

In The Name Of God The Most Gracious, Most Merciful

Republic Of Iraq

Federal Supreme Court

(Emblem)

(Kurdish Text)

Ref: 81/Federal/Media/2016

The Federal Supreme Court has convened in 7.3.2017, headed by the Judge Medhat Al-Mahomood and the membership of the Justices Jaefar Naser Hussain , Akram Taha Mohamed , Akram Ahmed Baban , Mohamed Saeb Al-Naqshabnde , Mekaeel Shamshon Qis Qourqis , Hussain Abbass Abo Al-timen and Mohamed Rajeb Al-kobaese who are authorized to judge in the name of the people and it issued the follow decision:

The Plaintiff: Al-Basra Governor/being in this post.

The Defendant: Minister Of finance/being in this post.

THE CLAIM:

The agent of the plaintiff claims that Al-Basra Governorate has many official border ports and have revenue earned of it, half of these earned revenue are belongs to Al-Basra Governorate according to clause (7) provisions of article (44) of Governorate Not Incorporated Into A Region Code no.(21) year 2008 and article (45) of Federal Budget Code no. (1) year 2016. Despite the plaintiff requests by the letters issued by his department no.(Meem. Meem./Alef./875) on 2.6.2016 and (Meem. Meem./Alef./2923) on 19.4.2016 and (Meem. Meem./Alef./5954) on 22.8.2016 and (14238) on 4.8.2016. but the defendant is refusing to apply the provisions of articles (44) and (45) of the aforementioned Codes; justifying that by that the government revenue should be gathered in joined vessel.

While the plaintiff is not convinced in the reasons mentioned by the defendant to justify his objection to allocate the aforementioned amounts of revenue to Al-Basra Governorate (the plaintiff department), so he led the challenge before the FSC in the aforementioned two letters issued by the defendant department including the defendant objection, requesting to compel the defendant/being in this post to allocate half the amounts of the border ports earned revenue to Al-Basra Governorate and transfer this revenue to the Governorate account; so the Governorate shall spend it in

offering services to the Governorate citizens according to the aforementioned two letters.

After registering the case in this Court according to clause (third) of article (1) of FSC Bylaw no.(1) year 2005, and completing the required procedures according to clause (second) of article (1) of FSC Bylaw a day 7.3.2017 appointed as a date to hear the case. On that day the Court convened; the legal official (Ha'. Ya'. Meem.) attended as the agent of the plaintiff according to the procuration attached to the case file, the defendant Minister Of finance/being in this post did not attend nor any one attend as his agent in spite of he was informed based on the law, so the Court start the hearing in his absent. The agent of the plaintiff repeated what is mentioned on the case petition and requested to judge by it. While the case completed the judge reasons the court decided to judge in it with the absent of the defendant based on the FSC Bylaw no.(1) year 2005. Where is nothing left to say the decision made clear.

THE DECISION:

In the deliberation and discussion the FSC found that the agent of the plaintiff claims that Al-Basra Governorate has many official border ports and have revenue earned of it, half of these earned revenue are belongs to Al-Basra Governorate according to clause (7) provisions of article (44) of Governorate Not Incorporated Into A Region Code no.(21) year 2008 and article (45) of Federal Budget Code no. (1) year 2016, and the defendant Minister Of finance/being in this post refusing to allocate these revenue to the plaintiff department for the aforementioned reasons, as the plaintiff was not convince in this reasons he led the challenge in it before the FSC requesting to judge to compel the defendant to allocate half of the border ports earned revenue to Al-Basra Governorate and transfer this revenue to the Governorate account; so the Governorate shall spend it in offering services to the Governorate citizens according to the aforementioned two letters.

The FSC finds that the hearing in that case is out of the Court Competence stipulated in article (93) of Constitution and article (4) of its law no.(1) year 2005. As the competence of this Court regarding the applying of the Governorate Code no. (28) year 2008 restricted in article (31/eleventh/3) of it; that give the power to the Governor to direct the Governorate Council decision impeached by the Governor when the Governorate Council insist on its decision or if the Council amend it without removing the violation marked by him to the FSC to judge in it and what came in the aforementioned is restricted in the aforementioned code. Therefore the hearing in the plaintiff request is out of the Court competence.

The FSC also found that the plaintiff in his case based on the provisions of article (45) of the Federal Budget Code for year 2016 no.(1) ; and the aforementioned law is not valid as the Federal Budget Code for year 2017 is issued. The FSC according to article (93) of Constitution is specialized to control the Constitutionally of the systems and valid laws not the invalid laws therefore it is out of this Court Competence.

For the aforementioned reasons the FSC decided to reject the case formally as its out of the Court competence and decided to burden the plaintiff/being in this post the expenses of the case and the fees of the agent of the defended amount of (100000) one hundred thousand Iraqi dinar, the decision was made decisive according to article (94) of Constitution and article (5/second) of FSC Bylaw no.(30) year 2005 and with unanimous agreement and made clear in 7.3.2017.