

**IN THE HIGH COURT OF SINDH AT KARACHI
(ORIGINAL SIDE)**

Suit No. 1481 of 2022

(All Pakistan Restaurant Association & Others v. Province of Sindh & Others)

Plaintiffs:	All Pakistan Restaurant Association & Others Through M/s Muhammad Umer Lakhani & Ishfaq Ahmed, Advocates
Defendants No.1 & 2:	Province of Sindh & Food Department, Sindh Nemo
Defendant No.3:	Sindh Food Authority Through Mr. Rajesh Kumar Khagaija
Date(s) of Hearing:	23-11-2023, 7-9-2024 & 17-1-2025
Date of Decision:	27-1-2025

ORDER

1. **Sana Akram Minhas, J:** The instant Suit No.1481/2022 ("**Suit 1481**") has been filed by the Plaintiffs seeking a "*Declaration And Injunction*", challenging the constitutionality of the *Sindh Food Authority Act, 2016 ("Act 2016")* as being ultra vires to the *Constitution of Pakistan, 1973 ("Constitution")*, inter alia, due to the Defendants failure to frame rules for its regulatory framework. The Plaintiff No.1 is an association and a representative body of the Plaintiffs No.2 to 20, whereas the latter are individual restaurants and stakeholders within the food and restaurant industry.
2. This order adjudicates upon CMA No.16260/2023, an application filed by Defendant No.3 i.e. Sindh Food Authority ("**SFA**"), under Order 7 Rule 11 of the *Code of Civil Procedure, 1908 ("CPC")*, seeking rejection of the Plaintiff.

Respective Submissions

3. The primary grounds asserted for Plaintiff rejection are:
 - i) The Plaintiffs lack locus standi, as, with the exception of Plaintiff No.18, none of the remaining Plaintiffs currently hold a valid license under Section 19(1)¹ of the Act 2016.

¹ Section 19(1) of Act 2016: No person shall use any place for food business except under the prescribed registration and possessing of a valid licence.

- ii) The Suit 1481 is barred by law since an alternate remedy is available under Section 43(2)² of Act 2016. The Plaintiffs have directly approached this Court without first exhausting the remedy of filing an appeal before the Government notified Appellate Authority.
- iii) Suit 1481 is further barred under Section 42 of the *Specific Relief Act, 1877* as the Plaintiffs lack the requisite legal character or enforceable right necessary to challenge the vires of the Act 2016.
- iv) In any case, the validity of the Act 2016 has already been affirmed in the case of *Nadeem Mumtaz Raja*³.
- v) Without prejudice, after the enactment of the *Constitution (Twenty-Sixth Amendment) Act, 2024*, the jurisdiction over this *lis* now vests in the “Constitutional Benches” established under the said Act 2024.

In support of his submissions, learned Counsel for SFA has referenced case law⁴.

4. In response, the learned Counsel for the Plaintiffs, drawing on case law⁵, contended that:

- i) The Plaintiffs have challenged the vires of the Act 2016 itself, rather than any specific order or notification issued under the Act. Hence, no question arises of invoking alternate remedy of appeal before the Appellate Authority.
- ii) No license is required to challenge the vires of a statute viz. Act 2016.
- iii) Even otherwise, Suit 1481 remains maintainable, as, by the SFA's own admission, at least Plaintiff No.18 holds a valid license.
- iv) Without prejudice to the above, during the pendency of the Suit, licenses have been issued to a couple of Plaintiffs, while applications for licenses of a few other Plaintiffs remain pending before the SFA.
- v) Since the challenge in Suit 1481 is limited to the vires of the Act 2016, jurisdiction over the *lis* remains with this Court.

² Section 43(2) of Act 2016: If the Authority cancels the licence or imposes fine on a food operator, the food operator may, within fifteen days of the communication of the order, prefer an appeal against such order to such Appellate Authority as Government may specify by notification in the official Gazette.

³ *Nadeem Mumtaz Raja v. Sindh Food Authority* (2021 MLD 478)

⁴ Defendant No.3's Citations: 2021 MLD 478 (*Nadeem Mumtaz Raja v. Sindh Food Authority*); 2022 CLC 1374 (*Ghulam Hyder Mahar v. Illahi Bux Mahar*); PLD 2023 Sindh 142 (*Muhammad Akbar v. Province of Sindh*); PLD 2023 SC 298 (*Naveed ul Islam v. District Judge, Gujrat*); 2023 SCMR 1427 (*Asrar Ahmed v. Chairman Pakistan Aeronautical Complex*)

