

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-2724 of 2022.

a/w

C.P No.D-5654 & 6798 of 2022 and 233 of 2024

Date: Order with signature(s) of the Judge(s)

**Before: Salahuddin Panhwar &
Khadim Hussain Soomro, JJ**

Priority Case.

1. For Hearing of Misc. No. 12689/2022.
2. For Hearing of Main Case.

29th May, 2024.

Mr. Muhammad Tariq Mansoor advocate for the Petitioners in CP No. D-2724/2022 & 233/2024.

M/s. Arif Shaikh and Zeeshan Rafiq advocate for the Petitioner No.1 in CP No. D-2724/2022.

Mr. Usman Farooq advocate for the Petitioner in CP No.D-5654/2022.

M/s. Syed Hassan Mujtaba Abidi, Mohsin Khan & Naveed Anjum advocates for Respondent/KMC.

M/s. Zeeshan Adhi & Suresh Kumar, Addl. A. G. Sindh.

Mr. Murtaza Wahab, Mayor Karachi.

SALAHUDDIN PANHWAR, J. Heard parties at length. Three petitions bearing CP Nos. D-2724, 5654 & 6798 2022 are challenging the resolution of Administrator and Notifications dated 21.01.2022, 11.04.2022 & 12.04.2022, whereas, CP No.D-233/2024 is filed after two years wherein declaration is sought by challenging provisions of KMC, MUCT Rules 2022 to the extent of Rule 2(b), 3, 4(a), (b), (c), (d), (e), 5(a), (b) for entering into contract with public/private utility service providers for collection of MUCT Tax are inconsistent, ultra vires and in contravention with the parent Act. Further that petition seeks enforcement of power of collection regarding MUCT Tax under Section 100(2), 103(3), 141(1) of SLGA, 2013 as well as challenged Council Resolution No.22 dated 11.12.2023.

2. In C.P. No.D-2724 of 2022, the Petitioners have prayed for the following reliefs:-

- a) *To declare the impugned act/decision to charge from the citizens of Karachi the two KMC taxes, i.e. Fire and Conservancy and/or any other tax/duty through the K- Electric bills is illegal, unlawful and discriminatory, as such not tenable and set-aside the said impugned decision.*
- b) *To hold that the mechanism already in vogue for collection of Municipal taxes by the department be made effective and efficient to get collection of the Municipal taxes rather hiring the service of K-Electric, further burdening the KMC, instead to utilizing the services of the own employees who are heavily paid by the department.*
- c) *To suspend the operation of the impugned decision for collection of Fire and Conservancy taxes through K-Electric bills, notified vide Notification dated 21.01.2022, issued by the Respondents, Government of Sindh.*
- d) *Any other relief(s) as this Honorable court deems fit and appropriate under the circumstances of the case may be granted to the petitioner.*

3. In C.P. No.D-5654 of 2022, the Petitioners have prayed for the following reliefs:-

- (i) *Declare that Municipal Utility Charges and Taxes imposed under the Resolution of Respondent No. 4 are illegal and without following the provisions of law.*
- (ii) *Declare that connecting and linking the Municipal Utility Charges and Taxes with the consumption of electricity units is illegal and liable to be set aside.*
- (iii) *Declare Notifications dated 21-01-2022, 11-04-2022, 12.04.2022 and summary put up by the Metropolitan Commissioner and Resolution signed by the Respondent No. 4, as illegal, void and ab-initio.*
- (iv) *Stop the Respondents No. 6 from collection of Municipal Utility Charges and Taxes, in Electricity Bills.*
- (v) *Any other relief which this Hon'ble Court deems fit and proper in the circumstances.*

4. In C.P. No.D-6798 of 2022, the Petitioner has prayed for the following reliefs:-

- I. *Declare that Municipal Utility Charges and Taxes (MUCT) imposed by Respondent No. 4 on the consumption of electricity units are illegal and contrary to law.*
- II. *Declare that collection of MUCI through monthly electricity bills is unlawful and ultra vires the Act. 2013.*
- III. *Declare that the Impugned notifications are all illegal, unlawful and void ab initio.*
- IV. *Permanently and pending disposal of this case, restrain the Respondent No. 4 from imposing and collecting MUCT through electricity bills.*
- V. *Grant such other relief as may be deemed necessary in the circumstances of the case.*
- VI. *Grant costs.*

