

Form No:HCJD/C-121
ORDER SHEET

**IN THE LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT**

Case No: W.P.No.3768/2024

Adnan Arif

Versus

Province of Punjab etc.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of Parties or counsel, where necessary.
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10.12.2024 Syed Qamar Hussain Shah Sabzwari, ASC for the Petitioner alongwith M/s Basharat Ali Khan Abbasi and Mansoor Tariq, Advocates.
Mr. Abid Aziz Rajori, Assistant Advocate General Punjab (on Court call).
Mr. Arshad Mehmood Malik, Assistant Attorney General.
Mr. Fazli Qadir Khan, Advocate.
Mr. Mujtaba-ul-Hassan, Civil Judge/Research Officer.

This Court will examine veracity of quasi-judicial order of the Secretary, Local Government & Community Development Department passed on the directions issued in this Court on 18.03.2024 in (earlier) Writ Petition No.803/2024 filed by the Respondent No.4 i.e. M/s Coca Cola Beverages Pakistan Limited (the “Company”) under Sections 146(3), 147 and 148 of the Punjab Local Government Act, 2022 (the “Act”) read with Rule 10 of the Punjab Government Rules of Business, 2011 (the “Rules”) which is the constitutional power of the Secretary Local Government & Community Development Department under the “Rules” as held by the Supreme Court of Pakistan in Messrs Mustafa Impex, Karachi and others versus The

Government of Pakistan through Secretary Finance, Islamabad and others (PLD 2016 SC 808) holding that the Rules of Business flowed from the Constitution of Islamic Republic of Pakistan, 1973 (the “Constitution”) is mandatory and binding on the Government. This case is being decided by this Court by applying the principle of limine control developed in the cases of Asif Saleem versus Chairman BOG University of Lahore and others (PLD 2019 Lahore 407), Messrs Colony Textile Mills Limited and another versus First Punjab Modaraba (2021 CLD 1212) and Muhammad Shehzad versus Faisal Bank Limited (2024 CLD 141).

A. Background

2. Through this petition under Article 199 of the “Constitution” the Petitioner has called in question the vires of impugned order dated 17.10.2024 passed by Respondent No.1/Secretary, Local Government & Community Development Department.

B. Confrontation to Petitioner’s Counsel

3. When confronted to counsel for the Petitioner Syed Qamar Hussain Shah Sabzwari, ASC how writ is maintainable against the impugned order which has been passed by the Respondent No.1 pursuant to the direction issued by this Court on 18.03.2024 in (earlier) Writ Petition No.803/2024 filed by the “Company”, Syed Qamar Hussain Shah Sabzwari, ASC

submits that the Petitioner is the contractor and has been awarded a contract by the Municipal Corporation, Murree to collect advertisement fee for the year 2023-24 of the areas mentioned in work order dated 25.07.2023. He further submits that demand notice has also been issued in favour of the Petitioner on 29.11.2023 to which the Company has not raised any objection at the relevant time but subsequently, it has filed the aforesaid writ petition and pursuant to the direction of this Court, the (Secretary) Respondent No.1 has passed the impugned order by reducing the rate of advertisement fee from Rs.400 per square foot per annum to Rs.100 per square foot per annum, which is illegal and without lawful authority. He contends that the Respondent No.1 has no authority to reduce the rate of advertisement. He clarifies that as per provisions of Section 110 of the Punjab Local Government Act, 2022 (the “Act”), a person aggrieved from the order of a Chief Officer passed under Section 109 of the Act, may, within thirty days of the receipt of such order, file an appeal before head of the local government which shall be decided within thirty days. He submits that head of the local government is defined in Section 2(rr) of the Act as the (i) Lord Mayor of Metropolitan Corporation Lahore; (ii) City Mayor of a Metropolitan Corporation other than Lahore; (iii) District Mayor of a District

Council and (iv) Chairperson of a Union Council and not the Secretary, Local Government & Community Development Department.

C. Arguments of Law Officer

4. Learned law officer has objected to maintainability of the petition and submitted that the impugned order has been passed strictly in accordance with law by the Secretary Local Government & Community Development Department under the “Act” and the “Rules” which is the direct command under Article 139 of the “Constitution”.

