

**ORDER SHEET**  
**THE HIGH COURT OF SINDH AT KARACHI**

CP No.D-5180 of 2021

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Date	Order with signature of Judge(s)
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1. For orders on CMA No.22299/2021.
2. For orders on CMA No.22300/2021.
3. For orders on CMA No.22301/2021.
4. For orders on CMA No.22302/2021.
5. For orders on CMA No.21397/2021.
6. For hearing of main case.

**07.09.2021**

Mr. Monawwer Ghani, advocate for the petitioner.

1. Urgency granted.
2. Exemption granted subject to all just legal exceptions.

3 to 5. The petitioner has assailed a notice per s.122 ITO dated 09.01.2020 ("Impugned Notice") and on the very first date<sup>1</sup> of hearing was confronted with regard to the maintainability hereof. Today, the matter has been listed again and the petitioner has engaged another learned counsel to argue.

A bare perusal of the Impugned Notice demonstrates that it was issued on 09.01.2020 and pursuant thereto numerous communiques were served, dated 23.01.2020, 04.02.2020, 04.11.2020, 04.06.2021 and 14.06.2021. The instrument further demonstrates that the petitioner did in fact submit to jurisdiction and submitted replies dated 27.01.2020, 11.02.2020 and 15.06.2020. The department served a reminder, dated 16.08.2021, and required the petitioner to comply by 23.08.2021, which date had also passed prior to even the date of institution<sup>2</sup> hereof.

A Division Bench of this Court had sieved a myriad of commonwealth authority, in *Dr. Seema Irfan*<sup>3</sup>, and maintained that that a show-cause notice may not be justiciable in writ jurisdiction; unless it is manifest *inter alia* that the same suffers from want of jurisdiction; amounts to an abuse of process; and / or is *mala fide*, unjust and / or prejudicial towards the recipient. The aforementioned ratio<sup>4</sup> 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 Notice to be mala fide, unjust and / or prejudicial towards the petitioner.

The petitioner seeks to agitate issues of a factual nature, requiring appreciation of conflicting claims and documentation. While such an exercise is amenable for adjudication before the statutory hierarchy, it is now settled law that entertaining of a fact finding exercise, requiring

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<sup>1</sup> 31.08.2021.

<sup>2</sup> 27.08.2021.

<sup>3</sup> *Dr. Seema Irfan & Others vs. Federation of Pakistan & Others* reported as *PLD 2019 Sindh 516* ("Dr. Seema Irfan"); *Deputy Commissioner Income Tax / Wealth Tax Faisalabad vs. Punjab Beverage Company (Private) Limited* reported as *2007 PTD 1347*.

<sup>4</sup> 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*).

appreciation of evidence and adjudication of conflicting claims, is discouraged in the exercise of writ jurisdiction of this Court<sup>5</sup>.

In view hereof, we are constrained to observe that no case has been set forth for the invocation of the discretionary writ jurisdiction of this Court, hence, the petition is hereby dismissed *in limine*. The petitioner remains at liberty to avail of the statutory dispute resolution mechanism for redress of grievance/s, if any.

JUDGE

JUDGE

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<sup>5</sup> 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.