

Form No: HCJD/C.

**JUDGEMENT SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**Case No: Writ Petition No.1750 of 2015**

**M/s. Pakistan Oilfields Limited**

**Vs.**

**Federation of Pakistan and 4 others**

**Petitioner by: M/s. Ali Sibtain Fazli, Malik Sardar Khan, Abad ur Rehman, Hafiz Muhammad Idrees and Muhammad Mohsin Nazir, Advocates.**

**Respondents by: M/s. Syed Ishfaq Hussain Naqvi and Babar Bilal, Advocates.**

**Date of Hearing: 20.06.2019**

**AAMER FAROOQ, J.-** This judgment shall decide the instant petition as well as W.P. No.1061/2016 and W.P. No.1453/2019 as common questions of law and facts are involved.

2. The petitioner in all the petitions have challenged the show cause notices issued to it (W.P. No.1750/15 dated 27.05.2015), (W.P. No.1061/16 dated 25.02.2016) and (W.P. No.1453/19 dated 07.03.2019).

At the outset, the preliminary objection was raised regarding the maintainability of the writ petitions against the impugned notices which are in the nature of show cause in light of the fact that the show cause

notice does not amount to adverse order but is issued to set wheels in motion with respect to the proceedings against a person.

3. Learned counsel for the petitioners *inter alia* contended that notices issued are with respect to the matter regarding well head value of the oil/gas sold and allied matters thereto which are subject matter of Tax References pending before this Court. It was further submitted that the decision on the issue has already been handed down by the Appellate Tribunal Inland Revenue and in view of the referred decision the show cause issuing authority shall mechanically pass the orders hence, there is no efficacious and alternate remedy available to the petitioner in the facts and circumstances of the matter. In support of his contentions learned counsel placed reliance on the case titled *Messrs Shamim & Co. v. Tehsil Municipal Administration, Multan city through Nazim and 2 others* (2004 YLR 366), *Bank of Punjab through Group Head of its Special Projects v. Accountability Court No.1, Lahore and 2 others* (PLD Lahore 92), *Attock Cement Pakistan Ltd. v. Collector of Customs, Collectorate of Customs and Central Excise, Quetta and 4 others* (1999 PTD 1892), *Iqbal Hussain through Authorized Attorney v. Federation of Pakistan*

through the Secretary, Revenue Division and 2 others  
 (2010 PTD 2338), Messrs Central Insurance Co. and  
others v. The Central Board of Revenue, Islamabad  
and others (1993 SCMR 1232), Collector of Customs,  
Multan v. Muhammad Tasleem (PTCL 2002 CL 80),  
Engro Vopak Terminal Ltd. through Manager  
Finance & Corporate Service, Karachi v. Pakistan  
through Secretary Finance, Islamabad and another  
 (2012 PTD 130), M/s. Julian Hoshang Dinshaw Trust  
and others v. Income Tax Officer, Circle XVII South  
Zone, Karachi and others (PTCL 1992 CL 181),  
Karachi Bulk Storage and Terminals Pvt. Ltd. v.  
Collector of Central Excise and Land Customs and  
others (2011 PTD 2103), Messrs Usmania Glass Sheet  
Factory Limited, Chittagong v. Sales Tax Officer,  
Chittagong (PLD 1971 Supreme Court 205), Nagina  
Silk Mill, Lyallpur v. The Income Tax Officer, A-  
Ward Lallpur and another (PLD 1963 Supreme  
 Court 322), Messrs Julian Hoshang Dinshaw Trust  
and others. v. Income Tax Officer, Circle and others  
 (1992 SCMR 250), Rishad Choudri and another v.  
Cantonment Board, Karachi and another (PLD 2014  
 Sindh 1), Pakistan Broadcasters Association and 7  
others v. Pakistan Electronic Media regularity  
Authority and another (2014 CLC 197) and Nadeem

**Ellahi through special Attorney v. Deputy District Officer and another (2011 MLD 1961).**

4. Learned counsel for the respondents *inter alia* contended that the writ petitions are not maintainable inasmuch as the show cause notices have been assailed and the petitioner can only reply and contest the proceedings before the notice issuing authority. It was further argued that mere pendency of the matter before this Court by way of Tax References does not make the remedy illusory.

