IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 1566 of 2020
Additional Registrar High Court of Sindh Bench at Sukkur v. Government of Sindh and others

C. P. No. D – 897 of 2013
Additional Registrar High Court Sukkur v. Chief Secretary Sindh and others

C. P. No. D – 2116 of 2018
Additional Registrar High Court Sukkur v. Education & Literacy Department and others

Before:
Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Zulfiqar Ali Sangi

Date of hearing: **27-10-2021**

Date of announcement: **24-03-2022**

Mr. Sarfraz A. Akhund, Advocate / Amicus Curiae.
Mr. Khuda Bux Chohan, Advocate for Respondents-Sukkur Municipal Corporation.
Mr. Zulfiqar Ali Naich, Assistant Advocate General Sindh.
Mr. Muhammad Hamzo Buriro, Deputy Attorney General.

.-.-.-.-.-.-.-.-.-.-.

O R D E R

Muhammad Junaid Ghaffar, J. **–** All these Petitions involve a common question, which was discussed and framed by us on 07-10-2021 in the following terms:

> **"***Progress report has been filed by learned Special Prosecutor, NAB, pursuant to earlier directions of the Court.*
>
> *However, on perusal of the record, it appears that in this matter, the Additional Registrar of this Court on 19.12.2020 had put up a note before the then Senior Sitting Judge at this Bench, wherein, he had stated that a news has been published in daily Kawish on 15.12.2020, alleging misappropriation of machinery of SCARP department in Khairpur district. It was further reported that tube wells were under illegal occupation and were not working properly. In his note, it was further stated that matter may be taken up under Article 199 of the Constitution treating the same as a petition and notices be issued to all concerned. The said note was approved as proposed and has resulted in these proceedings by way of CP No.D-1566 of 2020.*
>
> *However, we are of the tentative view, that this amounts to taking Suo-moto notice, which apparently does not vest in the High Court.*

*The Hon'ble Supreme Court in the cases reported as Dr. Imran Khattak v Ms. Sofia Waqar Khattak (**2014 SCMR 122**) has been pleased to hold that the judgment of Baluchistan High Court in the case reported as High Court Bar Association v Government of Baluchistan **(PLD 2013 Baluchistan 75)** passed in Suo Moto jurisdiction by the High Court is per-incuriam by holding that such jurisdiction has not been provided under Article 199 of the Constitution. Similarly, in the case of Mian Irfan Bashir vs. The Deputy Commissioner (D.C.), Lahore reported as (**PLD 2021 SC 571**) and Chief Executive Officer, Multan Electric Power Company Limited, Khanewal Road, Multan vs. Muhammad Ilyas reported as (**2021 SCMR 775**) the Hon'ble Supreme Court has been pleased to deprecate the tendency of judicial overreach.*

Since the Petitioner is the Additional Registrar and cannot assist us, let Mr. Sarfraz A. Akhund, Advocate be appointed as amicus curiae in this matter to assist the Court on the next date. Office is directed to issue notice along with copy of this order to Mr. Sarfraz A. Akhund for such date.

*Adjourned to **27.10.2021**; to be taken up at **11:00 a.m.**"*

2. Learned Amicus has assisted us proficiently, and according to him, this Court is creation of and subject to Article 175(2) of the Constitution of Islamic Republic of Pakistan, 1973 (**"Constitution"**) and do not enjoy any *suo moto* powers under the Constitution. He has read out Article 199 of the Constitution, and according to him, until and unless some aggrieved person in terms thereof approaches this Court, no jurisdiction can be exercised by any High Court on its own and through *suo moto* proceedings. Per learned Amicus in exceptional circumstances when an aggrieved person approaches a High Court in a case of public interest, and if facts and circumstances warrant, a High Court may extend or assume such jurisdiction by even touching upon the issues which were never raised by the Petitioner; so as to correct or remedy a wrong. He has also explained the types of writs as are available to a High Court under Article 199 of the Constitution and has traced out its history since the Government of India Act, 1935, which according to him, after the 1962 Constitution has been restricted under Article 98, (now Article 199) of the Constitution. Per learned Amicus, the Court by taking *suo moto* action becomes a prosecutor and adjudicator by itself and in that case the restriction under Article 199 of the Constitution, whereby, either an aggrieved or a person has to approach the Court would become redundant which cannot be attributed to the Constitution itself. Lastly, he has also argued that now the Hon'ble Supreme Court in its latest view has also dilated upon judicial overreach and the concept of binding precedents; hence, the Court in all such circumstances cannot take *suo moto* actions as no authority or jurisdiction is vested under the Constitution upon a High Court to take any *suo moto* notice. He has

