

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P. No. D-3141 of 2024

(M/s. Pak Sun Green [PVT] Ltd. and others v/s Federation of Pakistan and others)

PRESENT:

MR. JUSTICE MUHAMMAD KARIM KHAN AGHA

MR. JUSTICE NISAR AHMED BHANBHRO

Petitioners : Through Mr. Taha Abassi Advocate
Respondents : Through Ms. Wajiha Mehdi,
Assistant Attorney General.
Date of hearing : 12.03.2025
Date of Announcement : 20.03.2025

ORDER

Nisar Ahmed Bhanbhro, J. The petitioners, through the instant Petition have challenged Enquiry No. 53 of 2023 (**the said inquiry**), initiated by the Federal Investigation Agency (**FIA**). The Petitioners seek the indulgence of this Court to declare **the said inquiry** illegal, unlawful, unjustified, arbitrary, and in violation of the principles of natural justice, equity, and fairness, and to quash **the said inquiry** and further the Respondents, including **FIA**, may be directed to act in accordance with law and to refrain from taking any action against the Petitioners in violation of law and set aside the notice dated 24.06.2024 (**the impugned notice**) summoning the Petitioner No 3 to record his statement.

2. The facts in brief leading to this Petition are that Petitioners No. 1 and 2 are Private Limited companies, sole proprietorship, concern and family concerns of Petitioner No. 3. The Petitioners are engaged in the business of Import and Export, and processing fresh

fruits and vegetables. The Petitioners have established a state-of-the-art Hot Water Treatment (**HWT**) facility to enhance the shelf life of fresh fruits and vegetables for export purposes. The **HWT** facility has been approved by the Plant Quarantine Organizations of various countries. The Petitioners are pioneers in the business of fruit and vegetable process and through their dedication, honesty, and hard work, they have successfully expanded their market for the export of fruits and vegetables from Pakistan. They are regular taxpayers and contribute significantly to bringing much-needed foreign exchange into the country, The Petitioner have established **HWT** facility at Plot No 55 Deh Gadap opposite Baqai University. The Respondents No 3 and 4 who are officers of **FIA** conducted a raid at the petitioners' factory premises on 24.06.2024 without giving petitioners prior notice ahead of the raid, the said act was done under the pretext of an inquiry initiated on the complaint of certain private individuals who are competitors of the Petitioners. Per Petitioners' assertions that the import and export of fruits and vegetables, in terms of Sanitary and Phytosanitary regulations, are governed under the Pakistan Plant Quarantine Act, 1976 (**PPQA**) and the Rules of 2019 framed thereunder. Any violation or contravention of provisions of **PPQA**, 1976 was not a scheduled offense under the **FIA** Act, 1974. Thus, the **FIA** was not under competence and vested with jurisdiction to take cognizance of any offense falling under the ambit of **PPQA**, 1976. The cognizance of an offense punishable under **PPQA**, 1976 can only be taken by a Court on complaint in writing by an officer authorized in this regard by the Federal Government. In all circumstances, it is the Department of Plant Protection (**DPP**) responsible for initiating any complaint regarding violations or contravention of the provisions of the **PPQA**, 1976. The **FIA** is acting at the behest of certain private fruit processors whose licenses have been suspended by National Plant Protection Organization (NPPO) Iran for defective disinfestation treatment, non-compliance of standards 2005 MoU, Technical Procedures 2015 between Department of Plant Protection (**DPP**) and Plant Protection Organization (**PPO**) Iran due to which their export of fruits to Iran were banned. That the rival Competitors of the Petitioners lodged frivolous complaints against the Petitioners before **FIA** leveling allegations against the Officers of **DPP** for extending undue favor to the Petitioners. That

