

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

AFR (DJ)

CIVIL PETITION NO.5646 OF 2021

(Against the order of the Peshawar High Court
dated 16.09.2021 passed in Writ Petition
No.3794-P of 2021)

M/s Sadiq Poultry (Pvt.) Ltd.

...Appellant(s)

VERSUS

Government of Khyber Pukhtunkhwa
thr. its Chief Secretary & others

...Respondent(s)

For the Appellant:

Sardar Muhammad Latif Khan Khosa,
Sr. ASC

Mr. Kamran Murtaza,
Sr. ASC

Syed Rifaqat Hussain Shah,
AOR

For the Respondents:

Mian Shafqat Jan,
Additional AG KP

Dr. Kamran Farid
District Director Livestock, Peshawar

Date of Hearing:

27.09.2022

JUDGEMENT

IJAZ UL AHSAN, J- This Petition arises out of an order passed by the Peshawar High Court, Peshawar dated 16.09.2021 in Writ Petition No.3794-P/2020 (the "**Impugned Order**"). The Private Respondents, aggrieved of the prices and

quality *inter alia* of poultry products/diary products, approached the High Court by filing a Writ Petition. The learned High Court, vide the impugned order, made several directions, *inter alia*, that a committee should be formed to review prices of livestock and poultry products and that officials of the government ought to make regular visits to the market to ensure that adulterated milk and other items which are not consumable are not sold in the market.

2. The necessary facts giving rise to this *lis* are that due to a purported rise in the prices of livestock and dairy products, the private respondents herein filed a writ petition before the Peshawar High Court and prayed that prices be fixed according to the prevailing pricing policy. The learned High Court sought various reports from government officials of the Khyber Pukhtunkhwa (the “**KP**”) and made certain directions *inter alia* that a policy should be made to bring down prices of livestock, dairy and poultry products. It was further directed that exports of dairy and poultry products be banned till such time that the prices are lowered. The Petitioner-Company, being a poultry company in Pakistan, specifically the KP, is aggrieved of the directions of the High Court. The Petitioner filed a CMA before the High Court for impleadment as a necessary party which was allowed vide order dated 08.09.2021. On 16.09.2021, the Petitioner’s counsel explained to the High Court that a complete ban on exports was causing colossal losses to its business and that the High Court’s interference insofar as it concerned fixation of prices was

unwarranted. The learned High Court, vide order dated 16.09.2021, recalled its earlier order. However, while doing so, the learned High Court directed the formation of a committee to review the prices of livestock and poultry to calculate prices under a formula whereby prices of livestock by-products like hide, viscera, feathers, legs/wings etc. were deducted. Aggrieved of the impugned order, the Petitioner has approached this Court.

3. The learned Senior ASCs on behalf of the Petitioner have argued that the High Court does not have *suo motu* powers and, therefore, exercise of *suo motu* jurisdiction by the High Court was legally unjustifiable. The learned Senior ASCs have further argued that the learned High Court exceeded its jurisdiction in going beyond the prayers made in the writ petition and granting relief which was not even prayed for. The learned ASCs have further argued that the High Court could not have interfered in policy matters of the executive by ordering the formation of committees to review livestock prices based on a formula provided by the High Court. They maintain that such matter fell within the domain of the executive and judicial interference in the matter militates against the constitutional scheme of trichotomy of powers. It has further been argued that import and export is a federal subject and the High Court overstepped its jurisdiction by issuing directions in a matter which could not be entertained by it.

4. The Additional AG KP, who appeared on behalf of the official Respondents, has argued in favour of the impugned order.

5. We have heard the learned Counsel for the parties and perused the record. The basic question which needs adjudication is whether the High Court could exercise *suo motu* jurisdiction and issue orders relating to policy matters which squarely fall within the domain of the executive.

6. It is settled law that the High Court does not have *suo motu* jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan (the "**Constitution**") as compared to this Court which has been conferred exclusive jurisdiction in the matter by the Constitution in terms of Article 184(3). Reliance in this regard is placed on Mian Irfan Bashir v. Deputy Commissioner (D.C.), Lahore (2021 PLD SC 571). The prayer of the private respondents was essentially limited to the pricing of products. To the contrary, the learned High Court passed a series of *suo motu* orders, such as the orders dated 25.02.2021 and 01.07.2021, whereby a ban was imposed on the export of dairy and poultry products. It is pertinent to mention here that banning imports or exports of products is not the domain of the Courts but falls under the exclusive domain of the executive. The learned High Court could not have transgressed its jurisdiction under Article 199 of the Constitution by passing an order which not only amounts to

exercise of *suo motu* jurisdiction, but also an encroachment on the jurisdiction of the executive.

