

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Abdul Maalik Gaddi

Mr. Justice Mohammad Karim Khan Agha

C.P. No.D-2409 of 2018

Muhammad Ikram Rajpoot & Another

Vs.

Province of Sindh and others

Petitioner : Muhammad Ikram Rajpoot & Another	Through Mr. Ishrat Ali Lohar, Advocate
Official respondents No.1 to 6:	Through: Mr. Allah Bachayo Soomro, Addl. A.G.
Respondents No.7 to 11:	Through Mr. Riazat Ali Sahar, Advocate
Date of hearing :	03.09.2018
Date of judgment :	05.09.2018

**J U D G M E N T**

**MOHAMMAD KARIM KHAN AGHA, J.-** This Constitutional Petition has been filed by the petitioners (Muhammed Ikram Rajput and Iqbal Hussain Biag) under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. The petitioners have prayed as under:-

- A. That this Honourable Court may graciously be pleased to direct the Respondent No.4 & 5 to remove the police picket/police mobile from the Awan-e-Tijarat, Hyderabad Chamber of Commerce & Industry.
- B. That this Honourable Court may graciously be pleased to restrain the respondent No.5 to 7 not to indulge in the peaceful business of the petitioners.
- C. That this Honourable Court may graciously be pleased to direct the respondent No.5 to 7 to de-sealed the office of the Hyderabad Chamber of Commerce & Industry (HCCI) and allow the petitioners to perform their job/duties.
- D. That this Honourable Court may graciously be pleased to provide protection to the petitioners under the garb of Article 18 of the Constitution of Islamic Republic of Pakistan.
- E. That, any other relief which this Honourable Court may deem fit and proper to award the petitioner.

2. The brief facts of the case are that as per schedule the annual Elections to the HCCI were held on 27.05.2018 in which the petitioner No.1 was elected as President and the petitioner No.2 was elected as Vice



President alongwith other Executive Members of Committee and on 03.06.2018 the Secretary General, Chairman Election Commission officially announced the result.

3. That after announcement of the result, the respective office bearers took the charge of their respective offices/positions and started the work of the HCCI. On 02.07.2018 the petitioner No.1, being President of HCCI moved an application to the Secretary HCCI/respondent No.7 regarding the Official State Report of HCCI.

4. According to the petitioner No.1 after filling the application the Secretary and pedicure of the petitioners became annoyed and the Secretary/Respondent No.7 tried to interrupt the duties of the petitioners and compel them to withdraw the application regarding account details of the HCCI but the petitioners flatly refused to do so.

5. That on 07.07.2018, the Ex President HCCI alongwith the unknown persons (so called) members forcibly entered into the office of HCCI and produced false resignation of Petitioner No.1 as President of the HCCI. According to petitioner No.1 on that date he was present in Karachi and hence in his absence the rival group attempted to oust him

6. That, when the ex-president tried to forcibly and deliberately in collusion with the so called members, entered in the office of the petitioners in mob shape they issued threats of the dire consequences to the petitioner's party. Thereafter the respondent No.5 and 6 (police) came there and disbursed the mob while deputing a police constable and sealed the secretariat of HCCI. On same day the petitioner moved an application to the office of respondents No.3 and 4(Police) for lodgment of the FIR against identified and named miscreants as well as legal protection against the culprits but there pleas were ignored.

7. That the Secretariat of HCCI was sealed by the respondent No.7 and deputed police constables including police vehicles/mobile and did not allow the petitioners to attain their respective offices at the instance of ex-president and so called members in order to create hurdle in the business of the HCCI.

8. That, the petitioner No.1 categorically denied resigning as President before the Executive Committee, office bearers, managing committee and moved application to the SSP Hyderabad/Respondent No.5 against the culprits for lodgment of the cognizable offence for cheating, fraud etc.



9. That the petitioners tried to open the Secretariat of Chamber of Commerce & Industry but due to availability of respondent No.6 and his companions did not allow the petitioners to sit in their respective office, when they were enquired they replied that the Secretariat of HCCI was sealed.

