

Form No: HCJD/C-121  
**ORDER SHEET**  
**IN THE LAHORE HIGH COURT, LAHORE**  
**JUDICIAL DEPARTMENT**

**Intra Court Appeal No.54648 of 2021**

*M/s Jet Green (Pvt.) Limited*      **V/S**      *Federation of Pakistan etc*

<i>S.No.of order / Proceedings</i>	<b>Date of order /Proceedings</b>	<i>Order with signatures of Judge, and that of parties or counsel, where necessary.</i>
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<b>13.09.2021</b>	M/s Ayesha Hamid, ASC, Sahar Bandial and Raja Akbar Ali Mehboob, Advocates for the Appellant. Mr. Naveed Sohail Malik, Additional Attorney General with Ms. Sadia Malik, Assistant Attorney General and Sheikh Nadeem Anwaar, Assistant Attorney General. Barrister Umair Khan Niazi, Additional Advocate General, Barrister Zargham, Assistant Advocate General and Muhammad Khalil Rana, on behalf of CAA.
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Through this Intra Court Appeal filed under Section 3 of the Law Reforms Ordinance, 1972 (*the “Ordinance”*), the Appellant has challenged the validity of order dated 02.07.2021 (the *“Impugned Order”*) passed in Writ Petition No.42922 of 2021 by the learned Single Judge whereby the constitutional petition filed by the Appellant was disposed of for want of jurisdiction.

2. Learned counsel for the Appellant Ms. Ayesha Hamid, ASC *inter alia* contends that the Appellant only sought directions in the writ petition for decision of pending application for grant of Regular Public Transport License (*“RPTL”*) before the Civil Aviation Authority (the *“CAA”*) under Pakistan Civil Aviation Authority Ordinance, 1982 (the *“Ordinance of 1982”*) but the learned Single Judge has not taken into consideration the language used under Article 199(1)(a)(i) of the

Constitution of Islamic Republic of Pakistan, 1973 (the “*Constitution*”); that the learned Single Judge has not kept in mind the preamble of the Ordinance of 1982 which clearly states that the purpose of establishing CAA is to provide for the promotion and regulations of Civil Aviation activities and to develop an infrastructure for safe, efficient, adequate, economical and properly coordinated civil air transport service throughout Pakistan; that under the Ordinance of 1982 and rules made thereunder, the CAA exercises authority and jurisdiction over matters related to aviation across the Pakistan. Hence, the CAA/Respondent No.4 falls within the ambit of Article 199(5) of the Constitution as it performs its functions in connection with the affairs of the Federation across Pakistan but this fact has totally been over looked by the learned Single Judge while passing the impugned order; that the learned Single Judge has totally ignored the precedents already settled on the point of determining jurisdiction of this Court cited in “Messrs AL IBLAGH LIMITED, LAHORE Versus THE COPYRIGHT BOARD, KARACHI and others” (1985 SCMR 758), “LPG ASSOCIATION OF PAKISTAN through Chairman Versus FEDERATION OF PAKISTAN through Secretary, Ministry of Petroleum and Natural Resources, Islamabad and 8 others” (2009 CLD 1498), “Messrs SETHI AND SETHI SONS through Humayun Khan Versus FEDERATION OF PAKISTAN through Secretary, Ministry of Finance, Islamabad and others” (2012 PTD Lahore 1869), “Barrister SARDAR MUHAMMAD Versus FEDERATION OF PAKISTAN and others” (PLD 2013 Lahore 343) and “Messrs AIR CIRO through Senior Partner Versus GOVERNMENT OF PAKISTAN through Secretary Aviation Division, Islamabad and 5 others”

(2018 YLR 164); that the Appellant Company is registered at Lahore hence it is entitled to file writ petition against any person performing functions in connection with the affairs of the Federation before a High Court for redressal of grievance as such the impugned order is liable to be set-aside.

3. On the other hand, learned Law Officer vehemently opposed the arguments advanced by the learned counsel for the Appellant and prayed for dismissal of the Appeal on the ground that the impugned order has been passed strictly in accordance with law as such does not call for any interference by this Division Bench.

