

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Present:

**Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon.**

CP. No. D- 1154 of 2013

Youth Action for Pakistan Petitioner

Vs.

Province of Sindh & others Respondents

Mr. Imdad Ali R. Unar, advocate for petitioner(s)
Mr. Allah Bachayo Soomro, Addl.A.G.

Date of Hearing: 19.02.2019

ORDER

ADNAN-UL-KARIM MEMON, J. - The instant petition was disposed of by this Court vide order dated 1.6.2016 with the following observation:-

“ Today learned Assistant A.G. files an statement along with the report/ comments filed by the respondent No.3, wherein it is stated that the Finance Department has released adequate funds Rs. 4,330.00 million to the Relief Commissioner Sindh and Rs.150.00 million to PDMA Sindh for relief and rescue activities during the finance year 2010-2011.

In parawise comments already filed by the respondent No.2 in this petition while replying paras-8 & 9 of the petition stated that the cheque bearing No. 4691331 amounting to Rs.2,13,21,866/- (Rupees two crore thirteen lac, twenty one thousand, eight hundred and sixty six only) was bounced due to non-receipt of funds from the Finance Department.

Since the funds have already been allocated/provided as per the comments of respondent No.3, respondent No. 2 is directed to redress the grievance of the petitioner in accordance with law within a period of 30 days time from receipt of this Court and submit such compliance report before this Court through Additional Registrar of this Court.

Petition stands disposed of in the above terms”.

2. On 24.8.2016, the petitioner being aggrieved by and dissatisfied with the inaction by the alleged contemnors filed Application (MA No. 11795 of 2016 under Section 151 CPC) praying therein to direct the respondent No.2 to submit compliance report before the Additional Registrar of this Court and redress the

grievance of the petitioner and issue payment of Rs.2, 13, 21,866/- within the time as directed by this Court.

3. This Court vide order dated 30.8.2016 issued notice to the respondents for submission of compliance report. The petitioner, however against the inaction of the respondents filed another Application (MA No. 1315 of 2017) under Article 204 of the Constitution, praying therein to initiate contempt proceedings against the alleged contemnors, who wilfully disobeyed and disregarded the order dated 1.6.2016 passed by this Court. The alleged contemnors have filed a statement on 23.2.2017 showing compliance of the aforesaid order passed by this Court with the assertion that the summary for the Chief Minister Sindh was floated for sanction of the amount of Rs.2,13,21,866/- in order to avoid contempt proceedings and implement the order passed by this Court in the aforesaid matter.

4. Mr. Imdad Ali Unar, learned counsel for the petitioner has argued that the alleged contemnors, despite clear directions of this Court have not complied with the above order in its letter in spirit. He further contended that directions be issued to the respondents to redress the grievance of the petitioner in accordance with law within a period of 30 days and submit compliance report before this Court. He further contended that the respondents have not complied with the directives of this Court as contained in the order rather they have wilfully flouted the same by lame excuses and frivolous pleas which act of the respondents fall within the ambit of contempt of Court proceedings. That the petitioner is agitating for basic right of his due amount owed by the respondents and seeking an indulgence of this Court by directing the respondents for compliance of order dated 1.6.2016 passed by this Court; that the respondents have sanctioned the amount of the petitioner but they are avoiding to pay the same to the petitioner which act on the part of the alleged contemnors is violative of the order of this Court.

5. Mr. Allah Bachayo Soomro, Additional A.G Sindh has submitted that the respondents have complied with the order passed by this Court, enquired the matter and found that the petitioner is not entitled for the amount as claimed by him on the premise that the claim of M/s. Youth Action of Pakistan NGO is not genuine as per report of Deputy Commissioner, Jacobabad and claim does not stand further; that this Court has only directed the respondents to redress the grievance of the petitioner in accordance with law, which has been looked into and found that the claim of the petitioner was bogus and based on a fabricated document, therefore the respondents are not obliged under the law to fulfil the illegal claim of the petitioner. He lastly prayed for dismissal of listed application.