5. Considering the nature of the controversy, this Court in W.P. No.1750/15 appointed Mr. Sajeel Sheryar, Advocate as *amicus curiae* to assist the Court on the question of maintainability of the writ petitions against show cause notices. Mr. Sajeel Sheryar, Advocate addressed arguments based on the case law from Indian jurisdiction as well as local and even from the Courts of United States of America. It was argued that under the Indian law general rule is that writ petition is not maintainable against the show cause notice, however, there are exceptions to the general rules which are always narrowly construed. It was further submitted that the writ petition is maintainable where the notice was totally *non est* in the eye of law for want of jurisdiction of the authority. Reliance was

placed on the case titled **The Special Director And another v. Mohd. Ghulam Ghouse And another** (AIR 2004 SC 1467 = (2004) 3 SCC 440) and **State of Uttar Pradesh v. Brahma Datt Sharma and another** (AIR 1987 SC 943); that where the notice is patently illegal and against any statutory provision leading to infringement of fundamental rights. Reliance was placed on the case titled **The Executive Engineer, Bihar v. Ramesh Kumar Singh and others** (1996 SCC (1) 327 = 1996 AIR 691); that when the notice is issued with premeditation and the respondent authority has made up his mind to take a decision against the party for extraneous reasons. Reliance was placed on the case titled **M/s.Siemens Ltd. v. State of Maharashtra and others** (2006) 12 SCC 33); that where there is no efficacious and alternate remedy. Reliance was placed on the case titled **C.I.T. Gujarat v. Vijaybhai N. Chandrani** (2013) 14 SCC 661. Mr. Sajeel Sheryar, Advocate further submitted that even in Pakistan as a general rule writ petition against show cause notice is not maintainable, however, there are certain exceptions which are similar to the ones provided in the Indian jurisdiction. It was submitted that where there is no efficacious and alternate remedy writ petition against show cause notice is maintainable; that where the show

cause notice is without lawful authority/jurisdiction writ petition lies; that where there is an important question for interpretation of some statute or law, in the referred circumstances as well petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “Constitution”) is maintainable. Reliance was placed on the case titled *Attock Cement Pakistan Ltd. v. Collector of Customs, Collectorate of Customs and Central Excise, Quetta and 4 others* (1999 PTD 1892), *Messrs Ocean Pakistan Ltd. v. Federal Board of Revenue, Islamabad and others* (2012 PTD 1374). It was submitted that even in United States of America it is provided that the petition for judicial review lies against the summons issued by any Government Department. Reliance was placed on the case titled *United States v. Clarke etc.* (573 US (2014)).

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

7. The general rule is that a writ petition under Article 199 of the Constitution is not maintainable against a show cause notice. Against the said general rule there are certain exceptions which are almost similar in Pakistan as well as across the border. Before laying down the principles regarding the exceptions

where the writ petition is maintainable, it is worthwhile to discuss the case law on the subject.

8. In case titled **The Executive Engineer, Bihar v. Ramesh Kumar Singh and others** (1996 SCC (1) 327 = 1996 AIR 691) it has been held by the Indian Court as under:

*“We are concerned in this case, with the entertainment of the Writ Petition against a show cause notice issued by a competent statutory authority. It should be borne in mind that there is not attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext. P-4 notice is ex facie a "nullity" or totally "without jurisdiction" in the traditional sense of that expression -- that is to say even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorized. In such a case, for entertaining a Writ Petition under Article 226 of the Constitution of India against a show-cause notice, at power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and taken up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him, to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India.”*

In case titled **The Special Director And another v. Mohd. Ghulam Ghouse And another** (AIR 2004 SC 1467 = (2004) 3 SCC 440) it has been held as under:

*“This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court. Further, when the Court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is accorded to the writ petitioner even at the threshold by the interim protection, granted.”*

In another case titled **State of Uttar Pradesh v. Brahma**

**Datt Sharma and others** (AIR 1987 SC 943 = 1987 SCR

(2) 444) it has been held as follows:

*“The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a Govt. servant under a statutory provision calling upon him to show cause, ordinarily the Govt. servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown*



