

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No. 23394 of 2023

Muhammad Aslam

versus

Govt. of the Punjab & 5 others

JUDGMENT

<i>Date of hearing</i>	18-04-2023
<i>Petitioner(s) by:</i>	<i>Ch. Imran Raza Chadhar and Mr. Amir Raza, Advocates.</i>
<i>Respondent(s) by:</i>	<i>Babar Aman Babar, Secretary, Raja Mansoor Ahmad, Director General, Aftab Ahmad, Director, Sajid Rehman Deputy Director, Rashid Latif, Deputy Secretary (Technical) Mines & Mineral Department and Rashid Bhatti, Law Officer, Mines and Mineral Department. Muhammad Fahad, Assistant Director (Legal) EPA and Kashif Sajin, Assistant (Legal) EPA Punjab Lahore.</i>
<i>Province by:</i>	<i>Mr. Muhammad Naseem Kashmiri, Addl. Advocate General.</i>

SULTAN TANVIR AHMAD, J:—Through the present Constitution petition, the petitioner has assailed the auction of certain blocks of sand in Lahore by Mines and Mineral Department, Punjab (**MMD**), *inter alia*, on the ground that the auction is taking place without obtaining requisite approval from Environment

Protection Agency (**EPA**).

2. Ch. Imran Raza Chadhar, learned counsel for the petitioner has submitted that petitioner is interested to participate in forthcoming auction of sand blocks in Lahore and obtain lease but the failure on the part of *MMD* to obtain no objection certificate (*NOC*) prior to auction is likely to cause loss to the petitioner, if he remains successful in obtaining lease of sand blocks, as after the commencement of lease the period consumed in obtaining *NOC* shall be at the cost of the petitioner. The learned counsel for the petitioner has further argued that auction of sand zones namely Muridwal / Niaz Beg Zone, Bhadru / Chamrupur Zone and Nonarian Block (hereinafter collectively called as the '**Sand Blocks**') is in contravention of the decision dated 02.04.2019 passed by this Court in constitution petition titled "*Ch. Ghulam Rasool versus Province of Punjab, etc.*" bearing No. 9428 of 2019 as well as undertaking of *MMD* before this Court in the said case.

3. Conversely, the learned Law Officer and the representatives of *MMD* as well as *EPA* have vehemently opposed this petition. It is argued that petition has been filed just to stop the auction process and to retain the possession to the extent of the zone(s) that the petitioner obtained through earlier auction. It is contended that during pendency of this petition this Court refused to stop the process of auction as an interim measure and the petitioner without disclosing this fact filed a civil suit and obtained injunctive order from learned civil Court, which resulted into halting auction process of Bhadru / Chamrupur Zone and this has been done with the view to

continue his possession against lease consideration for previous auction i.e. 2021, just for his personal gain and at cost of Public Exchequer; that if the auction process of mines and minerals lease is stopped it can cause loss of Rs. 10.5 billion estimated just on the basis of reserved prices, however, bids of much higher amounts, letters of intent and offer are being received and if the same are considered, the loss shall be far greater. Learned Law Officer has also raised serious objections as to the conduct of the petitioner.

4. The question of shifting responsibility by *MMD* to the contractors and / or the successful bidders to obtain *NOC* from *EPA* has earlier came before this Court in case titled Ch. Ghulam Rasool (*supra*) and in consequence of meeting held on 01.03.2019 by the concerned authorities, the following resolution of matter was brought on the record of this Court: -

i. *MMD shall submit IEE/EIA Reports and shall obtain Environmental Approval for the project of mining under Section-12 of the PEP Act, 1997 (Amended 2012) prior to commencement of bidding process and prior to issuance of Offer's Letters to the successful bidders.*

ii. *The Environmental approvals would be issued to MMD who will be responsible to monitor the execution of the terms and conditions of the Environmental approvals.*

However, EPA would also extend its expertise in monitoring of the terms and conditions as and when requested by the MMD. In case of violation of the terms and

conditions, MMD would initiate action against the violators, under the Punjab Mining Concessions Rules-2002.

