

IN THE HIGH COURT OF SINDH AT KARACHI

Suit 1557 of 2021 : Saleem Butt & Another vs.
Dr. Afnan Ullah Khan & Another

For the Plaintiffs : Mr. Abdul Ahad, Advocate

For the Defendants : Mr. Junaid Ahmed, Advocate

Date of hearing : 27.06.2022

Date of announcement : 27.06.2022

ORDER

Agha Faisal, J. The crux of this order is whether proceedings before a civil court ought to inquire into proceedings of Parliament and place a restraint upon functioning of a Standing Committee of the Senate of Pakistan.

Contextual Background

2. Briefly stated, a letter dated 06.07.2021 was issued by a member of the Senate Standing Committee on Petroleum to its Chairman (“Impugned Letter”). It is considered illustrative to reproduce the letter herein below:

“Dear Mr. Chairman,

I would like to bring to your attention press reports/allegations of corruption in Hascol Pakistan Limited. It is being reported that Hascol and its management team along with Vitol (major stakeholder in Hascol) have managed to undertake the largest financial default (74 billion rupees) in Pakistan’s history [1][2][3]. These are serious allegations and merit scrutiny by the Committee as public money is involved. A UAE based company by name Noir Energy DMCC is also allegedly involved in this scam. More worrying is the fact that allegedly the people who are responsible for this fraud have started new ventures by the names of Fossil Energy and Clover Pakistan, further scams are in the making.

I would advise that a meeting of the Senate Committee on Petroleum be called immediately. The concerned persons from OGRA, FIA , FBR, SECP, National Bank and Ministry of Petroleum be present to apprise the Committee about the facts in the instant case, and the veracity of the press reports be clarified. It should be explained how such a mega scam (if any) has been allowed to go unchecked. I suggest that the personal wealth of the individuals involved be checked against the income they generated to verify if any corrupt practices took place. I am attaching evidence of the press reports with this letter for your perusal and record.

The names of the following persons have appeared in the press reports:

- Saleem Butt, Former CEO, Hascol;
- Abdul Aziz, Director Hascol (Vitol Representative);
- Alan Doncan, Chairman, Hascol;
- Hamid Khan, CEO, Fuel Expert (BulkHead Distributor of Hascol);
- Ali Ansari, Former COO, Hascol
- Khurram Shahzad, Former CFO, Hascol.

Your cooperation in this regard is appreciated.

Sincerely,
Sd/-

Senator Dr. Afnan Ullah Khan ”

The Impugned Letter was challenged in this civil suit only by the plaintiff number 1¹ and the following prayers were sought:

- a. Declare that the allegations made by the Defendant No.1 regarding the Plaintiffs in his Letter dated 06.07.2021 sent to the Chairman Petroleum Committee Senate are false, malicious and a blackmailing tactic to coerce the Plaintiffs into paying the Defendants unsubstantially, baseless and unverified alleged dues;
- b. Declare that the Defendant No.1's circulation of unverified news reports and his Letter dated 06.07.2021 through his social media tweets dated 02.07.2021 and 06.07.2021 is derogatory in nature and amounts to harassment, blackmailing and jeopardizing the business of the Plaintiffs;
- c. Declare that the first invoice and the second invoice both dated 04.03.2020 are baseless, unjustified and of no legal effect in view of there being no contractual arrangement or a signed agreement between the Plaintiffs and the Defendants;
- d. Permanent injunction restraining the Defendant No.1 from initiating/ participating in any derogatory and prejudicial meeting/inquiry against the Plaintiffs through the Petroleum Committee of Senate pursuant to his Letter dated 06.07.2021, and/or from circulating, publishing, disseminating any allegations and / or remarks that tend to or are prejudicial against the reputation and image of the Plaintiffs;..."

The basis of this suit was rested on a controverted invoice dated 04.03.2020 issued by the defendant no. 2 to a company not even initially arrayed as a party herein. *Ad interim* orders were granted on 15.07.2021 restraining the defendant no. 1, sitting senator and member of the Senate Standing Committee on Petroleum, from acting upon the Impugned Letter. The said restraint subsists till date.

Respective arguments

3. Per defendants' learned counsel, the present suit was barred by law, specifically the Constitution, and even otherwise no actionable cause had accrued to the plaintiffs, hence, the plaint merited being rejected forthwith. The plaintiffs' learned counsel submitted that the Impugned Letter was not actuated on *bona fides* and was the consequence of a financial disagreement between the plaintiff no. 2 and the defendant no. 2, hence, the suit ought to be sustained, interim order confirmed and the plaint in any event could not be rejected in piece meal.

