

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial

Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

Civil Petition No.3380-L of 2017

(Against the judgment dated
09.10.2017 of the Lahore High
Court, Lahore passed in RSA
No.62/2016)

M/s James Construction Company (Pvt.) Ltd., Lahore

...Petitioner(s)

Versus

Province of Punjab through Secretary Communication & Works,
Government of Punjab, Lahore etc.

...Respondent(s)

For the Petitioner(s): Mr. Zahoor Nasir Tagga, ASC

For the Respondent(s): Ms. Aaliya Ejaz, Asstt.A.G.

Date of Hearing: 01.01.2021

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ORDER

Umar Ata Bandial, J.- The learned High Court in its impugned judgment dated 09.10.2017 has held that the petitioner's suit for recovery of Rs.945,475/- against the Provincial Government and the concerned Highways Authorities of the Provincial Government in Faisalabad was not maintainable before the learned Civil Court at Lahore on account of lack of territorial jurisdiction. In this respect reliance has not been placed on any case law but merely on the provisions of Section 20 of the CPC. That provision lays down the following:-

**"20. Other suits to be instituted
where defendants reside or cause of action
arises.---Subject to the limitations aforesaid,**

every suit shall be instituted in a Court within the local limits of whose jurisdiction--

(a) the defendant, or each of the defendants where there was more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation I.---Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

Explanation II.---A corporation shall be deemed to carry on business at its sole or principal office in Pakistan or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

2. In the present case the contract was executed in Faisalabad but it was approved by the Provincial Government at Lahore *vide* memorandum dated 03.02.1991 issued by the Chief Engineer (South), Punjab Highway Department, Lahore addressed to the Superintending Engineer, Highway Circle, Faisalabad. This document was not considered by either the learned High Court in its judgment dated 09.10.2017 or the learned Appellate Court in its judgment dated 24.11.2015 to arrive at the conclusion

regarding the lack of jurisdiction of the Civil Courts at Lahore to adjudicate the claim raised by the petitioner.

2. Learned counsel for the petitioner has placed before us a judgment of this Court reported as **Faqir Muhammad Vs. Pakistan through Secretary, Ministry of Interior and Kashmir Affairs Division, Islamabad** (2000 SCMR 1312) wherein it was observed:-

"4: This is not denied that tender was accepted at Rawalpindi and it being so clause (c) of section 20, C.P.C. was attracted, which speaks about cause of action wholly or in part. It is immaterial that about acceptance of tender letter to the appellant was issued from Gilgit. The facts remains that it was accepted at Rawalpindi. Thus, cause of action in part had accrued at Rawalpindi."

3. Learned Assistant Advocate General, on the other hand, has placed reliance on the following passage from Justice Kaikaus's concurring note in **Pakistan Vs. Waliullah Sufyani** (PLD 1965 SC 310):-

"Page 345: A suit against a person can only be brought under the C.P.C. at a place where the cause of action arose or where the defendant resides or carries on business or personally works for gain. A suit would not lie in the Indian Courts because the cause of action arose at a place which is not in India and a Government neither resides anywhere nor carries on business nor works for gain."

4. The proposition dealt with by the aforesaid judgment was regarding the specific residence of the Government. In the present case, the provisions of Section 20 of the CPC have been invoked with respect to the place of accrual of the cause of action

wholly or in part. Be that as it may, even in relation to the rule enunciated in the afore-noted judgment, this Court has restricted the said proposition in a recent decision reported as **Province of Punjab through Secretary to Government of Punjab, Communication and Works Department, Lahore and another Vs. Messrs Muhammad Tufail and Company** (PLD 2017 SC 53).

The relevant portion is produced below:-

"22: The commercial activities undertaken by a government are not included in the "ordinary connotation" of the word "Government". Indeed we are not persuaded by the reasoning of the learned High Court in Fazal Muhammad's case (supra) to the effect that commercial activities are undertaken by Government for welfare purposes and for that reason they are to be treated as part of its functions. The commercial activities do not form a part of the core functions of a government which remain its executive, judicial, legislative and administrative functions. When a government enters into the domain of business and commerce it cannot be given a premium of its position and must be treated at par with its competitors or near competitors in the private sector. It must be subject to the laws of the land. Its commercial activities must be regulated in the same manner as those of the private sector. It cannot be exempted therefrom simply by the dint of being a "government". Hence when a government is engaged in the 'business' of road building through the vehicle of construction contracts with a private contractor then it cannot be allowed to claim privileges on account of being the government. In these circumstances it would be liable to be treated as a corporation in terms of Explanation II to Section 20, C.P.C. In the case of Bakhtawar Singh (supra) the Supreme Court of India upheld the decision of the Delhi High Court dismissing an the application of a contractor under Sections 14 and 17 of the Indian Arbitration Act by holding that the phrase 'actually and voluntarily' resides, 'carried on business' or 'personally works for gain' do not apply to legal entities like the Union of India and only

to natural persons. But this inapplicability is only in reference to the sovereign functions of the State (as the contract pertained to maintaining armed forces therefore it was considered to be a sovereign activity of the State). When the State carries on commercial activities then Section 20, C.P.C. would apply, as held in Ladulal Jain's case (supra). We find ourselves in agreement with this subtle but important distinction. The Government in the exercise of its core functions viz, its executive, legislative, judicial and quasi-judicial, and administrative roles exercises sovereign powers. But when it engages in commercial activities it is not exercising sovereign power, rather it is engaging in business/commercial activities and merits no undue advantage over ordinary litigants: it is subject to Section 20, C.P.C. in its entirety.

(emphasis supplied)

5. In the above quoted case, this Court, after examining in detail the case-law of Pakistan and India, reached the conclusion that by engaging in activities which did not form part of its sovereign functions i.e. which could be performed by private entities if the Government was not in charge of them, the Government was in effect carrying on a business. Consequently, it was held that in such situations the Government would be subject to Section 20 of the CPC in its entirety. We agree. Therefore, in our considered opinion, keeping in view the nature of the activity in which the Government was involved in, namely, the construction of roads, the specific issue raised in these proceedings is governed by Section 20 of the CPC in toto. Accordingly, the learned Civil Court at Lahore did have the territorial jurisdiction to entertain the suit filed by the petitioner (both in terms of clause (a) and clause (c) of Section 20 of the CPC). Learned counsel for both the parties agree that insofar as the merits of the case are concerned, the same

stand adjudicated by the judgment of the learned Trial Court and on that issue no contest was made by the Provincial Government before the learned Appellate Court as recorded in paragraph No.7 of its judgment dated 24.11.2015.

6. In the light of the foregoing discussion, the impugned judgments dated 09.10.2017 and 24.11.2015 are set aside. As a result, this petition is converted into an appeal and allowed.

Judge

Judge

Lahore, the
1st of January, 2021
approved for reporting
Waqas Naseer/Meher LC