

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
CP No. D-5128, 4091, 4620, 4621, 4829, 4924, 4925, 4926 & 5364 of  
2022

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DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of CMA No.21856/2022
2. For hearing of main case.

**03.10.2022.**

**For the petitioners**

Mr. Faisal Mehmood Ghani Advocate  
Mr. Asim Iqbal Advocate  
Mr. Faiz Durrani Advocate  
Mr. Ghulam Muhammad Advocate  
Mr. Sohail Thahrani, Advocate  
Barrister Ghazi Khan Khalil, Advocate  
Mr. Amer Noshawan, Senior Legal Council  
Mr. Bilal Farooq Alvi, Advocate

**For the respondents.**

Mr. Abdul Rauf, Advocate  
Mr. M. Arshad Khan Advocate  
Mr. Ali Akbar Leghari, Advocate  
Mr. Abdul Rauf Advocate  
Mr. Waqar Ahmed Advocate  
Ms. Shahnaz Anila in person  
Mr. Yasir Ahmed Shah, Assistant Attorney General

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Mr. Wasim Ahmed Memon Advocate files Vakalatnama on behalf of respondent No.1 in CP No. D-4620 of 2022 and Mr. Ali Akbar Leghari Advocate files Vakalatnama on behalf of respondent No.1 in CP No. D-5128 of 2022 which are taken on record.

In all these petitions the only controversy involved is that whether the Single Member Bench of National Industrial Relations Commission ("**NIRC**"), can proceed to execute its orders on the complaint of private respondents, notwithstanding the fact that the Full Bench of NIRC, at Karachi, before whom the Appeal(s) of the petitioners against such order(s) are pending is presently non-functional.

We have heard all learned Counsel for the petitioners as well as respondents. Admittedly, under section 58 of the Industrial Relations Act, 2012, a statutory appeal is provided against the orders of Single Member Bench of NIRC, whereas, admittedly the petitioner's Appeals are pending before a Full Bench of NIRC, at Karachi, which presently is non-functional, whereas, some coercive measures have been adopted against the Petitioners for implementation of the order(s) in question. In that case, to our understanding, the Single Member Bench of NIRC ought to have restrained itself from proceeding further on the complaints of private Respondents for executing its own orders when admittedly, Full Bench of NIRC, at Karachi, was not functional.

Per settled law, at least right of one appeal cannot be denied to an aggrieved person, whereas, refusal to grant an injunctive order would amount to upholding the decision of recovery as well reinstatement as the case may be<sup>1</sup>. Per settled law, access to justice is a fundamental right and the essential feature of this right is the determination of grievance or dispute by an independent forum<sup>2</sup>. It is further settled that an assessee is entitled to adjudication in respect of his dispute regarding tax liability by at least one independent forum outside the hierarchy of the department<sup>3</sup>. Reliance may also be placed on the case of *Flying Kraft Paper*<sup>4</sup>.

To sum up, it is the consistent view of the Courts that any order which has not passed the test or examination by at least one higher / Appellate forum, ought not to be implemented in haste, when law by itself has provided an appeal against such an order. In the present case apparently the petitioners are not at fault. They have filed their Appeals impugning the order of Single Bench which are to be heard and decided by a full Bench of NIRC, at Karachi, which as informed is presently non-functional. The default, if any, is on the part of the State / Federation who has to act swiftly in making requisite appointments and during the interregnum, it can't be justified that orders passed by Single Member, NIRC are implemented; and that too by the same Member, by way of coercive measures including threats and issuing warrants against the officers of the Petitioners. Propriety demands that Single Member, NIRC, should have shown restraint till such time the Appeals or for that matter, injunction applications of the Petitioners are decided finally. Any expediency or haste in implementation of such orders would be against the norms of justice as in case they are overturned by the full Bench

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<sup>1</sup> Pak Gulf Construction Limited v Commissioner Inland Revenue (2016 PTD 1061)

<sup>2</sup> Mehram Ali v Federation of Pakistan (PLD 1998 SC 1445)

<sup>3</sup> Z. N. Exports (Pvt) Limited v Collector of Sales Tax (2003 PTD 1746)

<sup>4</sup> 1998 SCMR 1041

subsequently, then the harm caused would be irreparable and for that at least the present petitioners are not at fault.

Lastly, as to entertaining these petitions during pendency of Appeals before full Bench of NIRC, it would suffice to observe that firstly the full Bench of NIRC at Karachi is non-functional; secondly, the very act of Single Bench, NIRC, for implementation of its orders is without jurisdiction, and therefore a petition would be competent as held in Malik Nazar Hussain<sup>5</sup>.

In view of hereinabove facts and circumstances, all these **petitions are allowed / disposed** of with directions to the Full Bench of NIRC, at Karachi, (*as and when it becomes functional*), to decide the pending Appeals or stay applications filed by the petitioners, as the case may be, within a period of sixty (60) days from the date of constitution of such full Bench. Till such time this exercise is carried out by the full Bench at Karachi, no coercive measures shall be adopted against the petitioners for implementation of order(s) passed by the Single Bench, NIRC.

Let copy of this order be issued to the Registrar, NIRC, Karachi, for information, compliance and circulation amongst all members of NIRC. Office shall also place copy of this order in connected matters.

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<sup>5</sup> 2033 PLC 405