

ORDER

AAMER FAROOQ, J.---This is an application on behalf of Pakistan Telecommunication Authority ("PTA") seeking recovery of costs.

2. Learned counsel for the applicant/PTA, inter alia, contended that while deciding Writ Petition No.1400/11, the Court had imposed costs on the petitioner, hence the same be awarded. In this behalf, it was contended that professional fee for the counsel, engaged by the PTA, is Rs.150,000/- and miscellaneous cost incurred during the proceedings is Rs.69,078/-. It was contended that this Court has jurisdiction to impose costs while deciding a petition under Article 199 of the Constitution and even special cost can be imposed. Reliance was placed on Muhammad Zia v. Ch. Nazir Muhammad, Advocate and 4 others (2002 CLC 59), Kawas B. AGA and another v. City District Government, Karachi (CDGK) through Nazim-e-Ala and others (PLD 2010 Karachi 182), Major (Retd.) Ahmed Nadeem Sadal and 3 others v. Federation of Pakistan through Secretary Sports, Islamabad and 3 others (2015 CLC 34) and Urooj Tabani v. Federation of Pakistan through Secretary Ministry of Interior, Islamabad and 2 others (PLD 2021 Islamabad 105). It was added that in similar facts and circumstances, this Court had passed order dated 10.10.2018, in C.M. No.352/ 2012, in Writ Petition No.399/2010.

3. Learned counsel for the petitioner, in writ petition, inter alia, contended that no cost can be recovered by PTA inasmuch as no certificate from the counsel representing PTA was filed during the proceedings as required under Rule 16 of Rules and Orders of the Lahore High Court, Lahore (Volume- V), which is being followed by this Court as well. The learned counsel also placed reliance on cases reported as National Bank of Pakistan v. Messrs Asghar Enterprises and 2 others (2002 CLD 1097), Abdur Rahim Sathi v. Ghulam Sarwar and 11 others (2009 CLC 1039) and Malik Sajjad v. Shafqat Zaman and 2 others (2019 CLC 284).

4. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

5. Messrs Dancom Pakistan (Pvt.) Limited/petitioner filed a petition against inter alia PTA (W.P. No.1400/2011). The referred petition was dismissed by this Court vide judgment dated 24.6.2011 with costs. Pursuant to said order, the above-mentioned application has been filed for recovery of the costs. Along with an application, an appendix has been filed wherein the cost of lawyer has been claimed as Rs.150,000/- and miscellaneous cost incurred during the proceedings as Rs.69,078. There is no cavil with the proposition that this Court in a petition under Article 199 of the Constitution can impose costs at its discretion. The leading judgment on the issue is by the Hon'ble Division Bench of the Lahore High Court reported as Muhammad Zia v. Ch. Nazir Muhammad, Advocate and 4 others (2002 CLC 59), wherein it was observed that a High Court in exercise of its extraordinary jurisdiction had ample power to do justice and to prevent the misuse or abuse of authority by the public functionaries. In this behalf, it was observed that even special costs can be imposed. Similar view was expressed by the Hon'ble Division Bench of Sindh High Court in Kawas B. AGA and another v. City District Government, Karachi (CDGK) through Nazim-e-Ala and others (PLD 2010 Karachi 182), and it was observed that in addition to actual costs and compensatory costs, the High Court in its Constitutional jurisdiction can award compensatory costs even in excess of Rs.25,000/-. In another decision of the Hon'ble Sindh High Court reported as Pur Bux v. Province of Sindh through Secretary Education Government of Sindh and 10 others (2020 CLC 956), it was observed as follows:--

"9. Needles to emphasize, that the jurisdiction of this Court under Article 199 of the Constitution is extra-ordinary in nature which is aimed at proper dispensation of justice and to avoid abuse of the process of law. Constitutional jurisdiction is a discretionary jurisdiction which is meant to foster justice and to remedy the wrong but could not be allowed to be invoked for extending protection to ill-gotten gains.

