JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1304 of 2017
M/s Farhad Enterprises
Versus
Federation of Pakistan through Secretary to Government of Pakistan and others

Date of Hearing:	21.04.2017
Petitioner by:	M/s Najeeb ur Rehman Abbasi and Aasim Shafi, Advocates,
Respondents by:	Raja Khalid Khan, learned Deputy Attorney-General, Ms. Sitwat Jahangir, learned Assistant Advocate-General, Mr. Shahid Abdullah, Entomologist Plant Protection.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioners, M/s Farhad Enterprises, which is an entity engaged in the business of *inter alia* importing fresh fruits into Pakistan, prays for the following relief:-

> *"In view of above, it is humbly prayed that while allowing instant writ petition, the Respondents may please be directed to entertain the Quarantine Certificate/Phytosanitary Certificate issued by the competent authority of the country of origin (Egypt); issue release order of the consignments in question without any further procrastination; and consequently the petitioner may kindly be allowed to file the Goods Declaration for clearance of goods in question, in the interests of justice.*
> *Any other relief which this Honourable Court deems just and proper in the circumstances of this case, may also graciously be awarded."*

2. Learned counsel for the petitioner submitted that the petitioner is engaged in the business of importing fresh fruits into Pakistan from various countries; that recently, the petitioner imported five consignments of fresh oranges (Valencia) from Egypt; that the said consignment was accompanied by a certificate of origin and a phytosanitary certificate along with the relevant import documents; that the said phytosanitary certificate issued by the exporting country showed that the said consignment of oranges had been inspected and tested and found free from quarantine pests; that

at the port of entry (i.e. Port Muhammad Bin Qasim, Karachi), the said consignment was refused entry into Pakistan; that as a No Objection Certificate had not been issued in the petitioner's favour, the petitioner could not file Goods Declaration with the custom authorities; that aggrieved by the said situation, the petitioner filed W.P.No.1107/2017, before this Court; that prior to the filing of the said writ petition, the petitioner had submitted an application on 08.03.2017 to the Plant Quarantine Division, Ministry of National Food Security & Research (respondent No.5) for the issuance of a release order for the said consignment of oranges; that vide order dated 29.03.2017, the said writ petition was disposed of with the direction to the Director General of the Plant Quarantine Division to decide the petitioner's said application dated 08.03.2017 through a reasoned order; that on the same very day i.e. 29.03.2017, respondent No.5 turned down the petitioner's application for the issuance of a release order, and ordered the reshipping of the said consignment of oranges from Pakistan.

3. Learned counsel for the petitioner further submitted that the said order dated 29.03.2017 was passed by respondent No.5 with undue haste; that even if the petitioner had imported the said consignment of oranges without a valid import permit, the petitioner was ready to pay the fine for such a lapse; that such fine is normally Rs.10,000/- per consignment; that since the past four years, the petitioner had not obtained an import permit; that the consignment of oranges imported by the petitioner is free from any pests and diseases, and the respondents are at liberty to have the said consignment tested by any laboratory of their choice at the petitioner's cost; that respondent No.5's contention that oranges from Egypt could contain Mexicon Fly is without any basis; that respondent No.5 had on 15.02.2017, 22.02.2017, 24.03.2016, 12.03.2016, and 03.03.2016, issued release orders to various importers, including the petitioner with respect to fresh oranges imported from Egypt. Learned counsel for the petitioner prayed for a direction to respondent No.5 a release order with respect to the

consignment of oranges imported by the petitioner from Egypt. A direction was also sought to the Collector of Customs, Karachi to release the consignment of oranges imported by the petitioner.

4. Mr. Shahid Abdullah, Entomologist from the Department of Plant Protection (Plant Quarantine Division), tendered appearance and submitted that the petitioner had not been issued a release order with respect to the consignment of oranges imported from Egypt, because there was a danger of Mexican Fly in the said consignment; that the said consignment had been imported without a valid import permit in terms of Import Policy Order, 2013; that the said consignment had not undergone foolproof phytosanitary measures and treatments in the exporting country for its safe entry into Pakistan; that the petitioner had already been ordered to re-ship the said consignment out of Pakistan in order to avoid the possible entry into Pakistan of the pests and diseases listed in the order dated 29.3.2017. He further submitted that proceedings had been initiated against the officer who had earlier issued release orders to importers of oranges from Egypt.

5. On the other hand, the learned Deputy Attorney-General raised an objection to the maintainability of this petition by submitting that the impugned order dated 29.3.2017 had been issued by the Plant Quarantine and Services Certification Office at Karachi; that the earlier release order for the import of fresh oranges from Egypt had been also issued in the petitioner's favour by the Department of Plant Protection at Karachi; that the consignment of the imported oranges were presently at the port in Karachi; that the laboratory test of the fruits earlier imported by the petitioner were also carried out at Karachi; that the Collector of Customs at Karachi was refusing to release the consignment of oranges without release order from respondent No.5. He further submitted that the petitioner had impleaded the Federal Board of Revenue and the Ministry of National Food Security and Research as parties to this petition only so as to file a constitutional petition before this Court; that the subject

matter of this petition has no nexus whatsoever with Islamabad; that none of the impugned decisions have been taken by the respondents at Islamabad; and that the petitioner ought to seek redress from the Hon'ble High Court of Sindh at Karachi. Learned Deputy Attorney-General further submitted that the instant petition is also barred by *res judicata,* because the petitioner had in the earlier writ petition No.1107/2017 prayed for the same relief as in the instant writ petition.

6. I have heard the contentions of the learned counsel for the petitioner as well as the learned Deputy Attorney-General, and perused the record with their able assistance.

