

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui, CJ
Mr. Justice Jawad Akbar Sarwana

C.P. No. D-3523 of 2020

B.R.R Guardian Modaraba & others
Versus
Federation of Pakistan & others

Date of Hearing: 02.09.2024

Petitioner: Through Mr. Sameer Tayebally Advocate.

Respondents No.1: Through Mr. Khaleeq Ahmed, Deputy Attorney General.

Respondents No.2 and 3: Through Mr. Furqan Ali Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, CJ.- Impugned in this petition is an order passed by respondent No.2 i.e. The Registrar Modaraba Companies & Modaraba, SECP, on 13.05.2020 in the proceedings initiated in pursuance of a show-cause notice dated 29.10.2019. In essence in terms of the impugned order the respondent No.2 in order to safeguard the interest of the certificate holders has asked for undertaking from the Board's members etc. with further direction to Modaraba Company and its Board of Directors to take coercive measures including recoveries from the concerned after analyzing and studying their respective cases.

2. Learned counsel for the petitioner has pleaded that in fact earlier also there was an enquiry initiated against the petitioner in terms of order dated 24.04.2018 passed by the respondent No.3 and in terms of inquiry report dated 15.10.2018 certain assertions were made against the petitioner. However, its review was sought in terms of letter dated 08.11.2018 and while the same was still pending and the petitioners were in process of taking over the management of KASB, the

respondents initiated the instant proceedings, which culminated in the impugned order.

3. Learned counsel for the petitioner has firstly challenged the very appointment of the respondent No.2. In this regard he referred to Section 3 of the Modaraba Companies and Modaraba (Flotation and Control) Ordinance, 1980 (“Modaraba Ordinance”) and submitted that it is the Government that had to appoint the Registrar whereas in the instant case such appointment was made by the SECP, which, per learned counsel is against the law hence the order passed is without jurisdiction.

4. Learned counsel then argued that the impugned order was passed after a delay of about 18 months of issuance of show-cause notice which makes entire proceedings a sham exercise. He then went on to argue that petitioners No.3 to 9 in terms of the impugned order have been saddled with certain liabilities in their personal capacity, which, per learned counsel, is not warranted under the law, so also they have been condemned unheard as they were not put on notice in their personal capacity to attend the proceedings. Hence have been deprived of their fundamental right as to fair trial and due process guaranteed under Article 10A of the Constitution of Islamic Republic of Pakistan, 1973. Learned counsel further argued that the hearing on the show-cause took place on 25.11.2019 whereas impugned order was passed on 13.5.2020, that is after a delay of considerable period of time hence not tenable in the law.

5. On the other hand learned counsel appearing for the respondents has controverted the arguments, as raised by the petitioner, and has supported the impugned order.

6. We have heard learned counsel appearing for the parties and perused material available on record.

7. It is very pertinent to note that through the impugned order no action is being taken rather it has kept the proceedings under the subject notice in abeyance. The impugned order appears to have only cautioned the petitioners of a possible action in terms as mandated in Section 20 of the Modaraba Ordinance in case they did not mend their ways. Thus, practically there is no action taken against the petitioners hence the mala fide or ill will on the part of the respondents is not established.

8. As regards the first point that respondent No.2 had no jurisdiction as being not appointed in accordance with law is concerned, we are of the view that this petition mainly challenges the proceedings initiated under the provisions of Modaraba Ordinance and has nothing to do with the appointment of the Registrar, though a prayer is made to that effect. Instant petition is not in the nature of quo-warranto nor the petitioners are aggrieved of the appointment. Even otherwise the petitions in the nature of quo warranto have different criteria to be considered which are lacking in the instant petition. Suffice to say is that the Registrar is not made party in personal capacity, which is a foremost and preliminary ingredient to challenge such kind of appointments. Furthermore, in terms of Section 20(4)(o) of the SECP Act, the Security & Exchange Commission of Pakistan is empowered to perform such functions and exercise such powers of the Authority, including any powers of the Federal Government delegated to the Authority and under any other law for the time being in force under which any function or power has been conferred on the Authority including, but not limited to, the functions and powers set out in the Act.

9. As to the delay in passing the impugned order, it is a fact that the order was passed after more than six months of the hearing but learned

counsel for petitioners has not been able to point out any of the precedents that such delay would make the order questionable and/or null and void. So also as to the question that the show-cause notice was issued after 18 months of conclusion of the inquiry, the petitioner has again failed to point out any law which makes the proceedings untenable on this score except an argument that it shows mala fide on the part of the respondents, which is not borne out from perusal of the impugned order and/or arguments of the learned counsel for petitioners. Furthermore the contention of the learned counsel for the petitioners that show-cause notice was issued after 18 months is incorrect as the date of inquiry report is 14.01.2019 whereas the show-cause notice was issued on 29.10.2019.

10. As regards the plea that petitioners No.3 to 9 cannot be burdened to be personally liable for any loss to the certificate holders as they are not liable for the same in the personal capacity, suffice to say is that they have been directed to provide undertaking which is general in nature. Even if they do not file such undertaking, they are bound by law to adhere to the regulatory framework for Modarabas and should not indulge in any mismanagement or misappropriation of the funds to the detriment of the certificate holders hence filing of such undertaking will not cause any harm to them. Even otherwise in Para 30 of the impugned order the Modaraba Company and Board of Directors are directed to take action including taking coercive measures and recoveries from the concerned only after analyzing and studying all the cases thoroughly.

11. We have also perused the record which reveals that an inquiry was conducted by the respondents under section 21 of the Modaraba Ordinance, which report was submitted on 14.01.2019. On the basis of such report, on 29.10.2019 respondent No.3/SECP issued a show-cause notice to petitioner No.1 alleging violation of Rule 8(4) of Modaraba

Companies & Modaraba Rules 1981 followed by reply of petitioner No.1 via letter dated 19.11.2019. The respondent No.2 after hearing the petitioners and/or their representatives passed the impugned order, perusal of which reveals that payments to different individuals on different heads were made without codel formalities and/or providing legitimacy of such payments. It also shows some incidents of fire which resulted in loss to the company in view of absence of insurance coverage/Takafal. All these facts show huge payments, which needed to be scrutinized, and if the regulator keeps a blind eye on it, then the entire scheme set out in the relevant laws to maintain a system of check and balance on the companies will become redundant.

12. It is also pertinent that learned counsel has not been able to convince this Court that what fundamental right of the petitioners has been infringed that could led us to exercise the jurisdiction under Article 199 of Constitution of Islamic Republic of Pakistan, 1973 as we are not sitting in an appeal over the impugned order. All that has been argued and/or pleaded by the petitioners is/are of factual nature delving therein is eschewed herein as the same are not warranted while exercising constitutional jurisdiction under article 199 of the Constitution of Islamic Republic of Pakistan, 1973. In our view it is the primary duty of the regulatory authorities to safeguard the interests of the certificate holders and the impugned order appears to be an attempt to achieve such goal.

13. Upshot of the above discussion is that the petitioners have not been able to make out a case to interfere in the impugned order. Consequently the petition is dismissed along with pending applications.

Dated:

Chief Justice

Judge