

IN THE HIGH COURT OF SINDH AT KARACHI

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

CP D 147 of 2020 : Sahib Din Logistics vs.
Federation of Pakistan & Another

CP D 255 of 2020 : Syed Murtaza Ali Jaffery vs.
Federation of Pakistan & Another

CP D 256 of 2020 : Syed Mehdi Abbas Jaffery vs.
Federation of Pakistan & Another

CP D 257 of 2020 : Syed Aqeel Abbas Rizvi vs.
Federation of Pakistan & Another

CP D 3530 of 2020 : S.S. Corporation vs.
Federation of Pakistan & Others

For the Petitioners : Mr. Aqeel Ahmed Khan, Advocate
(CPs D 147, 255, 256 & 257 of 2020)

Mr. Iftikhar Hussain, Advocate
(CP D 3530 of 2020)

For the Respondents : Mr. Kafeel Ahmed Abbasi
Deputy Attorney General

Mr. Ghulam Asghar Pathan, Advocate

Mr. Tahir Zafar, Assistant Director (Audit)

Date of hearing : 08.02.2021

Date of announcement : 30.03.2021

JUDGMENT

Agha Faisal, J. The petitioners have in essence challenged the authority of the officer, having issued notices thereto under section 37 of the Sales Tax Act 1990 ("Impugned Notices"), to hold office; and predicated upon the said challenge sought for the Impugned Notices to be set aside. The petitions were heard and reserved upon this solitary contention and shall be determined vide this common judgment.

2. Briefly stated, the Impugned Notices were issued to the petitioners in respect of an inquiry pertaining to issuance / utilization of fake / flying invoices. Instead of participating in the inquiry, as required vide the Impugned Notices,

the petitioners preferred the present petitions, wherein *ad interim* orders were obtained that subsist till date.

3. The crux of the petitioners' case was that the issuing officer, of the Impugned Notices, was not appointed in accordance with section 30A¹ of the Sales Tax Act 1990 ("Act"). It was contended that the officer ought to have been *appointed* by the Federal Board of Revenue ("FBR") as an additional director and since the said officer was not so *appointed*; hence, the Impugned Notices merited being quashed.

4. The learned counsel for the respondents articulated that functions, jurisdiction and powers of the offices of the Directorate General Intelligence & Investigation – Inland Revenue were duly prescribed and the petitioners had raised no cavil in such regard. The officer, having issued the Impugned Notices, was duly appointed to his office by the FBR; however, such an appointment could not be interpreted to only signify fresh recruitment, as the same was essentially the prerogative of the Public Service Commission. Learned counsel shed light upon the competitive examination process for civil servants, their subsequent distribution into cadres and promotion therein. It was concluded that the petitioners were seeking to abjure their legal duty in the garb of the present petitions, essentially seeking the writ of *quo warranto*.

5. We have appreciated the arguments of the respective learned counsel and have also considered the record / law to which our attention was solicited. It is settled law² that a departmental notice may not ordinarily merit interference unless it is manifest that it suffers from want of jurisdiction; amounts to an abuse of process; and / or is *mala fide*, unjust and / or prejudicial towards the recipient. Therefore, the only question for determination before us is whether the Impugned Notices suffer from any such infirmity; meriting interference by this Court.

6. It is considered appropriate to initiate this deliberation by recording that the petitioners have articulated no cavil to the Impugned Notices having been issued by an office of appropriate jurisdiction. It is not the petitioners' case that the content or context of the Impugned Notices suffers from any abuse of

¹ 30A. Directorate General (Intelligence and Investigation), Inland Revenue. (1) The Directorate General (Intelligence and Investigation) Inland Revenue shall consist of a Director General and as many Directors, Additional Directors, Deputy Directors and Assistant Directors and such other officers as the Board may, by notification in the official Gazette appoint. (2) The Board may, by notification in the official Gazette, (a) specify the functions and jurisdiction of the Directorate General and its officers; and (b) confer the powers of authorities specified in section 30 upon the Directorate General and its officers.

