

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.1853 of 2017.

M/s Air Ciro through its Senior Partner.

Vs.

***Government of Pakistan through Secretary
Aviation Division, Islamabad & 5 others.***

<i>Petitioner's by.</i>	<i>Mohammad Shoaib Shaheen, Advocate.</i>
<i>Respondent's by.</i>	<i>Barrister Mumtaz Ali Khan, Advocate and Raja Khalid Mehmood Khan, Deputy Attorney-General.</i>
<i>Date of Decision.</i>	<i>19.05.2017.</i>

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AAMER FAROOQ, J.- The petitioner is aggrieved of letter dated 15.05.2017 whereby the bids/offers have been called by respondent No.5 for awarding contract/licence to the highest bidder with respect to Handling and outbound excess, unaccompanied baggage and establishment of baggage wrapping facility at Allama Iqbal International Airport, Lahore.

02. Learned counsel for the petitioner, inter alia, contended that the impugned letter is against the policy of respondents No.1 to 5 whereby the facilities at the three International Airports of Pakistan are being out sourced. In this behalf it was further contended that respondent No.2 to 5 are under the control of Federal Government of Pakistan and are bound by its policies/directives. Learned counsel also contended that the license is for a period of 5 years and if licensor during the

subsistence of license period implements the policy violates the policy the same would amount to revocation of the license.

03. In response to the query of the Court regarding maintainability of the petition in light of territorial jurisdiction of this Court learned counsel placed reliance on unreported judgment of Hon'ble Supreme Court of Pakistan in case titled "Fast Developers International (Pvt.) Limited vs. Pakistan Telecommunication Authority" (**Civil Petitions No.1071 & 1072 of 2016**) as well as cases titled "Khalid Habib vs. Pakistan Telecommunication Corporation Ltd & others"[**2014 PLC (C.S.)203**], "Tanveer Hussain Manji & 3 others vs. Federation of Pakistan through Secretary, Interior & 3 others."(**2016 CLC 1534**) and "Gen. (Rtd.) Pervez Musharraf through Attorney vs. Pakistan through Secretary Interior & others"(**PLD 2014 Sindh 389**).

04. Learned counsel for respondents No.2 to 5, inter alia, contended that this Court lacks territorial jurisdiction hence the instant petition is not maintainable. Reliance was placed on cases reported **PLD 1997 SC 334, 1998 SCMR 2389** and "M/s Sethi & Sethi sons vs. Federation of Pakistan through Secretary Finance and others" (**2012 PTD 1869**).

05. Respondents No.2 & 3 invited bids vide tender notice dated 30.04.2016 for the concession of Handling and outbound excess, unaccompanied baggage & for establishment and operation of baggage wrapping facility. The process for bidding was pursued by the petitioner and respondent No.6. Due to dispute regarding procedure the petitioner filed a petition before the Hon'ble Lahore High Court (Writ Petition No.17223/16) which was allowed vide judgment dated 01.07.2016. Respondents preferred Intra Court Appeal (ICA No.1203/16) which was dismissed as withdrawn vide order dated 19.04.2017. In its judgment dated 01.07.2016 the Hon'ble Lahore High Court directed respondent No.5 i.e. Airport

Manager, Civil Aviation Authority, Allama Iqbal International Airport, Lahore to hold the process afresh for seeking financial offers from the petitioner and respondent No.6. In pursuance of the directions of the Lahore High Court, respondent No.5 issued the impugned letter. In this behalf the letter impugned has been issued by respondent No.5 which is the Airport Manager, Allama Iqbal International Airport, Lahore and does not fall under the territorial jurisdiction of this Court. It has been argued before this Court that since respondent No.1 has issued directive and in pursuance thereof has called bids for out sourcing airport facilities at three International Airports of Pakistan i.e. Islamabad, Lahore and Karachi, therefore, this Court has the concurrent jurisdiction in the matter. In support of his contentions learned counsel placed reliance on case reported as "Trading Corporation of Pakistan (Pvt.) Ltd vs. Pakistan Agro Forestry Corporation (Pvt.) Ltd and another" (**2000 SCMR 1703**) wherein the Hon'ble Supreme Court of Pakistan held that relief was not only claimed against the Corporation but also against the Government of Pakistan at Islamabad, therefore, the Courts at Karachi as well as Rawalpindi had the jurisdiction in the matter and remedy can be resorted in either of them. Similarly, Lahore High Court in case "Tanveer Hussain Manji & 3 others vs. Federation of Pakistan through Secretary Interior & 3 others" (**2016 CLC 1534**) held that where the petitioners were residents of place-L and the impugned letters were addressed to them at L, part of cause of action arose at L hence High Court at L has the concurrent jurisdiction in the circumstances. Similarly, the Hon'ble Supreme Court of Pakistan in case titled "Fast Developers International (Pvt.) Ltd. vs. PTA" (**C.P. No.1071 and 1072/2016**) vide judgment dated 28.09.2016 held that where a part of the cause of action had arisen in AJ&K and the other part at Islamabad, both the Courts have the concurrent jurisdiction in the matter. Conversely, the Hon'ble Lahore High Court in case titled "M/s Sethi and Sethi Sons vs. Federation

of Pakistan etc.” (2012 PTD 1869) while examining the case law on the subject of territorial jurisdiction held as follows:

