



MONTHLY CASE LAW UPDATE

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CIVIL LAW

- 1) Muhammad Iqbal vs. Khair Din etc.
(2014 SCMR 33)

Tassaduq Hussain Jillani and Muhammad Ather Saeed, JJ.

In this case while deciding a civil lis court defined terms “creditor” and “consent decree” in a beautiful manner.

Consent Decree

“A consent decree is a kind of agreement/contract between two parties with a superadded command of the court but it would not bind a third party who was not party to the said suit”.

While refereeing to section 53 of the Transfer of Property Act and after quoting from Black’s Law Dictionary, the august court gave extended meaning to term “creditor”.

“In the afore-quoted definition of ‘creditor’ various shades of its meanings have been encapsulated. The ‘creditor’ thus includes someone who has a right to require someone to fulfill a promise, an obligation or a contract”.

CONSTITUTION

- 2) Dr. Imran Khattak vs. Ms. Sofia Qaqaar Khattak, PSO to Chief Justice etc.

(2014 SCMR 122)

Anwar Zaheer Jamali, Ejaz Afzal Khan and Iqbal Hameedur Rahman, JJ.

In this case the Hon'ble Supreme Court of Pakistan has put a seal of finality on the question of suo motu jurisdiction of High Courts, by overruling and declaring judgment rendered by Balochistan High Court in case titled High Court Bar Association and others v. Government of Balochistan as per incuriam court held:

"The case of "High Court Bar Association and others v. Government of Balochistan through Secretary, Home and Tribal Affairs Department and six others" (supra), Inasmuch as it upholds exercise of Suo Motu jurisdiction is per-incuriam for having been rendered in derogation of the express words used in Article 199 of the Constitution, therefore, has no force altogether..... We, therefore, are of the view that a High Court cannot exercise suo motu jurisdiction under Article 199 of the Constitution".

- 3) Dossani Travels Pvt. Ltd. vs. M/s Travels Shop (Pvt) Ltd.

(PLD 2014 S.C. 1)

Tassaduq Hussain Gallani and Amir Hani Muslim, JJ.

While seized of petitions under Article 199 of the Constitution, the High Courts at times are faced with prayers to pass order and provide relief for "doing complete justice". But such powers in constitutional jurisdiction are vested in the Supreme Court under Article 187 of the Constitution. These powers are distinct both in scope and the manner of their exercise. The apex Courts in

most of the democratic countries enjoy such powers. The powers of the Supreme Court to pass any order or give any direction "for doing complete justice" are similar to those, which the Supreme Court of India enjoys under Article 142 of the Constitution of India and such powers cannot be exercised by the High Courts in India in exercise of their constitutional jurisdiction.

- 4) Habibullah Energy Limited etc. vs. WAPDA etc.

(PLD 2014 S.C. 47)

Iftikhar Muhammad Chaudhry, CJ., Jawwad S. Khawaja and Sh. Azmat Saeed, JJ.

Public Functionaries

Per. Jawwad S. Khawaja, J.

At this point, it is important to note that not all decisions by state functionaries are to be subjected to an exacting judicial oversight. This is because the principal, (the people), has in fact vested state agencies with discretionary power of an administrative nature. Such delegation of authority by the principal is essential to the efficient functioning of the government. However, given the possibility of the agent's deliberate or negligent deviation from the best interests of the beneficiary, the court will enforce fiduciary obligations under certain circumstances. A breach of the duty of loyalty, such as in the case of a self-dealing transaction or one involving conflict of interest, will trigger heightened scrutiny by the court. Further, if public officials fail to exercise the duty of care that is expected of a prudent manager, the court will assess the underlying action or transaction to ascertain whether the state functionaries have breached their fiduciary obligations to the people of Pakistan.

5) Dil Awaiz Khan vs. Government of the Punjab

(PLD 2014 Lahore 50)

Umar Ata Bandial, CJ.

A vested right is created when it is mature in every respect and no contingency exists before its completion. When merely the passing of a formal order remains to finalize the status of a claimant then according to the Hon'ble Supreme Court in *Nabi Ahmed and another v. Home Secretary, Government of the West Pakistan, Lahore and 4 others* (PLD 1969 SC 599 at page 616) his entitlement qualifies as vested right. The relevant extract of the said judgment is reproduced below:--

“What is a vested right? According to the Oxford English dictionary, “vested” means “clothed, robed, dressed especially in ecclesiastical vestments.... Vested rights essentially differ.... From rights which are contingent.... That is, completely created vested interests may perhaps be defined as rights based not upon contract but upon custom”. A close examination of these meanings and explanations reveals that a vested right is free from contingencies, but not in the sense that it is exercisable anywhere and at any moment.”

COMPANY LAW

6) Fatima Sugar Mills Ltd etc.:
In the matter of

(PLD 2014 (Lah) 38)

Syed Mansoor Ali Shah, J.

