

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. D - 6059 of 2023

Date	Order with signature of Judge
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Present: **Mr. Justice Salahuddin Panhwar**
Mr. Justice Khadim Hussain Soomro

- 1.For orders on office objections
- 2.For hearing of CMA No.6418/2024
- 3.For hearing of CMA No.27288/2023
- 4.For hearing of Main Case

13th May 2024

Mr. Muhammad Saleem Mangrio, Advocate for the Petitioner
Ms. Naushaba Solangi, Additional Advocate General, Sindh
Mr. Waleed Khanzada, Advocate for Respondent No.2/KW&SC

Salahuddin Panhwar,J.- Precisely relevant facts are that operation against illegal hydrants in Metropolis was taken up by the Supreme Court of Pakistan during hearing HRC No.28963-S of 2014, in which the Apex Court recorded the statement of the then M.D Water Board wherein, he stated that he intends to stop all the hydrants and that presently 13 hydrants are functional and that he wants to retain only six hydrants, one for each District within Karachi besides one hydrant of NLC which needs to remain operational on account of strategic reasons. The Apex Court further observed that if the M.D Water Board thinks that six hydrants will serve the need of Karachi in emergent conditions, he may close down remaining hydrants. The M.D. Water Board further stated that the proposed hydrants which he wants to operate need to be retendered. Accordingly, it was ordered that M.D Water Board may take steps in this regard and finalize the mode under which it can be contracted out in a transparent manner. After passing of the aforesaid order, the respondent No.2 published notice in newspapers of wide circulation thereby inviting Tenders for auction of water hydrants and the last date for submission of tenders was 17.12.2016. In pursuance whereof the bids were submitted and contracts were awarded in respect of all seven (07) hydrants which were operating accordingly.

2. Counsel for the Petitioner has emphasized over order dated 08.09.2016 passed by the Apex Court in HRC No.28963-S of 2014 being relevant Paragraph No.2 of that order is reproduced herewith:-

“2. According to the M.D. Water Board, he intends to stop all the hydrants. Accordingly to him, present 13 hydrants are functional and he want to retain only six hydrants, one for each District within Karachi besides one hydrant of NLC, which needs to remain operational on account of strategic reasons. If the M.D. of Water board thinks that six hydrants will serve the need of Karachi in emergent conditions, he may close down the remaining hydrants. According to the M.D Water board, the proposed hydrants, which he wants to operate need to be retendered. He may take steps in this regard and finalize the mode by which it can be contracted out in a transparent manner.”

3. Further, he contends that Respondents have allowed two additional points to each hydrant, which is in contravention of the Apex Court’s order, as such, it is prayed that they may be restrained permanently.

4. Conversely, counsel for the Respondent while referring Page No.23 of the petition, contends that the present petition referring notice of tender published in 2016 however, they have awarded contracts within the spirit of the order passed by the Apex Court in 2022. At this juncture, it would be advantageous to reproduce paragraph No.7 of the comments:

“7. The contents of the paragraph No.5 to 8 are denied being false, fabricated, fictitious, and figment of petitioners own imagination. It is submitted that the paragraph under reply are based on incomplete stolen/illegally obtained document and also on the basis of expired tender documents in which regards the Respondent No.2 reserve its right to take appropriate legal action against the petitioner. It is submitted that auction of hydrant took place in 2017 and work order was awarded on 17.10.2017 for two years where after, once again hydrant was auctioned through public notice and awarded on 11.12.2020 which expired in the year 2022 and last auction was awarded in the year 2023 on 30.05.2023. It is specifically denied that the high level meeting was called on 11.12.2023 to approve variation order and/or same was prepared on 10.12.2023. Further, malafide intentions of the petitioner are evident from the fact that he has not disclosed in the entire petition as to how he is effected by the variation order whatsoever and that too after relying on stolen incomplete documents and expired documents with intent to misguide this honourable Court in the said regard strict action may be initiated against the petitioner. It is submitted that the Respondent No.2 in order to permanently curtail the menace of illegal hydrants initiated strict action/ operation against the illegal water mafia in coordination with law enforcement agencies including but not