placed reliance upon the cases reported as *Federation of Pakistan through the General-Manager, N.W. Railway* (**PLD 1967 Supreme Court 249**), *Dr. Imran Khattak and another v. Ms. Sofia Waqar Khattak, PSO to Chief Justice and others* (**2014 SCMR 122**), *Mian Irfan Bashir v. The Deputy Commissioner (D.C.), Lahore and others* (**PLD 2021 Supreme Court 571**) and *Chief Executive Officer, Multan Electric Power Company Ltd, Khanewal Road, Multan v. Muhammad Ilyas and others* (**2021 SCMR 775**).

3. Learned law officers of the Province and the Federation have adopted the submissions of learned Amicus. We have heard the learned Amicus and perused the record.

4. Only to recapitulate, it is manifest from perusal of order dated 07-10-2021, as above, that in C. P. No. D-1566 of 2020, the Additional Registrar of this Court on 19-12-2020 had put up a note before the then Senior Sitting Judge of this Bench, whereby he had informed on the basis of some news report published in Daily Kawish dated 15-12-2020 that some misappropriation of machinery of SCARP Department in Khairpur District has taken place; whereas, it was further reported that tube wells were under illegal occupation and were not working properly. The Additional Registrar in his note further stated that matter may be taken up under Article 199 of the Constitution treating the same as a Petition and notice be issued to all concerned. On that basis, the said note was approved and then a Petition number was allotted to that note and thereafter numerous orders have been passed by the Court on the above controversy and so also various other allied issues, whereas, reports have been called on continuous basis from all concerned. It is also a matter of record that such orders passed by this Court have also been acted upon, whereas, failure to do so has also resulted in initiation of coercive measures against delinquent officials.

5. As per Article 199 of the Constitution, this Court exercises Constitutional jurisdiction as under:

> ***"199. Jurisdiction of High Court**.- (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,-*
>
> *(a) on the application of any aggrieved party, make an order-*
>
> *(i) directing a person performing, within the territorial jurisdiction of the Court, 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; or

(ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or

(b) on the application of any person, make an order-

(i) directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

(ii) requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or

(c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II.

(2) Subject to the Constitution, the right to move a High Court for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II shall not be abridged.

(3) An order shall not be made under clause (1) on application made by or in relation to a person who is a member of the Armed Forces of Pakistan, or who is for the time being subject to any law relating to any of those Forces, in respect of his terms and conditions of service, in respect of any matter arising out of his service, or in respect of any action taken in relation to him as a member of the Armed Forces of Pakistan or as a person subject to such law.

(4) Where-

(a) an application is made to a High Court for an order under paragraph (a) or paragraph (c) of clause (1), and

(b) the making of an interim order would have the effect of prejudicing or interfering with the carrying out of a public work or of otherwise being harmful to public interest or State property or of impeding the assessment or collection of public revenues,

the Court shall not make an interim order unless the prescribed law officer has been given notice of the application and he or any person authorized by him in that behalf has had an opportunity of being heard and the Court, for reasons to be recorded in writing, is satisfied that the interim order-

(i) would not have such effect as aforesaid; or

(ii) would have the effect of suspending an order or proceeding which on the face of the record is without jurisdiction.

[(4A) An interim order made by a High Court on an application made to it to question the validity or legal effect of any order made, proceeding taken or act done by any authority or person, which has been made, taken or done or purports to have been made, taken or done under any law which is specified in Part I of the First Schedule or relates to, or is connected with, State property or assessment or collection of public revenues shall cease to have effect on the expiration of a period of six months following the day on which it is made:

Provided that the matter shall be finally decided by the High Court within six months from the date on which the interim order is made.]

(5) In this Article, unless the context otherwise requires,-

"person" includes any body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or tribunal, other than the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan; and

"prescribed law officer" means

(a) in relation to an application affecting the Federal Government or an authority of or under the control of the Federal Government, the Attorney-General, and

*(b) in any other case, the Advocate-General for the Province in which the application is made.***"**

