

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

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

**Civil Appeals No.1363 to 1365 of 2018**

*(Against the judgment dated 15.07.2017 of the High Court of Sindh, Karachi passed in Constitution Petitions No. D-2892/14, D- 1135 and D-3539/2016)*

And

**Civil Misc. Application No. 4728 of 2023**

*[For impleadment by M/s Zubi International Private Limited, through its Assistant Manager, Hafiz Zahid Hassan]*

**In CA. 1363/18:**

*Cantonment Board Faisal and another. ... Appellants*

*Versus*

*Habib Bank Limited, Karachi and another. ... Respondents*

And

**In CA. 1364/18:**

*Cantonment Board Clifton, Karachi. ... Appellant*

*Versus*

*K & N Foods (Pvt.) Limited and others. ... Respondents*

And

**In CA. 1365/18:**

*Cantonment Board Clifton, Karachi. ... Appellant*

*Versus*

*M/s Venus Pakistan (Pvt.) Limited and others. ... Respondents*

For the Appellants:  
*(In all cases)*

Mr. Muhammad Umer Riaz, ASC.  
Assisted by Ch. Abubakar.

Mr. Zaki Haider, CEO, Clifton.  
Mr. Aamir Rashid, CEO, Faisal.  
Mr. Tanveer Ashraf, Director, ML & C.  
Mr. Javed Abbasi, Law Officer, ML & C.  
*(Though video-link from Karachi)*

For the Applicant:  
*(In CMA. 4728/23)*

Mr. M. Naeem Sadiq, ASC.

**On Court's Notice:**

Mr. Mansoor Usman Awan,

Attorney-General for Pakistan.  
Ch. Aamir Rehman,  
Additional Attorney-General.

Respondents No. 1-2:  
(In CA. 1363/18)

Ex-parte.

For Respondent No. 1:  
(In CA. 1364/18)

Mr. Tahir Ishaq Mughal, ASC.  
Mrs. Shaista Altaf, ASC.

For Govt. of Sindh:  
(In CA. 1364 & 1365/18)

Mr. Zeeshan Adhi,  
Additional Advocate-General, Sindh.  
Mr. Saifullah, Asst. Advocate-General, Sindh.  
Mr. Ghulam Nabi Shah, Addl. Director Excise & Taxation.  
Mr. Ayaz Ali Mangi, Dy. Director (P-II).  
(Through video-link from Karachi)

Respondents No. 2, 3 and 5:  
(In CA. 1364/18)

Ex-parte.

Respondents No. 1 and 3:  
(In CA. 1365/18)

Ex-parte.

Date of Hearing:

13.10.2023.

### JUDGMENT

**Qazi Faez Isa, CJ.**

Civil Appeals No. 1363 to 1365 of 2018: These Civil Appeals, assailing the judgment dated 15 July 2017 of a Division Bench of the High Court of Sindh at Karachi, are filed by the Cantonment Board Faisal and Cantonment Board Clifton (hereinafter '**Cantonment Boards**'). Leave to appeal the judgment of the High Court was granted on 30 October 2018.

2. The Cantonment Boards had levied provincial taxes in respect of professions, trades, callings and employments mentioned in Article 163 of the Constitution of the Islamic Republic of Pakistan (respectively '**the professional taxes**' and '**the Constitution**'). Article 163 is reproduced hereunder:

**'Provincial taxes in respect of professions, etc.** A Provincial Assembly may by Act impose taxes, not exceeding such limits as may from time to time be fixed by Act of Majlis-e-Shoora (Parliament), on persons engaged in professions, trades, callings or employments, and no such Act of the Assembly shall be regarded as imposing a tax on income.'

The High Court held that the Cantonment Boards could not levy the professional taxes.