5. Recently, in case titled “Public Interest Law Association of Pakistan registered under the Societies Act, 1860 through authorized person Chaudhry Awais Ahmed versus Province of Punjab through Chief Secretary, Civil Secretariat, Lower Mall, Lahore and others” (**C. P. No. 55 of 2020**), the Honourable Supreme Court of Pakistan has resolved the matter of responsibility as to obtaining environmental approval and reports. It has been settled that impact on environment must be looked into, before bidding commences, by the MMD. It will be beneficial to reproduce the following extract from the said judgment:-

“In this context, we have examined the Regulations and agree with the contention of the learned counsel for the Petitioner that there is no timeline provided within which these approvals are to be obtained nor does it specify any process to bind the successful bidder of the project to the terms of any EMP or other measures provided for in the IEE or EIA. However, the Regulations do clarify that the proponent of the project has to obtain the IEE or the EIA and in this case, the proponent of the project will always be the MMD, hence the practice of requiring a successful bidder to obtain an IEE or EIA after bidding of the project totally negates the purpose and impact of these reports. The impact on the environment must be looked into before bidding commences by the MMD and at the time of bidding a bidder must know the terms set out in the IEE or EIA that they are bound by and are required to comply with especially the mitigation measures and the EMP. Hence, it is the MMD that is responsible for obtaining these reports before initiating the process for bidding of the said projects.”

(Underlining is added)

6. Report submitted by respondents No. 1 to 4 reflects that *MMD* before the previous auction of the *Sand Blocks* has obtained *NOC* from *EPA* in 2019 and through letter dated 02.09.2020 *EPA* intimated *MMD* that project proponent can submit application for extension for the said projects without filing fresh IEE / EIA reports provided shape and area of the project remains unchanged. On 10.04.2023 this Court was intimated that the matter of grant of *NOC* is in process and issue is likely to be resolved within a week. This stance of *MMD* was not denied by *EPA* on the said date of hearing. Today, *NOC* / letter for extension of environmental approvals dated 14.04.2023 in respect of the *Sand Blocks* for 03 years therefrom, has been brought on the record of this Court.

7. Mr. Babar Aman Babar, the Secretary Mines and Minerals Punjab has drawn the attention of the Court towards certain corrective measures and steps taken towards reforms in this regard. Office order dated 03.03.2023 of *MMD* has been produced before the Court which reveals that directions to field officers and licensing authorities have been issued that as and when the revision process of mines and mineral zones is required the same should be initiated at least one year before expiry of already granted lease rights. At the same time, officers concerned have also been directed to complete the process and obtain required approval from *EPA* as well as other approvals / reports not less than three months prior to expiry of the previous lease period.

8. In course of arguments before this Court, Ch. Imran Raza Chadhar, learned counsel for the

petitioner and the Secretary, Mines and Minerals Punjab have consensus on one point, which is regarding possible threat of unauthorized excavation, theft of minerals and possibility of collusiveness between officials and contractors. The Court has been apprised that where these evils have caused massive loss to the Government exchequer in the past, at the same time the menace of theft of minerals, unauthorized mining can have serious environment bearing as the same perchance can go even unchecked by *EPA*. Some documents and office orders are placed before the Court that also include notification dated 22.02.2023 and notification dated 03.03.2023 that reflect initiatives taken to control the theft, malpractice and unauthorized mining or excavation as well as increase transparency in bidding process, easy access to information etc. Nevertheless, *MMD* representatives have assured that the requisite approvals shall be obtained in future well before conducting auctions and it is confirmed by all the respondents that the meeting of the Secretaries of the two departments (*MMD* and *EPA*) has already taken place to encounter the above apprehensions. It is expected from *MMD* that all the remedial measures, as discussed above, shall be taken in most effective manners and at earliest. In view of the fact that *NOC* from *EPA* has already been obtained and the future assurances by *MMD*, the grievance of the petitioner as to shifting responsibility of obtaining *NOC* on prospective bidders including the petitioner and / or the possibility of any loss to successful bidders for failure to obtain approvals / *NOC* by *MMD* from *EPA* vis-à-vis the *Sand Blocks*, do not subsist any further and for such matters even otherwise, comprehensive guidelines have

already been given to *MMD* as well as *EPA* and other concerned by the Honourable Supreme Court in Public Interest Law Association of Pakistan case (supra).