D. Determination by the Court

5. Heard. Albeit the Respondent No.4/ Company has approached this Court in the aforesaid writ petition but this Court has referred the matter to the Respondent No.1 with a direction to decide the same after hearing all concerned, including the Petitioner, by also granting an interim relief in the said petition. This Court has already discussed in detail and strengthened the provincial autonomy after Eighteenth Amendment to the Constitution in the case of Muhammad Yousaf versus Secretary Finance and others (PLD 2021 Lahore 156)= [2021 PLC (CS) 195] by highlighting functions of the government departments/forums throughout the Province of Punjab in light of Article 127 read with the provisions of Article 139 of the Constitution. In a

subsequent judgment reported as *Ch. Fayyaz Hussain versus Province of Punjab and others* (PLD 2022 Lahore 1), this Court, while dealing with an issue relating to the Rescue 1122, has further strengthened the scope of government departments rendering services in the Province of Punjab by observing as under:

“...Word ‘department’ is defined under R. 2(i) of the Punjab Government Rules of Business, 2011, which means a self-contained administrative unit in the Secretariat responsible for the conduct of business of the Government in a distinct and specified sphere, and declared or constituted.”

6. Here in this case, Rules 3 and 10 of the Punjab Government Rules of Business, 2011 (the “Rules”) are relevant. Under Rule 3(3) of the Rules, business of the Government has been distributed amongst several Departments in the manner indicated in the Second Schedule and functions of the Secretary are described under Rule 10 of the 2011 Rules, which is reproduced hereunder for ease of the matter:-

“10. Functions of the Secretary.— (1) A Secretary shall:

- (a) be the official head of the Department and be responsible for its efficient administration and discipline, for the conduct of business assigned to the Department and for the observance of laws and rules, including these rules, in the Department;

- (b) *be responsible to the Minister for the business of the Department and keep him informed about the working of the Department, and of important cases disposed of without reference to the Minister;*
 - (c) *assist the Minister in the formulation of policy and bring to the notice of the Minister cases required to be submitted to the Chief Minister under the rules;*
 - (d) *execute the sanctioned policy;*
 - (e) *submit, with the approval of the Minister, proposals for legislation to the Cabinet;*
 - (f) *keep the Chief Secretary informed of important cases disposed of in the Department;*
 - (g) *issue, subject to any general or special orders of the Government:*
 - i) standing orders specifying the cases or class of cases which may be disposed of by an officer subordinate to the Secretary; and*
 - ii) specific orders and instructions to its officers for the conduct of the business assigned to a local government.*
- (2) *While submitting a case for the orders of the Minister, the Secretary shall suggest a definite line of action.*
- (3) *Where the Minister's orders appear to contravene any law, rules, regulations or Government policy, the Secretary shall resubmit the case to the Minister inviting his attention to the relevant law, rules, regulations or Government policy,*

and if the Minister disagrees with the Secretary, the Minister may refer the case to the Chief Minister for orders.”

This Court, while interpreting the aforesaid provisions of the Rules first time has given verdict regarding responsibilities and functions of the heads of government departments in the case of PIA Officers Cooperative Housing Society Ltd. through President versus Province of Punjab through Secretary to the Government of Punjab, Cooperatives Department, Lahore and 4 others (2024 CLC 947) by holding that the Secretary, being official head of the department, is responsible for its efficient administration and discipline, for the conduct of business assigned to the department and for the observance of laws and rules. This concept has subsequently been further strengthened by this Court in another case cited as Muhammad Banaras versus Government of the Punjab etc. (PLJ 2024 Lahore 242). In the aforesaid earlier Writ Petition of the Respondent No.4/Coca Cola, this Court, vide order dated 18.03.2024, has directed the Respondent No.1 to decide the matter under Rule 10 of the Rules in light of the principles settled in PIA’s Case (supra) and Secretary, Local Government & Community Development Department has passed the impugned order dated 17.10.2024 strictly

under Rule 10(g) of the Rules by specifically mentioning as under:

“...The matter at hand was also referred to the Director (Accounts), LG&CD Department to be inquired into. As per the report submitted by the said officer “the dispute over the rates charged for advertisement boards stems from a misclassification of the boards as Neon Signs. Based on the definitions and evidence provided, it is clear that the complaint’s advertisement boards do not meet the criteria for Neon Signs and may be billed at a lower rate. By reclassifying the boards and issuing revised bills, as MC Murree previously charged an Advertisement tax @ 100 rupees per square foot per annum for the same type of Advertisement Boards during the same financial year. MC, Murree can resolve the dispute amicably and ensure fair and accurate taxation for advertisement boards. It is further added that the complainant should ensure the payment of advertisement bills within seven days after resolution of the dispute.”

The issue raised in this case relates to the reduction of advertisement fee and since the Secretary, Local Government & Community Development Department functions under the command of the Constitution, as per Rule 10 read with First Schedule and Second Schedule of the 2011 Rules, which have been framed under Article 139 of the Constitution in addition to powers under Section 146(3) of the “Act”, he is fully competent to administer the laws [including the rules framed under the said laws] mentioned under Clause 15 of Second Schedule to the Rules.

