

P L D 1999 Supreme Court 880

Present: Ajmal Mian, CJ., Sh. Riaz Ahmed
and Ch. Muhammad Arif, JJ

Civil Appeal No. 702 of 1995

ZAHUR TEXTILE MILLS LTD. ---Appellant

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 25-4-1995, in C. M.
No.1009/95 in W. P. No.15474/93, passed by Mr. Justice Sh.Ijaz Nisar),

Civil Appeal No. 703 of 1995

KOHINOOR WEAVING MILLS LTD.-- -Appellant

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the . judgment of the Lahore High Court, dated 25-4-1995, in C.M.
No. 1108/95 in W.P. No.14573/93 passed by Mr. Justice Sh.Ijaz Nisar).

Civil Appeal No. 704 of 1995

SERVICE FABRICS LTD. ---Appellant

versus

FEDERATION OF PAKISTAN and others -Respondents

(On appeal from the judgment of the Lahore High Court, dated 25-4-1995, in C.M.
No. 1008/95 in W.P. No.14865/93 passed by Mr. Justice Sh. Ijaz Nisar).

Civil Appeal No. 1639 of 1997

Messrs OLYMPIA POWER (PVT,) LTD.- Appellant

versus

FEDERATION OF PAKISTAN and others -Respondents

(On appeal from the judgment of the Lahore High Court, dated 13-5-1996, in C.M. No. 1294/96 in W.P.No. 1463/95, passed by Mr. Justice Raja Muhammad Khurshid and Mr. Justice Jaffar Hashmi).

Civil Appeal No. 308 of 1998

LIBERTY POWER LTD. ---Appellant

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 27-11-1996, in. W.P.No. 1883/96, passed by Mr. Justice Karamat Nazir Bhandari).

Civil Appeal No. 1295 of 1998

Messrs SIGMA INTERNATIONAL---Appellant

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Sindh High Court, dated 29-9-1997, in Constitutional Petition No.2087/93 passed by Mr. Justice Mamoon Kazi, Mrs. Justice Majida Razvi and Mr. Justice Rasheed Ahmed Razvi).

Civil Appeal No. 1536 of 1998

THATTA CEMENT EMPLOYEES' UNION, THATTA.---Appellant

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal, from the judgment of the Sindh High Court, dated 29-9-1997, in C.P. No. 1664/94 passed by Mr. Justice Mamoon Kazi, -Mrs. Justice Majida Razvi and Mr. Justice Rasheed Ahmed Razvi.).

Civil Appeal No.. 1537 of 1998

ISRAR KHAN---Appellant

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Sindh High Court, dated 29-9-1997, in C.P. No. 2165/94 passed by Mr. Justice Mamoon Kazi, Mrs. Justice Majida Razvi and Mr. Justice Rasheed Ahmed Razvi).).

Civil Petition No. 1403 of 1998

OLYMPIA BLENDED FIBRE and others---Petitioners

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.12014/98, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1404 of 1998

MONNOO INDUSTRIES LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.12010/92, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1405 of 1998

GOJRA SUMMANDRI SUGAR MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.12139/92, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1406 of 1998

MONOOWAL TEXTILE MILLS LTD. ---Petitioner

versus

FEDERATION. OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.12092/92, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1415 of 1998

Messrs LAHORE TEXTILE AND GENERAL MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.12008/92, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1419 of 1998.

NISHAT MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 23-11-1998, in W.P. No.382/97 passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1420 of 1998

RAZA TEXTILE MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 23-11-1998, in C.M. No. 1/98 in W.P. No.438/93, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1421 of 1998

UMER FABRICS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 23-11-1998, in C.M. No. 1/98 in W.P. No.492/93, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1422 of 1998

I.C.C. (PVT.) LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 23-11-1998, in C.M. No.1/98 in W.P. No.7004/96, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1423 of 1998

I.C.C. TEXTILE MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 23-11-1998, in C.M. No. 1/98 in W.P. No.9705/92 passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1424 of 1998

ICC (PVT.) LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 23-11-1998, in C.M. No. 1/98 in W.P.- No.11724/92, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1478 of 1998

RAWAL TEXTILE MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 23-11-1998, in C.M. No. 1/98 in W.P. No.12011/92, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1479 of 1998

SANPAK ENGINEERING (PVT.) LTD.---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.5766/95, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1480 of 1998

NISHAT MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 23-11-1998, in C.M. No. 1/98 in W.P. No.1770/98, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1481 of 1998

NISHAT FABRICS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 23-11-1998, in C.M. No. 1/98 in W.P. No.2185/93, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1504 of 1998

QURESHI TEXTILE MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 23-11-1998, in C.M. No. 1/98 in W.P. No.12012/92, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1505 of 1998

Messrs TRIBAL TEXTILE MILLS LTD.---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 23-11-1998, in C.M. No. 1/98 in W.P. No.12007/92, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1506 of 1998

Messrs JAMHOOR TEXTILE MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 23-11-1998, in C.M. No. 1/98 in W.P. No.12013/92, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil. Petition No. 1507 of 1998

Messrs MARGALLA TEXTILE MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 23-11-1998, in C.M. No. 1/98 in W.P. No.12091/92, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1508 of 1998

Messrs NISHAT (CHUNNIAN) LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 23-11-1998, in C.M. No. 1/98 in W.P. No.436/93, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1509 of 1998

I.C.I. PAKISTAN LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents?????????

(On appeal from the judgment of the Lahore High Court, dated 4-12-1998, in C.M. No. 2/98 in W.P. No.2087/93, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1510 of 1998

Messrs ASHIANA COTTON PRODUCTS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in C.Ms. Nos. 1/97, 2/97 & 1/98 in W.P. No.1357/93, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No.1511 of 1998

Messrs CRESCENT JUTE PRODUCTS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents ?????????

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.684/93, passed by Mr. Justice Malik Muhammad Qayyum and Mr Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1512 of 1998

Messrs BILAL FABRICS---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.18841/96, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1513 of 1998

D.G. KHAN CEMENT COMPANY LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.4315/93, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1514 of 1998

Messrs CRESCENT, SUGAR MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.18330/96, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1515 of 1998

Messrs AMJAD TEXTILE MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.600/94, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1516 of 1998

Messrs DIN POWER LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal , from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.21262/96, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1517 of 1998

Messrs IDEAL SPINNING MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.541/93, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1518 of 1998

Messrs LAHORE POLY PROPYLENE INDUSTRIES LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.4033/96, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1519 of 1998

Messrs ORIENT METAL COMPANY LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.5422/95, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1520 of 1998

Messrs CHEMICAL PROCESS INDUSTRIES---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.23229/97, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1521 of 1998

Messrs ADIL TEXTILE MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.131/97, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1522 of 1998

Messrs AMJAD TEXTILE MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.28243/94, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice

Ghulam Mahmood Qureshi).

Civil Petition No. 1523 of 1998

Messrs ISHAQ TEXTILE MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.544/93, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1524 of 1998

Messrs ARSHAD TEXTILE MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.542/93, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1525 of 1998

Messrs IMPERIAL TEXTILE MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.792/93, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No, 1526 of 1998

Messrs CLIMEX ENGINEERING CO. LTD.---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.12974/97, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1527 of 1998

Messrs MAJID MUNIR (PVT.) LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.11250/97, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1528 of 1998

Messrs PEN KUWAIT TEXTILE MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.1083/93, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petitions Nos. 1529 to 1531 of 1998

Messrs D.G. KHAN CEMENT CO. LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.Ps. Nos.9/94, 704/97, 8/94, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petitions Nos. 1532 to 1538 of 1998

Messrs NISHAT MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.Ps. Nos,5282/93, 12696/96, 7601/97, 1848/93, 4726/98, 11121 /96, 20980/96, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1539 of 1998

ZEESHAN ENERGY LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 7-12-1998, in C. M. No. 1/98 in W. P. No.8371/96, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1540 of 1998

ASIAN TEXTILE MILLS LTD. ---Petitioner

versus

?FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 7-1z-1998. in C.M. No. 1/98. in W.P. No.372/96, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmnexl Qureshil.

Civil Petition No. 1541 of 1998

Messrs SHAKARGANJ MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents'

(On appeal from the judgment of the Lahore High Court, dated 2-12-1998, in C.M.No.1/98 in W. P. No.11491/96, passed by Mr. Justice Malik Muhammad Qayyum).

Civil Petition No. 1542 of 1998

J.A. TEXTILE MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others--Respondents

(On appeal from the judgment of the Lahore High Court, dated 7-12-1998, in C. M. No. 1/98 in W. P. No.1265/95, passed by Mr. Justice Malik Muhammad Qayyum).

Civil Petition No. 1543 of 1998

ZEESHAN ENERGY LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN; and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 7-12-1998, in C.M.1/98 in W.P. No.114R7/96, passed by Mr. Justice Malik Muhammad Qayyum).

Civil Petition No. 1544 of 1998

KASHMIR TEXTILE MILLS LTD Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 7-12-1998, in C.M.No.1/98 in W.P.No.2188/93, passed by Mr. Justice Malik Muhammad Qayyum).

Civil Petition No. 1545 of 1998

Messrs SHAKARGANG MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 7-12-1998, in C.M.1/98 in W.P. No.8820/97, passed by Mr. Justice Malik Muhammad Qayyum).

Civil Petition No. 1550 of 1998

Messrs MAQBOOL TEXTILE MILLS LTD.--Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court. dated 23-11-1998, to C.M. No.2/96 in W.P. No.566/94, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi). ,

Civil Petition No. 1551 of 1998

Messrs AHMED FINE TEXTILE MILLS LTD.---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore high Court, dated 23-11-1998, in C.M.2/96, in W.P. No.2037/95, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1552 of 1998

Messrs ALLAH WASAYA TEXTILE AND FINISHING MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 23-11-1998, in C.M.No.2/96, in W.P. No.604/94, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1553 of 1998

Messrs AHMAD HASAN TEXTILE MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 23-11-1998, in C/M. 2/96 in W.P. No.56794/95, Passed by Mr, Justice Malik ' Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No.1554 of 1998

Messrs BILAL TEXTILE MILLS LTD.---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 23-11-1998, in C.M. 2/96 in W.P. No.10590/93, passed. by Mr. Justice Malik Muhammad Qayyum and Mr Justice Ghulam Mahmood Qureshi).

Civil Petition No 1555 of 1998

D.G. KHAN ELECTRIC COMPANY LTD.---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court. dated 23-11-1998, in C.M.2/96, .in W.P. No.703/97, passed by Mr. Justice Malik Muhammad Qayyum-and Mr. Justice Ghulam Mah.mood Oureshi).

Civil Petition No 1857-L of 1998

FLYING PAPER INDUSTRIES---Petitioner

versus?????????

FEDERATION OF PAKISTAN and others--Respondents

(On??? appeal from the judgment of the Lahore' High Court, dated 29-10-J998,? in C.M. 3827/95 in W.P. No.17394/93, passed by Mr. Justice: Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1865-L of 1998

PAKISTAN PULP PAPERS AND BOARD MAKERS ASSOCIATION---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.15292/95, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood. Qureshi).

