

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Shafi Siddiqui
& Jawad Akbar Sarwana JJ

**Karachi Municipal Corporation v. Presiding Officer, IX AD&SJ,
East, Karachi and Two Others**

Constitution Petition No.D-192 of 2023

Petitioner:	Karachi Metropolitan Corporation (KMC), through Mr Mohsin Khan, Advocate
Respondent No.1:	Presiding Officer, IX AD&SJ, East, Karachi, through Nemo
Respondent No.2:	Advocate-General Sindh, through Mr Sandeep Malani, Addl. A.G.
Respondent No.3:	Muhammad Shafiq s/o Muhammad Nasir through Nemo
On Notice:	Qazi Abdul Hameed Siddiqui DAG
Date of hearing:	23.11.2023
Date of decision:	28.11.2023

J U D G M E N T

Jawad A. Sarwana, J: The Petitioner, Karachi Metropolitan Corporation (“KMC”), has filed this Constitution Petition against the Order dated 24.12.2022 of the learned IXth Additional District Judge, Karachi East passed in the Civil Revision Application No.101/2022 returning the Memorandum of Appearance (hereinafter referred to as “Memo of Appearance”) filed by KMC’s panel advocate in the said Revision and directing her to file a proper Vakalatnama duly signed by KMC. KMC contends that the Additional District Court Karachi East Impugned Order is without lawful authority and beyond jurisdiction, hence this Petition.

2. The brief facts of the Petition are that on 10.11.2022, when one of the Panel Advocates for KMC (impleaded as Respondent No.3 in the aforementioned Revision) attempted to file her Memo of Appearance in Court, the Additional District Judge did not accept the same. After hearing the Panel Advocate, the Court observed that according to Order 3 Rule 4 CPC, no pleader can act for any person in any Court unless such person is appointed through a written document signed by such person or by his recognised agent or some other person authorized through power of attorney to make such appointment.¹ The Court further observed that under Section 2(7)

¹ Order III, Rules 4 and 5 CPC.-- "III. Service of process on recognized agent.-- (1) . . .

(2) . . .

(3) . . .

4. Appointment of pleader.--(I) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognised agent or by some other person duly authorised by or under a power of attorney to make such appointment.

(2) Every such appointment shall be filed in Court and shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

(3) For the purposes of sub-rule (2) an application for review of judgment, an application under section 144 or section 152 of this Code, any appeal from any decree or order in the suit and any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or for obtaining refund of moneys paid into the Court in connection with the suit shall be deemed to be proceedings in the suit.

(4) . . .

(5) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party, unless he has filed in Court a memorandum of appearance signed by himself and stating--

(a) the names of the parties to the suit,

(b) the name of the party for whom he appears, and

(c) the name of the person by whom he is authorised to appear:

CPC only a Government Pleader can appear and act for the Government through a Memo of Appearance.² As the Panel Advocate was not a permanent employee of the Government of Sindh, and her appointment was not made by a notification of the Government of Sindh, the Memo of Appearance was unacceptable, and the Court directed her to file proper Vakalatnama duly signed by KMC if she was going to represent KMC on the next date of hearing.

3. The Counsel for KMC, who incidentally has also filed a Memo of Appearance in this Petition on behalf of KMC, argued that the District Court did not appreciate that Order 3 Rule 4 CPC was procedural in nature, did not prohibit KMC from appointing a pleader and that “procedural law is a means to an end and not an end in itself”.³ He contended that Order 3 Rule 4 CPC enabled a pleader to be appointed by any person appointed by a document in writing signed by such person, which he argued included a Memo of Appearance. He relied on the observations of the Supreme Court of Pakistan in Pakistan through General Manager, Pakistan Railways v. Messrs O.M.R. Expert Consultants, 1990 PLD SC 800, in support of his contention that the term “document in writing” was not restrictive and that the apex Court had already observed in the said judgment that (i) an advocate appearing on behalf of a Government puts in a Memo of Appearance, and (ii) the word “document” is of a wide connotation and includes a Vakalatnama as well as a Memo of Appearance, which an Advocate files on behalf of a Government. The Additional District Judge could not reject the Memo of Appearance on the grounds that the Panelist Advocate of KMC was not a permanent employee of the Government of Sindh, particularly in light of O.M.R.

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party.”

² Section 2(7), CPC.-- "Government Pleader" includes any officer appointed by the 1 [Provincial Government] to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader.”

