

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : C.R. NO.216-2017

Wilson's Pharmaceuticals

Vs.

Drug Regulatory Authority of Pakistan through its Chief Executive
Officer, Islamabad etc.

Petitioner by : Mr. Amjad Hameed Ghouri, Advocate
 Respondents by : Mr. Shoaib Ali Khan, Assistant Director, Legal
 Affairs Division
 Date of decision : 08.06.2017

AAMER FAROOQ J. The petitioner filed a Suit for Declaration and Permanent Injunction challenging the price fixed by the respondents at the time of registration of the Drug '**Sofvasc-HCT Tablets**' manufactured by the petitioner on the ground that the respondents did not have the authority to do so and the price fixed was discriminatory, illegal and inconsistent with the provisions of Drug Act, 1976 and Drug Regulatory Authority of Pakistan Act, 2012. Along with the Suit, an application for interim relief was filed under Order 39 Rules 1 & 2 CPC. The respondents filed reply to the referred application. The said application for interim relief was dismissed vide order dated 07.11.2016 on the ground that jurisdiction of the Civil Court is barred. The petitioner assailed the order before District Judge, Islamabad by way of an appeal which was dismissed vide order dated 11.02.2017.

2. Learned counsel for the petitioner, *inter alia*, contended that the courts have interpreted the provision regarding the bar of jurisdiction strictly and do exercise jurisdiction. It was further contended that the

Civil Court do have the jurisdiction in such like cases and in the instant the Court had the jurisdiction inasmuch as the issue of price fixation does not fall within the domain of the Authority and it has exercised the same illegally, which can be examined by the Court of plenary jurisdiction. Reliance was placed on cases reported as 'Mian Muhammad Latif Vs. Province of West Pakistan through the Deputy Commissioner, Khairpur and Another' (PLD 1970 Supreme Court 180), 'Hamid Husain Vs. Government of West Pakistan and Others' (1974 SCMR 356), 'Province of the Punjab through Collector District Khushab, Jauharabad and Others Vs. Haji Yaqoob Khan and Others' (2007 SCMR 554), 'Begum Syeda Azra Masood Vs. Begum Noshaba Moeen and Others' (2007 SCMR 914), 'M/s Getz Pharma Pvt. Ltd. through Authorized Person Vs. Province of Sindh through Chief Secretary, Government of Sindh and 7-Others' (PLD 2016 Sindh 479), 'Liaquat National Hospital Association through Chairman, Governing Body and Another Vs. Province of Sindh through Chief Secretary and 5-others' (PLD 2002 Karachi 359) & 'Shahida Bibi and Others Vs. Habib Bank Limited and Others' (PLD 2016 Supreme Court 995).

3. Learned counsel for the respondents, *inter alia*, contended that jurisdiction of the Civil Courts is barred under section 39 of the Drug Act, 1976 therefore the orders passed by the courts below are in accordance with law.

4. The petitioner filed a Suit for Declaration and Permanent Injunction which was resisted by the respondents on the ground that same is barred under section 39 of the Drug Act 1976. For the ease of convenience, relevant provision of law is reproduced below: -

“39. Finality of orders, etc.-- *Save as otherwise expressly provided in this Act, every order passed or decision given by any Board, a Drug Court or any other authority under this Act shall be final and shall not be called in question by or before any Court or other authority”*

The bare reading of above Section shows that any order passed or decision given by any Board is final and not to be called in question by or before any court or other authority.

5. The Courts of Pakistan have interpreted such provisions strictly in a way not to oust the jurisdiction of the courts. In a case reported as ‘Mian Muhammad Latif Vs. Province of West Pakistan through the Deputy Commissioner, Khairpur and Another’ (PLD 1970 Supreme Court 180), it was observed as follows: -

“There is no doubt that under section 11 of the Sindh Revenue Jurisdiction Act, 1876, ordinarily a party in revenue matters should exhaust all his remedies by way of appeal before invoking the aid of the civil Court. But there are different considerations where the allegation of a party is that the impugned order is a nullity in the eye of law. The civil courts have jurisdiction to examine into cases where statutory provisions have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure”

Similarly, in case reported as ‘Hamid Husain Vs. Government of West Pakistan and Others’ (1974 SCMR 356), it was observed as follows:-

“Jurisdiction of civil Courts even if bared and conferred upon special tribunals, civil courts being Courts of ultimate jurisdiction have jurisdiction to examine acts of such forums to see if such are in accordance with law, or illegal, or even malafide”

In a case reported as ‘Province of the Punjab through Collector District Khushab, Jauharabad and Others Vs. Haji Yaqoob Khan and Others’ (2007 SCMR 554), it was held as under: -

“It is pertinent to mention here that different statutes provide that an order made by the authority acting under it shall not be called in question in any Court. The intentions of the Legislature in their wisdom qua section 36 of Colonization of Government Lands (Punjab) Act, 1912 are that the officers working under the Act should exercise their powers freely and should not be interrupted unnecessarily to administer colony land

according to the terms and conditions issued by the competent authority off and on but this provision does not give unfettered power. The ambit of jurisdiction has been prescribed by the Act and the officers functioning there under cannot be allowed to act beyond their scope of jurisdiction. The Civil Court while exercising supervisory jurisdiction has the authority to interfere, if the orders are without jurisdiction, mala fide, excessive or otherwise not in accordance with law or based on fraud. This proposition of law was considered by the Privy Council in Secretary of State v. Mask and Company AIR 1940 PC 105 and laid down the following principles:--

"The exclusion of jurisdiction of the Civil Courts is not to be readily inferred but that such exclusion must either be explicitly expressed or clearly implied. It is also well-settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied, or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure."

