

Writ Petition No.3490 of 2010

AMIR SOHAIL etc.

VERSUS

T.M.A. CHAKWAL and others.

15.03.2011

Mr. Asif Ali Malik Advocate for Petitioner.
Ch. Imran Hassan Ali Advocate for Respondents.
Razzaq A. Mirza, Addl. A.-G.

The petitioner carries on the business in the name of "Phelwan Juice House and Rewari" at Chappar Bazar, Chakwal. The respondent TMA, Chakwal and its staff led by the respondent No.3 took over forcible possession of two Generators belonging to the petitioner on 12-3-2010 and 2-6-2010 separately. As per detail given in the paras-3 and 4 of the instant Writ Petition, a Japan made 35 KVA Generator was purchased by the petitioner for Rs.800, 000 which was forcibly taken by the respondents on 12-3-2010 and as per contents of Para-6 of the petition, a 50 KVA local made Generator of the petitioner was taken away by the respondent No.3 on 2-6-2010. The petitioner instituted the present Writ Petition challenging the act of the respondents of taking over two Generators described in the title of the Writ Petition. Parawise comments in the instant Writ Petition were requisitioned which have been submitted. The petitioner also submitted the re-joinder. This taking into possession of the Generators of the petitioners is neither denied in the comments, nor by the

learned counsel for the respondents.

2. It is argued out by the learned counsel for the petitioner that two Generators which is the private property of the petitioner have been taken over forcibly by the respondent No.3, without due process of law and the respondents are still retaining with them the generators, which acts of the respondents are illegal and arbitrary. The learned counsel for the petitioner further elaborates that no written order of taking over the Generators in question has been passed by any competent authority of the respondents. It is further contended, that no recovery memo of the seizure of the Generators has been prepared by the respondents Nos.2 and 3. It is also contended that the respondents are illegally detaining these two generators since the date of taking forcible possession thereof from the petitioner. The learned counsel for the petitioner submits that the petitioner has a right to be treated in accordance with the law and the respondents being the functionaries of the statutory body under the Punjab Local Government Ordinance, 2001 were and are under legal obligation to proceed in the matter in accordance with the provisions of said statute.

3. The learned counsel for the respondents has addressed his lengthy arguments. He has argued that the notices dated 3-8-2009, 4-8-2009, 5-8-2009, 4-3-2010 and 8-3-2010 have been served upon the petitioner and that the seizure of the two generators have been effected in a lawful

manner by the respondents. It is further contended that the petitioner had placed these generators outside his shop, which according to the learned counsel was an act of encroachment. The learned counsel for the respondents has referred to the provisions of section-146-D of the Punjab Local Government Ordinance, 2001 and contended that said provisions of law authorize the respondents to proceed in the matter and to take actions against the petitioner. It is further argued by the learned counsel for the respondents that the Eighth Schedule annexed with the Punjab Local Government Ordinance, 2001 and its Clause-8 is applicable to the facts of the instant case and the action has been taken against the petitioner in accordance with the said provisions of law. It is further argued by the learned counsel for the respondents that the petitioner had an alternate remedy of filing of an appeal as well as of the lodging of a complaint before the Commission constituted under the Punjab Local Government Ordinance, 2001 for the alleged illegal acts by the respondents. It is further argued that the petitioner has the remedy of filing of a private complaint as well, which course has not been adopted. Thus, the Writ Petition has been prayed to be dismissed by the learned counsel for the respondents.

4. The learned Additional Advocate-General, who was available in the Court has also been called upon to assist the court, as to upon whose shoulders the responsibility for the illegal acts can be fixed in view of the peculiar facts

and circumstances of the case. The learned Additional Advocate-General has referred to the Punjab Tehsil/Town Municipal Administration, Business Rules, 2002 made under the Punjab Local Government Ordinance, 2001 and has pointed out that it is the Tehsil Municipal Officer, who is responsible for the general administration of T.M.A as its Incharge. The learned Additional Advocate-General has also referred to the provisions of section 53(3) of the Punjab Local Government Ordinance, 2001 in support of his contentions.

5. I have considered the arguments of the learned counsel for the parties and have perused the record.

6. There is no denial of the fact that the respondents have taken over the possession of the two generators which is the private property of the petitioner, on the dates mentioned in Paras Nos.3, 4 and 6 of the Writ Petition. The learned counsel for the respondents did not place any orders of seizure of these generators by the respondents. No order of confiscation either has been claimed to have been passed or has been placed on the record. The petitioner has also not been proceeded against for any alleged act of encroachment, forming basis of the seizure of the generators. The notices which have been referred to by the learned counsel for the respondents do not contain specifically the facts that these notices were with respect to the generators having been installed by the petitioner outside his premises encroaching upon the property of the

respondents, rather there is no mention of these generators at all in the said notices, which are annexed with the comments. The contentions raised by the parties and the arguments addressed by their learned counsel clearly reflect that the respondents have acted with absolute arbitrariness and sheer illegality in taking over forcible possession of generators of the petitioner since 12-3-2010 and 2-6-2010 respectively. The respondents Nos.2 and 3 are functionaries of a statutory body which has been constituted under the provisions of Punjab Local Government Ordinance, 2001. They are expected to act in accordance with law under the said Ordinance. If the petitioner has committed any act of encroachment, he should have been proceeded against with reference to Clause-8 of Eighth Schedule, which provides the charging of Tickets of maximum of Rs.1000/-only. The generators of the petitioner are still admittedly lying with the respondents. There is no explanation as to why these generators have been detained by the respondents. The learned counsel for the petitioner submits that the respondents now plan to auction the generators of the petitioner without passing any order to that extent as well.