6. Perusal of the aforesaid Article of the Constitution reflects that insofar as Article 199(1)(a) is concerned, the High Court, if it is satisfied that no other adequate remedy is provided by law, on the *application of an aggrieved party*, may make an order. Then there are two further categories or cases or situations under Article 199(1)(a); and the first one is in respect of directions to a person performing functions within the territorial jurisdiction of the Court who may be connected with the affairs of a Federation or Province or a local authority and can be restrained from doing anything he is not permitted by law to do or be directed to do anything which otherwise he is required by law to do. The second portion is in respect of giving a declaration and that too again on an application of *an aggrieved person* that any act done or proceedings taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation or a Province or a local authority has been done are taken without lawful authority and is of no legal effect. Similarly, under Article 199(1) (b) again there are two further categories of writs which can

be issued by the High Court; however, the same again can only be made on an application *of any person*. The first category of writ under Article 199(1)(b) is the one empowering this Court to issue directions that a person in custody within the territorial jurisdiction of the Court be brought before it, so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner and is ordinary called a writ of *habeas corpus*. The second part of this Article 199(1)(b) is that the Court may require a person again within the territorial jurisdiction holding or purporting to hold a public office to show under what authority of law he claims to hold that office which is also called a writ of *Quo-warranto*. Similarly, under Article 199(1)(c) again it has been provided that on the *application of an aggrieved person*, the Court may make an order giving such directions to any person or authority including any Government exercising any power or performing any function in or in relation to any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the fundamental rights conferred by Chapter 1 of Part II of the Constitution. On overall perusal of these three separate and distinct situations, it appears that except one; i.e. Article 199(1)(b), the other two require that the Court can only assume jurisdiction when an *aggrieved person* approaches the Court for seeking the relief as provided therein. For that matter, even under Article 199(1)(b), there has to be *a person* who has to approach the Court; but he may not be an *aggrieved person* directly. Nonetheless, when this Constitutional provision is examined and looked into, minutely, it clearly reflects that in any case there has to be an application (be it in any form or manner) before the Court to assume jurisdiction under Article 199 of the Constitution. There is no such thing as may empower the Court to convert a request or note of an Additional Registrar / Registrar of a Court; or for that matter, any other officer, by treating the same as a Petition under Article 199 of the Constitution and then passing orders as may be deemed appropriate. This amounts to assuming *suo moto* jurisdiction which is not conferred upon a High Court under the Constitution. As against this, the Hon'ble Supreme Court has been specifically conferred such jurisdiction under Article 184 of the Constitution in the following terms:

> ***"184. Original Jurisdiction of Supreme Court**.-(1) The Supreme Court shall, to the exclusion of every other court, have original jurisdiction in any dispute between any two or more Governments.*

> ***Explanation.-*** *In this clause, "Governments" means the Federal Government and the Provincial Governments.*
>
> *(2) In the exercise of the jurisdiction conferred on it by clause (1), the Supreme Court shall pronounce declaratory judgments only.*
>
> *(3) Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II is involved have the power to make an order of the nature mentioned in the said Article.***"**

7. As could be seen from Article 184(3), the Supreme Court shall if it considers that a question of public importance in respect of enforcement of any of the fundamental rights as mentioned in Chapter I of Part-II of the Constitution is involved, it may make an order of the nature mentioned in the said Article; and most importantly, it is without prejudice to the provisions of Article 199 ibid. Here, a clear distinction has been provided as to the powers which are to be exercised by the High Court under the said Article, and the manner in which the same powers are to be exercised by the Hon'ble Supreme Court. Therefore, on bare perusal of these Articles and Sub Articles of the Constitution, it clearly appears that the High Court cannot take any *suo moto* action on the basis of a note of an Additional Registrar or anybody else; whereas, the action, if any, can only be taken by the High Court pursuant to an application (whether in the form of a petition or otherwise); either of an *aggrieved person*; or *any person* as the case may be under Article 199(1)(a) and Article 199(1)(b) of the Constitution.

8. Having said that, it is also a matter of record that time and again the High Courts of this country have been taken *suo moto* actions, but none of them, as and when brought before the Hon'ble Supreme Court, has been approved or appreciated. In the case of *High Court Bar Association and others v. Government of Baluchistan through Secretary, Home and Tribal Affairs Department and 6 others* (**PLD 2013 Baluchistan 75**), the Registrar of the learned Baluchistan High Court on 21-09-2011 had placed a note before the then Hon'ble Chief Justice along with newspaper reports regarding a tragic incident, whereby, some 26 passengers were taken off from a bus and were mercilessly shot, and on such note, the then Hon'ble Chief Justice of the Baluchistan High Court passed an order on the administrative side and a Constitutional Petition number was assigned to the said note and thereafter matter was proceeded and various orders were passed. The learned Baluchistan High Court while justifying its actions under *suo moto* proceedings traced out the entire history of such

proceedings and also distinguished various pronouncements of the Hon'ble Supreme Court and came to the view that the High Court is fully empowered and competent to take suo moto action under Article 199 of the Constitution. The relevant finding to this effect is contained in paragraph No.23 and 24 of the said judgment, which reads as under:

> **"***23. That there are also practical matters that require consideration. When the High Court takes suo motu notice in respect of a transgression within its territory it may be able to immediately attend to it. The provincial government's seat of government is the provincial metropolis, which is also the principal seat of the High Court, therefore, notices will be promptly attended to and the requisite record and/or facts placed before the Court, and the Court is better placed to monitor any action that is required to be taken. Sometimes major transgressions of Fundamental Rights may not even come to the notice of the Hon'ble Supreme Court; if they are only reported in the local press or a letter in this regard has been sent to the High Court. There is also the element of cost. The principal seat of the Supreme Court is at Islamabad and the victims (and even the perpetrators) who are in the province may not have the funds to travel to and stay at Islamabad or may face other difficulties. Also the respondents in a suo motu petition, if they want to assail the decision of the High Court, will be able to approach the Supreme Court.*
>
> *24. That with the assistance of the learned amici, the learned counsel and the learned law officers a thorough and detailed examination of the Constitutional provisions, precedents of the superior courts of Pakistan, as well as the judgments from other jurisdictions, was carried out to determine whether this court can itself (suo motu) take notice of the infringement of Fundamental Rights. From the said exercise we can derive the following principles:*
>
> *(1) The Fundamental Rights enshrined in Chapter 1 of Part II of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter "the Constitution" or "1973 Constitution") are, as their name suggests, 'fundamental', i.e. basic, essential, primary, pivotal;*
>
> *(2) Article 4 may also be categorized as a Fundamental Right in view of the language used therein, i.e. that it is the inalienable right to enjoy the protection of the law and to be treated in accordance with the law;*
>
> *(3) An effective machinery for the enforcement of Fundamental Rights makes the Fundamental Rights real and effective, and without it the same are illusory;*
>
> *(4) The Constitution has set in place the machinery for the enforcement of Fundamental Rights, which are the superior courts, i.e. the High Courts and the Supreme Court;*
>
> *(5) In respect of adversarial matters agitated under Article 199 of the Constitution between contending parties or cases which are basically private in nature, the party/person approaching the court is required to comply with the procedural requirements contained in Article 199, including, to show to the satisfaction of the High Court that there is 'no other adequate remedy' available and he/she/they are 'aggrieved party' in respect of the remedies sought under Article 199(1)(a) (i) and (ii) or 'aggrieved person' in terms of Article 199(1)(c). There may also be other procedural requirements imposed by the law and/or by the rules enacted by the High Court that require compliance, such as payment of court fee,*

the form and manner of filing of the application, requirement as to its verification on oath or being supported by an affidavit. In addition the principles derived from the corpus of precedents require observance, including approaching the court within a reasonable time, coming to court with clean hands, not suppressing material facts, et cetera;

(6) Any person (not necessarily aggrieved) can seek an order under Article 199(b) (i) or (ii), respectively the writ of habeas corpus and quo warranto, and since the same fall within the ambit of public interest litigation the High Court may also initiate action itself (suo motu);

(7) Non compliance of any procedural requirement may be condoned if the High Court is shown good cause and each case is to be considered on its own merits by the High Court;

(8) Sub-Article (2) of Article 199 has no precedent in either the 1962 Constitution or the 1956 Constitution, and the same was consciously inserted into the Constitution by the Framers of the 1973 Constitution, therefore it must be treated as singularly important and applied to its full extent;

(9) Sub-Article (2) of Article 199 stipulates that the right to move a High Court for the enforcement of Fundamental Rights 'shall not be abridged', therefore, in respect of matters of Fundamental Rights no procedural or ceremonious trappings or fetters can be placed upon the High Court;

(10) The nature of jurisdiction that the High Court exercises itself in a public interest litigation is inquisitorial (and not adversarial) in nature;

(11) Those decisions of the Supreme Court which are prior to the 1973 Constitution (which incorporated Article 199(2)) wherein it was observed that the High Court cannot of itself (or suo motu) take notice of the violation of any Fundamental Right or those decisions which did not specifically consider the scope of Article 199(2) or the specific question of the suo motu powers of the High Court are decisions on facts of individual cases or per incuriam and cannot be categorized as a "decision ... to the extent that it decides a question of law or is based upon or enunciates a principle of law" in terms of Article 189 of the 1973 Constitution;

