

THE HIGH COURT OF SINDH AT KARACHI

Suit No. 2112 of 2023

Plaintiff: Mr. Aziz Khalid & another
Defendants: Province of Sindh & others

Date of hearing: 22nd January 2024
Date of decision: 26th January 2024.

APPEARANCE:

Mr. Ahmed Masood, advocate for plaintiffs
Mr. Rajesh Kumar Khagaija, advocate for defendant No.5
Mr. Muhammad Ali Lakhani, advocate for defendants No.7
Mr. Aizaz Ahmed advocate for Sindh Education Foundation (SEF) alongwith Mr. Abdul Kabeer Kazi, Managing Director Sindh Education Foundation
Mr. Mehran Khan, Asstt. A.G. Sindh alongwith Piyar Ali Lakho, Deputy Secretary (School)/Focal Person.

ORDER

SALAHUDDIN PANHWAR, J.-By the dint of this order I intend to decide application under Order XXXIX Rule 1 & 2 CPC filed by learned counsel for the plaintiffs.

2. Precisely, the facts are that plaintiffs are owners of M/s. Urdu Academy (Sindh) and Al Khalid Publishing Company; publishing textbooks for the Defendant No. 5 as per allocations awarded. Through, instant suit, the plaintiffs have called in question the illegal appointment of Defendant No 7, vide Notification dated 08.12.2023 on additional charge basis, as Chairman, Sindh Textbook Board; that under Section 4(2) of the Sindh Textbook Board Ordinance, 1970, the power to appoint the Chairman of Sindh Textbook Board vests with the Government i.e. the provincial Cabinet, whereas vide the Impugned Notification the same has been exercised by the Defendant No. 1; that earlier the defendant No.4 illegally made appointment of Secretary, Sindh Textbook Board, which appointment was challenged by the Plaintiffs by preferring C.P.No. D-5937 of 2023, wherein vide Order dated 08.12.2023 restraining orders have been issued; that though Election Commission of Pakistan has imposed Ban whereby restraining the Defendants No 1 to 4 from postings and transfers without prior approval of the Defendant No. 6 in accordance with Section

230(2)(e) and (f) of the Elections Act, 2017, that in numerous judgments, this Court has taken note of such illegalities being committed within the Sindh Textbook Board and has directed that appointment to the offices of the Defendant No. 5 in accordance with law, but even then additional charge of Chairman, Sindh Textbook Board has been given to defendant No.7 through impugned Notification, which is sheer violation of the law and the orders passed by this Court, hence, through listed application, the plaintiffs prayed that defendants may be restrained from giving effect to the impugned Notification.

3. Notices of the applications were issued to the other side. Defendants caused their appearance through their respective counsel.

4. Learned counsel for the plaintiffs contended that in the first attempt, Sindh Government approached the Election Commission of Pakistan (ECP) and sought permission with regard to transfer of the Chairman, Sindh Textbook Board but such permission was declined, hence, Chairman was suspended and in order to facilitate defendant No.7, he has been assigned Additional Charge of Chairman, Sindh Textbook Board which cannot be allowed. He has referred to the Notifications with regard to the ban issued by the Election Commission as well as by the Sindh Government. He has also referred to the order passed in CP.No.D-3133 of 2013 while arguing that in the case of Khawaja Muhammad Asif reported as **(2013 SCMR 1205)**, the apex Court, while referring to paragraph 30(a) of the impugned notification, held that during the election process, appointment and transfer orders by the caretaker government are void and having no legal effect. On that analogy, the referred petition was disposed of. In the present case, despite the ban imposed by the Election Commission of Pakistan and Sindh Government, defendant No. 7 has been assigned Additional Charge. He has referred to the judgment passed by this court in CP.No.D-33 of 2023, whereby in paragraph No.13, 14, 15 and 16, categorical directions were issued that the Sindh Government shall appoint Chairman Sindh Textbook Board on permanent basis. Accordingly, the Notification was suspended. He has also contended that Sindh Textbook Board Ordinance 1970 does not contain any provision

authorizing appointment on acting charge basis and according to the counsel, Secretary Textbook Board has maneuvered second auction and ultimately, plaintiffs have no other remedy to redress such illegality as the Chairman of the Grievance Committee will be defendant No.7. In supporting of his submissions, he has relied upon decisions reported in 2007 Karachi 11, PLD 2019 Sindh 785 and 2011 CLC (CS) 956.

5. In contra, counsel for defendant No.7 contended that plaintiffs have no cause of action; they are publishers, hence, they cannot challenge the Notification whereby defendant No.7 has been assigned the additional charge of Chairman; that suspension of ex-Chairman has been challenged by the ex-Chairman himself in a Constitution Petition, therefore, it would be appropriate to adjudicate the issue in that jurisdiction and not through instant Suit; that permission of the Election Commission was irrelevant as the Notifications of suspension of ex-Chairman and assignment of additional charge were issued as stopgap arrangement in public interest, therefore, the same cannot be termed as illegality. He further contended that the plaintiffs filed a Constitution Petition No. 5937/2023, whereby they challenged the Notification of appointment of Secretary Textbook Board but the same has been dismissed vide order dated 26.12.2023; hence, the plaintiffs have approached this Court with clean hands. In support of his submissions, he has relied upon paragraph 11 of 2023 SCMR 162.