the **FIA** calls the officers of **DPP** in its office to harass and humiliate them by making them wait for hours. The conduct of the **FIA** officials is seriously prejudiced against the export and import of the Country. The Officers of **DPP** have already filed CPD 4256 of 2023 titled Samra Arif & others VS Federation of Pakistan & others in which the jurisdiction of **FIA** to investigate offences falling under the provisions of **PPQA**, 1976 has been challenged. That the Petitioner No 2 was subjected to harassment in the past when similar action was initiated against him during mango processing season of 2021. Petitioner No 2 challenged such an inquiry before this Court and after passage of time the inquiry was closed as no evidence was found. The **FIA** raided the Petitioners' factory premises on 24.06.2024 and detained the factory workers. They were pressurized to sign blank papers so that their statements could be managed against Petitioners. That the impugned notice dated 24.06.2024 has been issued to cover illegal raid and the Petitioners are being implicated in false and frivolous inquiry at the behest of Private Individuals. The **FIA** lacks jurisdiction to investigate matters falling within the ambit of **PPQA** 1976. The raid conducted on the factory premises by the **FIA** is illegal and exceeds the powers conferred upon the agency under the **FIA** Act, 1974. The petitioners have not been treated in accordance with the law, and their fundamental rights have been violated, making such actions amenable to judicial review under the writ jurisdiction of this Court. The Petitioners prayed for quashing the inquiry proceedings.

3. Respondents No 2 to 4 (**FIA**) in their joint reply averred that the petition was not maintainable under the law. The Petitioners filed this Petition with unclean hands, narrating incorrect and misleading facts. The **FIA** Karachi Anti -Corruption Circle initiated Enquiry No. **53 of 2023** based on written complaints received from four complainants namely Syed Qasim Ali Zaidi, owner of M/s. Al-Qasim Mango Processing and Pack House, Hot Water Treatment Plant, near SUPARCO, Karachi, Mr. Junaid Haider Shah, CEO of M/s. Haider Shah Mango Hot Water Treatment Plant, DHA, Karachi, Mr. Zulfiqar Ali, owner of A.Z.Z Traders, Mango Hot Water Processing Unit and Muhammad Shahzad Shaikh of M/s. PFVA (Pakistan Food and Vegetable Exporters and Importers and Merchant Association, Karachi). The complaints were lodged against the officials of **DPP**, Government of

Pakistan, Karachi, alleging that the Officers of **DPP** were demanding lavish food, conveyance, unjustified demands and causing hinderances in the export of mango abroad just to give undue favors to **M/S Durrani Associates** to monopolize mango trade. The complaints further alleged that mangoes were exported to Iran without proper treatment. No raid was conducted on petitioners' factories. That on 24.06.2024, the Respondent No. 4/ Inquiry Officer visited the factory premises to verify whether the **HWT** plant for mangoes treatment was operational. During the visit, it was found that the plant was non-functional, and only five to six employees of **M/s. Durrani Associates** were present. A notice for the appearance of **Petitioner No 3 Babar Khan Durrani** was handed over to one employee namely Hamza Sattar, but he refused to receive it. That there were serious allegations regarding the export of untreated mangoes to Iran and other destinations in connivance with officials of the **DPP**. Other companies exporting mangoes to Iran were not being issued verification emails upon crossing Pakistan border, allegedly due to the involvement of these officials. This malpractice resulted in significant financial losses for Pakistan and led to Pakistani mangoes being sold at extremely low prices in international markets. That the officers of the **DPP** were involved in corruption, misuse of authority, and abuse of official position, and said offenses are covered under Section 5(2) of the Prevention of Corruption Act (**PCA**) 1947 and accused of abetment an offence punishable under Section 109 of the Pakistan Penal Code. These offenses fall within the scheduled offenses under the **FIA** Act, 1974. The **FIA** was not conducting any inquiry under the provisions of the **PPQA**, 1976, or the Rules of 2019 framed thereunder, but was instead acting within its jurisdiction to investigate offences of corruption and corrupt practices within the mandate of **FIA** in accordance with the law.

4. Mr Taha Abassi, the Learned counsel for the Petitioners contended that the Petitioners were companies recognized under the provisions of **PPQA**, 1976, and the Rules of 2019 framed thereunder. The company established a **HWT** Plant for the phytosanitary treatment of fresh fruits and vegetables intended for export from Pakistan. Under the provisions of the **PPQA**, 1976, and the Rules of 2019, only an officer authorized by the Federal Government in that behalf was competent to file a complaint in court if any offence