⁵ Plaintiffs' Citations: 1994 SCMR 826 (*Jewan v. Federation of Pakistan*); PLD 1997 SC 3 (*Abbasia Cooperative Bank v. Muhammad Ghaus*); 2004 CLC1029 (*Arif Majeed Malik v. Board of Governors Karachi Grammar School*); PLD 1987 Kar 225 (*Mirpurkhas Sugar Mills v. Consolidated Sugar Mills*); PLD 2021 SC 684 (*Lung Fung Chinese Restaurant v. Punjab Food Authority*); 2015 PTD 1100 (*Muhammad Amin Muhammad Bashir Limited v. Government of Pakistan*); PLD 1989 Kar 404 (*Sharaf Faridi v. The Federation of Islamic Republic of Pakistan*); 2001 SCMR 279 (*Ali Asghar v. Creators Builders*); PLD 1986 SC 35 (*Samar Gul v. Central Government*)

Argument Evaluation

5. Counsel for both parties have been heard, and the record duly considered.

Judicially Derived Key Principles Of Order 7 Rule 11 CPC

6. As a starting point, Order 7 Rule 11 CPC prescribes the following:

11. Rejection of plaint: The plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so; and*
- (d) where the suit appears from the statement in the plaint to be barred by any law.*

7. The progression of legal interpretations on Order 7 Rule 11 CPC has led to the establishment of several key principles that shape its judicial understanding and application. Some of the principles derived thus far from this ongoing legal evolution are summed up below:

- i) The primary objective of Order 7 Rule 11 CPC is to shield parties from the burden of frivolous litigation right at the outset of legal proceedings, ensuring that baseless claims are identified and addressed before they consume judicial time and resources⁶.
- ii) The Court has a duty to reject a plaint if it is evident, upon examination, that the suit is incompetent. It is not only empowered but also obligated to do so, even *suo motu*, if any grounds under Order 7 Rule 11 CPC are met⁷.
- iii) The assertions in the plaint must be evaluated solely to determine whether a cause of action is disclosed. Lack of proof or weakness of evidence does not justify concluding that no cause of action is shown in the plaint⁸.

⁶ *Pakistan Agricultural Storage v. Abdul Lateef* (PLD 2008 SC 371)

⁷ *Ali Shan v. Essem Hotel Limited* (2007 SCMR 741); *S. Abdul Mannan Muttaqi v. Defence House Authority* (2014 MLD 1380)

⁸ *Ghulam Ali v. Asmat Ullah* (1990 SCMR 1630); *Mamoon v. Province of Sindh* (Unreported judgment dated 22.1.2020 of DB of Sindh High Court in CP No.D-6278/2016)

- iv) Primacy, though not exclusivity, is accorded to the contents of the plaint. However, this does not obligate the Court to accept every averment in the plaint as true or to accept as correct any self-contradictory or absurd statements. Order 7 Rule 11 CPC fully preserves the inherent power of the Court to determine whether a suit is barred by any law in force, ensuring the Court's authority to uphold principles of justice and equity remains unaffected⁹.
- v) For purpose of Order 7 Rule 11 CPC, the Court is not to compare the pleadings and decide whether the plaint or the written statement is right. In Rule 11 cases, the focus is solely on whether the plaint is barred by law, not on the credibility of either party¹⁰.
- vi) If, after reviewing the averments in the plaint and the documents on record, the Court concludes that even if all the allegations in the plaint are assumed to be true, the plaintiff would still not be entitled to the relief claimed, the Court is justified in rejecting the plaint under Order 7 Rule 11 CPC¹¹.
- vii) In cases involving disputed questions of fact or law, Order 7 Rule 11 CPC cannot be invoked. Instead, the Court ought to frame issues on these questions and resolve them on the merits, based on the evidence, in accordance with the law¹².
- viii) For the rejection of a plaint, the conventional view was that rejection under Order 7 Rule 11 CPC should be based solely on the contents of the plaint. However, this stance has evolved to permit the consideration of undisputed additional material on record¹³.
- ix) The rejection of a plaint under Order 7 Rule 11 CPC and the maintainability of a suit are distinct legal concepts. A plaint may not qualify for rejection under Rule 11, yet the suit could still be dismissed later as non-maintainable for various other reasons. Likewise, the likelihood of a suit succeeding on its merits is an entirely separate consideration. The Court's decision to reject a plaint

⁹ *Abdul Karim v. Florida Builders* (PLD 2012 SC 247)

¹⁰ *Ibid*

¹¹ *Pakistan Agricultural Storage v. Abdul Lateef* (PLD 2008 SC 371)

¹² *Mamoon v. Province of Sindh* (Unreported judgment dated 22.1.2020 in CP No.D-6278/2016 of DB of Sindh High Court)