4. We have heard the arguments and have perused the record.

5. The Appellant has basically disputed the impugned order 02.07.2021. The relevant portion of the same is reproduced hereunder:

*“It is noted that the Civil Aviation Authority (“CAA”) only has offices in Karachi or Rawalpindi and does not have any office in Lahore. Furthermore, the issuance of license is a matter which has to be scrutinized by Respondent No.4 which function will be performed at Karachi. Therefore, the argument that the CAA is performing functions in connection with the affairs of the Federation is sufficient to grant territorial jurisdiction of this Court is misconceived. What is relevant for this Court to note is the dominant objective with which this petition has been filed with reference to its pending request for a RPTL considered specifically by an officer which license to be issued by Respondent No.4 who sits within the territorial jurisdiction of Karachi. Therefore, it cannot be said that this Court has territorial jurisdiction over Respondent No.4 to issue a direction or to consider the issue of the pending license which the*

*Petitioner states that is delayed for no apparent reasons”*

6. It evinces from the record that the Appellant filed an application for grant of RPTL in terms of Rules 178 and 179 of the Pakistan Civil Aviation Rules, 1994 (the “**PCCA Rules**”) and National Aviation Policy, 2000 but despite its approval, the license could not be issued. The application of the Appellant remained pending before the Respondent concerned for a considerable time and meanwhile the Respondents enacted National Aviation Policy, 2015 and National Aviation Policy, 2019. Non-decision of the application by the Respondents prompted the Appellant to approach this Court for seeking direction under writ of mandamus under Article 199 of the Constitution to direct the CAA to do what is required by law to do under the Ordinance of 1982 and the PCCA Rules, which was disposed of vide the impugned order.

**CAA being a Regulator**

7. Before proceeding further, it is imperative to discuss the purpose and object of the Ordinance of 1982. The preamble to a statute is though not an operational part of the enactment but it is a gateway, which opens before us the purpose and intent of the legislature, which necessitated the legislation on the subject and also sheds clear light on the goals which the legislator aimed to secure through the introduction of such law. The preamble of a statute, therefore holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law. The August Supreme Court of Pakistan in “DIRECTOR GENERAL, FIA AND OTHERS Versus KAMRAN IQBAL and others” (2016 SCMR 447) laid down the similar principle by holding that :-“*indeed, preamble to a Statute is not an operative part thereof,*

*however, as is now well laid down that the same provides a useful guide for discovering the purpose and intention of the legislature. Reliance in this regard may be placed on, the case of Murree Brewery Company Limited v. Pakistan through the Secretary of Government of Pakistan and others (PLD 1972 SC 279). It is equally well-established principle that while interpreting a, Statute a purposive approach should be adopted in accord with the objective of the Statute and not in derogation to the same.”*

8. The Preamble of the Ordinance 1982 provides for **promotion** and **regulations** of Civil Aviation activities and to develop an infrastructure for safe, efficient, adequate, economical and properly coordinated Civil Air Transport Service in Pakistan. The function of the CAA under the Ordinance of 1982 is of Regulator, which is being regulated by (i) Authority (ii) Board (iii) Chairman (iv) Director General. The general direction and administration of CAA and its affairs vest in CAA Board which exercises all powers, performs all functions and does all acts and things that need to be exercised, performed or done by the Authority. The Federal Government appoints the Director General who is the Executive head of CAA and exercises such powers and performs such functions as may be specified in the Ordinance of 1982 or delegated to him by the CAA Board from time to time. Under the Constitution, the Federal Government is established under Article 90 of the Constitution and functions under Article 97 read with Article 99 according to which the Federal Government or executive action of the Federal Government shall make rules for the allocation and transaction of its business. Under the Federal Government Rules of Business, 1973, the affairs of the Federation lie with the Divisions created under Rule 3(1), Schedule-I. The Aviation Division falls under the