Civil Petition. No. 1920-L of 1998

Messrs YOUSAF SUGAR MILLS LTD.---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W. P. No.11711/95, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1928-L of 1998

GOJRA SUMMANDRI SUGAR MILLS LTD, ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court. dated 29-10-1998, in W.P. No.17767/95, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi),

Civil Petitions Nos. 1932-L and 1933-L of 1998

Messrs SYED BHAIS LIGHTING LTD.---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.11711/95, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1934-L of 1998

MONNOO ENERGY LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.5766/95, passed by Mr. Justice Malik Muhamtnad Qayyum and Mr. Justice

Ghulam Mahmood Qureshi).

Civil Petition No. 1935-L of 1998

ZEESHAN ENERGY LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.5766/95, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1936-L of 1998

POLY FLEX (PVT.) LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.5766/95, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1937-L of 1998.

POLY PACK (PVT.) LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from. the judgment of the Lahore High Court. Dated 29-10-1998, in W.P. No.5766/95, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1938-L of 1998

TAJ INDUSTRIES (PVT.) LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.5766/95, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1939-L of 1998

NEWAGE PLASTIC (PVT.) LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.5766/95, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1940-L of 1998

Messrs SERVIS INDUSTRIES LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998 in W.P. No.1711/95, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition NO.1941-L of 1998

DEA DUCK CORPORATION (PVT.) LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court dated 29-10-1998, in W.P. No.5766/95, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1942-L of 1998

Messrs SHEIKH SPINNING MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.1711/95, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No. 1943-L of 1998

RIAZ-UD-DIN PACKAGES (PVT.) LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.5766/95, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No.2112-L of 1998

FURQAN JAVED & CO. LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.6948/95, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No.39 of 1999

SHAKARGANJ MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.14750/95, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No.51 of 1999

SARGODHA TEXTILE MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 7-1-1999, in C.M. 1/99, in W.P. No.8812/92, passed by Mr. Justice Faqir Muhammad Khokhar).

Civil Petitions Nos.70 to 73 of 1999

KOHINOOR WEAVING/TEXTILE MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 23-11-1998, in C.M. 3/98, in W.Ps. Nos.2524, 2525/93, 322/94, C.M. 2/98 in W.P.23391/96, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No.74 of 1999

Messrs ZIMPEX (PVT.) LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 23-11-1998, in C.M.3/98 in W.P. No.5317/93, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No.217 of 1999

Messrs ALI AKBAR SPINNING MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in C.M. No.1-2/97 in W.P. No.3309/93, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No-218 of 1999

Messrs NOBEL TEXTILE MILLS LTD. ---Petitioner
versus
FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in C.M. 2/96 in W.P. No.5640/96, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No.219 of 1999

Messrs ARSHAD CORPORATION LTD. ---Petitioner
versus
FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in C.M. 2/96 in W.P. No.543/93, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No.220 of 1999

Messrs COLONY TEXTILE MILLS LTD. ---Petitioner
versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in C.M.2/96 in W.P. No.12450/92, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No.221 of 1999

Messrs PUNJAB PRINTING MILLS LTD. ---Petitioner
versus

FEDERATION OF PAKISTAN and others --- Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in C.M.2/96 in W.P. No.5639/96, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No.222 of 1999

Messrs MURTAZA HASEEB TEXTILE MILLS LTD. ---Petitioner
versus

FEDERATION OF PAKISTAN ' and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in C.M.2/96 in W.P. No.5631/96, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petition No.223 of 1999

AERO ASIA INTERNATIONAL (PVT.) LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in W.P. No.1203/97, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petitions Nos.224 to 231 of 1999

SITARA CHEMICAL INDUSTRIES LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in C. M. 2/96, in W. Ps. Nos. 12671, 12674, 12672, 12677, 12673, 12735, 12676, 12675/96 respectively, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Petitions Nos.232 to 234 of 1999

SITARA ENERGY LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal from the judgment of the Lahore High Court, dated 29-10-1998, in C. M.1-2/97 in W. Ps. Nos. 12767, 12665, 12768/96, passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).-

Civil Petition No-235 of 1999

BILAL SPINNING MILLS LTD. ---Petitioner

versus

FEDERATION OF PAKISTAN and others---Respondents

(On appeal. from the judgment of the Lahore High Court, dated 29-10-1998, in C.M.1-2/97 in W.P. No.1046/93; passed by Mr. Justice Malik Muhammad Qayyum and Mr. Justice Ghulam Mahmood Qureshi).

Civil Appeals Nos.702 to 704 of 1995, 1639 of 1997, 308, 1295, 1536, 1537, 1403 to 1406, 1415, 1419 to 1424, 1478 to 1481, 1504 to 1545, 1550 to 1555, 1857-L, 1865-L, 1920-L, 1928-L, 1932-L to 1943-L, 2112-L of 1998, 39, 51, 70 to 74, 217 to 235 of 1999, decided on 18th March, 1999.

(a) Constitution of Pakistan (1973)---

---Arts. 199(4-A), (4-B) & 185(3)---Interim order by High Court---Leave to appeal was granted, inter alia, to examine the scope and effect of Art. 199(4-A) & (4-B) of the Constitution of Pakistan.

(b) Constitution of Pakistan (1973)---

----Art. 199(4)(b)---Provision of Art.199(4)(b) of the Constitution covers the stage when the process of assessment of the liability of tax through the procedure. provided under the relevant law is in progress whereas the stage of collection starts after the liability is quantified through the mechanism provided under the relevant law.

Paragraph (b) of clause (4) of Article 199 of the Constitution speaks of. inter alia, impeding the assessment or collection of public revenues. In other words, it; inter alia, covers the stage when the process of assessment of the liability of tax through the procedure provided under the relevant law is in progress, whereas the stage of collection starts after the liability is quantified, through the mechanism provided under the relevant law.

(c) Constitution of Pakistan (1973)---

----Arts. 199(4-A), (4-B) & 254---Interim order made in respect of Art. 199(1) of the Constitution---Inability on the part of High Court to dispose of a case in which interim order is passed in respect of Art. 199(1) of the Constitution within six months from the date of the order, will not justify to nullify the mandatory provision of Art.199(4A) of the Constitution---Interim order if covered by Art.. 199(4A), stands expired on the expiry of the six months by operation of the Constitutional provision--Time of six months specified in Art.199(4B) of the Constitution cannot be treated as mandatory in view of Art.254, Constitution of Pakistan.

The inability on the part of a High Court to dispose of a case to which interim order is made in respect of clause (1) of Article 199 of the Constitution within six months from the date of the order will not justify to nullify the mandatory provision of clause (4-A) of Article 199 of the Constitution. The interim order if covered by clause (4A) of Article 199 stands -expired on the expiry of the six months by operation of the above Constitutional provision. The time of six months specified in clause (4-B) of Article 199 cannot be treated as mandatory in view of Article 254 of the Constitution which lays down that; "When any act or thing is required by the Constitution to be done within a particular period and it is not done within that period, the doing of the act or thing shall not be invalid or otherwise ineffective by reason. only that it was not done within that period"

(d) Constitution of Pakistan (1973)---

----Arts. 176 & 192---Constitution of Supreme Court and High Courts---Power to determine the strength of the Judges of Superior Courts has been conferred on the President---Court is not competent to determine such strength.

In Pakistan, a Court is not competent to determine the strength of the Judges of the Superior Courts in view of Articles 176 and 192 of the Constitution which empower the Parliament to fix the strength of the Supreme Court and the High Courts Judges by an Act. In the absence of such an enactment in the field, the power has been conferred on the President to fix the same.

(e) Constitution of Pakistan (1973)---

----Art. 199(4-A) & (4-B)---No conflict exists between cls.(4-A) & (4-B) of. Art. 199 of the Constitution.

(f) Constitution of Pakistan (1973)---

----Art. 199(4-A)---Civil Procedure Code (V of 1908), O. XXXIX, Rr. 2-B & 4-A---Interim order by High Court under Art.199 of. the Constitution--Extension of time of six months of interim order--Mere fact that another statute (O.XXXIX, Rr.2-B & 4-A, C.P.C.) empowers a Civil Judge or a High Court Judge acting on the original side to extend the period upon the expiry of six months would not entitle the Court to read into Art.199(4-A), (4-B) something which has not been provided therein expressly.

Contention was that by virtue of Rule 2-B of Order XXXIX, C.P.C. a Civil Judge, or a Judge of the High Court of Sindh exercising original civil jurisdiction, could extend the period of six months provided under Rule 4-A of the Order but a High Court in exercise of its constitutional jurisdiction had no such power, and therefore, Supreme Court should come in aid and make good the above deficiency. Without going into the question, as to whether Rule 2-B of Order XXXIX, C. P. C. can be pressed into service in order to negate Rule 4-A thereof, it was observed that the mere fact that another statute empowers a Civil Judge or a High Court Judge acting on the original civil side to extend the period upon the expiry of six months specified in Rule 4-A of the above Order of the C.P.C. would not entitle the Court to read into clause (4-A) or clause (4-B) of .Article 199 of the Constitution something which has not been provided therein expressly.

(g) Constitution of Pakistan (1973)-.

----Art.199 (4-A) & (4-B)---Interim order by High Court under Art. 199 of the Constitution---Words "impeding the assessment or collection of public revenues" cover a case where the process of assessment has been initiated but the liability has not been quantified.

If paragraph (b) of clause (4) and clause (4-A) of Article 199 are read in juxtaposition, it becomes evident that the words used in paragraph (b) of clause (4), namely, "impeding the assessment or collection of public revenues" cover a case where the process of assessment has been initiated but the liability has not been quantified.

(h) Interpretation of Constitution---

---- Constitution being an organic document, it is to be read as a whole and all efforts should be made to harmonise and to reconcile its various provisions with the object to make them more functional and effective.

(i) Constitution of Pakistan (1973)-

----Art. 199(4-A) & (4-B)---Interim order by High Court under Art. 199 of the Constitution---Court has to make efforts to dispose of the case covered by Art.199(4-B) of the Constitution within the stipulated period of six months--Non-disposal of such case, however, will not render Art.199(4-A) of the Constitution ineffective.

(j) Constitution of Pakistan (1973)---

----Art.199 (4-A) .& (4-B)---No conflict between Art.199(4-A) & (4-B) having been found, principle that since cl.(4B) was added in the Constitution after about 10 years from the incorporation of cl.(4-A) in Art.199 of the Constitution, cl.(4-B) would prevail over cl.(4-A), would not be applicable.

(k) Constitution of Pakistan (1973)

----Art. 199(4-A) & (4-B)---Interim order by High Court under Art.199 of the Constitution---Provisions of Art.199(4-A) & (4-B) of the Constitution were though inter-connected, but were not dependent upon each other for their operation---Provisions of Art.199(4-A) & (4-B) were not taxing provisions but were part of the Constitution---Clause (4-A) of Art.199 provided outer limit of six months for operation of interim order of restraint covered by this clause whereas cl. (4-B) envisaged that a High Court should dispose of a case in which an interim order upon an application under Art.199(l) of the Constitution had been passed within a period of six months from the date of such order.

(l) Maxim--

----"Actus curiae namenem gravabit" (an act of Court shall prejudice no in an)---Application---Maxim is generally applicable where a Court on account of an act or omission passes a prejudicial

order against a party---Court in order to retrieve an affected party cannot act in violation of the Constitution.

