IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J
Agha Faisal, J

CP D 6808 of 2020	:	Fazal Nazir Printing Press & Others vs. Federation of Pakistan & Others
For the Petitioners	:	Mr. Aqeel Ahmed Khan Advocate
For the Respondents	:	Mr. Khalid Rajpar, Advocate
Date of hearing	:	20.01.2021
Date of announcement	:	20.01.2021

JUDGMENT

Agha Faisal, **J**. The present petition assails show cause notices ("Impugned Notices") issued by the Collectorate of Customs (Adjudication), pursuant to the Customs Act 1969 ("Act"), whereby the petitioners have been provided an opportunity and a forum to present their case.

2. Briefly stated, the issuing authority was in receipt of contravention reports, pursuant whereof the Impugned Notices were issued. Instead of availing the opportunity provided, per the Impugned Notices, the petitioners have opted to prefer the present petition.

3. The petitioners rest their claim on the assertion that the respondents have not correctly appreciated the pertinent facts and circumstances; hence, issuance of the notices thereto was unwarranted. The respondents argued that an opportunity and a forum have been provided to the petitioners to put forth their case; hence, no cause has arisen to prefer the present petition. It was further stated that even otherwise a show cause notice was not ordinarily justiciable in writ jurisdiction.

4. We have considered the arguments of the respective learned counsel and have also considered the law to which our attention was solicited. It is apparent that the Impugned Notices have been predicated upon contravention reports and an opportunity has been provided to the petitioners to present their point of view before the statutorily designated forum. In such a scenario

we consider it appropriate to ring fence this determination to consider whether the factual controversies, raised by the petitioner, merit determination before this Court in place of the designated forum.

5. An earlier Division Bench of this Court has recently deliberated at length upon the issue of assailing show cause notices in the writ jurisdiction. After sifting through of a myriad of authority from the commonwealth jurisdictions and it was maintained[1] as follows:

> "15. A show cause notice is delivered to a person by an authority in order to get the reply back with a reasonable cause as to why a particular action should not be taken against him with regard to the defaulting act. By and large, it is a well-defined and well-structured process to provide the alleged defaulter with a fair chance to respond the allegation and explain his position with reasonable timeframe that he has not committed any unlawful act or misdemeanor. Even in case of an adverse order, the remedies are provided under the tax laws with different hierarchy or chain of command. In the matters of show cause, this court cannot assume a supervisory role in every situation to pass an interim order with the directions to the authority concerned to proceed but no final order should be passed till decision of the constitution petition or to suspend the operation of show cause notice for an unlimited period of time or keep the matters pending for an indefinite period. By saying so, we do not mean that the show cause notice cannot be challenged in any situation but its challenge must be sparing and cautious. This court in exercise of its extraordinary constitutional jurisdiction may take up writs to challenge the show cause notice if it is found to be lack of jurisdiction, barred by law or abuse of process of the court or coram non judice and obviously in such situation, may quash it but not in every case filed with the expectation and anticipation of ad-interim order by the assesse.
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> 16. The lack of jurisdiction means lack of power or authority to act in a particular manner or to give a particular kind of relief. It refers to a court's total lack of power or authority to entertain a case or to take cognizance. It may be failure to comply with conditions essential for exercise of jurisdiction or that the matter falls outside the territorial limits of a court. The Abuse of process is the intentional use of legal process for an improper purpose incompatible with the lawful function of the process by one with an ulterior motive in doing so, and with resulting damages. In its broadest sense, abuse of process may be defined as misuse or perversion of regularly issued legal process for a purpose not justified by the nature of the process. Abuse of process is a tort comprised of two elements: (1) an ulterior purpose and (2) a willful act in the use of process not proper in the regular conduct of the proceeding. Abuse of process is the malicious misuse or misapplication of process in order to accomplish an ulterior purpose. However, the critical aspect of this tort remains the improper use of the process after it has been issued. Ref: DeNardo v. Maassen, 200 P. 3d 305 (Supreme Court of Alaska, 2009), McCornell v. City of Jackson, 489 F. Supp. 2d 605 (United States District Court, Mississippi, 2006), Montemayor v. Ortiz, 208 SW 3d 627 (Court of Appeals of Texas at Corpus Christi-Edinburg, 2006), Reis v. Walker, 491 F. 3d 868 (United States Court of Appeals, 2007), Sipsas v. Vaz, 50 AD 3d 878 (Appellate Division of the Supreme Court of the State of New York, 2008). Whereas coram non judice is a Latin word meant for "not before a judge," is a legal term typically used to indicate a legal proceeding that is outside the presence of a judge or with improper venue or without jurisdiction. Any indictment or sentence passed by a court which has no authority to try an accused of that offence is clearly in violation of the law and would be coram non judice and a nullity. When a lawsuit is brought and determined in a court which has no jurisdiction in the matter, then it is said to be coram non judice, and the judgment is void. Manufacturing Co. v. Holt, 51 W. Va. 352, 41 S. E. 351. Here in this case, the department has issued show cause notices with the allegation that the petitioners have shown the other income also which is not possible as a full time teacher or a researcher employed in a non-profit education or research institution hence the petitioners have been confronted that their other income seems to be earned through clinical work and surgical procedures and for this reason they have been called upon to submit their response along with few documents which are much essential to resolve the petitioners entitlement to rebate or reduction in tax and this is being done on the basis of available documents came into knowledge of the Tax

