

IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A. No. 413 of 2022

Date	Order With Signature Of Judge
------	-------------------------------

Present: Aqeel Ahmed Abbasi, J
Mrs. Kausar Sultana Hussain, J

1. For order on office objection
2. For hg of main case
3. For hg of CMA No.4140/22

19.12.2022.

Mr. Shahryar Mahar, Additional Advocate General, Sindh
for appellants.

Mr. Mohsin Shahwani, advocate for respondents.

O R D E R

Instant High Court Appeal has been filed against the order dated 18.11.2022, passed by the learned Single Judge of this Court in Suit No.1685 of 2022, whereby, according to learned Addl. Advocate General, Sindh, the learned Single Judge has been pleased to grant status quo in respect of the Private Wildlife Farms of the respondents. The contention of the learned Additional Advocate General was recorded in order dated 09.12.2022, which is reproduced for the sake of brevity and perusal as under:-

“ Instant High Court Appeal has been filed against the impugned order dated 18.11.2022 passed by the learned Single Judge of this Court in Suit No.1685 of 2022, whereby, according to learned Addl. A.G. Sindh, the respondents, through misrepresentation of facts and without referring to relevant rules, particularly Rule 64(3) of the Sindh Wildlife Protection, Preservation, Conservation and Management Act, 2020, have obtained the restraining order against the Notification issued by the competent authority after approval of Cabinet, and the respondents have been allowed to carry out hunting on their private reserved farms. According to learned Addl. A.G. Sindh, after compliance of all the codal formalities and with the approval by the Cabinet a Notification dated 27.10.2022 was issued, according to which, hunting of game birds shall remain closed for the season 2022-23 in view of natural disaster in the form of heavy rains and flood in the Province of Sindh, which has seriously affected the human life as well as wildlife, including the game birds and migratory water fowls, falling in category “A” as detailed

in the aforesaid Notification. According to learned Addl. A.G. Sindh, there are three different categories, which have been recognized under the relevant rules as reflected in the Notification and there has been no discrimination whatsoever in the impugned Notification while placing restriction in respect of hunting season of game birds for the season 2022-23, as the category “B” & “C” are entirely different and distinct from the category “A”, whereas, their licensing rules and conditions are also different and distinct as detailed in Rules 75 and 76 of Sindh Wildlife Protection, Preservation, Conservation and Management Act, 2020. It has been further contended by the learned Addl. A.G. Sindh that the respondents are at liberty to participate in the hunting such as trophy hunting and falcony hunting, which fall in categories “B” & “C”, after obtaining license, however, subject to fulfillment of the requirements and payment of the requisite fees, as there is no ban on such hunting for the reason that the area where such hunting takes place are not affected by the natural disaster due to heavy rains and flooding in Sindh, as such hunting takes place at deserts and hill areas. Per learned Addl. A.G., while concluding his submissions submits that same Notification was challenged before a Divisional Bench of this Court in C.P. No.D-7075 of 2022 on similar grounds of discrimination, however, the learned Divisional Bench of this Court vide order dated 01.12.2022 has been pleased to dismiss the said petition in limine while holding that no case of discrimination has been made, as category “A” is different and distinct from the categories “B” and “C”, which have been left open for all. In support of his contention learned Addl. A.G. has referred to the aforesaid order, copy of which has been annexed at pages 483 & 485. According to learned Addl. A.G. Sindh, since the Divisional Bench of this Court has been pleased to hold that the impugned Notification, which is subject matter of the suit and also of instant appeal, does not suffer from any discrimination, therefore, the impugned order passed by the learned Single Judge in this regard is contrary to law as well as the order passed by the learned Divisional Bench of this Court. It has been prayed that impugned order may be set aside.

