

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
**Muhammad Junaid Ghaffar, J.**  
**Agha Faisal, J.**

*CP D 1090 of 2021*

*Yasmeen Mashkooor*

*vs.*

*Pakistan & Others*

*(And connected matters, particularized in the Schedule<sup>1</sup> hereto.)*

Messrs. Ali Almani, Jam Zeeshan, Iqbal Salman Pasha, Jawaid Farooqi, Malik Naeem Iqbal, Sami-ur-Rehman Khan, Faizan Hussain Memon, Fazly Rabi, Muhammad Nasir, Tasleem Hussain Maitlo for Sofia Saeed Shah, Muhammad Fahim Bhayo, Muhammad Din Qazi, Furqan Mushtaq, Umer Sikandar and Darvesh K. Mandhan, Advocates for the Petitioners.

Messrs. Ameer Bakhsh Metlo, Rana Sakhawat Ali, Muhammad Aqeel Qureshi, Imran Ahmed Metlo, Imtiaz Ali Solangi, Qaim Ali Memon, Ghulam Asghar Pathan, Majid Ali Dayo, Ashfaq Ali Gilal, Farha Naz, Ayaz Sarwar Jamali, Kanji Mal Meghwar, Touqeer Ahmed Seehar, Hafeezullah, Irfan Mir Halepota, Mirza Nadeem Taqi, Tania Alam, Iftikhar Hussain, Imran Ali Mithani, Bushra Zia for Zubair Qureshi, Muhammad Khalid for Bilal Bhatti, Advocates G.M. Bhutto (Assistant Attorney General), Qazi Ayazuddin Qureshi (Assistant Attorney General) for the Respondents

Date/s of hearing : 08.03.2023

Date of announcement : 14.03.2023

## ORDER

**Agha Faisal, J.** Mrs. Yasmeen Mashkooor is a tax paying resident of Karachi, however, the jurisdiction with respect to her income tax has been suddenly changed to Islamabad, a city that she has represented to have no nexus within meaning of section 209(5) of the Income Tax Ordinance 2001 ("Ordinance") or otherwise, without any manifest reasoning, hearing, opportunity thereof or even a notice in such regard. Mrs. Yasmeen Mashkooor and the other petitioners have assailed such inter provincial / city transfers primarily on the grounds that it amounts an improper exercise of power

<sup>1</sup> The Schedule hereto shall be read as an integral constituent hereof.

dissonant with the contemplation of the statute. The said petitions shall be determined vide this common order.

2. It was the petitioners' case<sup>2</sup> that section 209 of the Ordinance deals with the jurisdiction of income tax authorities and it is explicated that within the area assigned a commissioner shall have jurisdiction in respect of a person carrying out business therein and / or residing therein. It was the petitioners' case that the transfers undertaken were in *prima facie* derogation of the requirements as aforesaid. Reference was made to the proviso to section 209(1) of the Ordinance to demonstrate that while the FBR or a Chief Commissioner were empowered to transfer jurisdiction, however, such powers were restricted from one Commissioner to another Commissioner. The definition of a Chief Commissioner, per section 2(11B) of the Ordinance, was adverted to in such regard and it was shown that it was distinct from section 2(13) defining a Commissioner. Finally, it was concluded that the action undertaken by the respondents amounted to manifest improper exercise of power by state functionaries.

3. It was the department's case<sup>3</sup> that FBR had authority to transfer jurisdiction of any tax payer at its whim and fancy and relied on section 209(8A) of the Ordinance to demonstrate that the power to confer jurisdiction included the power to transfer jurisdiction.

4. Heard and perused. It is noted that while these matters have been pending since 2021, however, not a single respondent in any respective petition has deigned to file comments herein, despite repeated opportunities. We appreciate Mr. Ameer Bux Maitlo's assistance in articulating the department's stance, however, in the absence of any express response by the respective constituents of the department, we deem it expedient to eschew any deliberation of the law itself and confine our focus to whether the power exercised by the department was in apparent consonance with settled legal principles or otherwise.

5. The Supreme Court has maintained in *Pakistan Beverages*<sup>4</sup> that the law recognizes no such thing as unfettered discretion and that all discretionary powers conferred by statute must be exercised in terms of well-established principles of administrative law and only to achieve an object that was lawfully

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<sup>2</sup> Articulated by Mr. Jam Zeeshan and Mr. Malik Naeem Iqbal in seriatim; adopted by the remaining learned counsel for the petitioners.

<sup>3</sup> Articulated by Mr. Ameer Bux Maitlo; adopted by the remaining learned counsel for the respondents and the learned Assistant Attorney General.

<sup>4</sup> Per *Munib Akhtar J* in *CIR Karachi vs. Pakistan Beverages* reported as 2018 SCMR 1544.

within the contemplation of the statute. This has been recently reiterated in *Mian Liaqat*<sup>5</sup>. Similar observations were articulated by this Court in *Wateen Telecom*<sup>6</sup>, authored by one of us (*Muhammad Junaid Ghaffar J.*).

6. In the present facts and circumstances it stands admitted before us that the department has transferred jurisdictions beyond provincial / city boundaries irrespective of whether the assessee had any nexus with the transferee jurisdiction, within meaning of section 209 of the Ordinance or otherwise. More importantly, it is also admitted that such a transfer was done without any manifesting reasoning<sup>7</sup>, hearing<sup>8</sup>, notice<sup>9</sup> and / or intimation to the tax payers.