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11. It may be observed with great concern that the tendency of invoking extra-ordinary constitutional jurisdiction of this Court on the basis of frivolous and vexatious

litigations is increasingly alarmingly which needs to be curbed in order to save precious time of this Court which could be utilized in deciding the matters based on sincere and genuine foundations. The Superior Courts in certain cases involving such frivolous and vexatious litigations have imposed costs against the litigants initiating such frivolous litigations. In the case reported as Azhar Iqbal v. Government of Pakistan (PLD 2015 Islamabad 140) it was held that duty of the Court is to take effective measures against obstinate litigants who resort to frivolous or fraudulent litigation. It was further held that the petitioner in a Constitutional Petition wasting precious time of the Court should be burdened with heavy costs and the Court can award heavy costs for harassing others or dragging them in frivolous litigation. It was further held that High Court under its jurisdiction under Article 199 of the Constitution can award, in appropriate cases, costs to compensate a party made to suffer unnecessarily through frivolous litigation. It was further held that proceedings under law of contempt can also be initiated against litigant and who drafted such petition."

Even this Court in Urooj Tabani v. Federation of Pakistan through Secretary Ministry of Interior, Islamabad and 2 others (PLD 2021 Islamabad 105) held that a High Court in a petition under Article 199 of the Constitution had power and jurisdiction to order payment of exemplary costs, where it was satisfied that per facts and circumstances of a case, a party was entitled to payment of such exemplary costs by another party.

6. In view of above case law, there does not seem to be any doubt that this Court does have jurisdiction and power to impose not only compensatory costs but also exemplary and special costs where the facts and circumstances so warrant.

7. In the instant case, as noted above, writ petition filed by the petitioner was dismissed with costs, however, no specification was made as to the nature of costs, hence it would be safe to assume that the costs imposed on the petitioner are compensatory in nature and are covering actual expenses incurred by the respondent in defending the lis. In this behalf, method for recovery of the costs is provided in Chapter-IV, Volume-V of the Lahore High Court's Rules and Orders (adopted and being followed by this Court). Rule 16 provides for submission of a certificate by the counsel with respect to whom the cost is being recovered. For ease of convenience, the relevant Rule is reproduced below:--

"Notwithstanding anything contained in the rules of the Court but subject to any order of a Judge or Judges in cases of hardship no fee for the appearance of any Advocate shall, except as in these rules hereinafter provided, be allowed on taxation between party and be allowed on taxation between party and party, or shall be included in any decree or order unless the Taxing Officer is satisfied that the fee was paid to the Advocate before the hearing and unless the party claiming to have such fee allowed shall, before the hearing, file in the office of the Taxing Officer, a certificate signed by the Advocate, as the case may be, certifying the amount of the fee or fees actually paid by

or on behalf of his client to him or to any other Advocate in whose place he may have appeared."

The bare examination of the Rules shows that the Rule starts with the non-obstante clause and provides for submission of an advocate fee certificate before hearing of the case for the purposes of assessment of cost by the Taxing Officer. Whether such certificate can be appended subsequently after the conclusion of the matter came up for consideration before the Hon'ble Division Bench of Lahore High Court in case reported as National Bank of Pakistan v. Messrs Asghar Enterprises and 2 others (2002 CLD 1097), wherein it was observed that where no certificate has been filed, the amount cannot be claimed as costs. Likewise, with respect to miscellaneous costs, claimed by the applicant, no proof as such has been filed with respect to the sum of Rs.69,078/-, however, it can again safely be assumed that some cost must have been incurred by PTA in pursuing the writ petition. Since no actual proof has been submitted, a general figure in the sum of Rs.25,000/- would be appropriate as expenses.

8. In view of the foregoing, the applicant cannot claim the counsel fee and even miscellaneous expenses as claimed, however, the petitioner is liable to pay sum of Rs.25,000/- as general expenses in contesting the afore-noted writ petition. The instant application is disposed of in light of the above, observations and also direction to the petitioner to pay the said sum to the applicant within 30 days of this order failing which the PTA shall be entitled to recover the same in accordance with law.

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