² Per *Muhammad Ali Mazhar J. in Dr. Seema Irfan & Others vs. Federation of Pakistan & Others* reported as *PLD 2019 Sindh 516*.

process, *mala fide* and / or is unjust / prejudicial. On the contrary the petitioners' counsel had unequivocally stated that they would have no objection to the Impugned Notices if the same had been issued by an officer, who in their opinion was entitled to hold the relevant office.

7. We have observed that the officer, having issued the Impugned Notices, has been impleaded in person in the present petitions and that the entire case of the petitioners rests on his entitlement to hold office. This lends credence to the respondents' assertion that these petitions are in essence *quo warranto*, being a judicial remedy by virtue whereof a holder of public office may be called upon to demonstrate the right where under he held office.

8. The Supreme Court has held³ that while considering a writ in the nature of *quo warranto*, it is imperative to consider the intent and motive of the petitioner and if it is manifest that a petitioner has invoked the jurisdiction of the Court with an ulterior motive then jurisdiction ought to be declined. It is manifest before us that an objection to the officer's entitlement to hold office has only been taken in an unappreciated attempt by the petitioners to deny the information sought vide the Impugned Notices.

9. The honorable Supreme Court has maintained⁴ that *quo warranto* is an *extraordinary discretionary* jurisdiction and the Court is not bound to exercise such jurisdiction in each and every case; specially in matters of minor discrepancies, sheer curable technicalities or where the approach is doctrinaire unless it is shown that non-interference would result in grave injustice or would amount to endorsing the retention of illegal gains. In the present facts and circumstances it is *prima facie* manifest that the challenge to the entitlement of the issuing officer to hold office is intended solely to vitiate the Impugned Notices and no case has been made out to suggest that non-interference would result in any injustice.

10. A Division Bench of this Court has held in the *Rafiq ur Rehman*⁵ case that mere issuance of a notice under section 37 of the Act, whereby a person has been confronted with a set of allegations to explain his position, does not ordinarily give rise to any valid cause of action to file a writ petition. The aforesaid authority is squarely applicable in the present facts and circumstances and no cogent justification has been articulated before us to

³ Per Sarmad Jalal Osmany J (as he then was) in *Ghulam Shabbir vs. Muhammad Munir Abbasi & Others* reported as *PLD 2016 Supreme Court 516*.

⁴ Per Sajjad Ali Shah J in *Asif Hassan & Others vs. Sabir Hussain & Others* reported as *2019 SCMR 1720*.

⁵ Per Aqeel Ahmed Abbasi J in *Rafiq ur Rehman vs. Federation of Pakistan & Others* reported as *2017 PTD 1178*.

sanction the petitioners' intransigence in complying with the due process of law.

11. It is manifest that section 37⁶ of the Act contemplates issuance of notice / summons to persons to give evidence and produce documents in any inquiry. There is no cavil to the factum that there is a pending inquiry and an officer of Inland Revenue has required persons to appear and present documentation in regard thereof; therefore, no case has been made out before us to consider the Impugned Notices otherwise than in accordance with section 37 of the Act.

12. In view of the reasoning and rationale herein contained, we are of the considered view that the petitioners' counsel have failed to set forth a case for the exercise of extra ordinary writ jurisdiction by this Court, hence, these petitions, along with pending applications, are hereby dismissed.

JUDGE

JUDGE

⁶ 37. Power to summon persons to give evidence and produce documents in inquiries under the Act. (1) Any officer of Inland Revenue shall have powers to summon any person whose attendance he considers necessary either to tender evidence or to produce documents or any other thing in any inquiry which such officer is making for any of the purposes of this Act. (2) Any person summoned under sub-section (1) shall be bound to attend either in person or by an authorised agent, as the officer of Inland Revenue may direct; Provided that a person who is exempted from personal appearance in a court under section 132 and 133 of the Code of Civil Procedure (Act V of 1908), shall not be required to appear in person. (3) Any inquiry before an officer of Inland Revenue shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Pakistan Penal Code (Act XLV of 1860).