

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-1465 / 2021

Date Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Agha Faisal

Petitioner: Ahmed & Kamran Trader Pvt. Ltd.
Through Mr. Shahid Kandwal,
Advocate.

Respondent: Federation of Pakistan & Others

Date of hearing: 12.03.2021.

Date of order: 12.03.2021.

ORDER

Muhammad Junaid Ghaffar J:- On 26.02.2021 Mr. Humayun Rashid Advocate had appeared before us and we had confronted him as to maintainability of this Petition. The precise reason was pendency of a Civil Suit (136/2021)¹ on the Original Side of this Court against the Petitioner seeking a Declaration² in respect of Petitioners import permission of the item in question. The said certificate stands cancelled; now impugned in this petition. We had heard him at length, and after being confronted, he had sought time to seek instructions as to withdrawal of instant Petition and seeking remedy by way of a Civil Suit; however, today another Counsel has affected appearance and has tried to reargue the matter afresh, including maintainability of this Petition. According to him, this Petition has been filed against unlawful cancellation of import permission, whereas, the Civil Court cannot take cognizance of such conduct of the Respondents; hence, the Petition is maintainable.

We have heard Mr. Shahid Kandwal Advocate today and are of the view that such conduct on the part of the Petitioner's Counsel cannot be

¹ Mir Muhammad Tahir Zehri v Federation of Pakistan & Others

² Declare that the 'Certificate of Import Permission of Pesticide not having a Trade name (Form 16A)' bearing registration No. (GENERIC)/DPP/2020/9610 dated 21.10.2020 (the "**Impugned Certificate**"), in respect of the product 98% Methyl Bromide + 2% Chloropicrin (the "**Product**"), has been issued by Defendant No.2 without lawful authority and is of no legal effect;

appreciated. Mr. Humayun Rashid was before us and he had made all efforts to satisfy as to maintainability of this Petition but after failing to do so, sought time to seek instructions for withdrawal of instant petition, which though was not so exactly recorded in the said order; but nonetheless, we remember it and as an indulgence, matter was adjourned for today. Now another Counsel is before us and wants to proceed afresh, whereas, on perusal of the record it reflects that he has not even signed the Vakalatnama. Such conduct on the part of the Counsel needs to be deprecated.

Be that as it may, it is a matter of fact that a Suit has been filed by the Plaintiff³ who has not been arrayed as a Respondent in this Petition, wherein, the present Petitioner is Respondent No. 10 and a learned Single Judge on the Original Side of this is Court has taken cognizance of the same and has already passed a restraining order dated 20.01.2021. The operative part of the same reads as under:-

“Issue notice to the Defendants for 09.02.2021. Till the next date of hearing, Defendants are restrained to import the product 98% methyl bromide + 2% chloropicrin and / or to sale, market, distribute the same.”

It further appears that the said order was then impugned by the present Petitioner in High Court Appeal No. 22/2021 which is though pending as stated; however, it appears that the Petitioner has remained unsuccessful in obtaining any ad-interim relief. It further appears that the Petitioner is contesting that Suit, including challenge to its import permission (now cancelled), and now by way of this Petition wants this Court to take cognizance on the ground that a further cause of action has accrued. We are not inclined to entertain this petition which even otherwise has been filed firstly without joining the Plaintiff in the pending Suit as it is apparently not maintainable. We in our Constitutional jurisdiction cannot interfere with the orders passed by a Single Judge of this Court on the Original Side. For this reason, on the last date of hearing we had asked the learned Counsel for the Petitioner to withdraw this Petition and seek its remedy either by way of a counter Suit or through some application, if permissible in that very Suit. Such concession has not been agreed upon. Moreover, the argument that the Civil Court has no jurisdiction is also misconceived inasmuch as the law now stands settled that the jurisdiction exercised by a Single Judge on the Original Side of this Court is not that of a Civil Court at all; but a

³ Muhammad Tahir Zehri

High Court / Constitutional Court⁴ and challenge to any law on the ground that it is inconsistent with the Federal Rights conferred by the Constitution can validly be raised in a civil suit that is to say that such challenge is not confined to be made only in a constitutional petition⁵. Therefore, a High Court under its general jurisdiction conferred on it under or by law and the Constitution may as well exercise such power e.g. this Court under its original Civil Jurisdiction may also enforce the existing law in the light of Article 2-A, as challenge to any law on the ground that it contravenes a provision of the Constitution can validly be made in a civil suit⁶.

Accordingly, in our considered view the present Petition in the given facts and circumstances of this case is not maintainable, whereas, the Petitioner has the remedy of approaching the learned Single Judge on the Original Side of this Court as above.

Petition stands dismissed with pending applications in limine.

J U D G E

J U D G E

Arshad/

⁴ **2018 SCMR 1444** (SEARLE IV SOLUTION (PVT.) LTD. V Federation of Pakistan)...Therefore, even prior to the Order of 1955, this Court, in light of section 14 of the Act of 1926, was a "High Court" merely exercising the original civil jurisdiction for the District of Karachi. As insisted upon by the learned counsel for the appellants, we are convinced by the argument that in light of the above, the Single Bench of the Sindh High Court, regardless of what jurisdiction it exercises, is a "High Court" and will always remain a High Court because it is a constitutional Court and is not a District Court, therefore the two cannot be equated by any stretch of imagination.

⁵ Mirpurkhas Sugar Mills Ltd. Vs. Consolidated Sugar Mills Ltd. and 3 others (PLD 1987 Karachi 225)

⁶ Bank of Oman Ltd. Vs. Messrs East Trading Co. Ltd. And others (PLD 1987 Karachi 404)