

IN THE HIGH COURT OF SINDH AT KARACHI

M.A. NO.15/2016

Appellant : Mashriq Employees Management (Pvt) Ltd.
through Mr. Muhammad Wasif Riaz alongwith
Hafiz Muhammad Suleman, advocates.

Respondents : The Director, Information Department (Press),
Government of Sindh, and two others.
through Mr. Waseem Iqbal advocate for
respondent No.3.

Date of hearing : 06.08.2020.

Date of announcement : 05.11.2020.

J U D G M E N T

SALAHUDDIN PANHWAR, J. Appellant has filed this appeal u/s 20 of the Press Newspapers, News agencies and Books Registration Ordinance 2002 (hereinafter referred to as ‘the Ordinance, 2002’), against order dated 10.03.2016 passed by the Deputy Commissioner, Karachi South (respondent No.2), with following prayer:-

- a) That impugned order dated 10.03.2016 passed by respondent No.2 may graciously be declared illegal, unlawful and void ab-initio and consequently set aside.
- b) Declare that the declaration and authentication allegedly issued in favour of respondent No.3 is illegal, unlawful and of no legal effect.
- c) Declare that the declaration and authentication in favour of the appellant and/or its representatives, is (and has always been) valid for the purpose of publishing the newspapers.
- d) Operation of the impugned order dated 10.03.2016 passed by respondent No.2 may kindly be suspended till the final disposal of the instant appeal.”

2. Briefly stated, appellant is a private limited company under the Companies Ordinance 1984 engaged in publishing newspapers, acquired ownership of Daily Mashriq Karachi, Akhbar-e-Khawateen Karachi and Evening Special Karachi alongwith all assets and liabilities therein vide sale agreement dated 26.08.1996 executed between President of Pakistan through Privatization Commission and Mashriq Employees Bid Group through Syed Mumtaz Ahmed; that on request of appellant name of publisher was changed to Altaf Hussain Khan by sanction issued by Deputy Commissioner, District Magistrate Karachi South vide a declaration and authentication and appellant started publication; that in 1997 appellant company underwent internal unrest/turmoil whereby its employees illegally took control of the building/office of the company, disrupted publication of Daily Mashriq Karachi and Akhbar-e-Khawateen Karachi, inability to publish newspaper was conveyed to Deputy Commissioner and District Magistrate Karachi South and sought suspension of declaration issued in favour of Altaf Hussain Khan, later on, on 26.12.1998 appellant addressed a letter to the Deputy Commissioner and District Magistrate concerned seeking authentication of Altaf Hussain as publisher of the Daily whereby Director Information (Press) vide letter dated 10.11.1999 informed that Altaf Hussain has legitimate right to obtain re-authentication as publisher of appellant company however no authorization letter of re-authentication was issued due to which publication could not be resumed; that in 2005 Altaf Hussain expired and appellant addressed letter dated 29.01.2005 to the Deputy Commissioner and District Magistrate concerned for change of name of publisher to Syed Kamran Mumtaz and the Information Officer (press) vide letter dated 05.03.2005 informed that Information Department, Govt. of Sindh

has no objection if Syed Kamran Mumtaz is made publisher of appellant company for publishing Daily Mashriq Karachi; that after obtaining all approvals appellant made all requisite preparations to resume publication however same could not be done as it was informed by Information Department (Press) vide their letter dated 21.03.2005 that respondent No.3 was publisher of Daily Mashriq Karachi, however in response respondent No.1 vide letter dated 06.04.2005 also intimated that respondent No.3 was authenticated on 03.10.2000 and that declaration and authentication in his favour was cancelled and declared null and void on 10.08.2000 by the then Deputy Commissioner South due to failure of respondent No.3 to bring out his publication; that on 17.03.2005 respondent No.3 addressed a letter to District Coordination Office, CDGK to change periodicity of the Daily from daily to monthly which was disapproved vide letter dated 01.04.2005 as authentication in favour of respondent No.3 had already been declared null and void; subsequently respondent No.3 filed Appeal NO.29/2005 before this Court challenging letter dated 01.04.2005 and this court vide order dated 20.11.2014 remanded the matter to Deputy Commissioner South to dispose it off in accordance with law; that on 10.03.2016 the Deputy Commissioner Karachi South passed impugned order whereby declared letter dated 01.04.2005 to be without lawful authority and confirmed the declaration and authentication in favour of respondent No.3 as publisher of Daily Mashriq Karachi, dated 10.10.2000 to be valid and refused to grant any relief to the appellant on the pretext that law does not allow any relief to the person who has been refused authentication of declaration or whose declaration has been cancelled.