3. Learned Mr. Muhammad Umer Riaz, who represents the Cantonment Boards, referred to section 60 of the Cantonments Act, 1924 (**'the Cantonments Act'**), which enabled cantonment boards to perform local government functions. He submitted that after the passing of the impugned judgment the Constitution underwent a change with the insertion of Article 140A therein.<sup>1</sup> He submitted that after this change cantonment boards could levy the professional taxes. Reference was also made to Article 74 of the Constitution and to the second entry to the Federal Legislative List,<sup>2</sup> and by reading these provisions together, cantonment boards are empowered to impose taxes with regard to *local self-government and cantonment areas*, including the professional tax taxes on those engaged in professions, trades, callings or employments in cantonment areas. The impugned judgment, submitted learned counsel, had relied upon the decision of this Court in the case of *ICI Pakistan Ltd. v Tehsil Council*<sup>3</sup> (**'the ICI case'**) but after the incorporation of Article 140A into the Constitution it was no longer applicable. He also sought to distinguish the decision in the *ICI* case by contending that the matter therein pertained to the imposition of the professional taxes through a notification, and not through an act of a provincial assembly, however, the province of Sindh had enacted the Sindh Local Government Act, 2013 (**'Sindh Local Government Act'**), which had empowered local councils to impose and collect the professional taxes. He submitted that the Cantonment Boards could impose professional taxes pursuant to notification S.R.O. No. 1374(I)/2012,<sup>4</sup> which was issued in supersession to notification No. 903, dated 13 April 1946, of the War Department.

4. Since the matter may have required interpretation of Federal and provincial laws and also of the Constitution, notices were issued to the Attorney-General for Pakistan and to the Advocate-General, Sindh in terms of Order XXVII-A of the Code of Civil Procedure, 1908. However, it transpired that this Court had already decided the issue herein in the *ICI* case; therefore, these appeals were not required to be heard by a five-member or larger Bench in terms of section 4 of the Supreme Court (Practice and Procedure) Act, 2023.

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<sup>1</sup> Through section 48 of the Constitution (Eighteenth Amendment) Act, 2010.

<sup>2</sup> Constitution of the Islamic Republic of Pakistan, Fourth Schedule.

<sup>3</sup> PLD 2007 Supreme Court 428.

<sup>4</sup> Published in the Gazette of Pakistan, Extraordinary, dated 15 November 2012.

5. Mr. Mansoor Usman Awan, the learned Attorney-General for Pakistan ('AGP'), supported the contentions of the learned counsel for the appellants. He added that the province of Sindh is constitutionally and legally empowered to impose the professional taxes and had authorized local governments to impose and collect them under section 96 of the Sindh Local Government Act. Therefore, cantonment boards, which also perform functions of local governments, can also impose and collect the professional taxes.

6. Mr. Zeeshan Adhi, the learned Additional Advocate-General, Sindh ('AAG') supports the impugned judgment. He submitted that under Article 163 of the Constitution only provinces are empowered to impose the professional taxes, and Parliament's legislative power is limited to fixing the maximum limit the provinces may impose. The Federal law which fixed the maximum limit is the Professions Tax Limitation Act, 1941; the maximum limit was raised on 1 July 1997 to one hundred thousand rupees per annum. The professional taxes, submitted the learned AAG, were levied pursuant to section 11 of the West Pakistan Finance Act, 1964,<sup>5</sup> reproduced hereunder:

*'11. Tax on trades, professions callings and employment.- (1)*  
With effect from the first day of July 1964, there shall be levied and collected from the following classes of persons, namely:-

- (a) Persons who in the preceding financial year, were assessed to income-tax under the Income-tax Act, 1922, in respect of earnings or income from any profession, trade, calling or employment, as the case may be, pursued either wholly or in part within this Province.
- (b) Persons who in the preceding financial year, were assessed to Agriculture Income-tax or who paid land revenue in excess of Rs. 250,
- (c) Legal practitioners of not less than 5 years standing,
- (d) Income-tax practitioners,
- (e) Clearing agents, licensed or approved as Custom House Agents,

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<sup>5</sup> PLD 1964 West Pakistan Statutes 315.

- (f) Contractors supplying goods, commodities and services to the Central or Provincial Governments or any Local Authority,
- (g) Persons holding license under the Import and Export (Control) Act, 1950.

a tax in respect of the professions, trades, callings or employments, for each financial year at the rate of thirty rupees in addition to any tax, rate, duty or fee that may be payable under any other law:

Provided that nothing in this section shall authorize the levy of more than thirty rupees as tax payable by any person for any financial year.

Explanation.- In this section-

- (i) the expression "person" includes a company;
  - (ii) the expression "land revenue" excludes any water rate, payable in respect of irrigated land.
- (2) Government may, by notification in the official Gazette, exempt any class of persons from the operation of subsection (1) or remit, in whole or in part, the tax payable under subsection (1).'

