

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 1024 of 2020

Rear Admiral Jamil AKhtar (R) HI (M) TBT.

Vs

The Federation of Pakistan & Others

PETITIONERS BY: M/s Ashtar Ausaf Ali, Agha Muhammad Ali Khan, Raja Zahoor ul Hassan, Malik Qamar Afzal and Abdul Wahid Qureshi, Advocates.

RESPONDENTS By: Mr Khalid Javed Khan, Attorney General for Pakistan.

Syed Muhammad Tayyab, DAG.

Mr Saqlain Haider, AAG.

Mr Rizwan Ahmed, Secretary Ministry of Maritime Affairs.

Mr Nadeem Arshad, S.O, Lit, Establishment Division.

Mr Shams ud Din, S.O, Establishment Division.

Mr Zaheer Iqbal, S.O/Lit-II, Cabinet Division.

DATE OF HEARING: 16-04-2020.

ATHAR MINALLAH, CJ.-

Through this

consolidated order, I shall dispose of the instant petition alongwith W.P.No.1076 of 2020.

2. The petitioner namely, Rear Admiral (R) Jamil Akhtar was appointed as Chairman of Karachi Port Trust (hereinafter referred to as the "**Trust**") vide notification, dated 23.11.2017 for a fixed tenure of three years. The tenure of the petitioner will expire on 22.11.2020. The appointment of the petitioner was in consonance with the law laid down by

the august Supreme Court in the case titled "Messrs Mustafa Impex, Karachi and others vs. The Government of Pakistan through Secretary Finance, Islamabad and others", **PLD 2016 SC 808**. It appears from the record that the Federal Minister of Maritime Affairs and the Ministry of Maritime Affairs appointed private auditors to conduct audit of the Trust. The Trust has been established under the Karachi Port Trust Act, 1886 (hereinafter referred to as the "**Act of 1886**"). Section 79 of the Act of 1886 empowers the Government to order a survey and examine any work of the Board and other matters explicitly mentioned therein. Other powers of the Government are also described in sections 79-A, 80, 81 and 82. Moreover section 68 explicitly empowers the Government to audit and examine in such manner and by such auditor or auditors of accounts of the receipts and expenditure of the Board as it may deem appropriate. The expression 'Government' is not defined in the Act of 1886 but a plain reading of the said statute as a whole makes it obvious that "Government" means the "Federal Government". The powers vested in the Government under the Act of 1886 are, therefore, required to be exercised in conformity with the law laid down by the august Supreme Court in the case titled "Messrs Mustafa Impex, Karachi and others vs. The Government of Pakistan through Secretary Finance, Islamabad and others", **PLD 2016 SC 808**. It may also be observed that any person, entity, Ministry or Department not explicitly mentioned in the Act of 1886 has no jurisdiction or authority to interfere in the affairs of the Trust.

3. Mr Khalid Javed Khan, Attorney General for Pakistan has appeared and has taken a fair stance by stating that he is in the process of recommending to the Federal Government to withdraw the impugned notifications. He has further stated that he further intends to advise the Federal Government to proceed strictly in accordance with the provisions of the Act of 1886 and having regard to the principles of procedural fairness and due process embedded in Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973.

4. The learned counsel for the petitioner has stated that keeping in view the fair and just interpretation of the law by the learned Attorney General for Pakistan, the grievance of the latter stands redressed.

5. The petitioners in W.P.No.1076 of 2020 are two private individuals. Petitioner no.1 claims to be the General Secretary of one of the registered unions of employees of the Trust while the other is a retired employee. Perusal of the contents of the memorandum of their petition, prima facie, raises questions regarding bonafides of the petitioners and appears to be an attempt to prejudice the proceedings in the instant petition. Moreover, both the individuals cannot be treated as aggrieved persons. A registered trade union or a notified Collective Bargaining Agent under the Industrial Relations Act, 2011 are bound by its provisions and their role is confined to matters explicitly described by the legislature. It is noted that Courts while exercising constitutional jurisdiction jealously guard against abuse of its process.

Moreover, maintaining discipline within statutory organizations and discouraging scandalous and frivolous litigation are relevant factors for determining maintainability of a constitutional petition. Despite the able assistance of the learned counsel, he has not been able to persuade this Court that the petition was filed for bonafide reasons.

6. In view of the above, the instant petition is disposed of while recording appreciation for the fair stance taken by the learned Attorney General for Pakistan. It is noted that the impugned notifications shall remain suspended till the advice of the learned Attorney General for Pakistan is considered by the Federal Government and a decision is taken accordingly. The petitioner would be at liberty to file an application for restoration of the petition in the event that the advice of the learned Attorney General for Pakistan is not acted upon by the Federal Government. It is further noted, as rightly pointed out by the learned Attorney General, that the Federal Government would be at liberty to proceed in the matter in accordance with law, inter alia, having regard to the provisions of the Act of 1886 and the law laid down by the august Supreme Court of Pakistan in the case titled "Messrs Mustafa Impex, Karachi and others vs. The Government of Pakistan through Secretary Finance, Islamabad and others", **PLD 2016 SC 808**. This Court further expects that the affairs of the Trust will be dealt with by the Federal Government in accordance with its statutory powers and that there will be no unauthorized interference in violation of the explicit provisions of the Act of 1886.

7. The petition i.e. W.P.No.1076 of 2020 is not maintainable and, therefore, accordingly dismissed while W.P.No.1024/2020 is allowed and disposed of in the above terms.

CHIEF JUSTICE

*Asif Mughal**