

ORDER SHEET
LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No.3965 of 2023

M/S Madni Paper Mart, through its Proprietor Irshad Ahmad and another

Versus

Federation of Pakistan Through Secretary Commerce and 2 others

S.No. of order/ Proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel, where necessary
	28.06.2024	M/s Shafqat Mehmood Chohan and Adnan Ahmed Paracha, Advocates for the petitioners. Mr. Tahir Raheel Awan, Assistant Attorney General Pakistan. Mr. Waqas Amir, Advocate for respondent No.2. M/s Saif Ullah Khan and Rais Mehmood Ali, Advocates for respondent No.3.

This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 calls in question the order dated 1st November, 2023 passed by the National Tariff Commission, Government of Pakistan (hereinafter referred to as “Commission”) whereby the “Commission” decided to initiate sunset review under Section 58 of the Anti-Dumping Duties Act, 2015 (hereinafter referred to as “Act, 2015”) in order to determine the likelihood of continuation or recurrence of dumping of the product under review by the exporters/producers of the exporting countries and likely continuation or recurrence of material injury to the domestic industry.

2. Facts forming background of instant petition are that an application was moved by respondent No.3 (hereinafter referred to as “respondent”) being the domestic industry, before the “Commission”, who started an investigation for imposition of the Anti-Dumping duty in terms of Section 23 of the “Act, 2015”. In furtherance whereof “Commission” issued final determination dated 30th March, 2018 imposing

definitive Anti-Dumping duties on dumped imports of certain uncoated writing/printing paper into Pakistan originated from Brazil, China, Indonesia, Japan and Thailand. Being aggrieved from the final determination various exporters as well as importers preferred their respective appeals before the Anti-Dumping Appellate Tribunal Pakistan (hereinafter referred to as "Tribunal") which were disposed of by way of judgment dated 6th August, 2020. After passing of the judgment by the "Tribunal" some of the importers preferred their appeals before the Islamabad High Court, Islamabad which are pending. The grievance of the petitioners is that sunset review for Indonesia can only be initiated in terms of Section 58 of the "Act, 2015" within five years from the expiry of the duty, whereas in the present case as the duty was set aside by the "Tribunal" *vide* judgment dated 6th August, 2020, so the matter has become past and closed transaction. In response to this petition, the respondents submitted their report and parawise comments.

3. I have heard learned counsel for the parties at considerable length and perused the record.

4. It is a well-entrenched and settled principle of law that before delving into matter in issue, a Court/Tribunal has to make sure that it has jurisdiction to ponder upon such issue. The question of territorial jurisdiction has though been raised by learned counsel representing respondent No.2 but halfheartedly. It is an oft repeated principle of law that jurisdiction cannot be vested to the court with the consent of the parties or at their whims unless it is so equipped under the law. Reference to this effect can be made to IZHAR ALAM RAROOQI, ADVOCATE versus Sheikh ABDUL SATTAR LASI and others (2008 SCMR 240). The relevant extract from the same is reproduced below :-

"6. It is true that a Court which has the jurisdiction to adjudicate the dispute and pass an order has also implicit power to have the order implemented and mere an erroneous order

passed by the Court of competent jurisdiction does not render the order without jurisdiction. This is an established law that jurisdiction cannot be assumed with the consent of the parties and notwithstanding the raising of such an objection by the parties, the forum taking cognizance of the matter must at the first instance decide the question of its jurisdiction. There can be no exception to the principle that an order passed or an act done by a Court or a tribunal not competent to entertain the proceedings is without jurisdiction and that it is mandatory for the Court or tribunal as the case may be to attend the question of jurisdiction at the commencement of the proceedings because the jurisdictional defect is not removed by mere conclusion of trial or inquiry and objection to the jurisdiction can be raised at any subsequent stage. This Court in *Rashid Ahmed v. State* PLD 1972 SC 271 held as under:--

"If a mandatory condition for the exercise of a jurisdiction before a Court, tribunal or authority is not fulfilled, then the entire proceedings which follow become illegal and suffer from want of jurisdiction. Any orders passed in continuation of these proceedings in appeal or revision equally suffer from illegality and are without jurisdiction."