“11. The requirement to determine the "dominant object" or the primary grievance of the petitioner or the paramount purpose of the petition is essential for the purposes of identifying the actual PERSON against whom writ is being sought. Which in turn becomes relevant for carrying out circumferential determination whether the PERSON falls within the territorial jurisdiction of this Court. This methodology has already received pontifical approval by the august Supreme Court of Pakistan in Sandalbar Enterprises (Pvt.) Ltd. v. Central Board of Revenue and others, (PLD 1997 SC 334). Justice Ajmal Mian speaking for the august Court held:--

"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."... (emphasis supplied).

12. A series of judgments have since followed this tradition. Reliance is placed with advantage on Dr. Zahoor Ahmed Shah v. Pakistan Medical and Dental Council through Secretary and another, (2005 MLD 718), Dr. Qaiser Rashid v. Federal Secretary, Ministry of Foreign Affairs, Government of Pakistan, Islamabad, (PLD 2006 Lahore 789), Amin Textile Mills (Pvt.) Ltd. v. Islamic Republic of Pakistan and 3 others, (1998 SCMR 2389), Sh. Abdul Sattar Lasi v. Federation of Pakistan and 6 others, (2006 CLD 18), Sohail Jute Mills (Pvt.) Ltd. Rawalpindi through Chairman v. Central Board of Revenue, C.B.R., Islamabad through Chairman, (1997 CLC 574) and LPG Association of Pakistan through Chairman v. Federation of Pakistan and 8 others,

(2009 CLD 1498).

13. Having identified the "dominant object," the primary grievance or the paramount purpose of the petition, I venture to examine whether the impugned Notice/Summons issued by Deputy Director, Directorate General of Intelligence and Investigation, Karachi (Regional Office) and F.I.R. dated 9-5-2011 registered at Karachi by the said Directorate can be challenged before this Court.

14. Relevant portion of Article 199 of the Islamic Republic of Pakistan, 1973 is reproduced hereunder for ready reference:--

Article 199: Jurisdiction of High Court.

Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law:---

(a) on the application of any aggrieved party, make an order:

- (i) directing a person performing, within the territorial jurisdiction of the Court, 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; or**
- (ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or".... (emphasis supplied)**

15. The above article provides that writs in the nature of prohibition, mandamus and certiorari can be issued by this Court against a person who is: (i) performing functions; or has (ii) done an act or; (iii) has taken proceedings (iv) within the territorial jurisdiction of this Court; in connection with the affairs of the (v) Federation; (vi) Province or; (vii) local authority.

16. The test is to ascertain whether the PERSON against whom writ is being sought is performing functions or has done an act or initiated proceedings against the petitioner within the territorial jurisdiction of this Court. Prior to applying the test, it is important to verify the extent of territorial jurisdiction enjoyed, under the law, by the PERSON itself. For this it needs to be seen if the PERSON, under the law, is performing functions in connection with the affairs of the Federation or the Province or the Local Authority.

17. The phrase "performing functions in connection with the affairs of the Federation, Province or Local Authority" has already been explained by Anwar ul Haq, J. in *Salahuddin and 3 others v. Frontier Sugar Mills and Distillery Ltd. Tokht Bhai and 10 others*, (PLD 1975 SC 244), which reads:--

"...The primary test must always be whether the functions entrusted to the organization or person concerned are indeed functions of the State involving same exercise of sovereign or public power; whether the control of the organization vests in a substantial manner in the hands of the Government; and whether the bulk of the funds is provided by the State. If these conditions are fulfilled, then the person, including a body politic or a body corporate, may indeed be regarded as a person performing functions in connection with the affairs of the Federation or a Province; otherwise not."

18. Reliance is also placed on a more recent judgment passed in *Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others*" (PLD 2010 SC

676). FBR, therefore, under the constitution is a PERSON "performing functions in connection with the affairs of the Federation." Under Federal Board of Revenue Act, 2007 the jurisdiction of FBR extends to the whole of Pakistan. Similarly, persons performing functions in connection with the affairs of the Province or the local authority, already have a defined territorial extent, which either extends to the entire Province or is limited to an area within the Province.