³ Javaid Iqbal v. Abdul Aziz & Another, PLD 2006 SC 66

Expert Consultants (ibid.). The Additional District Judge was bound by the judgment of the Supreme Court of Pakistan, which he disregarded and did not follow. KMC's Counsel further submitted that the definition of "Government Pleader" under Section 2(7) CPC included any and all officers appointed by the Government, including officers of all forms of Government recognised under the Constitution of the Islamic Republic of Pakistan, 1972. Thus, the reference to "Government" included the "Federal Government", "Provincial Government" and "Local Government". He contended that "KMC" was a creation of the Municipal Act of 1933, which became a metropolitan corporation in 1976 and provided municipal services in Karachi under the Sindh Local Government Act, 2013. Therefore, KMC is a "Local Government", and the term "Government" under Articles 32 and 140A of the Constitution includes local governments throughout Pakistan, such as "KMC".⁴ As a local government, KMC had appointed a pleader through a Memo of Appearance and the Additional District Judge could not reject the Memo of Appearance on the ground that KMC was neither part of the Federal nor Provincial Government. KMC was deemed to be a Government, and the Memo of Appearance presented to the Court could not be declined on this ground. He submitted that under Rule 44 of the Sindh Civil Court Rules, no Government or other Pleader appearing on behalf of the Central Government or the Provincial Government, which now included the Local Government, shall be required to file a

⁴ Articles 32 and 140A of the Constitution of Pakistan, 1972

"Promotion of local Government institutions

Article 32. The State shall encourage local Government institutions composed of elected representatives of the areas concerned and in such institutions special representation will be given to peasants, workers and women."

"Local Government

[Article 140A. (1) Each Province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments.

(2) Elections to the local governments shall be held by the Election Commission of Pakistan.]"

Vakalatnama.⁵ Therefore, KMC intended to file a Memo of Appearance (as an alternative to the Vakalatnama) in accordance with the law. He contended that KMC's Panel Advocates were appointed through an official KMC Order issued pursuant to Section 126 of the Sindh Local Government Act, 2013. In the circumstances, the Additional District Judge could not ignore the Order because the appointment of KMC's Panelist advocate had to be notified. KMC's Panel Advocate had also produced a copy of KMC's official Order, but the Additional District Judge did not accept her submission. Section 126, which pertains to the appointment of a legal adviser, authorises a Council or group of Councils to appoint, in such manner and on such terms and conditions as may be prescribed, either a full-time or part-time legal advisor, not being a member of the Sindh Councils Unified Grades or employee of the Council or Councils to appear in all legal proceedings and to render such advice as may be required.⁶ He relied on the certified copy of KMC Order No.Sr.Dir (HRM)/Dir (RECTT)/KMC/2022 2659 dated 14.10.2022, filed in the Revision but not referred to in the Impugned Order. KMC's above-referred Order approved the hiring of services on a contract basis in the Law Department, KMC, for a period of one (1) year of the listed Panel Advocates, which list included the name of the Panel Advocate whose Memo of Appearance was not accepted by the Additional District Judge. He submitted that the Panelist Advocate was empanelled pursuant to a valid Order. She did not fall within the exception of Section 126 of SLGA, 2013, and hence, the Court had no option but to accept her engagement through a Memo of Appearance in the Revision. Finally, in paragraph "A" of the Grounds of the Petition filed

⁵ Sindh Civil Court Rules. "Rule 44.-- Government Pleader not to file vakalatnama:-- No Government or other Pleader appearing on behalf of the Central Government of the Provincial Government shall be required to file a vakalatnama."

⁶ Sindh Local Government Act, 2013.-- "Section 126. Legal Adviser.- A Council or group of Councils may, in such manner and on such terms and conditions as may be prescribed appoint a whole time or part time Legal Advisor, not being a member of the Sindh Councils Unified Grades or employee of the Council or Councils to appear in all legal proceedings and to render such advice as may be required."

by KMC, Counsel for KMC has placed reliance on a case (copy is neither available in the Petition file nor was it supplied during arguments), presumably, an Indian authority, reported as 1979 4 SCC 701, that “The government in its discretion may appoint as many government pleaders as it likes and is free to put a particular pleader in charge of a particular case.” Therefore, the Additional District Court’s Impugned Order dated 24.12.2022 was beyond jurisdiction on this score, too. He submitted that the Petition may be granted, and KMC should be allowed to engage its panel advocates to appear, prosecute, and defend cases on behalf of KMC through a Memo of Appearance.