Contentions raised require consideration, whereas, the fate of the impugned Notification has been decided by a Divisional Bench of this Court in the above petition, whereby, the ground of discrimination has been repelled. Let pre-admission notice be issued to the respondents, to be served through first three modes, for 13.12.2022, when reply/objection, if any, shall be filed with advance copy to the learned Addl. A.G. Sindh. However, in the meanwhile, the operation of the impugned order, whereby, status quo has been granted to the extent of private wildlife farms of plaintiffs (Respondents) shall remain suspended. However, the appellant shall not take any adverse action with regard to the licenses of the respondents till next date of hearing.”

2. Pursuant to Court's notice, Mr. Mohsin Shahwani, advocate has shown appearance and filed Vakalatnama on behalf of the respondents and also filed a statement along with copy of memo of petition bearing C.P. No.D-7075 of 2022 and argued that scope of the aforesaid petition was entirely different and distinct, whereas, the respondents were not parties in such petition, which was filed by private hunters, who have challenged the Notification on the ground of discrimination, however, such petition was dismissed in *limine* without notice to the affected parties, whereas, the learned Division Bench of this Court has been pleased to dismiss the petition in *limine* while holding that, *prima facie*, no case of discrimination has been made out. According to learned counsel for the respondents, in the subject suit filed by the respondents, there are various grounds taken, including *malafide* on the part of the Government of Sindh, who have issued impugned Notification in violation of law and the terms of the Licence Agreement, whereas, no reasonable excuse or justification has been given in the impugned Notification to impose the ban on hunting abruptly just before the start of the hunting season. Per learned counsel, impugned Notification, particularly to the extent of private hunting farms of the petitioners, is neither just nor legal, on the contrary, it amounts to cancelling the licence of the respondents unilaterally, in violation of Sindh Wildlife Protection, Preservation, Conservation and Management Act, 2020 read with Sindh Wildlife Protection, Preservation, Conservation and Management Rules, 2022. Learned counsel for the respondents has argued that the respondents did not violate any term of the licence agreement nor acted in violation of the relevant law and Rules, whereas, huge investment has been made in establishing the private wildlife hunting farms, however, when the season of hunting has started, without any Notice or confronting the petitioners, the impugned Notification has been issued with *malafide* intention to cause financial injury and damage to the

petitioners, whereas, no legal and factual justification has been shown. It has been further contended by learned counsel for the respondents that in the impugned Notification and the summary placed before the Chief Minister, it has not been alleged that on account of heavy rains and flooding in Province of Sindh, there has been mortality and decrease of the birds during hatching/breeding period, therefore, such ban has been imposed, however, hatching/breeding period started in March, 2022 and continued till June/July 2022 and the flooding in Sindh started in the month of August-September, 2022. According to learned counsel, in the impugned Notification, it has been stated that there has been increase in quantity of migrant birds because of stranding water in the area, therefore, it is not a case that on account of decrease in the number of birds, such restriction or ban has been imposed for the current season when hatching/breeding period is already over. Moreover, no such situation of flooding or danger to human lives (IDPs on account of flood) who, as per summary have gathered on such areas, where hunting may take place. It has been prayed that impugned Notification whereby, ban has been imposed upon the petitioners (Private Wildlife Farms) on the flimsy grounds, which otherwise are not attracted in the case of petitioners, may be declared to be illegal and of no legal effect.

3. Heard the learned counsel for the parties, perused the record with their assistance and also examined the reasons as disclosed in the impugned Notification for imposing ban on hunting for current season 2022-2023. It will be advantageous to reproduce para. 3 and 6 of the impugned Notification, wherein the reasons for imposing ban have been disclosed:

“3/-Whereas, during the monsoon season 2022, an unprecedented situation surfaced in shape of massive rains causing the runoff to the extent that larger areas of the fertile plains of the Province confronted flooding. Hunting

areas described in the paragraph above under type (A) were more hit by the calamity as compared to other two types. Owing to heavy rains, the flooding at plains and river belt took place; eventually human life and wildlife suffered. The reptilian, rodents, insect fauna and ground flora were amongst the worst sufferers, whereas, since birds could fly, therefore, surviving birds of the flood hit vicinities flew and took refuge at scattered dry pieces of land and trees, yet majority of the recently hatched brood faced mortality. With regards to water fowls, the ground reality is that since water is omnipresent at most of the calamity hit areas hence waterfowls are expected to land all around, contrary to their traditional sites, thus may likely to attract masses to avail shooting opportunity. This may pose threat not only to migratory water fowls but to human life too because of presence of IDPs in the same areas.