was committed by the company. The **FIA** was established under the **FIA Act, 1974** and was empowered to inquire into and investigate matters falling in the Schedule under Section 3(1) and (6) of the said Act. The **PPQA, 1976**, is not included in the Schedule of the **FIA Act 1974**, the **FIA** had no jurisdiction to investigate the offences or contraventions falling within the meaning and definition of section 3, 4 & 5 of the **PPQA, 1976**. Learned Counsel for the Petitioners further argued that the **HWT** facility was established by them after obtaining the necessary approvals, clearances, and fulfilling all formalities under the **PPQA, 1976** and the Rules of 2019. The **FIA**, at the behest of the Petitioners' business rivals, raided the premises without any prior notice, exceeded its authority and violated the fundamental rights of the Petitioners enshrined under Articles 4, 9, 18, 23, and 25 of the Constitution. The **impugned notice summoning Petitioner No 3** is illegal and beyond jurisdiction, constituting an attempt to interfere with the legitimate business activities of the Petitioners' company. If the Petitioner No 3 appeared before Enquiry Officer, his reputation would be damaged, and he would be disrespected and humiliated. Since the matter fell under the provisions of the **PPQA, 1976**, which was not scheduled under the **FIA Act, 1974**. The investigation/ inquiry is illegal, void, and without jurisdiction, therefore, prayed for the quashing of **Enquiry No. 53 of 2023** and for setting aside the impugned notice.

5. Ms. Wajiha Mehdi, Learned Assistant Attorney General, argued that the Petition was not maintainable under the law, as this Court lacked jurisdiction to interfere in investigations/ Enquiry by the **FIA**. She contended that the **FIA** received various complaints against the officials of **DPP** that they were extending undue favors to a particular group for exporting mangoes to Iran, viz. **M/S. Durrani Associates**. The officials of the **DPP**, in connivance with **M/s. Durrani Associates**, facilitated the export of untreated mangoes to Iran, causing a loss of millions of rupees to the **National Exchequer**. She argued that due to the illegal and unwarranted actions of **DPP** officials, the foreign trade of Pakistan's fruit and vegetable sector suffered a significant setback, resulting in a drastic reduction in foreign exchange earnings. She further contended that **DPP** officials were responsible for issuing NOCs (No Objection Certificates) for the treatment of mangoes. However, acting under the influence of **M/s. Durrani Associates**, they

deliberately delayed issuing verification through email for rival exporters, causing financial losses to them. The CEO of M/s. Haider Shah Hot Water Treatment Plant lodged a complaint with the **FIA**, stating that 18 consignments were issued by the Department of Plant Protection on 26.05.2023 for mango exports to Iran. However, when these consignments crossed the Pakistan-Iran border and reached at Mirjaveh [Boarder area], **DPP** officials failed to issue verification emails in time despite repeated requests. The verification emails were eventually issued on 31.05.2023, resulting in significant losses for the exporters as by that time mango had lost its quality and was sold at a very cheap price. She contended that the **FIA** was investigating the offences covered under section 5 (2) of PCA 1947 and section 109 PPC against the officers of **DPP**. The offences under Enquiry are scheduled under the **FIA**, Act 1974. the **PPQA**, 1976 has got no relevance with the subject matter of inquiry. The Petition was filed with ulterior motives to circumvent the inquiry proceedings. She prayed for dismissal of Petition.

6. We have heard Learned Counsel for parties and examined material available on record with their able assistance.

7. The core issue involved in the present lis is whether the **FIA** is competent to investigate the matter, which is the subject matter of this Petition. To resolve this issue, it must be examined whether the **FIA** is conducting an inquiry for the offences cognizable under the **PPQA**, 1976 or the offence cognizable under the **PCA**, 1947.

8. To reach a definite answer to the core issue involved in the present petition, a visit of the relevant provisions of the laws is essential. The **PPQA**, 1976 was enacted to give effect to the understanding reached in International Plant Protection Convention 1951 to which Pakistan is also a signatory. The purpose of enactment of the **PPQA**, 1976 was to regulate the import and export of plant related articles (fruits, vegetables etc.). The Section 3 of the **PPQA** 1976 empowered the Government of Pakistan to prohibit or regulate the import or export of certain articles through a notification issued by the Government in that behalf under Official Gazette. The operation of any notification issued under section 3 had the import and meaning as that of section 16 of the Customs Act 1969, empowering the

