



Case Law Update
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1. Pakistan State Oil Company Limited v M/s. Jawed Pervaiz Enterprises

<http://43.245.130.98:8056/caselaw/view-file/MTQ2NjYwY2Ztcy1kYzgz>

Present: Irfan Sadaat Khan and Muhammad
Faisal Kamal Alam, JJ

Whether the SOPs earlier not the part of contract could not be considered as the rules and regulations, hence penalty could not be imposed based on SOPs?

Honourable Court held that:-

“Before proceeding any further, we would like to discuss what SOPs are. As the name indicates SOPs are Standard Operating Procedures adopted by the companies to set routine procedures that prescribe accepted principles or practices for completing any activity or functions helpful for the better running of the company internally and externally both. Certain standard procedures are being adopted by the companies for their internal and external better functioning. The SOPs are routine procedures developed by certain companies either in written or in verbal form or are their customary procedures and, in our view, carries the same force as that of directives and instructions and violation thereof could result in the imposition of fine and penalty or other administrative measures, as the case may be. SOPs though are internal arrangements of a company but these SOPs could be applied to the contractors, clients /customers of the company, who to a certain extent are obliged to abide by these SOPs of the

companies, however, subject to the condition that these SOPs should not be violative of the fundamental principles of law. Nowadays almost in every company SOPs are being adopted and are considered to be an integral part for an effective /quality system to be adopted and followed and to facilitate consistency in the smooth running of a company which may include instructions /directions /worksheets /derivatives and other methods for adoption and application of these SOPs. However, it is clarified that the above list is inclusive and not exhaustive. The SOPs describe either regular or routine working procedures conducted and followed within an organization and the procedures to be adopted while dealing with persons, institutions, etc. to avoid any future eventuality if any. Some SOPs are designed in such a way to maintain quality control and quality assurance of a company and some SOPs are designed in such a way to ensure compliance with the government regulations etc. The SOPs would fail if not followed. Usually, the SOPs are designed in a concise step by step format but this is not a decisive factor to be considered while drafting the SOPs of a company. Having said that we are of the view that SOPs could partake in the shape of rules and regulations of a company but, as stated above, the SOPs should cater to the fundamental norms of the law and could be whittled down, in case these are against the basic principles of the law. Hence we do not agree with the findings of the learned Single Judge that while imposing the penalty no reference could be made to the SOPs as, in our view, the Clause (3) of the agreement, reproduced hereinabove, caters within it the SOPs issued by the company, being directions and instructions and could have a binding effect

upon the company as well as upon its contractors, clients /customers.

2. Commissioner of Inland Revenue, Zone-1, LTU, Karachi v M/s. Industrial Development Bank of Pakistan

<http://43.245.130.98:8056/caselaw/view-file/MTQ3NDAwY2Ztcy1kYzgZ>

Present: Irfan Saadat Khan and Yousuf Ali Sayeed, JJ

Whether the Assistant Collector had the lawful authority to adjudicate the cases relating to non/short payment of Central Excise Duty on services under Rule 10 of the Central Excise Rules 1944 if the value of suit property exceeds its pecuniary jurisdiction provided in law?

Honourable Court held that:-

A Show-Cause Notice dated 29.09.1998, bearing C. No. 16(329)CONT/98/1767 (the “SCN”) was issued to the Respondent by the Assistant Collector, Central Excise. The proceedings that then commenced based on the SCN before the Assistant Collector, Central Excise, culminated in Order-in-Original No.444 of 1998 (the “OIO”). However, on appeal to the Tribunal, the OIO was set aside on the ground that the SCN had been barred under Rule 10(1) of the Federal Excise Rules, 1944, and as the Assistant Collector lacked the competence to assess the matter, as the same was beyond his pecuniary jurisdiction under Section 33 of the 1944 Act.– the Assistant Collector, who had issued the SCN and made the OIO, it merits consideration that under the 1944 Act, in terms of Section 33, a framework had been laid down structuring the power of adjudication at first

instance on a pecuniary basis. The Tribunal had found the OIO to have been passed without jurisdiction, as on the relevant date the power of adjudication conferred upon the Assistant Collector was only to the extent of cases involving the confiscation of goods or imposition of a penalty which did not exceed Rs.2,50,000/-, excluding the value of conveyance and the value of non-dutiable goods and imposition of penalty under the rules, whereas in the present case a much larger sum was involved, thus bringing the matter within the jurisdiction of the Collector or Additional Collector. As per section 179 of the Customs Act, Assistant Collector has a security limit not exceeding three hundred] thousand rupees. Therefore the question is answered in the negative.