Guidance to the above effect can also be sought from Syed MUHAMMAD HUSSAIN SHAH versus ABDUL QAYYUM and others (2011 SCMR 743), MUNAWAR HUSSAIN and 2 others versus SULTAN AHMAD (2005 SCMR 1388) and Pir SABIR SHAH versus SHAD MUHAMMAD KHAN, MEMBER PROVINCIAL ASSEMBLY, N.-W.F.P. and another (PLD 1995 Supreme Court 66).

5. The petitioners are aggrieved of order of the "Commission", whereby it has decided to initiate sunset review under Section 58 of the "Act, 2015" in order to determine the likelihood of continuation or recurrence of dumping of the product under review by the exporters/producers of the exporting countries and likely continuation or recurrence of material injury to the domestic industry.

6. In order to properly appreciate the question of territorial jurisdiction it would be advantageous to observe that in order to give effect in Pakistan to the provisions of Article VI of the General Agreement on Tariffs and Trade, 1994, and to the Agreement on Implementation thereof and to amend and consolidate the law relating to imposition of anti-dumping duties to offset such dumping, to provide a framework for investigation and determination of dumping and injury in respect of goods imported into Pakistan and for

matters ancillary thereto or connected therewith, “Act, 2015” was promulgated. Part VII of the “Act, 2015” deals with initiation and conduct of investigations whereunder “Commission” is empowered to conduct investigation upon a written application by or on behalf of domestic industry. Part IX of the “Act, 2015” deals with investigation procedures, preliminary and final determinations. Any person aggrieved or interested from the initiation of investigation or preliminary determination or even final determination can prefer an appeal before the “Tribunal” constituted by the Federal Government in terms of Section 64 of the “Act, 2015”.

7. The respondent No.3 being the domestic industry moved an application upon which investigation was started by the “Commission” on 15th January, 2016. In furtherance of which preliminary determination was made on 21st April, 2017 which later on matured into final determination on 30th March, 2018. Feeling offended from the final determination a large number of exporters preferred their appeals before the “Tribunal” alongwith two importers i.e. M/s April International Enterprise, Private Limited and M/s PT. Indah Kiat Pulp and Paper TBK, which are directly related to the petitioners being their importers. Through judgment dated 06th August, 2020 the “Tribunal” proceeded to dismiss all other appeals whereas Appeals No.275 & 276 of 2018 were remanded to the “Commission” for fresh decision strictly in accordance with law after providing an appropriate opportunity of hearing to the appellants therein. Due to one reason or the other “Commission” could not conduct the proceedings and instead after passing considerable period issued the impugned notification for sunset review. It is thus evident without any hint of doubt that the impugned notice is an offshoot of the proceedings which not only came up in appeal before the “Tribunal” but the Islamabad High Court, Islamabad. In such a case exercise of constitutional

jurisdiction by this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 would amount to launch parallel proceedings, which would certainly result into overlapping and conflicting of judgments. Moreover not only the “Commission” but the “Tribunal” are established at Islamabad. Even otherwise as an outcome of sunset review the matter would again became the subject of appeal before the “Tribunal”. In a previous round a Full Bench of this Court in M/s Ashfaq Brothers and another versus Anti-Dumping Appellate Tribunal of Pakistan and others (2023 LHC 484 LHC website), while dealing with almost similar issue held as under :-

“8. Section 70 deals with appellate procedures and it is the most pivotal provision for the resolution of the question raised before us. The decision of the “Appellate Tribunal” is appealable under sub-section (13) of Section 70 of the “Act”, which reads as under:-

“70.-----

- (1) -----
- (2) -----
- (3) -----
- (4) -----
- (5) -----
- (6) -----
- (7) -----
- (8) -----
- (9) -----
- (10) -----
- (11) -----
- (12) -----

*(13) The decision of the Appellate Tribunal shall be appealable in the **High Court**. The High Court shall render a decision within ninety days of receiving an appeal from the decision of the Appellate Tribunal:*

