

JUDGMENT SHEET
IN THE HIGH COURT OF BALOCHISTAN QUETTA.

Constitution Petition No.1365/2024
(CC-100107703591)

Yar Muhammad
& others
v.
Government of Balochistan
& another

Constitution Petition No.1446/2024
(CC-100107703755)

Faiz Muhammad
& others
v.
Government of Balochistan
& others

Date of short order 01.10.2024 Reasons drawn on 12.10.2024

In Constitution Petition No.1365/2024:

Petitioners by: Messrs Muhammad Ali Attari and Muhammad Akram Shah, Advocates.

Respondents by: Mr. Zahoor Ahmed Baloch, Additional Advocate General assisted by Mr. Waqar Khan Kakar, Deputy Commissioner (Revenue), Quetta.

In Constitution Petition No.1446/2024:

Petitioners by: Messrs Syed Ayaz Zahoor and Mehnaz Hameed, Advocates.

Respondents by: Mr. Zahoor Ahmed Baloch, Additional Advocate General assisted by Mr. Waqar Khan Kakar, Deputy Commissioner (Revenue), Quetta.

JUDGMENT

Muhammad Hashim Khan Kakar, CJ.- Through this common judgment, we intend to dispose of the above-captioned

Constitution Petitions as identical propositions of law and similar facts are involved in these petitions.

2. The petitioners are Car Dealers and running Motor Show Rooms with different names and styles at Spinny Road Quetta. It is the case of the petitioners that their Motor Show Rooms have been sealed by the District Administration Quetta on the ground that they have violated the previous orders passed by this Court in different Constitution Petitions including order dated 21.03.2024 passed by this Court in Constitution Petition No.668 of 2021, whereby this Court, in order to ensure smooth running of the traffic and to discourage illegal parking in front of the Motor Show Rooms, had issued certain directions.

3. Learned counsel for the petitioners mainly contended that the petitioners are doing lawful business of purchasing and selling legally imported vehicles and vehicles being manufactured in Pakistan. Per learned counsel, through petitioners, the owners of newly purchased vehicles pay huge taxes to the Government at the time of purchase and at the time of transfer of Registration to the new owners of the old vehicles but the Government, instead of providing any facility to the Show Rooms owners, time and again created hurdles which are not only illegal but unconstitutional as well.

4. The petition was contested by learned Additional Advocate General ('AAG') who had been assisted by Mr. Waqar

Khan Kakar, Deputy Commissioner (Revenue), Quetta. Per learned AAG, in order to regulate mushroom growth of Motor Show Rooms, certain measures have been taken by the District Administration and in this context, in the light of directions issued by this Court in different Constitution Petitions, the Motor Show Rooms of the petitioners have been sealed.

5. We have heard the learned counsel for the parties and have perused the available record with their able assistance.

6. The petitioners, being car dealers, are running the business of selling and purchasing vehicles and in this context, the petitioners have set-up different Motor Show Rooms at Spinny Road Quetta. It is not the case of the respondents that the petitioners are doing commercial activities in a residential area, rather it is admitted fact that Spinny Road Quetta is known for commercial activities, wherein a number of businesses have been set-up by the citizen of Quetta. Apart from that different Federal and Provincial Government Offices are also situated at Spinny Road Quetta including SSP Traffic Police Office and Office of Federal Board of Revenue (FBR).

7. The pivotal question in these Constitution Petitions would be, whether the petitioners require any license either from the Deputy Commissioner Quetta or to that effect from the Administrator, Metropolitan Corporation Quetta ('MCQ') and whether considering Article 18 of the Constitution of Islamic Republic of Pakistan, 1973

(‘**Constitution**’), which guarantees freedom of trade, business or profession as a fundamental right under the Constitution, without any Regulation and in absence of any licensing system, any restriction can be imposed by the Executive authorities in arbitrarily manner by resorting to colourful exercise of jurisdiction which is even not vested in them? In order to get answers of these questions, it would be advantageous to refer Article 18 of the Constitution which reads as under:

“Freedom of trade, business or profession

18. Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:

Provided that nothing in this Article shall prevent—

- (a) the regulation of any trade or profession by a licensing system; or*
- (b) the regulation of trade, commerce or industry in the interest of free competition therein; or*
- (c) the carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons.”*

