

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

C.P.No.D- 686 of 2010.

Present:- **Mr. Justice Ahmed Ali Shaikh**
Mr. Justice Salahuddin Panhwar.

Petitioner: Mazhar Ali Vistro through Mr. Bakhshan Khan Mahar Advocate.

Respondents: P.O Sindh and others through Mr. Liaquat Ali Shar: Addl. A.G along with Muzaffar Hussain Assistant Commissioner, Bhiria.

Date of Hearing: 06th February, 2013.

J U D G M E N T

SALAHUDDIN PANHWAR, J- The petitioner has invoked constitutional

Jurisdiction of this Court and has prayed as under:-

- (a) To declare Notification No. SO (B&U) 3-191/2000 dated 4th January 2010 (Annexure-A) to be mala fide, illegal, without lawful authority and of no legal effect.
- (b) To direct the respondents to quote the said High School as Rasool Bux Vistro Government High School Machur or Government High School Machur.
- (c) To restrain the respondents from giving effect to the impugned notification referred above and/or changing record of the School on the basis of said notification till decision of this petition.
- (d) To compensate the petitioner by appointing his nominee as Naib Qasid or Chowkidar at Government High School Machur.

2. Succinctly, the facts as set-out in the petitioner are that his father late Rasool Bux was owner of agricultural land in Deh and Tapo Machur taluka Bhirya, District Naushahro Feroze and he donated, one piece of land admeasuring 0-30 ghunta from S.No.612 Deh Machur, for the construction of Government High School in Village Machur, without any compensation and such School was named as Government High School Machur. After lapse of some period, at the affluence of respondent no1, with

mala fide intention, vide notification No.SO (B&U) 3-191/2000 dated 4th January 2010 ;name of school was changed as Nisar Ahmed Vistero High School (father of respondent No.4) the petitioner and other inhabitants of village Machur, being aggrieved, sent representation to the Secretary Education & Literacy Department for cancellation of such notification, the then Secretary Education prepared such summary and placed before the Minister Education but the same was not approved, thus change in the name of School is mala fide and without any justification and said notification is ultra vires.

3. Learned counsel for the petitioner, while reiterating above contention further argued that though the petitioner's father donated a valuable land for the construction of said School for the benefit of area but while changing name of School, the petitioner was condemned unheard, therefore, such notification is not sustainable under the law . Senior Minister who, on application of Nisar Foundation has changed the name of School from Government High School Machur to Nisar Ahmed Vistro Government High School Machur, such act is against the spirit of law and liable to be cancelled.

4. Respondent No.1 filed comments, wherein it is stated that name of School was changed purely in the public interest. Moreover, Mr. Nisar Ahmed Vistro was a renowned educationist and with his efforts a lot of education proposed in the province, therefore, official respondents have not committed any illegality. Whereas respondent No.4 Nisar Ahmed Vistro, in spite of repeated notices, remained absent.

5. Heard the learned counsel and perused the record.

6. After careful consideration and meticulous examination of record, it is not disputed that it was the father of the petitioner late Rasool Bux Vistro, who donated his agricultural land admeasuring 0-30 ghunta for the construction of Government High School without any compensation and adjustment; it is also matter of record that School was running in the name of Government High School Machur but in the year 2010, by way of impugned Notification, issued by Secretary Education Government of Sindh, the name of School was renamed as Nisar Ahmed Vistro Government High School Machur. It is also not disputed that while, issuing impugned Notification, petitioner and other inhabitants of village were not heard. Moreover on the application of petitioner and

villagers Secretary Government of Sindh sent proposal that the name of School be renamed as late Rasool Bux Vistro Government High School Machur, District Naushahro Feroze but yet no order is passed. It is settled principle of law that ***The authorities can exercise their powers and jurisdiction but to claim legal protection for such exercise the authorities must show that same was judicious (strictly in accordance with rules, procedure and policy), transparent, impartial and non-discriminatory else such exercise of jurisdiction cannot be stamped to be legal.*** Since, it is no more disputed rather admitted fact that impugned notification of change of name of the school is without any justification and legal reasoning and even while issuing such notification the authorities have violated the basic principle of law “*audi alterm partem*” which requires that before changing the name of the school the petitioner, whose father donated such land for school and other inhabitants, should have been heard; therefore the petitioner has succeeded to prove that impugned Notification of change of name of school is ultra vires, thus instant petition is allowed. Consequently Notification No.SO (B&U) 3-191)2000 is hereby declared ultra vires and the authorities are directed to pass a fresh order after hearing the parties.

7. Above are the reasons of a short order dated 06.02.2013 whereby this petition was allowed.

JUDGE

JUDGE

A.R.Brohi