3. Respondent No.2 framed and answered following issues:-

1.	Whether the declaration in favour of the respondent (Mr. Ghulam Muhammad Gull) issued by the then Deputy Commissioner, South Karachi, via letter No.DC&DM(S)/ Press 311/2000 dated 10.10.2000 under section 6 of the Ordinance 2002 is still intact or otherwise ?	Affirmative
2.	Whether the applicant (Mr. Syed Mumtaz Ahmed) is entitled for any relief ?	Negative

4. Learned counsel for appellant has argued that the Deputy Commissioner Karachi South (Respondent No.2) while passing the impugned order, failed to realize that the declaration and authentication issued in favor of respondent No.3 on 10.10.2000 was illegal, unlawful and in contravention to the provisions of the Ordinance 2002; that the Declaration and Authentication issued in favor of the Appellant Company remained intact and valid at all times for all intents and purposes thereby prohibiting issuance of any subsequent Declaration and Authentication in favor of the Respondent No.3; that Respondent No.2 failed to consider that the act of authenticating the declaration in favor of the Respondent No.3 was contrary to Section 10(2)(b) of the Ordinance of 2002 (Section 12(2)(b) of the Ordinance of 1963), which prohibits authentication in case the title of the newspaper proposed to be published was already being published in the same language at any place in the country; it is clear and obvious that the Declaration of Respondent No.3 become null and void due to the failure of Respondent No.1 to bring out his publication, and the Information Department merely communicated this fact to the District Coordination Officer, City District Government, Karachi. Even otherwise, under Section 11 of the

Ordinance of 2002 (Section 9 of the Ordinance of 1963), in case of the failure of a publisher to publish the newspaper, a declaration automatically becomes null and void by the mechanism of law, without any need / opportunity of hearing; Respondent No.2 thus, misconstrued the law and the letters on the record while holding that that the Declaration in favor of Respondent No.3 had been illegally declared to be null and void; that there was no requirement of providing a hearing to Respondent No.3 as the Declaration in his favor had become null and void under Section 11 of the Ordinance of 2002 (Section 9 of the Ordinance of 1963), as opposed to being cancelled in terms of Section 19 of the Ordinance of 2002; that there is no requirement of conducting a hearing under Section 11 of the Ordinance of 2002; that Declaration in favor of Respondent No.3 was not held to be null and void by the Information Department as concluded by the Respondent No.2 in the impugned Order; rather, it automatically became null and void by the operation of law, particularly Section 11 of the Ordinance of 2002. This factum was confirmed / upheld by respondent No.2 vide letter dated 10.08.2001, as provided in the letter of the Information Officer, dated 06.04.2005. In light of the foregoing, impugned order, holding the Declaration in favor of Respondent No.3 to be valid, is illegal, unlawful, and not maintainable in terms of the Ordinance of 2002; that respondent No.2 has held that declaration once issued cannot be cancelled without fulfilling the requirements of law, i.e. section 19 of the Press, Newspaper, News Agencies and Books Registration Ordinance 2002. However, the said requirement is not mandatory in case where the declaration has been issued in illegal manner and without any legal basis; that alleged declaration issued in favor of respondent No.3 suffers from inherent defects and same cannot withstand legal

scrutiny that a declaration in terms of Section 7 of Ordinance of 1963 has to be made by the Publisher. However, respondent No.1 has never been authorized as the Publisher of Daily Mashriq by its owners, which is a mandatory requirement in terms of Section 12 of the Ordinance of 1963, then how comes a declaration can be made by Respondent No.1 and granted under section 12 of the Ordinance of 1963, without any authorization. Learned counsel has referred sections 2(a), 2(k), 2(p), 4, 5, 6, 10, 11, 16, 19, 20, 40(i) of the Ordinance 2002 and relied upon 2007 YLR 1944 (Karachi), 2009 YLR 1248 (Karachi), 2013 PLD 71 (Islamabad), 2009 PLD 33 (Islamabad), 2017 PLD 147 (Lahore), 2006 YLR 2951 (Lahore), 2006 CLC 42 (Karachi), 2006 PLD 638 (Lahore), 2006 PLD 76 (Lahore), 2006 PLD 185(Lahore) and 2005 PLD 190 (Lahore).