9. Now coming to objection of Mr. Muhammad Naseem Kashmiri, learned Law Officer and Mr. Rashid Bhatti, learned Legal Advisor of *MMD* regarding the conduct of the petitioner that is very strongly put-forth before this Court. In paragraph No. 7 of the instant constitution petition, the petitioner has disclosed that he wants to participate in auction. It is overall impression given in this constitution petition as well as it remained the arguments before this Court that petitioner is desirous to participate in auction of the *Sand Blocks*. The relevant paragraph of constitution petition reads as follows: -

“That the publication of proclamation for the auction of sand leases of Lahore, in which petitioner is fully interested in order to run his business and in order to avoid litigation after obtaining any of lease through competitive mode without obtaining NOC / IEE / EIA from the respondents No. 5 & 6 by the respondents No. 1 to 4 will create multiplicity litigation and problems and even otherwise it was the duty of respondents No. 1 to 4 while obeying the order of this Hon'ble Court as mentioned supra obtaining NOC first and thereafter put to auction any of lease through proclamation, which is free from all encumbrances and without any legal hurdle in order to run peaceful business by the lessee and putting the said leases for auction without obtaining permission from respondents No. 5 & 6 is illegal, unlawful, having direct impact upon environment and courts are taking strict action in order to get better environment for the citizens of this country especially in Lahore.”

However, in civil suit titled “*Muhammad Aslam versus The Province of Punjab and another*”, the petitioner has

managed to obtain stay order with respect to one of the sand block namely Badharu / Chamrupur Zone. It is stated in the said civil suit that the auction is contrary to the interest of the petitioner and he asserted some oral promise of *MMD* to extend the lease of Badharu / Chamrupur Zone. The petitioner, in the two proceedings (i.e. the instant constitution petition and the civil suit) has sought to declare the auction dated 11.04.2023, to the extent of one zone, against law but on different grounds. The stance adopted in the two proceedings is incompatible. It will be useful to reproduce para No. 4 of the suit titled "*Muhammad Aslam versus The Province of Punjab and another*", which reads as follows:-

"That the defendants issued a publication in newspaper of Chamru Pur Zone of auction of mines and the date of auction has been fixed 11.04.2023 which is contrary to the interest of plaintiff because the plaintiff has already verbally promised to extend the period of lease for 6 months to meets the expenses afford by the plaintiff in order to construction of road that's were leads to the Chamru Pur Mines."

10. In civil miscellaneous application No. 02 of 2023 the petitioner sought suspension of auction of *Sand Blocks* / subject matter of this constitution petition. This application was fixed on 06.04.2023, when notices were issued to the respondents for 10.04.2023. This Court considered it appropriate not to suspend the auction but to decide that the further process would be subject to the outcome of the petition. On 10.04.2023 *EPA* maintained that the matter of granting *NOC* is likely to be resolved

within one week. *MMD* also undertook that in case *NOC* is not issued they will not waste time in returning the amounts to the participants in auction. These statements were made by *EPA* and *MMD* to avoid any loss to Govt. exchequer and at the same time to ensure that citizens or participants of bidding process should not lose confidence. The Constitution petition was fixed for 17.04.2023 for arguments, when it was unearthed that the petitioner has already obtained restraining order from the learned civil Court from dispossessing the petitioner from one of the blocks namely Bhadru / Chamrupur Zone. The auction of rest of blocks was conducted on 11.04.2023 but due to restraining order the auction of block Bhadru / Chamrupur Zone was not held. This suit before the learned civil Court was filed on 08.04.2023 but on 10.04.2023 the petitioner never disclosed about filing of the said suit. On 17.04.2023 when *MMD* representatives were asked about obtaining of *NOC* and outcome of auction, they disclosed that the auction of block Bhadru / Chamrupur Zone could not take place as on the day (10.04.2023) when this case was being heard by this Court, by adopting a different stance, interim relief was obtained from the learned civil Court.