Ministry of Cabinet Secretariat and has the responsibilities/duties to look into the aircraft and air navigation, administration and development of civil aviation throughout Pakistan. One of the key functions of Aviation Division is to deal with development of civil aviation in Pakistan. However, the CAA was established under Section 3 of the Ordinance of 1982 with the powers and functions provided under Section 5 of the Ordinance of 1982 including power to control of air transport and aviation services in terms of Section 6 of the Ordinance of 1982. The Preamble of the Ordinance of 1982 laid strong emphasis to **regulate** Civil Aviation activities and to develop an infrastructure for safe, efficient, adequate, economical and properly coordinated Civil Air Transport Service in Pakistan. Reliance is placed on “Abwa Knowledge Village Pvt. Ltd. etc. Versus Federation of Pakistan etc” (PLD 2021 Lahore 436), “Chenab Flour and General Mills etc. Versus Federation of Pakistan through Secretary Revenue Division etc” (PLD 2021 Lahore 343) and “Additional Registrar Company Versus Al-Qaim Textile Mills Limited” (2021 CLD 931) whereby roles and functions & duties of (i) the Pakistan Medical Commission; (ii) the Federal Board of Revenue and (iii) the Securities & Exchange Commission of Pakistan, being regulatory bodies, has been vastly discussed and elaborated. CAA not only plays the role of the aviation Regulator of the country but at the same time performs the service provider functions of Air Navigation Services and Airport Services. The core functions of CAA are (i) Regulatory (ii) Air Navigation Services; and (iii) Airport Services. Since the CAA is a Regulator, hence under Section 177 of the PCCA Rules, the Respondent No.4, with prior approval of the Federal Government, may issue RPTL to a person applied for under Section 178 of the Rules by

complying with the other terms and conditions mentioned under the Rules. The role and functions of a Regulator has been discussed in detail in “CHENAB FLOUR AND GENERAL MILLS Versus FEDERATION OF PAKISTAN and others” (PLD 2021 Lahore 343) by observing that *“if a Regulator is restrained from performance of its function it will negate the very purpose of law, which chalk out the functionality of such Regulator by observing that “The functions of a Regulator are comprehensive and exhaustive ranging from formulation of policies, regulations etc. in furtherance of the cause of legislation to administratively govern and oversee the implementation of those policies/rules/regulations to ensure that the same are observed in the very spirit in which the law intended it. If a Regulator is barred from exercising any of such functions, the purpose of law will not only be compromised but the intent behind making of such law will also be jeopardized.”*

9. The question that looms large before us is whether a High Court can issue directions to a person in terms of Article 199(5) of the Constitution functioning outside its territorial jurisdiction or not? As the language of Article 199 for the writ of mandamus is very clear that if there is any duty on a person to what is he required by law to do, which has connection with the affairs of the State.

#### **Territorial Jurisdiction**

10 The celebrated maxim of Common Law *“boni judicis est ampliare jurisdictionem”* laid down the principle that it is the duty of a Judge to extend (or use liberally) his jurisdiction whereas the maxim *Boni judicis est ampliare justitiam* set down the idea that it is the duty of a good judge to enlarge or extend justice. In Broom’s Legal Maxims 10<sup>th</sup> Edition at page 44, while making a discussion on the principle laid down under the first maxim stated further

that:-“The true maxim of our law is “to amplify its remedies, and, without usurping jurisdiction, to apply its rules, to the advancement of substantial justice”. In a nutshell, it is the duty of Court to amplify, enhance and extend its jurisdiction to advance justice and for that purpose it must adopt an approach to embrace rather to deny.