3. Najmul Hassan & others v Mst. Romana Qamar & others

<http://43.245.130.98:8056/caselaw/view-file/MTQ3OTMzY2Ztcy1kYzgZ>

Present: Irfan Saadat Khan and Yousuf Ali Sayeed, JJ

The principles settled for calling into question the legitimacy of persons seeking canceling the documents.

Honourable Court held that:-

(a) That the status of a person in terms of his being of legitimate or illegitimate birth is established in view of the proof of birth but in a case where such proof is not forthcoming, then on the rule of acknowledgment by an acknowledger, in respect of the status of a person, a conclusive presumption can be drawn

that he/she is his/her legitimate child and once such status is confirmed, it cannot be destroyed by any subsequent act of the acknowledged, or of anyone claiming through him;

(b) If a man acknowledges another to be his child and there be nothing, which obviously renders it impossible that such relationships should exist between them, parentage will be established;

(c) As per Mahomedan Law, the acknowledgment and recognition of children by a father as his sons gives them the status of sons, capable of inheriting as legitimate sons. Such acknowledgment may be in the express or implied, and in the latter case, the inference to be drawn from the acts of father would depend upon the circumstances of each particular case;

(d) Continual unequivocal representation by a person portraying himself or herself as the parent of a child, identifying and holding out the child to be his or her own, would then estop that person or anyone else claiming as his or her representative from denying paternity;

(e) Only the putative father may challenge the paternity of a child, and that too, within the time prescribed in Article 128 of the QSO, failing which the suit would be barred;

(f) Article 128 of the QSO does not permit any other person to challenge paternity and cannot be circumvented by basing a case on the claim that a child had been adopted and seeking a declaration to that effect.

(g) To challenge another's adoption or legitimacy of birth does not assert a plaintiff's own legal character, and under Section 42 of the Specific Relief Act, a declaration cannot be sought in that regard or as to the person's

incapacity to inherit, and a suit seeking the cancellation of official documents reflecting another person's parentage is also not maintainable;

Indeed, if the position were otherwise, the floodgates would be thrown open to an endless stream of litigation on the part of persons seeking to disentitle others on a mere allegation as to their adoptive status, whether they be heirs seeking to thereby enhance their share(s) or strangers to an estate seeking to succeed by ousting those otherwise legitimately entitled.

4. **Dewan Motors & others v Federation of Pakistan & others**

<http://43.245.130.98:8056/caselaw/view-file/MTQ1NjI0Y2Ztcy1kYzgz>

Present: Aqeel Ahmed Abbasi And Abdul Maalik Gaddi, JJ

“Once a law declared illegal, or ultra vires to the constitution by the constitutional court can never be cured or legalized even by parliament or cabinet through subsequent legislation?”

Honourable Court held as under:-

“We are in agreement with the submissions of the learned counsel for the petitioners that Article 98 of the Constitution does not confer unfettered powers upon the Parliament to delegate the taxing powers to any person or authority, other than the Federal Government, however, only to the extent of permissible delegated legislation. Since, Imposition of Regulatory Duty is a species of delegated legislation, therefore, it can only be a function of the Federal Government i.e. Federal Cabinet comprising of Prime Minister and other Federal Ministers. Having realized the Constitutional

and legal position relating to the scope and extent of delegation of authority by the Parliament to the Federal Government, and issuance of any Notification and SRO relating to imposition of taxes etc. as emerged in the light of judgment of the Hon'ble Supreme Court in the case of Mustafa Impex as well as the judgment of the Divisional Bench of this Court in the case of Premier Systems (Pvt) Ltd., in sub-section (3) of Section 18 of the Customs Act, 1969, the expression —Federal Governmentll has been substituted for “Board, with the approval of Federal Minister-in-Charge. However, while doing so, it has been observed that no retrospective effect has been given to such amendment in sub-section (3) of Section 18 of the Customs Act, 1969 either expressly or through any intendment. On the contrary, through impugned amendment, while inserting sub-section (2) in Section 221-A of the Customs Act, 1969, an attempt has been made to revive imposition of Regulatory Duty through amendment in sub-section (3) of Section 18 and issuance of SRO 1035(I)/2017 dated 16.10.2017 through Finance Act, 2017, which has already been declared to be unconstitutional, illegal and of no legal effect by Divisional Bench of this Court in the case of Premier Systems (Pvt.) Ltd. Moreover, in view of withdrawal of Civil Appeal by the FBR before the Hon'ble Supreme Court, the legal positions as emerged in view of the judgment in the case of Premier Systems (Pvt) Ltd. has attained finality, particularly, in respect of amendment made through Finance Act, 2017 in sub-section (3) of Section 18 of the Customs Act, 1969, and issuance of SRO 1035(I)/2017 dated 16.10.2017, therefore, any subsequent legislation in this regard without removing the legal and Constitutional defect, would be equally illegal and unConstitutional. It