The aforesaid Section 146(3) of the “Act” reads as under:

146. Supervision of local governments

(1)-----

(2)-----

(3) The Secretary shall exercise supervision and general control over the local governments to ensure that they always act in the public interest and perform their functions strictly in accordance with the provisions of this Act and all other relevant laws for the time being in force.

The aforesaid provision of law is similar to powers prescribed under Rule 10 of the “Rules, hence in paragraph-5 of the impugned order, the Respondent No.1 has categorically stated that advertisement fee being charged to the Company (the Respondent No.4) is at variance with the gazette notification dated 29.08.2018. He has also obtained a report from the Director (Accounts), LG & CD Department to clarify the aspect that advertisement boards of the Respondent No.4 do not meet the criteria for Neon Signs and may be billed at a lower rate. This action of reduction in advertisement fee has also strengthened the protection of foreign investors in Pakistan, as has already been discussed by this Court in the judgment reported as M.C.R. (Pvt) Ltd, franchisee of Pizza Hut versus Multan Development Authority and others (2021 CLD 639), relevant

paragraphs 28 and 29 of which are reproduced hereunder for ease of the matter:

“28. Undoubtedly freedom of trade, business and commerce is a fundamental right guaranteed under Article 18 of the Constitution which states that every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business. One of the basic purposes behind provision of this fundamental right is certainly to advance culture of socio-economic progress and to protect and promote business and trade activities and, at the same time, to encourage simplification of the process of establishing and carrying out new business ventures throughout the country because activities of business and trade create opportunities for the masses around and provide job options, financial stability and progress in the area.

29. Since the Pizza Hut is an international chain and entered into lease agreement with WASA, it is the duty of the Courts in Pakistan to see the rights of the parties and to protect their interest in order to build confidence of investors in Pakistan but at the same time the interest of government functionaries has also to be examined regarding financial interest of the Government.”

7. In response to the Court queries (i) what is *locus standi* of the Petitioner; (ii) how a contractor can levy advertisement fee under the concept developed by the Division Bench of Sindh High Court in the case of *Continental Biscuits Ltd versus Federation of Pakistan through Secretary Defence, Ministry of Defence, Islamabad and 3 others* (**2017 PTD 1803=2017 YLR 2155**) and (iii) whether the impugned order is directly hitting

rights of the Petitioner because the same has been passed in the public interest, learned counsel for the Petitioner has reiterated his aforesaid submissions and could not satisfy the Court on the aforesaid queries. Moreover, Section 99 of the Act provides mechanism for levy of tax and Part-I (l) of Fifth Schedule of the Act deals with the fee for regulation of advertisement through sign boards, hoardings, cutouts, neon-signs, pole signs, sky signs and boards; billboards; directional boards, banners, streamers, mopyy signs, temporary advertisement structures and stalls, posters, one way visions, hot air balloons and blimps, moving vehicles, electronic display screens including Light Emitting Diode (LED) and Surface Mounted Device (SMD), etc.

8. The nutshell of the above discussion is that since the (Secretary) Respondent No.1 is the incharge of the Local Government & Community Development Department and he has passed the impugned order strictly as per mandate of Section 146(3), 147 and 148 of the “Act” in addition to Rule 10(1) of the Rules, which are made under Article 139(2) of the Constitution, providing that the Provincial Government shall by rules specify the manner in which orders and other instruments made and executed shall be authenticated, and the validity of any order or instrument so authenticated shall not be questioned in any Court

on the ground that it was not made or executed by the Governor, and further in the case of Messrs Mustafa Impex, Karachi and others versus The Government of Pakistan through Secretary Finance, Islamabad and others (PLD 2016 SC 808), the Supreme Court of Pakistan, while highlighting the importance of Rules of Business, has already held that the Rules of Business cannot be understated within a constitutional framework and all rules are binding for, and in relation to, the powers thereby conferred on the Executive, this is especially so in the case of the Rules of Business. In the said case, the Supreme Court of Pakistan has further observed that the Rules of Business are closely intertwined with the concept of good governance for and in the public interest and allowing a departure therefrom would be detrimental to open and transparent forms of government, therefore, it can be safely stated that the Rules have the constitutional command because the same have been made under Article 139 of the Constitution. In this legal backdrop, no interference is required by this Court and by applying the principle of limine control developed in the cases of Asif Saleem versus Chairman BOG University of Lahore and others (PLD 2019 Lahore 407), Messrs Colony Textile Mills Limited and another versus First Punjab Modaraba (2021 CLD 1212) and Muhammad Shehzad versus

Faisal Bank Limited (2024 CLD 141), this writ petition is **dismissed** in *limine*.

(JAWAD HASSAN)
JUDGE

APPROVED FOR REPORTING

JUDGE

*Mājid