11. On the question of maintainability of the instant Petition as raised by the learned Additional Attorney General on the ground that the office of the Respondent is located in Karachi, so this Court lacks territorial jurisdiction to pass a direction to the Respondent within the contemplation of Article 199 of the Constitution, suffice is to observe that the CAA is a statutory authority, which is a creation of federal law and it performs functions in connection with the affairs of the Federation, which is the mandatory and required criteria to pass a direction in the nature of Mandamus as ordained under Article 199(1)(ii) of the Constitution. Admittedly, the Appellant is residing within the territorial jurisdiction of this Court and carrying out its business throughout Pakistan through his office situated within the territorial bound of this Court and the prayer it has made regarding the issuance of RPTL from the Respondent, if granted, will also take effect and going to be operative and effective throughout the Country including the Province of Punjab. Moreover, the subject matter of the Petition, the RPTL, whether granted or denied by the Respondent, will directly have an impact on the rights and interests of the Appellant, which is residing for the purposes of carrying out business through its office within the jurisdictional limits of this Court and since any order of the Respondent will directly affect the functionality and operation of the Appellant within the limits of this Court, therefore this Court has got the jurisdiction to entertain and



decide the instant Petition. Even otherwise, had the CAA, which is a Federal Regulatory Authority in the matters of Civil Aviation, would have been functioning through a sole office situated in Karachi, Province of Sindh then the conclusion drawn by the Learned Judge in Chamber would have been correct and justified whereas in this case CAA has its offices in the Province of Punjab as well, which further strengthens the argument that besides being performing the functions in connection with the affairs of the Federation, the Respondent authority has also material and actual presence in the form of its office in Lahore, well within the territorial jurisdiction of this Court.

12. The Honorable Supreme Court in “THE FEDERAL GOVERNMENT THROUGH SECRETARY INTERIOR, GOVERNMENT OF PAKISTAN VERSUS MS. AYYAN ALI AND OTHERS” (2017 SCMR 1179) has dilated upon similar question of maintainability of constitutional petition before the Sindh High Court in a matter where name of the Petitioner was placed in Exit Control List on the recommendation of Home Department Government of Punjab and the Court held as follows:-

*It is now well settled that the Federal Government, though may have exclusive residence or location at Islamabad, would still be deemed to function all over the country. In this regard the case of LPG Association of Pakistan through its Chairman v. Federation of Pakistan through Secretary Ministry of Petroleum and Natural Resources Islamabad and 8 others (2009 CLD 1498), may be referred to, whereby the Lahore High Court, after meticulously analyzing the judgments rendered by this Court, as well as of the High Courts on the question of territorial jurisdiction, with regard to the acts, deeds and the legislative instruments of/by the Federal Government, has deduced the jurisprudential principles as follows:-*

*"(A) The Federal Government or any body politic or a corporation or a statutory authority having exclusive residence or location at Islamabad with no office at any other place in any of the Province, shall still be deemed to function all over the country.*

*(B) If such Government, body or authority passes any order or initiates an action at Islamabad, but it affects the "aggrieved party" at the place other than the Federal capital, such party shall have a cause of action to agitate about his grievance within the territorial jurisdiction of the High Court in which said order/action has affected him.*

*(C) This shall be more so in the cases where a party is aggrieved by a legislative instrument (including any rules, etc.) on the ground of it being ultra vires, because the cause to sue against that law shall accrue to a person at the place where his rights have been affected. For example, if a law is challenged on the ground that it is confiscatory in nature, violative of the fundamental rights to property; profession; association etc. and any curb has been placed upon such a right by a law enforced at Islamabad, besides there, it can also be challenged within the jurisdiction of the High Court, where the right is likely to be affected.*

*In this context, illustrations can be given, that if some duty/tax has been imposed upon the withdrawal of the amounts by the account holders from their bank account and the aggrieved party is, maintaining the account at Lahore though the Act/law has been passed at Islamabad, yet his right being affected where he maintained the account (Lahore), he also can competently initiate a writ petition in Lahore besides Islamabad; this shall also be true for the violation of any right to profession, if being conducted by a person at Lahore, obviously in the situation, he shall have a right to seek the enforcement of his right in any of the two High Courts."*

*And thus whether or not the subject Notification/Memorandum was issued on the recommendation of the Punjab Government has*

*no relevance to the question of the Court's jurisdiction in the matter.*

Similar view was earlier expressed by the Honorable Supreme Court of Pakistan in “Messers AL-IBLAGH LIMITED, LAHORE Versus THE COPYRIGHT BOARD, KARACHI and others” (1985 SCMR 758) wherein it was observed by the Court:-