The learned AAG submitted that in the province of Sindh the Government of Sindh alone collects the professional taxes, and though the Sindh Local Government Act may have authorized local governments to do so, in practice no local government had done so.

7. Section 60 of the Cantonments Act, on which the appellants and the learned AGP rely, grants a general power of taxation, submitted the learned AAG, and this provision cannot prevail over Article 163 of the Constitution, which specifically authorizes the provinces to impose the professional taxes. The power to impose and collect the professional taxes neither vests in Parliament, the Federal Government nor in cantonment boards, which come under the Federal domain, submitted the learned AAG. With regard to the contention that the second entry of the Federal Legislative List<sup>6</sup> empowers cantonment boards to impose and collect the professional taxes, he submitted that the second entry merely refers to *local self-government in cantonment areas*, and its meaning cannot be extended to authorize them to impose the professional taxes. He added that Federal taxes are enumerated in entries 43 to 53 of the Federal Legislative List, and none of

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<sup>6</sup> Constitution of the Islamic Republic of Pakistan, Fourth Schedule.

them mentions the professional taxes. As regards the submission that Article 140A of the Constitution had brought about a change and allowed local governments to impose the professional taxes, he submitted that Article 140A only requires *financial responsibility* from local governments and it cannot be extended to mean that it has authorized the imposition of the professional taxes, and Article 140A does not negate Article 163 of the Constitution, which is the only specific authorization to impose the professional taxes in the Constitution and has to be given effect to. The learned AAG also referred to Article 77 of the Constitution and submitted that it further supported his contention. Concluding his submissions, the learned AAG stated that the matter which is under consideration has already been determined by this Court in the *ICI* case (particularly at pages 431, 432A and 432B of the judgment therein); reliance was also placed on the decisions in the cases of *Province of Punjab v Sargodha Textile Mills Ltd.*<sup>7</sup> and *Flying Cement Co. v Federation of Pakistan.*<sup>8</sup>

8. Learned Mr. Tahir Ishaq Mughal and learned Mrs. Shaista Altaf represent K & N Foods (Pvt.) Limited (respondent No. 1 in Civil Appeal No. 1364 of 2018). They supported the impugned judgment and adopted the submissions of the learned AAG. Learned Mr. Muhammad Naeem Sadiq had filed CMA No. 4728/2023 on behalf of Zubi International Private Limited. He also supported the impugned judgment, adopted the submissions of learned AAG and stated that the benefit of the impugned judgment should also be extended to the applicant.

9. We have heard the learned counsel for the parties and acknowledge their assistance and the assistance provided by the learned AGP and the learned AAG. The history of the professional taxes is set out in the case of *Province of Punjab v Sargodha Textile Mills Ltd.* and the issue in hand has been decided in the *ICI* case.

10. However, during the pendency of these appeals section 60(1) of the Cantonments Act underwent a change. The earlier provision and the existing one are reproduced herein below:

Section 60(1) as it was till 4 August 2023:

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<sup>7</sup> PLD 2005 Supreme Court 988.

<sup>8</sup> PLD 2016 Lahore 35.

60. **General power of taxation.**- (1) The Board may, with the previous sanction of the Federal Government, impose in any cantonment any tax which, under any enactment for the time being in force, may be imposed in any municipality in the Province wherein such cantonment is situated:

Section 60(1) as it now is, from 5 August 2023:

'60. **Power to levy taxes, etc.** (1) The Board may, with the previous sanction of the administrative division, impose in a cantonment any or all the taxes, fees, tolls or charges as specified in the Schedule VII.'

The above amendment was made by the Cantonments (Amendment) Act, 2023, promulgated on 5 August 2023, which had also made additions to Schedule VII of the Cantonments Act and included therein the professional taxes. The *administrative division* mentioned in section 60(1) is defined in section 2(a)(i) of the Cantonments (Amendment) Act, 2023, as under:

"administrative division" means the division to which business of cantonments stands allocated.'

The Second Schedule to the Rules of Business, 1973,<sup>9</sup> made pursuant to Articles 90 and 99 of the Constitution, stipulate that the *business of cantonments stands allocated* to the Defense Division. The aforesaid change meant that, previously the sanction of the Federal Government was required to be obtained for cantonment boards to impose taxes but now it has been delegated to a Division. This downgrading the power of the Federal Government does not seem to conform to democratic principles, and obfuscates transparency.