5. Learned counsel for respondent No.3 contended that board resolution annexed with the memo of appeal [Page 35] is on letter head of the Mashriq Management (Pvt) Ltd whereas instant appeal is filed by the Mashriq Employees Management (Pvt) Ltd. Moreover, board resolution is specifically for appearance before DCO South and not for filing appeal in High Court. Furthermore, board resolution neither have stamp of company nor date of meeting of board of directors is mentioned. Thereafter, upon specific objection of Respondent No.3 [page 113] in his Counter Affidavit, Appellant filed another board resolution on letter head of the Mashriq Employees Management (Pvt) Ltd along with his rejoinder. Suffice it to mention here that Appellant tried to rectify the error retrospectively through board meeting held on 26.03.2018, however, the Honorable Superior Courts in its numerous judgments held that Board of directors could not authorize retrospectively and also held that defect in institution of proceeding is incurable; he has relied upon PLD 1971 SC 550

relevant at page 560(B). He has also relied upon 2005 CLD 1208 relevant at page 1217(A) and 2017 YLR 633, relevant at page 640(A) 2015 YLR 1105, relevant at page 1110, and referred section 20 of the Ordinance 2002; it is contended that authentication of declaration of appellant was neither refused nor cancelled through impugned order. Impugned order was passed on application of respondent No.3 for change of periodicity of Daily Mashriq Karachi from daily to monthly. Suffice it to mention here that Authentication of declaration was declined to Mr. Altaf Hussain Khan in the year 2000 who never filed any appeal and the judgment has attained finality, therefore, appellant is not an aggrieved person under section 20 of the Press, Newspapers, News Agencies and Books registration Ordinance, 2002. Learned counsel has further contended that firstly, Authentication of Declaration was refused to Mr. Altaf Hussain Khan who, in his life, had never challenged the order therefore, the order attained finality. Secondly, these proceedings were started in 2005 when respondent No.2 refused to change the periodicity of publication from daily to monthly, however, through impugned order, neither authentication of declaration was refused to appellant nor through impugned order, declaration was granted to respondent No.3, therefore, appellant has no locus standi to challenge the impugned order. Even otherwise, keeping in view the legal and factual position as has been narrated in paragraph No.7 of the Counter Affidavit filed on behalf of Respondent No.3, a safe conclusion could be drawn that the proceedings against the appellant has attained finality; that appellant never challenged the original order whereby declaration was authenticated in favor of respondent No.3 therefore, appellant has no occasion to challenge the subsequent proceedings which are purely between respondent No.3 and controlling authority; that the lis has been incompetently filed, it

has been filed in violation of mandatory provisions of Order XXIX CPC; that the order was passed after hearing the parties and appellant has failed to point out any illegality in the impugned order, as such the appeal may be dismissed.

6. *Prima facie*, the core issue was / is revolving around the '**declaration & authentication**' of title **Newspaper** as the appellant claims declaration of title in their favour prior to that in name of respondent No.3 which (*declaration in favour of respondent No.3*) respondent No.3 claims to be legal while the appellant claims declaration of same title in its favour to have never been cancelled. At this juncture, I would take no exception to the legal position, so provided by Section 11 of the Ordinance, regarding **non-publication of newspaper**. The same reads as:-

11. Effect of non-publication of newspaper –

- (1) If a newspaper in respect of which a declaration has been made under section 6 is not published, at the frequency reflected therein, **within three months of the date** on which such declaration is authenticated under section 10, **the declaration shall become void**.
- (2) Where a declaration becomes void under sub-section (1) the printer and the publisher shall make and subscribe a fresh declaration under section 6 before printing or publishing the newspaper, and the provisions of sub-section (1) shall apply to the fresh declaration and to any subsequent fresh declaration.
- (3) Where a newspaper after publication is not published.
 - (a) in the case of a daily newspaper, for sixteen days in a calendar month;
 - (b) in the case of a weekly newspaper, for eight weeks in a calendar year;
 - (c) in the case of a fortnightly newspaper, for two months;
 - (d) in the case of a monthly newspaper, for four months;

- (e) in the case of a quarterly newspaper, for six months;
- (f) in the case of a six-monthly newspaper, for one year; and
- (g) in case of a news agency for sixteen days in a calendar month.

