

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah, Ayesha A. Malik and Irfan Saadat Khan, JJ

FEDERATION OF PAKISTAN through Revenue Division and others ---Petitioners

Versus

DEWAN MOTORS (PVT) LTD. and others ---Respondents

C.P.L.As Nos. 836-K to 887-K, 951-K, 1056-K, 1296-K of 2020, 741-K to 743-K of 2021 and 165-K of 2022, decided on 13th January, 2025.

Constitution of Pakistan---

---Arts. 185(3) & 191A [as inserted by 26th Constitutional Amendment]---Customs Act (IV of 1969), S. 221A (2)---Regular Bench of Supreme Court---Jurisdiction---Interpretation of Constitutional provision--- Authorities contended that regular bench of Supreme Court could not hear the matter in question as it involved a challenge to Constitutionality of law namely section 221A (2) of Customs Act, 1989--- Authorities referred to provisions of Article 191A of the Constitution, which was added to the Constitution through the 26th Constitutional Amendment---Respondents contended that Article 191A of the Constitution, was constitutionally invalid as it had infringed upon the salient features of the Constitution, including independence of judiciary and separation of powers among three organs of the State---Validity---Supreme Court found that it would be necessary to first decide upon the objection raised and reply thereto before proceeding further in the matter at hand---Supreme Court granted time to parties to prepare their arguments and assist Supreme Court on such points---Petition was adjourned.

Sabir Shah v. Shad Muhammad Khan PLD 1995 SC 66; Fazlul Quader Chowdhry v. Abdul Haque PLD 1963 SC 486 and Marbury v. Madison 5 US 137 [1803] ref.

Mirza Nasar Ahmad, Advocate Supreme Court (through video-link), M. Nadeem Qureshi, Advocate Supreme Court, Raja M. Iqbal, Advocate Supreme Court for Petitioners.

Salah-ud-Din, Advocate Supreme Court, Haider Waheed, Advocate Supreme Court, Imran Iqbal, Advocate Supreme Court, Ghulam Haider Sh, Advocate Supreme Court, Hussain Ali Amani, Advocate Supreme Court (through video-link), Afzal Awan, Advocate Supreme Court and Pervaiz Akhtar Tahir, Advocate Supreme Court for Respondents.

Date of hearing: 13th January, 2025.

ORDER

At the very outset, the learned counsel for the petitioners submitted that the present regular bench of the Court cannot hear these cases, as they involve a challenge to the constitutionality of a law, namely, subsection (2) of Section 221-A of the Customs Act, 1969. When asked why this bench cannot hear these cases, the learned counsel referred to the provisions of Article 191A, which was added to the Constitution of the Islamic Republic of Pakistan through the 26th Constitutional Amendment. In response to the petitioners' objection regarding the lack of jurisdiction of the present bench of the Court, the learned counsel for the respondents contended that Article 191A, the basis of the objection regarding jurisdiction, is constitutionally invalid as it infringes upon the salient features of the Constitution, including the independence of the judiciary and the separation of powers among the three organs of the State. He further submitted that a constitutionally invalid amendment cannot oust the constitutionally valid conferment of jurisdiction on the regular benches of the Court.

2. When asked how the present bench of the Court can decide upon the constitutional validity of the newly added Article 191A, the learned counsel for the respondents took the position that since the objection raised and the basis thereof pertain to the jurisdiction of the present bench, it must be decided by it. In support of his stance, he referred to Sabir Shah v. Shad Muhammad Khan (PLD 1995 SC 66), Fazlul Quader Chowdhry v. Abdul Haque (PLD 1963 SC 486) and Marbury v. Madison (5 US 137 [1803]) and sought time to further assist the Court on this point.

3. Given the objection raised and the reply thereto, we find that it would be necessary to first decide upon the same before proceeding further in the matter at hand. Therefore, the learned counsel for the parties are

granted time to prepare their arguments and assist the Court on the said points. The hearing for arguments on those points is adjourned to 16.01.2025.

MH/F-

2/SC

Order accordingly.