It is true that a party is not to be prejudiced on account of an act or omission on the part of the Court. But at the same time the Court in order to retrieve an affected party cannot act in violation or derogation of a provision of the Constitution. The maxim *actus curiae neminem gravabit* is generally applicable where a Court on account of an act or omission passes a prejudicial order against a party. For example, if the office of the Court does not issue a notice of a date of hearing to a petitioner and the case is listed in the Court and is dismissed for non-prosecution, the above maxim will be attracted to the case.

Siddiqui Trust v. Income Tax Officer 1987 CLC 2366 ref.

(m) Constitution of Pakistan (1973)---

---Art. 199 (4-A) & (4-B)---Interim order by High Court under Art. 199 of the Constitution---Reasons which may constitute sufficient cause preventing High Court to dispose of the case, in which interim order had been passed, on merit, within six months from the date on which the interim order was passed---No general rule of universal application as to the reasons which may constitute sufficient cause for the purpose of Art.199(4-B) could be laid down---Heavy pendency of the cases in the High Court, and the shortage of Judges, would be a sufficient cause within the ambit of cl.(4-B) of Art. 199---High Court, however, was supposed to make efforts to dispose of such cases to which cl.(4-A), Art.199 is applicable within the period stipulated in Art.199(4-B) of the Constitution.

No doubt that clause (4-B) of Article 199 of the Constitution of Pakistan enjoins that a High court shall dispose of the case in which an interim order has been passed on merit within six months from the date on which such an order is made unless the High Court is prevented from doing so for sufficient cause to be recorded. It is difficult to lay down a general rule of universal application as to the reasons which may constitute a sufficient cause for the purpose of clause (4-B). The heavy pendency of the cases in the High Court and the shortage of Judges would be a sufficient cause within the ambit of the above clause. However, the High Court is supposed to make efforts to dispose of such cases for which clause (4-A) of Article 199 is applicable within the period stipulated in clause (4-B) thereof.

(n) Constitution of Pakistan (1973)---

---Art. 199 (4-A) & (4-B)---Interim order passed by High Court stands automatically expired on the expiry of the period of six months by operation of Art. 199(4-A) of the Constitution---Not necessary that High Court should pass an order in each case on the expiry of the period of six months for recording the reasons for its inability to dispose of the same within six months---Efforts, however, should be made by the High Court to dispose of cases in which interim orders covered by Art. 199(4-A) are passed in order to render order inoperative on the expiry of six months' period specified therein.

Efforts should be made by the High Courts to dispose of cases in which interim orders covered by clause (4-A) of Article 199 of the Constitution are passed in order to render them inoperative on the expiry of six months' period specified therein. However, it is not necessary that a High Court should pass an order in each case on the expiry of the period of six months for recording the reasons for its inability to dispose of the same within six months. The interim order stands automatically expired on the expiry of the period of six months by operation of the Constitutional provision, namely, clause (4-A) of Article 199.

(o) Constitution of Pakistan (1973)---

---Art. 199 (4-A)---Interim order passed by High Court under Art.199 of the Constitution---Provision of cl.(4-A) of Art.199 of the Constitution expressly provides for the expiry of an interim order on the expiry of six months' period, cl.(4-A), therefore, cannot be rendered ineffective or

redundant by passing a fresh interim order on a fresh application---What cannot be done directly, the same cannot be done indirectly.

Contention was that clause (4-A) of Article 199 does not put any embargo on the powers of a High Court to modify its first interim order and that six months' period can be reckoned from the modified order. It is a well-settled proposition of law that what cannot be done directly, the same cannot be done indirectly. Since clause (4-A) of Article 199 expressly provides for the expiry of an interim order on the expiry of six months' period, the above provision cannot be rendered ineffective or redundant by passing a fresh interim order on a fresh application.

Federation of Pakistan through Secretary, Ministry of Finance, Government of Pakistan, Islamabad v. United Sugar Mills Ltd. PLD 1977 SC 397 'ref. '

(p) Constitution of Pakistan (1973)---

---Art. 199(4-A)---Interim order is to be passed by High Court when the Court is, inter alia, satisfied that such order would have the effect of suspending an order or proceeding which, on the face of record, is without jurisdiction, such an order is covered by Art. 199(4-A) of the Constitution---Provision of the Constitution having expressly provided that even in respect of order or proceeding which, on the face of record, was without Jurisdiction, an interim order was to operate only for a period of six months in term of Art. 199(4-A) of the Constitution---Doctrine that an action which perpetuated injustice or was mala fide or coram non judice could be activated under Art. 199(4-A) on the expiry of the period of six months, could not be invoked to defeat the unambiguous intention of the Constitution-makers ,

The contention was that an action which perpetuates injustice or is mala fide or coram non judice can be activated under clause (4-A) of Article 199 on the expiry of the period of six months.,

Under paragraph (b) of clause (4) of Article 199 of the Constitution the Court is prohibited from making an interim order which would have the effect of prejudicing or interfering with the carrying out of a public work or otherwise teeing harmful to public interest or State property or impeding the assessment or collection of public revenues. To the above prohibition there are two exceptions provided sub-paragraphs (i) and (ii) of paragraph (b) of clause (4) of Article 199, namely, for the reasons to be recorded in writing the Court 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 on the face of the record as without jurisdiction. '

In other words, an interim order is to be passed when the Court is, inter alia, satisfied that it would have the effect of suspending an order or proceeding which. on the face of record, is without jurisdiction, such an order is covered by, clause (4-A) of Article 199. Since the Constitution-makers have expressly provided that even in respect of an order or proceeding which, on the face of the record, is without jurisdiction, an interim order is to operate only for a period of six months in terms of clause (4-A) of Article 199 of the Constitution, the clear and unambiguous intention of the Constitution-makers cannot be defeated by invoking in aid interpretive process or any other legal doctrine.

Ihsanullah v. Collector of Customs, Customs House, Lahore and 4 others PLD 1999 Lah. 96 approved.

(q) Constitution of Pakistan (1973)---

---Arts. 199(4-A) & 254---Interim order made by High Court in respect of Art. 199(1) of the Constitution---Period of six months provided for disposal of every case under Art. 199(4-B), though not mandatory in view of Art. 254 of the Constitution, but Supreme Court observed that it was

expected of every High Court that. sincere efforts were made to dispose of the cases covered by Art. 199(4-B) within period of six months---Measures for compliance of said Constitutional mandate suggested.

Though the period of six months provided for disposal of every case under clause (4-B) is not mandatory in view of Article 254 of the Constitution, which lays down that failure to comply with the requirement as to time does not render an act invalid, but it is expected of every High Court that sincere efforts should be made to dispose of the cases covered by clause (4-B) of Article 199 within the above period of six months. This cannot be done unless the cases are ordered to be listed for regular hearing within two or three months from the dates of interim orders after complying with the procedural preliminaries. It is desirable that Special Benches should be constituted in the High Courts to ensure that the above mandate of the Constitution is complied with, which will be beneficial to the litigants as well as to the Federation.

Siddiqui Trust v. Income Tax Officer 1987 CLC 2366; Dewan Textile Mills Ltd. v. Pakistan and others PLD 1976 Kar. 1368; Federation of Pakistan through Secretary, Ministry of Finance, Government of Pakistan, Islamabad v. United Sugar Mills Ltd. Karachi PLD 1977 SC 397; Hassan Mahmood and others v. Federal Land Commission and others 1985 Law Notes Lah. 12;; Bibi Zuhra v. Member, Federal Land Commission and others 1988 CLC 129; Punjab Cables v. Government of Pakistan PLD 1989 Lah. 121; Messrs Noori Trading (Pvt.) Ltd. and others v. The Federation of Pakistan and others PLD 1997 Kar. 663; Messrs Agro Pak (Pvt.) Ltd. v. The Collector of Customs, SCMR 2624; Municipal Committee, Sahiwal through Administrator and another v. Pakistan Burma Shell Limited and another 1999 SCMR 98; Ihsanullah v. Collector of Customs, Custom House, Lahore and 4 others PLD 1999 Lah. 96; Assistant Collector of Central Excise, Calcutta v. National Tobacco Co, of India Ltd. AIR 1972 SC 2563; Shubhesh Sharma v. Union of India AIR 1991 SC 631; Muhammad Ismail and others v. The State PLD 1969 SC 241; Mst. Fazal Jan v. Roshan Din and 2 others PLD 1990 SC 661; Hasham Khan v. The State PLD 1991 SC 567; Al-lehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ulKhairi and others v. Federation of Pakistan and others PLD 1996 SC 324; Wukala Mahaz Barai Tahafaz Dastoor and another v. Federation of Pakistan and others PLD 1998 SC 1263; Abdul Latif v. The Government of West Pakistan and others PLD 1962 SC 384; The Province of West Pakistan v. Muhammad Ayub Khuhro PLD 1967 Kar. 673; Constructions Ltd., Karachi v. Executive Engineer, Indus Bridge Division, West Pakistan P.W.D., Thatta and another PLD 1975 Kar. 1059 and Agricultural Development Bank of Pakistan v. Sanaullah Khan and others PLD 1988 SC 67 ref.

Raja Muhammad Akram, Senior Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record for Appellants/Petitioners (in C.As. Nos.702 to 704 of 1995 and C.Ps.51, 70 to 74 of 1999).

Muhammad Akram Shaikh, Senior Advocate Supreme Court and M.A. Zaidi, Advocate-on-Record for Appellants/Petitioners (in C. As. Nos. 1639 of 1997, 308 of 1998 and C.Ps. Nos.1920-L, 1928-L, 1932-L to 1943-L, 1403 to 1406, 1415, 1419 to 1424, 1478 to 1481, 1504 to 1538, 1550 to 1555 of 1998; 39 and 217. to 235 of 1999).

Abdul Mujeeb Pirzada, Advocate Supreme Court and N. Advocate-on-Record (absent) for Appellants (in C.As. Nos. 1536 1998).

Akhlaq Ahmad Siddiqui, Advocate-on-Record? Naveed Rasool, Advocate Supreme Court and M.A. Qureshi, Advocate-on-Record for Appellants (in C.A. No. 1295 of 1998 and for Respondents Nos.3 and 4 (in C. A. No. 1537 of 1998 and for Respondents 2 and 3 in C. A. No. 1536 1998).

Hamid Khan, Advocate Supreme Court and Ejaz Ahmad Khan, Advocate-on-Record (absent) for Petitioners (in C.Ps. No. 1857-L and 1865-L of 1998).

Abul Aasim Jafri, Advocate-on-Record for petitioner (in C.P. No.2112-L of 1998).

M.A. Qureshi, Advocate-on-Record for Petitioners? (in No. 1539 to 1545 of 1998).

Date of hearing; 22nd February, 1999.

