

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Before:

Justice Mrs. Kausar Sultana Hussain
Mr. Justice Khadim Hussain Soomro

CP No. D-1989 of 2023

[Muhammad Hanif & another versus Province of Sindh & Ors.]

CP No. D-19 of 2024

[Akber Ali versus Province of Sindh & Ors.]

CP No. D-71 of 2024

[Union Council Lakhi @ Mirwah versus Province of Sindh & Ors.]

M/s Asad Abbasi, Adnan Memon, Muhammad Yousuf Leghari,
Sunder Das and Ravi Kumar, advocates for petitioners

M/s Haq Nawaz Talpur, Abdul Khalique Laghari and Uzair
Rasool, advocate for respondents

Mr. Allah Bachayo Soomro Additional A.G Sindh a/w Accounts
Officer Badin (**Agha Khurram**)

Dates of hearing : **19.03.2024**

Date of decision : **22.03.2024.**

J U D G M E N T

KAUSAR SULTANA HUSSAIN J. In the captioned petitions a common question of law and facts is involved, therefore, all are being taken up together and disposed of by this common judgment.

2. In C.Ps No.D-19 and 71 of 2024 petitioners (private contractor and Union Council) have challenged the setting up/holding of new cattle market (Mal Piri) by the private respondent Muhammad Suleman in same area and on same day, wherein the petitioner of C.P No.D-19 of 2024 Akber Ali is already holding the cattle market. Whereas petitioners of C.P No.D-1989 of 2023 who, as claimed, are doing the business of cattle farming, besides challenging the setting up/holding of cattle market on same day by the aforesaid private respondent have also challenged the levy of various taxes by the above private person and District Council Badin.

3. Though at the very outset the counsel(s), representing the private person and District Council Badin state that no such tax, as alleged, is being charged, yet as per Notification dated 19th February 1995, issued by the Registrar of this Court with the approval of Hon'ble Chief Justice, the petitions/matters arising out of or involving interpretation of fiscal laws, including octroi taxes and fees levied under the Sindh Local Government Ordinance 1979 are to be heard and decided at

Principal Seat Karachi. Therefore, keeping in view the said Notification we confine ourselves to hear and decide these petitions to the extent of setting-up/holding of new cattle market on same day in same vicinity on the basis of open auction and license/permission, without giving any observation as to the levy of tax, if any.

4. Learned counsel(s) representing the petitioners jointly argued that it is the exclusive prerogative of Union Council Lakhi @ Mirwah to award contract and holding cattle market to any individual within its limit in accordance with law and accordingly a notice was published in various newspapers with regard to auction of cattle market in Deh Veedho Chounro Union Council Lakhi @ Mirwah District Tando Muhammad Khan for the year 2023-24 (**Cattle Market**); that bid was opened in accordance with law wherein petitioner Akber Ali, having offering the bid of Rs.6,75,00,000/-, become successful and he was accordingly allowed to hold/set up above said cattle market on every Saturday; that however, the respondent –Chairman District Council Badin without authority and without issuance of public notice gave permission to respondent Muhammad Sulleman, who is his blue eyed, to also hold/set up cattle market on same day viz: Saturday in same vicinity, which besides being against the fundamental right of petitioner Ali Akber, is without authority and in violation of law. They prayed for allowing these petitions by restraining the private respondent from holding cattle market on same day in same vicinity. In support of their case, they relied upon the cases reported in (i) 1989 MLD 1982 and (ii) 1982 CLC 1252.

5. On the other hand, counsel representing the respondents, raised questions over maintainability of these petitions by arguing that these petitions involve disputed questions of law and facts, hence cannot be looked into by this Court under its constitutional jurisdiction; that the Union Council Lakhi @ Mirwah has no powers to award any contract in respect of holding cattle market rather the said powers lies with the Chairman District Council. They prayed for dismissal of these petitions. In support of their arguments they relied upon the cases reported in (i) PLD 2010 SC 483, (ii) 1985 SCMR 491, (iii) PLD 1997 SC 351 and (iv) 2011 SCMR 374.