11. Article 163 of the Constitution alone authorizes the provinces to impose the professional taxes, and this Court had already decided this very issue in the *ICI* case, as under:

'8. A bare perusal of the aforesaid Article [163] shows that the repository of the power to impose professional/trade tax is only the Provincial Assembly and that too by an Act. The Article neither empowers the Provincial Assembly to delegate its authority to impose such a tax in favour of the Punjab Government or a Local Council nor it permits imposition of such a tax by subordinate legislation i.e. the notifications which were impugned in the two constitutional petitions filed by the appellant company. The argument of the learned counsel appearing for the Local Council based on sections

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<sup>9</sup> Rules of Business, 1973, Second Schedule, entry 7(a)(ii).

137 and 138 is totally misplaced because Article 163 stands in the way and any provision in any statute to the contrary will have to yield in favour of the said Article.<sup>10</sup>

'9. Perusal of section 137 shows that power of a Local Council to levy impugned tax was subject to any other provision of law. The limitation on the powers of the Local Government to impose tax is inbuilt in the said provision. Article 163 places a complete embargo to levy professional/trade tax except by an Act of a Provincial Assembly... .'

'10. In view of the above we allow Civil Appeal Nos. 1902 of 2002 and 1381 of 2005 of the ICI Pakistan Limited and declare that the Tehsil Council, Pind Dadan Khan (now Tehsil Municipal Administration) is not lawfully empowered to levy any professional/trade tax. In view of the conclusion reached by us, Civil Appeal No. 1382 of 2005 filed by the Local Council is dismissed.<sup>11</sup>

12. We are in complete agreement with the decision of this Court in the *ICI* case. The attempt to distinguish it on the ground that, after the insertion of Article 140A into the Constitution it changed the existing constitutional scheme, is not correct. Neither has Article 163 been made redundant nor has Article 140A empowered the Federation, including cantonment boards, to impose the professional taxes. It is also not correct to state that since the second entry of the Federal Legislative List mentions *local self-government and cantonment areas* the Federation has been authorized to impose the professional taxes. Article 163 of the Constitution specifically empowers the provinces to impose the professional taxes; it is the only provision in the Constitution which permits or authorizes this, and it must be given effect to; it cannot be disregarded or whittled down by untenable submissions.

13. Article 163 of the Constitution had already been interpreted by this Court in the *ICI* case, with which we are in agreement. Decisions of this Court are binding on all executive functionaries, including cantonment boards, as mandated by Article 189 of the Constitution. Therefore, section 60(1) of the Cantonments Act and its Schedule VII to the extent that they may authorize the imposition of the professional taxes are *ultra vires* the Constitution. Moreover, this oblique attempt to undo the decision in the *ICI* case cannot be allowed to succeed.

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<sup>10</sup>*ICI Pakistan Ltd v Tehsil Council*, PLD 2007 Supreme Court 428, p. 431A.

<sup>11</sup>*Ibid.*, p. 433C.

14. For the aforesaid reasons, these appeals are dismissed with costs throughout. The professional taxes mentioned in Article 163 of the Constitution recovered by the Cantonment Boards was unconstitutional, consequently, they cannot be retained, which should be refunded and would have to be refunded, as held in the case of *Pfizer Laboratories Ltd. v Federation of Pakistan*:<sup>12</sup>

'(viii) That when moneys are paid to the State which the State has no legal right to receive, it is ordinarily the duty of the State, subject to special provisions of any particular statute or special facts and circumstances of the case, to refund the amount so received and in case of failure, a superior Court in exercise of its Constitutional jurisdiction can direct the refund of the same if no disputed questions of facts are involved.'

15. We would like to clarify that this judgment follows the decision in the *ICI* case, and that the observations made herein are with regard to the professional taxes mentioned in Article 163 of the Constitution, section 60(1) of the Cantonments Act and its Schedule VII.

Chief Justice

Judge

Judge

Islamabad:  
13.10.2023  
(M. Tauseef/Hassan)

Approved for Reporting

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<sup>12</sup> PLD 1998 Supreme Court 64, p. 88.