4. The Additional Advocate-General did not oppose submissions of Counsel for KMC and adopted his arguments. He further contended that the definition of “Government Pleader” in Section 2(7) CPC begins with the words “includes” and “any”. He contended that the choice of these words used by the Legislature in the definition clause of the word “Government Pleader” appearing in the CPC indicates the intention of the Legislature as to how the definition of a “Government Pleader” is to be interpreted. He contended that the words “includes” and “any” are used to broaden further and widen the scope of “Government Pleader”. It signifies the Legislative intent to include non-exhaustive species and to be treated as an enabling provision. He added that the definition of “Government Pleader” restricts neither who may appear on behalf of the Government nor specifies how (in what manner, e.g. through either Vakalatnama or Memo of Appearance) such Government Pleader is to be appointed. The definition imposes no limits on the mode of appointment.

5. It appears that on 12.01.2023, this Court had issued notice to the Deputy Attorney-General in this Petition. The DAG opposed submissions made by KMC and the Additional Advocate General. He submitted that the references to “Government” and “Government Pleader” in the CPC have to be strictly construed. KMC was not to be considered a third-tier of Government for purposes of CPC, and

KMC was bound to engage Advocates through a Vakalatnama and not by a Memo of Appearance.

6. We have heard the Counsel for KMC, the Additional Advocate General (Respondent No.2), and the Deputy Attorney-General, reviewed the record as available in the Petition file and read the Impugned Order.

7. To appreciate the controversy, it may be pertinent to refer to the relevant provisions of (i) the Constitution of Pakistan, namely Articles 32 and 140A⁷; (ii) the Civil Procedure Code, 1908, hereinafter referred to as "CPC", namely, Section 2(7) ("Government Pleader")⁸, Order III, Rules 4 and 5 ("Appointment of Pleader")⁹, and Order XXVII, Rule 8B ("Definitions of "Government" and "Government Pleader")¹⁰; (iii) Rule 44 of the Sindh Civil Court Rules ("Government Pleader")¹¹; and, (iv) Section 126 of the Sindh Local Government Act, 2013 ("Legal Advisor")¹², which are referenced in the footnotes of our Judgment.

8. The Additional District Judge declined to accept the Memo of Appearance from KMC's empanelled Advocate on the ground that she should have filed a Vakalatnama of KMC as she could not be treated as a Government Pleader because KMC was neither part of

⁷ Ibid. See footnote 4 on Articles 32 of 140A of the Constitution.

⁸ Ibid. See footnote 2 on Section 2(7) CPC.

⁹ Ibid. See footnote 1 on Order III Rules 4 and 5.

¹⁰ Order 27 Rule 8B.- - "Definitions of "Government" and "Government pleader. In this Order "3 [Government]" and "3 [Government]" pleader means respectively ___ (a) in relation to any suit by or against 4* * * the 5 [Federal Government], or against a public officer in the service of that Government, the 5 [Federal Government] and such pleader as that Government may appoint whether generally or specially for the purposes of this Order; 6* * * * * (c) in relation to any suit by or against a Provincial Government or against a public officer in the service of a Province, the Provincial Government and the Government pleader, or such other pleader as the Provincial Government may appoint, whether generally or specially, for the purposes of this Order.]"

¹¹ Ibid. See footnote 5 on Rule 44 of the Sindh Civil Court Rules.

¹² Ibid. See footnote 6 on Section 126 of Sindh Local Government Act, 2013.

“Government”, nor the Counsel was a Government employee nor was she notified by the Government of Sindh. KMC also produced the relevant KMC Order confirming the empanelment of KMC’s Advocate, which was also not accepted by the Additional District Judge. These were essentially the reasons the Additional District Judge assigned in the Impugned Order dated 24.11.2022. Frankly, we are not at all impressed by his reasoning.

9. First, it is a well-understood and common practice for Advocates to appear for a private party to file a Vakalatnama and, in contrast, for an Advocate appearing on behalf of the Government to put in a Memo of Appearance. According to the Counsel for KMC, the Advocate had also cited the Judgment of the Supreme Court of Pakistan in O.M.R. Expert Consultants (ibid.), but the Additional District Judge had ignored it. This practice of Government Pleader filing a Memo of Appearance instead of Vakalatnama is also consistent with the provisions of the Sindh Civil Court Rules, particularly Rule 44. We agree with the contentions of the Counsel for KMC in this regard and the authority he relied upon as mentioned above.