is pertinent to note that the Divisional Bench of this Court in the case of Premier Systems (Pvt) Ltd. while placing reliance on the judgment of the Hon'ble Supreme Court in the case of Mustafa Impex, wherein, it was held that Rule 16(2) of the Rules of Business, 1973, is ultra-vires to the Constitution for the reasons it enabled the Prime Minister to by-pass the Cabinet, has been pleased to hold that such defect, being a constitutional defect in terms of Articles 90, 91 and 98 of the Constitution, therefore, cannot be cured through subsequent legislation, particularly, in past and closed transaction unless, there is amendment in Constitution . It has been further held that Rules of Business 1973, are mandatory in nature and binding on the Federal Government, therefore, failure to follow them would lead to an order lacking any legal validity. Any other interpretation of the legal position or inference drawn from above facts, would be contrary to the judicial pronouncements by the Hon'ble Supreme Court in the case of Mustafa Impex and judgment of the Divisional Bench of this Court in the case of Premier Systems (Pvt) Ltd.

-----, we are of the opinion that legislature has erred in law, while attempting to revive an illegal and unconstitutional amendment made under Section 18(3) of the Customs Act, 1969, through Finance Act, 2017 and also issuance of SRO 1035(I)/2017 dated 16.10.2017, whereby, the authority of delegated legislation was given from Federal Government (Federal Cabinet) to the Federal Minister-In-Charge..”

5. Imkaan Welfare Organization v Province of Sindh and Others Sindh High Court, Karachi

<http://43.245.130.98:8056/caselaw/view-file/MTQ30TY5Y2Ztcy1kYzgz>

Present: Muhammad Ali Mazhar and Arshad Hussain Khan, JJ

'Disposal of the cases through diversion'. Implementation of Section 9 and 10 of the Juvenile Justice System Act, 2018.

The Honorable Court directed that;

“There is no cavil to the proposition that once the Law has been promulgated this should be implemented in its letter and spirit and now the Sindh Government has also established the Juvenile Justice Committee for each district separately except three districts, therefore, it is the responsibility of every learned District & Sessions Judge in his district to ensure the due compliance of the law and make some mechanism for their district so that the Juvenile Justice Committee meetings should be held regularly for the purpose of disposal of the cases through diversion as provided under the law

All learned District & Sessions Judges to ensure the due compliance of the law and ensure that the Juvenile Justice Committee constituted by the Government of Sindh with their concurrence shall perform their duties diligently and the committee members will also submit the compliance report on regularly basis to their learned District & Sessions Judges”.

6. M/S Daily peoples life v Government of Pakistan & others

<http://43.245.130.98:8056/caselaw/view-file/MTQ30TczY2Ztcy1kYzgz>

Present: Muhammad Ali Mazhar and Arshad Hussain Khan, JJ

'Cancellation of Declaration of Newspaper'. The declaration of newspaper can only be canceled if it is published in contravention of provision of Press, Newspapers, News Agencies and Books Registration Ordinance, 2002 by following the due process and fair enquiry/trial principles.

The Honourable Court observed as under;

“--the declaration of newspaper can only be cancelled if it is being published in contravention of the provision of the above Ordinance or rules made thereunder or the newspaper bears a title which is the same as, or similar to, that of any other newspaper published or the printer and publisher has ceased to be the printer or publisher of the newspaper and or the declaration was made on knowingly false representation or on the concealment of any material fact or in respect of a periodical work which is not a newspaper. In order to provide right of fair trial and due process, it is clearly provided that no action shall be taken without providing an opportunity of showing cause against the action proposed to be taken, hold an enquiry into the matter and if, after considering the cause, if any, shown by such parties and after giving them reasonable opportunity of being heard, he is satisfied then further action of cancellation may be taken.

The proposed action or threat of suspension of newspaper declaration is alien and extraterrestrial to the aforementioned provision of law.”

7. Sarvech Shaikh (Petitioner) v NAB and Others

<http://43.245.130.98:8056/caselaw/view-file/MTQ4MDY1Y2Ztcy1kYzgZ>

Present: Nadeem Akhtar and Adnan-ul-Karim Memon, JJ

Order passed by the President of Pakistan in statutory appeals without applying due process of law has no legal value.