¹³ *Jewan v. Federation of Pakistan* (1994 SCMR 826); *S.M. Shafi Ahmad Zaidi v. Hassan Ali Khan* (2002 SCMR 338); *Arif Majeed Malik v. Board of Governors Karachi Grammar School* (2004 CLC 1029); *Muhammad Saleemullah v. Additional District Judge* (PLD 2005 SC 511); *Port Services Company Ltd v. Port Services (Pvt) Ltd* (2006 CLC 303); *Abdul Karim v. Florida Builders* (PLD 2012 SC 247)

depends solely on whether it satisfies the legal criteria for rejection (e.g. failure to disclose a cause of action or being barred by law), and not on the plaintiff's chances of ultimately succeeding in the case¹⁴.

- x) If a plaint is rejected under Order 7 Rule 11 CPC, the plaintiff is not barred from filing a fresh plaint on the same cause of action, as permitted by Order 7 Rule 13 CPC, provided that the right of action is not prohibited by law. If a plaint is rejected due to undervaluation or failure to affix proper court fee stamps, the plaintiff can rectify these issues and file a fresh plaint within the prescribed limitation period. On the other hand, if the plaint is rejected after determining that there is no cause of action or if the suit is barred by law, the rejection may have the effect of res judicata, barring the plaintiff from re-filing the same case. Thus, the ability to file a fresh plaint depends on the nature of the rejection order¹⁵.
- xi) A plaint cannot be rejected piecemeal under Order 7 Rule 11 CPC. If even one prayer is maintainable or the primary cause of action is not barred by law, the plaint cannot be rejected, even if a secondary cause of action is barred¹⁶. Similarly, partial rejection is not permissible if the suit is barred only against some defendants or if some plaintiffs are found not entitled to relief¹⁷.

Locus Standi To Challenge Vires

8. Now, addressing the case at hand, as regards the locus standi of the Plaintiffs to challenge the vires of the Act of 2016 due to the non-framing of rules, it is not necessary for a person to be registered or licensed under a statute to impugn it. It is sufficient that he is affected by it. Similarly, the Plaintiffs are not required to be registered or licensed under the Act of 2016 to challenge its constitutionality or legality. The key consideration is whether they are affected by its provisions. If the Plaintiffs' rights or interests are impacted by the Act, they have the standing to bring a challenge. This principle ensures that individuals or entities who suffer harm or are likely to

¹⁴ *Al Meezan Investment Management v. WAPDA First Sukuk* (PLD 2017 SC 1); *Kiran Babu v. Jamil Ahmed* (Unreported judgment dated 16.2.2021 in CP No.D-1103/2021 of DB of Sindh High Court); *Muhammad Khan v. Province of Sindh* (Unreported judgment dated 26.2.2021 in CP No.D-2132/2019 of DB of Sindh High Court)

¹⁵ *Muhammad Ali v. Province of Punjab* (2009 SCMR 1079); *Muhammad Fazil v. Mumtaz Munnawar Khan Niazi* (deceased) (2024 SCMR 1059)

¹⁶ *Kaikusro Merwan v. Ardeshir Merwan* (1989 MLD 3281); *Khursheed Jehan v. Aziz Ahmed Naqvi* (1990 CLC 1132); *Attaullah v. Sanauallah* (PLD 2009 Kar 38); *Ali Gohar v. Abdullah Mallah* (2021 CLC 1102); *Rehmat Begum v. Mehfooz Ahmed* (PLD 2024 SC 1108)

¹⁷ *Moinuddin Paracha v. Sirajuddin Paracha* (1994 CLC 247)

suffer harm due to the operation of the law have the right to contest it, even if they are not directly subject to its regulatory framework.

9. The decision in *Muhammad Akbar*¹⁸, cited by the SFA's Counsel, is easily distinguishable. In that case, the petitioners did not challenge the vires of the Act 2016, but instead contested a notification issued under it. Without prejudice, the cited case (at paragraph 11) notes that the petitioners failed to prove they had submitted applications to the relevant authority for a license, which the authority denied receiving, and nor produced copies of those applications which allegedly remained pending. This is not the situation in the present case (for reasons stated in paragraph 12 below).
10. The contention raised by Counsel for SFA – that the validity of the Act 2016 was confirmed in *Nadeem Mumtaz Raja* (supra) – is misplaced. The central issue in that case was whether the Act 2016 was inapplicable to cantonment areas in light of the *Cantonment Pure Food Act, 1966*. The constitutionality of the Act 2016 was never under consideration in the said case.

