

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Agha Faisal

C.P. Nos. D-4079, D-4212, D-4341, D-4353 & D-4377 of 2021

- 1) Shakeel Ahmed Kasana
- 2) Abdu Hameed & others
- 3) Muhammad Aslam Shaikh
- 4) Abdul Hameed Abro
- 5) Farhat Hassan Khan

Versus

Federal Tax Ombudsman & others

Date of Hearing: 21.03.2023

Petitioners: Through M/s. Abid S. Zuberi, Ayan Mustafa Memon, M. Saad Siddiqui, Ali Abid Zuberi, Agha Ali Durrani, Fayaz Ali Maitlo, Ovais Ali Shah, Khalid Mehmood Siddiqui, Farooq Mirani and Owais Leghari Advocates.

Respondents: Through M/s. Barrister Ghazi Khan Khalil, Ameer Bakhsh Metlo, Ameer Nausherwan Adil, Abdul Razzaque Panhwar, Abdul Hakeem Junejo Advocates and Qazi Ayazuddin Qureshi, Assistant Attorney General.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Petitioners have impugned the respective letters issued to them from the office of Registrar, Federal Tax Ombudsman to the Chairman Federal Board of Revenue Islamabad, which require constitution of an inspection team, as mandated under section 17 of Federal Tax Ombudsman Ordinance, 2000. Since it is a common letter, in substance, in all the petitions, we propose to decide the same through this common judgment.

2. Record reflects that vide impugned letter, (CP No.D-4079 of 2021) in purported exercise of powers conferred under section 9(1) of

Ordinance 2000, Federal Tax Ombudsman has ordered to hold inspection of the office of an individual, performing as Commissioner Inland Revenue Karachi, in terms of Section 17 of Ordinance 2000, on complaint of malpractices with corrupt motives in the discharge of duties, falling within the ambit of maladministration, as mandated in Section 2(3)(i)(d) & (ii) of Ordinance 2000. (Same letter is issued to petitioners in other petitions). Learned counsel for respondents further reiterated that to make inspection transparent, Federal Tax Ombudsman has attempted to conduct the inspection under section 17(1) of Ordinance 2000 which shall consist of two officers of office of Federal Tax Ombudsman and a nominee of FBR office of not less than BS-20/21.

3. Petitioners have challenged the impugned letters on the ground that these are patently illegal, arbitrary and mala fide as Federal Tax Ombudsman has no jurisdiction under the facts and circumstances of the case in terms of Section 9, 10 and 17 of Ordinance 2000. Learned counsel submitted that all related and ancillary questions that have been raised or could have been raised have already been decided in somehow identical matters involving identical letter issued by the office of Federal Tax Ombudsman and the learned Single Judge, Islamabad High Court while deciding Writ Petition No.2332 of 2021 was pleased to allow the petition by setting aside letter, being devoid of jurisdiction and in breach of the provisions of the Ordinance 2000. The order was assailed before learned Division Bench of Islamabad High Court which concurred with the views of learned Single Judge and the Intra Court Appeal No.220 of 2022, despite not being maintainable on other counts as well, was dismissed on merit.

4. Learned counsel for respondents Barrister Ghazi Khan however submitted that the jurisdiction of the Federal Tax Ombudsman is two-folded i.e. action against complaint and sou-moto initiation of action

and that suo-moto action mandated the Federal Tax Ombudsman to take cognizance of such affairs as deem fit under the law. He has sum-up his case that Federal Tax Ombudsman is an institution to act as an inquisitive body which could be requested for by any aggrieved person, superior Court, president, Senate or any of its motion to investigate in response to maladministration on the part of the revenue department as a whole or as an individual tax official and a complaint may not be of consideration in such suo moto actions.

5. We have heard the learned counsel and perused material available on record.

6. Incidentally the questions, as raised and arising out of these petitions, have been dealt with in detail by learned Single Judge of Islamabad High Court in Writ Petition No.2332 of 2021. Learned Single Judge discussed the ibid statute starting from its preamble. Learned Single Judge then went on to discuss every relevant provision, which could have been applied and invoked by Federal Tax Ombudsman. Learned Single Judge has summed up that the very existence of the office of the Federal Tax Ombudsman to be of a complaint redressal mechanism for individual tax payers. It was not considered as an appellate authority sitting over the assessments, judgments and orders of the officers.

