

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. NO.D-1111 of 2017

Present: Munib Akhtar & Yousuf Ali Sayeed, JJ

Appellants: Saif-Uz-Zaman Khan, through, Dr. Amjad Hussain Bukhari, Advocate.

Respondents: Federation of Pakistan & Others, Nemo.

Date of hearing 28-03-2017

Date of Judgment

JUDGMENT

YOUSUF ALI SAYEED, J. The Petitioner, who professes to be an investigative journalist, has invoked the Writ jurisdiction of this Court under Article 199 of the Constitution, assailing the proposed acquisition of 51% of the capital of Invest & Finance Securities Limited (“**IFSL**”), comprising 10,207,982 ordinary shares (the “**Subject Shares**”), by EFG Hermes Frontier Holdings (LLC), Dubai (“**EFG**”) pursuant to a Share Purchase Agreement dated 24.08.2016 (the “**SPA**”) - a transaction that he contends contravenes the Foreign Exchange Regulation Act, 1947 (“**FERA**”) and the Foreign Exchange Manual (the “**F.E. Manual**”), particularly Chapter XX thereof and, if unchecked, will result in colossal loss of capital gain tax and foreign exchange to the national exchequer.

2. It has been pleaded that this transaction has received the sanction of the Competition Commission of Pakistan (the “**CCP**”) by virtue of an Order made on 23.01.2017 in respect of a Pre-Merger Application submitted by EFG under S.11 of the Act (the “**Pre-Merger Approval**”), even though the Subject Shares are set to be acquired by EFG at a fraction of the price that they were trading on the Pakistan Stock Exchange as on the date thereof, which constitutes a violation of the FERA and the F.E. Manual.

3. Whilst the SPA itself has not been filed amongst the corpus of documents annexed with the Petition, it has nonetheless been alleged that the motive underpinning the SPA is to evade income tax and that its subject matter is perhaps a “suspected” money laundering transaction.
4. In this backdrop the Petitioner has prayed for declarations to the effect that the SPA and the Pre-Merger Approval contravene the FERA and the F.E. Manual and that the Pre-Merger Approval is *non est*. Furthermore, it is sought that various regulatory authorities and investigative agencies that have been arrayed as respondents be directed to thwart implementation of the transaction envisaged in the SPA and/or investigate the same under the Anti-Money Laundering Act, 2010.
5. It merits consideration from what has been stated in the Petition and the documents filed therewith, that IFSL is a corporate entity established under the Companies Ordinance 1984, which falls completely within the private domain, and is involved in financial brokerage, corporate finance and financial research. The transaction envisaged in respect of the Subject Shares is a private transaction, and on the Petitioner’s own showing, is subject to a statutory regulatory framework overseen by the CCP as well as by the State Bank of Pakistan (the “**SBP**”).
6. When the matter coming up before us for hearing, we had at the very outset posed a query as to the *locus standi* of the Petitioner, and in response learned counsel had submitted that the petition was in the nature of public interest litigation and invited our attention to Paragraphs 4 and 5 of the Memo of Petition where it has been stated that the Petitioner, as a citizen of Pakistan, is filing the Petition for the protection of fundamental rights and rights of millions of inhabitants under Articles 9, 19-A- and 26 of

the Constitution, and reference has been made to a Judgment of the Honourable Supreme Court reported as Javed Ibrahim Paracha, PLD 2004 SC 482, as well as to Judgments of learned Division Benches of this Court and of the Lahore High Court in cases reported as Salahuddin Dharaj v. Province of Sindh, PLD 2013 Sindh 236, and Atta Ullah Khan Malik v. Federation of Pakistan, PLD 2010 Lahore 605.

7. When pressed to explain how a share purchase transaction such as that said to be contemplated in the SPA could conceivably result in a violation of Articles 9, 19-A and 26 of the Constitution falling within the sphere of public interest litigation, learned counsel was unable to muster a compelling response and merely stated that the transaction would result in loss to the public exchequer which in turn would impair the Petitioner's right to life as well as the public at large as there would be a paucity of funds for expenditure in public projects such as parks, etc. He also sought to substantiate his claim in terms of Article 19-A by alleging that the public had a right to information in respect of such transactions.

8. While the judicial activism shown by our superior Courts in their role as guardians of the Constitution, particularly in safeguarding fundamental rights, requires little elucidation, and whilst there can be no cavil with the proposition that the concept of public interest litigation is well entrenched in our jurisprudence, the invocation thereof is predicated on a fit case warranting the exercise of the Court's jurisdiction. With all due respect, we are unable to subscribe to the line of argument advanced by learned counsel in the present instance, as it hardly establishes a public wrong or public injury warranting an action for redressal through the Court under Article 199, and to accept such a contention would unwarrantedly open the door for an invasion of virtually every private transaction on the touchstone of alleged evasion of some duty, tax, etc.

9. Undoubtedly, the 'right to life', as guaranteed in terms of Article 9, is well recognized and has been given a wide import in various Judgments, following the landmark decision of the Honourable Supreme Court in Shehla Zia's case, PLD 1994 SC 693, and in terms of the social contract between the State and its constituents (the people of Pakistan), it is the responsibility of the former to strive for public betterment as part of a national imperative, and to provide conditions where every inhabitant has a right to lead a meaningful existence with proper opportunity of economic and social upliftment. It is axiomatic that investment in infrastructure and places of recreation, as mentioned by learned counsel in this case, are of considerable public importance, for which the availability and allocation of proper recourses is a basic requirement. However, that does not mean that the Court should embark on roving enquiries into private transactions such as that identified by the Petitioner under the banner of public interest, especially when there are regulatory authorities in the field mandated with the statutory responsibility of maintaining vigil in their respective spheres.

10. Similarly, the right to information, as enshrined in Article 19-A, is undoubtedly of immense value in promoting transparency by ensuring that citizens are able to have knowledge of matters concerning public administration, which is of vital importance in ensuring good governance and accountability, but that does not mean that commercial transactions in the private domain which do not have any direct nexus with matters of public administration be opened up to scrutiny before the Courts on the touchstone of Article 19-A at the behest of any member of the public whose curiosity may be piqued.

11. Even otherwise, the Petitioner's contention in respect of the FERA and the FE Manual appears to be ill conceived in as much as the F.E. Manual is directed towards and binds those entities that are Authorized Dealers in foreign exchange, being scheduled banks subject to regulation by the SBP. As such, it is hardly conceivable that an Authorized Dealer would countenance such a flagrant contravention of the F.E. Manual as to do so would inevitably invite serious censure from the SBP.

12. In view of what has been discussed herein above, we are of the view that the Petition is misconceived and does not properly fall within the domain of public interest. Hence, the same is dismissed accordingly.

13. These are the reasons for our short Order dictated in open Court on 28.03.2017.

JUDGE

JUDGE

Karachi
Dated _____