

HCJD/C-121  
**ORDER SHEET**  
**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**W.P. No. 3635 of 2014**

**M/S Attock Petroleum Ltd Rawalpindi**  
Versus  
**Additional Commissioner Inland Revenue**

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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05-08-2014    Mr Mian Tauqeer Aslam Advocate for the petitioner.  
Mr Tariq Mehmood Khokhar Deputy Attorney General.  
Mr Malik Faisal Rafique Deputy Attorney General.  
Mr Talat Abbas Khan Standing Counsel.  
Mr Malik Zahoor Standing Counsel.  
Mr Chaudhry Haseeb Standing Counsel.  
Mr Kh. Imtiaz Standing Counsel.  
Mr Syed Nayyab Gerdezi Advocate (on Court call).

At the very outset a question has arisen as to whether this Court has jurisdiction to hear and entertain the petition, which has been filed by invoking Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, on the ground that through a Notification issued by the Federal Government, Article 245 of the Constitution has been invoked and, therefore, in the light of sub-Article 3, jurisdiction vested under Article 199 has been ousted. It was also brought to the notice of this Court that it has been widely publicized in the print media that since Article 245 of the Constitution has been invoked, therefore, during the period for which it remains enforced, this Court shall have no jurisdiction to exercise powers under Article 199 in relation to any area in which the Armed Forces of Pakistan are for the time being, acting in aid of civil power in

pursuance of Article 245 of the Constitution. It was contended that such wide publication has created a perception that the right to access to the Court and the fundamental rights guaranteed by the Constitution shall remain suspended regardless of the nature of grievance.

2. On the notice of this Court, the learned Deputy Attorney General Tariq Mehmood Khokhar made appearance and placed on record Notification dated 24<sup>th</sup> July, 2014, whereby it appears that on the request of the Chief Commissioner, Islamabad Capital Territory, the Federal Government in exercise of its powers under Article 245 has exercised its powers and has been pleased to authorize deployment of 350 troops of Pakistan Army, subject to law, to act in aid of the civil power of Islamabad Capital Territory, to discharge such functions as specified for a period of 90 days. The Notification dated 24<sup>th</sup> July, 2014 does not specify any reason other than mentioning about some request of the Chief Commissioner of the Islamabad Capital Territory. It is further informed that invoking Article 245 of the Constitution of the Islamic Republic of Pakistan, 1973, has been challenged before this Court in Writ Petition No.3642 of 2014 which is fixed before another Bench for tomorrow. The learned Deputy Attorney General has placed reliance on "*Niaz Ahmed Khan Vs. Province of Sindh* (P.L.D. 1977 [Karachi] 604, *Amanat Hussain Vs. Mst. Misri Bibi* (P.L.D. 1977 [Lahore] 840), *Darwesh M. Arbey Vs. Federation of Pakistan & others* (P.L.D. 1980 [Lahore] 206, Federation of

Pakistan & another Vs. *Malik Ghulam Mustafa Khar* (P.L.D. 1989 S.C. 26), in support of the contention that powers of this Court to exercise jurisdiction under Article 199 shall remain suspended or ousted during the period specified in the Notification dated 24<sup>th</sup> July, 2014. It was contended that such ouster is complete and makes no distinction regarding grievances relating to acts or omissions of the Armed Forces acting in "aid of civil power" in pursuance of a direction under Article 245 (1) or those which relate to the civil executive authorities having no nexus with the said direction. By implication, the ouster being complete, the court has no jurisdiction to exercise powers even in such matters such as petitions seeking bails, family disputes, rent matters, environmental issues etc.

3. In the cases cited by the learned Deputy Attorney General, the facts and circumstances were altogether different and, therefore distinguishable.. Furthermore, in all the cases the importance of the right of "access to justice to all" as a fundamental right has been recognized and it has been unequivocally held that the right could not be exercised in the absence of an independent judiciary providing impartial, fair and just adjudicatory framework i.e. judicial hierarchy. By now it is settled that the phrase "to act in aid of civil power" used in Article 245 (1) of the Constitution does not include the power to substitute the existing judicial system or to establish a parallel system. The civil executive authorities do not cease to function or go in oblivion. The

phrase "subject to law" in relation to acting in "aid of the civil power" has also been interpreted, which reaffirms that the ouster of jurisdiction of the Court to exercise powers under Article 199 of the Constitution is, neither naked nor, can the citizens be deprived of enforcing their fundamental rights.

