JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 1657 of 2022

Syed Sajjad Haider, etc.

Versus

Deputy Commissioner, ICT, Islamabad, etc.

Date of Hearing	:	**25.07.2022.**
Petitioner by	:	Misbah ul Mustafa, Advocate
State by	:	Mian Zain Qureshi, State counsel.
		Mr. Asif Jahangir, ETO, Islamabad.

ARBAB MUHAMMAD TAHIR, J. The instant writ petition has been filed with the following prayer:-

"a. Declaration that the impugned Notification No. 1 (20)-HC(G)/2022-690 dated 10.05.2022 has been issued by the Deputy Commissioner, respondent No. 1, without lawful authority and is of no legal effect;

b. Declaration that all the actions taken by the ICT Administration under or in pursuance of the impugned Notification are also unlawful and are of no legal effect;

c. Prohibition that the respondents may be restrained from causing any hindrance to the petitioners in doing their lawful business and activity; and

d. Direction to respondent No. 3 (IG Police) and the police officer under him to refrain from harassing and intimidating the petitioners on the basis of the impugned Notification and/or on the behest or instruction of respondent No. 1 for implementing the impugned Notification."

2. Precisely, the case as set-up by the petitioners in the memo of the petition is to the effect that they are doing business of providing services in respect of registration of vehicles owned by the banks and authorized automobile dealers for the last many years; that they were duly authorized by the owners of vehicles especially the banks and dealers to get their vehicles registered from the Excise and Taxation Department; that the process of registration is envisaged in section 25 of the Motor Vehicle Ordinance, 1965 where under any person can make application on behalf of the owner of the vehicle for its registration and there is no restriction in the Ordinance ibid to appoint an authorized agent for the purposes of registration of vehicles; that the practice of appointment of agents is not regulated by any other special law rather it is governed by the general law of the land under which any civil action can be taken by a person himself or on his behalf by any of his authorized agent.

3. The petitioners further asserted that Chapter X of the Contract Act, 1872 provides all principles of appointment of agent and fiduciary duties of agent towards their principal while Section 182 of the Act of, 1872 creates no exception for the appointment of agent for the purposes of registration of vehicles.

4. Further maintained that under the law, an authorized agent can act for and on behalf of his principal before any forum (except in criminal cases) including all courts and tribunals; that the activity of registration of vehicles in bulk by the banks and automobile industry for their leasing business has given opportunity for many people to provide certain services to them in respect of such registration. The banks appoint their agents (individuals, firm or companies etc.) by giving them proper authority letter to act on their behalf before the Motor Registration Authority. It is a longstanding practice in the market which is beneficial for the banks in terms of saving their time and human resource on the one hand and for the agents on the other hand who earn money from banks or owners by providing their services. The working of agents has emerged as a profession in which hundreds of people are involved. Curtailing this permissible and lawful business, simply through an administrative or executive action and that too without the sanction of any law, is illegal and violation of the governing law and the fundamental rights of the persons

involved in this business and their families; that the relationship of the petitioners with banks and dealerships is purely legal and valid as the petitioners duly charge the banks and dealerships for their services and they are paid through banking channels. There is nothing secret, deceptive, fraudulent or underhand dealing in all this activity. Moreover, the banks and dealership deduct the tax on this remuneration to the agents which is a revenue generating activity for the State. The Excise and Taxation Departments in other provinces of the Country allow the agents to act on behalf of the owners. ICT Administration itself has allowed third parties like NADRA to facilitate General public in respect of registration of motor vehicles and, therefore, impugned Notification is liable to be set-aside.

3. Learned Counsel for the petitioner pressed this petition, inter-alia, on the grounds that the respondent No. 1 has no authority to put any ban, restriction, or condition on the owners of the vehicle to appoint their agent, under the Motor Vehicle Ordinance; that Section 25 of Ordinance permits the owners to appoint any agent for applying for the registration and that impugned action being in violation of Article 4 of the Constitution is liable to be set-aside.

4. On the other hand, learned State Counsel while referring parawise comments objected upon the maintainability of the instant writ petition. Further argued that only an authorized person can act on behalf of the original owner and without authority letter of the original owner, the Excise Office cannot permit any person to act on behalf of original owner and that the impugned action has been taken across the board to eliminate mal-practices with no discrimination to any one and that the duly authorized representatives were not prohibited by the impugned notification they have to fulfill the conditions mentioned in the impugned notification so as to make the working more transparent.

5. Heard, record perused.

6. The perusal of impugned notification reveals that all authorization letters issued previously stood cancelled with immediate effect with direction that in future while appointing authorized persons, the businesses, banks, or similar entities have to observe the following:-

- *"An authorization letter shall only be accepted it provided with specific details of the vehicle, the person so authorized, and the date of its validity.*
- *An authorization letter can only be used once and for each different case, a separate authorization letter shall be required.*
- *In case of banks, the authorized persons must not be below the rank of Assistant Manager and must be working as permanent employee in Islamabad.*
- *In the case of public limited companies, their representative must hold a valid office identity car, authorization letter for a specific case, and SECP registration of the company.*
- *The authorized person must be a taxpayer.*
- *Showrooms are not allowed to issue authorization letter to any person.*

7. Perusal of above directions clearly indicates that no perpetual clog has been put against the authorized person to act on behalf of the principal. It is specifically envisaged in section 25 (1) of the West Pakistan Motor Vehicles Ordinance, 1965 that an application for the registration of a vehicle ***can be made by or on behalf of the owner on his behalf*** while as per section 25 (2) of the Ordinance, the documents/certificate of registration shall be issued to the owner of a motor vehicle only. This provision is mandatory as the word "shall" has been used which means that the agent or authorized person cannot receive certificate of registration of the vehicle on behalf of the owner/principal.

8. It is significant to note that earlier this Court has dealt with the issue vide judgment dated 05.05.2016 passed in the case of "Noshad Ahmad Zada Muhammadzai v. Chief Commissioner Islamabad & 2 others" (W.P. No.771 of 2016), operative paragraph 6 of the judgment reads as under:-

> "The bare examination of above provision shows that an application for registration can be made by owner or on his behalf

> by anyone else. Further under sub-section 2, the documents/certificate of registration are only to be handed over to the owner of the vehicle. The law permits making of an application on behalf of the owner which fact is not denied by the respondents, however, in the reply, it has been contended that when an application for registration or transfer is submitted by an agent, it does not accompany a letter of authority. Since under section 25(1) of the Ordinance ibid, an application can be made on behalf of the owner, therefore, demand of authority letter is a proper request on part of the respondents to protect the misuse or curb fraud in this behalf. The learned counsel for the petitioner also has relied upon the decision of ICA No.324/2008. The referred ICA was disposed of by the Division Bench on the statement of the Officer of Excise and Taxation appearing before the Court. In the instant case, the just and proper interpretation of law would be that an application for registration of a motor vehicle can be made on behalf of the owner by an agent, however, he should be duly authorized in this behalf . however, as required under section 25(2) ibid, "the certificate of registration shall be handed over to the owner of the motor vehicle only."

9. By taking guidance from the judgment ibid, it is held that an application can be made on behalf of the owner in terms of Section 25(1) of the Ordinance 1965, therefore, the demand of Authority Letter is a proper request on the part of the respondents to protect the misuse or curb fraud in this behalf while an application for the registration of a motor-vehicle can be made on behalf of the owner by an agent, however, he should be duly authorized in this behalf. The certificate of the registration shall be handed over to the owner of the motor vehicle only in terms of Section 25(2) of the Ordinance, 1965.

10. With above observations, the instant writ petition is accordingly **disposed of**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on __07.2022.

JUDGE

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