Shunning Piecemeal Rejection Of Plaint & Considering Subsequent Developments

11. Even assuming, without conceding, that holding a license is a prerequisite for challenging the vires of the Act 2016, the SFA itself acknowledges that Plaintiff No.18 is the only one holding a license. Therefore, as long as the Suit 1481 can be maintained by even one Plaintiff, the Plaint cannot be rejected for the reason that the Plaint cannot be rejected in fragments or in portions.
12. Without prejudice to the above, during the pendency of Suit 1481, licenses have been issued to Plaintiffs No.6 and 16, while applications from Plaintiffs No.2 to 5, 7 to 9, 12 to 14, 17 and 20 remain pending before the SFA, who have deposited the license fee with SFA but have not been issued licenses. The written synopsis submitted by the Plaintiffs' Counsel includes copies of these recently issued licenses and pending applications along with fee payment receipts as annex. When specifically queried about the later developments regarding the issuance of licenses and the status of pending license applications for some of the Plaintiffs, the Counsel for SFA did not refute or challenge the assertions made. The Court is fully empowered to take cognizance of these changed circumstances and subsequent developments¹⁹.

¹⁸ *Muhammad Akbar v. Province of Sindh* (PLD 2023 Sindh 142)

¹⁹ *Ali Asghar v. Creators Builders* (2001 SCMR 279)

13. So also, a court with jurisdiction over a matter has the authority to grant appropriate relief in the interest of justice, even if it has not been explicitly claimed, so long as it falls within the court's jurisdiction. In determining the relief sought, the plaint must be considered in its entirety, focusing on its substance rather than its form²⁰.
14. Even assuming the Court rejects the Plaint of those Plaintiffs on the grounds that they did not possess a license at the time of filing Suit 1481, in view of Order 7 Rule 13 CPC such Plaintiffs are not barred from filing fresh suits the following day or in the near future, now that they have obtained the required license. Such rejection would only lead to unnecessary multiplicity of proceedings.

Alternate Remedy Under Act 2016

15. The Plaintiffs have directly challenged the vires of the Act 2016, rather than contesting any specific order or notification issued under its provisions. As such, since there is no order being disputed in this case, the issue of invoking an alternative remedy, such as an appeal before the Appellate Authority, does not arise. The matter at hand pertains to the constitutionality and legality of the Act itself, and any remedy related to specific administrative actions or orders would be irrelevant in this context.

Legal Character Under Section 42 Of Specific Relief Act, 1877

16. The SFA contends that Suit 1481 is barred under Section 42²¹ of *Specific Relief Act, 1877* ("**SRA**"), arguing that the Plaintiffs lack the necessary legal standing or enforceable right to challenge the vires of Act 2016. However, the exact legal standing required of the Plaintiffs by the SFA to challenge the legality of a statute remains ambiguous and has not been sufficiently explained by the SFA's Counsel.

²⁰ *Samar Gul v. Central Government* (PLD 1986 SC 35); *Sharaf Faridi v. The Federation of Islamic Republic of Pakistan* (PLD 1989 Kar 404)

²¹ Section 42 of Specific Relief Act, 1877: Discretion of Court as to declaration of status or right. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Bar to such declaration. Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation. A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

17. It goes without saying that the locus standi for such challenges is not limited to a particular "*legal character*" but depends on whether the Plaintiffs are directly affected by the provisions of the statute. Therefore, the assertion that the Plaintiffs lack the requisite legal standing to challenge the competence of the Act 2016 is unfounded and unsupported by any clear legal basis.
18. Even otherwise, the archaic and conservative interpretations historically associated with Section 42 of SRA have long been shed. The non-exhaustive²² nature of Section 42 is by now a matter of established jurisprudence and needs no repetition. What this means is that Section 42 does not provide a comprehensive or exclusive framework for all possible legal remedies related to declaratory relief. Courts are, therefore, not strictly limited to the remedies or scenarios explicitly mentioned in this Section. Instead, Courts can interpret the Section more broadly and address cases that may not fit neatly within its technical wording, particularly in light of evolving rights and legal principles.
19. The principle established in *Arif Majeed Malik*²³ (supra) firmly asserts that wherever there is a right, there must be a remedy to enforce it. This guiding dictum has consistently encouraged courts to transcend the rigid technicalities of Section 42 of SRA, ensuring that substantive justice prevails over procedural constraints. This flexibility allows Courts to adapt to changing societal and legal landscapes, ensuring justice is not denied simply due to technical constraints of the statute. This evolution also reflects an acknowledgment that the law must remain a living instrument, capable of addressing emerging rights and complex legal relationships effectively.