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[1] Per *Muhammad Ali Mazhar J.* in *Dr. Seema Irfan & Others vs. Federation of Pakistan & Others* reported as *PLD 2019 Sindh 516* ("*Seema Irfan Case*").

> department through Aga Khan University case when they claimed rebate on account of their full time employees as teachers/researchers….
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> 18. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice, the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. This Court ought to be careful when it passes an interim order to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities is the normal rule.
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> 19. The whys and wherefores lead us to a finale that neither the show cause notice has been issued without jurisdiction nor it can be considered an abuse of process of law nor it is totally non est. in the eye of law for absolute want of jurisdiction or coram non judice. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved person could approach the high court. A reasonable reading of show-cause notice does not unearth or establish that it is an empty ceremony nor an impenetrable wall of prejudged opinion in which a fair procedure with reasonable opportunity of defence may not commence or afforded so in our good judgment, the interference at the show cause notice stage should be rare and in an exceptional circumstances but not in a routine manner. However a significant attribute cannot be disregarded that when a show cause notice is issued then obviously a fair chance to contest must also be provided. In our Constitution, right to fair trial is a fundamental right. This constitutional reassurance envisaged and envisioned both procedural standards that courts must uphold in order to protect peoples' personal liberty and a range of liberty interests that statutes and regulations must not infringe. On insertion of this fundamental right in our Constitution, we ought to analyze and survey the laws and the rules/regulations framed thereunder to comprehend whether this indispensable right is accessible or deprived of? In case of stringency and rigidity in affording this right, it is the function rather a responsibility of court to protect this right so that no injustice and unfairness should be done to anybody, therefore, we direct that the respondent No.3 shall provide fair opportunity to the petitioners to defend the show cause notice and with proper application of mind consider the grounds raised in the response to rebut the show cause for which a clear provision is already envisaged and integrated under Sub-section (9) of Section 122 of the Income Ordinance 2001."

6. The ratio of the *Seema Irfan Case*[2] is squarely applicable to the present facts and circumstances. It is pertinent to observe that no case of abuse of process and / or want of jurisdiction is manifest before us. Furthermore, no case has been made out before us to consider the Impugned Notices to be mala fide, unjust and / or prejudicial towards the petitioners.

7. The petitioners have also sought to agitate issues of a factual nature, requiring appreciation of conflicting claims and documentation. It is now settled law that entertaining of a fact finding exercise, requiring appreciation of evidence and adjudication of conflicting claims, is discouraged in the exercise of writ jurisdiction of this Court[3].

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[2] The judgment was followed by another Divisional Bench judgment of this Court dated *04.10.2019* in *K-Electric Limited & Others vs. Federation of Pakistan & Other (CP D 4346 of 2017)*.

[3] *2016 CLC* 1; 2015 *PLC 45*; *2015 CLD 257*; *2011 SCMR 1990*; *2001 SCMR* 574; PLD *2001 Supreme Court 415*.

8. In view of the reasoning and rationale herein contained, it is our considered view that the Impugned Notices merit no interference in the exercise of Constitutional jurisdiction of this Court. Therefore, the present petition, along with pending application/s, is hereby dismissed.

JUDGE

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