The declaration made in respect of newspaper or news agency shall become null and void, and the printer and the publisher and **the news agency shall make and subscribe a fresh declaration under section 6 before further printing or publishing the newspaper** or disseminating news, and to every such fresh declaration the provisions of the two foregoing sub-sections shall, without prejudice to the provisions of this sub-section, apply.

- (4) Where a declaration becomes void under sub-section (1) or sub-section (3) and a fresh declaration, is made under section 6, **the decision with regard to its authentication shall be made within a period of thirty days.**

From plain reading of the above provision, it becomes quite obvious to say that effect of non-publication of newspaper has its *legal* effects which, *prima facie*, results into making the '**declaration**' as **null and void**'. The term (s) 'Null' & 'Void' have been defined by Black's Law Dictionary as:-

"Null—having no legal effect; without binding force; void
"Void—1. Of no legal effect; null

The provision makes it further clear that once a *declaration* becomes '**null & void**' in result of effects of non-publication of newspaper, the news agency '**SHALL**' make and subscribe a '**fresh declaration**' which I say, will have effects of '*cancellation*' because any other view shall prejudice the meaning of said provision whereby the news agency is required to apply for a '**fresh declaration**' once its *declaration* becomes '**null & void**' in

consequence of effects of non-publication of newspaper.

7. I would add that the legislatures have kept in view the situations, making the publisher *incapable* to publish, therefore to avoid the consequences of said section, sub-section (5) was added at the bottom thereof which reads as:-

(5) Nothing in sub-section (1) or sub-section (3) shall apply in the case of a printer, publisher or owner of a news agency who, within the period stated in those sub-sections and applicable to the particular case, show to the satisfaction of the District Co-ordination Offices that the newspaper has not been, **or cannot be published** or as the case may be, the news agency could not disseminate news for reasons which are beyond their control.

The obligation and failure have been emphasis by use of the word '**shall**' and the provision does have consequence of such **failures** therefore there can be no exception that provision is '**mandatory**' in nature.

8. To make my point further clear, it would be appropriate to refer the Section 19 of the Ordinance which reads as:-

19. Cancellation of declaration –

(1) On the application of the Press Registrar either *suo moto* or based on the information through any person, the District Co-ordination Officer empowered to authenticate a declaration under this Ordinance, is of opinion that any declaration made in respect of a newspaper should be cancelled, he may, after giving the person concerned an opportunity of showing cause against the action proposed to be taken, hold an enquiry into the matter and if, after considering the cause, if any, shown by such parties and after giving them reasonable opportunity of being heard, he is satisfied that;

(a) the newspaper, in respect of which the declaration has been made is being published in contravention of the provisions of this Ordinance or rules made their under; or

(b) the newspaper mentioned in the declaration bears a title which is the same as or similar to, that of any

other newspaper published either in the same language or in the country; or

- (c) the printer and publisher has ceased to be the printer or publisher of the newspaper mentioned in such declaration; or
- (d) the declaration was made on knowingly false representation on the concealment of any material fact or in respect of a periodical work which is not a newspaper; the District Co-ordination Officer may, by the order, cancel the declaration and shall forward as soon as possible a copy of the order to the person making or subscribing the declaration and also to the Press Registrar.

(2) During the period of sixty days of the cancellation order no person shall be issued a declaration in the name of the same title to any other person.

