

Form No: HCJD/C-121

ORDER SHEET
IN THE LAHORE HIGH COURT
LAHORE.
JUDICIAL DEPARTMENT

W.P.No.57829/2024

M/S Z A Corporation
Vs.
Federation of Pakistan etc

S. No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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	01.10.2024.	Mr. Shafqat Mehmood Chohan, Advocate for the petitioner. Barrister Syed Sajjad Haider Rizvi, Assistant Attorney General for Pakistan.
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Through this constitutional petition, the petitioner has challenged the appointment of respondent No.3 as Member of National Tariff Commission (NTC), Islamabad vide notification dated 30.8.2023 and his appointment as Chairman of NTC, Islamabad for period of five years or till attaining the age of 65 years whichever is earlier vide separate notification dated 30.8.2023. The petitioner has also challenged the order dated 04.5.2024 passed under section 63 of the Anti Dumping Duties Act, 2015 (Act).

2. Learned Law Officer at the very outset raised preliminary objection to the maintainability of this petition before this Court on the touchstone of territorial jurisdiction. He submits that respondent No.3 being appointed by the Federal Government and posted as Chairman NTC at Islamabad, this constitutional petition is not maintainable at Lahore due to lack of territorial jurisdiction and petitioner may approach Islamabad High Court, Islamabad. He further submits that the impugned order dated 04.5.2024 being passed by the Commission at Islamabad may also be assailed before Islamabad High Court in view of the order dated 28.6.2024 in Writ Petition No.3965/2023 titled “*M/S Madni Paper Mart, through its Proprietor Irshad Ahmad and another vs. Federation of Pakistan etc*”. He also placed reliance on *Sandalbar Enterprises (Pvt.) Ltd vs. Central Board of Revenue and others* (PLD 1997 Supreme Court 334).

3. Learned counsel for the petitioner in response to the preliminary objection submits that respondent No.3 is Chairman of NTC, which has jurisdiction all over Pakistan, therefore, this constitutional petition

by way of quo warranto can be filed against him in any of the High Court of Pakistan including before this Court at Lahore. He placed reliance on judgment of this Court dated 24.10.2016 titled “*Shahid Mehmood Khan vs. Federation of Pakistan*” passed in Writ Petition No.18698/2016 and judgment dated 28.11.2017 titled “*Musa Raza vs. Federation of Pakistan etc*” passed in Writ Petition No.1091-P of 2017 by Peshawar High Court, Peshawar. He however submits that petitioner do not press this petition to the extent of impugned order dated 04.5.2024 passed under section 63 of the Act in these proceedings.

4. Arguments heard. Record perused. Before touching merits of the case, lest it may prejudice case of either party, I would like to decide the threshold question of territorial jurisdiction of this Court. In this writ petition, relevant facts which are discernible from the available record are that the petitioner has mainly challenged the two separate notifications dated 30.8.2023 (impugned notifications), whereby respondent No.3 was appointed as Member and then Chairman NTC,

Islamabad. Though the petitioner has also challenged the order dated 04.5.2024 issued under section 63 of the Act, however, learned counsel for the petitioner does not press this petition to the extent of aforesaid order dated 04.5.2024 (which is otherwise passed by National Tariff Commission under section 63(4) of the Act and not by respondent No.3 in his individual capacity). In the light of aforesaid facts, the moot question require determination is that whether this Court at Lahore has territorial jurisdiction to proceed with this constitutional petition filed by way of quo warranto or jurisdiction lies with the Islamabad High Court.

5. The writ of quo warranto is filed under Article 199(1)(b)(ii) of the Constitution of Islamic Republic of Pakistan, 1973 (**Constitution**). To facilitate an easy analysis, aforesaid article is reproduced hereunder:-

199.(1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,-

(b) on the application of any person, make an order--

(ii) requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or

The language of aforesaid article is explicit, according to which, the High Court may if it is satisfied that there is no other adequate remedy provided by law on the application of any person, make an order requiring the person within the territorial jurisdiction of the Court holding or purporting to hold public office to show under what authority of law, he claims to hold that office. The words “*within the territorial jurisdiction of the Court holding or purporting to hold public office*” would lead to the ineluctable conclusion that for the purpose of writ of quo warranto, a person against whom, constitutional petition has been filed, must be holding or purporting to hold public office within a territorial jurisdiction of that Court. In the present case, admittedly respondent No.3 is holding the post of Member and Chairman NTC at Islamabad and not holding or purporting to hold a public office within the territorial jurisdiction of this Court in Province of Punjab.