7. Respectfully, we find ourselves unable to fathom as to why the tax jurisdiction of Mrs. Yasmeen Mashkooor has been transferred from Karachi, where she resides, to Islamabad, where she *admittedly* has no nexus. This observation applies *mutatis mutandis* to the remaining petitioners as well. In view hereof, we are constrained to observe that the inter-provincial / inter-city transfers, under scrutiny, appears to have been carried out in manifest dissonance with the well-established principles of administrative law<sup>10</sup> and otherwise than reasonably and / or fairly<sup>11</sup>.

8. In view hereof, these petitions are allowed to the remit that the inter-provincial / inter-city transfers of jurisdiction, undertaken without any manifest reasoning, hearing, notice and / or intimation to the tax payers, are hereby set aside. The department remains at liberty to initiate a *de novo* exercise to transfer the tax jurisdiction of the petitioners, if permissible within the law, and in the manner prescribed by the law; to be initiated by notice to the relevant petitioner. Any conclusion of such exercise shall be justiciable in the manner provided in law. Insofar as the actions which have been initiated by the respondents, after transfer of such jurisdictions, they shall stand remitted to

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<sup>5</sup> *Commissioner Inland Revenue vs. Mian Liaqat Ali (Civil Petition No.648-L OF 2021)*.

<sup>6</sup> *Wateen Telecom vs. Sindh* reported as 2019 PTD 1030.

<sup>7</sup> *Pakistan vs. Farheen Rashid* reported as 2011 SCMR 1; *Muhammad Din vs. Jamal Din* reported as 2007 SCMR 1091.

<sup>8</sup> *Naseem Anwar vs. ITO* reported as PLD 1964 Dacca 775.

<sup>9</sup> *Qazi Abdul Jalil vs. NWFP Forest Development Corporation* reported as 2010 SCMR 1933; *Liaqat Ali Chughtai vs. Pakistan* reported as PLD 2013 Lahore 413; *Dewan Salman Fibre vs. NWFP* reported as PLD 2004 SC 441; *Anissa Rehman vs. PIAC* reported as 1994 SCMR 2232.

<sup>10</sup> *Chairman RTA vs. PMICL* reported as PLD 1991 SC 14; *Airport Support Services vs. Airport Manager* reported as 1998 SCMR 2268; *KAECHS Ltd vs. Sindh* reported as 2004 YLR 1070; 2011 PLC CS 1489.

<sup>11</sup> *Haq Bahu Sugar Mills vs. Pakistan* reported as 2016 PTD 955; *Pannalal Binjraj vs. Union of India* reported as [1957] 31 ITR 565; *Bidi Supply Co vs. ITO* reported as AIR 1956 SC 479.

the offices / respondents who were enjoying jurisdiction in respect of the petitioners prior to such transfers.

The office is instructed to place a copy hereof in each of the connected petitions.

JUDGE

JUDGE

*Schedule*

CP D 5665 of 2020 - Popular Juice Ind. Pvt. Ltd v. Fed. of Pakistan and Others	CP D 5666 of 2020 - Popular Food Ind (Pvt) Ltd v. Fed. of Pakistan & Others
CP D 5667 of 2020 - Popular Aseptic Packaging Pvt Ltd v. Fed. of Pakistan & Others	CP D 6721 of 2020 - Raazy Motor Ind. Pvt. Ltd v. Fed. of Pakistan & Others
CP D 1385 of 2021 - Muhammad Iqbal Shaikh v. Fed. of Pakistan & Others	CP D 1953 of 2021 - Hafiz Rab Nawaz & Co. v. Fed. of Pakistan & Others
CP D 1954 of 2021 - Pak Arab Food Ind. (AOP) v. Fed. of Pakistan & Others	CP D 1955 of 2021 - Bashir Ahmed Soomro v. Fed. of Pakistan & Others
CP D 1956 of 2021 - Abdul Qudoos Chachar v. Fed. of Pakistan & Others	CP D 1957 of 2021 - Muhammad Waris Panhwar v. Fed. of Pakistan & Others
CP D 1958 of 2021 - Kenjhar Ind (AOP) v. Fed. of Pakistan & Others	CP D 2338 of 2021 - Khursheed Builders v. Fed. of Pakistan & Others
CP D 2339 of 2021 - G.M & Sons Builders & Developers v. Fed. of Pakistan & Other	CP D 2340 of 2021 - Shafqar Ali Siyal v. Fed. of Pakistan & Others
CP D 2430 of 2021 - Naveed Aslam v. Fed. of Pakistan & Others	CP D 2478 of 2021 - Three Star Construction Co. v. Fed. of Pakistan & Others
CP D 3628 of 2021 - Tariq Iqbal & Others v. Fed. of Pakistan & Others	CP D 3803 of 2021 - Premier Oil Ind. Pvt. Ltd v. Fed. of Pakistan & Others
CP D 3804 of 2021 - Sukkur Township v. Fed. of Pakistan & Others	CP D 3984 of 2021 - Raibow Hi Tech Engineering v. Fed. of Pakistan & Others
CP D 5323 of 2021 - Faraz Brothers Builders & Developers v. Fed. of Pakistan & Others	CP D 1442 of 2022 - Rainbow Hi Tech Engineering Co. Pvt. Ltd v. Fed. of Pakistan & Others
CP D 2526 of 2022 - D.S Motors (Pvt) Ltd v. Fed. of Pakistan & Others	CP D 2668 of 2022 - Muhammad Arif Memon v. Fed. of Pakistan & Others
CP D 3545 of 2022 - D.S Motors (Pvt) Ltd VS Fed. of Pakistan and Others	CP D 59 of 2022 - Ahmed Textile v. Fed. of Pakistan & Others
CP D 7479 of 2022 - Rainbow Hi Tech Engineering Co. (Pvt) Ltd VS Fed. of Pakistan & Others	