

IN THE HIGH COURT OF SINDH, KARACHI
C. P. No. D-1473 of 2017

Present:

Mr. Zafar Ahmed Rajput, J.

Ms. Sana Akram Minhas, J.

Petitioner	:	M/s. Welfare Association of Field Organizers weekly Bachat Bazar (Regd.) Karachi, through its member (<i>Nemo</i>)
Respondents 1 to 4.	:	Deputy Commissioner Korangi; SSP Korangi; Director (Bureau of Supply); and Government of Sindh, through Home Department, through Mr. Pervaiz Ahmed Mastoi, Assistant Advocate General (“AAG”)
Date of hearing	:	11.11.2024
Date of order	:	11.11.2024

ORDER

ZAFAR AHMED RAJPUT, J:- Through the instant Constitutional Petition, the Petitioner, *inter-alia*, has sought the following relief: -

- A. *Immediately suspend the impugned cancellation order dated 01.03.2017 as being unlawful/illegal and arbitrary passed by respondent No. 1.*
- B. *Direct the respondent No 2 not to remove the legal Bachat Bazars of the Petitioner located in District Korangi.*
- C. *That Respondent may be restrained from taking any adverse action detrimental to the interest of the Petitioner their members and to stop them from or creating hindrances from organizing the Bachat Bazaar.*

2. Briefly stated facts of the case, as disclosed in the memo of Petition, are that the Petitioner is an Association duly registered under the relevant law, comprising field organizers who arrange and operate weekly Bachat Bazaars at open spaces. In 1981, the Scheme of weekly Bachat Bazaars was introduced in the Federal Capital, Islamabad to facilitate the sale of essential commodities at subsidized rates in open spaces, with a view to alleviating the burden of inflation and curbing the spiraling prices of commodities. The Scheme operates under the supervision and control of the Bureau of Supply and Prices, which exercises overall control over the organizers of the Bazaars as well as the prices of commodities sold therein. Having proved effective, the Scheme was subsequently extended to all the provinces. Since 1997, the Petitioner-Association has been

organizing Bachat Bazaars on specified days at open spaces situated on lands under the control of the concerned authorities. At present, 59 members of the Petitioner-Association operate Bachat Bazaars in the vicinity of District Korangi under valid NOCs issued by Respondent No. 1. Initially, the members of the Petitioner-Association organized Bachat Bazaars on privately owned open lands. Subsequently, the concerned authorities, through the award of contracts, permitted the Petitioner-Association to organize such Bazaars on open lands owned by them. A dispute arose when the occupancy charges were sought to be enhanced from Rs.3.00 to Rs.25.00 per sq. yd. vide Notification dated 27.11.2014. The Petitioner challenged the said Notification before this Court through C.P. No. D-1578 of 2015, wherein this Court suspended the operation of the Notification, subject to the deposit of occupancy charges at the rate of Rs.3.00 per sq. yd. with the Nazir of this Court. Petitioner-Association regularly deposited the said charges and has not committed any violation of the order passed by this Court. On 11.05.2016, the Sindh Assembly enacted the Karachi Development Authority (Revival and Amending) Act, 2016, whereby the Karachi Development Authority Order, 1957, was retrospectively revived with effect from 01.07.2002, the date on which it had previously been repealed. Thereafter, the Karachi Metropolitan Corporation and the Karachi Development Authority demanded occupancy charges from the members of the Petitioner-Association at the respective rates of Rs.6.00 and Rs.5.00 per sq. yd. The Petitioner-Association challenged the said demand before this Court through C.P. No. D-6549 of 2016, wherein this Court directed it to deposit occupancy charges at the rate of Rs.6.00 per square yard with the Nazir of this Court and the Petitioner-Association duly complied with the said direction. On 01.03.2017, a Cancellation Order was issued from the office of Respondent No. 1 (*Deputy Commissioner, Korangi*), directing all Assistant Commissioners to remove illegal Bachat Bazaars, funfairs, festivals, melas and marriage functions operating under expired NOCs or permissions. The order further directed that, henceforth, the terms and conditions stipulated in the Standard Operating Procedures (**SOPs**) dated 16.11.2016 be implemented in letter and spirit. Acting upon the said Cancellation Order, Respondent No.2 (*Senior Superintendent of Police, Korangi*) dismantled the Bachat Bazaars and subjected the field organizers to harassment, who were also arrested and released only upon payment of bribes, with the object of extorting money from those affiliated with the Petitioner-Association. Aggrieved by the aforesaid actions, the Petitioner-Association has filed the instant Constitutional Petition before this Court.