10. The upshot of the above, as per the petitioner No.1, is that he has been illegally ousted as President of the HCCI and his position has been illegally usurped by other members in collusion with the police and he has been unable to fulfill his duties as President of the HCCI

11. Learned counsel for the petitioners stated that his resignation letter had been forged by other members of the HCCI in collusion with the ex president and the police; that he was still the President of HCCI; that his position has been illegally usurped because neither the procedure for accepting his resignation nor appointing a new President had been followed as per Memorandum and Articles of Association of the HCCI; the fact that this was all a manufactured affair was clear from the fact that his alleged resignation letter was received by the HCCI on 07-07-2018 and the Meeting of the Executive Committee where he was removed as President and a new President appointed was also held on 07-07-2018 being the same day; that he was ousted on account of the fact that he wanted to look into the earlier accounts and financial information relating to the HCCI which in his view would have potentially exposed the financial wrong doing of the previous President and other members of the HCCI; that the police being the official respondents were hand in glove with the private respondents and hence they had refused to register his F.I.R. against the forgery of his resignation letter; had sealed the office and denied him access and had later handed over the key to the allegedly newly elected President. He submitted that the HCCI came under the Trade Organization Act 2013 and not the Companies Act 2017 and as such this court could entertain this matter in its constitutional jurisdiction. He also in this respect placed reliance on the case of **Shafique Ahmed Qureshi v HCCI** (2015 CLD 107)

12. On the other hand learned counsel for the respondents submitted that the Petitioner No.1's letter was not a forgery and that the petitioner No.1 had submitted it and that now he was trying to retract the same which was not possible; that the new President had been elected in accordance with the relevant Rules governing elections to the HCCI; that this court had no jurisdiction to hear this matter as it fell under the exclusive domain of the Companies Act 2007 and had to be placed before the companies bench of this court and that even otherwise the issues at hand concerned a number



of factual controversies which this court could not go into in its constitutional jurisdiction under A.199 and as such the petition was not maintainable.

13. Learned Addl.AG submitted that this court had no jurisdiction to hear this case and noted that Trade Organization Act 2013 even precluded a High Court from hearing this matter. He also submitted that the police were not hand in glove with the private respondents and at all times had acted in accordance with the law

14. We have heard learned counsel for the parties, considered the record and the relevant law.

15. Firstly we note that the police picket which was allegedly surrounding the HCCI has been removed from the HCCI and that any locks which may have been placed on the offices of the HCCI have now been removed.

16. In essence, in our view the only aspect of the Prayer clause which remains alive relates to the internal management of the HCCI. Namely, whether the Petitioner remains the President of HCCI or some other person as per applicable rules has been elected as President.

17. We are of the considered view that whether the jurisdiction in respect of this issue lies either under the Trade Organization Act 2013 or the Companies Act 2017 is of little relevance to us based on the particular facts and circumstances of this case. This is because in our view the **crux** of the matter as things currently stand revolves around whether petitioner No.1's resignation letter was fabricated or not which is a factual inquiry. It is well settled law that this court under its A.199 jurisdiction cannot examine disputes which concern factual controversies.

18. In this respect reliance is placed on the case of **Anjuman Fruit Arhtian v. Deputy Commissioner** (2011 SCMR 279) (relevant page 283), where it was held as under:

"It is worth mentioning that it is mandatory and obligatory for a party invoking the Constitutional jurisdiction to establish a clear legal right which should be beyond any doubt and controversy. In the light of alleged forgery and fraud as pointed out by learned Additional Advocate General, we are of the considered view that legal right and entitlement of the petitioners are controversial. It hardly needs any elaboration that disputed question of fact cannot be decided in constitutional jurisdiction."

19. Likewise in the case of **Fida Hussain v. Saiqa** (2011 SCMR 1990) (relevant pages 1992-93), it was held as under:



"On examination of the material made available before us it becomes evident that the appellants had, in their replies (available at pages 23 and 45 of the paper book), specifically denied the allegations of respondent No.1 and in support had produced some documents noted above meaning thereby that matter involved disputed facts which for the purpose of determination required factual inquiry by recording evidence. It is well settled by way of plethora of case-law laid down by Superior courts that the High Court is not to resolve the disputed question of facts in exercise of constitutional jurisdiction under Article 199 of the Constitution."

20. In our view to answer the question whether petitioner No.1's resignation letter was fabricated or not which to our mind remains the crux of the petitioner No.1's case a full inquiry is likely be needed, the recording of evidence may be required and even the use of a hand writing expert resorted to. Such factual inquiry as alluded to above is beyond the scope of this court's jurisdiction under A.199 of the Constitution

21. Thus, we find this petition be to non maintainable and the same is dismissed along with listed application (if any). The petitioners however are at liberty, if so advised, to approach the appropriate forum for redressal of their grievance. Likewise if the petitioner No.1 approaches the police to register an F.I.R. in respect of his alleged forged signature the same shall be registered if a cognizable offense is made out.