(12) The power of the Supreme Court with regard to the enforcement of Fundamental Rights is contained in Article 184 (3);

(13) Article 184(3) does not control Article 199 as the former attends to the jurisdiction of the Supreme Court whereas the latter to the jurisdiction of the High Courts. Article 184(3) should not be used as an interpretative tool to determine the scope of Article 199, and as there is also no mention of Article 184(3) in Article 199;

(14) The decisions of the superior courts with regard to the enforcement of fundamental rights under Article 98 of the 1962 Constitution or Article 170 of the 1956 Constitution and which were given at a time of purported suspension of fundamental rights or at a time when the High Courts' were ostensibly denuded of the power to issue writs or at a time when the powers of the High Court had been curtailed or an independent judiciary had been undermined can no longer be treated as binding precedent with regard to deciding a question of law or which enunciates a principle of law (in terms of Article 189 of the 1973 Constitution) because they are in conflict with the unanimous judgment of the Chief Justice and fourteen judges of the Hon'ble Supreme Court in the case of Sindh High Court Bar Association v. Federation of Pakistan (PLD 2009 SC 879);

(15) Article 199 of the 1973 Constitution does not prohibit the High Court itself (or suo motu) from taking notice of the violation of Fundamental Rights;

(16) As per the established rules of interpretation and precedents of the superior courts ouster of High Court's jurisdiction is not to be assumed;

(17) The superior courts must ensure that the Constitution prevails, and their power in this regard cannot be curtailed;

(18) The word application used in Article 199 can not be limited to mean something written on a piece of paper (as the Constitution does not state written application). Since the word application has not been defined in the Constitution, therefore, the same should be given its ordinary English language meaning, which does not restrict application to mean only in a written form. An application is in the nature of a 'submission', 'request' or 'claim' and can be written or verbal, or expressed in any other form;

(19) There is no reason that a letter addressed to the Chief Justice of a High Court or a note put up before the Chief Justice that identifies serious transgression of Fundamental Rights, should not be deemed to be an application as envisaged in Article 199 of the Constitution;

(20) Those who have been wronged or are subjected to indignities or have suffered atrocities or violence are usually those who do not have knowledge of their Fundamental Rights or are weak or are not in a position to complain, let alone resist the transgression, but are in the fullest sense of the word aggrieved, therefore, if a letter or a note is put up before the Chief Justice the same can be deemed to be one submitted on their behalf and thus, even if a pedantic view is taken to determine the scope of the words, application and aggrieved person/party, appearing in Article 199 of the Constitution, both these conditions are met;

(21) In view of the fact that there is potential for misuse, and even mischief, the High Court should exercise care when taking (suo motu) action itself under Article 199 of the Constitution;

(22) The High Courts may formulate rules with regard to exercise of (suo motu) jurisdiction itself under Article 199 of the Constitution and the manner in which to attend to the same, but till such rules are framed the following should be ensured:

(i) If a letter is received that prima facie evidences violation of any Fundamental Right an initial examination be undertaken to ascertain the identity of the person, the nature of the grievance and whether he is acting bona fide;

(ii) In respect of serious violation of Fundamental Rights reported in the media or elsewhere, the veracity of such report may be ascertained;

(iii) Where it is considered by the Registrar that the High Court may take notice of the violation of the reported violation of Fundamental Rights he should put up a note before the Chief Justice on the administrative side, and if the Chief Justice deems it necessary he may have the same converted into a petition, and direct that the same be numbered as such;

(iv) Save the Chief Justice, individual judges should not take suo motu notice, to avoid confusion and possibly contradictory orders being passed in respect of the same matter;

(v) Depending on the nature of the matter any person who has the requisite expertise, a reputable non-governmental organization and / or bar association may by arrayed as petitioner/s so that the High Court receives proper and independent assistance;

(vi) Before proceeding with the matter the Federation, Province and/or a local authority, as the case may be, and any other concerned organization, department or person should be arrayed as respondents;

(vii) Notices be also issued to the Advocate General and or the Attorney General for Pakistan, as the case may require;

(viii) Before issuing notices, the court should be prima facie satisfied that the information that has been laid before the court requires examination and pertains to the violation or infringement of Fundamental Rights;

(ix) Notices issued to the respondents, the Attorney General and/or the Advocate General must enclose copies of the documents on which cognizance of the matter has been taken, and they must be provided with an opportunity to submit their respective replies;

(x) The High Court should ensure before making a decision, that the facts contained in the letter / report are correct;