8. The Balochistan Local Government Act, 2010 (‘**Act, 2010**’) was promulgated in order to provide constitution and continuance of Local Government Institutions in Balochistan and to consolidate law relating to the Local Government and to provide for the matters connected therewith and ancillary thereto. Section 80 of the Act, 2010 stipulates that the articles and trades mentioned in the

First Schedule shall be deemed to be dangerous or offensive for the purposes of this section, and without a license granted by the Local Council, no person shall carry out any business specified in the First Schedule of the Act, 2010. For ready reference, section 80 of the Act, 2010 is reproduced:

“Dangerous and offensive trades.

80. (1) *The articles and trades given in the First Schedule shall be deemed to be dangerous or offensive for the purposes of this section.*

(2) *Except under, and in conformity with, the conditions of a licence granted by the Local Council—*

(a) *no person shall carry on any dangerous or offensive trade;*

(b) *no premises shall be used or suffered to be used for any dangerous or offensive trade; and*

(c) *no person shall store or keep in any premises—*

(i) *any dangerous or offensive article except for domestic use; or*

(ii) *any dangerous or offensive articles in excess of such limits as may be fixed by bye-laws.*

(3) *A Local Council may, with the previous sanction of the Board, prepare and enforce a scheme providing for the prohibition of dangerous and offensive trades in specified areas within the Local Council, and for the restriction of such trade in any area not so specified.”*

9. The First Schedule of the Act, 2010 has enumerated the following businesses/trades:

**“THE FIRST SCHEDULE
DANGEROUS AND OFFENSIVE ARTICLES AND
TRADES**

(See Section 80)

1. *The business of storing or selling timber, firewood, coal, charcoal and coke, hay straw, grass and bamboo, jute, shrub, hemp munj and their products, matches, explosives, petrol, oil and lubricants, paper, ghee and other dangerously inflammable materials.*
2. *Sugar refining and sugar refineries.*
3. *preparation of aerated water.*
4. *Operating or running bake houses.*
5. *Electroplating.*
6. *Welding.*
7. *Storing, packing, pressing, cleaning, preparing or manufacturing by any process whatever blasting powder, ammunition, fireworks, gun powder, sulphur, mercury, gases gun cotton, saltpeter, nitrocompounds, nitromixtures, phosphorus or dynamite.*
8. *Cleaning, dying, preparing or manufacturing by any process whatever clothes or yarn in indigo and other colours.*
9. *Storing, processing, cleanings, crushing, melting, preparing or manufacturing by any process whatever or dealing in bones, offal, fat blood, soap, raw hides and skins candles, manure, catgut and oil cloth.*
10. *Manufacturing oils.*
11. *Washing or drying wool or hair.*
12. *Making or manufacturing bricks, ‘Surkhi’, tiles, or earthenware potselay pipes or other earthenware by any process of baking or burning.*

13. *Burning or grinding of limestone or metal stone or storing of lime for sale.*
14. *Cleaning or grinding of grain or chilies by any kind or class or machinery.*
15. *Keeping animals likely to create nuisance.*
16. *Casting of heavy metals such as iron, lead copper and brass.*
17. *Dealing in chemicals, liquid or otherwise.*
18. *Whole-sale storing cleaning pounding and selling of tobacco except the storing of tobacco required for the preparation of biddies, cigars or cigarettes.*
19. *Operating or running tin factories.*
20. *Manufacture of safes, trunks and boxes.*
21. *Marble cutting and polishing.*
22. *Glass leveling and polishing.*
23. *Manufacture of cement and home pipes.*
24. *Storing, packing, pressing, cleaning, preparing or manufacturing by any process whatever, rags, pitch, tar, turpentine, dammar, coconut, fiber, flax, hemp, rosin or spirit.*
25. *Tanning, Pressing or packing hides or skins whether raw or dry.*
26. *Trade or operation of a Ferries.*
27. *Working of power-looms, rice husking plants, steam whistle, steam trumpet or electric or hand operated sirens beyond hours fixed for their operation by a Local Council.*
28. *Discharging fire-arms and letting off fire-works, fireballoons of detonators, or any game dangerous to life, dwelling and other property.*
29. *Any other article or trade declared by Government to be dangerous to life, health or property or likely to cause nuisance either from its nature or any reason of*

the manner in which or the conditions under which, the same may be processed or carried on.”