3. It has been averred in the pleading that the Petitioner-Association is engaged in a lawful trade on lands and plots owned by the competent authorities, against payment of occupancy charges regularly deposited with the Nazir of this Court pursuant to the orders passed by this Court and its lawful business cannot be discontinued through the arbitrary, illegal, and unlawful exercise of powers by the Respondents; that the SOP relied upon by the Respondents has not been shown to have been duly issued or notified in accordance with law; that no show-cause notice was issued to the Petitioner-Association, nor was it afforded an opportunity of hearing before the impugned Cancellation Order was enforced against it; therefore, the impugned action is violative of the fundamental principle of “*audi alteram partem*”, and has caused serious prejudice to the Petitioner-Association; that the members of the Petitioner-Association are the law-abiding citizens of Pakistan, whereas the arbitrary and unlawful action of Respondent No. 1 infringes upon the fundamental rights of the Petitioner-Association guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973 (“**Constitution**”) including the right to engage in a lawful trade or business under Article 18, the right to be dealt with in accordance with law under Article 4, and the right to equality before the law and equal protection of the law under Article 25 of the Constitution; that the State is under an obligation to safeguard the lawful exercise of these rights, and the Respondents cannot, through arbitrary or unlawful action, deprive the Petitioner-Association of the protection afforded by the Constitution; that the Cancellation Order was directed against Bachat Bazaars operating on the basis of expired NOCs or permissions, whereas the members of the Petitioner-Association hold valid NOCs and have duly complied with the orders passed by this Court, including those relating to the payment of occupancy charges; therefore, the said Cancellation Order is inapplicable to the Petitioner-Association, and any action taken against it in purported enforcement thereof is without lawful authority and of no legal effect; that, in purported implementation of the Cancellation Order, the Respondents dismantled the Bachat Bazaars, harassed the field organizers, and caused them to be arrested and released only upon payment of illegal gratification and such conduct is arbitrary, mala fide, and without lawful authority, warranting interference by this Court.

4. Learned AAG appearing on behalf of the Respondents has maintained that with a view to preventing the unlawful use of public property and public places and maintaining peace in District Korangi, Respondent No. 1 issued the subject SOPs for regulating the grant of permissions/NOCs; that the said SOPs were intended for the guidance of all concerned and were required to be followed in

letter and spirit in the public interest; that several complaints were received from members of the public regarding change of designated locations, overlapping of Bachat Bazaars, misuse of permissions, encroachments upon public property, obstruction of public rights of way, and violations of the prescribed SOPs; that some organizers were also creating nuisance and obstructing public passages by holding Bazaars on public property on the strength of already-cancelled NOCs; that, in the public interest, the General Cancellation Order was issued under the Security of Vulnerable Establishments Act, 2015, and the Sindh Removal of Encroachments (Public Property) Act, 2010; that the Petitioner-Association repeatedly violated the terms and conditions of the permissions granted to it by changing designated locations, causing overlapping of Bazaars, encroaching upon public property, increasing prices, and selling substandard goods under the guise of Bachat Bazaars; that the action taken by Respondent No. 1 was purely administrative in nature and was taken solely to address and prevent such recurring problems; hence, in the circumstances, no prior show-cause notice was required, as the action was taken in the public interest; that the SOPs and the Cancellation Order were administrative measures relating to public security and public interest, and the principle of *audi alteram partem* did not necessitate prior notice in the facts and circumstances of the case; that the Cancellation Order was lawfully issued by the competent authority in the public interest and setting it aside would adversely affect the public at large and undermine the ability of the District Administration to regulate traffic, maintain security, prevent encroachments, and effectively manage the related matters; that the action taken by the District Administration is lawful, justified, and in the public interest; hence, the instant Petition, being devoid of merit, is liable to be dismissed.