6. The same view was also expressed by Division Bench of Balochistan High Court in Mirza Lugman Masud vs. Government of Pakistan etc (2015 PLC (C.S.) 526), while interpreting Article 199(1)(b)(ii) of the Constitution. Relevant parts of the judgment are reproduced hereunder:-

"We have heard the learned counsel at length and have gone through the petition. Before attending the contentions raised by the learned counsel, it would be advantageous to reproduce the relevant provision of the Constitution. Article 199 of the Constitution provides the jurisdiction of the High Court and its sub-clauses (1)(b) (ii) is related to the writ quo warranto, which stipulates as under:---

"requiring a person within the territorial jurisdiction of the court holding or purporting to hold a public office to show under what authority of law he claims to hold that office:"

The jurisdiction of this court has been invoked for relief of quo warranto against the respondents Nos.6 to 15, but the above referred provision of the Constitution clearly mentions "within the territorial jurisdiction of the court". The High Court under Article 199 of the Constitution enjoys ample powers, but it is mandatory upon the High Court to confine itself to its jurisdiction as provided in the Constitution. The High Court is competent to direct any person performing functions in connection with the affairs of the Federation, Province or a Local authority to refrain from doing anything, which he is not permitted by law or to do anything by law he is required to do, as well as, in terms of writ of quo-warranto, to call upon anyone that under what authority of law he/she holds or purported to hold the public office, but within its territorial jurisdiction only and not otherwise.

It is suffice to mention here that the respondents were appointed by the NAB headquarters in Islamabad, and have never served within the territorial jurisdiction of this court. They therefore cannot be called upon by this Court in terms of writ of quo-warranto to explain under what authority of law they are holding the offices as it will

amount to transgression of the constitutional authority of this High Court.

Moreover, the petitioner has also failed to satisfy us that we can exercise jurisdiction against the respondents, who were neither appointed nor carrying out their duties within the territorial jurisdictions of this Court. It may be clarified that the respondents are not holding any post created by the Constitution of Pakistan and performing functions within the territory of the Province or which includes the Province in respect whereby the High Court could exercise jurisdiction.

Thus, the petition is dismissed in limine being not maintainable”.

7. The Supreme Court in case of *Sandalbar supra* on the question of territorial jurisdiction held that Court is to see what is the dominant object of filing of writ petition. Relevant part of the judgment is reproduced hereunder:-

“A perusal of the above sub-clause (a)(i) of the above Article indicates that a High Court has power to issue a direction to a person performing within its territorial jurisdiction functions in connection with the affairs of the Federation, a Province or a local authority to refrain from doing anything he is not permitted by law to do or to do anything he is required by law to do. Similarly, under sub-clause (a)(ii) a declaration without law authority or of no legal effect can be given by a High Court in respect of any act done or proceeding taken within its territorial jurisdiction by a person performing functions in connection with the affairs of the Federation, a Province or a local authority.

The petitioners’ prayer was for a direction to the Customs Authority at Karachi not to levy the regulatory duty. The above relief could have been granted by the High

Court of Sindh within whose jurisdiction the person performing the affairs of the Federation is discharging his functions.

We may observe that it has become a common practice to file a writ petition either at Peshawar, or Lahore, or Rawalpindi or Multan etc, to challenge the order of assessment passed at Karachi by adding a ground for impugning the notification under which a particular levy is imposed. This practice is to be depreciated. The court is to see, what is the dominant object of filing of the writ petition. In the present case, the dominant object was not to pay the regulatory duty assessed by a Customs official at Karachi. We are, therefore, not inclined to grant leave. Leave is refused”.

In present case, the dominant object is to challenge the impugned notifications whereby the respondent No.3 has been appointed by Federal Government as Member and Chairman NTC, Islamabad. Neither impugned notifications were issued by Punjab Government nor respondent No.3 is holding a public office in the Province of Punjab. Therefore, the dominant object of this writ petition being at Islamabad and not Lahore, this constitutional petition is not maintainable before this Court on this score as well.

8. Even otherwise, the term “performing functions within the territorial jurisdiction of the Court” used in Article 199(1)(a)(i),(ii) and (c) of the

Constitution, is much wider term than words “holding or purporting to hold public office within territorial jurisdiction” used in Article 199(1)(b)(ii) of the Constitution. A person may perform functions within the territorial jurisdiction of the Court, even if, he is not holding public office within the territorial jurisdiction of said Court, hence constitutional petition may be maintainable in said Court considering the dominant object for filing of writ petition, however, in case of writ of quo-warranto under Article 199(1)(b)(ii) of the Constitution, a person must hold or purported to hold public office within territorial jurisdiction of Court, where constitutional petition has been filed.

9. The case law relied upon by learned counsel for the petitioner is distinguishable. The case of *Shahid Mahmood Khan supra* was not a writ of quo-warranto rather in said case the petitioner for his personal grievance has challenged his termination order against the post of Chairman NTC at Lahore, however, his writ petition was dismissed on merits. In the case of *Musa Raza supra*, though appointment of Chairman NTC was under

challenged, however, in said case, the question of territorial jurisdiction was neither raised nor discussed or adjudicated. On the other hand, the case of *M/S Madni Paper Mart supra* relied upon by learned Law Officer is relevant and also support the preliminary objection on the question of territorial jurisdiction.

10. In view of above discussion, this Court is of the considered view that territorial jurisdiction with regard to the instant matter lies with the Islamabad High Court, Islamabad and this Court lacks territorial jurisdiction under Article 199(1)(b)(ii) of the Constitution, thus not maintainable. Consequently, office is directed to return the petition to the petitioner in terms of Order VII Rule 10 of the Code of Civil Procedure, 1908 (**CPC**) so as to present before the Court concerned (Islamabad High Court, Islamabad), if so advised.

(ABID AZIZ SHEIKH)
JUDGE.

Approved for Reporting.

JUDGE.