

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Muhammad Faisal Kamal Alam, J.
Agha Faisal, J.

CP D 4793 of 2020 : Kashif Feroz vs.
Federation of Pakistan & another

For the Petitioner : Mr. Sardar M Ishaque, Advocate

For the Respondents : Mr. Muhammad Ahmer
(Assistant Attorney General)

Date of hearing : 10.12.2020

Date of announcement : 10.12.2020

ORDER

Agha Faisal, J. The petitioner has approached this Court seeking implementation of an order of the learned Customs Appellate Tribunal dated 01.06.2020 in Custom Appeal K-73 of 2020 (“Appellate Order”); which remains unimplemented despite passage of over six months; even though nothing has been placed on record to suggest that the afore mentioned order has been suspended and / or no longer holds the field.

2. Petitioner’s counsel has referred to the Appellate Order (*available at page-93 and the concluding paragraph-14 at page-123*), in which the order impugned therein was set aside and it was directed that the subject vehicle be released. He has adverted to the record to demonstrate that at least on two previous dates a counsel has appeared on behalf of the department and sought time; however, no reply / comments are available on file and the said counsel remains absent without intimation or justification.

Since learned counsel for the department is not present (and the same was the case on the last date of hearing), therefore, we had queried the learned Assistant Attorney General as to the reasons for not implementing the Appellate Order and furthermore as to why this Court is being treated as the forum to execute orders rendered in the departmental hierarchy of adjudication. The learned Assistant Attorney General could not offer a satisfactory response.

3. The Appellate Order was rendered over six months ago and there is nothing on file to suggest that it does not hold the field. Therefore, upon deliberated consideration it is hereby directed that unless the respondents have obtained an order, from the forum of appropriate jurisdiction, suspending the operation of the Appellate Order, the said order shall be implemented in letter and spirit within two weeks from the date hereof¹. The Collector of Customs (Preventive) shall be present in person on the next date and will submit a compliance report in such regard and shall also show cause as to why action should not be taken against him for the above *prima facie* abandonment of duty.

4. However, this matter does not end here as we remain cognizant of our Constitutional responsibility²; which requires us to take notice in situations where it appears that persons, mandated to perform functions in connection with the affairs of the State, are abdicating their statutory duties.

5. It is noted with concern that copious litigation is pending before this Court wherein the petitioners are seeking implementation of orders in original, orders in appeal and judgments of the learned appellate tribunal. Such is the volume of these petitions that in colloquial parlance they are referred to as ***implementation petitions***. In these matters the orders / judgments are not being implemented by the department, notwithstanding the absence of any supervening orders suspending the operation of the said orders / judgments. The tax payers are left with little alternative but to approach this Court seeking execution of the respective departmental orders / judgments. It has been observed that departmental disregard of such orders / judgments has become practice as it remains unconcerned with the implementation thereof and only deigns to contemplate implementation once appropriate orders are obtained from this Court.

6. While under Article 187(2) of the Constitution, the decisions of the august Supreme Court can be executed by this Court; however, it is ironic that recourse to the writ jurisdiction of this Court is being sought for execution of orders / judgments of subordinate fora. If suspension orders have been obtained from the supervening jurisdiction then the same ought to have been communicated to the parties; however, in the absence thereof

¹ Reliance is placed on earlier Division Bench orders of this Court dated 30.04.2015 in *Tahir Mehmood Tareen vs. Federation of Pakistan & Others*; Order dated 04.05.2016 in *Arain Filing Station vs. Collector of Customs & Another (CP D 2274-5 of 2016)*; Order dated 10.01.2017 in *Nadeem Khan vs. Federation of Pakistan & Others (CP D 6913 of 2016)*; and the Order of the honorable Lahore High Court dated 09.08.2017 in *Muhammad Akram Chohan vs. Federation of Pakistan & Others (WP 57542 of 2017)*.

² Per Articles 199 and 203 of the Constitution.

there is no justification to delay or deny implementation. If there are no supervening suspension orders then it may be reasonable to apprehend that implementation is being denied due to *extraneous considerations* by the concerned officers; for which they ought to be exposed to appropriate proceedings (departmental or otherwise).

7. We, respectfully, find ourselves unable to appreciate this abdication of responsibility by the officials / department as it not only clogs the docket but deprives the tax payer of the benefit already granted thereto by the statutory hierarchy of dispute resolution. The tax bench of the High Court is constituted primarily to address questions of law impacting public revenues, however, departmental abdication of duties is burdening the Court with matters for which the very statutory hierarchy of dispute resolution was created. Whether such conduct of the functionaries is by design or negligence, is a question we deem appropriate to leave to the executive to determine and redress. However, it is certain that such conduct cannot be allowed to subsist.

8. The departmental disdain of its responsibility is also manifest in other aspects of its duties; as evident from the recent *Office Order 5 of 2020*³. This office order was issued, post taking of notice by an earlier Division bench of this Court, to stipulate that the issue of provisional release of consignments would be resolved expeditiously by the department in consonance with the statutory prescriptions. We remain at a loss to comprehend as to why orders of this Court are necessitated to precipitate departmental correspondence merely to reinforce that which is already the statutory duty of the department / respondents.

9. In view hereof we are constrained to direct the Secretary Revenue Division (Respondent No. 1) as well as Chairman Federal Board of Revenue to scrutinize all such cases, pending in this Court or otherwise, through their officers, where implementation of orders / judgments in favor of the parties have not been implemented; and if it is found that there is no lawful reason for not implementing the decisions, then the Secretary, Revenue Division / Chairman FBR will initiate proceedings against those found to be in dereliction of duty. The report regarding the above be submitted by the Secretary Revenue Division / Chairman FBR, through the

³ Office Order 5 of 2020 dated 20.10.2020 issued by the Office of the Chief Collector of Customs.

office of the learned Attorney General, in this Court within four (04) weeks from today.

The respondents are also put on notice that in the unfortunate event that such abdication of duty persists then this Court shall be constrained to initiate appropriate proceedings (inclusive of contempt) against those responsible, including those at the helm of affairs.

10. Adjourned to be listed on 12.01.2021, per roster. The office is instructed to communicate copies hereof directly to the Secretary, Revenue Division, Chairman FBR, learned Attorney General for Pakistan and the learned Additional Attorney General for Pakistan at Sindh, for compliance.

JUDGE

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