*“...The Central Government has set up a Copyright Board for the whole of Pakistan and it performs functions in relation to the affairs of the Federation in all the Provinces. Hence, any order passed by it or proceedings taken by it in relation to any person in any of the four Provinces of Pakistan would give the High Court of the Province, in whose territory the order would affect such a person, jurisdiction to hear the case.*

The conclusion drawn by the Supreme Court Court goes as under:-

*...We agree and are of the opinion that both the Lahore High Court as well as the Sindh High Court had concurrent jurisdiction in the matter and both the Courts could have entertained a Writ Petition against the impugned orders in the circumstances of this case. We, therefore, hold that the Lahore High Court has illegally refused to exercise jurisdiction in this case. The case will, therefore, go back to the Lahore High Court for the decision of the Writ Petition filed by the appellant before it for decision on merits, in accordance with law. ”*

13. Moreover, the Full Bench of this Court in “General (R) PERVEZ MUSHARRAF Versus FEDERATION OF PAKISTAN and others” (PLD 2020 Lahore 285), held that “where a federal instrument/notification was under question before the (Lahore) High Court, undoubtedly, it had territorial jurisdiction as envisaged under Art.199 of the Constitution. Furthermore the place of residence (of

*defendant) as contemplated under S. 20 of Civil Procedure Code, 1908, had no relevance, particularly, when dealing with the issue of territorial jurisdiction under Art.199 of the Constitution”.*

14. To further strengthen the view, further reliance can also be placed on the judgment in the case of “A.M. CONSTRUCTION COMPANY (PVT.) LIMITED through Chief Executive Officer and another Versus NATIONAL HIGHWAY AUTHORITY through Chairman and 2 others” (2017 CLC 178), wherein it was observed by the Court:-

*11. It is not denied by the learned counsel for the respondent that the NHA is a statutory authority performing functions in whole of Pakistan. Therefore, any action or inaction on part of the statutory body can be challenged in any High Court of any Province.*

Likewise, this Court in the case of “Messrs Sethi and Sethi sons through Humayun Khan Versus Federation of Pakistan through Secretary, Ministry of Finance, Islamabad and others” (2012 PTD 1869) also commented upon the concept involving principle of similar nature. It was held by the Court as under:-

*A PERSON performing functions in connection with the affairs of the FEDERATION as compared to a Province or local authority, is a PERSON who besides carrying the attributes listed in Salahuddin Case is by law vested with territorial jurisdiction that spans across the country i.e. possessing a national or country wide territorial jurisdiction. Federal Government or any person performing functions in connection with the affairs of the Federation enjoys ubiquitous presence everywhere across the country having territorial jurisdiction of every High Court in the country. In this case it will be up to the aggrieved person to choose the High Court of his convenience. Similarly, the territorial jurisdiction of a person performing functions in connection with affairs of the Provinces or the*

*Local Authority enjoys precedence all over the Province and within the territorial jurisdiction of the local authority.*

15. The enumerated judgments discussed above leads the Court to hold that if an authority, which is established under a federal law and performing functions in connection with the affairs of federation, like CAA in the present case, no matter where the head office is situated, in the Capital or in any other city of a Province, if it pass any order or undertake any proceedings in relation to any person living or doing business in any of the Provinces, then the High Court of the Province, in whose territory the order would affect that person, would be competent to exercise jurisdiction in the matter.

16. The rule of law includes access to justice as its most sacrosanct and hallmark ingredient to secure dispensation of justice, therefore in order to further strengthen the belief of general public in the system of justice, to provide them the choice of judicial forum with regard to territory in case of availability of more than one and to give them confidence in the Courts is essential to uphold the majesty of law within the spectrum of its efficiency and efficacy at the same time. The High Court is established under the Constitution for the very purpose and for other multifaceted functions and powers including original jurisdiction, extra-ordinary constitutional jurisdiction and supervisory jurisdiction, the aim of which is to secure the ends of justice for all and sundry. In this case, Civil Aviation Authority has offices all over Pakistan and, where application of the Appellant under the Ordinance, Rules and Policy is pending with the Authority which has not been decided and the basic prayer of the Appellant in the writ petition in hand was to direct the respondents to pass

an order on the application of the Appellant which the Court can do on the first date of hearing under the rule of law and for dispensation of justice.