JUDGMENT

AJMAL MIAN, C.J.--By this common judgment, we intend to dispose of the above 8 appeals and 106 petitions for leave to appeal. It may be observed that except Civil Appeals Nos. 1295 of 1998, 1536 of 1998 and 1537 of 1998, which have arisen out of the judgments rendered by Division Benches of the High Court of Sindh, all the remaining appeals and the petitions for leave to appeal are directed against the judgments/orders, passed by various Division Benches and learned Single Judges of the Lahore High Court in writ petitions. In all the above cases the High Courts have held that the interim prohibitory orders passed in the above writ petitions inter alia in respect of assessment and collection of public revenues have expired and have ceased to have any legal effect in view of clause (4-A) of Article 199 of the Constitution of the Islamic Republic of Pakistan (hereinafter referred to as the Constitution). In the above 8 appeals leaves were granted, inter alia to examine the scope and effect of clauses (4-A) and (4-B) of Article 199 of the Constitution. Whereas in the above petitions leave has not been granted but after interim chamber orders the same were ordered to be listed along with the above appeals.

2. Raja Muhammad Akram, learned counsel has appeared for the appellants in Civil Appeals Nos. 702 to 704 of 1995 and for the petitioners in Civil Petitions Nos. 51 and 70 to 74 of 1999. Whereas, Mr. Muhammad Akram Sheikh learned counsel has represented the petitioners in the above 104 Civil Petitions. Mr. Hamid Khan, learned counsel has appeared for the petitioners in Civil Petitions Nos. 1857-L and 1865-L of 1998. Mr. Abdul Mujeeb Pirzada, learned counsel has represented the appellants in Civil Appeals Nos. 1536 and 1537 of 1998. Mr. Akhlaq Ahmed Siddiqui, learned counsel has represented the appellants in Civil Appeal No. 1295 of 1998. Sheikh Izharul Haq, learned counsel was to appear on behalf of the respondents, but he was reported to be sick. He could not attend the above cases but the Government's point of view was presented by Mr. Tanvir Bashir Ansari, learned Deputy Attorney-General. We would have adjourned the above cases, but as the controversy at issue, namely, the scope and effect of clauses (4-A) and (4-B) of Article 199 of the Constitution, is affecting a large number of cases in the various High Courts, we thought it appropriate not to postpone the above cases and to proceed with the same.

3. (a) Raja Muhammad Akram, learned counsel has submitted, as follows: -

(i) That in order to understand the scope of clause (4-A) of Article 199 of the Constitution, the same is to be read with paragraph (b) of clause (4) thereof.

(ii) That clause (4-A) is attracted if an interim order impedes the assessment or collection of public revenues but it does not include levy.

(iii) If an order of assessment or collection of public jurisdiction clause (4-A) of Article 199 is not attracted and, thus, an interim order would not lapse on the expiry of six months' period.

(iv) That since the High Court has failed to dispose of the writ petitions in which interim orders were passed within a period of six months from the date of the above order as mandated by clause (4-B) of Article 199 on account of shortage of Judges the tax payers should not be made to suffer because of clause (4-A) of Article 199 and, therefore, the interim orders passed cannot be treated as having expired.

(b) Mr. M. Akram Sheikh, learned senior counsel has urged as follows:--

(i) That in the case of Siddique Trust v. Income Tax Officer 1987 CLC 2366 a Division Bench of the High Court of Sindh to which one of us (Ajmal Mian, C.J.) was a party, found clauses (4-A) and (4-B) of Article 199 deficient inasmuch as it was observed that either in clause (4-A) the period of six months be extended to a reasonable period or the Court may be empowered under clause (4-B) to extend the period of stay in case where an authority itself is at fault and as the Legislature has not

taken any action pursuant to the above observation, the Court should supply the omission in the above clauses through interpretive process.,

(ii) That clause (4-A) of Article 199 and Rule 4A of Order 39, C.P.C. are identical, but a Civil Judge under Rule 2-B of Order 39, C.P.C. has jurisdiction to extend time but this power is not available to a High Court which supervises and controls the subordinate Courts in view of Article 203 of the Constitution.

(iii) That clauses (4-A) and (4-B) of Article 199 of the Constitution are to be read as complementary and if there is no possibility of reconciliation between the two, clause (4-A) having lesser right shall yield to clause (4-B) having higher right.

(iv) That the use of the word "shall" in clause (4-B) is mandatory and not directory and a High Court is bound to dispose of the case within six months in which an interim order has been passed.

(v) That by plain reading of clause (4-B) of Article 199 of the Constitution, it is manifest that there is an omission and the same can be supplied in order to avoid causing injustice.

(vi) That clause (4-A) of Article 199 has its limited application by choice of the words employed in the above clause and it does not admit blanket and wholesale application to all cases.

(c) Mr. Hamid Khan, learned counsel has submitted as under:--

(i) That clauses (4-A) and (4-B) of Article 199 are to be read together and to be harmonized, and all cases be disposed of within six months and only exceptional cases may go beyond, six months for reasons to be recorded by the Court.

(ii) That clause (4-B) of Article 199 has been added after the period of ten years of the incorporation of clause (4-A) of Article 199 and, therefore, clause (4-B) being subsequent in time has the effect of controlling and modifying clause (4-A).

(iii) That taxing statutes are to be construed strictly and in favour of the subject and if this principle of interpretation is superimposed on clauses (4-A) and (4-B) more favourable picture will emerge in favour of the subjects/tax payers.

(iv) That since this court is construing a provision of the constitution which is an organic document all its provisions are to be read together including clauses (4-A) and (4-B) of article 199.

(v) That since there was no fault on the part of the petitioners and the High Court in para. 12 of the impugned judgment has given reason of heavy pendency for non-disposal of the Writ Petitions in terms of clause (4-B) of Article 199 of the Constitution, such a general reason cannot be a sufficient reason for non-compliance of the mandate of the Constitution under above clause (4-B).

(vi) That there are three views which have been expressed' by the Courts as to the scope and import of clauses (4-A) and (4-B) of Article 199, namely, (i) that clause (4-A) does not apply when prima facie the impugned order of assessment and collection of revenues lacks jurisdiction, (ii) that the petitioners could not be made to suffer, (iii) that the Government should have extended the period of six months to a reasonable period in clause (4-A) of Article 199, or should have given power to the Court under clause (4-B) to extend the period of six months for the operation of the impugned order.

(d) Mr. Abdul Mujeeb Pirzada, learned counsel has submitted as under:-

(i) That clause (4-A) of Article 199 does not put any embargo on' the power of the High Court to modify its first interim order and that six :'.months' period can be reckoned from the date of modified order.

(ii) That an action which perpetuates injustice, or is mala fide, coram non judice, and in excess of jurisdiction cannot be activated under _; clause (4-A) of Article 199 upon the expiry of six months.

(iii) That the interim order cannot be terminated automatically upon the expiry of six months' period but the Court will have to apply its mind on the above question, either suo motu or on application of a party and to pass an order for ceasing of the interim order.

Mr. Akhlaq Ahmad Siddiqui, learned Advocate Supreme Court adopted the arguments of M/s. M. Akram Sheikh and Hamid Khan.

4. Mr. Tanvir Bashir Ansari, learned Deputy Attorney-General has urged as under:

(i) That clauses (4-A) and (4-B) of Article 199 of the Constitution are independent, and therefore, the factum that the case in which interim order was passed could not be disposed of within six months in terms of clause (4-A) of Article 199 would not affect the operation of clause (4-A).

(ii) That there is no inconsistency between clauses (4-A) and (4-B) of Article 199 of the Constitution as to attract any principle of interpretation of statutes/Constitution.

(iii) That since clause (4-A) of Article 199 is clear and unambiguous, namely, that interim order inter alia against an assessment and collection of public revenues is to expire on the expiry of six months from the date of its grant, the Court cannot negate the above mandatory provision of the Constitution on any principle.

5. In order to appreciate the point at issue, it may be pertinent to refer to the relevant portions of clauses (1) and (4) of Article 199 of the Constitution. It may be observed that paragraph (a) of clause (1) of Article 199 empowers the High Court upon an application of an aggrieved party to make an order "directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, or a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or declaring that any act done or proceedings taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect. " It may further be pointed out that paragraph (c) of clause (1) of Article 199 empowers a High Court "on the application of any aggrieved person, to make an order giving such direction to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II".

It may further be observed that paragraph (a) of clause (4) provides that where an application is made to a High Court for an order under paragraph (a) or paragraph (c) of clause (1), whereas paragraph (b) thereof lays down that if the making of an interim order would have (i) the effect of prejudicing or interfering with the carrying out of a public work, (ii) or otherwise being harmful to public interest or State property, (iii) 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 authorised 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 (a) would not have such effect as aforesaid, or (b) would have the effect of suspending an order or proceedings which on the face of the record is without jurisdiction.

It may be pointed out that clause (4-A) of Article 199 was incorporated by the Constitution (Fourth Amendment) Act, 1975 (Act 71 of 1975) with effect from 21-11-1975. The object of inserting the above clause was to limit the period of the operation of an interim order by sixty days. However, by President's Order No. 14 of 1985 the period of sixty days was substituted by six months and the words "State property" were added after the words "in Part I of the First Schedule or relates to, or is connected with". The above President's Order No.14 of 1985 also added clause (4-B), which enjoins a High Court to dispose of the case within six months in which an interim order has been passed. It

may be pertinent to reproduce the above amended clause (4-A) and clause (4-B) of Article 199, which reads as follows:-

"(4-A). An interim order made by a High Court on an application made to it to question the validity or legal effect of any order made, proceeding taken or act done by any authority or person, which has been made, taken or done or purports to have been made, taken or done under any law which is specified in Part 1 of the First Schedule or relates to, or is connected with, State property or assessment or collection of public revenues shall cease to have effect on the expiration of a period of six months following the day on which it is made, unless the case is finally decided, or the interim order is withdrawn, by the Court earlier.

(4-B). Every case in which, on an application under clause (1), the High Court has made an interim order shall be disposed of by the High Court on merits within six months from the day on which it is made, unless the High Court is prevented from doing so for sufficient cause to be recorded."

6. The perusal of above quoted clause (4-A) of Article 199 indicates that an interim order made by a High Court on an application made to it to question the validity or legal effect of any order made, proceeding taken or act done by any authority or person, which has been made, taken or done or purports to have been made, taken or done under any law which is specified in Part I of the First Schedule or relates to, or is connected with, State property or assessment or collection of public revenues shall cease to have effect on the expiration of a period of six months following the day on which it is made, unless the case is finally decided, or the interim order is withdrawn, by the Court earlier.

It may further be noticed that clause (4-B) of Article 199 provides that every case in which, on an application under clause (1), the High Court has made an interim order shall be disposed of by the High Court on merits within six months from the day on which it is made, unless the High Court is prevented from doing so for sufficient cause to be recorded.

The above clauses (4-A) and (4-B) of Article 199 have been the subject-matter of interpretation by the Superior Courts including this Court. The thrust of the arguments of the learned counsel for the appellants/petitioners was that since the High Courts had not disposed of the cases as mandated by clause (4-B) within a period of six months, the period of six months mentioned in clause (4-A) is to be extended by the Court inter alia by pressing into service the interpretive process.

7. It will not be out of context at this stage to refer the cases decided by the Superior Courts on the interpretation of the above clauses.

(i) *Dewan Textile Mills Ltd. v. Pakistan and others* PLD 1976 Karachi 1368.