19. A PERSON performing functions in connection with the affairs of the FEDERATION as compared to a Province or local authority, is a PERSON who besides carrying the attributes listed in *Salahuddin Case*² is by law vested with a territorial jurisdiction that spans across the country i.e., possessing a national or country wide territorial jurisdiction as opposed to provincial or sub provincial jurisdiction. Federal Government or any person performing functions in connection with the affairs of the Federation enjoys ubiquitous presence everywhere across the country having territorial jurisdiction all over Pakistan or in other words, within the territorial jurisdiction of every High Court in the country. In this case it will be up to the aggrieved person to choose the High Court of his convenience. Similarly, the territorial jurisdiction of a person performing functions in connection with affairs of the Province or the Local Authority enjoys presence all over the Province and within the territorial jurisdiction of the local authority.

20. Persons performing functions in connection with the Province or Local Authority have a clearly demarcated territorial jurisdiction and pose little challenge for the purposes of applying the test of territorial jurisdiction under Article 199 of the Constitution as the corresponding High Court in the Province assumes territorial jurisdiction. Assessment of territorial jurisdiction of this Court in a case where the PERSON is performing functions in connection with the affairs of the Federation is more complex. As explained above, such a PERSON under the law enjoys a nationwide territorial jurisdiction, hence, is legally everywhere in the country. This ubiquitous presence, infact,

waters down the importance of territorial jurisdiction and renders it immaterial where the office or residence of such a PERSON is located. As a corollary, any act done or proceedings initiated being part of the functions performed by the said PERSON will also be considered to have been performed everywhere in Pakistan. The real test, therefore, is the nature of territorial jurisdiction of the PERSON against whom the writ is being sought. It is for this reason that a tax levied by FBR (an act done) or a Notice issued by FBR (proceedings initiated) can be challenged before any High Court in Pakistan even though the notification or notice is issued in Islamabad. This issue has come up before the courts earlier and the above principle, viewed in a different nuance, has been approved and has since been consistently followed. Reliance with advantage is placed on *Asghar Hussain v. The Election Commission of Pakistan and others*, (PLD 1968 SC 387), *Messrs Al-Iblagh Limited, Lahore v. The Copyright Board, Karachi and others*, (1985 SCMR 1758), *LPG Association of Pakistan through Chairman v. Federation of Pakistan through Secretary, Ministry of Petroleum and Natural Resources, Islamabad and 8 others*, (2009 CLD 1498), *Muhammad Idrees v. Government of Pakistan through Secretary, Establishment Division, Islamabad and 5 others*, (1998 PLC (CS) 239), *Messrs Lucky Cement Limited v. The Central Board of Revenue and others*, (PLD 2001 Pesh. 7), *Khaista Gul v. Akbar Khan and 7 others*, (PLD 1975 Pesh. 146), *Trading Corporation of Pakistan (Private) Limited v. Pakistan Agro Forestry Corporation (Private) Limited and another*, (2000 SCMR 1703), *Sh. Abdul Sattar Lasi v. Federation of Pakistan and 6 others*, (2006 CLD 18), *Nawabzada Muhammad Shahabuddin v. The Chairman, Federal Land Commission*, (1996 CLC 539) and *Gulzar Ahmad Khan v. The Chief Election Commissioner of Pakistan, Islamabad and 7 others*, (PLD 1997 Lahore 643).

21. There is yet another dimension to the above principle. In managing its day-to-day affairs a PERSON, performing functions in connection with the affairs of the Federation may often delegate its powers to its officers. Such delegation ordinarily limits the power of the officer

within a specified territorial domain. In such a situation, the all encompassing countrywide territorial jurisdiction of the PERSON is localized to a specific limited territorial jurisdiction³. For example, Collector of Customs, an officer of FBR, has specific territorial jurisdiction limited to a particular area, as opposed to the countrywide territorial jurisdiction enjoyed by FBR. Such an officer, therefore, performs a localized function in connection with the affairs of the Federation in a particular area and will be considered to be performing functions within the territorial jurisdiction of the High Court within whose territorial jurisdiction the territorial jurisdiction of the Officer/PERSON falls. In the present case the Deputy Director is an Officer of the Directorate General of the Intelligence and Investigation, FBR at Karachi. As per Order dated 9-12-2010 issued by the FBR⁴, the said Officer enjoys specific territorial jurisdiction confined to Karachi. Similarly a person having territorial jurisdiction limited to Karachi has registered the F.I.R. at Karachi. Therefore, it cannot be said that the Deputy Director or the Directorate is performing functions all over Pakistan as compared to FBR, therefore, only the High Court with corresponding territorial jurisdiction will assume jurisdiction in the matter.