Provided that the High Court shall not make an interim order against the conduct of investigation by the Commission unless the Commission has been given notice of the application and has had an opportunity of being heard and the High Court for reasons to be recorded in writing, is satisfied that the interim order would not have the effect of prejudicing or interfering with the carrying out of a public work or of otherwise being harmful to the public interest [or State property] or of impeding the assessment or collection of public revenues:

Provided further that The Appellate Tribunal may, if it thinks fit accept an application from any party to an appeal in which the Appellate Tribunal has rendered its decision, for a clarification of any of the issues raised by the Appellate Tribunal in its decision:

Provided also that such application shall specify the precise issue in respect of which a clarification is sought and given reasons as to why a clarification is necessary".

(underlining supplied for emphasis)

;

;

;

It is, thus, evident from the above that an appeal against the decision of the "Appellate Tribunal" lies before the High Court.

9. The term "High Court" is nowhere defined in the "Act". This prompted the parties to raise the moot point. Part VII of the Constitution of the Islamic Republic of Pakistan, 1973 deals with the judicature and Chapter 1 defines the Courts. In terms of Article 175(1), there shall be a Supreme Court of Pakistan, a High Court for each Province and a High Court for Islamabad Capital Territory and such other courts as may be established by law. Chapter 3 deals with the High Courts and Article 192 provides the composition and jurisdiction of a High Court. For ready reference and convenience, same is reproduced below:-

- "(1) A High Court shall consist of a Chief Justice and so many other Judges as may be determined by law or, until so determined, as may be fixed by the President.*
- [2] (2) The Sind and Baluchistan High Court shall cease to function as a common High Court for the Provinces of Baluchistan and Sind.*
- (3) The President shall, by Order, establish a High Court for each of the Provinces of Baluchistan and Sind and may make such provision in the Order for the principal seats of the two High Courts, transfer of the Judges of the common High Court, transfer of cases pending in the common High Court immediately before the establishment of two High Courts and, generally, for matters consequential or ancillary to the common High Court ceasing to function and the establishment of the two High Courts as he may deem fit.*
- (4) The jurisdiction of a High Court may, by Act of 2[Majlis-e-Shoora (Parliament)], be extended to any area in Pakistan not forming part of a Province".*

10. It would not be out of context to mention here that initially, Islamabad High Court was not in existence and it was ultimately established through Act No.XVII of 2010, dated 2nd August, 2010. By virtue of Section 4 of the said Act, jurisdiction of Islamabad High Court was extended in respect of the Islamabad Capital Territory, original, appellate, revisional and other jurisdiction, as under the constitution or the laws in force immediately before the commencement of the Act ibid, which was previously exercisable in respect of the said territory by the Lahore High Court.

11. Article 198 deals with seat of the High Court and reads as under:-

[1] (l) Each High Court in existence immediately before the commencing day shall continue to have its principal seat at the place where it had such seat before that day.

2[(1A)The High Court for Islamabad Capital Territory shall have its principal seat at Islamabad.]

(2) Each High Court and the Judges and divisional courts thereof shall sit at its principal seat and the seats of its Benches and may hold, at any place within its territorial

jurisdiction, circuit courts consisting of such of the Judges as may be nominated by the Chief Justice.

- (3) *The Lahore High Court shall have a Bench each at Bahawalpur, Multan and Rawalpindi; the High Court of Sindh shall have a Bench at Sukkur; the Peshawar High Court shall have a Bench each at Abbottabad [, Mingora] and Dera Ismail Khan and the High Court of Baluchistan shall have a Bench at Sibi [and Turbat.]*
- (4) *Each of the High Courts may have Benches at such other places as the Governor may determine on the advice of the Cabinet and in consultation with the Chief Justice of the High Court.*
- (5) *A Bench referred in clause (3), or established under clause (4), shall consist of such of the Judges of the High Court as may be nominated by the Chief Justice from time to time for a period of not less than one year.*
- (6) *The Governor in consultation with the Chief Justice of the High Court shall make rules to provide the following matters, that is to say,—*
 - (a) *assigning the area in relation to which each Bench shall exercise jurisdiction vested in the High Court; and*
 - (b) *for all incidental, supplemental or consequential matters.]*

