

Order Sheet
IN THE HIGH COURT OF SINDH,
BENCH AT SUKKUR

Const. Petition No.S-50 of 2025

Date of hearing	Order with signature of Judge.
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Hearing of Case(Priority)

- 1.For orders on CMA 140/25
- 2.For orders on CMA 141/25
- 3.For orders on CMA 142/25
4. For orders on CMA 143/25

10-03-2025

Mr. Ali Raza Baloch, Additional A.G Sindh a/w Dr. MB Raja Dharejo,
Deputy Commissioner, Sukkur.

Urgent application is granted. It is contended by learned AAG that though office objection was available that this petition pertains to a Constitutional Bench, but inspite of that objection same was heard by a Regular Bench. The objection raised by the office was adjourned to be addressed on the next date. He contended that the jurisdiction was to be decided first in view of the case of *Muslim Commercial Bank Limited vs. Muhammad Anwar Mandokel (2024 SCMR 298)*. He has also relied upon the order dated 07.02.2025, passed by Hon'ble Supreme Court in Civil Petitions No.836-K of 2020 etc. with concurring note of his Lordship Mr. Justice Muhammad Ali Mazhar. He also states that the matter is of urgent nature and of public interest and the case was being adjourned for 08.04.2025 and the impugned Notification was to be executed upto month of Ramzan.

Relevant paras-14 to 16 of the order dated 07.02.2025 are reproduced as under:

“14. The term '*jurisdiction*' in legal parlance refers to the authority conferred upon the courts by law and the Constitution

to adjudicate matters between parties. The jurisdiction of every court is delineated and established to ensure adherence to the law and the issuance of legal orders. Transgressing or exceeding the boundaries of its jurisdiction and authority annuls and invalidates the judgments and orders. It is clear from the orders passed by this Court dated 06.05.2021, which explicitly reflect that the Bench seized of the above cases observed that the question involved was whether the impugned amendment is *ultra vires* to the Constitution. Accordingly, notice was issued to the learned Attorney General for Pakistan, and the parties were directed to maintain the *status quo* until the next date of hearing. Subsequently, on 07.02.2023, another Bench recorded the submissions of the learned Additional Attorney General, who asserted that there was no violation of the Constitution regarding the legislative competence or any breach of fundamental rights. Therefore, the impugned judgment had misinterpreted the meaning of "constitutional violation". What does this indicate? It demonstrates that both the aforementioned benches were fully cognizant that in all these petitions, the moot question or dominant issue was the challenge to the *vires* of sub-section (2) of Section 221-A of the Customs Act, 1969.

15. I am also fortified by the judgment authored by Honorable Mr. Justice Syed Mansoor Ali Shah in Mian Irfan Bashir Vs. Deputy Commissioner (D.C.), Lahore (PLD 2021 Supreme Court 571). In this case, while speaking for the Bench, his lordship quoted Chief Justice John Marshall, who states that 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. Additionally, his lordship referenced an excerpt from the chapter chapter "The Rehnquist Court and "Conservative Judicial Activism" in the book *That Eminent Tribunal: judicial supremacy and the constitution* authored by Christopher Wolfe (American Political Scientist), and held 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. 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.”

[Emphasis Applied]

16. In the Additional Opinion contributed by Honorable Mr. Justice Syed Mansoor Ali Shah in the case of Hamza Rasheed Khan (*supra*), while discussing the question of jurisdiction, his lordship went on to hold that:-

“12. Any court, including this Court, cannot by a judicial order confer jurisdiction on itself or any other court, tribunal or authority.

The power to confer jurisdiction is legislative in character; only the legislature possesses it. No court can create or enlarge its own jurisdiction or any other court's jurisdiction. Nor any court has any inherent or plenary jurisdiction. Because of the constitutional command in Article 175(2) of the Constitution, the courts in Pakistan do not possess any inherent jurisdiction on the basis of some principles of common law, equity or good conscience and only have that jurisdiction which is conferred on them by the

Constitution or by or under any law. The same is the position with the claim of plenary jurisdiction in favour of any court; no court has plenary, i.e., unlimited or indefinite, jurisdiction. Some courts may be called the courts of general jurisdiction because of the general terms in which the jurisdiction is conferred on them by any law, such as the civil courts on which Section 9 of the Code of Civil Procedure 1908 confers jurisdiction in general terms; but such general jurisdiction is also limited and defined in terms of the relevant provisions of the law. Therefore, in order to assert that a particular court has the jurisdiction to make the declaration mentioned in Article 62(1)(f) that any person is not sagacious, righteous, non-profligate, honest and ameen, it is imperative to identify the provision in the Constitution or under any law that confers such jurisdiction”.

Since the order dated 06.03.2025 was passed by his Lordship Mr. Justice Zulfiqar Ahmad Khan who is available at the Bench; therefore, office is directed to fix this matter before the same Bench by today.

JUDGE

Ahmad