



Phone: 99214311
Fax No. 99214329
99214330

KARACHI PORT TRUST

*Eduljee Dinshaw Road,
KPT Main Head Office Bldg,
Karachi.*

From: *Bashir Ahmed*
Manager, Legal Affairs

No. SL/O-HO/12-08/140
Dated: 07-04-2010

To: Syed Adil Gilani
Chairman
Transparency International - Pakistan
5-C, Kh-e-Ittehad, Phase VII,
DHA, Karachi.

Sub: TRUSTEES OF KPT ARE PUBLIC SERVANTS.

Dear Sir,

I am directed to refer to your letter dated 19-06-2009 addressed to Chairman, KPT and to state that the legal points raised in your said letter have been studied and examined at depth by the KPT Board. The Board also sought legal opinion from Mr. M. Shaiq Usmani, Ex-Judge and Sr. Advocate. A copy of the legal opinion is enclosed for your perusal.


MANAGER LEGAL AFFAIRS

Sl. 36A

M. SHAJQ USMANI
M. AZAD IQBAL
MANSOOR A. SHEIKH
SYED SHAKIL AHMED
MAZHAR-UL-ISLAM
TAHIR MAHMOOD
GUL SHAHNAZ
ANILA KANWAL
(LAHORE OFFICE)
MOEN GURESHI

Usmani & Iqbal
Advocates & Solicitors
Trade Mark & Patent Attorneys

YOUR REF: SLO/HO/12-08/1/5120

OUR REF: Gen-KPT

DATE: 19.12.2009

Karachi Port Trust,
KPT Building,
Karachi.

Att. Mr. Bashir Ahmed
(Manager Legal Affairs)
Fax: 921 4329 / 30

Dear Sir,

TRUSTEES OF KPT ARE PUBLIC SERVANTS

Kindly refer to your letter dated 04.11.2009.

We have examined Transparency International Pakistan ("TI Pakistan") letter dated 19.06.2009.

We find that TI Pakistan's concerns expressed in their letter arise from certain misconceptions about the duties, responsibilities and liabilities of Trustees of Port of Karachi ("Trustees"). TI Pakistan seems to be under the impression that merely because under Sec 84B, KPT Act Trustees, have been declared to be "Public Servants" within the meaning of Sec 21 of Pakistan Penal Code, 1860 ("PPC"), the Trustees may feel that they enjoy some kind of indemnity for their acts as Trustees. TI Pakistan takes it upon itself to warn the Trustees that such is not the case and that they enjoy no such indemnity.

We believe TI Pakistan views in this regard are misconceived because in law, being a public servant in itself does not confer any indemnity on the Trustees in the first place, hence TI Pakistan's warning is uncalled for. Indeed in so far as civil liability of a Public servant is concerned, the privilege that he has by virtue of being a public servant is as provided in Sec 80, Civil Procedure Code, 1908 ("CPC") which reads as under:

"80. Notice. (1) A suit may be instituted against the Government or against a public officer, in respect of any purporting to be done by such public officer in his official capacity, after the expiration of two months next after notice in writing has been delivered to or left at the office of—

- (a) (i) in the case of a suit against the Provincial Government, a Secretary to that Government;

Contd. P/2

: 2 :

(ii) in the case of a suit against the Federal Government relating to the affairs of a Railway, the General Manager of the Railway concerned, and in the case of a public officer, delivered to him or left at his office stating the cause of action, the name, description of place of residence of the Plaintiff and the relief, which he claims and the plaint shall contain a statement that such notice has been so delivered or left.

(2) Where any such suit is instituted without delivering or leaving such notice as aforesaid or before the expiration of the said period of two months or where the plaint does not contain a statement that such notice has been so delivered or left, the Plaintiff shall not be entitled to any costs if settlement as regards the subject matter of the suit is reached or the Government or the public officer concedes the Plaintiff's claim, within the period of two months from the date of the institution of the suit;

Provided that in a suit instituted without such notice, the Court shall allow not less than three months to the Government to submit its Written Statement

A perusal of the above would show that the only advantage that a public servant has, is that if any proceedings are initiated against him, he is entitled to a notice in the manner provided for in Sec 80, CPC. The portion relating to Public servants in Sec 80, CPC re-produced above is underlined. The General law provides for no indemnity to a public servant.

The Sections in KPT Act, which govern the performance of Trustee's duties and liabilities are Sections 85 and 86 of KPT Act. These section read as under :

"85. Trustees not personally liable. No Trustee shall be personally liable for any contract made or expense incurred by or on behalf of the Board; but the funds from time to time in the hands of the Board shall be liable for and chargeable with all contracts made in manner provided in this Act."

"86. Trustees liable for breach of trust. Every Trustee shall be liable for any misapplication of money entrusted to the Board to which he has been a party or which happens through, or is facilitated by, the neglect of his duty."

As per Section 85 a Trustee shall be criminally liable for any involvement in misapplication of money entrusted to the Board of Trustees, even if it occurs due to his negligence. However, giving this section its natural meanings, it would appear that it refers to misuse of the funds at the disposal of the Board by a Trustee either due to indulgence in corruption or due to

: 3 :

inefficiency or incompetence. It does not apply to contracts entered into by the Board of Trustees. It is Sec 85 KPT Act which applies to contracts according to which Trustees are protected from any personal liability arising from any loss that KPT may suffer as a result of entering into a contract or an expense incurred by or on behalf of Board of Trustees. In effect what the above Sec 85, KPT Act provides is that a Trustees cannot be held personally liable for any loss suffered by KPT arising from a contract, including Procurements contract, entered into by Trustees, even if it is in violation of the Procurements Rules, which in any case are in the nature of subordinate legislation and not primary legislation. However, the Trustees will have collective responsibility and will owe an explanation for violation of Procurement Rules to its Administrative Authority.

Consequently, we believe TI Pakistan over reaches itself when it attempts to lean on the law to evoke trepidation amongst the Trustees for their actions when negotiating to enter into a procurement contract and thereby persuade them to observe the Procurement Rules. Indeed this is a laudable objective but alas, more on the moral plane than legal. But this is not to say that if a Trustee deliberately influences the Board to cause it to enter into a contract in violation of Procurement Rules knowing that it will cause loss to KPT, he will have no liability in law. Nothing could be farther from the truth since such an erring Member will have tortious liability and could even be indicted under the criminal law.

We trust you would find the above adequate for your needs.

With kind regards,


(M. Shaiq Usmani)
USMANI & IQBAL

Sd/- Shaiq Usmani
21-12-09