12. There is no cavil to the proposition that the “Appellate Tribunal” is performing functions in connection with the affairs of the Federation and it is amenable to writ jurisdiction, but we have to examine as to whether in the circumstances, this Court can exercise the jurisdiction constitutional or appellate against the decision of the “Appellate Tribunal”. It is an admitted fact that initially investigation was started by the “Commission” at Islamabad, which resulted into passing of order in original. The said order was assailed through an appeal before the “Appellate Tribunal” under Section 70(1)(2) of the “Act”, who decided the same through impugned order.

13. We have noticed that the cause of action also arose either at Islamabad or Karachi and even the appellants before us while preferring their appeals before the “Appellate Tribunal” mentioned their addresses of places other than Rawalpindi. Apparently, the appellants have now changed addresses for their convenience or for any other reason best known to them.

14. It is trite law that the Court cannot assume jurisdiction on the whims of the parties or to facilitate any of them. We cannot ignore the doctrine of *forum non conveniens*. It is founded on the principle that if some other forum is more appropriate and the interest of justice would be served better, the Court may decline to exercise jurisdiction on the ground that a case could be suitably tried by another Court. The above doctrine has come under discussion before this Court in HASSAN SHAHJEHAN vs. FPSC through Chairman and others (PLD 2017 Lahore 665) and while outlining the scope and object of the same, it was held as under:-

*“19. Another dimension of the case is the principle of *forum non conveniens* which is a discretionary power that allows courts to dismiss a case where another court, or forum, is much better suited to hear the case. This dismissal does not prevent a plaintiff from refiling his or her case in the more appropriate forum: The doctrine allows a court with jurisdiction over a case to dismiss it because the convenience of the parties and the interest of justice would be better served if the case were brought in a court having proper jurisdiction in another venue. "The doctrine of*

forum non conveniens, i.e., that some other forum is more "appropriate" in the sense of more suitable for the ends of justice, was developed by the Scottish courts in the nineteenth century, and was adopted (with some modifications) in the United States. The Scots rule is that the court may decline to exercise jurisdiction, after giving consideration to the interests of the parties and the requirements of justice, on the ground that the case cannot be suitably tried in the Scottish court nor full justice be done there, but only in another court. The basic principle is that.... the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, i.e. in which the case may be tried more suitably for the interests of all the parties and the ends of justice. Applying this principle to the facts of the present case, the matter in hand, can best be resolved at the Supreme Court of Pakistan.

Guidance to the above effect can also be sought from SANDALBAR ENTERPRISES (PVT.) LTD. vs. CENTRAL BOARD OF REVENUE and others (PLD 1997 Supreme Court 334) and Let.-Gen.(R) SALAHUDDIN TIRMIZI vs. ELECTION COMMISSION OF PAKISTAN (PLD 2008 Supreme Court 735).

15. In somewhat similar circumstances, in the case of Messrs KARACHI IRON AND STEEL MERCANTS ASSOCIATION through Authorised Representative and 30 others vs. ANTI-DUMPING APPELLATE TRIBUNAL and 22 others (2021 PTD 1150), the learned Sindh High Court observed as under:-

"6. It is an undeniable position that the appellant(s) did contest the matter before the Tribunal, constituted at Islamabad over which this Court has got no administrative control therefore, mere plea of 'convenience' is never sufficient for choosing the Court(s) rather it is always the commandment of the law and law alone which describes the 'jurisdiction'. Failure of the Federation in establishing Tribunal(s) at other provinces is also no ground to press right of convenience. Further, the matter appears to be between the parties alone hence the same, legally, can't be taken as having applicability thereof on people at large. It is conducive to refer the case of Rashid Latif v. Federation of Pakistan through Secretary Ministry of Inter Provincial Coordination (PLD 2014 Karachi 135 (authored by me in a DB matter) wherein the issue of jurisdiction is discussed in detail while discussing all the citations. The conclusion was that in case an action of Federation, if affecting community or public at large then same may be challenged before High Court of other province, too but if the same is personam relating to any party then the jurisdiction would lie with the High Court of the area where order is passed.