The aforesaid proposition of law was considered by this Court in Zafarul Ahsan's case (supra) and laid down following principles:--

"Of course where the proceedings are taken mala fide and the statute is used merely as a cloak to cover an act which in fact is not taken though it purports to have been taken under the statute, the order will not, in accordance with a long line of decisions in England and in this sub-continent, be treated as an order under the statute."

There are several pronouncements of the superior Courts that Civil Court in spite of the exclusive power has jurisdiction to take the cognizance of the matter in case the authorities under the Special Law have passed the order in violation of Rules and Regulations or mala fide. It is also settled law that manner of exercising power is also termed as mala fide as law laid down by this Court in Agha Shorash Kashmiri's case PLD 1969 SC 14. The aforesaid proposition of law with regard to the jurisdiction of the Civil Court is supported by following judgments:--

(1) Khadim Hussain's case PLD 1967 Lah. 915, (2) Muhammad Amin's case NLD 1998 Rev. 47, (3) Jewana's case PLD 1954 Lah. 253, (4) Karam Dad's case PLD 1978 Lah. 679, (5) Muhammad Saleh's case 1980 CLC 662, (6) Muhammad Ibrahim's case PLD 1960 Lah. 1106, (7) Masood Ali's case PLD 1950 Lah. 340, (8) Anjuman-e-Taleem-ul-Islam's case PLD 1983 Lah. 294, (9) Hamayun's case 1997 MLD 2669, (10) Muhammad Akram's case PLD 1993 Lah. 114, (11) Nawab Din's case 2003 CLC 1922, (12) Fateh Muhammad's case 2002 CLC 639, (13) Muhammad Zafar's case 2003 CLC 1922, (14) Muhammad Saleh's case 1980 CLC 662, (15) Khadim Hussain's case 1970 SCMR 127 and (16) Muhammad Shaft's case 1982 CLC 55.

The ratio of the aforesaid judgments is that section 36 of the Colonization of Government Lands (Punjab) Act, 1912 is available only

where the authorities concerned acted within powers and four corners of their jurisdiction and not their acts are ultra vires or without jurisdiction or void or in excess of their jurisdiction”

In a case reported as ‘Begum Syeda Azra Masood Vs. Begum Noshaba Moeen and Others’ (2007 SCMR 914), the august Apex Court reiterated the earlier case law and observed as follows:

“The law is clearly settled that an ouster clause in any statute will only apply when the authorities constituted therein act within the four corners of the statute and if they step out of it, the protection available to the orders passed by a Tribunal of special jurisdiction is no more available and Court of plenary jurisdiction could examine the controversy”

The Hon’ble Sindh High Court also followed the referred principle in a case reported as ‘M/s Getz Pharma Pvt. Ltd. through Authorized Person Vs. Province of Sindh through Chief Secretary, Government of Sindh and 7-Others’ (PLD 2016 Sindh 479).

6. In view of above case law, the ousting of jurisdiction as provided in Section 39 of Drug Act, 1976 shall operate only if the Board or Drug Courts have acted in accordance with four corners of law. In case, there is any illegality or jurisdictional defect in exercise of authority, the same can be examined by civil courts being the court of plenary jurisdiction and the ouster clause would not be an impediment in exercise of jurisdiction by the civil courts.

7. There is no cavil that under section 56(d) of Specific Relief Act, 1877, no injunction can be granted against exercise of authority by a public functionary. However, if the public functionary acts illegally or with malafide, the referred exclusion shall not be applicable. Reliance is placed on a case reported as ‘Liaquat National Hospital Association through Chairman, Governing Body and Another Vs. Province of Sindh through Chief Secretary and 5-others’ (PLD 2002 Karachi 359).

8. The learned trial court as well as first appellate court, while dismissing the application and the appeal, have erred in holding that the civil courts do not have the jurisdiction in light of Section 39 of the Drug Act, 1976. The conclusion reached by the courts below is without examining the fact that whether the respondents have exercised their authority in accordance with law or have acted with malafide. The jurisdiction, hence exercised by the courts below, is with material irregularity hence the impugned orders are not tenable.

9. In view of above, instant Civil Revision is allowed and the orders dated 11.02.2017 and 07.11.2016 are set aside. Consequently, the application for interim relief, filed by the petitioner, shall be deemed to be pending before learned trial court and shall be decided on merits in accordance with law.

(AAMER FAROOQ)
JUDGE

Zawar