(xi) If during the course of hearing any additional information is received, which may have a bearing on the case, the same should also be provided to the respondents and they be given an opportunity to respond thereto;

(xii) The particular Fundamental Right/s which may have been violated must be identified to enable the respondents to address the same and these must also be mentioned in the decision;

(xiii) If during the hearing of the petition it transpires that there has been no violation of any Fundamental Right, or there is no case to answer in respect of habeas corpus or quo warranto the proceedings should be withdrawn/dismissed;

(xiv) The High Court should not exercise such powers in routine but should do so in exceptional cases, and particularly where those whose Fundamental Rights have been violated are the poor, the weak, the disenfranchised, women, children, members of any minority community, and those who live in fear of force or threat;

(xv) The matter should be heard by a bench of two judges, ideally comprising of the Chief Justice and another judge;

(xvi) The High Court should not involve itself in any dispute which may adversely affect any pending litigation or which may prejudice the private right of any party / person; and

*(xvii) A cautious approach should be adopted with a view to ensure that the process of the court is not abused or misused.***"**

9. Perusal of the above findings reflects that an elucidate and elaborate mechanism was arrived at that as to how such *suo moto* powers are necessary to be exercised by the High Court(s) and in what manner. In fact, a complete way out was outlined and even there were restrictions as well circumspection for the Court in exercising such powers. Though apparently,

the said judgment was not directly impugned before the Hon'ble Supreme Court; however, subsequently a matter in the case of *Dr. Imran Khattak and another v. Ms. Sofia Waqar Khattak, PSO to Chief Justice and others* (**2014 SCMR 122**) came before the Hon'ble Supreme Court, which was also an outcome of some *suo moto* proceedings initiated by the learned Peshawar High Court on the basis of an information given to the Chief Justice of that Court by his personal staff officer in respect of some election issue, wherein, female voters were being denied their right to cast votes in some Elections. The Hon'ble Supreme Court in this judgment again dealt with various pronouncements for and against the *suo moto* powers of a High Court under Article 199 and came to the conclusion that the High Court cannot exercise *suo moto* jurisdiction under Article 199 of the Constitution and for that the aggrieved persons are to approach the Court for seeking remedy, if any, as may be available under the Constitution. Before the Hon'ble Supreme Court in support of exercising such powers by the High Court, this judgment of the learned Division Bench of the Baluchistan High Court in the case of *High Court Bar Association* (***supra***) was also cited; however, the same was not appreciated. It would be advantageous to refer to the finding of the Hon'ble Supreme Court in its concluding paragraph, which reads as under:

> **"***9. The case of* ***"High Court Bar Association and others v. Government of Balochistan through Secretary, Home and Tribal Affairs Department and six others" (supra), inasmuch as it upholds exercise of Suo Motu jurisdiction is per incuriam for having been rendered in derogation of the express words used in Article 199 of the Constitution, therefore, has no force altogether****. The case of "Mian Muhammad Nawaz Sharif and others v. Muhammad Habib Wahab-al-Khairi and others" (supra), when read carefully does not support the contention of the learned counsel for the respondents. The case of "Multiline Associates v. Ardeshir Cowasjee and others" (supra), too, does not support the contention of the learned counsel for the respondents as in that case Sindh High Court had not passed the order impugned before this Court, in exercise of its Suo Motu jurisdiction. The case of "Mst. Zubaida A. Sattar and others v. Karachi Building Control Authority and others" (supra), would not advance the case of the respondents as in that case this Court opted to decide the question as to whether the High Court can register a constitutional petition Suo Motu under Article 199 of the Constitution in an appropriate case. The case of "Ardeshir Cowasiee and 10 others v. Karachi Building Control Authority (KMC), Karachi and 4 others" (supra), too, would not give any strength to the contention of the learned counsel for the respondents as in that case the High Court did not pass the order impugned before this Court in exercise of its Suo Motu jurisdiction. A reference was also made to the case of "Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty" (1996 AIR SC 922) by arguing that for exercise of Suo Motu jurisdiction, it is not necessary that the person who is the victim of violation of his fundamental right should personally approach the Court as the Court can itself take cognizance of the matter and proceed Suo Motu or on a petition of any public spirited individual, but this would not support the case canvassed at the bar by the learned counsel for the respondents as Article 226 of*