7. Gist of the impugned letter is as under:-

“Sub: CONSTITUTION OF INSPECTION TEAM AS MANDATED IN SECTION 17 OF FEDERAL TAX OMBUDSMAN ORDINANCE, 2000 (FTO ORDINANCE) IN 0033/OM/2021

WHEREAS, the Hon’ble Federal Tax Ombudsman while exercising powers conferred u/s 9(1) of the FTO Ordinance, has ordered to hold inspection of the office of Mr. Shakeel Kasana, Commissioner-IR, Karachi, in terms of Section 17 of the FTO Ordinance, on complaints of malpractices with corrupt motives in the discharge of duties, falling within the ambit of maladministration, as mandated in Section 2(3)(i)(d) & (ii) of the FTO Ordinance.

AND WHEREAS, the Hon'ble Federal Tax Ombudsman has ordered to constitute an inspection team u/s 17(1) of the FTO Ordinance, for investigation of the allegations. To make the investigation transparent, the Hon'ble Federal Tax Ombudsman has decided that the inspection team shall consist of 2 officers of this office and a nominee of your office of not less than BS-20/21;

NOW THEREFORE, it is required that an officer of BS-20/21, having sound integrity and competence, be nominated for the purpose by 03.05.2021, to proceed further in the matter.

THIS ISSUES WITH THE APPROVAL OF HON'BLE FEDERAL TAX OMBUDSMAN."

8. It is surprising that in the letters impugned, the complainant is not known, accusations are not known, purpose of inspection is also not known. Section 9(1)'s core emphasize is on the investigation of any allegation of maladministration on the part of revenue division or any tax employee. Purported action was contemplated under 9(1) read with Section 2(3)(i)(d) and (ii), which are reproduced as under:-

"2. Definitions.- In this Ordinance, unless there is anything repugnant in the subject or context.-

...

(3) "maladministration" includes,-

(i) a decision, process recommendation, act of omission or commission which-

(a) ...

(b) ...

(c) ...

(d) involves the exercise of powers, or the failure or refusal to do so, for corrupt or improper motives, such as bribery, jobbery, favouritism, nepotism, and administrative excesses;

(ii) neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities;

(iii) ...

9. Jurisdiction, functions and powers of the Federal Tax Ombudsman.- (1) Subject to sub-section (2), the Federal Tax Ombudsman may on a complaint by any aggrieved person, or on a reference by the President, the Senate or the National Assembly, as the case may be, or on a motion of the Supreme Court or a High Court made during the course of any proceedings before it or of his own motion, investigate any allegation of maladministration on the part of the Revenue Division or any Tax Employee."

9. While discussing the maladministration, learned Single Judge concludes that Federal Tax Ombudsman is not a corruption watchdog or maximizer of the tax revenue and rightly so as that could have enabled the Ombudsman to enter into regime of other authorities having jurisdiction in this regard. While the limits have been prescribed under the statute as far as intended action of the Federal Tax Ombudsman and the definition of maladministration is concerned, Section 9(1) of Ordinance 2000 authorizes Federal Tax Ombudsman only to investigate allegations of maladministration on his own motion as well. The attempt that has been made by learned counsel for respondents that the own motion investigation would exclude the availability or necessity of written complaint, is also unjustified in the sense that the procedural requirement of such investigation would render Federal Tax Ombudsman responsible to apprise the officers of such facts or accusations with the intended investigation to be triggered.

10. Since section 10(2) bars anonymous or pseudonymous complaints, the question raised as to when Federal Tax Ombudsman can exercise suo moto jurisdiction. Will the suo moto powers become redundant? Certainly not; as the statute has provided its frame. It is submitted that the Federal Tax Ombudsman would still retain such powers and an example of the Federal Tax Ombudsman acting without a complaint, but on the basis of an allegation, would be on basis of newspaper reports which contain certain allegations against officers of the FBR as happened in the flying invoices case. Another example would be journalist reports, investigative reports, observations, references or reports made by any other department or authority. Therefore, while it is clear that the presence of a complaint is not mandatory, there must be something in the form of allegation and to avoid the bar under Section 10(2), the

allegation cannot be made anonymously/pseudonymously and be brought to notice in black and white.

