

IN HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P No.D-175 of 2023

[Mirza Aslam Baig v. Federation of Pakistan & Others]

Before:

Mr. Justice Arbab Ali Hakro

Mr. Justice Riazat Ali Sahar

Petitioner :	Mirza Aslam Baig through Syed Babar Ali Kazmi, Advocate.
Respondent No.1:	Through Mr. Ghulam Abbas Sangi, Assistant Attorney General for Pakistan.
Respondents No.2to4:	Through Mr. Muhammad Nadeem Tagar, Advocate.
Date of Hearing :	<u>11.04.2025</u>
Date of Decision :	<u>11.04.2025</u>

JUDGMENT

RIAZAT ALI SAHAR J: -Through this petition, the petitioner has claimed that he is an experienced and law-abiding bidder and has participated in Customs Department auctions at Hyderabad and Sukkur for the past 22 years, earning his livelihood solely through this lawful activity. On 24.03.2022, the Customs Department released a list of perishable items for auction, including Lot No. 100/21-22 comprising 14,000 liters of foreign-origin cooking oil. The petitioner submitted a bid of Rs. 4,000,000/- (Rupees forty lacs), but during the auction proceedings, he was informed that the lot had been withheld due to stay orders from this Court. Later, the petitioner came to know that the same lot was secretly sold to one Faraz Ali for only Rs. 2,530,000/- (Rupees twenty five lac and thirty thousand only), which was significantly lower than his offer,

thereby causing a substantial financial loss to the national exchequer and raising concerns of favoritism and illegal conduct by the respondents. The petitioner further contends in his petition that he approached Respondent No. 2 with a complaint dated 22.06.2022 and was summoned to appear before the Assistant Collector; however, instead of addressing his grievance, the petitioner was allegedly subjected to verbal abuse and threats by the Additional Deputy Collector, Mr. Asim Rehman, who compelled him to withdraw his complaint. He contends that despite further applications and legal notices, no remedial action was taken; instead, Respondent No. 3, through an order dated 01.08.2022, unjustly restricted the petitioner from entering Customs premises and participating in future auctions. The petitioner contends that this exclusion is based on biasness and baseless grounds and has left him and his family financially shocked. He contends that the conduct of Respondents No. 3 and 4 is illegal, arbitrary and in violation of statutory and constitutional obligations, as such, the petitioner prayed with the following prayers:-

- a. Declare the impugned order dated 01.08.2022 as illegal, unlawful, void, ab-initio, unjustified and unconstitutional and set-aside the same;*
- b. Direct the respondents No.3 and 4 to act strictly in accordance with the law and award bid to the petitioner by accepting his offer which is way higher than the awarded bid/offer;*
- c. Costs of the petition may be saddled upon the respondents.*
- d. Any other relief(s) which this Honorable Court deems fit, just and proper in favour of the petitioner.*

2. In response to the Court notice, the respondents have filed their comments, wherein they denied the petitioner's claims and contended that an open auction was held on 07.04.2022 for Lot No.100/21-22, in which three bidders participated: Mr. Mirza Hassan Baig (Rs.2,200,000/-), Mr. Fayyaz Ali (Rs.2,300,000/-), and Mr. Muhammad Shafique Malik (Rs.2,000,000/-), offering 53.16%, 55.58%, and 48.33% respectively against the reserved price. The competent authority, i.e., the then Collector, Hyderabad, accepted the highest bid submitted by Mr. Fayyaz Ali, who was declared the successful bidder, and the goods i.e. Iranian origin oil were accordingly delivered to him. The respondents further contend that the petitioner neither submitted any bid during the said auction nor was any bid from him received or recorded by the department. The auction proceedings were conducted in accordance with Rule 71 of the Auction Rules, 2001 notified vide SRO 450(I)/2001 dated 18.06.2001, pursuant to the public notice dated 04.02.2022. They also contend that Mr. Asim Rehman, the then Additional Collector, was appointed as the Inquiry Officer on the petitioner's complaint and the petitioner was called upon to submit evidence. The Inquiry Officer, after conducting proceedings, submitted a report on 21.07.2022, concluding that the complainant was attempting to exert pressure on the department to have his bids accepted below fair value and on the basis of such report, the Collector Hyderabad, **as the competent authority, decided to restrict the petitioner's access to the Customs House, Hyderabad, including participation in future auctions.**