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

7. Article 18 of the Constitution of Islamic Republic of Pakistan 1973 gives every citizen a right of freedom of trade, business or profession, however, such right is to be exercised strictly in accordance with law. In the present case the petitioner Ali Akber has been awarded contract of holding subject cattle market on every Saturday by the Union Council Lakhi @ Mirwah through auction proceedings as required under Sindh Local Councils (Auctioning of Collection Rights) Rules, 2016, whereas the private respondent has been given

license/permission by the District Council to set up/hold cattle market in same vicinity on same day, however, without publication of any notice.

8. Before dilating upon the point involved in present cases, we observe that under the aforesaid license/permission since the District Council admittedly besides receiving fee of Rs.1,00,000/- is also collecting other charges from the licensee, as such before award of such license, even if it is claimed that licensee is holding cattle market free of cost which though do not attract a prudent mind, the procedure as provided under Sindh Public Procurement Rules, 2010 as well as Sindh Local Councils (Auctioning of Collection Rights) Rules, 2016 was required to be followed. Further as per provisions of Sindh Local Government Act 2013 the Councils have to enter into any contract with private parties, subject to law, after approval from the Government, however, it appears that though it is claimed by the District Council that license/permission has been issued to the private respondent after decision of the Council, but neither any approval from the Government, as required under the law, nor minutes of alleged meeting of the Council are available on record.

9. Coming to the point involved in present cases, the case of the petitioner Akber Ali is that he was awarded contract of the subject cattle market in open auction by the Union Council Lakhi @ Mirwah strictly in accordance with law and he is doing his business according to the terms and conditions of the contract, whereas District Council claimed that Union Council Lakhi @ Mirwah has no authority to award such contract.

10. The Union Councils and District Councils have been established under Sindh Local Government Act 2013 (**Act 2113**) to carry out certain functions. Both these Councils are working within the framework of Provincial Government Sindh. Chapter-XIII of the Act *ibid* relates to the appointment of Provincial Local Government Commission (**Commission**) for performance of various functions. Section 120 of said Chapter defines the functions of Commission which include resolution of disputes between any Department of Government of Sindh and Council or between two Councils. For the sake of understanding Section 120(d) of the Act *ibid* is reproduced below:

120. Functions of the Provincial Local Government Commission. (1) The functions of the Provincial Local Government Commission shall be as, otherwise, provided in this Act and, in particular, it shall –

(a).....

(b).....

(c).....

(d) *resolve disputes between any Department of Government of Sindh and Council or between two Councils:*

Provided that if the Local Government Commission fails to settle the disputes, the aggrieved party may move the Chief Minister Sindh for resolution thereof;

11. There is no denial of the fact that petitioner Akber Ali was awarded contract of subject cattle market in open auction after following due process as provided under the Sindh Public Procurement Rules, 2010 and Sindh Local Councils (Auctioning of Collection Rights) Rules, 2016, while the crux of the grievance of the District Council is that Union Council Lakhi @ Mirwah has no authority to collect fee/tax on account of said auction, as it falls within its (*District Council*) domain under the law. As such, in our view, the District Council could have approached the Commission appointed under Chapter-XIII of the Act 2013 for redressal of its grievance as provided under the law, reproduced above, instead of creating clash of business interest by granting license/permission to some other person, which too without following the procedure as provided under the Sindh Public Procurement Rules, 2010 and Sindh Local Councils (Auctioning of Collection Rights) Rules, 2016.

12. It may also be noted that private respondent, instead of participating in auction proceedings conducted by Union Council Lakhi @ Mirwah if at all he was/is interested to provide services free of cost, moved a separate application before the District Council and obtained license/permission, which prima facie proves act of malafide on his part. Therefore, this Court has the jurisdiction to entertain the matters arisen out of the act of malafides.

13. In view of the above discussion, since the petitioner Akber Ali was awarded contract of subject cattle market in open auction after due process of law, as such he cannot be deprived from exercising his right as provided to him under Article 18 of the Constitution on account of any dispute between two Councils. Accordingly, license/permission granted by District Council to private respondent Muhammad Suleman for holding of cattle market is set aside. However, the District Council is at liberty to adopt the procedure as provided under Section 120(d), Chapter-XIII of Act 2013 for redressal of its grievance viz: charging of fee/tax on account of present/current contract awarded to petitioner Akber Ali.

14. Captioned petitions stand disposed of in the above terms alongwith pending applications.