Customs Officials to act against any contravention of the said Act. The contravention of the provisions of the **PPQA**, 1976 was punishable under section 6 and the Court of law could take cognizance of the offence when a complaint was filed by the officers authorized by the Federal Government in that behalf. For ease of reference the Sections 6 and 7 of the **PPQA**, 1976 are reproduced below:

(6) Penalty: *Whoever contravenes or attempts to contravene any of the provisions of this Act, or of any rules made or notification issued thereunder, shall, without prejudice to any confiscation or penalty to which he may be liable under the provisions of the Customs Act, 1969 (IV of 1969), as applied by Section 4, be punished with fine which may extend to five hundred rupees and, upon any subsequent conviction, with imprisonment for a term which may to six months, or with fine which may extend to two thousand rupees, or with both.*

(7) Cognizance of offence: *No court shall take cognizance of any offence under this Act except upon complaint in writing made by any officer authorized by the Federal Government in this behalf.*

9. The law empowers the Federal Government to regulate plant imports and exports. Section 6 of the **PPQA** 1976 says that the violations of the Act or its rules might result in fines and sentence of imprisonment, but only upon a complaint filed by an authorized officer before the Court having jurisdiction. The provisions of **PPQA**, 1976 shall apply to the concerns carrying the business of import and export of plants (plants would herein mean the plants as defined under section 2 of the **PPQA**, 1976). The **PPQA**, 1976 lays down in clear terms that the officers appointed by the Federal Government would take action against the concerns dealing with import and export business if found acting in contravention of the prohibitions or restrictions imposed by the Government in terms of section 3 and 4 of the **PPQA**, 1976.

10. The **FIA** has been established by the Federal Government under section 3 of the **FIA** Act, 1974, for inquiry into and investigation of the offences specified in the schedule to the said Act, which includes an attempt or abetment or conspiracy to commit the scheduled offence. Under section 5 of the **FIA** Act 1974, the members (officers) of the **FIA** are empowered to conduct search, seize the property and arrest of the people suspected of the commission of cognizable offences. The Officer of rank of Sub Inspector has been delegated the same powers as bestowed upon the Station House Officer of Local Police under sections 154 and 156 of Code of Criminal Procedure. The **FIA** has been empowered to investigate allegations of corruption, corrupt practices, and misuse of authority as defined under **Prevention of Corruption Act, (PCA)1947**. Offenses under **PCA** 1947 are cognizable and punishable with imprisonment up to seven years or fines, or both.

11. To examine whether the **FIA** was conducting Enquiry No 53 of 2023 relating to an offence scheduled under **FIA**, Act 1974 or was probing the contravention of prohibitions if any imposed by the Government under section 3 of the **PPQA** 1976, it would be relevant to peruse the complaints lodged against the Petitioners and officers of the **DPP**. The minutiae of the complaint lodged by different business concerns dealing with the export of Mango revealed that the Petitioners were engaged in the **export of mangoes**, they had established a **Hot Water Treatment Plant** for phytosanitary of plants. The **Department of Plant Protection (DPP)** issued **NOCs** to the Petitioner but simultaneously caused hurdles for rival competitors of Petitioners, leading to financial losses to the **National Exchequer**. The **FIA**'s investigation pertained to allegations against **DPP officials** and the Petitioners' alleged abetment in getting Quarantine Certificates exclusively to them while delaying certification for rival competitors, which prima facie amounted to a misuse of authority and corrupt practices.

12. There is no denial to the fact that Officers of **DPP** are public servants discharging their duties in connection with the affairs of the Federation. The **FIA**, an investigating agency, was well within its competence and jurisdiction to investigate complaints against public servants regarding corruption, corrupt practices and misuse of authority. The bare

perusal of **the impugned notice** reveals that the **FIA** was engaged in enquiry against the officers of **DPP** for their alleged involvement into corruption and corrupt practices, misuse of authority at the instance and abetment M/S Durrani Associates and creating problems and hinderances in export of Mango for rival competitor companies. For the sake of convenience, **the impugned notice** is reproduced hereunder:

Government of Pakistan

Office of the Additional Director

Federal Investigation Agency Anti-Corruption Circle Karachi

\No FIA /ACC/ ENQ – 53 / 2023 / 2024 - 4831 – 32

dated 21.06.2024

M/S Babar Khan Durrani

Owner of M/S Durrani Associates

Durrani Associates situated at No 55 Dehtorre

Superhighway Gadap Town Karachi

Opposite Baqai Medical College

NOTICE FOR ATTENDANCE U/S 160 CRPC

Subject: ENQUIRY NO 53/2023 OF FIA ANTI-CORRUPTION CIRCLE KARACHI

*Whereas I, sub Inspector Erum Yasir, an officer of the Federal Investigation Agency, Anti-Corruption Circle Karachi being empowered under section 5(2) of the FIA Act 1974, am engaged in enquiry No 53 of FIA Anti-Corruption Circle, registered on the complaint lodged by different Mango Hot Water Treatment Plant Owners on allegation of that the Department of Plant Protection (DPP) is creating problems and hinderances for exporting mango **further extending undue favor to M/S Durrani Associates**. During the Course of enquiry, it has come on record that Durrani Associates have been registered by the Department of Plant Protection (DPP) for mangoes treatment, and it appears that you are acquainted / well conversant with the circumstances leading to subject inquiry.*

And therefore, you are hereby required to appear before the undersigned on 26.06.2024 at 1400 hours positively along with original CNIC and all related documents / records pertaining to the subject matter, and to answer such questions as may be put to you for recording your statement.

In case of non-compliance legal action will be initiated in accordance with law.

\\Sd/

(Erum Zehra)

Sub Inspector / E.O

FIA, ACC Karachi

The language contained in **the impugned notice** summoning Petitioner No 3 for recording his statement suggests that the enquiry under question has nothing to do with the offences or contraventions of any provisions of law under **PPQA**, 1976. It relates to the misuse of authority, corrupt practices by the officers of **DPP**. No offence under the provisions of **PPQA** 1976 attracted from the perusal of **the impugned notice**. The language of **the impugned notice** suggested that the **FIA** was enquiring against the officials of **DPP** into the allegations of misconduct within the meaning of section 5(2) of the **PCA** 1947 but not those of Section 6 of **PPQA** 1976 which has got no relevancy to the matter under enquiry.

13. The contention of the Petitioner that the **FIA** has conducted raid on factory premises without any lawful authority, such actions on the part of **FIA** vitiated all the proceedings under enquiry, are without any backing of the law. Though the **FIA** in its reply admitted that they visited the Petitioners' factory premises on 24.06.2024 to ascertain the status of **HWT** plants established by the Petitioners. **During visit of the HWT plant by FIA it revealed that the HWT plant was in-operational. It was a peak mango export season and Petitioner Company was exporting mangoes to Iran on the basis of Phytosanitary Certificates of Quarantine issued by the officers of the DPP. Since the factory was not operational and Petitioners were getting certification of disinfection process of the mango from DPP, which revealed that Petitioners were exporting mango to Iran without disinfection treatment under managed certificates, such assertion finds support from the letter dated 03.07.2024 written by the Ministry of Agriculture – Jihad Plant Protection Organization Islamic Republic of Iran to Mr Muzammil Hussain Entomologist Department of Plant Protection Karachi detailing the list of the approved mango disinfection facilities. In the said letter the Government of Iran has**

disallowed mango exports from Pakistan to Durrani Associates (Petitioners) categorically mentioning that phytosanitary Certificates were issued without disinfection. Such an allegation from a foreign country was very serious in nature, it damaged Pakistan's trade reputation and might cause diplomatic tensions with Iran. An agricultural Country like Pakistan cannot afford such colorful exercise of the powers by the officers trusted with a sacred duty of export of commodities, in fact it lowers the reputation of nation in the entire world. If companies engage in fraudulent export activities, it would have long lasting effects on the foreign exchange of the Country which majorly depends upon agriculture exports.