*to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the Govt. servant and once cause is shown it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Govt. servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature. The High Court in our opinion ought not have interfered with the show cause notice.”*

In case titled **M/s. Siemens Ltd. v. State of Maharashtra and others** (2006) 12 SCC 33 it has been held as under:

*“Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of Uttar Pradesh v. Brahm Datt Sharma and Anr. AIR 1987 SC 943, Special Director and Another v. Mohd. Ghulam Ghouse and Another, (2004) 3 SCC 440 and Union of India and Another v. Kunisetty Satyanarayana, 2006 (12) SCALE 262], but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See K.I. Shephard and Others v. Union of India and Others (1987) 4 SCC 431 : AIR 1988 SC 686]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause.”*

In case titled **The Secretary, Ministry of Defence and others v. Prabhash Chandra Mirdha** (AIR 2012 S.C. 2250) it has been held as under:

*“Ordinarily a writ application does not lie against a charge sheet or show cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge sheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court.”*

In case titled **Union of India and another v. Kunisetty Satyanarayana** (AIR 2007 SC 906 = (2006) 12 SCC 28 it has been held as under:

*“In our opinion, the High Court was not justified in allowing the Writ Petition. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others JT 1995 (8) SC 331, Special Director and another vs. Mohd. Ghulam Ghouse and another AIR 2004 SC 1467, Ulagappa and others vs. Divisional Commissioner, Mysore and others 2001(10) SCC 639, State of U.P. vs. Brahm Datt Sharma and another AIR 1987 SC 943 etc. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the*

*proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.*

*No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”*

In case titled **Pushpanjali Silk Private Limited v. The Chief Commissioner of Customs, Custom House No.60, Rajaji Salai, Chennai** (2006) 4 MLJ 968) it has been held as under:

*“It was held that the writ petitions challenging show cause notice should not be entertained unless exceptional circumstances warrant it. This indeed is a special case. There is a contract dated 17-02-2005, the period of contract expires in September 2006. Goods forming part of the contract have been imported in stages. The goods imported under the earliest bills of entry were allowed to be cleared, on payment of duty at USD 13.94 per kg-CIF voluntarily by the petitioner though the declared value was USD 13.50 per kg-CIF. In respect of goods imported a few months later, 7 months after the contract to be precise, a show cause notice was issued calling upon the petitioner to pay duty at an enhanced rate. The proceedings pursuant to the show cause notice ended in favour of the petitioner. The Department fought all the way upto the*

*Supreme Court. Now sixteen months after the contract, when goods are imported under the contract and within the contract period, the Department raises the same objections, refusing to accept the order passed earlier that the declared value must be accepted. Considering the history of this case, and since the respondents have hedged and stalled at every stage, it would be futile to ask the petitioner to respond to the show cause notice.”*

In case titled **Electrolux Kelvinator Ltd. v. Union of India and others** (RLW 2005 (3) Raj 1949 = 2005 (3)

WLC 743 it has been held as under:

*“I carefully considered the judgment of Hon'ble Supreme Court rendered in the case of Dr. Shashank v. Commissioner of Customs (supra) wherein the Hon'ble Supreme Court has held as under:-*

*"We see no reason to interfere with the order of the High Court which dismissed the writ petition filed challenging the show cause notice that was issued. The High Court should not have entertained the writ petition under Article 226 of the Constitution of India against the show cause notice issued under the Customs Act. The more appropriate remedy for the person aggrieved is to file a reply to the show cause and take recourse to the proceedings available under the Act."*

In case titled **Rameshwar Dass Aggarwal v. MCD and others** (W.P. (C) 1932/2010 & CM No.3845/2010) it has been held as under”

*“I am of the opinion that ordinarily a notice of a show cause notice is not entitled to impugn the show cause notice itself and can only respond thereto and the challenge, if*