limited to Pakistan Rangers since September 2023 (which is still ongoing) and in the said regards have successfully managed to dismantle/destroy such illegal hydrants which is evident from the fact that the Respondent No.2 lodged 108 FIRs against multiple people who are arrested (or on bail) and trial is proceeding before the trial court and 130 water tankers were impounded and penalty was imposed of 1.9 million which are received. Due to the said operation against the illegal water hydrants shortage of water supply was noted by the Respondent No. 2 in the city and tankers started charging exorbitant amount from public at large in order to curtail the same and from stopping water tankers owner to start refilling from illegal hydrants additional filing points were given by the Respondent No.2 to the existing hydrant operator who after bidding have won the tender in the year 2023 so as to streamline the filling as prior to September only 480 tankers were filling from the legal water hydrant of the KWSC after operation 1977 water tankers (which were earlier taking water from illegal hydrants) have joined the legal water hydrant having registered themselves with QR Code and tracking device in the water tanker duly being monitored by the KWSC command and control center. It is specifically denied that adding two filing points at the duly auctioned hydrants for the benefit of the public at large amounts to illegal water hydrants and/or are violation of the Honourable Supreme Court order dated 8.9.2016. It is submitted that the petitioner is either unaware of how hydrants operate or is purposely trying to misguide this Honourable Court. It is submitted that the hydrants have already been auctioned after competitive bidding and only two filing points are being increased in the same area to deal with the aftermaths of operation against illegal hydrant in the best interest of public at large. It is submitted it is within the domain of the Respondent No.2 to regulate its hydrant and its filing points. It is submitted that the respondent No.2 board first meeting took place on 16th October 2023 wherein, two additional tap were part of the agenda as evident from agenda Item No.3 which minutes of the meeting were duly circulated/approved on 30.10.2023 having been attended by the members of the board of the KWSC duly existing under Karachi water & sewerage corporation act 2023. Thereafter, committee formed by the board in its meeting dated 16.10.2023 approved the suggestion of the two additional taps on 30.10.2023, Thereafter, note sheet dated 30.10.23 was moved and approved for additional two filling points. Further, explanatory note was approved on 6.12.2023 and only then approval for variation order was obtained vide note sheet dated 7.12.23. It is submitted that the all this exercise is taken for the welfare and protection of the residents of the city and also to bring down prices of the water tanker which obviously does not make petitioner happy due to ulterior motives hence, he misguided this Honourable court that the note sheet was moved on Sunday etc. by just annex the document too after stealing the same of variation order approval and not the actual

approval of the additional two taps in the said regards strict action may be taken against the petitioner including but not limited to of perjury. (Copy of the publication of auction notices dated 25.12.2023 published in Jang; the news; dawn; daily express; work orders dated 30.05.2023; HMP Report dated 18.12.2023; list of 108 FIRs; Minutes of the meeting dated 30.10.2023 (held on 16.10.223); Note sheet dated 30.10.2023; and Explanation note dated 06.12.2023 are annexed herewith and marked as Annexures R/1 to R/15 respectively).”

5. Moreover, the counsel for the respondents emphasized that the matter remained sub judice before the Supreme Court, therefore, if there is any contravention, this Court is not empowered to construe the Order of the Apex Court, and the petitioner is entitled to seek redress directly from the Supreme Court by instituting a contempt proceeding. Furthermore, he submits that this Court lacks jurisdiction to issue any provisional orders that would contravene existing order of the Apex Court. The respondents have unequivocally refuted any breach, claiming that they have executed contracts subsequent to fulfilling all essential formalities, thereby upholding the true essence of the Supreme Court's order.

6. We have heard learned counsel for the parties and perused the record.

7. The Apex court in the case of *Water and Sanitation Agency, Lahore through M.D. v. Lottee Akhtar Beverages (Pvt.) Ltd. Lahore and others (2019 SCMR 1146)* addressed the issue of judicial propriety and the hierarchy of Courts. However, the Apex Court disapproved learned Lahore High Court's assumption of writ jurisdiction over a matter that was sub judice before the Supreme Court. The Apex Court emphasized that such actions are contrary to the principles of judicial comity and propriety, as they could potentially undermine the judicial process by disregarding the Supreme Court's explicit directions.

8. Accordingly, in light of dictum laid down by the Apex Court, we have no hesitation to hold that instant petition is misconceived, consequently, the same is dismissed together with listed/pending application(s).

JUDGE

Nasir P.S.

JUDGE