11. Besides, Section 9(1) where it relates to his own motion is also dependent on the allegations of maladministration. When it is read with Section 10 of *ibid* Ordinance 2000 it leaves no room that with the disclosure of allegations or accusations, such actions contemplated under section 9 and 10 could be mandated. Section 10(4) is discussed in detail in the referred judgment; no need for any further discussion in the case in hand as we are in agreement with the reasoning of learned Single Judge as well as learned Division Bench of Islamabad High Court in the above referred cases.

12. Conclusion drawn is that section 10(2) of Ordinance 2000 provides that Federal Tax Ombudsman shall not entertain anonymous or pseudonymous complaints whereas Section 10(4) provides where a Federal Tax Ombudsman proposes to conduct an investigation, notwithstanding it be a written complaint, he shall issue to the Secretary of the Revenue Division and to the person who is alleged in the complaint to have taken or authorized action complained of, a notice calling upon him to reply to the “allegations”. He could have only proceeded if no response to the notice is received. This investigation however is premised on the fact that the maladministration, as defined in Ordinance 2000, spells out. Section 9(2) excludes from the ambit of Federal Tax Ombudsman such inquiries and investigation which would be subject matter of the Federal Board of Revenue’s regime.

13. The Federal Tax Ombudsman cannot conduct inspection as a fishing and roving inquiry against the petitioners¹. In the instant case Federal Tax Ombudsman in the impugned letter stated that there was a complaint, however, when the petitioners approached the Court the

¹ 2005 PTD 23 Karachi, 2012 SCMR 455 and PLD 1992 SC 485.

Federal Tax Ombudsman has changed the stance and stated that it was “on its own motion”. Further it was stated in the comments that no opinion against the petitioners has been formed thus far. All of this makes it clear that there is nothing against the petitioners and the inspections are being conducted as fishing and roving inquiry which is not permissible.

14. The office of the Federal Tax Ombudsman is not meant to oversee if such orders, assessments, decisions etc. are lawful or unlawful. Such aspect of the matter has been dealt with by learned Single Judge in paragraph 14 of the *ibid* judgment and no further deliberation as such is required. Therefore, if at all any lawful procedure, as required in terms of Section 10 and discussed by learned Single Judge, is to be triggered, it is to be seen first whether it was within the frame of powers described in the subject Ordinance.

15. Petitioners have neither been served any notice intimating them with regard to the complaints against which the investigations were to be conducted nor have been given fair opportunity to respond to the accusations of alleged maladministration and corrupt practices. Furthermore, the Federal Tax Ombudsman is authorized to summon record under section 10(9) of Ordinance 2000 and no reasons have been provided as to why the powers conferred therein have not been exercised and resort has been made directly to inspection of the petitioners offices. Indeed there must be some refusal by the petitioners to comply with Section 10(9) of the *ibid* ordinance before measures such as inspections are resorted to and/or a case has to be made out to jump/short-circuit the mechanics.

16. It has been argued by the respondents that Federal Tax Ombudsman can issue a notice at any stage of their proceedings. This submission is misconceived as the Federal Tax Ombudsman Investigation

and Disposal of Complaints Regulations 2001 provide for a step by step mechanism for conducting proceedings. Regulation 10 sets out the procedure regarding examination of complaints whereas Regulation 11 provides that the Ombudsman shall require a reply from the revenue division/department. Regulation 13 states that the revenue division replies to the grievance of the complainant already redressed or relief that may have been provided to him on receipt of the complaint from the Ombudsman office and in addition a rejoinder may be given under Regulation 14 where the department intends to contest. After the above steps, further investigation may be made under Regulation 15 which provides for inspection under sub-clause (d). It is evident and admitted that the procedure has not been followed in the instant cases.

17. With the above understanding of facts and law, all petitions are accordingly allowed and the impugned letters are set aside.

18. Above are the reasons of our short order dated 21.03.2023.

Dated: 28.03.2023

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