> *the Constitution of India does not provide anywhere that any writ, order or direction shall be issued on the application of an aggrieved person. The case of "Benazir Bhutto v. Federation of Pakistan" (PLD 1988 SC 416) was also cited but that has no perceptible relevance to the case in hand as the jurisdiction in that case was exercised by this Court under Article 184(3) of the Constitution which too does not provide anywhere that this Court will exercise its jurisdiction on the application of any aggrieved or any person. We, therefore, are of the view that a High Court cannot exercise suo motu jurisdiction under Article 199 of the Constitution.*
>
> *10. For the reasons discussed above, we convert this petition into appeal, allow it and set aside the impugned judgment. The aggrieved persons may approach the for a provided by the Constitution and the Act mentioned above for the redressal of their grievance. Copy of this judgment be dispatched to the Chief Justices of all the High Courts.***"**

10. From perusal of the aforesaid observations of the Hon'ble Supreme Court, it reflects that the judgment of the learned Baluchistan High Court in the case of *High Court Bar Association* (***supra***) was held to be *per incuriam* for having been rendered in derogation of the expressed words used in Article 199 of the Constitution; therefore, has no binding force. Hence, for now, notwithstanding the discussion and the very detailed and elucidate reasoning assigned therein, any reliance on the said judgment of the learned Baluchistan High Court, whereby it was held that in certain circumstances the High Court can take *suo moto* proceedings no more remains a good law to be followed.

11. Not only this, it further appears that recently the Hon'ble Supreme Court in at least two cases while dilating upon the administration of justice and the powers of the Courts for judicial review has come to the conclusion that the Courts can only exercise jurisdiction which has either been conferred by law or by the Constitution; whereas, the judges are always required to decide the case on merits and must not ignore the Constitutional boundaries of separation of powers while assuming the role of the executive as this would amount to disregard the core functions of adjudication. This view has been enunciated in the case *Chief Executive Officer, Multan Electric Power Company Ltd, Khanewal Road, Multan v. Muhammad Ilyas and others* (**2021 SCMR 775**) at paragraph No.6 and 7, which reads as under:

> **"***6. In the instant case, the judge instead of deciding the case on merits, passed the final order of appointment of respondent No.1 without adjudicating the issue in hand and then executed the order by directing the petitioner that the Appointment Letter be issued by the next date of hearing. By assuming the role of the Executive the judge disregarded his core function of adjudication, in accordance with law. Ignoring the*

> *constitutional boundaries of separation of powers can easily equip a judge with a false sense of power and authority. This is a dangerous tendency and must be guarded against to ensure that the judicial role continues to remain within its constitutional limits.*
>
> *7. When judiciary encroaches upon the domain of the Executive, as in this case, where the learned judge disregarded the eligibility criteria and the recruitment policy of the Executive Authority and assumed the function of the Executive, it is said to commit judicial overreach - which occurs when a court acts beyond its jurisdiction and interferes in areas which fall within the Executive and/or the Legislature's mandate.[1] Through such interference the court violates the doctrine of separation of powers by taking on the executive functions upon itself. The instant case is a textbook case of judicial overreach, where a judge directs an authority to issue an Appointment Letter disregarding the recruitment process, merit and the employment policy of the executive authority. Such judicial role imperils the separation of powers, jeopardizes the legitimacy of the judicial institution and undermines constitutional democracy. It is imperative that the courts do not derogate from their constitutionally mandated oversight function of judicial review. Certain values in the Constitution have been designated as foundational to our democracy which means that, as corner-stones of our democracy, they must be scrupulously observed. It is a sure recipe for a constitutional crisis if these values are not observed and their precepts are not carried out conscientiously.***"***

12. This view of the Hon'ble Supreme Court has been further elaborated in the case *Mian Irfan Bashir v. The Deputy Commissioner (D.C.), Lahore and others* (**PLD 2021 Supreme Court 571**), wherein the concept of judicial review, judicial activism and judicial overreach has been elaborately discussed and explained, and it would be advantageous to refer to the relevant finding of the Hon'ble Supreme Court, which reads as under:

> **"***5. It is one thing for a judge to progressively interpret the law because of human rights considerations about which he has substantial information. It is quite another to change or ignore the law for economic or social or political reasons based on polycentric considerations beyond the judge's expertise. According to Chief Justice John Marshall, judicial power is never exercised for the purpose of giving effect to the will of the judge; but always for the purpose of giving effect to the will of the legislature; or in other words, to the will of the law.[4] When courts exercise power outside the Constitution and the law and encroach upon the domain of the Legislature or the Executive, the courts commit judicial overreach.*
>
> *6. Judicial overreach is when the judiciary starts interfering with the proper functioning of the legislative or executive organs of the government. This is totally uncharacteristic of the role of the judiciary envisaged under the Constitution and is most undesirable in a constitutional democracy. Judicial overreach is transgressive as it transforms the judicial role of adjudication and interpretation of law into that of judicial legislation or judicial policy making, thus encroaching upon the other branches of the Government and disregarding the fine line of separation of powers, upon which is pillared the very construct of constitutional democracy. Such judicial leap in the dark is also known as "judicial adventurism" or "judicial imperialism." A judge is to remain within the confines of the dispute brought before him and decide the matter by remaining within the confines of the law and the Constitution. The role of*