In the above case the interpretation of clause (4-A) of Article 199 and its validity were involved. A Full Bench of the erstwhile High Court of Sindh and Balochistan while holding the above clause as valid held that the words "purports to have been made, taken or done" are relatable to the first part of the above clause (4-A), namely, an interim order made by a High Court on an application made to it to question the validity or legal effect of any order made, proceeding taken or act done by any authority or person under any law which is specified in Part I of the First Schedule, or "purports to have been made, taken or done". It was further held that the words "purports to have been made taken or done" do not cover the second part of the above clause, namely, an interim order made by a High Court on an application made to it to question the validity or legal effect of any assessment or collection of public revenues.

(ii) *Federation of Pakistan through the Secretary, Ministry of Finance, Government of Pakistan, Islamabad and others v. United Sugar Mills Ltd.*, Karachi PLD 1977 SC 397.

In the above case five appeals were filed with the leave of this Court. The vires of the above newly-added clause (4-A) in Article 199 was assailed on various grounds. This Court while upholding the validity of the above clause observed as under:

"As I look at the matter, the question at the root is to ascertain the Parliament's intendment underlying clause (4-A) in Article 199 of the Constitution. It was pointed out by the learned Attorney; General, that the whole object was to put an end to what he described as gross abuse of process of the Court by which enormous sums of money recoverable by the State as taxes are held in abeyance for indefinite period as a result of they stay orders which are generally secured by big industrialists and businessmen to the detriment of public revenues. Indeed, the amount which has accumulated and has become due since the stay was originally granted by the High Court in C.P. 152-R brings into sharp focus, the rationale underlying the amendment. Similarly, in the case of Chaudhry Textile Mills (referred to already) in consequences of the stay granted by the High Court, arrears representing 25 % of the taxes held in abeyance, amounting to Rs.54,76,650.61. Thus, this was the mischief which the Parliament plainly intended to eradicate by restricting the duration of the interim order issued by the High Court to not more than 60 days.

Once we reach that conclusion and were to hold at the same time that the High Court will also have the power to repeat the order for interim relief after the expiry of the previous order, it will reduce the Constitutional provision of clause (4-A) otherwise competently made to a complete farce. It is wholly wrong to think that clause (4-A) stultifies the judicial power of the High Court, for it does not control the manner in which the abridged jurisdiction of the High Court will be exercised. The correct view is that the provision is merely regulatory of the jurisdiction of the High Court."

(iii) Hassan Mahmood and others v. Federal Land Commission etc. 1985 Law Notes (Lahore) 121.

In which a Division Bench of the Lahore High Court had held that any order or assessment by any functionary, which runs counter to the provision of clause (4-A) of Article 199 extending time of interim order beyond six months is illegal.

(iv) Messrs Siddiaue Trust v. Income Tax Officer and another 1987 CLC 2366.

In the above case the facts were that the petitioners filed a Constitution Petition impugning the notices issued against them under sections 56 and 61 of the Income Tax Ordinance, 1979 by the Income Tax Officer, Central Circle B=II, Karachi on the ground that they being a Trust under the Trusts Act, 1882 were not liable to be assessed. While the above Constitution Petition was pending an application under section 151, C.P.C. read with clause (4-B) of Article 199 of the Constitution was filed praying for the following relief:

"It is therefore, respectfully prayed that as an ancillary and incidental step to the exercise of jurisdiction this Hon'ble Court may grant stay for a further period of 3 months and direct that the case may be decided within this period."

In support of the above application very elaborate arguments were advanced and reference was made to Latin Maxim *Actus curiae neminem gravabit* (An act of the Court shall prejudice no man). It was contended that since the High Court had failed to dispose of the main Constitution Petition though mandated under clause (4-B) of Article 199, the petitioner should not be made to suffer on account of the above omission/default on the part of the High Court and, thus, the period of a stay order beyond six months as envisaged under clause (4-A) be extended by three months. The above contention was repelled as follows:

"The maxim *Actus curiae neminem gravabit* can be pressed into service so long as it does not violate any express provision of law and can be given effect in exercise of inherent power of the Court which has not been negatived by any express provision of law. In the present case clause (4-A) of Article 199 of the Constitution expressly provides that the stay shall cease to have effect on the expiration of a period of six months following the day on which it is made, unless the case is finally decided, or the interim order is withdrawn, by the Court earlier. Nothing contrary to this has been provided in clause (4-B) of the above Article 199. The Court, therefore, cannot negate the above mandatory provision of clause (4-A) by extending the period of stay on the basis of the above maxim *Actus curiae neminem gravabit*. "

It was also contended that clause (4-B) being curative/remedial provision should be given liberal construction so as to advance the remedy and suppress the mischief. The above contention was also rejected and it was held that the Court could not add in the Constitution to what has not been provided therein.

As regards the contention that if two constructions are possible, the one which favours the citizen/tax payer should be preferred, the following observations were made:

"Admittedly, the above-quoted clause (4-B) does not empower the Court to extend the period of a stay order beyond six months as provided in clause (4-A) of the same Article 199. If two constructions of the above clause would have been possible, one which would have empowered the Court to extend the period of a stay order beyond six months and the other which would not have empowered the Court to extend the period of a stay order, the Court would have preferred the former. But the language of the above clause is clear and free from any ambiguity and does not warrant the former construction."

The contention that the Court can grant a relief on the basis of the principle that the Court which can grant the final relief can grant interim relief being ancillary and incidental to the main relief, was also not accepted for the following reasons: ,

"We are inclined to hold that the above principle can be invoked as long as there is no express prohibition. In the present case as pointed out clause (4-A) expressly provides that the stay shall not operate for more than six months and, therefore, the above principle cannot be pressed into service."

Incidentally it may be stated that one of us (Ajmal Mian, C.J.) was the author of the above judgment.

(v) Bibi Zuhra v. Member, Federal Land Commission and others 1988 CLC 129.

In the above case the question at issue was, as to whether an interim order could be passed upon a second application upon the dismissal of the application for interim order in default. It was contended that since the impugned order passed by the Federal Land Commission was without jurisdiction, the Court could pass second interim order. The above contention was repelled by a Division Bench of the High Court of Sindh, the author of the judgment was Nasir Aslam Zahid, J. (as he then was) as under:

"We find no substance in the contention of the learned counsel. Admittedly in this matter an interim order had been obtained by the petitioner as far back as 5-5-1982 and though this interim order expired by an efflux of time on the expiry of six months from the date of the passing of the said interim order, in any case the interim application was dismissed for non-prosecution by order dated 24-9-1984 and as such even if the said interim order of status quo had remained in the field, it came to an end on 24-9-1984. The submission made by the learned counsel on the basis of 1984 SCMR 861 and PLD 1976 Peshawar 66 is not relevant. ,The point being considered is the interpretation and application of clause (4-A) of Article 199 of the Constitution. Admittedly the order that has been passed purports to be an order under a law specified in Part I of the First Schedule to the Constitution. As a result, clause (4-A) of Article 199 is attracted and the interim order lost its efficacy on the expiry of six months of the order dated 5-5-1982. It is now settled that once an interim order has remained in the field for six months and it expires then in view of clause (4-A) of Article 199 of the Constitution, a second interim order cannot be passed which will have the effect of nullifying the provisions of clause (4-A) of Article 199 of the Constitution."

(vi) Punjab Cables v. Government of Pakistan PLD 1989 Lahore 121.

In the above case four miscellaneous applications were filed by Punjab Cables in a pending Constitution Petition for restraining the respondent from realising the bank guarantees submitted by them, pursuant to the interim order dated 9-4-1988, which had expired on the expiry of six months. The applicant imported certain machinery which came in separate consignments. The Customs Authorities found that they were reconditioned instead of new. There was no dispute as regards the

assessment of duties, but the dispute was with regard to nature of the goods. The question was, whether the above imported goods could be confiscated for violation of the law. The Collector took up proceedings under section 156(1)9 of the Customs Act, 1969 which authorised the Customs Authorities to confiscate goods and to impose penalty for contravention of the provisions of the Customs Act and the other relevant law. The Collector acting under section 181 of the Customs Act allowed the applicant to redeem the goods on payment of stated sums of money by way of fines, in addition to customs duties and other taxes which were chargeable thereon. The applicant challenged the four orders in separate writ petitions, which were admitted. By way of interim relief, the goods were ordered to be released against furnishing of bank guarantees to cover the fines, subject to payment of the duties etc., which were not in dispute. The applicant through the above miscellaneous applications sought the extension of time as stated above. The above applications were supported on a number of grounds including that the subject-matter of the petitions was not covered by the words "public revenues". Rustam S. Sidhwa, J. (as he then was) held that Customs Act does not define the word "duty" or "customs duty" and that there is nothing in the Act to suggest that moneys realised out of confiscation, penalty or fine should be treated as customs duty. It was further observed by him that section 2(ccc) of the Central Excises and Salt Act, 1944 defines "duty" to include regulatory duty and all sums payable under any of the provisions of the Act or the Rules made thereunder. Monetary receipts arising out of confiscations, fines and penalties under the Central Excises and Salt Act, 1944. However, the above application for extension was declined and it was observed that the order of confiscation of the above imported machinery operated directly on the status of the property i.e. the title to the machinery shall stand absolutely transferred to the Government and thus the same was covered by first part of clause (4-A) of Article 199. Reliance was placed by Mr. M.Akram Sheikh particularly on the following observation from the above judgment:

"The fact that 'State property' is dealt with separately, clearly shows that the general meaning is not intended. The words 'relates to, or is connected with assessment or collection of public revenues' are also significant, for they show that what is intended are revenues which are normally assessed, as such. If an order relates to or is connected with the assessment of public revenue, it obviously relates to revenue which is receivable in the established sense through some form of determination or realisation by way of assessment, as in taxation. Proceedings for confiscation of goods or imposition of fines or penalties for offences are not proceedings for assessment of revenue, in the established sense. A fine is not a tax levies. See *Ark-Allis v. Jefferson County* (34 Ark 307) and *Corpus Juris Secundum*; Vol. 36-A, page 432. A fortiori, a penalty imposed for an offence, would also not be a tax levied. The words 'collection of public revenues' must be read ejusdem generis with the words 'assessment of public revenues'. In short 'public revenues' referred to in Article 199(4-A) cover all types of income of the Government from sources akin to taxation which is receivable through some form of determination or realisation by way of assessment.

(vii) *Messrs Noori Trading (Pvt.) Ltd. and others v. The Federation of Pakistan and others* PLD 1997 Karachi 663.

In the above case the official respondent filed application under clause (4-A) of Article 199 of the Constitution for seeking the order to permit them to encash the bank guarantee which was furnished by the petitioners in lieu of release of imported consignment as a security for the amount payable as "Iqra" surcharge, which was assailed through Constitution Petitions.

A Full Bench of the High Court of Sindh headed by Mamoon Kazi, C.J. (as he then was) held that any extension made by the Court in the said period of six months, as envisaged under clause (4-A) of Article 199 would amount to tampering with the provisions of the Constitution. It was further held that where whole aim and object of the Legislature would be defeated if command to do the thing in a particular manner implies prohibition to do the same in any other manner, such statutory requirement would be mandatory. It was also observed that where no provision was made indicating consequences in case of non-compliance with the requirement of the statute, such provision would be directory.

