

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit 967 of 2022
Suit 968 of 2022

Date	Order with signature of Judge(s)
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1. For orders as to maintainability of suits against defendants 1 & 4.
2. For hearing of CMA No.9986/2022 & CMA No.9988/2022.

05.09.2023

M. Hyder Ali Khan, advocate along with Mr. Sami ur Rehman Khan, advocate for the plaintiff.

Syed Ghulam Shabbir Shah, advocate for the defendants 2 & 3.

Mr. Javed Ali Sangi, advocate for the defendant.

Mr. Amer Zeb Khan, Assistant Attorney General.

Mr. Shehryar Qazi, Additional Advocate General Sindh.

1. In so far as the issue of maintainability is concerned, learned counsel for the plaintiff demonstrates that the nomenclature has been pleaded as per section 79 of the CPC. Learned counsel for the defendants have articulated no cavil in such regard. Therefore, the objection as to the maintainability is overruled.

2. These are two applications for interim relief seeking to restrain the defendants from taking any adverse action against the plaintiff on the basis of the show cause notices dated 18.06.2022 ('Impugned Notice').

Per learned counsel for the plaintiff, the Impugned Notice, in each of the two suits, is *prima facie* without jurisdiction. Learned counsel demonstrates from paragraph 5 of the Impugned Notice that it has been issued under section 5(1) of the Sindh Companies Profits (Workers Participation) Act, 2015 ('Act'). Learned counsel adverts to the relevant provision, available at page 35 of the court file, to demonstrate that the authority conferred thereunder is upon the Government and admittedly the instruments have not been issued by the Government. Reference is made to the Sindh Government Rules of Business, 1986, relevant being available at page 37 hereof, wherein government is defined as 'Government of Sindh'. It is further contended that while the Act contains a provision for delegation of powers, per section 9, upon any such subordinate or authority so specified, however, the same has not been done. It is demonstrated that the role designated per the Act falls under the Labour and Human Resources Department, per rule 21-1(a) of the Sindh Government Rules of Business, 1986, copy available at page 227 of the court file. Learned counsel submits that the Impugned Notice has not been issued by any delegatee in the Labour Department and now the next issue is whether it has been issued by any authority so delegated. In such regard, it is contended that there is no notification to demonstrate that any powers have been delegated to the SRB in pursuance of section 9 of the Act. Learned counsel cements his submissions by reference to the Judgment of the Supreme Court reported as PLD 2017 SC 28 to demonstrate that the levy under question was never considered to be a tax in any event, therefore, any adverse inference per the *Searle Solutions 2018 SCMR 1444* judgment was unmerited. In conclusion, learned counsel submits that the plaintiff has demonstrated a *prima facie* case, favorable balance of convenience and finally that irreparable harm would be caused if the application is not allowed.

Learned counsel for the defendants drew attention to prayer clause 4 and stated that an issue before the court is whether the Act is applicable to trans-provincial entities. Learned counsel stated that the similar suits have been clubbed in a bunch, led by CP D 2659 of 2017, and are being proceeded before a learned Division Bench. Learned counsel insisted that the interim arrangements in other matters are perhaps at variance to that which is operating in this suit, hence, it would be just and proper for the interim relief herein to be identical to the suits referred to supra. Learned counsel next contended that the Impugned Notice has also been issued under section 3 of the Act, therefore, section 5 ought not to be considered in isolation. Finally it was argued that the delegation per section 9 has taken place, contrary to that being pleaded by the plaintiff.

Heard and perused. A bare perusal of the Impugned Notice demonstrates that it has been issued under section 5(1) of the Act and the same is apparent from the paragraph 5 of the instrument itself. Section 5, *admittedly*, confers power upon the Government and it was nobody's case that the Government in itself has exercised such power.

Section 3 of the Act refers to establishment of a fund and nothing could be demonstrated therefrom to confer any powers, either upon the Government or any other entity, in addition to or derogation of that contemplated vide section 5 of the Act.

In so far as the issue of delegation of powers per section 9 is concerned, no notification to such effect has been placed before this court and most importantly the counter affidavit filed by the defendants makes no mention of any such delegation having taken place.

It is also noted that the SRB's counter affidavit comprises of five (5) paragraphs, four (4) of which are formal and the fifth merely contains a generic denial. The said counter affidavit has not even deigned to address the specific narrative delineated in the application/affidavit or placed anything on record to controvert the plaintiff's assertions.

The primary thrust of the SRB counsel's case was that the interim orders herein must be identical to some other orders, in other proceedings, not before this Court. At the very least that amounts to tacit admission that interim protective orders are merited herein. Furthermore, this Court is unaware of the precise nature of the *other* suits or any orders passed therein and even otherwise no case is made out to eschew any independent application of mind herein with respect to the application under consideration.

In view of the foregoing, this court is of the opinion that the plaintiff's learned counsel has set forth a fit case for grant of interim injunctive relief, hence, the applications are allowed and the defendants are restrained from taking any adverse action against the plaintiff, on the basis of the Impugned Notice in either suit, until decision of the suits.

It is jointly submitted that since all similar matters are being proceeded before the learned Division Bench, in a bunch led by CP D 2689 of 2017, pursuant to orders of the honorable Chief Justice, therefore, these suits may also be placed before the honorable Chief Justice for appropriate orders. Order accordingly. Office to place a copy hereof in the connected file.

JUDGE