

P L D 1997 Supreme Court 334

*Present: Ajmal Mian and Mukhtar Ahmed Junejo, JJ*

SANDALBAR ENTERPRISES (PVT.) LTD. ---Petitioner

versus

CENTRAL BOARD OF REVENUE and others---Respondents

Civil Petition for Leave to Appeal No. 1457/L of 1996, decided on 26th January, 1997.

(On appeal from the judgment dated 13-2-1996 of the Lahore High Court, Lahore, passed in Writ Petition No. 18516 of 1995).

**(a) Customs Act (IV of 1969)---**

---S. 18---Constitution of Pakistan (1973), Art.199---Levy of regulatory duty through Notification by Customs Authorities---Validity---Constitutional petition---Territorial jurisdiction---Thrust of the attack of the petitioners was directed against the order of assessment though they had also assailed the vires of the notification levying the regulatory duty---Such fact, simpliciter, held, would not be sufficient to oust the jurisdiction of a High Court within whose jurisdiction the main cause of action arose. Messrs AI-Iblagh Limited, Lahore v. The Copyright Board, Karachi and others 1985 SCMR 758 **distinguished**.

**(b) Constitution of Pakistan (1973)---**

---Art. 199(1)(a)(i)---Constitutional jurisdiction of High Court---Scope---High Court, under Art.199(1)(a)(i), Constitution of Pakistan (1973), has power to issue a direction to a person performing within its territorial jurisdiction functions in connection with the affairs of Federation, a Province or a local authority to refrain from doing anything he is not permitted by law to do or to do anything he is required by law to do. Asghar Hussain v. Election Commission of Pakistan and others PLD 1968 SC 387 ref.

**(c) Constitution of Pakistan (1973)-**

---Art. 199(1)(a)(ii)---Constitutional jurisdiction of High Court---Scope---High Court under Art.199(1)(a)(ii) of the Constitution of Pakistan (1973), has the power to issue a declaration in respect of any act done or proceeding taken within its territorial jurisdiction by a person performing functions in connection with affairs of the Federation, a Province or a local authority to be without lawful authority or of no legal effect.

**(d) Customs Act (IV of 1969)---**

---S. 18---Constitution of Pakistan (1973), Arts. 199 & 185(3)---Constitutional jurisdiction of High Court---Territorial jurisdiction---Levy of duty by Customs Authorities through notification---Constitutional petition challenging such duty---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 impugning the notification under which levy is imposed depreciated by Supreme Court---High Court is to see, what is the dominant object of filing of the Constitutional petition---Where the dominant object of filing the Constitutional petition was not to pay the duty assessed by a Customs official at Karachi, Supreme Court would decline petition for leave to appeal in cases where petitions were filed at other places on the plea of publication of relevant notification at such places---Petition for leave to appeal refused in circumstances.

Irfan Qadir, Advocate Supreme Court and Ejaz Ahmad Khan, Advocate-on-Record for Petitioners.

Saeed-uz-Zafar, Deputy Attorney-General for Pakistan for Respondents.

Date of hearing: 26th January, 1997.

## ORDER

**AJMAL MIAN, J.**---This is a petition for leave to appeal against the judgment dated 13-2-1996 of a Division Bench of the Lahore High Court passed in Writ Petition No. 18516 of 1995 and other connected writ petitions, directing the return of the original papers of the writ petition to the petitioner in order to enable them to file the writ petition before the proper Court on the ground that the Lahore High Court had no territorial jurisdiction in respect of the authorities, of which actions/orders were impugned.

2. It seems that the petitioners imported certain consignment from abroad. The same arrived at the Port of Karachi. They filed bill of entry for the release of the same. The Customs Authorities assessed the levy of regulatory duty imposed under notification dated 29-10-1995. In order to assail the above levy, inter alia the petitioners filed the above writ petition. A preliminary objection was raised by the learned Deputy Attorney-General as the maintainability of the writ petition. The learned Judges, after hearing the learned counsel for the parties, upheld the above objection and disposed of the aforesaid writ petition and the other connected writ petitions as under:---

"resultantly, keeping in view the filing of bills of entries and the location of goods as well as the authorities functioning beyond the territorial jurisdiction of this Court, we hold that these Constitutional petitions are not maintainable before this Court. The office is directed to return the original papers to the petitioners enabling them to file their petitions before the proper Court. Disposed of in the above terms."

The petitioner has, therefore, filed the present petition for leave to appeal,

3. In support of the above petition Mr. Irfan Qadir, learned ASC for the petitioners, has contended that the High Court erred in holding that the writ petition was not competent

to be filed as admittedly the notification for levying the above regulatory duty was issued by the Federal Government at Islamabad and the petitioners have their office and factory located within the jurisdiction of Lahore High Court.

