

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

CP D 3971 of 2022 : Senator Khalida Ateeb vs.
Province of Sindh & Others

For the Petitioner : Mr. Muhammad Tariq Mansoor, Advocate

For the Respondents : Mr. Mukesh Kumar G. Karara, Advocate
Mr. Nabi Bux Leghari, Advocate
Mr. Muhammad Yousuf Alvi, Advocate

Mr. Kafeel Ahmed Abbasi
Additional Advocate General Sindh

Date/s of hearing : 16.02.2023

Date of announcement : 16.02.2023

ORDER

Agha Faisal, J. This petition was preferred, on 27.06.2022, primarily assailing minutes of a meeting dated 03.01.2020 of the Sindh Cabinet and a letter of the SGA&C department of the Sindh Government dated 06.02.2020. Furthermore, a memorandum of understanding dated 25.02.2020, unrelated to the petitioner, was also challenged. The petitioner had termed the minutes of the cabinet meeting and the SGA&C letter as notifications, perhaps under a misapprehension of the law, and sought for the same to be quashed, along with the MOU, by this Court in the exercise of its writ jurisdiction.

2. It was also brought to our attention that an earlier petition, in respect of the same respondents, seeking the same relief on identical grounds, had been presented and articulated by the present counsel, however, upon dismissal thereof had filed this petition, albeit with a substituted petitioner. Be that as it may, petitioner's counsel was put on notice with respect to the maintainability hereof on the first date of hearing¹ and it is for the said purpose that the matter is listed today.

3. It is observed that this petition is fraught with issues of maintainability, *inter alia*, the manifest dearth of *locus standi* of the petitioner; the absence of any alternate remedy having been availed to assail the MOU; and further that the petition appeared to be *prima facie* hit by the doctrine of *laches*.

¹ Being 28.06.2022.

4. The petitioner's counsel admitted that the petitioner was not personally aggrieved with the issues sought to be agitated, however, submitted that she enjoyed a supervening privilege to invoke writ jurisdiction on account of being an honorable Member of Parliament. It was unequivocally acknowledged that while the MOU was assailed on the allegation of being non-compliant with the public procurement rules, however, no remedy pursuant to the said law or available otherwise had ever been invoked by the petitioner. Finally, no justification in respect of the unmistakable delay, in preferring the present proceedings, was articulated before us.

5. Article 199 of the Constitution contemplates the discretionary² writ jurisdiction of this Court and the said discretion *may* be exercised upon invocation by an aggrieved person³ and in the absence of an adequate remedy. The petitioner's counsel failed to make any case before us to qualify the petitioner within the definition of an aggrieved person⁴. In so far as the issue of the MOU is concerned, *admittedly* there existed an adequate remedy, however, the same was abjured. Under such circumstances no case could be set forth to justify the direct recourse to writ jurisdiction. It was the respondents' argument that the present petition was filed only after the earlier identical petition had been dismissed, hence, the delay. Be that as it may, the petitioner's counsel made no effort to dispel the preponderant reflection that this petition was hit by *laches*. Even otherwise the allegations levelled, albeit *prima facie* bald and unsubstantiated, could not be entertained in any event as adjudication of disputed questions of fact, requiring detailed inquiry, appreciation of evidence etc., is unmerited in writ jurisdiction⁵.

6. While the learned counsel insisted that this matter merited indulgence in the public interest, however, we are constrained to observe that the present petition appears to be an attempt to seek publicity, without any justifiable cause of action. Per settled law, public interest litigation ought not to be aimed at seeking publicity and the law requires the Court to ascertain whether the supplicant is acting in a *bonafide* manner⁶. Public interest litigation should not be a mere adventure, an attempt to carry out a fishing expedition and / or to settle personal scores⁷. The Court must distinguish between public interest

² Per *Ijaz Ul Ahsan J.* in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.

³ Barring certain exceptions, i.e. writ of *quo warranto*, however, no case was made out to qualify the present petition within an exception recognized by law; 2019 SCMR 1952.

⁴ *Raja Muhammad Nadeem vs. The State* reported as PLD 2020 Supreme Court 282; *SECP vs. East West Insurance Company* reported as 2019 SCMR 532.

⁵ 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415;

⁶ *Akhtar Hassan Khan vs. Federation of Pakistan* reported as 2012 SCMR 455.

⁷ *Dr. B. Singh vs. Union of India* reported as AIR 2004 SC 1923.

litigation and publicity motivated litigation, private interest litigation and / or politically motivated litigation⁸.

7. In view hereof, we are constrained to observe that in the *lis* before us the petitioner's counsel has been unable to set forth a case for the invocation of the discretionary writ jurisdiction of this Court, hence, the listed petition, and pending applications, is hereby dismissed.

JUDGE

JUDGE

⁸ *Mian Shabir Asmail vs. The Chief Minister of Punjab* reported as *PLD 2017 Lahore 597*.