It was concluded that there was no conflict between the provisions of clauses (4-A) and (4-B) of Article 199 of the Constitution and both the above provisions would stand side by side and effect can be given to both of them independently.

The view taken in *Dewan Textile Mills Ltd. v. Pakistan and others* (PLD 1976 Karachi 1368) (supra) that clause (4-A) contains two parts and the word "purports" covers the cases falling under the first part of the above clause and not the cases falling under second part, namely, assessment or collection of public revenues was reiterated.

However, as regards an order without jurisdiction the following observation was made:

"23. However, orders which appear on the face of the record to be without jurisdiction fall within altogether a different category. The words 'on the face of the record' clearly indicate that the defect is apparent on the surface. Although, no judicial interpretation of the said expression can be found but the expression is very much akin to 'per se doctrine' which has been defined Black's Law Dictionary, 6th Edn., p.1142 to mean "under the 'per se doctrine', if an activity is blatant in its intent and pernicious in its effect, a Court need not inquire into the reasonableness of the same". With reference to 'per se violations', it has been further observed in the said dictionary:

'Per se violations. In anti-trust law, term that implies that certain types of business agreements, such as price-fixing, are considered inherently anti-competitive and injurious to the public without any need to determine if the agreement has actually injured market competition. See Per se doctrine.'

Therefore, in case of an order which is inherently defective or invalid, no further enquiry would be required. Consequently, if a demand made by a public functionary is based on an order which on the face thereof is without jurisdiction, any interim stay granted by the Court cannot be construed as an order connected with assessment or collection of public revenues. For example, if a duty of customs is imposed by an order passed by a Deputy Commissioner who does not possess jurisdiction to pass such order under the provisions of Customs Act, such order on the face thereof would be without jurisdiction and any demand of tax made under authority of such order, would equally be illegal. Therefore, any stay granted by the Court in respect of such order cannot be construed as an order as postulated in clause (4-A). However, the question, whether an order is on the face of the record without jurisdiction, is a question which would depend upon the facts of each case."

"This Court in view of Article 199.(4-A) of the Constitution of Islamic Republic of Pakistan, 1973 cannot legally debar the contesting respondent from encashment of bank guarantees furnished during writ petition, even if suits are considered continuation of Proceedings initiated in writ petitions. as a period of six months has already been expired and consequently the contesting respondent has become entitled to encash the bank guarantees furnished by the appellants."

It may be observed that the above case does not touch upon the controversy at issue in the present case.

(ix) *Municipal Committee Sahiwal throw h Administrator and another v. Pakistan Burma Shell Limited and another* 1999 SCMR 98.

In which the facts were that the respondent had warehouse facility, which was withdrawn by the appellant. The High Court stayed the above order by an interim order under its Constitutional jurisdiction. Leave to appeal was granted to consider as to whether the stay order issued on a specified dated; ceased to exist after expiry of six months period and, therefore, the same could not either be extended nor could be deemed to be operative in view of clause (4-A) of Article 199. The respondent was not represented when the above appeal came up for hearing before this Court. The appeal was disposed of with the observation that the High Court should finally dispose of the writ petition within two months from the receipt of the order and in the meanwhile the impugned order shall remain suspended. However, about clause (4-A) of Article 199 the following observation was made:

"The contesting respondent is absent and has been proceeded ex parte vide order dated 31-7-1997. A question of law of great public importance is involved in this case as to whether in view of the provisions contained in clause (4-A) of Article 199 of the Constitution and the dictum laid down in the case of Federation of Pakistan v. United Sugar Mills Ltd. (PLD 1977 SC 397), the stay order issued by the High Court in respect of State property or assessment or collection of public revenue ceases to have effect on the expiration of the period of six months following the day on which it is made, unless the case is finally decided or the interim order is withdrawn by the Court earlier."

In this case also the controversy at issue has not been dilated upon and, therefore, it does not throw light on the merits of the controversy.

(x) Ihsanullah v. Collector of Customs. Custom House, Lahore and 4 others PLD 1999 Lahore 96.

The above report contains the judgment of a Division Bench of the Lahore High Court which has been inter alia impugned in the above petitions for leave to appeal. In this case all the relevant cases including those which have been referred to hereinabove have been discussed. It has been concluded that the period of six months mentioned in clause (4-B) of Article 199 is directory in nature and that under clause (4-A) thereof the period of six months cannot be extended. As regards the order without jurisdiction, the following observations have been, made: '

"So far as the question as to whether order without jurisdiction would be covered by the provisions is concerned, we with great humility are unable to agree to the view taken by the Division Bench of the Sindh High Court. The reason for our saying, so is that if clause (4-A) of the Constitution is read with clause (4) it would be seen that under clause (4) if the matter relates to public revenue the condition for grant of interim relief is that the order passed by the High Court would have the effect of suspending an order or proceedings which on the face of the record are without jurisdiction. It is, thus, obvious that in only those cases where the order impugned in the Constitutional petition relating to the collection and assessment is without jurisdiction that the Court can grant temporary injunction. If it is held that clause (4-A) does not apply to cases where the order has been challenged as being without jurisdiction then this provision would, itself be rendered futile and nugatory inasmuch as temporary injunction as already indicated is issued only when the order is without jurisdiction and not otherwise. The other reason for coming to this conclusion is that the question as to whether the order impugned is without jurisdiction or not can only be decided at the trial of the petition and not at the interim stage. If we were to hold that clause (4-A) does not apply to orders passed without jurisdiction then on the expiry of every six months in each case an examination of the facts and law will have to be undertaken and the Court has to decide as to whether or not the order was without jurisdiction. If that exercise is undertaken at that stage, nothing would remain pending for the decision in the main case itself."

8. The above-cited cases inter alia lay down the following legal propositions:

(i) That the words "purported to have been made, taken or done" are relatable to the first part of above clause (4-A) of Article 199 of the Constitution i.e. in respect of any law which is specified in Part I of the First Schedule or is connected with State property. ,

(ii) That the words "purported to have been made, taken or done" do not cover the second part of the above clause, namely. "An interim order made by a High Court on an application made to it to question the validity or legal effect of any assessment or collection of public revenues. "

(iii) That if it is to be held that a High Court will have the power to repeat the order of interim relief after the expiry of the .previous order on expiration of six months. It will reduce the Constitutional provision of clause (4-A) otherwise competently made to complete fare.

(iv) That the maxim "actus curiae neminem gravabit" (an act of Court shall prejudice no man) can be pressed into service so long as it does not violate any express provision of law and can be given effect in exercise of inherent power of the Court which has not been negated by any express provision of law.

(v) That a Court cannot negate the mandatory provision of clause (4-A) of Article 199 of the Constitution by extending the period of stay on the basis of the above maxim 'actus curiae neminem gravabit'."

(vi) That if two constructions of clause (4-B) would have been possible one which would have empowered a High Court to extend the period of stay order beyond six months and the other which would not have so empowered the High Court, this, Court, would have preferred the former but the language of the above clause is clear and free from any ambiguity and does not warrant for opting for the former construction.

(vii) That the proceedings for confiscation of goods or imposition of fine or penalties for offences under the Customs Act are not proceedings for assessment of revenue in terms of clause (4-A) of Article 199 of the Constitution.

(viii) That a fortiori, a penalty imposed for an offence, under the Customs Act cannot also be treated as a tax levied.

(ix) That the words "public revenues" used in clause (4-A) of Article 199 of the Constitution cover all types of income of the Government from sources akin to taxation, which is receivable through some form of determination or realisation by way of assessment.

(x) That the order of confiscation of the imported machinery under the Customs Act operated directly, on the status of the property i.e. the title to the machinery stood absolutely transferred to the Government and thus would be covered by first part of clause (4-A) of Article 199, which inter alia relates to the State property.

(xi) That the stay order issued by a High Court in respect of a State. Property or assessment or collection of public revenues ceases to have effect on the expiration of the period of six months from the day on which it is made unless the case is finally decided earlier or the interim order is withdrawn by the Court earlier. ???

(xii) That if a demand made by a public functionary is based on an order which, on the face of it, is without jurisdiction. any interim order granted by the Court cannot be construed as an order connected with the assessment or 'collection of public revenues [Messrs Noori Trading (Pvt.) Limited and others v. The Federation of Pakistan and others (PLD 1997 Karachi 663) (supra).

(xiii) That if it is held that clause (4-A) of Article 199 does not apply to cases where the order has been challenged as being without jurisdiction, then the above provision would itself be rendered futile and nugatory, which will be contrary to language of the aforesaid clause which inter alia indicates that a temporary injunction is to be issued only when the order is without jurisdiction and not otherwise (Ihsanullah v. Collector, of, Customs, Custom House, Lahore and 4 others PLD 1999 Lah. 96 (supra).

9. (a) I may now take up the submission of Raja Muhammad Akram, learned counsel, that the word "levy" has wider connotations as compared to the word "assessment" inasmuch as the former may include the latter but not vice versa.' In support of the above submission, he has relied upon the case of Assistant Collector of Central Excise, Calcutta v. National Tobacco Co. .of India Ltd. AIR 1972 SC 2563.

In the above case the Indian Supreme Court while construing the words "Levy" and "assessment" used inter alia in rules 9, 10 and 52 of the Central Excise Rules, held that the term "levy" appears to be wider in its import than the term "assessment". It may include both "imposition" of a tax as well as assessment. It was further held that the term "imposition" is generally used for the levy of a tax, pr duty by the legislative provisions indicating the subject matter of the tax and the rates at which it has to be taxed. Whereas the term "assessment", on the other hand, is generally used in India for the actual procedure adopted in fixing the liability to pay a tax on account of particular goods or property

or whatever may be the object of the tax in a particular case and determining its amount. The above report does not touch upon the controversy at issue. It merely indicates that the term "assessment" connotes generally actual procedure adopted in fixing the liability to pay.

It may be observed that paragraph (b) of clause (4) of Article 199 speaks of inter alia impeding the assessment or collection of public revenues. In other words, it inter alia covers the stage when the process of assessment of the liability of tax through the procedure provided under the relevant law is in progress, whereas the stage of collection starts after the liability is quantified through the mechanism provided under the relevant law.

(b) Adverting to the second submission of Raja Muhammad Akram that since the appellants/petitioners have been denied their Fundamental Right to seek justice as the case in which an interim order is made under clause (1) of Article 199 cannot be disposed of within six months from the date of the order as mandated under clause (4-B) on account of shortage of Judges and heavy pendency of the cases, the State should suffer on account of the above act/omission on its part and not a tax payer. Thus, according to him, the above period of six months specified in clause (4-A) cannot be pressed into service by the State. He has relied upon the case of *Shubhesh Sharma v Union of India* (AIR 1991 SC 631) in which the Indian Supreme Court made observation as obiter dicta that Judges strength should be adequate to the current requirement and must remain under constant review and that the matter of determination of Judges strength in the superior Courts should be justiciable (obiter dicta).