11. I have gone through the civil suit, affidavit attached with the same and the record but no disclosure about the pendency present petition or proceedings before this Court is found. On the one hand the petitioner kept maintaining before this Court till 17.04.2023 that he wants to participate in the forthcoming auction but the only hurdle is failure to obtain *NOC* by *MMD* and on the other hand the petitioner argued his case before learned civil Court on the basis that he is entitled to extension of

lease of Bhadru / Chamrupur Zone for which he asserted verbal promise of *MMD* for such extension. Apparently, the petitioner managed all this by engaging two different learned advocates and by keeping the Courts as well as said learned advocates in dark about all this. It appears that the petitioner was not interested in adjudication of cause(s) on merits but to get auction stopped and to retain possession of the land in question.

12. I am of firm view that litigants are duty bound not just to give disclosure before the Courts as to any other pending litigation, having direct or indirect effect on the proceedings or its outcome but at the same time the disclosure must be full and fair to enable the Courts to do complete justice, expeditiously. The conduct of the litigants causing obstruction in duty of the Courts towards *bona fide* litigants and such abuse of process is already curbed by the Courts in various judgments including cases titled "Mrs. Zeenat Ahmed versus Federation of Pakistan through Secretary Ministry of Defence and others" (**2015 PLC (C.S.) 719**), "Wali Muhammad and others versus Sakhi Muhammad and others" (**PLD 1974 Supreme Court 106**), "Faiz Bakhsh and others versus Deputy Commissioner/Land Acquisition Officer, Bahawalpur and others" (**2006 SCMR 219**) and "Major (Retd.) Ahmed Nadeem Sadal and 3 others versus Federation of Pakistan through Secretary Sports, Islamabad and 3 others" (**2015 CLC 34**). Grant of relief under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is a discretionary power of the High Court. A person seeking relief has to satisfy the conscience of the Court that he has approached the Court with clean hands. In case titled

Faiz Bakhsh and others (supra), the Honourable Supreme Court of Pakistan has observed as follows:-

"It is well-entrenched legal proposition that "conduct of petitioner can be taken into consideration in allowing or disallowing equitable relief in constitutional jurisdiction. The principle that the Court should be lean in favour of adjudication of causes on merits, appears to be available for invocation only when the person relying on it himself comes to the Court with clean hands and equitable considerations also lie in his favour. High Court, in exercise of writ jurisdiction is bound to proceed on maxim 'he who seeks equity must do equity'. Constitutional jurisdiction is an equitable jurisdiction. Whoever comes to High Court to seek relief has to satisfy the conscience of the Court that he has clean hands. Writ jurisdiction cannot be exercised in aid of injustice. The High Court will not grant relief under this Article when the petitioner does not come to the Court with clean hands. He may claim relief only when he himself is not violating provisions of law, especially of the law under which he is claiming entitlement. Manzoor Hussain v. Zulfiqar Ali 1983 SCMR 137; Khan Gul v. District Judge, Attock, PLD 1990 Lah. 263 and P.G. Barganza v. Border Area Allotment Committee 1984 CLC 1479. The Constitutional jurisdiction as conferred upon under Article 199 of the Constitution cannot be invoked by anyone who is guilty of bad faith and with unconscionable conduct. The right is in the nature or ex debito justitiae, but will only be granted if the petitioner can show that his conduct has not been such as to disentitle him of such a relief."

(Emphasis is supplied)

13. For what has been discussed above, the present petition, having no substance, is dismissed. No order as to costs.

**(SULTAN TANVIR AHMAD)
JUDGE**