3. Learned counsel for the petitioner contends that the petitioner, a seasoned and law-abiding bidder, has been unlawfully restrained from participating in auctions solely due to a complaint he made highlighting irregularities in the auction process. He submits that the petitioner's bid of Rs.4,000,000/- (Rupees forty lacs) for Lot No. 100/21-22 was significantly higher than the amount at which the same lot was later sold. Despite this, the petitioner's grievance was met with hostility and retaliations, including verbal abuse, threats, and eventually, the passing of the impugned order dated 01.08.2022, which barred him from future participation in the auctions. Learned counsel argues that the impugned action is a clear abuse of authority and retaliation against the petitioner's lawful exercise of his right to raise complaints. He further submits that the impugned order violates the principles of natural justice, was passed without affording due opportunity of hearing, and is patently unconstitutional as it adversely affects the petitioner's right to livelihood protected under Article 18 and 25 of the Constitution of Pakistan.

4. Learned counsel for the petitioner contends that the petitioner, a seasoned, regular, and law-abiding bidder, has been unjustly and subjectively restrained from participating in auctions conducted by the Customs Department, solely because he had exercised his right to file a complaint pointing out irregularities in the auction of Lot No. 100/21-22. He emphasizes that the petitioner has an unblemished track record of over 22 years in public auctions at both Hyderabad and Sukkur and has consistently conducted his

business within the ambit of the law, with no history of misconduct. He further contends that on 24.03.2022, when the list of perishable items was released for auction, the petitioner submitted a bid of Rs.4,000,000/- (Rupees forty lacs) for the said lot, which consisted of 14,000 liters of foreign-origin cooking oil. He later came to know that the lot was sold out to another bidder, allegedly a blue-eyed, at a price of only Rs. 2,530,000/- (Rupees twenty five lac and thirty thousand only), which was substantially lower than the offer made by the petitioner, as such, this raised serious questions about transparency, favoritism, and compliance with the statutory auction rules. Learned counsel further contends that rather than addressing the petitioner's grievance in a lawful and impartial manner, the departmental officials responded with hostility and cruelty. He points out that the petitioner was allegedly subjected to verbal abuse and threats by an officer, the Additional Deputy Collector, who not only insulted him but also warned him of dire consequences unless he withdrew his complaint; thereafter, instead of initiating any fair inquiry into the auction irregularities, the department turned against the complainant and vide impugned order dated 01.08.2022, restricted the petitioner from entering Customs House Hyderabad and participating in any future auctions, without issuing a proper show cause notice or conducting any transparent proceedings. Learned counsel for the petitioner contends that this action is an obvious abuse of administrative authority, carried out with *mala fide* intent and in direct retaliation to the petitioner's lawful exercise of his right to raise concerns against official misconduct. He contends that the impugned order

was passed in violation of the principles of natural justice and without affording the petitioner a fair opportunity of hearing or the ability to defend himself against the allegations levelled. He further contends that the petitioner was never provided a copy of the inquiry report or informed about the grounds on which an extreme measure of blacklisting was taken and this renders the entire process void ab initio. Furthermore, he contends that the impugned order violates the petitioner's fundamental rights guaranteed under the Islamic Republic of Pakistan, 1973. Lastly, the learned counsel for the petitioner contends that entire livelihood of the petitioner depends on participating in these public auctions, which has been deprived of this without lawful justification or due process, which is contrary to the rule of law and equal treatment under the Constitution, therefore, he prayed for setting aside of the impugned order.

5. Learned Assistant Attorney General for Pakistan appearing for respondent No.1 Federation of Pakistan, supports the departmental proceedings to the extent that the auction process is followed applicable rules and procedures under the Customs Rules, 2001.

6. Conversely, learned counsel for respondents No.2 to 4 contends that the auction was conducted strictly in accordance with **Rule 71 of the Customs Rules, 2001** and that the petitioner neither participated in the auction nor submitted any bid on record. He further contends that in the inquiry proceedings conducted by the then Additional Collector, wherein the complaint filed by the

petitioner was concluded to be baseless and an attempt to pressure officials to accept lower bids.

7. We have heard the learned counsel for the petitioner, learned A.A.G. for Pakistan and learned counsel for respondents No.2 to 4 as well as perused the material available on record.