Scope of this order

4. Heard and perused. There appear to be two questions for this Court to determine; Firstly, whether, in relation to prayer clauses a, b and d, this Court had jurisdiction could inquire into proceedings of Parliament and place a restraint upon functioning of a Standing Committee of the Senate of Pakistan; and secondly, whether in the present circumstances a negative declaration could be granted in exercise of section 42 of the Specific Relief Act 1877.

¹ The second plaintiff was impleaded post consequent to the interim order herein granted on 15.07.2021.

Proceedings of Parliament

5. The Constitution makes it clear that Courts ought not to inquire into proceedings of Parliament² and parliamentary privilege is accorded to inter parliamentary communications³.

6. *Pakistan vs. Ahmed Saeed Kirmani & Others*⁴ was a pioneering judgment in this regard, albeit in the context of being prior in time to the 1973 Constitution, wherein *Cornelius J* upheld the privilege attached to parliamentary proceedings. The settled ratio was followed by *Hamoodur Rehman CJ* in *Farzand Ali & Others vs. Province of West Pakistan*⁵ and has been consistently been maintained⁶ ever since; including in *BNP*⁷ wherein it was expounded that proceedings of a formally constituted committee of either house falls within the ambit of internal proceedings of the Parliament, hence, outside the jurisdiction of the Court in terms of Article 69 of the Constitution⁸.

7. The Impugned Letter is *prima facie* inter parliamentary communication and no cavil has been articulated in such regard by the defendants' counsel,

² Article 69 - (1) The validity of any proceedings in Majlis-e-Shoora (Parliament) shall not be called in question on the ground of any irregularity of procedure.

(2) No officer or member of Majlis-e-Shoora (Parliament) in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order in Majlis-e-Shoora (Parliament), shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

(3) In this Article, Majlis-e-Shoora (Parliament) has the same meaning as in Article 66.

³ Article 66 - (1) Subject to the Constitution and to the rules of procedure of Majlis-e-Shoora (Parliament), there shall be freedom of speech in Majlis-e-Shoora (Parliament) and no member shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Majlis-e-Shoora (Parliament), and no person shall be so liable in respect of the publication by or under the authority of Majlis-e-Shoora (Parliament) of any report, paper, votes or proceedings.

(2) In other respects, the powers, immunities and privileges of Majlis-e-Shoora (Parliament), and the immunities and privileges of the members of Majlis-e-Shoora (Parliament), shall be such as may from time to time be defined by law and, until so defined, shall be such as were, immediately before the commencing day, enjoyed by the National Assembly of Pakistan and the committees thereof and its members.

(3) Provision may be made by law for the punishment, by a House, of persons who refuse to give evidence or produce documents before a committee of the House when duly required by the chairman of the committee so to do :

Provided that any such law:

(a) may empower a court to punish a person who refuses to give evidence or produce documents; and

(b) shall have effect subject to such Order for safeguarding confidential matters from disclosure as may be made by the President.

(4) The provisions of this Article shall apply to persons who have the right to speak in, and otherwise to take part in the proceedings of, Majlis-e-Shoora (Parliament) as they apply to members.

(5) In this Article Majlis-e-Shoora (Parliament) means either House or a joint sitting, or a committee thereof.

⁴ PLD 1958 Supreme Court 397.

⁵ PLD 1970 Supreme Court 98.

⁶ PLD 2012 Supreme Court 774; PLD 2015 Islamabad 7; 2016 CLC 1169;

⁷ *BNP (Pvt.) Ltd. vs. CDA & Others* reported as 2016 CLC 1169.

⁸ *Riaz Hanif Rahi vs. Pakistan* reported as PLD 2015 Islamabad 7.

who graciously also conceded that the said instrument had already served its purpose.

8. The present suit in its original form was preferred only by the plaintiff no. 1 and he sought this Court's intervention in parliamentary proceedings, predicated on an alleged financial disagreement between the defendant no. 1 and a company, then stranger⁹ to the suit. While eschewing any observation of the alleged financial disagreement, it is apparent that the same could not be made a pretext of intervention in parliamentary proceedings.

9. It was never the case before this Court that the Impugned Letter was not the proceedings of a formally constituted committee of the Parliament and no case of intervention therewith could be set forth by the plaintiffs' counsel. Therefore, it is observed that the plaintiffs' counsel has remained unable to demonstrate that this Court has any jurisdiction to entertain the pertinent relief¹⁰ claimed.