4, The above contention seems to be untenable. A perusal of the Memo. of writ petition indicates that the thrust of the attack of the petitioners was directed against the order of assessment, no doubt they had assailed the vires of the notification. This fact, in our view, simpliciter will not be sufficient to oust the jurisdiction of a High Court within whose jurisdiction the main cause of action accrued. If the petitioners would not have challenged the assessment order but would have confined their challenge to the vires of the notification, one could urge that the Lahore High Court would have jurisdiction in the matter. If the petitioners were not to challenge the assessment order, they were to pay the amount assessed. Reliance has been placed by Mr. Irfan Qadir on the case of Messrs Al-Iblagh Limited, Lahore, v. The Copyright Board, Karachi and others 1985 SCMR 758, in which the facts were that a dispute had arisen between the appellant company, namely, M/s Al-Iblagh Limited, Lahore, and respondent No.3, namely, Syed Haider Farooq Maudoodi (one of the successors-in-interest of Maulana Syed Abul A'la Maudoodi) about the copyright in respect of a series of cassettes containing the lectures and sermons delivered by late Maulana Syed Abul A'la Maudoodi. The appellant company was formed by Mr. Hafeezur Rehman Ahsan, claiming to as an admirer of late Maulana. According to him, he not only attended the lectures delivered by late Maulana but to have tape recorded them at his own initiative and expense. From the said pre-recorded tapes of the sermons, he compiled two books entitled ' Kitab-us-Saum' and "Fazail-i-Quran" and got them registered with respondent No.2. After the death of late Maulana and after formation of the above company, he filed eleven applications to the Registrar of Copyright, Karachi, for registration of series of cassettes entitled "Paigham-e-Qur'an Cassettes Series", which had also been prepared by him from the aforesaid pre-recorded tapes of the sermons by . Maulana Maudoodi in respect of Tafseer of eleven Surahs of the Holy Quran. The above applications were rejected by the Registrar. The appellant company preferred an appeal under section 76 of the Copyright Ordinance before the Copyright Board, Karachi, which was heard by the three Members of the Board at Lahore at the request of the parties, but the order was announced at Karachi. The appellant company, therefore, challenged the said order of the Copyright Board in a writ petition before the Lahore High Court, but the same was dismissed on the ground that the Lahore High Court had no jurisdiction to entertain the writ petition because the office of the Registrar or the Copyright Board at located in Karachi and so also the record of the appellant company's case. The matter came up for hearing before this Court with the leave of this Court in the form of an appeal. The same was allowed for the following reasons,

"The rules laid down in the said case would, we think, be applicable also in the circumstances of this case. The Central Government has set up a Copyright Board for the whole of Pakistan and it performs functions in relation to the affairs of the Federation in all the Provinces. Hence, any order passed by it or proceedings taken by it in relation to any person in any of the four Provinces of Pakistan would give the High Court of the Province, in whose territory the order would affect such a person, jurisdiction to hear the case.

The learned Deputy Attorney-General, Mr. Munir A. Sheikh, who appeared on behalf of the respondent-Copyright Board, supported this interpretation of the Constitution provision in question and submitted that the writ petition filed by the appellant before the Lahore High Court should not have been dismissed for lack of jurisdiction by the said High Court, as it also had jurisdiction to entertain it, concurrently with the Sindh High Court.

We agree and are of the opinion that both the Lahore High Court' as well as the Sindh High Court had concurrent jurisdiction in the matter and both the Courts could have entertained a Writ Petition against the impugned orders in the circumstances of this case. We, therefore, hold that the Lahore High Court has illegally refused to exercise jurisdiction in this case. The case will, therefore, go back to the Lahore High Court for decision of the Writ Petition filed by the appellant before it for decision on merits, in accordance with law.

The appeal is allowed but as none of the respondents has opposed it there will be no order as to costs."

5. The above case is distinguishable for the reason that in the above report, the appeal was heard at Lahore by the Copyright Board. Secondly, the Board was for the entire Pakistan and not for Karachi alone. Whereas the Customs Authority which assessed the levy of the regulatory duty on the consignment imported by the petitioners is posted for Karachi Sea Port and not for any other territory.

6. The learned Judges of the Division Bench have pointed out the language originally employed in Article 98(2)(a)(i) of 1962 Constitution prior to the incorporation of clause (c) by the First Amendment Act, 1963, for distinguishing the case of Asghar Hussain v. Election Commission of Pakistan etc. PLD 1968 SC 387. The view found favour with the learned Judges of the Division Bench in the case in hand seems to be in consonance with Articles 199(1)(a) (i) and (ii) of the Constitution of the Islamic Republic of Pakistan, 1973, hereinafter referred to as the Constitution. A perusal of the, above sub-clause (a)(i) of the above Article indicates that a High Court has power to issue a direction to a person performing within its territorial jurisdiction functions in connection with the affairs of the Federation, a Province or a local authority to refrain from doing anything he is not permitted by law to do or to do anything he is required by law to do. Similarly, under subclause (a)(ii) a declaration without lawful authority or of no legal effect can be given by a High Court in respect of any act done or proceeding taken within its territorial jurisdiction by a person performing functions in connection with the affairs of the Federation, a Province or a local authority.

7. The petitioners' prayer was for a direction to the-Customs Authorities at Karachi not to levy the regulatory duty. The above relief could have been granted by the High Court of Sindh within whose jurisdiction the person performing the affairs of the Federation is discharging his functions.

8. 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. We are, therefore, not inclined to grant leave. Leave is refused.

M.B.A./S-1086/S Petition dismissed

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