P L D 2023 Supreme Court 207

Present: Syed Mansoor Ali Shah, Jamal Khan Mandokhail and Shahid Waheed, JJ

FEDERAL BOARD OF REVENUE through Chairman, Islamabad and others---Petitioners

Versus

Messrs HUB POWER COMPANY LTD. and others---Respondents

Civil Petition No. 3739 of 2019, decided on 20th January, 2023.

(Against the order of Islamabad High Court, Islamabad dated 26.07.2019 passed in W.P. No. 1228 of 2016).

Law Reforms Ordinance (XII of 1972)---

----S. 3---Constitution of Pakistan, Art. 185(3)---Petition for leave to appeal filed before the Supreme Court without exhausting the available remedy of filing an Intra Court Appeal ("ICA") under section 3 of the Law Reforms Ordinance, 1972 ("Ordinance") before the High Court---Maintainability---Where the right to file an ICA before the High Court under section 3 of the Ordinance exists, then a petition before the Supreme Court without exhausting the said remedy, and thereby circumventing the forum below, is ordinarily not maintainable---Requirement of filing an ICA is a rule of practice for regulating the procedure of the Court and does not oust or abridge the constitutional jurisdiction of the Supreme Court---Such petitions, however, have been entertained by the Supreme Court only when certain exceptional circumstances exist, such as, where the matter involves important questions of law of great public importance having far-reaching consequences, questions of law as to the interpretation of the Constitution and validity of provincial statutes, and substantial questions of law involving fundamental rights, coupled with the fact that the objection with regards to maintainability is taken at a belated stage before the Court.

Imtiaz Ali Malik v. Mst. Surrya Begum 1979 SCMR 22; Ch. Muhammad Ilyas Gujjar v. Chief Election Commissioner PLD 2011 SC 961; Government of Punjab v. Metropole Cinema 2014 SCMR 649; Accountant General v. Zia Mohy-ud-r 294Din PLD 2008 SC 164; PIAC v. Samina Masood PLD 2005 SC 831; PTCL v. Iqbal Nasir PLD 2011 SC 132; Commissioner of Income Tax v. Messrs Media Network PLD 2006 SC 787; Province of Punjab v. Sargodha Textile Mills PLD 2005 SC 988 and PESSI v. Manzoor Hussain 1992 SCMR 441 ref.

Ms. Shazia Bilal, Advocate Supreme Court, Syed Salauddin Gillani, Addl. Commissioner (Through V.L. Karachi Registry) for Petitioners.

Jahanzeb Awan, Advocate Supreme Court for Respondent No.1.

Date of hearing: 20th January, 2023.

ORDER

SYED MANSOOR ALI SHAH, J.---The learned counsel for the respondent, at the very outset, raised an objection that the petitioners have filed the instant petition without exhausting the available remedy of filing an Intra Court Appeal ("ICA") under section 3 of the Law Reforms Ordinance, 1972 ("Ordinance") before the High Court, therefore, the instant petition is not maintainable. In support of this contention, the learned counsel has placed reliance on Col. (Retd.) M.R. Hassan[1], Mst. Karim Bibi[2], Samina Masood[3], Zia Mohy-ud-Din[4], Ilyas Gujjar[5] and Abdul Ghani[6].

2. On the other hand, the learned counsel for the petitioners has also relied on Media Network[7] to contend that the instant petition is maintainable.

3. We have heard the learned counsel for the parties and have gone through the case law with their able assistance. It is settled law that where the right to file an ICA before the High Court under section 3 of the Ordinance exists, then a petition before this Court without exhausting the said remedy, and thereby circumventing the forum below, is ordinarily not maintainable.[8] The requirement of filing an ICA is a rule of practice for regulating the procedure of the Court and does not oust or abridge the constitutional jurisdiction of this Court.[9] Such petitions, however, have been entertained by this Court only when certain exceptional circumstances exist, such as, where the matter involves important questions of law of great public importance having far-reaching consequences[10], questions of law as to the interpretation of the Constitution[11] and validity of provincial statutes[12], and substantial questions of law involving fundamental rights[13], coupled with the fact that the objection with regards to maintainability is taken at a belated stage before the Court.[14] We note that no

such exceptional circumstances exist in the matter at hand and the objection regarding maintainability of the petition was also duly raised at the first instance. Reliance on Media Network (supra) by the learned counsel for the petitioners is misconceived as in the said judgment, this Court had noted that the objection as to maintainability was taken at a belated stage and important questions of law of great public importance having far-reaching consequences were involved in terms of selection of cases for audit under a Self-Assessment Scheme and policy guidelines issued by the Central Board of Revenue. Whereas, the present matter relates simply to adjustment of input tax with respect to services received by the respondent against the sales tax on services. Consequently, we find that the instant petition, having been filed without availing the remedy of an ICA before the High Court, is not maintainable.

4. In the light of the above, the preliminary objection raised by the learned counsel for the respondents is upheld and the instant petition is accordingly dismissed being not maintainable.

MWA/F-3/SC Petition dismissed.