

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa, CJ.
Mr. Justice Amin-ud-Din Khan
Mr. Justice Athar Minallah

Civil Petition No.740 of 2021

*(Against the judgment dated 21.01.2021
of the Islamabad High Court, Islamabad
passed in ICA No.115/19)*

M/s Sprint Oil and Gas Services
Pakistan FZC, Islamabad ...Petitioner

Versus

Oil and Gas Development Company
Limited (OGDCL), Islamabad ...Respondent

For the Petitioner: Mr. Muhammad Ahmad Qayyum, ASC.

For the Respondent: Mr. Khurram Mumtaz Hashmi, ASC.

Date of Hearing: 20.10.2023

ORDER

Qazi Faez Isa, CJ. Learned Mr. Muhammad Ahmad Qayyum represents the petitioner, which is a company with its registered office at Islamabad. He states that the petitioner entered into two contracts with the Oil and Gas Development Company Limited ('**OGDCL**') respectively on 11 March 2013 and 21 August 2013 ('**the contracts**') at Islamabad. The petitioner had carried out *cementation* works for OGDCL under the contracts and the subject dispute pertains to the sales tax paid by it on the said works. Learned counsel submits that when the contracts were entered into the requisite notifications, which commenced the imposition of sales tax on services, had not been issued under the following four applicable provincial laws:

Sindh Sales Tax on Services Act, 2011,
Punjab Sales Tax on Services Act, 2011,
Khyber Pakhtunkhwa Finance Act, 2013, and
Balochistan Sales Tax on Services Act, 2015.

2. OGDCL refused to reimburse the sales tax paid by the petitioner, therefore, the petitioner invoked the constitutional jurisdiction of the Islamabad High Court, because, the learned Mr. Qayyum submits, the petitioner's registered office is at Islamabad and

the contracts were also executed at Islamabad. In its petition the petitioner claimed that under the abovementioned laws OGDCL was liable to reimburse the sales tax paid by the petitioner on behalf of OGDCL.

3. The writ petition (WP No.2349 of 2017) filed by the petitioner was allowed on 1 March 2019, by a learned Single Judge of the High Court, in the following terms:

'21. In view of the above, the instant writ petition is partly allowed to the extent that it is declared that the services provided by the petitioner to the respondent under the contracts dated 11.03.2013 and 21.08.2013 were taxable under Section 3(2) of the Sindh Sales Tax on Services Act, 2011, and other pari materia provisions (i.e. Section 3(2) of the Punjab Sales Tax on Services Act, 2012; Section 3(2) of the Baluchistan Sales Tax of Services, 2015 and Section 19(2) of the Khyber Pakhtunkhwa Finance Act, 2013, and consequently, under Section 9(2) of the Sindh Sales Tax on Services Act, 2011, and other pari materia provisions (i.e. Section 11(2) of the Punjab Sales Tax on Service Act, 2012; Section 11(2) of the Baluchistan Sales Tax on Services Act, 2015; and Section 27(2) of the Khyber Pakhtunkhwa Finance Act, 2013), the liability to pay the sales tax on services was rendered on the respondent being the person receiving the services. There shall be no order as to costs.'

4. The aforesaid judgment was assailed by OGDCL in intra-court appeal (ICA No.115 of 2019). OGDCL's appeal was allowed *vide* judgment dated 21 January 2021; the judgment of the learned Single Judge was set aside and the cross objections filed by the petitioner were dismissed.

5. In response to our query on the maintainability of the writ petition filed by the petitioner, learned Mr. Qayyum submits that the impugned judgment had specifically endorsed the decision of the learned Single Judge who had held that the petition was maintainable. And, reiterated that since the petitioner has its registered office at Islamabad and the contracts were also entered into at Islamabad, therefore, the Islamabad High Court had jurisdiction. Reliance by learned counsel is also placed upon the following cases, which were relied upon in the impugned judgment: *Federal Government Employees*

Housing Foundation v Muhammad Akram Alizai,¹ *Petrosin Corporation (Pvt.) Ltd. v Oil and Gas Company Ltd.*² and *Nasiruddin Ghori v Federation of Pakistan*.³

6. The learned Mr. Qayyum further submits that in the impugned judgment the learned Judges had incorrectly interpreted the above mentioned four provincial statutes by holding that the liability to pay the sales tax lay upon the petitioner, consequently, the petitioner cannot recover the sales tax paid by it from OGDCL.