22. It is axiomatic that any act done or proceedings taken by such an Officer/PERSON are also within the territorial jurisdiction enjoyed by the said Officer, under the law. Additionally, "act done" or "proceedings taken" are closely linked with the locale of the Officer or authority doing that act or initiating the proceedings. Hence, the location of the effect of the act or order passed against the aggrieved person or the receipt of correspondence of any proceedings initiated against the aggrieved person is immaterial. What matters is the territorial jurisdiction of the PERSON and not of the "aggrieved person." I am fortified in my reasoning by the law laid down in Sandalbar Enterprises (Pvt.) Ltd. v. Central Board of Revenue and others, (PLD 1997 SC 334), Messrs Ibrahim Fibres Ltd. through Secretary/Director Finance v. Federation of Pakistan through Secretary/Revenue Division and 3 others,

(PLD 2009 Karachi 154), Sabir Din v. Government of Pakistan through Secretary, Ministry of Defence and others, (1979 SCMR 555), Zulfikar Ali Bhutto v. The Federation of Pakistan through the Secretary, Ministry of Interior, Government of Pakistan Islamabad and 4 others, (PLD 1980 Karachi 113), Sh. Abdul Sattar Lasi v. Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad and 6 others, (2006 CLD 18), Muhammad Shoaib v. Project Director, National ICT Scholarship Program, Ministry of Information Technology, Islamabad and another, (2011 CLD 23), Sohail Jute Mills (Pvt.) Ltd. Rawalpindi through Chairman v. Central Board of Revenue, C.B.R., Islamabad through Chairman, (1997 CLC 574), Amin Textile Mills (Pvt.) Ltd. v. Islamic Republic of Pakistan and 3 others, (1988 SCMR 2389) and A. R. Khan and Sons (Pvt.) Ltd. v. Federation of Pakistan through Secretary, Ministry of Commerce, Islamabad and 3 others, (2010 CLD 1648). It is pointed out that Flying Kraft Paper Mills case⁵ does not disturb the reasoning of Sandalbar Enterprises case⁶. First, because the objection regarding territorial jurisdiction was not allowed to be raised in this case and second, the order under challenge was also of the CBR (as it then was) in addition to the Collector.

23. In case, where a PERSON, enjoying limited territorial jurisdiction, does an act or passes an order or initiates proceedings by locating himself outside his legally earmarked territorial jurisdiction, the High Court within whose territorial jurisdiction such an act is done or order passed or proceedings initiated will assume jurisdiction under Article 199 of the Constitution. This is being pointed out for the sake of clarity and does not apply to the facts of the present case.

24. It is also clarified that the above test is to be applied strictly in terms of Article 199 of the Constitution and is not dependent on section 20 of the Civil Procedure Code, 1908 which cannot be relied upon to expand or interpret the Constitution. Reliance is placed on Sh. Abdul Sattar Lasi v. Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary

Affairs, Islamabad and 6 others, (2006 CLD 18)."

06. The test laid down in the referred judgment is regarding dominant object of the petitioner in the writ petition. There is no cavil with the principles laid down in the judgments relied upon by the learned counsel for the petitioner, however, the same are not attracted in the facts and circumstances of the case. The relevant principle for determining jurisdiction of a High Court in which the matter can be agitated where apparently two or more High Courts have concurrent jurisdiction is the dominant object in the petition. It is also relevant to observe that the position of Islamabad High Court is somewhat different from other High Courts inasmuch as they have jurisdiction over the matters pertaining to the affairs of Federation, Province or a Local Authority within their territorial jurisdiction whereas Islamabad being the Capital wherein the Islamabad High Court exists and exercises jurisdiction over Islamabad Capital Territory it does not have jurisdiction pertaining to the affairs of provinces.

07. The petitioner though in the instant petition has made representation to respondent No.1 to clarify its policy vis-a-vis outbound excess and the facility and in this regard this Court has jurisdiction over the referred issue but the contents of the petition, submissions made by learned counsel for petitioner and examination of the prayer clause shows that the dominant object of the petition is to have the impugned letter dated 15.05.2017 set aside. The referred letter has been issued by respondent No.5 i.e. Airport Manager, Allama Iqbal International Airport, Lahore. Undoubtly Civil Aviation Authority is under the control of respondent No.1 and this Court can exercise jurisdiction pertaining to the matters and affairs of Civil Aviation Authority but since the dominant object in the instant case is to set aside letter issued by respondent No.5 which exclusively pertains to the concession for Lahore, this Court lacks jurisdiction in the matter.

08. For the reasons set out above, I am of the considered view that the dominant object of the present petition is to challenge letter dated 15.05.2017 hence the instant petition is not maintainable before this Court, therefore, the same is dismissed with no order as to costs. Since the petition is being dismissed due to lack of territorial jurisdiction, therefore, no observation is made vis-a-vis the merits of the case.

(AAMER FAROOQ)
JUDGE

Altaf Malik

Approved For Reporting.