Impact Of The 26th Amendment To The Constitution Of Pakistan, 1973

20. At the last hearing, the SFA's Counsel made a fleeting attempt to question the effect of the *Constitution (Twenty-Sixth Amendment) Act, 2024 (Act No.XXVI of 2024) ("26th Amendment")*, passed by the Parliament on 21.10.2024, on the instant Suit. His contention was that this Court, in its original jurisdiction, cannot entertain relief of the nature prescribed under Article 199(1)(a)(i) and (c) of the Constitution, as Article 202A(3)²⁴ has now

²² *Veruareddi Ramaraghava Reddy v. Konduru Seshu Reddy* (AIR 1967 SC 436); *Supreme General Films Exchange v. Brijnath Singhji* (AIR 1975 SC 1810); *H.A. Rahim & Sons v. Province of Sindh* (2003 CLC 649); *Arif Majeed Malik v. Board of Governors Karachi Grammar School* (2004 CLC 1029); *Naseem-ul-Haq v. Raes Aftab Ali Lashari* (2015 YLR 550)

²³ *Arif Majeed Malik v. Board of Governors Karachi Grammar School* (2004 CLC 1029)

²⁴ Article 202A(3) inserted by 26th Amendment: No Bench of a High Court other than a Constitutional Bench shall exercise jurisdiction vested in the High Court under subparagraph (i) of paragraph (a) and paragraph (c) of Clause (1) of Article 199

removed the jurisdiction to grant such relief from Regular Constitutional Benches, vesting it exclusively in the newly established Constitutional Benches.

21. To give context, with the enactment of the 26th Amendment, a new division within the High Court has been established. This amendment assigns specific responsibilities under the Constitution to special benches of the High Court, designated as "Constitutional Benches" by the Judicial Commission of Pakistan, pursuant to Articles 175, 175A, and 202A of the Constitution. The Supreme Court of Pakistan, in a press release dated 25.11.2024, announced that the Judicial Commission of Pakistan (established under the 26th Amendment), approved the formation of Constitutional Benches in the High Court of Sindh during its meeting.
22. In response to the above assertion by the Counsel for SFA, rather than reinventing the proverbial wheel, the recent ruling in Attock Cement Pakistan²⁵ can be aptly cited. In this decision (see its paragraphs 26, 28, 30, 31, 45 and 46), a Division Bench of this Court has held that:
 - i) The newly created Constitutional Benches exercise jurisdiction specifically in terms of Article 199(1)(a)(i) and Article 199(1)(c). However, challenges to the vires of a statute (such as in the instant Suit, where only the vires of the Act of 2016 are under challenge) fall under Article 199(1)(a)(ii). Consequently, following the 26th Amendment of the Constitution, matters falling under the residual clauses of Article 199, including Article 199(1)(a)(ii), remain within the jurisdiction of Regular Constitutional Benches.
 - ii) The High Court's power to declare a law unconstitutional is inherent, stemming from the Constitution's overall scheme rather than specific provisions like Articles 184 or 199. As a constitutional court, the High Court can still grant relief under Article 199(1)(a)(ii) in cases where the remedy sought does not fit neatly within the specific provisions of Articles 199(1)(a)(ii) or 199(1)(b)(i) and (ii), and no one else other than the constitutional High Court can provide such relief.
23. It is worthwhile to remember here that the jurisdiction exercised by a Single Judge on the Original Side of this Court is not that of a Civil Court, but that of a High Court or Constitutional Court²⁶. Furthermore, a challenge to any law on the grounds of inconsistency with the Fundamental Rights granted by the

²⁵ *Attock Cement Pakistan v. Federation of Pakistan* (Unreported order dated 2.12.2024 of DB of Sindh High Court in CP No.D-1590 of 2023)

²⁶ *Searle IV Solution v. Federation of Pakistan* (2018 SCMR 1444)

Constitution or its violation of any constitutional provision can be validly raised in a civil suit and is not restricted to constitutional petitions alone²⁷.

Conclusion

24. Given the above, the Plaint is not liable to be rejected at this stage. What warrants rejection, however, is the SFA's application under Order 7 Rule 11 CPC (CMA No.16260/2023), which is hereby **dismissed**. No costs are awarded in this matter.

JUDGE

Karachi
Dated: 27th January, 2025

²⁷ *Mirpurkhas Sugar Mills v. Consolidated Sugar Mills* (PLD 1987 Kar 225); *Bank of Oman v. East Trading Co. Ltd* (PLD 1987 Kar 404); *HA Rahim & Sons v. Province of Sindh* (2003 CLC 649); *Sanofi Aventis v. Province of Sindh* (PLD 2009 Kar 69); *Muhammad Hussain v. Pakistan* (2016 PTD 622); *Engro Elengy Terminal v. Federation of Pakistan* (2017 PTD 959)