

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**

No. IHC/Judl.Deptt.

**(REVISED FORM OF BLUE SLIP)**

Case No. WP. 3423-13

Titled. M/s. MEGA Sign etc. vs. C.D.A.

- a) Judgment approved for reporting ✓ Yes/No
- b) Judgment any comment upon the conduct of the Yes/No  
Judicial officer for quality of the impugned judgment  
Is desired to be made.

(In case the answer is affirmative separate confidential note may be sent to the Registrar drawing his attention to the particular aspect).

Initial of the Judge.

**NOTE.**

1. If the slip is used, the Reader must attach on top of first Page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for reporting of any comment is to be made about the judicial officer / quality of judgment.
3. This slip is only to be used when some action is to be taken.

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**W.P. NO: 3423/2013**

**M/S MEGA SIGN ETC VERSUS CDA ETC**

Serial No. of order of proceeding.	Date or order of proceedings	Order with signatures of judge, and that of parties or counsel, where necessary.
1	2	3

28.11.2013

Dr. Amjad Hussain Bukhari, Advocate for petitioners.  
Raja Adnan Aslam, Advocate for respondents/CDA.

**ORDER**  
**MUHAMMAD ANWAR KHAN KASI, CJ:**

The petitioners' case is that the respondents [CDA] have no lawful and constitutional authority to cancel, withdraw and auction the licences of eleven sites, already licensed to them for a period of five years. They questioned the advertisement through which the said sites are going to be auctioned as being illegal, arbitrary and in contravention of their fundamental rights.

2. The respondent/CDA in their written-comments submitted that CDA had licensed out prime locations including the sites of the petitioners on standard terms & conditions, but it was done without any competitive process and ignoring the PPRA Rules. The learned Single Bench of this Court, vide order dated 15.10.2012, had constituted a Commission to inquire into the affairs of CDA. The Commission after extensive examination/scrutiny/investigation published its report on 15.4.2013, wherein it was recommended that all allotments/licences shall be carried out through competitive process. After change of new management, the CDA intend to implement the recommendations of the learned Judicial Commission and various steps have been taken including the cancellation of all allotments/licences issued without competitive process and to re-allot the same through open auction. The open auction is earning an average of 03 millions per bill board as compared to already licensed bill boards without competitive process are earning 0.9 millions. It is however, admitted that petitioner obtained licences for a period of five years.

3. Leaned counsel for the petitioners while referring Rule 10-A of the Islamabad [Control of Advertisement] Regulations 1977, submits that the licenses were granted to the petitioners in conformity of the said rule and therefore, the same cannot be



called to have been issued in violation of the procedure. PPRA Ordinance is only applicable where an authority is procuring the items but in this case the respondent authority is at selling end. According to the learned counsel, the petitioners had been treated with discrimination as the Commission constituted by this Court identified 60 sites, but only 40 sites were put to auction through impugned advertisement and the rest of the 20 had been left to accommodate the blue eyed.

4. He further submits that impugned action of the respondents is also in violation of the principle of locus poenitentiae. Neither any notice was issued nor the petitioners were provided an opportunity of hearing before taking action.

5. Learned counsel while placing reliance upon case laws reported as PLD 1991 Supreme Court 973 [Chief Secretary Government of Sindh Vs. Sher Muhammad Makhdoom], PLD 1969 Supreme Court 407 [Pakistan Vs. Muhammad Himayat Ullah Farrukh], 2012 CLC 1308 (Islamabad), 2002 MLD 1714 Karachi [Khan Dil Khan Vs. Karachi Metropolitan Corporation] and 1993 CLC 2344 Lahore [Khurram Ali Vs. Pakistan Railways] further submits that the authority that has the power to make an order has also the power to undo it, but this is subject to the exception where the order has taken legal effect and in pursuance if certain rights are created in favour of any individual, such an order cannot be withdrawn or rescinded to the detriment of those rights. The learned counsel emphasized that the doctrine of locus poenitentiae would apply when such order, notification is issued or communicated to the parties concerned, which is fully acted upon then authority, who issued it cannot rescind or cancel it.

6. In above backdrop, the learned counsel prayed that the impugned action being arbitrary, capricious & vindictive is liable to be set aside.

7. Conversely, learned counsel for the respondent/CDA while referring to various constitutional provisions repelled the above arguments by stating that the impugned action has been taken across the board in the cases wherein licences were issued without due process and open auction. There is no discrimination as all the licences which were granted without due process and open auction have been cancelled, pursuant to direction issued by the learned Judicial Commission. The learned counsel emphasized

that the government exchequer has been subjected to immense financial loss as the sites which are going to be auctioned for 03 millions per year per bill board were given for mere 0.9 millions per year per board.

8. Learned counsel further submitted that the action taken is in consonance with the terms & conditions of the license itself as Clause XIII provides that a license can be withdrawn as and when deemed necessary by the authority. According to him, the reliance on Rule 10-A is misconceived as the next Sub-Clause B provides that if there are more than one applicants, the authority shall resort to the bidding procedure. All the sites except the present one have been re-auctioned, whereby revenue upto seven/eight times more have been generated. The petitioners were not treated with any discrimination and their allegation of non-provision of opportunity of hearing is also incorrect.

9. The learned counsel referred Judgment of the Hon'ble Apex Court in Human Right Cases Nos. 4668 of 2006, 1111 of 2007 & 15283-G of 2010 [PLD 2010 SC 759].

10. Heard & record perused.

11. The license in question ostensibly confers a right in favour of its holder, but at the same time, it cannot lost sight that the right which was alienated in favour of the petitioners originally belonged to the State and the State being a virtual entity exercised its authority through the public functionaries, therefore, whenever a right belonging to the State is going to be alienated, the inventor/public functionary is under obligation to protect & preserve the transparency and to ensure the maximum gain for the public exchequer. In order to achieve the goal, legislature by way of principle as well as delegated legislation has settled the procedure. The pivotal aspect of the said exercise remains that equal opportunity shall be extended to all potential aspirants, who intend to acquire the State property, which is being alienated and for achieving this objective, it is mandatory for the public functionary to invoke such provisions of the statute, which ensure maximum participation of competitors with an object to gain maximum advantage.

12. Inspection of the procedure adopted for grant of the licenses in question on the above touchstone reflects that the very fundamental exercise of public notice was not followed, rendering the whole exercise superfluous.



13. At the same time, while dealing with the State Property, it is also the duty of the Public functionary to ensure transparency and where a right has been accrued without adhering to the parameters highlighted above, the principle of locus poenitentiae would not be applicable.

14. Admittedly, the licences were granted to the petitioners without any competitive process under the prescribed rules, therefore, the petitioners cannot claim to have a vested right to continue for the licence period. There was also violation of Article 18 of the Constitution as no other competitor except the petitioners as individuals were invited for bidding. The action has been taken across the board against all the licences, which were issued without any competitive process, so there arises no question of discrimination.

15. Under the principle of locus poenitentiae, the competent authority is vested with powers to repeal an illegal order. In case of **Raunaq Ali V. Chief Settlement Commissioner PLD 1973 SC 236**, the Hon'ble Apex Court held that the High Court was within its power to refuse relief in writ jurisdiction, where the impugned order had the effect of fostering justice and righting a wrong, even though the authority concerned had acted clearly without jurisdiction. Relief under writ jurisdiction cannot be extended in aid of injustice. **See 1998 SCMR 516.**

16. In view of above, the petition being forceless is dismissed with no order as to costs.

(CHIEF JUSTICE)

Saeed Akhtar  
28.11.2013

APPROVED FOR REPORTING