

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No.D-954 of 2024

Before:

*Mr. Justice Zulfiqar Ali Sangi;
Mr. Justice Abdul Hamid Bhurgri.*

Petitioner : Arshad Ali s/o Raees Ahmed Khan Mahar,
through Syed Muhammad Ali Shah Rizvi,
Advocate.

Respondents : Federation of Pakistan and another,
through Mr. Ghulam Abbas Akhtar,
Advocate.

: Syed Naveed Ahmed Shah, Deputy
Attorney General.

Date of Hearing: 14.05.2025.

Date of Order. 14.05.2025.

ORDER

Abdul Hamid Bhurgri, J.,- Through this petition, the petitioner seeks following reliefs:-

- (a) *To declare that the act of respondent No.2 while short-listing/removing the main selling 12 items as well as decreasing the numbers of 06 salesman/persons from the stall No.32 situated at Platform No.1 & 2 Railways Station Rohri is illegal, unlawful, contrary to law and full of discrimination, as the other allottees/vending contractors of stall No.31 situated at Platform No.1 & 2 & stall No.13 situated at Platform No.3 & 4 have already been allowed by the respondent No.2 to sale the above 24 items as well the respondent No.2 has provided 10 salesman to them.*
- (b) *To direct the respondent No.2 to allow the petitioner to sale above mentioned 24 items by providing him 10 salesman/persons at stall No.32 situated at platform No.1 & 2 at Railways Station Rohri, as the other allottees/vending contractors of stall No.31 situated at Platform No.1 & 2 & stall No.13 situated at Platform No.3 & 4 have already been allowed by the respondent No.2 to sale the above 24 items as well the respondent No.2 has provided 10 salesman to them.*
- (c) *That, this Honourable court may kindly be pleased to award the cost of petition.*

- (d) *That, this Honourable court may kindly be pleased to grant any other equitable relief which has not been specifically prayed for, which this Honourable Court deems fit and proper in the circumstances of the above petition.*

2. The petitioner avers that he is a duly appointed vending contractor engaged at various stations under the administrative control of Pakistan Railways. The office of Respondent No.2, having issued a public notice through national dailies Daily Jang and Daily Kawish, invited bids via auction for vending services across multiple railway stations. In response, the petitioner participated in the competitive bidding process and emerged as the highest bidder, having tendered a bid of Rs.5610000/- for vending staff No.32 at Rohri Railway Station, specifically designated at Platform Nos.1 and 2. Pursuant to the auction proceedings, the petitioner was awarded a contract for a duration of two (2) years, effective from 31.08.2023 to 30.08.2025, as per Letter of Award dated 13.07.2023, bearing Reference No.143/SAC/AUCTION/ROH/5/2023. In furtherance thereof, and in strict conformity with the applicable policy framework, the petitioner deposited thirty percent (30%) of the bid amount equivalent to Rs.16,83,000/- with the respondents. The said amount has been acknowledged and is currently retained by the respondent authority. Subsequently, the petitioner submitted that twenty-four (24) distinct items had been authorized by the respondents to be sold through his ten (10) designated vending staff members. The list of such items is delineated as follows:-

1. Chicken Burger,
2. Vegetable Burger,
3. Shami Burger,
4. Egg Burger,
5. Chicken Broast
6. Pizza
7. Chicken Roll,
8. Sandwich,
9. Chicken Biryani
10. Shami Kabab,
11. Aalu Tikki,
12. Chicken Karahi,
13. Naan
14. Roghni Naan
15. Pop Corn,
16. Pop Corn Fish,
17. Potato Finger Chips,

18. Lays/Nimko
19. Biscuits/Cakes,
20. Tea (Separate or Mixed)
21. Coffee with Milk and Sugar,
22. Ice Cream (Approved Brand)
23. Soft Drink/Juicer.
24. Mineral water of approved brand.

All of sudden, the respondents, in deviation from their earlier approval, unilaterally curtailed the petitioner's entitlement by reducing the list of saleable items and restricting him to employ only four (4) salespersons instead of the previously sanctioned ten (10). The respondents issued a revised and abridged list, authorizing the sale of merely twelve (12) items, enumerated as follows:-

1. Chicken Biryani.
2. Shami Kabab,
3. Anlu Tikki,
4. Chicken Karhai,
5. Naan,
6. Roghni Naan,
7. Pop Corn,
8. Pop Corn Fish,
9. Potato Finger Chips,
10. Lays/Nimko
11. Biscuits/Cakes,
12. Ice Cream (Approved Brand)

The petitioner has further alleged that the aforementioned conduct on the part of the respondents is patently discriminatory. He submits that vending units bearing Nos.13 and 31, awarded to individuals namely Mr.Farhan and Mr.Shamshad, have been permitted to sell the full complement of twenty-four (24) items through their respective sales staff. Despite the petitioner's repeated representations to Respondent No.2 for equitable treatment and permission to similarly operate ten (10) salespersons for the authorized items, the respondents allegedly offered false assurances, prolonged the matter unduly, and ultimately denied the relief sought. It is further contended that even the reduced complement of four (4) salespersons has not been made available or facilitated by the respondents, thereby impeding the petitioner's ability to lawfully operate his vending business. As a result, his commercial operations have suffered significant disruption, culminating in a forced closure.