6. We have heard learned counsel for the parties on the listed applications and perused the material available on record.
7. Before adjudicating upon the merits of the application, the question involved in the matter in hand is whether any contractual dispute can be resolved through mechanism provided under Article 199 of the Constitution of Islamic Republic of Pakistan or order of this court can be enforced under Article 204 of the Constitution. Our deep concern is on the maintainability of the listed application. This Court while disposing of the instant petition vide order dated 1.6.2016 only directed the respondents to redress the grievance of the petitioner in accordance with law. Record reflects that the respondents in compliance of the aforesaid order enquired into the matter and reached the conclusion that the entire claim of the petitioner was bogus, therefore, no amount on their part is required to be paid to the petitioner.
8. In the light of above averments, the petitioner in his contempt application has attempted to show that there was a genuine claim of the petitioner regarding contractual obligation which the government was bound to pay to him, this Court has already directed the competent authority to redress his grievance in accordance with law.
9. Now the question before us is as to whether in the contempt proceedings we can enlarge the scope and dilate upon the alleged contractual obligation in the proceedings which now they have seriously disputed. The answer is that the contempt proceeding are always between the Court and the alleged contemnors thus its scope cannot be enlarged except to see as to whether the alleged contemnors have committed the contempt of the court or otherwise.
10. The dispute between the parties is with regard to certain financial liability mentioned in the contract and without recording the evidence of the parties; it is not possible for this Court to ascertain the fact of actual amount or variation of the amount or any amount at all. It is also a settled principle of law that contractual obligation cannot be enforced through writ petition as it is the mandate of the ordinary jurisdiction to interfere in the contents, variations and applicability of terms & conditions of the contract. In view of above discussion, prima facie, claim of the petitioner which calls for enforcement of contractual obligation is not proceedable or amenable to the constitutional jurisdiction. We are fortified with the decision rendered by the Honourable Supreme Court in the case of Nizam-ud-Din and another. Vs. Civil Aviation Authority and 2- others. (1999 SCMR 467), On the strength of above cited dictum, we are of the considered view that writ jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan is not meant

for dispute relating to terms and conditions of contract. We are of the considered view that if the contract between the private party and the government functionary is under realm of a private law and there is no element of public law, the normal course for the aggrieved party is to invoke the remedies provided under ordinary civil law rather than approaching this Court under Article 199 of the Constitution and invoking its extra-ordinary jurisdiction. It is further clarified that if an order passed by this Court which is against the basic spirit of the judgment of the Honourable Supreme Court, the same cannot be enforced under Article 204 of the Constitution.

11. We have also gone through the contempt application, the reply of the alleged contemnors to the effect that they had complied with the order of this Court in its letter and spirit by enquiring into the matter and found the claim of the petitioner not genuine. We are cognizant of the fact that this Court while disposing of the matter simply directed to look into the matter of the petitioner and redress his grievance. In the light of above discussion it is crystal clear that the respondents floated a summary for the Chief Minister Sindh for sanctioning the amount in order to avoid the contempt proceedings but the record reflects that the claim of the petitioner is with regard to certain financial obligations which the respondents have refused in its categorical term that the same cannot be adhered to for the simple reason that the claim brought by the petitioner before this Court was found bogus and came to an end. Therefore on the basis of aforesaid allegations and counter allegations, this Court cannot direct the respondents to pay the contractual liabilities to the petitioner. The explanation offered by the respondents prima facie is tenable.

12. In view of the above facts and circumstances of the case and for the reasons as discussed above, we are satisfied with the explanation offered by the alleged contemnors that substantial compliance of the order dated 1.6.2016 passed by this Court has been made in its letter and spirit, therefore, no case for initiating contempt proceedings or indulgence of this Court is made out against the alleged contemnors. Thus we are not minded to proceed further on the listed application bearing (MA No. 1315 of 2017), having no merits. Accordingly the same is dismissed.

JUDGE

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