7. Here the situation is different as the Tribunal is constituted at Islamabad. Admittedly the appeals preferred by the appellants at Islamabad Tribunal and all parties contested their case at Rawalpindi Bench in FAO, against the said order four appeals are filed at Islamabad High Court, hence I agree with the same referred observation and hold the present appeal(s) to be incompetent. Accordingly, captioned appeals are dismissed on the point of jurisdiction".

16. So far judgment in the case of TRADING CORPORATION OF PAKISTAN (*supra*) heavily relied upon

by the learned counsel for the appellants is concerned, it is observed that in the said case, facts were entirely different. Moreover, said judgment was rendered by the Hon'ble Apex Court with reference to Article 199 of the "Constitution".

17. Though learned counsel has also relied upon MUHAMMAD FAYYAZ vs. FEDERATION OF PAKISTAN and others (2022 PTD 399), but we have no hesitation to observe that a question of territorial jurisdiction was though raised before the learned Single Judge, but it was not at all consciously attended or responded by the Court.

18. The crux of above discussion is that word "High Court" used in sub-section (13) of Section 70 of the "Act" corresponds to Islamabad High Court and, as such, this Court lacks territorial jurisdiction to ponder upon the decision of the "Appellate Tribunal"."

8. To betterly understand the core issue one can also seek guidance from HASSAN SHAHJEHAN versus FPSC through Chairman and others (PLD 2017 Lahore 665) wherein it is held as under :-

"12. What does "Within the territorial jurisdiction of this Court" mean? Relying on our constitutional jurisprudence developed over the years and the provincial constitutional architecture of a High Court, writ cannot be issued by High Court against any person which is located geographically outside the territorial limits of the Province, having no physical or legal presence within the Province. See: Sandalbar Enterprises (Pvt.) Ltd. v. Central Board of Revenue and others (PLD 1997 SC 334), Flying Kraft Paper Mills (Pvt.) Ltd., Charsadda v. Central Board of Revenue, Islamabad and 2 others (1997 SCMR 1874), Asghar Hussain v. The Election Commission Pakistan (PLD 1968 SC 387), Messrs Al-Iblagh Limited, Lahore v. The Copyright Board, Karachi and others (1985 SCMR 758) and Messrs Sethi and Sethi Sons through Humayun Khan v. Federation of Pakistan through Secretary, Ministry of Finance, Islamabad and others (2012 PTD 1869).

13. It is trite law that if the order or action of the Government or Authority (federal or provincial), present within the Province, affect the rights of a person within the Province, writ can be issued against the said Government or Authority (irrespective of its federal character) and relief given to the aggrieved person located within the Province.

14. The impugned Press Note dated 13.04.2016 does this and more, as it provides for quota for all the Provinces. Granting the prayer of the petitioner and striking down the Press Note would grant relief to the people of Punjab but simultaneously upset quotas belonging to the people of other Provinces and Areas. This would amount to issuing a writ beyond the territorial limits of the Court. A Provincial High Court can only grant relief to people of the Province and cannot meddle into the affairs of the other Provinces or affect the rights and privileges of the people of the other Provinces or Areas. 50% quota allocated to the Province of Punjab under the impugned Press Note is not inseparable from the quotas allocated to the other Provinces, hence striking down the Press Note will deprive the quota allocated to all the other Provinces and Areas. Any such writ issued by this Court would also amount to transgressing the territorial limits of the Province. So

while technically, for the sake of argument, writ can be issued and relief can be granted to the people of Punjab by abolishing their quota, it would also, at the same time, have the effect of abolishing the quota of other Provinces and Areas. This unique situation begs the question; whether issuance of a writ as prayed for in this case, is constitutionally *impermissible or inappropriate?*