17. Since the writ of mandamus filed by the Appellant is covered under Article 199(1)(a)(i) of the Constitution because prerequisite (i) no adequate remedy; (ii) application of aggrieved party; (iii) seeking directions; (iv) person performing; (v) territorial jurisdiction; (vi) functioning in connection with affairs of Federation; (vii) to do what is required by law to do. Record reveals that the application of the Appellant was pending with the CAA for issuance of RPTL to be operative across Pakistan. The CAA is the Regulator, as discussed above, in the light of judgments mentioned supra, has failed to decide the same. The Appellant has no adequate remedy available except to file writ petition for seeking directions to the Respondents-CAA for performing its functions as per law i.e. the Ordinance of 1982 and the PCCA Rules. It is also noted that time frame for decision of application has not been prescribed under the Ordinance of 1982 and the PCCA Rules. Therefore, the Court in order to advance carriage of justice and to avoid miscarriage of justice can pass appropriate orders under the rule of law.

18. As evident from the record that Appellant's application is pending with the Respondent No.4 who is the Regulator and that application has not been decided despite clear provisions of the Ordinance of 1982 and the PCCA Rules and the policies framed from time to time therefore, under Article 4 of the Constitution demonstrates that every citizen has inalienable right to be treated in accordance with law by the Respondents and no action detrimental to the reputation, life, and liberty shall be taken except as per law and in the present case the law is the

Ordinance of 1982 and other laws dealing with such matters. While Article 5 of the Constitution mentions inviolable obligation on every citizen and the government authorities to obey command of the Constitution and to follow the orders passed by the Supreme Court of Pakistan and High Courts under Article 189 and 201 of the Constitution. Ms. Ayesha Hamid, ASC states that non-decision of the application by the Respondents amounts to infringement of fundamental rights guaranteed under Article 8 read with Article 18 and Article 3 of the Constitution. In M.C.R. (Pvt) Ltd, franchisee of Pizza Hut versus Multan Development Authority and others (2021 CLD 639) the Court has highlighted the provisions of Article 18 of the Constitution, relevant portion of said judgment is reproduced hereunder:-

*“28. Undoubtedly freedom of trade, business and commerce is a fundamental right guaranteed under Article 18 of the Constitution which states that every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business. One of the basic purposes behind provision of this fundamental right is certainly to advance culture of socio-economic progress and to protect and promote business and trade activities and, at the same time, to encourage simplification of the process of establishing and carrying out new business ventures throughout the country because activities of business and trade create opportunities for the masses around and provide job options, financial stability and progress in the area.*

*29. Since the Pizza Hut is an international chain and entered into lease agreement with WASA, it is the duty of the Courts in Pakistan to see the rights of the parties and to protect their interest in order to build confidence of investors in Pakistan but at the same time the interest of government functionaries has also*

*to be examined regarding financial interest of the Government. The learned Civil/Commercial Court is, therefore, directed to decide the case expeditiously but not later than 60 days from the receipt of copy of this judgment in accordance with law.”*

19. In view of the above, as the Appellant has only sought a direction to the Respondents to decide its pending application and its fundamental right of livelihood (Article 9) as well as right to business & trade (Article 18) are involved in the matter, therefore, we modify the impugned order to the extent that the application of the Appellant, if pending before the Respondent No.4, shall be decided by it after providing proper hearing to all concerned including the Appellant, strictly in accordance with law and through a speaking order, within one month from the receipt of certified copy of this order.

Copy dasti on payment of usual charges.

**(MUZAMIL AKHTAR SHABIR)**  
**JUDGE**

**(JAWAD HASSAN)**  
**JUDGE**

**Approved for Reporting**

**JUDGE**

**JUDGE**