*any, has to be, only to the order passed in pursuance of the show cause notice. The Division Bench of this Court in Hindustan National Glass & Industries Vs. UOI 132 (2006) DLT 454 held that statutory proceedings pending at the stage of show cause notice ought not to be interfered with in exercise of discretionary jurisdiction under Article 226 of the Constitution and which ought not to be permitted to be bypassed by resorting to writ petitions under Article 226. Another Division Bench in Pepsico Restaurants International (I) (P) Ltd. Vs. MCD 1995 (35) DRJ 616 had also reiterated that the High Court would not entertain a writ petition against a mere show cause notice except in the case of patent lack of jurisdiction in the authority issuing the notice or violation of principles of natural justice. It was held that the High Court should leave such a hasty petitioner to pursue the remedy of showing cause against the notice raising all his contentions for the consideration of the statutory authority and then taking the appropriate remedy in the event of the result going against him.”*

In case titled **Namrata Marketing pvt.Ltd. v. Competition**

**Commission of India and others** (Writ Petition

**No.42783 of 2013)** it has been held as under:

*“The impugned notice issued by the Director General is in the nature of a show cause notice. The Supreme Court in a long line of decisions has held that the writ petition against the show cause notice is not maintainable. There are very limited grounds when writ petition can be entertained against show cause notice, i.e. when it is totally without jurisdiction or against the vires of statutory provision. In the present case, the petitioner has not challenged the impugned notice on the ground that the Commission does not have power to investigate or enquire into the matter.”*

In case titled **M/s Bajaj Auto Ltd. v. Union of India and three others** 2014 (4) ECS (11) (HC) it has been held as under:

*“It is settled principle of law that a writ petition is not maintainable against a show cause notice that too in revenue matters.”*

In case titled **Bhunesh Mishra v. State of U.P. and others** (1998 (2) ( AWC 990) it has been held as under:

*“The Division Bench in Ballabh Chaubey's case had dealt with the subject of maintainability of a writ petition against a show-cause notice in detail by quoting various provisions of different statutes and on the strength of various judgments of the Supreme Court in large number of cases, found that a writ petition against a show cause notice was not maintainable. The Division Bench further found that all those cases of the Supreme Court in which it had been held that the alternative remedy was no bar to approach the High Court and Supreme Court in its writ jurisdiction were cases in which fundamental right of a person to approach the Supreme Court under Article 32 was involved and that was the reason why the Supreme Court did not reject these petitions on the ground of alternative remedy.”*

9. The upshot of the above case law is that the exceptions under which writ petition against a show cause notice is maintainable are as follows:

- A) Where the impugned notice is without jurisdiction/lawful authority;**
- B) Where the impugned notice is non est in the eye of law;**
- C) Where the impugned notice is patently illegal;**
- D) Where the impugned notice is issued with premeditation or without application of mind**

- for extraneous reasons;*  
*E) Where the aggrieved person does not have adequate and efficacious remedy;*  
*F) Where the issues of show cause notice violate any fundamental rights of the aggrieved person;*  
*G) Where there is an important question of law requires interpretation of any fiscal law or any other substantive law.*

10. In light of the above principles, what needs to be examined is whether the instant petitions are maintainable. The sole ground agitated by the petitioner is that since the question involved and/ or raised in the impugned notices is pending by way of Tax References before this Court, hence writ petitions under Article 199 of the Constitution are not maintainable. The mere pendency of the matter before the superior Court is no justification for entertaining a petition under Article 199 of the Constitution in the High Court. The decision of the Tribunal against which Tax References are pending before this Court is a split and there is a contrary view as well. The Tax References are being heard by the Division Bench of this Court; meanwhile holding that the Department cannot issue a show cause notice on the issue involved or if they do, the petition under Article 199 of the Constitution is directly entertainable tantamount to make a statutory provision providing the machinery for issuance of notice and effecting recovery redundant which can never be the

case.

11. In view of the above background, the mere pendency of the Tax References is no bar for the notice issuing authority to proceed further in the matter and /or the petitioner agitates the matter directly before this Court.

12. For the reasons mentioned hereinabove, the instant petition as well as the above referred connected petitions are not maintainable, hence dismissed. Since the arguments were addressed only to the extent of maintainability of the petition under Article 199 of the Constitution, hence findings have been rendered to the said extent only.

**(AAMER FAROO)**  
**JUDGE**

Announced in open Court on the 16<sup>th</sup> day of September 2019

**JUDGE**

\*M.Naveed\*