7. I propose first to take up and decide the learned Deputy Attorney-General's objection to the maintainability of this petition on the ground that this Court does not have the territorial jurisdiction to adjudicate upon the matter. In the case at hand, the order dated 29.03.2017, whereby the petitioner has been ordered to reship the consignment of oranges, had been issued by the Plant Quarantine & Services Certification Office of the Department of Plant Protection at Karachi. Until and unless the said order dated 29.03.2017 is set aside, the petitioner cannot expect to obtain a direction to the Collector of Customs at Karachi to release the consignment of oranges in question. The release orders in the petitioner's favour for importing fresh fruits into Pakistan had also been issued earlier by the Plant Quarantine Division at Karachi. The consignment of oranges in question was presently at Port Muhammad Bin Qasim, Karachi. The petitioner is primarily aggrieved by the refusal of the Collector of Customs at Karachi to release the consignment of oranges imported by the petitioner. The petitioner, in effect, is seeking a direction to the Plant Quarantine Division at Karachi to issue a release order in the petitioner's favour so as to cause the Collector of Customs at Karachi to release the consignment of oranges imported by the petitioner from Egypt. In other words, the petitioner is seeking a direction from this Court to persons performing functions and duties beyond the territorial jurisdiction of this Court.

8. Perusal of the prayer clause of the petition shows that a direction is being sought to the Collector of Customs at Karachi to entertain the Quarantine Certificate/Phytosanitary Certificate issued in Egypt. Additionally, a direction to the Plant Quarantine Division at Karachi to issue a release order in the petitioner's favour has been prayed for. The learned counsel for the petitioner in his arguments submitted that in effect the order dated 29.03.2017, issued by the Plant Quarantine & Services Certification Office of the Department of Plant Protection at Karachi, whereby the petitioner has been ordered to re-ship the consignment of oranges, has been challenged. Without the setting aside of the said order, the petitioner cannot be granted the relief prayed for in the writ petition. No specific relief is sought against the Federal Board of Revenue or the Ministry of National Food Security & Research. The petitioner is seeking the issuance of a writ of mandamus only against the respondents No.3 and 5. Under Article 199(1)(a)(i) and (ii) of the Constitution, a writ of mandamus can only be issued to a person performing functions within the territorial jurisdiction of the High Court where the writ petition has been filed. As mentioned above, no specific relief has been sought by the petitioner against any person performing functions within the territorial jurisdiction of this Court. True, the administrative control over the Collector of Customs, Karachi lies with the Federal Board of Revenue, and that over Plant Quarantine & Services Certification Office of the Department of Plant Protection at Karachi, lies with the Ministry of Food Security & Research, but this by itself would not invest this Court with jurisdiction over respondents No.3 and 5. Reference in this regard may be made to the following case law:-

(i) In the case of Sandalbar Enterprises (Pvt.) Ltd. Vs. Central Board of Revenue and others, (PLD 1997 SC 334), it has been held as follows:

> ***"We may observe that it has become a common practice to file a writ petition either at Peshawar, or Lahore, or Rawalpindi or Multan etc. to challenge the order of assessment passed at Karachi by adding a ground for***

impugning the notification under which a particular levy is imposed. This practice is to be depreciated. The court is to see, what is the dominant object of filing of the writ petition. In the present case, the dominant object was not to pay the regulatory duty assessed by a Customs official at Karachi."

ii) In the case of Messrs Sethi and Sethi Sons Versus Federation of Pakistan through Secretary, Ministry of Finance (2012 PTD 1869), the petitioner had, through a writ petition, challenged notices issued by the respondent at Karachi. The petitioner had also sought the quashment of an FIR registered at Karachi. The Hon'ble Lahore High Court held that since the dominant object of the Constitutional petition had nexus with Karachi, the writ petition filed before the Hon'ble Lahore High Court was not maintainable. At paragraph 21 of the report, it was held as follows:-

"21. There is yet another dimension to the above principle. In managing its day-to-day affairs a PERSON, performing functions in connection with the affairs of the Federation may often delegate its powers to its officers. Such delegation ordinarily limits the power of the officer within a specified territorial domain. In such a situation, the all encompassing countrywide territorial jurisdiction of the PERSON is localized to a specific limited territorial jurisdiction[3]. For example, Collector of Customs, an officer of FBR, has specific territorial jurisdiction limited to a particular area, as opposed to the countrywide territorial jurisdiction enjoyed by FBR. Such an officer, therefore, performs a localized function in connection with the affairs of the Federation in a particular area and will be considered to be performing functions within the territorial jurisdiction of the High Court within whose territorial jurisdiction the territorial jurisdiction of the Officer/PERSON falls. In the present case the Deputy Director is an Officer of the Directorate General of the Intelligence and Investigation, FBR at Karachi. As per Order dated 9-12-2010 issued by the FBR, the said Officer enjoys specific territorial jurisdiction confined to Karachi. Similarly a person having territorial jurisdiction limited to Karachi has registered the F.I.R. at Karachi. Therefore, it cannot be said that the Deputy Director or the Directorate is performing functions all over Pakistan as compared to FBR, therefore, only the High Court with corresponding territorial jurisdiction will assume jurisdiction in the matter.

9. In view of the above, the objection to the maintainability of this petition raised by the learned Deputy Attorney-General

succeeds. Therefore, there is no need to delve into the merits of the case. Resultantly, this petition is dismissed as not maintainable. The petitioner is at liberty to seek relief, should it so desire, from the Hon'ble High Court of Sindh at Karachi. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Qamar Khan*

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