law Book Company, U. S.) In Halsbury's Laws of England (Volume 11, Third Edition), the following statements of the relevant law are found. If public officials or a public body fail to perform any public duty with which they have been charged, an order of mandamus will lie to compel them to carry it out. In accordance with this principle a mandamus will issue to Government officials in their capacity as public officers exercising public duties which affect the rights of private persons. Such a mandamus might even issue to the Lords of the Treasury in their capacity as public officers invested by statute with public duties affecting the rights of private persons. An applicant for a mandamus must show that he has a legal right to the performance of a legal duty by the party against whom a mandamus is sought. The prosecutor must be clothed with a clear legal and equitable right to something which is properly the subject of a writ, as a legal right by virtue of a Act of Parliament. The order is only granted to compel the performance of a duty of a public nature.”

Similarly in **The Chandpur Mills Limited vs. The District Magistrate Tippera and another**⁴ it was held that:⁵

“ ... We cannot conceive that a writ of mandamus to carry out the requirement of such an enactment as section 7-B of the Act in question can possibly be issued on the basis of an interpretation of several documents such as that which Mr. Fazal-ur-Rehman has attempted to place before us. A contract may sometimes be construed out of a number of documents in the manner suggested, but a writ of mandamus does not issue for the enforcement of contracts. What should be established on the record in order to obtain a writ in this case is a clear agreement to which the Provincial Government should be a party on the Government side as against the private claimant, as to what the compensation for the requisition should be, stating a specified sum.”

5. We have noted that there is nothing on record to indicate as to whether the Respondent No.1 has at any level confirmed his contractual

² PLD 1959 SC (Pak.) 147

³ *Ibid* at pg. 159

⁴ PLD 1958 SC (Pak.)267

⁵ *Ibid* at pg.274

obligations as to exact amount payable by it to either the Petitioner, or for that matter to the Respondent No.2. It is also noted that that the contractual obligation that is sought to be enforced by the Petitioner exists as between the Petitioner and the Respondent No.2, which is a private entity and is not amenable to our jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. As such, we are clear that in this case neither is there proof of a “clear agreement” as between the Provincial Government and the Petitioner; in fact the contractual obligations that are sought to be enforced by the Petitioner are with the Respondent No. 2 which is a private body. Neither is there any admission from the Respondent No. 1 to the Petitioner indicating that it owes the Petitioner a “specified sum”. It would seem that the course of action that should be adopted by the petitioner would be to avail a remedy in the ordinary civil jurisdiction for enforcement of contractual obligations and not the Constitutional Jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

6. For the foregoing reasons we are of the view of that in the facts and circumstances, this petition is not maintainable and which is therefore dismissed along with listed applications with no order as to costs.

JUDGE

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