

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

Present

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon.

C.P. No.D-321 of 2019

Faiz Muhammad & othersPetitioners

Vs.

Province of Sindh through Secretary Local Government Department Sindh
Secretariat, Karachi & others

.....Respondents

Date of Hearing: 25.02.2019

Ms. Asma Malik, advocate for petitioners.

O R D E R

ADNAN-UL-KARIM MEMON-J: - Through the instant constitution petition
the petitioners have made the following prayers:-

- a. *Direct the respondent No.5 to stop the functioning of CMO Secretariat in Municipal Committee Mirpurkhas.*
- b. *Direct the respondents No.1 to 4 to abolish the illegal CMO Secretariat at Municipal Committee Mirpurkhas.*
- c. *Direct the respondent No.6 to recall all the orders/ correspondence made through CMO Secretariat, Municipal Committee Mirpurkhas since the date of its establishment.*

2. Brief facts of the case as per memo of petition are that the petitioners are the employees of the Municipal Committee, Mirpurkhas which is functioning under the Sindh Local Government Act, 2013 and under this Act the executive powers of the Municipal Committee Mirpurkhas have been assigned to the respondent No.6 [Municipal Committee Mirpurkhas through its Chairman] as provided under Section 80 of Sindh Local Government Act, 2013. Petitioners have submitted that Section 35 and 36 of Sindh Councils (Conduct of Business) Rules, 2016 explicitly provide that no other department can be established except as

provided under the law and if any department is established, it is illegal, wrong and against the provisions of Sections 35 & 36 of Sindh Councils (Conduct of Business) Rules, 2016. The respondent No.5 [Chief Municipal Officer] in utter violation of Section 35 and 36 of Sindh Councils (Conduct of Business) Rules, 2016 have established a CMO Secretariat in Municipal Committee Mirpurkhas which is being used by the respondent No.5 for his personal agenda, gain and for victimization of the employees and official correspondence of the Municipal Committee, Mirpurkhas parallel to the General Department and newly established CMO Secretariat is functioning as General Department of the Municipal Committee, Mirpurkhas, which is seriously disturbing the functions of the Municipal Committee, Mirpurkhas.

3. Upon query by this Court as to how the instant Petition is maintainable as the office of Chief Municipal Officer is confined to the administrative matters and the public body has nothing to do with him.

4. Learned counsel for petitioners contends that in the year 2017, the respondent No.5 established illegal CMO Secretariat and started correspondence of his own bypassing the respondent No.6 through prior to performing any function relating to general administration of Municipal committee, Mirpurkhas approval of respondent No.6 is mandatory, hence respondent No.6 issued letter dated 10.04.2017 addressed to the respondent No.5 through which the respondent No.6 closed the CMO Secretariat/ Section of P.A. with immediate effect but the respondent No.5 did not pay heed to the above letter of the respondent No.6 and continue functioning of illegal secretariat with ulterior motives and all the correspondence made by the CMO Secretariat since date of its establishment are liable to be recalled/cancelled; that Section 35 (c) of Sindh Councils (Conduct of Business) Rules, 2016 provides that where a council does not have and it is not feasible to create any Department, the Chief Executive shall be deemed to be the Head of the Department and the functions assigned to the Department shall be

performed by the office of the Council. In the Municipal Committee, Mirpurkhas there is General Department and it is feasible for performing the functions of the Municipal Committee, Mirpurkhas hence the CMO Secretariat cannot be established by the respondent No.5 and it is liable to be closed; that General Administration Department is available in the Municipal Committee, Mirpurkhas hence there is no need of establishing the CMO Secretariat, it is functioning in utter violation of Section 35 (C) of Sindh Councils (Conduct of Business) Rules, 2016 and is disturbing the function of General Administration.

5. We posted another question as to how the petitioners are aggrieved by the creation of purported CMO Secretariat. Learned counsel replied to the query and argued that administrative decisions cannot be taken by the respondent No.5 without approval of the council of Municipal Committee, Mirpurkhas. She lastly prayed for allowing the instant petition.

6. We have heard the learned counsel for the petitioners on the point of maintainability of the instant petition and perused the entire material placed on record.

7. In view of the contention so made by the learned counsel for the petitioners, we consider it proper to first decide the issue of the maintainability of the instant petition on the ground as to whether Petitioners are aggrieved party as envisaged under Article 199 of the Constitution or not and could competently make a recourse to this Court under its Constitutional jurisdiction.

8. To appreciate and elaborate on the aforesaid issue. We refer to Article 199(1) of the Constitution of Islamic Republic of Pakistan, 1973, which reads, a High Court may, if it is satisfied that no other adequate remedy is provided by law:-

(a) On the application of any aggrieved party, make an order—

(i) Directing.....

(ii) Declaring.....”

9. The above referred Article lays emphasis on the satisfaction of this Court about absence of any adequate remedy available under the law to the person/party to justify invoking the jurisdiction of this Court under Article 199 of the Constitution and that the party has to be an aggrieved one, which conditions have not been prescribed under sub-clause (b) of clause (1) of Article 199 of the Constitution for invoking the jurisdiction of this Court through a Writ Petition. Under the clauses referred to hereinabove, the Petitioners must be an aggrieved persons and they must have a locus standi for availing the jurisdiction of this Court.

10. Learned counsel for the Petitioners during the course of arguments could not advance any convincing reasons to establish that the Petitioners are aggrieved party to approach this Court under Article 199 of the Constitution, challenging the powers of Chief Municipal Officer, who has purportedly established CMO Secretariat. In our view only the Council of Municipal Committee, Mirpurkhas is empowered to make recommendations on the issues enumerated in Section 89 of Sindh Local Government Act, 2013 to Government and the Government is under obligation to consider the recommendations of the Council and pass such order as may be deemed appropriate in the circumstances of the case: Provided that where Government does not accept the recommendations of the Council, it shall give reason for such refusal: Provided further that where Government proposes to take any action against any officer or person pursuant to the recommendations of the Council, no such action shall be taken by Government without providing opportunity of hearing to such officer or person. In the present proceedings the petitioners are seeking direction to Chief Municipal Officer to abandon the office of CMO Secretariat established without the approval the Council of Municipal Committee, Mirpurkhas. In our view the Chief Executive Officer who is a public servant in a civic body and he has to work within the parameters of law in the exigencies of public service of which the Government has to decide as to whether he has established the aforesaid secretariat in violation of law or otherwise, As we

held above the Petitioners are not aggrieved and were having no locus standi to agitate the matter before this Court and its Constitutional jurisdiction assailing the action of Respondent No. 5 by creation of alleged CMO Secretariat, such initiation of proceedings by the Petitioners is a futile exercise and it could drag the Respondents unnecessarily into frivolous and vexatious litigation, for the simple reason that Section 81 and 82 provide that Chief Executive of the Councils is Chief Municipal Officer in case of Municipal Committee.

11. For the aforesaid facts, reasons and circumstances of the case, we are of the view that Article 199 of the Constitution casts an obligation on the High Court to act in aid of law and to protect the rights within the frame work of the Constitution. This extra ordinary jurisdiction of High Court may be invoked to encounter and collide with extraordinary situation. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the object to foster justice in aid of justice and not to perpetuate injustice. However, if it is found that substantial justice has been done between the parties then this discretion may not be exercised.

12. This petition does not seem to be maintainable and is accordingly dismissed in *limine* alongwith the pending application(s).

JUDGE

JUDGE