6/- Now, therefore, in accordance with the decision taken in the Sindh Cabinet meeting, undersigned is pleased to declare that:

- . Hunting season of game birds shall remain closed for the season 2022-23 on the grounds of natural calamity with bonafide intent to provide relief to disaster affected game birds of category (A) as explained above. This closure shall be applied to all areas including privately owned hunting reserves so registered under the wildlife laws time being in force. However, other forms of hunting such as trophy hunting and falconry shall not be under the scope of the orders on the grounds of non-occurrence of natural calamity in such areas at deserts and foot hills of the Province.

- . Sindh Wildlife Department is hereby directed to carryout survey by engaging field staff of their divisions and submit report to the extent of breeding, sightings and stability of wildlife population once the floods recede to enable the department for taking decision regarding hunting season 2023-24, as required by the circumstances.

- . The department shall ensure the implementation of the orders in letter and spirit. Government of Sindh expects from the hunters to exhibit due consideration under the extra ordinary situation.

- . The violations, if so reported, must be dealt in accordance with law.”

4. From perusal of hereinabove reasons disclosed in the impugned Notification, *prima facie*, it appears that reference to flooding in Province of Sindh in the month of August, 2022, for the purposes of current hunting season 2022-23, is misconceived, as it did not effect the breeding season i.e. March to July, 2022, nor there seems any claim of

decrease of game birds for the current season 2022-2023, on the contrary, perusal of impugned Notification, reflects that there might be increase of the migrant birds and waterfowls in the flooding areas. It further appears that nothing has been stated either in the impugned Notification or in the summary that during breeding/hatching period (i.e. March to July, 2022) when there was no flooding in the area, there has been any mortality or distraction causing decrease of game birds. No reference with regard to flooding situation on the Private Wild Life Farms including the Farms of the respondents, has been made. However, mere apprehension has been expressed that since the waterfowls are expected to land all around, it will attract masses to avail shooting opportunity, which may endanger the lives of the IDPs. However, nothing has been placed on record to justify that such situation would also arise on the Private Wildlife Farms as well, which according to respondents are fully fenced and no IDPS are found in their hands..

5. In view of hereinabove facts and circumstances, we are of the view that the reasons disclosed in the impugned Notification besides being invalid, are not attracted to the Private Wildlife Farms impugned Notification, moreover, such unilateral decision at the time of start of hunting season is violative of principles of Natural justice appears to have been issued in excess of authority and without any reasonable basis in respect of Private Wildlife Farms falling in category 'A' as referred to hereinabove. Therefore, the learned Single Judge has been rightly been pleased to order for maintaining status quo in respect of petitioners. We do not find any error in the impugned order, passed by the learned Single Judge, which may require this Court to interfere, more particularly, when the matter is still subjudice before the learned Single Judge, who can pass appropriate orders in this regard after hearing the parties. Accordingly, instant High Court Appeal is dismissed along with

listed application. It is, however, clarified that the observations made hereinabove shall not come in the way of the learned Single Judge to pass any order in accordance with law. It is however clarified that respondents shall ensure that all due care and caution shall be exercised to avoid any accident or endangering the lives of IDPs in the locality during hunting seasons.

6. At this juncture, learned AAG submits that the learned Single Judge may be directed to decide the fate of the application and the case at an early date as the hunting season will be end within a couple of months. Such request can be made before the learned Single Judge, who may decide the fate of the case in accordance with law.

JUDGE

JUDGE

HANIF/Nadeem