

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, C.J.
MR. JUSTICE CH. IJAZ AHMAD
MR. JUSTICE GHULAM RABBANI

Civil Appeal Nos. 1738 to 1758 of 2001 and 1014 to 1016 of 2003
(On appeal from the order dated 25.10.2000 in W.Ps. Nos. 12337/96, 13840/94, 9925/98, 19944/96, 19251/98, 11912/98, 23855/96, 16902/96, 13805/96, 13841/96, 12340/96, 13839/96, 13838/96, 13837/96, 13836/96, 13835/96, 13834/96, 13833/96, 13325/96, 12339/96, 12338/96 and judgment dated 18.10.2001 in W.P. Nos. 12187/94, 12039/94, 12040/94 passed by the Lahore High Court Lahore)

Province of Punjab through Secretary Finance & another
..... Appellants
(in C.As. 1738 to 1758/2001)

Deputy Collector, Central Excise & Sales Tax, Lahore
..... Appellants
(in C.As. 1014 to 1016/2003)

Versus

The Food Consults (Pvt.) LTd. (in C.A. 1738/2001)
Pilot Hotel and Catering (Pvt.) LTd. (in C.A. 1739/2001)
Malik Muhammad Ashraf (in C.A. 1740/2001)
Muhammad Ilyas Tabassam. (in C.A. 1741/2001)
City View Marriage & Banquet Hall. (in C.A. 1742/2001)
Ch. Muhammad Naseem (in C.A. 1743/2001)
M/s. Usman International (Pvt.) LTd. (in C.A. 1744/2001)
Muhammad Nawaz and others (in C.A. 1745/2001)
M/s Tabaq Cuisine Restaurant. (in C.A. 1746/2001)
Parkway Hotel (Pvt.) Ltd. (in C.A. 1747/2001)
The Food Chain (Pvt.) Ltd. & others (in C.A. 1748/2001)
Wasif Ali Shah (in C.A. 1749/2001)
Lahore Hotel (Pvt.) LTd. (in C.A. 1750/2001)
Clifton Hotel, (Pvt.) Ltd. (in C.A. 1751/2001)
Liaqat Ali Khan & another (in C.A. 1752/2001)
Orient Hotel & Restaurant (Pvt.) LTd. (in C.A. 1753/2001)
Mehmooda Akhtar (in C.A. 1754/2001)
Shakeel Ahmad (in C.A. 1755/2001)
Pakistan Services Ltd. (in C.A. 1756/2001)
Tauseef Hussain Solo & others (in C.A. 1757/2001)
Ahmad Nadeem Asif (in C.A. 1758/2001)
Pakistan Services (Pvt.) Ltd. etc. (in C.A. 1014-1016/2001)
..... Respondents

ATTESTED

Superintendent
Supreme Court of Pakistan
ISLAMABAD

RTO
Lahore

For the Appellants Ch. Khadim Hussain Qaiser, Addl. P.G.
(in C.As. 1738 to 1758/2001)
Mr. Habib Qureshi, ASC
(in C.As. 1014 to 1016/2001)

For the respondents Mr. Muhammad Akram Sheikh, Sr. ASC
(in C.As. 1740, 1746, 1748 & 1748/2001)

Mr. Ali Sibtain Fazli, ASC
(in C.A. 1738/2001)

Nemo (in other appeals)

Date of hearing 16.2.2010

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, C.J.- We have heard learned counsel for the appellants as well as the respondents and have gone through the leave granting order. We are of the considered opinion that a lawyer appearing for a party - may be Government or otherwise - is not empowered to make a concessional statement in respect of the recovery of revenue, debts etc. against a stated provision and any concession given relating to the question of law and disposal of the matter on the basis of the same is not sustainable. Reliance in this behalf is placed on Faisalabad Development Authority v. Jahangir Nasir (2004 SCMR 1247). Relevant para therefrom is reproduced herein below:

" 9. The matter was argued from a different angle, as well, that the Law Officer without the permission of competent authority had no authority to make any concession detrimental to the vested interest of the Government. In this behalf PLD 2003 Journal 95 (at page 99) was placed reliance upon. These are certain recommendations made through Notification No.F.5(2)/2003 by Attorney-General for Pakistan pursuant to directions issued by this Court in Pakistan Railways v. Muhammad Sharif Javid Warsi PLD

ATTESTED

Superintendent
Supreme Court of Pakistan
ISLAMABAD

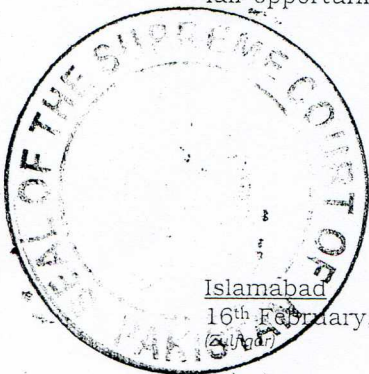
2003 SC 6 Recommendation No.8.0 concerning concessions is reproduced below:-

"Concessions

8.0 The Law Officers must not make any statement conceding an issue or a case in Court unless they have been duly instructed in writing by the Competent Authority and an officer not below Grade-17 is present in Court to verify and reiterate such instructions. In all such cases the presence of the officer must be recorded in the order of the Court and the written instructions made a part of the record of the Court."

These recommendations, for the present concession in question, may be treated as a rule of common sense but cannot be strictly applied against the Law Officer in question because he had made the instant misrepresentation during the hearing of writ petition somewhere in the year 1997 whereas the recommendations/ instructions (supra) have been issued in the year 2003. Thus, we can only observe that had the Law Officer exercised the rule of abundant caution, he ought to have asked the Government whether or not to make concession."

Thus for the foregoing reasons the impugned judgment is set-aside, appeals are allowed and the cases are remanded to the Lahore High Court for decision afresh of the writ petitions which shall be deemed pending in accordance with law after providing fair opportunity to the parties. No order as to costs.



Sd/r Jaffar Muhammad Chaudhry J
Sd/r Ch. Ijaz Ahmad J
Sd/r Abulhasan Rabbani J

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NOT APPROVED FOR REPORTING

2/3/10