4. In all fairness the learned Deputy Attorney General while assisting this Court, admits that it is for the Courts to interpret and decide the jurisdiction under Article 199 of the Constitution. The learned counsel in Writ Petition No.3642 of 2014 along with the President of the District Bar Association Islamabad, also assisted the Court. The learned Deputy Attorney General suggests that the petitions fixed in this Court be adjourned till the Writ Petition No.3642 of 2014 is decided by this Court. However, as pointed out that the matter has already been given wide publication through the print media thereby adversely affecting the enforcement of fundamental rights and the right to access to justice in case of persons aggrieved of the actions/inactions of the civil executive authorities. The learned Deputy Attorney General has not been able to persuade this Court that the ouster is complete and extends to grievances other than the acts or omissions committed by the Armed forces acting in "aid of civil powers" in pursuance of directions of the Federal Government under Article 254 (1). It is such an interpretation which has inevitably created the perception that the ouster is complete under sub-Article 3 of Article 245

of the Constitution, and thereby having the consequences of denying access to justice and the Courts for enforcement of their fundamental rights, particularly where the acts challenged before this Court have no relationship whatsoever with the functions of the Armed Forces, while acting in aid of civil power. Furthermore, the Notification dated 24<sup>th</sup> July, 2014, is silent regarding any plausible reason for invoking Article 245. However, the matter is subjudice in W.P.3642 of 2014, and therefore, propriety requires that no observation is made with regard thereto.

5. By now it is a settled law that even in case of ouster clauses, it is for the Courts to determine and decide their respective jurisdiction. Any perception that the jurisdiction of this Court under Article 199 or the right to access to justice or enforcement of fundamental rights have been automatically suspended, is not in public interest and undermines the independence of judiciary.

6. It is further alarming that the such perception has been created despite the fact that the matter remains subjudice before this Court. Nothing has been placed on record which would persuade this Court to come to a conclusion that sub-Article 3 of Article 245 of the Constitution has ousted jurisdiction in such cases having no relationship whatsoever with the directions issued under Article 245 (1) of the Constitution. The learned Deputy Attorney General has also not been able to persuade this Court that the Armed Forces, which are called in "aid" during

natural calamities, interalia, during floods or earthquake, and in which the Armed Forces render appreciable services, can in any manner tantamount to ousting the jurisdiction of the Court under Article 199 of the Constitution.

7. In all petitions listed for today, the petitioners have invoked the jurisdiction of this court for enforcement of fundamental rights which have no nexus or any relationship with the acts or omissions of the Armed Forces acting in "aid of civil powers" in pursuance of Article 245 (1) of the Constitution. If the arguments raised by the learned Deputy Attorney General are accepted, it would result in immeasurable and gross miscarriage of justice, which could never have been the intention of the framers of the Constitution. It would also severely undermine the independence of judiciary by denying the right to access to justice and the courts for enforcement of fundamental rights.

8. After hearing the learned counsel at length and with the able assistance of the learned Deputy Attorney General, this Court is not persuaded that the jurisdiction to exercise the powers vested in this Court under Article 199 have been completely ousted under Article 245 (3), extending to such grievances having no nexus with the functions, acts or omissions of the Armed Forces acting in aid of civil powers in pursuance of directions issued under Article 245 (1) of the Constitution. There is no petition fixed for today which has challenged any act or omission in relation to or connected

with the Armed Forces acting in aid of civil powers in pursuance of Article 245 (1) of the Constitution. This Court has, therefore, not made any observation in this regard as no such matter is under consideration or before this Court. Even otherwise, as pointed out, the vires of the notification dated 24<sup>th</sup> July 2014 shall be considered by this Court in Writ Petition No.3642 of 2014 along with the question of ouster of jurisdiction of this Court in such matters where the acts and omissions of the Armed Forces acting in aid of civil powers in pursuance of the direction issued under Article 245 (1) have or may be challenged by invoking Article 199 of the Constitution.

9. Therefore, this Court has no hesitation in concluding that despite issuance of an Executive Order through Notification dated 24<sup>th</sup> July, 2014, this Court has jurisdiction to proceed and exercise its powers vested under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 in case of such petitions where the grievance relates to acts/orders or omissions having no nexus with or relating to the Armed Forces acting in aid of civil powers under Article 245 (1) of the Constitution. This order shall not prejudice the proceedings before another Bench in WP No. 3642 of 2014.

10. Having concluded that this Court has jurisdiction to exercise powers under Article 199 of the Constitution, the petitions fixed for today are, therefore, taken up.

**Main Case.**

The learned Counsel contends that the impugned order dated 14.07.2014 is non-speaking and has been passed in violation of the settled principles of law laid down by the honourable Supreme Court. The application for interim relief has been arbitrarily dismissed and on the very face of the order it is perfunctory. It is further contended that several other similar petitions are pending. This Court has already taken up a number of petitions and on the last date of hearing senior officers of the Federal Board of Revenue had appeared, and have consented to submit a final report before the next date of hearing. The said Writ Petitions are fixed by the order of this Court on 18.09.2014, whereby the same issue is under consideration. The petition may also be relisted on 18.09.2014 alongwith Writ Petition No.3078/2014.

**C.M. No.1 of 2014**

Notice. In the meanwhile no further recovery shall be made till 18-09-2014.

**C.M. No.2 of 2014**

Dispensation sought for is allowed subject to all just and legal exceptions. C.M. stands disposed of.

**(ATHAR MINALLAH)**  
JUDGE