10. In view of section 80 and First Schedule of the Act, 2010, it is vividly clear that the trade of selling and purchasing vehicles and establishing Motor Show Rooms is not within the purview of ibid section and ibid Schedule. Therefore, without any legal backing and provision dealing with the subject, any restriction imposed by the District Administration would not only be illegal but would amount to violation of the fundamental rights of the citizens guaranteed by the Constitution.

11. It is well settled legal and constitutional proposition that Executive has no inherent power to pass any order or to take any action, as has been repeatedly held by the Hon'ble Supreme Court including in the judgment reported as: **Pakistan Muslim League (N) through Khawaja Muhammad Asif, M.N.A. and others Versus Federation of Pakistan through Secretary Ministry of Interior¹**, as under:

“There is no inherent power in the Executive, except what has been vested in it by law, and that law is the source of power and duty.

----- Therefore, executive action would necessarily have to be such that it could not possibly violate a Fundamental Right. The only power of the Executive to take action would have to be derived from law and the law itself would not be able to confer upon the executive any power

¹ 2007 PLD 642 SC

*to deal with a citizen or other persons in Pakistan in contravention of a Fundamental Right. Functionaries of State, are to function strictly within the sphere allotted to them and in accordance with law. **No Court or Authority is entitled to exercise power not vested in it** and all citizens have an inalienable right to be treated in accordance with law. Therefore, an action of an Authority admitted to be derogatory to law and Constitution, is liable to be struck down.”*

(Emphasis supplied)

Therefore, every Executive action must be justified by disclosure of the powers so vested in the Executive under the law and can always be subject to judicial scrutiny. Furthermore, all such actions must not only necessarily be intra vires the law i.e. the statute, rules or regulations, whereunder they are purportedly taken, but at the same time such actions must be free from malafide of fact and law. Even otherwise, if any law is promulgated in derogation of fundamental rights, it would be declared void because at the cost of fundamental rights guaranteed by the Constitution, the Executive Government is not empowered to frame a Policy.

12. Justice Cornelius, in the case titled as **East and West Steamship Co. Versus Pakistan**², while elaborating Article 12 of the Constitution of Islamic Republic of Pakistan, 1956 (present Article 18 of the Constitution) had observed as follows:

² PLD 1958 SC (Pak) 41, 68

“We may, therefore, safely conclude that among the considerations which guided the Constitution makers in the drafting of Article 12 (the present Article 18), so as to secure freedom to the citizens of Pakistan to conduct any lawful trade, the place of greatest importance must be given, firstly, to the necessity of ensuring to every individual member of the community, a right to engage in lawful trade according to his choice and to exercise that trade in a mode settled by him at his own discretion and choice, within the legal requirements, and secondly that the interests of the community should be advanced, by the grant of such liberty to individual citizens, and that every action which tends to interfere with that liberty should be repressed, since it would be injurious to the interests of the State.”

13. It was further held by Justice Cornelius in **East and West Steamship Co.** Case (supra) that:

“in unequivocal terms that every citizen shall have the right to conduct any lawful trade or business. In so doing, the Article merely furnishes a fresh and authoritative declaration of a pre-existing right under the common law.”

14. In the instant case, despite no provision of granting license in the Act, 2010 for running business of Motor Show Rooms, on highly misconceived grounds, the Motor Show Rooms of the petitioners were sealed. Despite our query, learned AAG could not point out any provision of law which could have authorized the District Administration to shut down the lawful business of the petitioners.

For the above reasons, after obtaining affidavits from the petitioners to the effect that their businesses would not disturb the traffic on road in any manner, the above captioned Constitution Petitions were allowed vide our short order dated 01.10.2024 in the following terms:

“For the reasons to be recorded later on, the petition is allowed and the respondents are directed to de-seal the petitioners’ showrooms situated at Spini Road Quetta.”

The above deliberations shall constitute reasoning of our short order dated 01.10.2024.

Reasons drawn on
12th October, 2024.

CHIEF JUSTICE

JUDGE