3. Comments were filed by the respondent No.3, wherein he stated that Pakistan Railway Administration allotted stall No.32 to the petitioner including fast food items which are mentioned in the allotment order specifically alongwith 04 salesmen, such allotment order was annexed with the petition. The allotment was made to the petitioner as per policy in vogue. It is further submitted in the comments that the petitioner was demanding commodities/items which were not permissible under the Railway Policy. The petitioner himself violated the terms and conditions of the contract. The respondent further submitted that the petitioner had moved an application for allowing commodities/items which were allowed to the Super Model stall No.13 and Mini Super Model stall, which were different vending stall policy hence his application was not acceded. Furthermore petitioner has failed to deposit monthly rent since last 12 months which comes approximately Rs.3,92,700/- and in case petitioner wants to run his business, firstly he has to deposit instant amount as per allotment order and policy. The petitioner himself has closed his vending stall. In the end he prayed for dismissal of the petition.

4. Learned Counsel for the petitioner submitted that the respondents are bound to honour the terms of the contract executed with the petitioner. However, contrary to their contractual obligations, the respondents have unilaterally curtailed the list of saleable items mutually agreed upon. He further argued that such action is manifestly discriminatory and in violation of Article 25 of the Constitution, as two other individuals namely Mr. Shamshad and Mr. Farhan have been permitted to sell twenty-four (24) items through ten (10) salespersons, whereas the petitioner has been subjected to arbitrary limitations. Counsel contended that despite repeated representations made to the respondents, no redress was afforded, thereby compelling the petitioner to invoke the extraordinary constitutional jurisdiction of this Court. Accordingly, it was prayed that the petition be allowed.

5. Conversely, learned counsel appearing on behalf of the respondents/Pakistan Railways contended that the dispute arises from a contractual arrangement, the enforcement of which lies outside the scope of constitutional jurisdiction. It was argued that the document annexed by

the petitioner (Annexure-A, P.13) itself reflects that the petitioner was only authorized to sell twelve (12) items, and was permitted to employ no more than four (4) salespersons. Counsel further asserted that the obligation to furnish the names of the engaged salespersons rests solely with the petitioner. He also submitted that the petitioner has failed to discharge his financial obligations, having defaulted on monthly rental payments since the preceding year, with an outstanding liability now standing at Rs.392,700/-. It was argued that the petitioner was required to deposit the due amount in accordance with the allotment order and governing policy before resuming vending operations. Instead, the petitioner unilaterally ceased operations without any prior notice or cancellation directive from the competent authority. Furthermore, counsel highlighted that the petitioner had previously instituted Civil Suit No.73 of 2023 (Re: Arshad Ali v. Federation of Pakistan), the plaint in the suit was rejected vide order dated 27.05.2024. This material fact, he argued, was deliberately suppressed in the instant petition, thereby disentitling the petitioner to equitable relief on the ground of unclean hands. Consequently, he prayed for the summary dismissal of the petition.

6. Learned Deputy Attorney General (DAG) endorsed the arguments advanced on behalf of the respondents and similarly prayed for dismissal of the petition.

7. We have heard the learned counsel for the respective parties and have given due consideration to the record placed before us.

8. A bare perusal of the petition makes it manifest that the matter at hand emanates solely from a contractual dispute between the petitioner and the respondents. The document annexed by the petitioner himself demonstrates that the petitioner was authorized to vend only twelve (12) items and to operate through no more than four (4) salespersons, in accordance with the terms explicitly set forth in the contractual letter. Hence, the very basis of his claim stands contradicted by his own annexures. Furthermore, the petitioner has concealed a material fact from this Court namely, that he had previously instituted Civil Suit No.73 of 2023, whereby plaint was rejected vide order dated 27.05.2024. This fact was duly brought to the fore by the respondents, who also submitted a

copy of the said order. Such concealment, coupled with the petitioner's contradictory pleadings, renders it evident that the petitioner has not approached this Court with clean hands, and, therefore, is not entitled to invoke the equitable jurisdiction of this Court for the relief claimed.

9. The controversy between the parties arises ex contractua, and it is well-settled that contractual disputes, laden with factual controversies, do not fall within the purview of constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. In the absence of any demonstrable violation of fundamental rights or statutory obligations, this Court cannot be called upon to adjudicate such disputes. In this respect reliance can be placed on the decision in the case of ***Pakcom Limited & Others Vs. Federation of Pakistan & Others (PLD 2011 SC 44)***, wherein the Supreme Court of Pakistan, while examining the issue of enforcement of contractual obligations, has held that "the contractual rights, commitments, undertakings and obligations have to be enforced through courts of ordinary jurisdiction which should not be interfered with by the High Court while exercising its Constitutional jurisdiction especially in those matters arising out of a contractual obligations". In the said decision it was further held by the Apex Court that "In such like eventualities the normal remedy to law being a suit for enforcement of contractual rights and obligations would be availed instead of invocation of Article 199 of the Constitution merely for the purpose of enforcing contractual obligations".

10. In view of the above, the petition is misconceived and, being devoid of merit, stands dismissed along with listed applications, if any. There shall be no order as to costs.

Judge

Judge

ARBROHI