5. The **Karachi Metropolitan Corporation (Collection of Municipal Utility Charges and Tax) Rules, 2002**, are legislative instruments governing the levy and collection of municipal utility charges and taxes within Karachi. These regulations delineate the procedural framework and methodologies for the accrual of fees associated with municipal amenities. In particular, they stipulate the assimilation of such charges within the power invoices furnished by K-Electric. Moreover, these rules explicate the duties and obligations incumbent upon the Karachi Metropolitan Corporation (KMC) and K-Electric in the execution of this mandate. The efficacy of these collection modalities has been a contentious issue. Proponents within the KMC assert that robust collection systems are imperative for the financial fortification of the Corporation. Conversely, the legitimacy of the KMC's provisional administration to enforce these levies has been called into question. To encapsulate, the aforementioned Rules are designed to facilitate the efficient appropriation of municipal utility charges and taxes in Karachi, with an emphasis on the utilization of electricity billing as the primary collection conduit. Nonetheless, the juridical scrutiny and contractual dynamics between KMC and K-Electric are under judicial review by this Court in Constitution Petition No. D-233 of 2024, wherein the constitutional validity of the said Rules is being contested. In Constitution Petition No.D-233/2024, the Petitioner challenges the validity (vires) of the Rules promulgated by the Local Government. This Court heard arguments of the learned counsel for the

Petitioner, who cited various legal precedents (case laws). However, due to paucity of time, the hearing of Constitution Petition No. D-233/2024 is adjourned being part-heard. The matter will be fixed in the second week of August, 2024. Office is directed to de-tag C.P.No.D-233/2024, however, the injunction application in this petition will be decided with main petition. With regard to ad-interim injunction in peculiar circumstances we are of the view that same cannot be extended in this petition at this stage.

6. With regard to the remaining Petitions, Mayor of Karachi appeared before the Court, the Court raised the question of the resolution's validity. Specifically, it is noted that the resolution was allegedly enacted by the Administrator, not the Council. Under applicable law, the Council holds the authority to enact resolutions, not the Administrator. The Mayor, in response to the Court's query, submitted a statement concerning the approval of the resolution as per law after due deliberation and its circulation among the public. This statement has been duly taken on record. Given its pertinence, the statement is reproduced as under:

"It is most respectfully submitted on behalf of the Mayor of Karachi Metropolitan Corporation (KMC) that the KMC will review the Agreement with K-Electric, to ensure that service charges are directly deductible by K-Electric and no other deduction shall be made directly. Moreover, the Mayor will constitute a special committee of Council Members to deliberate on the issue and the same will be presented to the Council for approval. Further, deliberations will also be made to maximize the tax collection for Karachi, however, some relief/exemption will be given to citizens receiving K-Electric bill of PKR 10,000/- or less per month".

7. Learned counsel for the Petitioner(s) asserts that the Petitioners does not contest the taxation imposed by the Karachi Metropolitan Corporation (KMC) and aims to reinforce the municipal council's efficacy. Nonetheless, the Petitioner harbors concerns regarding the non-passage of the pertinent resolution by the council, coupled with apprehensions that the council members may not be granted the opportunity for deliberation. Addressing this matter, the Mayor's submitted statement indicates an intention to establish a committee, inclusive of representatives from all political parties. The committee is tasked with deliberating the

resolution/dispute, which will subsequently be presented to the council. Following the observance of due legislative process, the council will then proceed accordingly. Besides, Mayor KMC has categorically contended that they will examine the number of units in the electricity bills and, up to 300 units they will extend relief to the common man living below the standard life and who cannot afford more financial burden. This exercise shall be completed within three months.

8. Accordingly, petition Nos. C.P No.D-2724 of 2022 & C.P No.D-5654 & 6798 of 2022 are hereby disposed of in terms of above. However the Karachi Metropolitan Corporation (KMC) is directed to proceed with its actions in compliance with applicable law. Needless to mention that any Resolutions or Notifications issued by the KMC shall be considered provisional and subject to the final determination of C.P. No.D-233/2024.

JUDGE

JUDGE

M.Zeeshan