7. Section 146-D of the Punjab Local Government Ordinance, 2001 reads as follows: ---

"146-D General Powers of Inspectors. ---

(1) In case of any serious threat to the public health, safety or welfare or danger to life and property, the Inspector may in his area of jurisdiction, in addition to imposition of fine or initiating prosecution under this Ordinance:--

(a) suspend any work;

- (b) seize the goods;
- (c) seal the premises;
- (d) demolish or remove work; and
- (e) issue directions for taking corrective measures in the time specified by him:

Provided that no Inspector shall enter any residential premises save with the permission of the occupier or owner or Court.

(2) An Inspector authorized under section 142 shall have the powers in relation to the offences specified in the Fourth Schedule to:--

(a) issue notices in writing on behalf of the respective local government served, either personally or through registered post with acknowledgement due or by any official of the local government, in order to restrain violations or commission of any offence forthwith:

(b) initiate legal proceedings in the competent Court where any person fails to comply with the directions contained in the notice issued under clause (a); and

(c) assist in defending any legal proceedings initiated against the local government."

8. Admittedly in the instant case, no order has been passed by the respondents Nos.2 and 3 against the petitioner invoking the provisions of section 146-D of the Punjab Local Government Ordinance, 2001, therefore, reference to these provisions by the learned counsel for the respondents does not support the action of the respondents in the matter and makes no sense. The members and servants of the Local Government constituted under the provisions of the Punjab Local Government Ordinance, 2001 are public servants as per provisions of section 193 of Punjab Local Government Ordinance, 2001 and they are holders of public offices. They cannot be allowed to proceed in the matters against the citizens without adopting

the necessary procedure provided for the same under the provisions of the Punjab Local Government Ordinance, 2001 and the Rules made thereunder. The issuing of a show-cause notice is the minimum requirement of all laws for taking any action against the citizens by a Public Officer. It is also an admitted fact that even after taking over of the generators by the respondents, no notice of any kind was served upon the petitioner. Although, it is alleged in the Writ Petition that the generators were taken into possession by the respondent No.3 along with another member of the staff, but the respondent No.2 by virtue of the provisions of section 53 of the Punjab Local Government Ordinance, 2001 is over all Incharge of the Administration of T.M.A and has to be burdened with the responsibility of what is happening within the limits of T.M.A. The parawise comments were submitted by the respondents Nos.1 to 3 through their learned counsel on 9-12-2010 which are part of the record which sufficiently indicate that the respondent No.2 being the over all Incharge of the administration of T.M.A was well aware of what the respondent No.3 has done in the matter. The generators in question are undoubtedly, the private property of the petitioner and he has been illegally and arbitrarily deprived of those valuable generators by the respondents Nos.2 and 3 for the last about one year without passing any order against the petitioner. Article-4 of the Constitution of Islamic Republic of Pakistan, 1973 lays down that it is a

fundamental right of every individual citizen of Pakistan to be dealt with in accordance with law and no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. The Article-4 of the Constitution of Islamic Republic of Pakistan, 1973 is reproduced as under:---

"Right of Individuals to be dealt with in accordance with law, etc.--- (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular -

(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

(b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and

(c) no person shall be compelled to do that which the law does not require him to do."

Similarly, Article 24 of the Constitution of Islamic Republic of Pakistan, 1973 creates a specific prohibition in the following words: ---

"24. Protection of property rights. --- (1) No person shall be deprived of his property save in accordance with law."

The respondents Nos.2 and 3 have gravely violated the principles of law as embodied in the aforementioned Articles of the Constitution of Islamic Republic of Pakistan, 1973.

9. In view of the above circumstances, the act of the respondents of taking over the generators of the petitioner is declared to be absolutely illegal. The respondents are directed to hand over the generators of the petitioner back

to him within a period of one week against a receipt to be issued. The matter is referred to the Commission constituted under the Punjab Local Government Ordinance, 2001 for taking action against the respondents Nos.2 and 3, as they acted arbitrarily and illegally in the matter. The respondents Nos.2 and 3 are also burdened with costs of Rs.25,000 each (total Rs.50,000), which shall be paid by them to the petitioner from their own pockets for illegal detention of the generators of the petitioner for the last one year.

10. In view of the above, this Writ Petition is allowed and disposed of as directed.

(NASIR SAEED SHEIK)
Judge