Negative declaration

10. The precepts of declaratory relief are governed by section 42 of the Specific Relief Act 1877¹¹ and the *sine qua non* of seeking such a declaration is to demonstrate entitlement to a legal right. There is ample authority to demonstrate that suits seeking negative declarations have not been appreciated by the Courts¹². In a recent judgment in *Frost International Limited vs. Milan Developers & Others*¹³, the Supreme Court of India has maintained that no plaintiff can be permitted to seek relief in a suit which would frustrate the defendants from initiating a remedy for redress of its grievance. The Supreme Court concluded that a plaintiff could not be permitted to seek an injunction against the defendant, restraining the defendant from seeking a remedy in law against the plaintiff and held that the plaint in such circumstances ought to be rejected.

11. The plaintiff no. 1 filed this suit essentially seeking orders with respect to the Impugned Letter and rested the claim on a rather illusory cause of action, admittedly not accrued thereto. The second plaintiff was only impleaded subsequently and no justification was articulated as to its omission

⁹ Subsequently impleaded as plaintiff no. 2.

¹⁰ Prayer clauses a, b and d.

¹¹42. Discretion of Court as to declaration of status or right. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief...

¹² PLD 2019 Supreme Court 449; 2016 CLC Note 10; PLD 1978 Lahore 113.

¹³ MANU/SC/0404/2022.

at the first instance. Notwithstanding the foregoing, the alleged financial disagreement arose on 04.03.2020¹⁴, however, the present suit was not instituted until 17.07.2021, being almost immediately after the Impugned Letter was issued. Without making any observation with regards to the merits of the financial disagreement, no justification / vicarious privity has been demonstrated before this Court to merit a restraint upon the defendant no. 1 on account of any grievance against the defendant no. 2.

12. *Shafi Siddiqui J* has observed in *Mobeen Raza*¹⁵ that relief under section 42 of the Specific relief Act 1877 could not be sought without demonstration of any legal entitlement, within meaning thereof. In application of the ratio hereto it is considered safe to observe that the plaintiff has been unable to demonstrate any right to seek relief¹⁶ within meaning of the statutory provision and has no case has been made out to seek the negative declaration sought.

Application for interim relief

13. The application for interim relief seeks to restrain the defendant no. 1, a sitting Senator and member of the relevant Committee, from participating in any meeting / proceedings pursuant to the Impugned Letter and from disseminating any remarks etc. prejudicial to the reputation and image of the plaintiff¹⁷. While the first segment of the relief claimed is *prima facie* repugnant to Articles 66 and 69 of the Constitution, the second limb is contradicted by the plaintiff's counter affidavit to CMA 16900 of 2021, in paragraph 6 whereof it is deposed that "*The instant suit is neither based on defamation nor do the plaintiffs wish to restrain the defendant no. 1 from performing his lawful parliamentary duties*". It is observed that the stance of the plaintiffs is entirely self-contradictory and this Court respectfully expresses its inability to sustain the same.

14. Notwithstanding the privileged nature of the Impugned Letter, it merely seeks determination of facts ostensibly in the national interest. Nothing could be demonstrated to show how any actionable grievance arose therefrom. While eschewing voluminous observations in such regard, it is submitted that no *prima facie* case, of balance of convenience and / or irreparable injury could be demonstrated before this Court, hence, the plaintiffs' application is found to be devoid of merit and dismissed.

¹⁴ Per original invoice of the said date at page 57.

¹⁵ 2016 CLC Note 10.

¹⁶ Prayer clause c.

¹⁷ Reference is only to the plaintiff, being the plaintiff no. 1.

Rejection of the plaint

15. The evolution of law with respect to rejection of plaints was chronologically catalogued in the *Florida Builders case*¹⁸ wherein the august Supreme Court demarcated the anvil upon which the decisions in such matters ought to be rested. *Saqib Nisar J* observed that the rejection of the plaint was merited when the suit appeared to be barred by law and the import of the word *appear* was deciphered to mean that if *prima facie* the court considered that it *appears* from the statements in the plaint that the suit was barred, then it should be terminated forthwith.

16. It has been discussed supra that prayer clause a, b and d appeared to be barred by law, being the Constitution in the present facts and circumstances, and prayer clause c did not survive the anvil of section 42 of the Specific Relief Act 1877. Even otherwise no actionable cause could be demonstrated to have accrued to maintain this suit. Therefore, the plaint merits rejection forthwith.

Findings

17. In view of the reasoning and rationale herein contained, CMA 11218 of 2021 is dismissed and CMA 16900 of 2021 is hereby allowed; the plaint herein is rejected.

JUDGE

¹⁸ *Haji Abdul Karim & Others vs. Florida Builders (Private) Limited* reported as *PLD 2012 Supreme Court 247*.