The above contention seems to be devoid of any force. The inability on the part of a High Court to dispose of a case in which interim order is made in respect of clause (1) of Article 199 of the Constitution within six months from the date of the order will not justify to nullify the mandatory provision of clause (4-A) of Article 199 of the Constitution. The interim order if covered by clause (4-A) of Article 199 stands expired on the expiry of the six months by operation of the above Constitutional provision. The time of six months specified in above clause (4-B) of Article 199 cannot be treated as mandatory in view of Article 254 of the Constitution which lays down that "When any act or thing is required by the Constitution to be done within a particular period and it is not done within that period, the doing of the act or thing shall not be invalid or otherwise ineffective by reason only that it was not done within that period." In my view, in Pakistan a Court is not competent to determine the strength of the Judges of the superior Courts in view of Articles 176 and 192 of the Constitution which empower the Parliament to fix the strength of the Supreme Court and the High Courts by an Act. In the absence of such an enactment in the field, the power has been conferred on the President to fix the same.

10. (a) I may now deal with the contentions of Mr. M. Akram Sheikh, learned counsel. His contention was that clauses (4-A) and (4-B) of Article 199 are deficient as was indirectly hinted by one of us in the judgment of the High Court of Sindh in the case of *Messrs Siddique Trust v. Income Tax Officer* and another 1987 CLC 2366 (supra) by observing that it would be appropriate that either in clause (4-A) of Article 199 the period of six months be extended to a reasonable period or the Courts be empowered to extend the period of six months of stay order under clause (4-B) thereof in a case where the petitioner is not at fault. On the basis of the above observation, his further contention was that since the Legislature has not acted upon the above observation by not amending the above clauses of Article 199 of the Constitution, this Court should read into the above clauses, the power in favour of the Court to extend the period of six months by pressing into service interpretative process. To reinforce the above submission, he has relied upon the following cases:-

(i) *Muhammad Ismail and others v. The State* PLD 1969 SC 241.

(ii) *Mst. Fazal Jan v. Roshan Din and 2 others* PLD 1990 SC 661.

(iii) *Hasham Khan v. The State* PLD 1991 SC 567.

(iv) *Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ulKhairi and others v. Federation of Pakistan and others* PLD 1996 SC 324.

(v) Wukala Mahaz Barai Tahafaz Dastoor and another v. Federation of Pakistan and others PLD 1998 SC 1263.

In the above first case this Court while construing clause (1) of paragraph 6 of the Provisional Constitution Order (PCO) held that the draftsman inadvertently omitted by not expressly clarifying that the word "appeal" used in the above clause (1) of paragraph 6 of the PCO had the same meaning as in Article 159 of the 1956 Constitution which was clearly being sought to be reintroduced..

In the second case this Court held that though the definition of the word "State" used in Article 7 of the Constitution does not include the judiciary, yet in the peculiar context of Article 25(3) the term "State" would also include the judicial functionaries.

In the third case the Shariat Appellate Bench of this Court (Justice Nasim Hasan Shah acting as the Chairman of the Shariat Appellate Bench), while construing section 11 of the Office of Zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1979), held that the same does not reflect the true intention, of the law maker as the word "extending" while prescribing imprisonment for life has been inadvertently omitted. It was further held that the Supreme Court in exercise of its ordinary jurisdiction has had occasion to deal with this question on more than one occasion. He also ruled that even though the Court cannot normally give any meaning to a provision other than that which the words used therein by the draftsman carry but the Court nevertheless in order to avoid injustice can give effect to the true and patent intention of the law-makers by supplying an omission.

In the fourth case Manzoor Hussian Sial, J. (as he then was) in his opinion observed that "It is true that generally a Court of law is not authorised to alter the language of the Statute for the purpose of supplying a meaning, yet in certain circumstances it is permissible for the Courts to give effect to the true and patent intention of the law-maker by supplying 'omission' in order to avoid manifest injustice. It is a misconception, therefore, to consider that the reading of the words in the Constitution or Statute to give effect to the free intention of the law-maker amounts to re-writing or amending the Constitution or the Statute. On the other hand, its purpose is to give effect to its true intent".

In the fifth case quotations from Corpus Juris Secundum and Halsbury's Law of England (Vol. 6) have been relied upon which deal with the question as to how conflicting provisions in a statute are to be construed.

There cannot be any cavil with the legal propositions propounded in the above reports that the Courts may supply a patent omission in a provision of statute or Constitution if it is not possible to make the said provision functional by making all efforts. But the above principle is not applicable to the case in hand. There seems to be no ambiguity in the above clauses nor there appears to be any conflict between the same.

(b) Then it was contended by Mr. M. Akram Sheikh that as clause (4-B) contains higher right than clause (4-A), the latter should yield to the former. To reinforce the above submission he has relied upon the cases of Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others (PLD 1996 SC 324) and Wukala Mahaz Barai Tahafaz Dastoor and another v. Federation of Pakistan and others (PLD 1998 SC 1263) in which the following observations were made by one of us (Ajmal Mian) as a Judge (V he then was) : .

- Al-Jehad Trust through Raeesul Muiahideen Haibu-ul-Khairi and others v. Federation of Pakistan and others PLD 1996 SC 324.

"Keeping in view the various provisions of the Constitution it is not possible to reconcile the above provisions of Article 203-C and Article 209. In such a situation, the question arises, which of the Article should prevail. One view can be that since Article 203-C was incorporated subsequent to Article 209, the former should prevail. The other view can be that since Article 209 was incorporated by consensus by the framers of the Constitution and whereas Article 203-C was incorporated by the then Chief Martial Law Administrator and as the same is detrimental to then basic concept of

independence of judiciary and the separation of judiciary, the former should prevail. I am inclined to prefer the latter interpretation as it will be more in consonance with the various provisions of the Constitution and in accord with justice and fair play. A person cannot be appointed on adverse terms in a new Court without his consent."

Wukala Mahaz Barai Tahafaz Dastoor and another v. Federation of Pakistan and others PLD 1998 SC 1263.

"We may observe that in Pakistan instead of adopting the basic structure theory or declaring a provision of the Constitution as ultra vires to any of the Fundamental Rights, this Court has pressed into service the rule of interpretation that if there is a conflict between the two provisions of the Constitution which is not reconcilable, the provision which contains lesser right must yield in favour of a provision which provides higher rights."

It is true that the above judgments propounded the theory that if there is a conflict between the two provisions of the Constitution which is not reconcilable, the provision which contains lesser right must yield in favour of a provision which provides higher right. But the above principle is not attracted to the case in hand. There seems to be no conflict between the above clauses (4-A) and (4-B) of Article 199. If clause (4-B) would have provided that in case of non-disposal of the case within six months referred to therein the Court may extend the period, in that event the above principle of law could have been attracted to.

?(c) I may also deal with Mr. M. Akram Sheikh's contention that by virtue of Rule 2B of Order XXXIX, C.P.C. a Civil Judge, or a Judge of the High Court of Sindh exercising original civil jurisdiction, can extend the period of six months provided under Rule 4A of the above Order but a High Court in exercise of its Constitutional jurisdiction has no such power, and therefore, this Court should come in aid and make good the above deficiency. Without going into the question, as to whether Rule 2B of Order XXXIX, C.P.C. can be pressed into service in order to negate Rule 4A thereof, it will suffice to observe that the mere fact that another statute empowers a Civil Judge or a High Court Judge acting on the original civil to extend the period upon the expiry of six months specified in Rule 4A of the above Order of the C.P.C. would not entitle the Court to read into clause (4-A) or clause (4-B) something which has not been provided therein expressly.

(d) Reverting to Mr. M. Akram Sheikh's contention that the words "assessment or collection of public revenues" connote that the amount of tax in respect of which the interim order is to expire on the expiry of six months should be an amount determined through the mechanism of hierarchy provided for in the relevant statute. In this behalf, he has relied upon the following cases:

(i) Addul Latif v. The Government of West Pakistan and others (PLD 1962 SC 384).

(ii) The Province of West Pakistan v. Muhammad Ayub Khuhro (PLD 1967 Karachi 673).

(iii) Constructions Ltd., Karachi v. Executive Engineer, Indus Bridge Division, West Pakistan, P.W.D., Thatta and another (PLD 1975 Karachi 1059).

(iv) Agricultural Development Bank of Pakistan v. Sanaullah Khan and others (PLD 1988 SC 67).

In the above first case, this Court observed as follows :

"When the land revenue has been determined after following an elaborate procedure, preparation of a statement of account becomes more or less a mechanical job. In the above context it is laid down in section 66 that 'a statement of account certified by a Revenue Officer shall be conclusive proof of the existence of an arrear of land revenue of its amount and of the person who is the defaulter ' It must be remembered that a right construction of the Act can only be attained if its whole scope and object, together with an analysis of its wording and the circumstances in which it is enacted are taken into consideration. From an examination of the Land Revenue Act, it is apparent that it provides first a

procedure for determination of land revenues and then comes the machinery for realisation of such revenue.

It is, therefore, manifest that before the operation of the machinery section for realisation of the arrears, the authority concerned must decide whether there is an arrear due or not. "

In the above second case Qadeeruddin Ahmed, J. (as he then was), sitting as a Judge of the erstwhile High Court of West Pakistan, while construing the word "dues" made the following observations

"The word 'dues' has been defined in Wharton's Law Lexicon to mean 'that which law or justice requires to be paid or done.'

Therefore, before a claim can ripen into 'dues' a determination has to be reached in accordance with law or justice. There is reference in section 6 to the Bombay Land Revenue Code of 1879, according to the provisions of which the dues of the Board form the agent have to be recovered as arrears of land revenue. Section 149 of the Bombay Land Revenue Code provides that a statement of account certified by the Collector shall for the purposes of this chapter (which relates to realization of land revenue) be conclusive evidence of the existence of the arrears of the amount of land revenue due and of the person who is the defaulter. It is only upon the receipt of such a certified statement that it becomes lawful for the Collector to proceed to recover the demand as arrears of land revenue. But before such a certificate is granted under section 149 there is an elaborate procedure which has to be followed for the determination of the land revenue. A determination in this regard by a Subordinate Revenue Officer is subject to appeal or revision. "

In the third case-a learned Single Judge of the erstwhile High Court of Sindh and Balochistan held that damages claimed by the P.W.D. could not be treated as established dues to make them recoverable as arrears of land revenue till the time they were determined and assessed by a competent Authority.

In the above fourth case this Court while construing section 25 of the Agricultural Development Bank Ordinance, 1961, in juxtaposition with section 115 of the West Pakistan Land Revenues Act, 1967 and section 79 of the Punjab Land Revenue Act made the following observation

"It will be seen that the provisions of section 79 are in pari materia with section 66 of the Punjab Land Revenue Act on which the cited decision, is based. Section 115 of the West Pakistan Land Revenue Act, 1967, expressly makes Chapter VIII of the Act applicable to the recovery of a sum as an arrear of land revenue. As section 79 falls under Chapter VIII it is clearly attracted in such a case. On parity of reasoning, therefore, the machinery provisions for the realisation of amount as arrears of land revenue under section 25 of the Ordinance could only be invoked after the procedure for determination of arrears due is adopted and duly certified. In absence of such a certificate the person concerned, without being given an opportunity of hearing, will not be a defaulter within the meaning of the law. Otherwise a mere claim could be recovered by one of the parties to the contract by the coercive procedure provided in the Ordinance. Such unjust and arbitrary power could not be attributed to have been conferred on the functionary by the Legislature. The Board of Revenue has taken care to frame rules called the West Pakistan Land Revenue Rules, 1968, in which Rules 57 and 58 lay down detailed procedure for adjudication of the amount due as arrears of land revenue and the person from whom it is due as the defaulter before proceedings for recovery of the same are initiated. In view of the aforesaid the matter is beyond controversy, and therefore, the procedure adopted in this case was totally unwarranted and contrary to law."

