

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.914 of 2011
Suit 917 of 2011
Suit 921 of 2011

Date	Order with signature of Judge(s)
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1. For orders on CMA No.13036/2024
2. For hearing of legal issues, in view of court's order dated 28.02.2024 and 03.09.2024

27.11.2024

Messrs. Arshad M. Tayebally and Abdul Ahad advocates for the plaintiff

Mr. Muhammad Wasif Riaz, advocate for defendant
Mr. Irfan Ahmed Memon, advocate for defendant

Mr. Zia-ul-Haq Makhdoom (Additional Attorney General), Ms. Alizeh Bashir, Assistant Attorney General

Mr. Naeem Ashraf, Director (Litigation) PTA.
Mr. Umer Adil Khalil, Director PTA
Mr. Ali Akbar Sahito, Deputy Director (Law)
Mr. Adil Jawed, A.D. (Law), PTA
Mr. Bilawal Hussain Baloch, Manager Legal (Litigation), South Zone PTCL

These suits were filed in 2011, predicated upon show cause notices, enforcement / suspension orders issued by the PTA, in Islamabad, to the plaintiffs in Lahore and Islamabad respectively. Perusal of the respective clauses in the respective complaints, pleading accrual of a cause of action, demonstrated that the suits were essentially actuated as aforesaid.

Per record, the *lis* has already been agitated before the fora at Islamabad culminating in dismissal of the petitions filed by the plaintiffs by the Islamabad High Court. While the plaintiffs remained at liberty to escalate their grievance further before fora of competent jurisdiction, such recourse appears to have been eschewed and civil suits were instituted in the original civil jurisdiction of this Court in 2011 and *ad interim* orders obtained, that subsisted till today.

In similar facts and circumstances, this Court has recently held in the *PTCL case*¹ that invocation of the original civil jurisdiction of this Court was unjustified. The relevant observations were as follows:

“The representative facts herein are that the plaintiffs have assailed demand notices issued by the Pakistan Telecommunication Authority for payment of annual radio frequency spectrum fee for wireless local loop license / service; ostensibly for the period starting from 2005. The amounts demanded by PTA are inclusive of USD 13,030,962/-, USD 3,108,744/- and USD 165,000/- respectively.

It is observed that the relevant demand notices were issued at Islamabad; they were addressed to the plaintiffs at Islamabad;

¹ PTCL vs. PTA (Suit 1312 of 2023) – order dated 13.11.2024.

however, the notices were impugned in civil suits in the original civil jurisdiction of this High Court at Karachi. Interestingly, in the latter suits, the respective deponents, instituting the suits, have also represented their addresses to be in Islamabad.

Notwithstanding the foregoing, the suits were entertained at Karachi and *ad interim* orders were obtained at the very onset, precluding the collection of public revenue. These orders subsisted until today.

Assistant Attorney General Alizeh Bashir raised objection as to maintainability and articulated that *prima facie* this Court did not enjoy territorial jurisdiction to entertain these suits. Mr. Jam Zeeshan and Mr. Rashid Mahar insisted that PTA, being a public body, had a presence in Karachi also, hence, the suits were rightly instituted.

The law with respect to territorial jurisdiction is well settled; as may be denoted from the *Sandalbar case*² and recently encapsulated by *Syed Mansoor Ali Shah J* in the *A F Furguson case*³. In *pari materia* facts and circumstances this Court held in *LIEDA*⁴ and *Safe Mix Concrete*⁵ that mere existence, concurrent or otherwise, of a party within a territorial remit confers no jurisdiction upon a court; especially when no manifest cause of action has accrued within the jurisdiction.

The impugned notices were issued by the PTA in Islamabad to the plaintiffs in Islamabad. The title page of each of the suits demonstrates the defendants impleaded are in Islamabad. The reference made to a zonal office in Karachi, as an additional address of the main defendant, could not be demonstrated to bestow any territorial jurisdiction upon this Court.

For purposes of conjuring the fiction of jurisdiction, the relevant clauses in the plaints (almost identical in nature), plead that since the defendants (being the Federation and PTA) perform function and exercise powers across Pakistan, including at Karachi, therefore jurisdiction may be assumed. Without prejudice to the tenability of this submission, the pleadings do not demonstrate whether any function was performed or power exercised in Karachi.

It is pleaded that if the plaintiffs are required to comply with the impugned notices, then the same shall affect the plaintiffs and also their customers at Karachi. It is also suggested that since the plaintiffs have a presence in Karachi, in addition to Islamabad and / or any other cities in Pakistan, therefore, jurisdiction may be assumed by this Court. Once again, and with respect, these grounds could not be sanctioned

² *Sandalbar Enterprises Pvt. Ltd. vs. Central Board of Revenue* reported as *PLD 1997 Supreme Court 334*.

³ Order dated 27.02.2024 in *CIR LTO Karachi vs. A F Furguson & Company & Others (Civil Petition 52 of 2024)* and connected matters. Reference was made to *Amin Textile Mills Pvt. Ltd. vs. Islamic Republic of Pakistan* reported as 1998 SCMR 2389; *Shahida Maqsood vs. President of Pakistan* reported as 2005 SCMR 1746; *Sethi & Sethi Sons vs. Federation of Pakistan* reported as 2012 PTD 1869; *Hassan Shahjehan vs. FPSC* reported as *PLD 2017 Lah. 665*; and *Sabir Din vs. Govt. of Pakistan* reported as 1979 SCMR 555.

⁴ Per Muhammad Junaid Ghaffar J in *Lasbella Industrial Estates Development Authority vs. Federation of Pakistan (Suit 2631 of 2015)* order dated 25.10.2016.

⁵ Per Muhammad Junaid Ghaffar J in *Safe Mix Concrete Limited vs. Federation of Pakistan & Others* reported as 2020 CLC 602 2020 PTD 263. Reliance was also placed upon *Murlidhar P Gangwani vs. Engineer Aftab* reported as 2005 MLD 1506; *Dewan Scrap vs. Customs, Central Excise & Sales Tax Tribunal* reported 2003 PTD 2127; *Sandalbar Enterprises Pvt. Ltd. vs. Central Board of Revenue* reported as *PLD 1997 Supreme Court 334*; *Abdul Rahim Baig vs. Abdul Haq* reported as *PLD 1994 Karachi 388*; *Mehboob Ali Soomro vs. SRTC* reported as 1999 CLC 1722.

to confer any territorial jurisdiction upon this Court in view of the law illuminated by the Supreme Court, as referred to supra.”

Therefore, in *mutatis mutandis* application of reasoning and rationale of the binding edicts cited supra, applicable squarely herein, read with the order reproduced above, the respective complaints are hereby returned per Order VII Rule 10 of the Code of Civil Procedure 1908. The office may place a copy hereof in each connected suit.

Judge

Amjad