7. We have read the cited three precedents. The decision of the Supreme Court, in the case of *Federal Government Employees Housing Foundation*, was given in a service matter arising out of Article 212(3) of the Constitution of the Islamic Republic of Pakistan (**the Constitution**) and had considered whether the terms of service of an employee entitled him to a plot. In the *Petrosin* case, which is a decision of a learned Single Judge of the Lahore High Court, challenge was made to OGDCL awarding a contract and the petitions challenging it were dismissed. In the case of *Nasiruddin Ghori* the question for consideration was whether certain organizations, in the absence of statutory rules, were amenable to writ jurisdiction in respect of employee disputes. In our opinion none of the cited judgments are relevant nor constitute precedents with regard to the maintainability of the petitioner's petition before the Islamabad High Court.

8. Pakistan is a Federation comprising of four provinces and the Islamabad Capital Territory.⁴ The Constitution provides a High Court for each province and, subsequently, the Islamabad High Court was established in 2010.⁵ Each province can enact laws with regard to their respective territories, and only the High Court of the said province can interpret them. Therefore, the said four provincial laws (mentioned above in paragraph 1) could only have been interpreted by the High Court of the province in which they had been enacted, and not by the Islamabad High Court. Admittedly, the petitioner did not carry out any of the *cementation* works in the Islamabad Capital Territory, nor was the applicability and/or interpretation of a Federal law required, which may have required consideration by the Islamabad

¹ PLD 2002 Supreme Court 1079.

² 2007 Corporate Law Decisions 578.

³ 2010 Pakistan Labour Cases 323.

⁴ Constitution of the Islamic Republic of Pakistan, Article 1(2)(a).

⁵ Pursuant to Constitutional (Eighteenth Amendment) Act, 2010.

High Court. The Islamabad High Court, therefore, lacked jurisdiction, and should not have entertained the writ petition filed by the petitioner on this ground alone.

9. The petitioner, however, faced other hurdles in invoking the High Court's constitutional jurisdiction under Article 199 of the Constitution which could only be invoked when '*no other adequate remedy is provided by law*'. In the instant case the petitioner had *other adequate remedy*, either by invoking the arbitration clause in the contracts or by filing a suit.

10. The High Court's jurisdiction under Article 199 of the Constitution may also not be invoked when contracts have to be interpreted, and all the more so when they are technical and/or complex, as in the instant case, nor when evidence is required to be recorded. In the exercise of its writ jurisdiction, under Article 199 of the Constitution, a High Court also does not enter into the realm of disputed facts.

11. The learned Mr. Qayyum then submitted that only a general objection to maintainability was taken by OGDCL, and that in the absence of specific objection(s), OGDCL had impliedly conceded to the constitutional jurisdiction of the Islamabad High Court. We cannot bring ourselves to agree with him because parties cannot confer jurisdiction on a court. This established principle was recently reiterated by this Court in the case of *Eden Builders Pvt. Ltd. Lahore v Muhammad Aslam*:⁶

'It is settled proposition of law that the parties cannot by agreement confer jurisdiction upon any court when otherwise the court has no jurisdiction.'

12. We have consciously avoided considering the merits of the case, that is, whether OGDCL was liable to refund to the petitioner the sales tax paid by the petitioner as it would impact on the parties' rights, which they may agitate. We merely hold that the Islamabad High Court did not have the jurisdiction to entertain the writ petition filed by the petitioner.

13. Therefore, for the reasons mentioned above, we dispose of this civil petition for leave to appeal, by holding that the writ petition filed

⁶ 2022 SCMR 2044, at 2046-2047B

by the petitioner before the Islamabad High Court was not maintainable. Consequently, any finding given or observation made in the judgment which had decided the writ petition (WP No.2349 of 2017) and in the intra-court appeal (ICA No.115 of 2019) are held to be of no legal effect, and the same shall not be used in proceedings which any party may initiate. In the circumstances of the case, there shall be no order as to costs.

Chief Justice

Judge

Judge

Islamabad:
20.10.2023

Approved for Reporting

*M. Azhar Malik/**