

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah, Jamal Khan Mandokhail and Athar Minallah, JJ
COMMISSIONER INLAND REVENUE, LARGE TAXPAYERS OFFICE, ISLAMABAD ---Petitioner
Versus

PAKISTAN OILFIELDS LTD., RAWALPINDI and others---Respondents

Civil Petitions Nos. 3472 to 3475 of 2023, decided on 29th February, 2024.

(Against the orders of Islamabad High Court, Islamabad, all dated 08.08.2023 passed in W.Ps. Nos. 2436 to 2439 of 2023).

(a) Constitution of Pakistan---

---Arts. 185(3) & 199---Interim order passed by the High Court---Interference by the Supreme Court---Scope---Established practice and policy of the Supreme Court is that it does not ordinarily intervene in the interim orders of the High Courts---Such intervention is warranted only in exceptional circumstances, such as cases involving a flagrant violation of law, a clear wrongful exercise of jurisdiction or a manifest grave injustice.

Attiq ur Rehman v. Tahir Mehmood 2023 SCMR 501 and Province of Sindh v. Sartaj Hyder 2023 SCMR 459 ref.

(b) Income Tax Ordinance (XLIX of 2001)---

---S. 4C [as amended by the Finance Act 2023]---Constitution of Pakistan, Art. 199(4)---Supertax under Section 4C of the Income Tax Ordinance, 2001---Recovery of---High Court granting interim relief against collection of super tax---Constitutionality---Violation of the constitutional requirement of granting interim relief under Article 199(4) of the Constitution---Plain reading of Article 199(4) of the Constitution shows that where the making of an interim order would have the effect of impeding the assessment or collection of public revenues, the High Court shall not make an interim order unless: (i) the prescribed law officer has been given notice of the application for interim relief and he or any person authorized has had an opportunity of being heard; and (ii) the High Court, for reasons to be recorded in writing, is satisfied that the interim order would have the effect of suspending an order or proceeding which on the face of the record is without jurisdiction---Use of the negative language, i.e., "shall not", in Article 199(4) leaves no doubt that its provisions are mandatory and an interim order passed without adhering to the procedure provided therein will be illegal and without jurisdiction---In the present case, it is an admitted fact that the High Court did not give notice of the application for interim relief and provide an opportunity of hearing to the prescribed law officer, i.e., the Attorney-General, nor did the High Court record its finding, and the reasons therefor, that the interim order would have the effect of suspending an order or proceeding which on the face of the record is without jurisdiction---Both the mandatory requirements of Article 199(4) were not complied with by the High Court in making the impugned orders, which failure makes these orders illegal and without jurisdiction---Present case, thus, involves a flagrant violation of law and a clear wrongful exercise of jurisdiction, which warrants interference by the Supreme Court in the impugned interim order---Petitions were converted into appeals and allowed; the impugned orders were set aside with the directions that the respondents' (tax payers') applications for interim relief shall be decided by the High Court after affording a fair and reasonable opportunity of hearing as envisaged under Article 199(4) of the Constitution; that the High Court shall also identify the order or proceedings under challenge in terms of Article 199(4)(b)(ii) of the Constitution; that the High Court will also attend to the other contention of the counsel for the petitioner (tax department) regarding suspension of legislation through an interim order in the light of the law cited by her.

(c) Interpretation of statutes---

---Provision couched in a negative language---Where any provision couched in a negative language requires an act to be done in a particular manner then it should be done in the manner as required by the statute otherwise such act will be illegal and without jurisdiction.

Atta Muhammad v. Settlement Commissioner PLD 1971 SC 61; Shujat Hussain v. State 1995 SCMR 1249 and Province of Punjab v. Javed Iqbal 2021 SCMR 328 ref.

Ms. Asma Hamid, Advocate Supreme Court, assisted by Hassan Ali and Mustafa Khalid, Advocates and Ch. Akhtar Ali, Advocate-on-Record for Petitioner.

Salman Akram Raja, Advocate Supreme Court and Syed Rifaqat Hussain Shah, Advocate-on-Record for Respondents.

Date of hearing: 29th February, 2024.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---Through the present petitions, the petitioner seeks leave to appeal against the order of the Islamabad High Court, dated 08.08.2023, whereby it has, as interim relief, restrained the petitioner from recovering the supertax under Section 4C of the Income Tax Ordinance, 2001 as amended by the Finance Act, 2023.

2. Arguing against the legality of the impugned orders, the learned counsel for the petitioner made two main contentions: (i) that the High Court did not adhere to the mandatory procedure prescribed in Article 199(4) of the Constitution of the Islamic Republic of Pakistan ("Constitution") for making interim orders in matters relating to assessment and collection of public revenue; (ii) that by making the impugned orders, the High Court virtually suspended the operation of the legislation, i.e., Section 4C of the Income Tax Ordinance, 2001 ("Ordinance"), which could not have been legally done. In support of her contentions, she placed reliance on *Federation of Pakistan v. Aitzaz Ahsan* (PLD 1989 SC 61), *Aijaz Jatoi v. Liaquat Jatoi* (1993 SCMR 2350) and *Asstt. Collector v. Dunlop India Ltd.* (AIR 1985 SC 330). On the other hand, the learned counsel for the respondents submitted that the respondents challenged the amendment¹ to Section 4C of the Ordinance through Finance Act, 2023 only to the extent of its retrospective applicability. He submits that a similar challenge to the extent of retrospectivity of the unamended Section 4C of the Ordinance was read down by the Islamabad High Court in its judgment dated 20.07.2023 passed in *Fauji Fertilizer*².