7. Article 184 of the Constitution provides that the power to exercise *suo motu* jurisdiction vests only with the Supreme Court. The learned High Court has not cited any law or precedent on the basis of which it exercised *suo motu* jurisdiction. It is pertinent to mention here that the learned High Court was not competent to even fix the prices of products. The only course of action available to it, if necessary, was to direct the Government to do what it is required to do under the law in case its officials/functionaries were not doing that. The High Court, under Article 199, cannot devise a formula for pricing. Doing so is not permitted under the law and does not fall in the domain of the Courts and goes against the principle of trichotomy of powers envisaged under the Constitution. The act of issuing directions with respect to an issue or dispute which was not before the High Court constitutes overstepping jurisdictional limits which cannot be countenanced. The learned High Court could only pass appropriate and lawful orders on matters which have a direct nexus with the *lis* before it and could not overstep or digress therefrom. The impugned order not only goes against the mandate of Article 199 but is also against settled principles of law. As such, the learned High Court could not have, *suo motu*, provided a formula for the calculation of prices nor could the High Court direct that a pricing committee be formed to implement the formula provided by the High Court. These

matters clearly relate to the executive and ought to be left to the policy makers to regulate.

8. Even otherwise, Item No.27 of the Federal Legislative List clearly and categorically provides that import and export are a federal subject. Further, Section 3 of the Pakistan Imports and Exports (Control) Act, 1950 clearly states that the power to prohibit or restrict imports and exports vests with the Federal Government. As such, directing the Provincial Government to do so did not have any legal or constitutional basis or sanction behind it. For ease of convenience, Section 3 of the *ibid* Act is reproduced below:-

“3. POWERS TO PROHIBIT OR RESTRICT IMPORTS AND EXPORTS

(1) The Federal Govt. may, by an order published in the Official Gazette and subject to such conditions and exceptions as may be made by or under the order, prohibit, restrict or otherwise control the import and export of goods of any specified description, or regulate generally all practices (including trade practices) and procedure connected to the import or export of such goods and such order may provide for applications for licenses under this Act, the evidence to be attached with such applications, the grant, use, transfer, sale or cancellation of such licenses, and the term and manner in which and the periods within which appeals and applications for review or revision may be preferred and disposed of, and the charging of fees in respect of any such matter as may be provided in such order.

(2) No goods of the specified description shall be imported or exported except in accordance with the conditions of a license to be issued by the Chief Controller or any other officer authorized in this behalf by the Federal Government.

(3) All goods to which any order under subsection (1) applies shall be deemed to be goods of which the import or export has been prohibited or restricted under section 16 of the Customs Act, 1969(IV of 1969), and all the provisions of that Act shall have effect accordingly.

(4) Notwithstanding anything contained in the aforesaid Act the Federal Government may, by an Order published in the official Gazette, prohibit, restrict or impose conditions on the clearance whether for home consumption or warehousing or shipment abroad of any imported goods or class of goods.

(Underlining provided)

The aforementioned provision of law clearly states that the subject of restriction or prohibition of imports and exports falls within the domain of the Federal Government. As such, the High Court clearly exceeded its jurisdiction by formulating a policy regarding pricing of goods or commodities and banning exports of livestock, poultry, dairy products or products derived therefrom. It is necessary to note that Section 5B of the *ibid* Act provides that in case of violation of an order restricting or prohibiting imports or exports, the jurisdiction to adjudge the same would exclusively vest with a Commercial Court. The High Court, acting under Article 199, cannot be termed as a Commercial Court. This is because civil/criminal jurisdictions

of the High Court are separate from the constitutional jurisdiction of the High Court. In the former, evidence is recorded by the competent Court and then the High Court sits in appeal/revision over a decision of the lower *fora*. In the latter, the High Court is the Court of first instance, does not ordinarily record evidence regarding factual matters, and is acting as a constitutional court *inter alia* to ensure that there is no infringement of the Constitution or the rights guaranteed to citizens by the Constitution.

9. We are of the view that the learned High Court has incorrectly applied the law. There are patent jurisdictional errors in the impugned order which warrant interference. The Learned Additional AG KP has been unable to persuade us to endorse the view taken by the High Court. We have repeatedly asked the Additional AG KP to show us how the impugned order is legally sound. However, he has been unable to do so. As such, the impugned order is found to be unsustainable.

10. For aforementioned reasons, this Petition is converted into an Appeal and allowed. The impugned order dated 16.09.021 passed by the Peshawar High Court, Peshawar is set aside.

ISLAMABAD, THE
27th of September, 2022
Haris Ishtiaq LC/*

NOT APPROVED FOR REPORTING