14. The discussion made hereinabove leads to a conclusion that the **FIA** is enquiring into a very sensitive matter of export of plants (fruits & vegetables) to foreign countries. These exports are subject to a certificate of quarantine issued by the officers of Department of Plant Protection that the fruit and vegetable have underwent a process of phytosanitary for disinfection. The importers believing those certificates to be true purchase the commodities and during the enquiry proceedings it has revealed that such certificates of mango export were fake as the mangoes received by the Foreign Traders / Importers did not undergo phytosanitary process. Such an act on the part of the officers of **DPP** was potentially an offence independent of the prohibitions contained in section 3 of the **PPQA**, 1976 and might constitute an offence of misconduct defined under section 5 of the **PCA** 1947. The **FIA**, being the investigating agency placing checks on the officers of the Federal Government would be competent to inquire and investigate such allegations and it would be necessary to sift grain from the chaff by conducting fair and transparent inquiry. Needless to mention that if the **FIA** or any other agency undertaking inquiry / investigation against public servants comes to a finding that the offence of misconduct was committed by them in connivance or abetment of private persons, the agency might proceed against them by arraigning them as accused and sending them to court of law for prosecution.

15. Adverting to the next contention of Learned Counsel for the Petitioners that **the said inquiry** was illegal, and it was being conducted without any lawful authority therefore

required interference by this Court. Learned Counsel for the Petitioners failed to quote a single instance wherein the **FIA** had taken any action beyond its powers or authority conferred upon the **FIA**. Petitioner No 3 was summoned by the **FIA** to record his statement regarding complaints made by private individuals. No action could be pinpointed by the Petitioners, which according to them occasioned the miscarriage of justice. Mere visits or the alleged raids of the **FIA** officials on the factory premises would not in any manner constitute an act of victimization as the allegations contained in the complaint necessitated to inspect **HWT** plants. However, it is observed that such visits should be conducted in accordance with law and only for the purposes of investigation / inquiry.

16. The **FIA** is an independent institution/ agency; tasked with a responsibility to investigate the white color crime, it is required to work within the bounds of law and to ensure the country was free of corruption. The High Court in its writ jurisdiction was custodian of the fundamental rights of the citizens, it would not hesitate to intervene and protect such rights when it was brought on record or notice that the actions on the part of the agency was colorful exercise of powers and tainted with malice, aimed at curtailing the liberty of citizens and taken under certain motivations. The Petitioners failed to quote a single instance of highhandedness at the hands of **FIA** warranting interference by this Court. On the contrary, it came on record that the Petitioners did not cooperate **FIA** during inquiry proceedings and did not come forward to record statement. The Petitioner was required to cooperate with **FIA** to reach a definite and fair conclusion in the investigation, as to the own admission of Petitioners that the earlier inquiry undertaken by **FIA** on similar complaints was closed as no material worth was found against them.

17. The High Court has unfettered powers to issue appropriate writ under article 199 of the Constitution in the cases where it transpired that the executive authority transgressed its powers and violated the fundamental rights of individuals guaranteed under the constitution. The judicial review of such actions would be in the furtherance of the cause of justice. In the case in hand no transgress or actions beyond the bounds of law have surfaced, if the writ as prayed is issued in favor of Petitioners it would amount to throttle

the due process of law. Judicial restraint is essential to continuance of the rule of law, the High Court was not sitting as a Court of appeal against the decisions of executive authority, and it would be fallacy to think that under all situations the powers of judicial review be exercised by the Court, which might frustrate the due process of law.

18. We are fortified in our view by the dicta laid down by the Honorable Supreme Court in the case of **Brig. (Retd) Imtiaz Ahmed Versus Government of Pakistan through Secretary Interior Division Islamabad and 2 others** reported in **1994 SCMR 2142**, wherein the August Court refused to interfere with the process of investigation undertaken by the FIA, the Petitioner in the case referred supra claimed that the FIA lacked jurisdiction to investigate the officers of army. Apex Court upheld the decisions of High Court by refusing the appeal of Petitioner, resulting in continuation of the investigation by Federal Investigation Agency.

19. Sequel to the above discussion we are of the considered view that subject matter of the inquiry No **53 of 2023** falls within the competence and jurisdiction of **FIA** as matter inquiry pertains to the offences detailed in the schedule to **FIA Act 1974**. The Petitioners failed to make out a case calling for interference by this Court, the petition being devoid of merits is dismissed accordingly along with listed applications.

20. Before parting with the order, it is necessary to observe that the impugned inquiry is pending with FIA for more than one and half years. The continuation of the inquiries / investigations for such long periods of time results in unnecessary harassment and embarrassment to the parties. It is therefore expected that the FIA would conclude the inquiry / investigation into the matter expeditiously.

Judge

Head of Const. Benches

Jamil