8. Upon careful consideration of the submissions advanced by the learned counsel for the parties and perusal of the record, we are of the considered view that the impugned order dated 01.08.2022 is not only procedurally flawed but also constitutionally untenable. The impugned order was issued following the petitioner's complaint against the auction of Lot No.100/21-22, and it is apparent that the order was passed as a retaliatory measure rather than as a reasoned administrative action. The petitioner, being a regular and experienced bidder with over two decades of active participation in public auctions conducted by the Customs Department, acted well within his legal rights to report what he perceived to be an irregular and unlawful disposal of auction goods. His legitimate act of lodging a complaint cannot, in law or equity, form the basis for depriving him of his right to participate in future auctions, which constitutes his sole source of livelihood. In this regard, we would like to refer Article 4 (1) of the Constitution of Pakistan which clearly states that:

"To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen..."

9. In the present case, the petitioner has been penalized without being afforded the protection of law or fair process. The impugned order contains adverse findings against the petitioner without providing him with a fair hearing or an opportunity to rebut the allegations in a meaningful way. Although the order cites that the petitioner was called for personal hearing but in respect to his complaint filed and it simultaneously admits that no written reply or supporting documents were taken from the petitioner. Such one-sided proceedings fail to meet even the minimum threshold of due process.

10. We have examined the relevant provision i.e. **Rule 75 (1) (iii) of the Customs Rules, 2001**, on the basis of which the petitioner has permanently been restrained of his entry and taking part in next auctions held in future, which provides that:

“The Collector may... restrict or refuse the entry of persons to the premises where an auction is held or their taking part in the auction.”

11. However, this discretionary power is not freed. It must be read under the agreement with the principles of natural justice, constitutional protections and the primary requirement of transparency and fairness in administrative actions. Importantly, Rule 56 (1) of the Custom Rules, 2001 which pertains to disciplinary action against auctioneers (a closely analogous situation), mandates that:

“On any complaint made against an auctioneer, or where the Collector is not satisfied with the work of the auctioneer, the Collector, may after giving an

opportunity of being heard... withdraw any auctioneering work..."

This principle of ***audi alteram partem***, the right to be heard, applies with equal force to regular auction participants, especially where the action leads to permanent or indefinite exclusion from auctions.

12. Further, the auction in question was held under the umbrella of **Rule 71 of the Customs Rules, 2001**, which permit the sale of *perishable goods* through private offers or public auction *"after obtaining approval of the Collector."* The petitioner's contention is that he submitted a bid higher than the one accepted, yet the lot was awarded through opaque means at a significantly lower price without adherence to the procedural mandates under Rules 58, 61 and 66, which collectively require proper notification, public advertisement and transparent bidding:

Rule 58(2): "The Collector shall... pass orders directing the sale of goods... by public auction either departmentally or through an auctioneer..."

Rule 61(b): "The auctioneer shall notify... by giving an advertisement in the classified columns of one English and one Urdu daily at least seven days in advance..."

Rule 66(i): "The first bid shall not be less than 30% of the reserve price notified before or at the time of auction..."

None of these rules permit discretionary award of auctioned goods behind closed doors or at suppressed prices. The fact that the successful bid i.e. Rs.2,530,000/- was significantly

below the petitioner's alleged offer of Rs.4,000,000/- and the sale occurred after the auction was withheld due to a stay, as alleged, points toward irregularity and lack of transparency. **Article 18 of the Constitution** further reinforces the petitioner's position, which provides that:

“Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business.”

13. We have meticulously scrutinized the impugned order, which effectively deprives the fundamental rights of the petitioner as guaranteed under the Constitution of Pakistan to carry on his lawful trade, participation in auctions without proving any misconduct or affording due process. Further, **Article 25 (1)** of the Constitution states that:

“All citizens are equal before law and are entitled to equal protection of law.”

14. By targeting the petitioner while allowing others including those allegedly favored in the questioned auction to freely participate, the Customs Department has acted in a discriminatory and illogical manner in violation of this constitutional guarantee. In the absence of any proven breach of discipline, misconduct or procedural violation on the part of the petitioner, the impugned order cannot stand. It fails to satisfy the dual test of legality and constitutionality and appears to be based not on factual findings but on unsubstantiated conclusions drawn in a summary inquiry thereby undermining the rule of law and principles of justice.

15. In view of the facts, circumstances and what has been discussed above, instant petition is **allowed** and the impugned order dated 01.08.2022 passed by Respondent No.3, whereby the petitioner was restrained from entering Customs House, Hyderabad and participating in future auctions, is hereby **set aside** being unconstitutional, illegal, arbitrary and passed in violation of the petitioner's fundamental rights. The respondents are directed to act strictly in accordance with law and ensure that the petitioner will not be deprived of his lawful right to participate in auctions without due cause or lawful authority.

JUDGE

JUDGE

Abdullahchanna/PS