3. We have considered the respective contentions of the learned counsel for the parties and have examined the record.

4. At the outset, it is important to note that the present petitions challenge the interim orders of the High Court, and we are fully cognizant of the established practice and policy of this Court, whereby it does not ordinarily intervene in the interim orders of the High Courts.³ Such intervention is warranted only in exceptional circumstances, such as cases involving a flagrant violation of law, a clear wrongful exercise of jurisdiction or a manifest grave injustice.⁴ In the present case, the exceptional circumstance is the alleged violation of the constitutional requirement of granting interim relief under Article 199(4) of the Constitution. Hence we proceed to examine the impugned order on merit.

5. To appreciate the contention of the learned counsel for the petitioner it would be expedient to reproduce Article 199(4) of the Constitution for ready reference:

(4) Where-

(a) an application is made to a High Court for an order under paragraph (a) or paragraph (c) of clause (1), and

(b) the making of an interim order would have the effect of prejudicing or interfering with the carrying out of a public work or of otherwise being harmful to public interest or State property or of impeding the assessment or collection of public revenues, the Court shall not make an interim order unless the prescribed law officer has been given notice of the application and he or any person authorized by him in that behalf has had an opportunity of being heard and the Court, for reasons to be recorded in writing, is satisfied that the interim order-

(i) would not have such effect as aforesaid; or

(ii) would have the effect of suspending an order or proceeding which on the face of the record is without jurisdiction.

(Emphasis added)

A plain reading of the above provisions shows that where the making of an interim order would have the effect of impeding the assessment or collection of public revenues, the High Court shall not make an interim order unless: (i) the prescribed law officer has been given notice of the application for interim relief and he or any person authorized has had an opportunity of being heard; and (ii) the High Court, for reasons to be recorded in writing, is satisfied that the interim order would have the effect of suspending an order or proceeding which on the face of the record is without jurisdiction.

6. It is a well-established principle that where any provision couched in a negative language requires an act to be done in a particular manner then it should be done in the manner as required by the statute otherwise such act will be illegal and without jurisdiction.⁵ The use of the negative language, i.e., "shall not", in Article 199(4) leaves no doubt that its provisions are mandatory and an interim order passed without adhering to the procedure provided therein will be illegal and without jurisdiction. In the present case, it is an admitted fact that the High Court did not give notice of the application for interim relief and provide an opportunity of hearing to the prescribed law officer, i.e., the Attorney-General,⁶ nor did the High Court record its finding, and the reasons therefor, that the interim order would have the effect of suspending an order or proceeding which on the face of the record is without jurisdiction. Both the mandatory requirements of Article 199(4) were not complied with by the High Court in making the impugned orders, which failure makes these orders illegal and without jurisdiction. The present case, thus, involves a flagrant violation of law and a clear wrongful exercise of jurisdiction, which warrants interference by this Court in the impugned interim order. We observe, with respect, that the High Court acted with undue haste in making the impugned interim orders without giving notice and without providing an opportunity of hearing to the prescribed law officer. The impugned interim orders suffer from this inherent vice and deserve to be set aside on this account alone.

7. For the above reasons, we convert these petitions into appeals and allow them. The impugned orders are set aside. The respondents' applications for interim relief shall be decided by the High Court after affording a fair and reasonable opportunity of hearing as envisaged under Article 199(4) of the Constitution. The High Court shall also identify the order or proceedings under challenge in terms of Article 199 (4) (b) (ii) of the Constitution. The High Court will also attend to the other contention of the learned counsel for the petitioner regarding suspension of legislation through an interim order in the light of the law cited by her. Given that the matter pertains to the assessment and collection of public revenue, we expect that the High Court will decide not only the applications for interim relief but also the writ petitions as expeditiously as possible.

MWA/C-9/SC

Appeals allowed.

¹ Mainly regarding rates of tax

² *Fauji Fertilizer v. Federation of Pakistan* (W.P. 4027 of 2022)

³ *Attiq ur Rehman v. Tahir Mehmood* 2023 SCMR 501 (several previous cases are cited in it).

⁴ Province of Sindh v. Sartaj Hyder 2023 SCMR 459 (several previous cases are cited in it).

⁵ Atta Muhammad v. Settlement Commissioner PLD 1971 SC 61; Shujat Hussain v. State 1995 SCMR 1249 and Province of Punjab v. Javed Iqbal 2021 SCMR 328.

⁶ Article 199(5). In this Article, unless the context otherwise requires, -... "prescribed law officer" means (a) in relation to an application affecting the Federal Government or an authority of or under the control of the Federal Government, the Attorney-General, and (b) in any other case, the Advocate-General for the Province in which the application is made.