The court while entertaining the petition under Ss. 284 to 287 of the Companies Ordinance, 1984 seeking sanction for a scheme of arrangement has to only ensure that the

scheme is made in good faith, is fair and reasonable, has commercial viability and is not adverse to the interest of the creditors or members or in any manner against the public interest. The court is not to substitute its judgment over the collective commercial wisdom of the members or the creditors but is to supervise the Scheme in general. Contents of such compromise are not to be minutely examined by the Court. It is not the function of the Court "to dot the i's and cross the t's" of the compromise. The court need not scrutinize the scheme in the way a carping critic, hair splitting expert, a meticulous accountant or a fastidious counsel would do. Technical details regarding quantification of valuation of assets should best be left to the discretion of the parties.

CRIMINAL LAW

7) Khalid Javaid vs. State etc.

(PLJ 2014 Cr.C. (Lah.) 48)

Abdul Sami Khan, J.

Section 489-F, PPC is not a mechanism for the recovery of amount. This is a penal section which carries maximum punishment of three years. Ultimately the complainant has to file suit for recovery of his amount under Order XXXVII CPC.

8) Ahsan Ullah vs. Illaqa Magistrate

(2014 YLR 113)

Muhammad Qasim Khan, J.

The learned Illaqa Magistrate when disagrees with the cancellation report and by the same order summons the accused person(s) to face trial, then his first step of disagreeing with the cancellation report (administrative in nature) would merge in his simultaneous order regarding summoning of the accused passed under section 204 Cr.P.C. which is squarely a judicial order. Therefore, due to the merger of disagreeing order of the Magistrate into the

ultimate and simultaneous order of summoning of the accused, the entire exercise by the Magistrate would become judicial action and undoubtedly such kind of order can be assailed through criminal revision, not under the constitutional jurisdiction of this court.

CUSTOM ACT

9) Shoukat Ali vs. Special Judge (Customs and Taxation) etc.

(2014 PTD 42) [Sindh High Court]

Syed Hasan Azhar Rizvi and Muhammad Junaid Ghaffar, JJ.

It has been observed while interpreting sections 156(1), 179, 181 and 185 of Customs Act 1969 that power to confiscate goods for violation of Customs Act and redemption on payment of fine vested in Adjudicating Authority under the quasi-judicial proceedings. The Special Judge had no lawful authority to pass an order for confiscation.

ELECTION LAW

10) Raja Rab Nawaz vs. Federation of Pakistan etc.

(PLJ 2014 SC 85)

Iftikhar Muhammad Chaudhry, C.J., Ijaz Ahmed Chaudhry & Gulzar Ahmed, JJ.

The august Court while dealing with the petition for extension of time in holding of Cantonment Board Elections, observed that:

“Local government is most vital element in democracy. Such government bodies are helpful for development including education, health, social services as well as in improving law and order situation. Local self Government is necessary not only for strengthening democracy

in country but also for securing good governance which is essential to ensure welfare of citizens. Local government bodies elections as envisaged under law must be held from time to time so that representatives of the people were enable to participate in meaning their affairs at gross root levels and fundamental rights guaranteed under Constitution are protected and enforced. In view of the constitutional provisions and the principles of good governance, local bodies had to play an important role to achieve welfare and good governance for citizens of the country”.

11) Ch. Nasir Iqbal etc. vs. Federation of Pakistan etc.

(PLD 2014 S.C.72)

Iftikhar Muhammad Chaudhry, C.J., Gulzar Ahmed and Sh. Azmat Saeed, JJ.

Right to Vote

It must be clarified here that the **overseas Pakistanis**, enjoy the right to participate in the election process in terms of Article 17 of the Constitution being dignified citizens of the country, though residing outside its territory, as such they cannot be denied the same rights on technical grounds, i.e. logistic arrangements made outside the country for casting their votes.

12) Rashid vs. Returning Officer, etc.

(2014 CLJ 67)

Ijaz-ul-Ahsan, Syed Mansoor Ali Shah, and Sayyed Mazahar Ali Akbar Naqvi, JJ.

“Sec 14(3-A) of Representation of the People Act,1976 provides that if the payment of unpaid loan is made before the rejection of the nomination papers, the disqualification under Article (63)(1)\(n) is not attracted. We are afraid the said provision of the Representation of the People Act ,1976 besides being inconsistent with Article 63(1) (o),disrupts the harmony of

the constitutional provision leading to discriminatory application of the above two Constitutional disqualifications, Which cannot be permitted through Sub-constitutional legislation We therefore hold that disqualification under Article 63(1)(n) becomes complete only when the loan remains unpaid for over a year till the date of filing of the nomination papers. We therefore also hold that Section 14(3-A) of representation of the People Act, 1976 is inconsistent with the Scheme of the Constitution in general and Articles 63(1)(o) and (n) in particular.”