The bare reading of the above provision, dealing with cancellation of **declaration**, nowhere includes the ground of '**effects of non-publication**', however, the sub-clause (a) thereof includes an action of **cancellation** when the **publication** is in contravention of any provisions of Ordinance or rules made thereunder. Here, it is worth adding that I have carefully sailed through the Ordinance which, *nowhere*, shows as to how it would be held that there shall be a declaration regarding '**non-publication for specified period**' or who shall be the authority to make such '**declaration**' within meaning of Section 11 of the Ordinance. I have to emphasize that legally a penal action would always require a *fair-trial* least an inquiry even where the law *itself* permits a punishment. There can be no exception to settled position that "**punishment without trial / inquiry can't be awarded**". The above position leaves me with no option but to conclude that till the time the *legislatures* describes mechanism for keeping a watch over **regular publication** or '**non-publication**' for specified period couple with a rider regarding competent authority to make such a '**declaration**' within meaning of Section 11 of the Ordinance, it would always be fair to have such

question decided within meaning of Section 19(1)(a) of Ordinance, so was viewed in the case of Abdul Samad Khan v. Asstt. Commissioner (Sectt) ICT, Islamabad & Ors (PLD 2013 Islamabad 71) as:-

“8. The only way to cancel a declaration is to pass an order under section 19 of the Press, Newspapers, News Agencies and Books Registration Ordinance 2002. No order under any other provision can be passed to declare declaration as null and void. If the printer or publisher leaves Pakistan or the newspaper is not published regularly, these can be taken as grounds for cancellation of declaration, but the order for cancellation can be passed only under section 19 *ibid.* ..”

In the instant matter, the claim of the appellant was always there that it (*appellant*) pleaded in his appeal in para-6 as:-

“6. That, in the year 1997, the Appellant Company underwent internal unrest and turmoil, whereby its employees illegally took control of the building / office of the company, and disrupted the affairs / publication of the Daily Mashriq Karachi and the Akhbar-e-Khawateen Karachi. The Appellant conveyed its inability to publish the newspapers to the Deputy Commissioner and District Magistrate Karachi (South), and sought suspension of the Declaration issued in the favor of Altaf Hussain Khan.

(copies of the relevant press clippings are attached herewith as Annexure F & G)”

There is no denial to the fact that declaration and authentication in favour of appellant was much prior to declaration in favour of the respondent No.3. The position shall stand clear and evident from referral to reply of respondent No.3 to relevant para of appeal which reads as:-

“5. I say that the contents of paragraph No.5 are not denied to the extent that the declaration was authenticated in favor of Mr. Altaf Hussain Khan by the then Deputy Commissioner, Karachi South on 20.9.1996.....However, Mr. Altaf Hussain Khan could not

continue to publish the same at the frequency reflected therein, as such, **declaration in his favor became void between 1996 and 1997....**”

Thus, it was obligatory upon the competent authority to have examined this aspect before passing the impugned. The impugned order, however, shows that no such **‘point / issue’** was framed except that of:-

1. Whether the declaration in favour of the respondent (Mr. Ghulam Muhammad Gull) issued by the then Deputy Commissioner, South Karachi, via letter No.DC&DM(S)/ Press 311/2000 dated 10.10.2000 under section 6 of the Ordinance 2002 is still intact or otherwise ?
2. Whether the applicant (Mr. Syed Mumtaz Ahmed) is entitled for any relief ?

9. I would say that without proper discussion regarding the *effects* of **‘non-publication’** as well claim of **‘getting declaration suspended’** the point No.1 as well discussion thereon can’t be effective. The claim of declaration in favour of respondent No.3 to be *intact* or *otherwise* would only be of any significance if the answer regarding **‘non-publication’** is answered in affirmation because *admittedly* the declaration in favour of the respondent No.3 would sustain only if it is proved / established that there had been failure on part of the appellant in making *regular* publication or that it was got suspended by making proper resort to section 11(5) of Ordinance.

10. In consequence to what has been discussed above, I am of the clear view that without an answer to following issue / point:

“whether the appellant ever resorted to course, provided by section 11(5) of Ordinance when publication was *admittedly* not being made?”

there would be no *final* adjudication onto the controversies.

11. Accordingly, the order impugned is hereby set-aside and matter is remanded back to respondent No.2 for decision *afresh* with direction to frame said point/issue. The parties will be allowed to submit any document and written submissions, if any; they will be heard properly. Needless to add that legal question, including competence of the appellant, can well be taken. Since the matter is an *old* one therefore, propriety demands decision within a period of **two months.**

IK

J U D G E