5. Heard, record perused.

6. Petitioner's case is that it holds valid NOCs, has regularly deposited occupancy charges with the Nazir of this Court, and is not affected by the Cancellation Order, as the same is directed against Bachat Bazaars operating on the basis of expired NOCs. Conversely, the Respondents claimed that the Petitioner repeatedly violated the terms and conditions of the permissions by changing locations, causing overlapping of Bazaars, encroaching upon public property, increasing prices, and selling substandard goods. It is further claimed that the NOCs under which certain organizers were operating had already been cancelled. Whether the members of the Petitioner-Association held valid and subsisting NOCs on the relevant date, whether they violated the terms and

conditions of their respective permissions, and whether the encroachment, overlapping, and sale of substandard goods occurred are disputed questions of fact. Their determination requires the recording and appraisal of evidence, which cannot appropriately be undertaken in the constitutional jurisdiction of this Court. So far as the allegations of harassment, arrest, and demand for illegal gratification are concerned, the same are vague and unsubstantiated, as they have been made without furnishing material particulars, including the relevant dates, FIR numbers, or the names of the officials allegedly involved. Allegations of mala fides must be specifically pleaded and established through cogent material; however, no such material has been placed on record in the present case.

7. A permission or NOC to organize a weekly Bachat Bazaar on public land is in the nature of an administrative licence, subject to the terms and conditions imposed by the competent authority and the applicable law. The Petitioner has not identified any statutory provision, rule, or policy conferring upon an association of Bachat Bazaar organizers a vested or enforceable right to operate at particular locations or to continue such activities notwithstanding a decision of the competent authority regulating the use of public land. The deposit of occupancy charges with the Nazir of this Court, pursuant to interim orders passed in the relevant petitions, was subject to the terms of those orders and did not, by itself, confer any right to occupy public land or restrain the administration from regulating its use in the public interest; nor did such deposits establish any permanent entitlement to continue operating the Bachat Bazaars.

8. The Cancellation Order was issued by the Deputy Commissioner in the exercise of administrative powers for the prevention of encroachments upon public property, the obstruction of public ways, and threats to public order, as well as for the enforcement of the applicable SOPs governing the grant of permissions. The Order does not, on its face, prohibit Bachat Bazaars operating under valid and subsisting permissions; rather, it directs the removal of those operating on the basis of expired NOCs; as such, if the members of the Petitioner-Association hold valid and subsisting NOCs, the Order, by its own terms, would not apply to it. It is, however, for the Petitioner to establish the validity and subsistence of the relevant permissions before the competent authority. No documentary material has been placed before us to establish that the NOCs of the members of the Petitioner-Association were valid and subsisting on the date of the impugned Cancellation Order. Likewise, the Petitioner's assertion that the SOPs were not duly issued or otherwise lack legal validity remains unsupported by any material on record.

9. As regards the plea that the Petitioner-Association was denied an opportunity of hearing, the Cancellation Order is a general administrative measure addressed to the Assistant Commissioners and is not an adjudicatory order specifically determining the Petitioner's rights. Where an administrative measure of a general and regulatory nature is adopted in the public interest to maintain public order and prevent encroachments upon public property, individual prior notice to every person potentially affected is not invariably necessary. In any event, the Petitioner-Association remains at liberty to approach the competent authority for verification of the validity and subsistence of its members' NOCs and for such further relief as may be permissible under the applicable law, whereupon the authority shall afford it an appropriate opportunity of hearing. In these circumstances, no violation of Articles 4, 18, or 25 of the Constitution has been established. The right to practice any profession or to carry on any lawful trade or business under Article 18 of the Constitution is subject to the applicable legal and regulatory framework and does not, in itself, confer an unrestricted right to occupy public land or roads, or to establish or operate a market thereon, without the requisite permission of the competent authority.

10. For the foregoing reasons, the instant Petition, which involves disputed questions of fact and seeks enforcement of a right that has not been shown to be vested or legally enforceable, is devoid of merit and is accordingly dismissed, along with the pending applications. The Petitioner shall, however, be at liberty to approach the competent authority for verification of the validity and subsistence of its members' NOCs or for renewal thereof, as may be permissible under the applicable law. Any such application shall be decided by the competent authority in accordance with law, after affording the Petitioner an adequate opportunity of hearing.

11. The above are the reasons for our short order dated 11.11.2024.

JUDGE

JUDGE

Athar Zai