15. In order to answer the above question, let's revisit the federalist structure of our Constitution. "The commonly accepted features of a federal constitution are: (i) existence of two levels of government; a general government for the whole country and two or more regional governments for different regions within that country; (ii) distribution of competence or power - legislature, executive, judicial, and financial — between the general and the regional governments; (iii) supremacy of the constitution — that is, the foregoing arrangements are not only incorporated in the constitution but they are also beyond the reach of either governments to the extent that neither of them can unilaterally change nor breach them; (iv) dispute resolution mechanism for determining the competence of the two governments for exercising any power or for performing any function. Federalism is in fact the basis of the division of powers...The principle of Federalism is a central organizational theme of the constitution and represents a political and legal response to underlying social and political realities... A federal system of government allows different provinces to pursue specific policies tailored to the particular concerns and interests of residents in that province. The Principle of Federalism also enables provinces to enact specific statutes to pursue specific collective goals, and may promote different cultures and linguistic minorities within a specific province or areas. At the same time federalism allows citizens to construct and achieve goals on a national scale through a Federal Government acting within the limits of its jurisdiction. Consequently, federalism is key to enable citizens to participate in different collectivities and to pursue objectives at local, provincial and national levels.

16. *Federalism or Federal Principle* under our Constitution envisages independent federating units with autonomous legislature, executive and judiciary. Chapter 1 of Part V of the Constitution provides for distribution of legislative power between the Federation and the Provinces. Chapter 2 of the same Part deals with distribution of executive power between the Federation and the Provinces. Chapters 1 to 3 of Part-VII deal with Judicature and the vertical sharing of jurisdiction between the Supreme Court of Pakistan and the High Courts, as well as, the horizontal jurisdictional limits between the High Courts. The Constitution provides a separate High Court for each Province and a Supreme Court of Pakistan with an overarching jurisdiction with an overlapping power with the High Court under Article 184(3) of the Constitution. The provincial jurisdictional limits, delineating judicial power between co-ordinate High Courts on the basis of territory and the vertical overlap of judicial power under Article 184(3) between the High Court and the Supreme Court of Pakistan is *judicial federalism*. Every Provincial High Court and the High Court of the Islamabad Capital Territory has its own jurisdictional space. Any order passed by a High Court is, therefore, effective in the Province and has merely a non-binding persuasive value in other Provinces. Province is a federating unit and has its own legislature, executive and

judiciary. Similarly, within the Province, the provincial High Court also functions on the same *Federal Principle* and exercises judicial power within the limited provincial jurisdictional space or within the Islamabad Capital Territory.”

9. In recent past in the case of TAUFIQ ASIF and others versus General (Retd.) PERVEZ MUSHARRAF and others (PLD 2024 Supreme Court 610) Supreme Court of Pakistan held as under:-

“14. In the present case, the main grievance agitated and the ultimate relief sought by the respondent in his writ petition were about the acts done and the proceedings taken by the Special Court at Islamabad. Over such acts and proceedings, only the Islamabad High Court enjoyed territorial jurisdiction, and only the Islamabad High Court could judicially review the legality thereof under Article 199(1)(a)(ii) of the Constitution. The Lahore High Court had no such jurisdiction; it wrongly assumed and exercised the jurisdiction that was not vested in it by the Constitution with regard to the acts done and proceedings taken outside its territorial jurisdiction.”

After having an overview of the principles laid down in the above quoted precedents, I am of the considered view that territorial jurisdiction with regard to the matter in issue lies with the Islamabad High Court, Islamabad and this Court is precluded to exercise its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Resultantly office is directed to **return** this petition to the petitioners in terms of Order VII Rule 10 of the Code of Civil Procedure (V of 1908), so as to be presented before the Court concerned (Islamabad High Court, Islamabad).

**(MIRZA VIQAS RAUF)
JUDGE**

Dictated
02.07.2024

Signed

Announced in open Court on **05.07.2024.**

JUDGE

APPROVED FOR REPORTING

JUDGE

*Shahbaz Ali**