

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Qazi Faez Isa  
Mr. Justice Syed Mansoor Ali Shah

**Civil Appeal No.570-P of 2013.**

*(on appeal from the judgment of Peshawar High Court, Peshawar dated 06.08.2013, passed in W.P No. 3750/2010.)*

Govt of KP thr. Secy Environment, Fisheries Deptt, etc

....Petitioner(s)

***Versus***

Roohullah and others

...Respondent(s)

For the petitioners: Mian Arshad Jan, AAG

Respondent: N.R

Date of Hearing: 08.05.2018

**JUDGMENT**

**Syed Mansoor Ali Shah, J.-** The question before this Court is whether amendment brought about in Rule 7 of the North West Frontier Province Fisheries Rules, 1976 ("the Rules") through sub-rule 1 (vii), is *ultra vires* the West Pakistan Fisheries Ordinance, 1961 ("**the Ordinance**")?

2. The matter arises out of writ petition filed by the respondents before the Peshawar High Court, challenging the said amendment on the above score. The petition was allowed and the amendment was set aside through impugned judgment dated 06.08.2013.

3. Challenging the said judgment, learned AAG on behalf of the petitioners, argued that the Provincial Government is empowered under Section 26 of the Ordinance to make Rules for the

purpose of carrying into effect the provisions of the Ordinance. As the Ordinance relates to fisheries, the sale of "cooked or uncooked fish in commercial, market, shop, hotel," etc falls within the domain of the Ordinance, hence the impugned amendment is *intra vires* the Ordinance.

4. We have examined the question of law raised before us and have gone through the relevant law and the record of the case. The respondents are private individuals, who deal in the sale of cooked and uncooked fish at Ghantaghar Bazaar, Peshawar. However, in order to answer the question raised, we have to first examine the purpose, object and scope of the Ordinance.

5. In common parlance, "Fishery" means a place where fish are reared, or caught in numbers or the occupation or industry of catching or rearing fish<sup>1</sup>. In legal parlance, "fishery" means right or liberty of taking fish.<sup>2</sup> "Right of fishery," generally means the right of persons to fish in public waters, subject to federal and state restrictions and regulations, such as fishing seasons, licensing and catch limits.<sup>3</sup>

6. The Ordinance has been promulgated to regulate fisheries in the public waters in the Province. Under the Ordinance, right to catch fish in any public water can be leased out, subject to such conditions as may be prescribed. It further provides that no person shall use or employ for the capture of any species of fish specified in any water other than private water, or use any net or cage

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<sup>1</sup> Concise Oxford English Dictionary. 12<sup>th</sup> Ed, p.536

<sup>2</sup> Black's Law Dictionary, Ninth Edition, p. 712

<sup>3</sup> *ibid*

or trap or other contrivance for taking fish or fixed engine<sup>4</sup> except during the period permitted, in respect of such species, through a license issued under the Ordinance (see section 9). Regulating the sector further, the Ordinance prohibits destruction of fish by explosives or destruction of fish by poisoning water and specifies the size of fish which shall not be killed, captured or possessed (see sections 4, 6, 7 and 8). The licenses issued under the Ordinance are subject to the payment of fee as prescribed under the Rules. The Government is also empowered to make Rules under Section 26, *inter alia*, to prescribe for fees to be charged for any license.

7. The Ordinance provides for regulation of the right of fisheries in "water" as opposed to "private water" which means water which is the exclusive property of any person..." Rules define the term "public water" in the following manner:-

- "2(e) Public water means water other than the private water and includes:
- (i) All natural bodies of water, such as rivers and their tributaries creeks, brooks, lakes, channels, canal or lagoons or dug, dredged or blasted canals;
  - (ii) Any water impounded by the construction of any lake or dam or other impounding device across the channel of navigable stream;
  - (iii) Flowing water within which fish are free to move across property limit and which are not by law or customs property of any person;"

From the above it is abundantly clear that the purpose and object of the Ordinance is to regulate fishery or the taking and catching of fish in public water. The Ordinance regulates public domain and deals with public rights and has no concern with private water or any other private activity relating to fish. For reference see: Naseer Muhammad

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<sup>4</sup> Defined in section 2(c) of the Ordinance to mean any net, cage, trap, or other contrivance for taking fish, fixed in the soil or made stationery in any other way.

v. Province of Sindh (PLD 2008 Karachi 359) and Jamaluddin v. Shahmurad (PLD 1976 Karachi 174).

8. The amendment brought about in Rule 7 (1) (vii) is as under:-

|  |                        |
|--|------------------------|
| For the purpose of sale of fish cooked or uncooked in commercial, Market, shop, hotel, motel, tent, hut, Cart or open space etc. | Rs. 2000/-<br>Per year |
|--|------------------------|

The impugned amendment in the Rule deals with the sale of cooked or uncooked fish by private individuals, in commercial, market, shop, hotel, etc. The Ordinance does not deal with sale of cooked or uncooked fish, but simply restricts itself to fishery i.e., taking, catching or rearing of fish in the public domain. The impugned amendment falls outside the scope of the Ordinance and is, therefore, *ultra vires* the Ordinance and *like fish out of water*. The Government was not empowered to promulgate such a Rule under Section 26 of the Ordinance. For reference see: Khawaja Ahmad Hassan v. Government of Punjab (2005 SCMR 186).

9. We, therefore, agree with the reasoning of the High Court to this extent only and uphold the striking down of Rule 7(1)(vii) of the Rules for being *ultra vires* the Ordinance. Leave is, therefore, refused and this petition is dismissed.

Judge

Peshawar,  
08<sup>th</sup> May, 2018.  
Approved for reporting.  
*Mushtaq*

Judge