

ORDER SHEET
IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.
JUDICIAL DEPARTMENT

Intra Court Appeal No. 56 of 2024

Muhammad Dilshad **Vs.** The Government of Punjab through Chief Secretary, Punjab Lahore and five others.

S.No. of order/ proceeding	Date of order/ proceeding.	Order with signatures of Judge, and that of parties or counsel, where necessary.
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07.05.2024 Mr. Mahmood Ahmad Bhatti, Advocate for the appellant.

This Intra Court Appeal has been filed against the order dated 02.05.2024, passed by the learned Single Judge in Chambers in the Writ Petition No.3188 of 2024, whereby the Petition filed by the appellant under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 was dismissed.

2. The brief facts, necessary for the disposal of the instant appeal are that the appellant filed the Writ Petition No.3188 of 2024 under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 assailing the order dated 18.04.2024, passed by the Project Director, Project Management Office (PMO) , Punjab Barrages, Irrigation Department, Lahore, whereby, on the recommendations of the Reserve Price

Committee, the approval was accorded for fixation of reserve price for auction rights of toll tax collection at Islam Headworks for the period from 01.07.2024 to 30.06.2025 (365-days) for Rs. 129,304/- per day and Rs. 47,195,960/- (Rupees Forty-Seven Million, One Hundred Ninety-Five Thousand, Nine Hundred Sixty Only) exclusive of withholding tax and Contractor profit, asserting that the said reserve price for auction rights of toll tax collection at Islam Headworks for the period from 01.07.2024 to 30.06.2025 (365-days) was too less, however, the learned Single Judge in Chambers vide the order dated 02.05.2024 dismissed the petition as filed by the appellant, hence, the appeal.

3. The learned counsel for the appellant submitted that the learned Single Judge in Chambers had erred in facts and law while passing the order dated 02.05.2024. The learned counsel for the appellant further argued that the reserve price for auction rights of toll tax collection at Islam Headworks for the period from 01.07.2024 to 30.06.2025 (365-days) was too less, therefore, it merited reappraisal.

4. We have heard the learned counsel for the appellant and perused the record.

5. The perusal of the record reveals that the order dated 18.04.2024, passed by the Project Director, Project Management Office (PMO), Punjab Barrages, Irrigation

Department, Lahore, whereby, on the recommendations of the Reserve Price Committee , the approval was accorded for fixation of reserve price for auction rights of toll tax collection at Islam Headworks for the period from 01.07.2024 to 30.06.2025 (365-days) for Rs. 129,304/- per day and Rs. 47,195,960/- (Rupees Forty-Seven Million, One Hundred Ninety-Five Thousand, Nine Hundred Sixty Only) exclusive of withholding tax and Contractor profit, was passed after the recommendations had been made by the Reserve Price Committee. It is also a fact that the appellant is not even seeking the toll tax collection at Islam Headworks contract for the period from 01.07.2024 to 30.06.2025 (365-days). The learned counsel for the appellant has remained unable to explain as to in what manner the appellant can be considered to be an *aggrieved person*. The existence of a legal right is the foundation of a writ of mandamus and the appellant has to prove that he was an aggrieved person. The appellant, in order to obtain relief by way of a writ of mandamus, must satisfy the Court that he had a legal right to compel the performance of a duty and the person against whom the right was sought was under a legal obligation to perform the duty. A person cannot be said to be an aggrieved person unless he has a right in the performance of a statutory duty by a person

performing functions in respect of any such right. Only an aggrieved person can file a writ other than a writ of habeas corpus and quo warranto and the learned counsel for the appellant has failed miserably to demonstrate before us that the appellant was an aggrieved person. Reliance in this regard is placed on the case of Raja Muhammad Nadeem Versus The STATE and another (P L D 2020 Supreme Court 282) wherein the august Supreme Court of Pakistan has held as under:-

"9. On the higher plane, High Court had no jurisdiction under the Constitution to take up the issue suo motu. Article 199 of the Constitution envisages an aggrieved person; there was none before the Court besides the bar of alternate remedy. It has been held by this Court in the case of Dr. Imran Khattak and another v. Mst. Sofia Waqar Khattak, PSO to the Chief Justice and others (2014 SCMR 122), as follows:-

".....It be noted that no Judge of a High Court or the Supreme Court is robed, crowned and sceptered as a King to do whatever suits his whim and caprice. In all eventualities, he is bound to abide by and adhere to the law and the Constitution.....It thus follows that the framers of the Constitution of 1962 and those of 1973, inasmuch as it can be gathered from the words used in Article 98 of the former and Article 199 of the latter, never intended to confer Suo Motu jurisdiction on a High Court. Had they intended, they would have conferred it in clear terms as the framers of the Code of Civil Procedure under its provision contained in section 115 have conferred it on the High Court and the District Judge and the frames of the Code of Criminal Procedure under its provisions contained in section 439 and 439-A have conferred it on the High Court and the Sessions Judge respectively. Article 175(2) of the Constitution leaves no ambiguity by providing that "no Court shall have jurisdiction, save as is or may be conferred on it by the Constitution or by or under any law". We would be offending the very words used in the Article by reading exercise of Suo Motu jurisdiction in it which cannot be read even if we stretch them to any extreme. It has been settled as far back as in 1916 in the case of Tricomas Cooverji Bhoja v. Sri Gopingath Jui Thakur" (AIR 1916 Privy Council 182), that where the meanings of a provision are clear, unequivocal and incapable of more

than one interpretation, even a long and uniform course of interpretation, if any, may be overruled, if it is contrary to its meanings. We have, therefore, no hesitation to hold that the High Court could not exercise *Suo Motu* jurisdiction under Article 199 of the Constitution of Pakistan. The more so when we have noticed that such jurisdiction has stridently been used even in the matters which are clearly and squarely outside the jurisdiction of a High Court."

The learned counsel for the appellant has been unable to point out any illegality or excess of jurisdiction having been committed by the learned Single Judge in Chambers while passing the impugned order dated 02.05.2024. We find that the impugned order dated 02.05.2024 has been passed by the learned Single Judge in Chambers after going through the record of the case and taking into consideration the facts and circumstances of the case.

6. In view of the above discussion, this appeal being devoid of merit, is *dismissed in limine*.