The law enunciated in the above-referred cases seems to be that in order to make an amount as "due", recoverable as arrears of Land Revenue, it should be a determined amount through the mechanism of the hierarchy provided under the relevant statute. However, in the present case if we were to read paragraph (b) of clause (4) and clause (4-A) of Article 199 in juxtaposition, it becomes evident that the words used in paragraph (b) of clause (4), namely, "impeding the assessment or collection of public revenues" cover a case where the process of assessment has been initiated but the liability has not been quantified.

11. I may now refer to some of the submissions of Mr. Hamid Khan who has appeared in two of the above petitions for leave to appeal:

(a) Adverting to Mr. Hamid Khan's contention that the efforts should be made to construe clauses (4-A) and (4-B) of Article 199 in such a way which may harmonise them, inasmuch as the cases in which interim orders are passed should be disposed of within six months, except in exceptional cases for the reasons to be recorded by the Court. There cannot be any cavil with the above proposition that since the Constitution is an organic document, it is to be read as a whole and all efforts should be made to harmonise and to reconcile its various provisions with the object to make them more functional and effective. It is also true that efforts should be made to dispose of the cases covered by clause (4-B) within the stipulated period of six months. However, non-disposal of the same will not render clause (4-A) ineffective.

(b) As regards Mr. Hamid Khan's submission that clause (4-B) was added in the Constitution after about ten years from the incorporation of clause (4-A) and as the former is subsequent, it would control the latter, and thus, clause (4-A) would not be applicable unless precondition provided in clause (4-B) is fulfilled. Since I have already held hereinabove that there is no conflict between clauses (4-A) and (4-B) of Article 199, it will not be proper to press into service the above principle of interpretation, namely, that since clause (4-B) is later in time, it would prevail over clause (4-A) which is earlier in time. ,

(c) Reverting to Mr. Hamid Khan's contention that one of the cardinal principles of interpretation of taxing statute that the same is to be construed strictly and in favour of a subject, if superimposed on clauses (4-A) and (4-B) of Article 199 more favourable picture will emerge in favour of the tax payer, it may be stated that superimposition of the above cardinal principle of interpretation of taxing statute on clauses (4-A) and (4-B) will not affect the result of the present case. It may be pointed out that clauses (4-A) and (4-B) are not taxing provisions but they are part of the Constitution. Clause (4-A) provides outer limit of six months for operation of an interim order of restraint covered by the above clause. Whereas clause (4-B) envisages that a High Court should dispose of a case in which an interim order upon an application under K clause (1) of Article 199 has been passed within a period of six months from the date of such order. Though the above two clauses (4-A) and (4-B) are interconnected, they are not dependent upon each other for their operation.

(d) I may take up' another submission of Mr. Hamid Khan, namely, that since there was no default on the part of the petitioners in the non-disposal of the Writ Petitions within six months in which the interim orders were passed, the petitioners should not be made to suffer. This submission was also canvassed by Mr. M. Akram Sheikh inasmuch as he relied upon the Latin maxim quoted in the judgment of the High Court of Sindh in the case of Messrs Siddique Trust v. Income-Tax Officer and another (1987 CLC 2366) (supra), namely, *Actus curiae neminem gravabit* (An act of the Court shall prejudice no man) and relied upon the following observation:

"This maxim 'is founded upon justice and good sense; and affords a safe and certain guide for the administration of the law (b). In virtue of it, where a case stands over for argument on account of the multiplicity of business in the Court, or for judgment from the intricacy of the question, the party ought not to be prejudiced by that delay, but should be allowed to enter up his judgment retrospectively to meet the justice of the case (c); and, therefore, if one party to an action die during a curia advisari vult, judgment may be entered none pretune, for the delay is the act of the Court, for which neither party should suffer (d).

It is true that a party is not to be prejudiced on account of an act or omission on the part of the Court. But at the same time the Court in order to retrieve an affected party cannot act in violation or derogation of a provision of the Constitution. The above maxim is generally applicable where a Court on I account of an act or omission passes a prejudicial order against a party. For example, if the office of the Court does not issue a notice of a date of hearing to a petitioner and the case is listed in the Court and is dismissed for non prosecution, the above maxim will be attracted to the case."

(e) It was also urged by Mr. Hamid Khan that the High Court was supposed to record good reasons for non-disposal of the cases in which interim orders were passed and which were not disposed of within six months and that the general reason recorded by the High Court that there was heavy pendency was not sufficient for the purposes of clause (4-B) of Article 199. No doubt that clause (4-B) enjoins that a High Court shall dispose of the case in which an interim order has been passed on merit within six months from the date on which such an order is made unless the High Court is prevented from doing so for 'sufficient cause to be recorded. It is difficult to lay down a general rule of universal application as to the reasons which may constitute a sufficient cause for the purpose of above clause (4-B). In our view, the heavy pendency of the cases in the High Court and the shortage of Judges would be a sufficient cause within the ambit of the above clause. However, the High Court is supposed to make efforts to dispose of such cases to which clause (4-A) of Article 199 is applicable within the period stipulated in clause (4-B) thereof.

(t) Then it was submitted by Mr. Hamid Khan that at present there are three judicial views in respect of the controversy, namely:

(i) That clause (4-A) of Article 199 does not apply when prima facie the impugned assessment and recovery proceedings are without jurisdiction.

To support the above view he has relied upon the High Court of Sindh's recent judgment in the case of Messrs Noori Trading (Pvt.) Ltd. and others v. The Federation of Pakistan and others PLD 1997 Kar. 663 relevant at p.675-6 (supra).

(ii) That the petitioner should not be made to suffer.

In support reliance has been made on the following observation from the judgment of Dewan Textile Mills Ltd. v. Pakistan and others PLD 1976 Kar. 1368 relevant at p.1399 (supra):

"Unless the petitioner is himself to be blamed, the complaint in regard to the delay in the disposal of the dispute would either lie on the High Court or the opposite-party. High Court is not powerless to pass ex parte orders or such other orders in accordance with law if opposite party be the defaulter. As regards the delay on the part of the High Court, I cannot conceive of lethargy or blame on its part to do justice in an appropriate case deserving disposal within 60 days. These are, however, not the aspects on which vires of a statute, not to speak of a Constitutional provision, depends."

(iii) That either in clause (4-A) the period of six months be extended to a reasonable period or the Court may be empowered under clause (4-B) to extend the period of stay in cases where the petitioner is not at fault.

To support the above submission, he has referred to sub-para.(ii) of para. 8 of the judgment of a Division Bench of the High Court of Sindh in the case of Messrs Siddique Trust v. Income-tax Officer and another 1987 CLC 2366 (supra) already discussed in detail hereinabove.

(g) According to Mr. Hamid Khan, learned counsel, if this Court is to harmonise clauses (4-A) and (4-B) of Article 199 the following would be necessary implications:

?(i) It would be the primary duty of a High Court to conclude within six months. In any case it would be duty bound to list the cases within six months.

(ii) If a petitioner is not at fault and a High Court could not dispose of a writ petition/Constitution petition, or delay is attributed to the official respondents the interim order is to be extended.

(iii) If the delay in the disposal of a writ petition/constitution petition is on account of a petitioner clause (4-A) would be applicable with full effect.

(iv) That the Court is to apply its mind on case to case basis in order to determine as to why a particular case was not concluded within six months, or to ascertain as to who was at fault and a

speaking order in respect thereof is to be passed.

(h) We are inclined to agree with Mr. Hamid Khan that efforts should be made by the High Courts to dispose of cases in which interim orders covered by clause (4-A) of Article 199 are passed in order to render them inoperative on the expiry of six months' period specified therein. However, in our view, it is not necessary that a High Court should pass an order in each case on the expiry of the period of six months for recording the reasons for its inability to dispose of the same within six months. The interim order stands automatically expired on the expiry of the period of six months by operation of the above Constitutional provision, namely, clause (4-A) of Article 199.

12. Adverting to Mr. Abdul Mujeeb Pirzada's submission that clause (4-A) of Article 199 does not put any embargo on the powers of a High Court to modify its first interim order and that six months period can be reckoned from the modified order, it may be observed that it is a well-settled proposition of law that what cannot be done directly, the same cannot be done indirectly. Since clause (4-A) of Article 199 expressly provides for the expiry of an interim order', on the expiry of six months period, the above provision cannot be rendered ineffective or redundant by passing a fresh interim order on a fresh application. This was so held by this Court in the case of Federation of Pakistan through Secretary, Ministry of Finance, Government of Pakistan, Islamabad v. United Sugar Mills Ltd. (supra).

His contention that the interim order cannot be terminated automatically upon the expiry of six months period but the Court will have to apply its mind on the above question, either suo motu or on an application of a party and to pass an order for ceasing of the interim order is also not tenable as held hereinabove in para. 11(h).

The only- contention of Mr. Abdul Mujeeb Pirzada, which needs consideration and to which the other learned counsel, Messrs Raja Muhammad Akram, M. Akram Sheikh and Hamid Khan, have joined is that, whether an action which perpetuates injustice or is mala fide or coram non judice can be activated under clause (4-A) of Article 199 on the expiry of the period of six months. In this behalf, it may be pointed out that there seems to be a cleavage between the views of the High Courts of Sindh and Lahore, inasmuch as a Division Bench of the High Court of Sindh in the case of M/s. Noori Trading (Pvt.) Ltd. and others (supra), has held that if a demand made by a public functionary is based on an order which, on the face of it, is without jurisdiction, any interim order granted by the Court cannot be construed as an order connected with the assessment or collection of public revenues.. Whereas a Division Bench of the Lahore High Court in the case of Ihsanullah v. Collector of Customs, Custom House, Lahore and 4 others (supra) (which is the subjectmatter of the above petitions for leave to appeal) has dissented from the above view of the High Court of Sindh and has held that the aforesaid view would render the above clause (4-A) of Article 199 futile and nugatory and that it would be contrary to the language employed in the said clause

It may be observed that if we were to refer to sub-paragraph (ii) of paragraph (b) of clause (4) of Article 199, it becomes evident that the view found favour with the Lahore High Court seems to be in consonance with the above provision of the Constitution. It may again be pointed out that under paragraph (b) of clause (4) the Court is prohibited from making an interim order which would have the effect of prejudicing or interfering with the carrying out of a public work or otherwise being harmful to public interest or State property or impeding the assessment or collection of public revenues. To the above prohibition there are two exceptions provided in the above sub-paragraphs (i) and (ii) of paragraph (b) of clause (4) of Article 199, namely, for the reasons to be recorded in writing the Court 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 on the face of the record is without jurisdiction.

In other words, an interim order is to be passed when the Court is, inter alia, satisfied that it would have the effect of suspending an order or proceeding which, on the face of record, is without jurisdiction, such an order is covered by clause (4-A) of Article 199. Since the Constitution-makers