6. Counsel for defendant No.5 adopted the arguments of learned counsel for the defendant No.7. Whereas, learned Asst. A. G. Sindh while relying upon the above referred arguments, contended that the plaintiffs are defaulters of Rupees 18 Million as they were contractors in the last year and they had to provide the books but they failed to provide the same.

7. At this juncture, Managing Director Sindh Education Foundation (SEF) contended that the tenure of Sindh Textbook Board has ended in March 2023, since then the Board is not operational and the students getting education in the SEF Education System are also facing hardship due to shortage of books. He has pointed out that under what manner, officers are running the day-to-day work of the Board without having any Board.

8. Heard and perused the record.

9. The well settled principles laid down by the superior Courts relating to grant or refusal of temporary injunctions are, firstly, whether the plaintiff has a prima facie good case, secondly, whether the balance of convenience lies in favour of the grant of injunction and thirdly, whether the plaintiff would suffer irreparable loss if the injunction is refused. However, in the present case, perusal of record reflects that this Court in CP.No.D-33 of 2022, issued directions regarding permanent appointment of Chairman of Sindh Textbook Board; but, Sindh Government has failed to comply with such directions. Admittedly, the plaintiffs, who are publishers and are participating in the bidding process of books in routine had earlier filed a petition challenging the appointment of Secretary Textbook Board, which was dismissed as the plaintiffs had failed to satisfy the Court regarding maintainability of the said petition. However, the plaintiffs, having knowledge regarding dismissal of such petition, have now assailed the appointment of Chairman, Sindh Textbook Board by approaching this Court through instant Suit and vide order dated 26.12.2023, the impugned Notification was suspended. Admittedly, the Chairman was suspended by the Worthy Chief Minister Sindh as per his mandate, nevertheless, in view of the amendment in Act 2022 and as a stop-gap arrangement, defendant No.7 has been assigned additional charge; Ex-Chairman also challenged his suspension in writ jurisdiction by filing petition, which petition is still pending and yet to be adjudicated; hence, there appears no illegality in making stop-gap arrangement in order to run day-to-day affairs of the Board. In any event, the plaintiffs have no cause of action to challenge the Notification as they are not affectees, on the contrary, they are beneficiaries and they cannot be allowed to choose the officers of their own choice, while bidding process of books is in pipeline and they are participating in such process. The Plaintiffs have nothing to do with the appointment of the Chairman and they are not "*aggrieved parties*" of the Notification issued by the Defendant No.7; therefore, the Plaintiffs do not have *locus standi* to impugn the Notification issued regarding appointment of the Chairman of the Sindh Textbook Board and seek injunctive relief against the said Notification. Thus,

plaintiffs have failed to establish the required ingredients i.e. prima facie case, balance of convenience and irreparable loss for grant of injunctive relief in their favour. In Case of *Messrs Maxim Advertising Company (Pvt.) Ltd. v. Province Of Sindh and 4 others (2007 MLD 2019)*, it was held by a division bench of this Court that: *“Manifestly, contracts involving collection of monetary benefits, which themselves have been obtained on specific monetary considerations, on principle, cannot involve irreparable loss because such loss, inherently, means and implies only such loss as is incapable of being calculated on the yardstick of money. Unless all the required ingredients of prima facie case, balance of convenience and irreparable loss to the aggrieved party are found to subsist, no injunction under Order 39, Rules 1 and 2, C.P.C. can [be] issue[d]”*.

The underlining is supplied

10. Perusal of record further reveals that the Plaintiffs have sought reliefs of “Declarations” in prayer clauses (A) & (B) as well as “Permanent Injunction” in respect of Impugned Notification dated: 08-12-2023 to the extent of *“Restraining the Defendants and other persons acting on their behalf or under them from giving effect to, in any form or manner, the Impugned Notification dated: 08.12.2023”* and the relief sought in the present application is also same. Thus, if the injunctive relief to the extent of that prayer is granted, it would amount to grant of main relief without recording evidence of the parties, which could not be undertaken at this interlocutory stage. In Case of *United Bank Limited and others v. Ahsan Akhtar and others (1998 SCMR 68)*, it was held by the Apex Court of Pakistan that: *“Another well-settled principle of legal jurisprudence is that generally a Court cannot grant an interlocutory relief of the nature which will amount to allowing the main case without trial/hearing of the same”*.

11. In view of above, the plaintiffs have failed to make out a *prima facie* arguable case in their favour. Accordingly, the application for grant of injunctive relief at interlocutory stage being bereft of merits is hereby dismissed. The interim Order dated: 26-12-2023 is hereby recalled. The parties to *lis* are left to bear their own costs.

While parting this order it is pertinent to mention that Governing Body of Sindh Textbook Board ended in March 2003, yet Government has not appointed members therefore, same can't be left upon the mercy of Chairman and Secretary, hence, Sindh Government shall issue notification as per the order within fifteen days. Secretary Education and Chief Secretary Sindh shall ensure compliance report.

SD/-
JUDGE