HIGH COURT RULES AND ORDERS

13) Muhammad Boota vs. Basharat Ali

(PLD 2014 Lahore 1)

Amin-ud-Din Khan and Abid Aziz Sheikh, JJ.

Powers of Deputy Registrar (Judicial)

From Rule 9 ibid it is clear that the Deputy Registrar (Judicial) of this Court, is only authorized to return the appeal for making up any deficiency or filing requisite documents within time to be specified in the objection memorandum, however, the rule does not empower the Deputy Registrar (Judicial) of this Court, to entertain the petition or in other words to dismiss the petition having not been validly instituted. In case the deficiency is not corrected by the appellant within time given by the Deputy Registrar (Judicial) of this Court, the situation is fully covered by rule 9-A (supra) which postulates that if within time provided such petition is not refilled /returned a notice shall be affixed upon the Notice Board meant for the purpose specified and if within seven days the deficiency is still not made good, the matter shall be placed before a judge of this Court for an order on a date to be notified by fixing such a petition in the motion cause list. It is thus clear that as per rules it is for the Court

to decide as to what should be done with such matter(s).

PRE-EMPTION ACT

14) Hasnain Nawaz Khan vs. Ghulam Akbar etc.

(2014 Appeal Cases 1)

(PLD 2013 SC 489)

Tassaduq Hussain Jillani, Mian Saqib Nisar, JJ.

In this judgment Hon'ble Supreme Court of Pakistan has exhaustively interpreted section 24 of the Pre-emption Act, 1991 and has finally put at rest several controversies arising qua application of above provision. The august court *inter alia* held as under:

- Trial Court has power to order deposit of Zar-e-Soem within period of 30 days and time granted can be extended subject to maximum statutory limit of 30 days.
- In ordinary course, Trial Court should provide adequate time for deposit of Zar-e-Soem and discretion should be used judiciously.
- No court has power to extend period for deposit of Zar-e-Soem in any eventuality beyond statutory maximum.
- Where court omits to fix the time, it will be deemed 30 days as mentioned in the statute.
- Limitation of 30 days does not stop running unless order of trial court is specifically suspended by the superior courts.
- On resolution of controversy by superior court, plaintiff has to deposit Zar-e-Soem within 30 days, deducting only those days during

which order of trial court remains suspended.

- Trial Court has power to fix the probable value of the suit land for purpose of Zar-e-Soem but in ordinary course value mentioned in mutation or registered deed should be adhered, to unless claim of plaintiff is supported by credible material.

SERVICE LAW

15) Contempt Proceedings Against Chief Secretary, Sindh and others:

[2014 PLC (C.S.) 82]

[Supreme Court of Pakistan]

Tassaduq Hussain Jillani, Asif Saeed Khan Khosa and Amir Hani Muslim, JJ.

The vires of certain legislative instruments promulgated by the Singh Government were challenged and the august Court has held that the said instruments do not have the effect to neutralize or nullify the judgments of the Courts. It has also been held that:

- Locus poenitentiae is the power of receding till a decisive step is taken, but it is not a principle of law that order once passed becomes irrevocable and past and closed transaction. If the order is illegal, then perpetual rights cannot be gained on the basis of an illegal order.
- No non-civil servant can be transferred and appointed in the Government by way of deputation to any cadre.

His lordship Mr. Justice Asif Saeed Khan Khosa in his concurring note observed that:

“Mala fide cannot be attributed to the legislature, but if a legislature deliberately and repeatedly embarks

upon a venture to nullify considered judicial verdict in an unlawful manner, trample the constitutional mandate and violate the law, then it is difficult to attribute bona fide to it either”.

16) Rao Muhammad Aftab vs. Province of Punjab etc.

[2014 PLC (C.S.) 39]

Muhammad Farrukh Irfan Khan, J.

In this case court while dealing with question of equivalence of educational qualification, for the purpose of appointment, approved meticulous compliance with requirement mentioned in advertisement and declined the petition for treating diploma of Associate Engineer equivalent to F.Sc. Court sealed the controversy by holding that:

“The petitioner does not fulfill the criteria as laid down in the advertisement as such apparently there appears to be no illegality or irregularity on the part of the respondents while rejecting his applications for the post of ESE (Science-Math).”

WORDS AND PHRASES

‘Judicial Activism’ and ‘Judicial Restraint’

PLD 2014 S.C. 47

(Habib Ullah Energy Ltd. vs. WAPDA)

For the Court, as guardian and interpreter of the Constitution, the only concept that matters is that of the rule of law. The Court will not condone an illegal action by the state just because it will be perceived as an activist institution. The Constitution defines the role of the judiciary as upholding the rule of law, and that is the only consideration the Court will have while adjudicating the matters before it.