10. The second issue which arose in this matter, which the Additional District Judge decided in the negative, was whether or not “KMC” is/was part of the “Government.” The Supreme Court of Pakistan has already made, in several reported judgments, affirmative observations with regard to the said proposition.¹³ In Raja Rab Nawaz v. Federation of Pakistan through Secretary Defence and Others, 2013 SCMR 1629, the Supreme Court observed as follows:

“13. Local Government or Municipal Government is a form of public administration, which in a majority of contexts, exists as the lowest tier of administration within a given state or district. In many countries, it usually comprises the *third tier* of government, often with greater powers than

¹³ Cantonment Board, Rawalpindi and Another v. Ghulam Habib Rana and Others, 1997 SCMR 1, 13 (Paragraph 11, Placitum “F”); M.Q.M. (Pakistan) and Others v. Pakistan through Secretary Cabinet Division, Government of Pakistan and Others, PLD 2022 SC 439, 467 (Paragraph 34, Placitum “G”).

higher-level administrative divisions. The question of municipal autonomy is a key question of public administration and governance. It is noteworthy that Local Governments generally act within powers delegated to them by legislation or directives of the higher level of government. . .

. . .

16. . . .

Local government is the *third tier* of government in Pakistan, after Federal Government and Provincial Government. There are three types of administrative unit of local government in Pakistan; namely, District Government Administrations, Town Municipal Administrations and Union Council Administrations. . . .”

11. In view of the above observations made by the Supreme Court, it was abundantly clear that the Additional District Judge did not follow the law laid down by the Court of Last Resort.

12. Next, the Additional District Judge did not accept the KMC Order dated 14.10.2022 issued by the Corporation, which empanels the Advocates listed therein. Instead, he insisted on seeing a Notification from KMC’s Advocate. If the Additional District Judge had gone to the genesis of the Order, then he would have changed his mind. He could have easily seen Section 126 of the Sindh Local Government Act, 2013, and examined KMC’s Order to determine whether the same was in accordance with the said Act. On our part, upon examination, KMC’s Order appears to be in line with the statutory requirements for issuing such Orders as laid down in Section 126 of SLGA, 2013. We do not find any lacuna in the said KMC Order. In the circumstances, once the Court has assessed that a Memo of Appearances submitted by KMC is in line with the provisions of the SLGA, 2013, the Court should accept the same.

13. Finally, we would like to weigh in on KMC’s Grounds of Appeal, which included reliance on a Judgment of the Indian Court, reported

as 1979 4 SCC 701. We find no reason to follow this Judgment. As a matter of fact the same is in conflict with the Judgment of the Supreme Court. Whereas the Indian Judgment leaves the appointment of government pleaders to the discretion of the Government, the Supreme Court of Pakistan has found such practice to be inefficient and a burden on the State. In Rasheed Ahmad v. Federal of Pakistan through Secretary, Ministry of Information, Broadcasting and National Heritage, Government of Pakistan Islamabad, and Other, PLD 2017 SC 121, the Supreme Court has discouraged the practice of hiring private counsels in Government matters. The Chief Justice of the Supreme Court, Justice Qazi Faez Isa, who authored the cited Judgment, disapproved of the practice of the Federal Government and the Provincial Governments engaging a host of law officers who are paid out of the public exchequer. The present Chief Justice observed that engaging as many law officers as the Government likes leads to the public being burdened twice. First, the taxpayer has to pay for incompetent law officers, and second, they have to pay again for the services of competent counsels the government engages. This is a waste of public resources and tantamount to financial impropriety by the person who approves such engagement on behalf of the government.¹⁴ Although no equivalent statutory post exists for local government, as is the case for the Office of Attorney-General's Office and the Advocate-General's Office, the remarks made by the Chief Justice are equally applicable to local government. Therefore, KMC's Counsel's submission, based on a judgment of the Indian Court that the government, at its discretion, may appoint as many government pleaders as it likes, is contrary to Pakistan law.

14. Lastly, we do not accept the submissions made by the Deputy Attorney General that a municipal corporation is not a third tier of government, which is irrelevant in view of the above.

¹⁴ PLD 2017 SC 121, Paragraphs 17, and 22 to 25.

15. In light of the above discussion, we allow this Petition and direct the Additional District Judge to accept the Memo of Appearance from the empaneled Advocate of KMC subject to scrutiny as per law.

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