> *a constitutional judge is different from that of a King, who is free to exert power and pass orders of his choice over his subjects. Having taken an oath to preserve, protect and defend the Constitution, a constitutional judge cannot be forgetful of the fact that he himself, is first and foremost subject to the Constitution and the law. When judges uncontrollably tread the path of judicial overreach, they lower the public image of the judiciary and weaken the public trust reposed in the judicial institution. In doing so they violate their oath and turn a blind eye to their constitutional role. Constitutional democracy leans heavily on the rule of law, supremacy of the Constitution, independence of the judiciary and separation of powers. Judges by passing orders, which are not anchored in law and do not draw their legitimacy from the Constitution, unnerve the other branches of the Government and shake the very foundations of our democracy.*
>
> *7. In the present case, the order passed by the single bench of the Lahore High Court has no law or executive policy behind it. It is a clear example of judicial legislation and thus judicial overreach. High Court is not vested with any such jurisdiction under the Constitution. Needless to mention, that the impugned direction by the High Court placing a ban on motorcyclists without a helmet to purchase petrol, loses sight of the fundamental rights guaranteed to the petrol pump owners and the motorcyclists under the Constitution. The impugned direction deprives the petrol pump owners of their business guaranteed under Article 18 of the Constitution and the motorcyclists of their right to mobility and right to livelihood guaranteed under Article 9 of the Constitution. The High Court, in its desire to make The Mall Road, an iconic thoroughfare, overstepped its jurisdiction, forgetting that a Judge is bound by the Constitution and the law.*
>
> *8. We, therefore, for the above reasons, set aside the impugned orders passed by the learned Single Bench dated 20.12.2018, as well as, learned Division Bench of the High Court dated 24.01.2019 to the extent of the direction issued to the petrol pump owners of placing a ban on the sale of petrol to motorcyclists plying without a helmet. The impugned direction is declared to be unconstitutional, illegal and without jurisdiction. Resultantly, this petition is converted into appeal and allowed.***"**

13. From perusal of the aforesaid dicta laid down by the Hon'ble Supreme Court, it is clear in express terms that insofar as a High Court is concerned, there are no *suo moto* powers available to the High Court under Article 199 of the Constitution and the High Court is not competent to take any notice of an information provided by the official staff of the High Court and convert them into Petitions, and thereafter, pass orders as may be deemed fit. All such actions of assuming powers have been held by the Hon'ble Supreme Court as unlawful and without lawful authority, whereas, for any such action which has to be initiated under Article 199 of the Constitution, there has to be an application before the Court; either by *an aggrieved person* or by *any person*, as the case may be.

14. In view of such position, all these Petitions which were initiated on the basis of information and notes provided or submitted by the Additional Registrar of this Court or by any other officer of the Court, and were converted into Constitutional Petitions by assigning them numbers as well,

are hereby **dismissed** with pending application(s), if any, as this Court lacks jurisdiction for exercising *suo moto* powers. However, since several orders have been passed after assuming such jurisdiction, which in fact have also been acted upon to a certain extent, affecting private and official Respondents, whereas, such Respondents have not challenged such orders any further, and therefore, now it is a case of fait accompli[1]. However, the aggrieved / affected parties are at liberty to seek appropriate remedy, if any, which shall be dealt with in accordance with law without being influenced by any such orders so passed by this Court. Before parting we would like to appreciate the valuable assistance provided by the learned Amicus Curiae. Office is directed to place a signed copy of this judgment in the captioned connected matters.

Dated: 24-03-2022

J U D G E

J U D G E

Abdul Basit

[1] The noun *fait accompli*, pronounced "fate uh-COM-plee," describes something that has already happened. It often refers to a change or decision made by some authority on behalf of the people who will actually be affected. If workers continue to strike after a change in their working conditions has taken effect, they're protesting a fait accompli. The phrase *fait accompli* is French, and it literally means "an accomplished fact." (https://www.vocabulary.com/dictionary/fait%20accompli)p