The Honorable Court directed that;

“The appeals filed by the petitioners before the President of Pakistan against their removal from service by NAB were rejected, however, this fact was conveyed to them by the respondents / NAB vide separate letters dated 11.12.2019 without supplying to them copies of the orders passed on their appeals. Even the dates of such orders were not disclosed in the above letters. It is stated on behalf of the petitioners that they were not provided any opportunity of hearing in their appeals and till date they have not been informed by the Secretariat of the President / appellate authority about the fate of their appeals, nor have copies of the orders of the purported rejection thereof been supplied to them. In our opinion, the petitioners were entitled to know the reasons that prevailed with the appellate authority for rejecting the grounds urged by them in their appeals. It is well-settled that every court / tribunal / authority is duty-bound to record reasons of its findings in its

order / judgment, failing which the order / judgment is considered to be void. We are also of the view that while deciding statutory appeals, the President of Pakistan or the Governor of a Province, as the appellate authority under the statute concerned, are not immune of this important and fundamental legal requirement. Therefore, the order of rejection of the petitioners’ appeals purportedly passed by the President of Pakistan / appellate authority is also not sustainable in law.”

8. Khizar Hayat v Province of Sindh and 02 others

<http://43.245.130.98:8056/caselaw/view-file/MTQ3ODY4Y2Ztcy1kYzgZ>

Present: Nadeem Akhtar and Adnan-ul-Karim Memon, JJ

Order of suspension cannot be challenged under writ jurisdiction. Order of suspension is not a punishment but a temporary measure which is taken to reduce the chances of tempering in enquiry.

The Honorable Court directed that;

“Suspension is not defined in law as a punishment, but is an intervening arrangement, which is temporary and resorted to prevent the delinquent official from influencing the outcome of subsequent inquiry on any of the charges against him. In view of such position, in our view, the Petitioner cannot file a petition against his suspension from service, which is simply a temporary measure and has been taken to reduce the chances of tempering in the course of an inquiry by them. Against the adverse result of the inquiry, if any, the petitioner will

have the remedy of appeal and in presence of such adequate remedy; this Court at this juncture will not step in to declare the suspension of the petitioner illegal or void. Moreover, if any adverse order is passed against him pursuant to the impugned show cause notice and suspension, the petitioner will be at liberty to challenge the same before the competent forum and to urge the grounds before such forum that have been urged before us”

9. Zubair Ahmed v The State

<http://43.245.130.98:8056/caselaw/view-file/MTQ3NjY3Y2Ztcy1kYzgz>

Present: Muhammad Shafi Siddiqui and Irshad Ali Shah, JJ

Whether adopting the same evidence of previous trial (Examination-in Chief and Cross-examination) in a fresh trial in which the charge was amended, is against the mandate of sections 231 and 353 Cr. P.C and Article 10-A of the Constitution of Pakistan 1973 and is incurable under section 537 Cr. P.C?

The Honorable Court directed that;

“Admittedly, on remand of the case, the charge against the appellant was framed afresh by the learned Trial Court. Surprisingly, the evidence already recorded in the first round of litigation was adopted not only by the prosecution but learned counsel for the appellant as well, such adoption of the evidence is against the spirit of Section 231 Cr. P.C which prescribes that, if the charge is altered, added, or amended, then the witnesses already examined are to be recalled and re-examined, on point of alteration, addition, or amendment so made in the charge. Adoption of evidence is also contrary to the

mandate contained by Section 353 Cr.PC, which prescribes that the evidence of witnesses shall be taken in presence of the accused facing trial. The procedure adopted by the learned trial Court being incurable has not only occasioned in the failure of justice, as is defined under Sub Section (b) to Section 537 Cr.PC but have prejudiced the appellant in his defense seriously, which is against the mandate contained by Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, which guarantees chance of fair trial and due process to every citizen for determination of his civil/criminal rights and obligations.

10. Mst. Farzana Aamir Butt & Another v Mst. Rukhsana Tabbassum & Other

<http://43.245.130.98:8056/caselaw/view-file/MTQ3NjA4Y2Ztcy1kYzgz>

Present: Salahuddin Panhwar J.

Mental Health and responsibility of government.

The Honorable Court observed that;

“Before going any further, here, I feel it quite relevant and necessary to say that mental health can’t be hoped unless it (mind) enjoys the life (gathering circumstances). The mental stress results into depression which even some time compels one to take harmful acts, including ‘suicide’. The ‘suicide’ numbers are increasing abnormally particularly in rural areas though we are claiming to have entered into 21st Century. The increase in cases of mental illness was / is always required to be studied; not only to be studied but with step (s) to prevent such ‘causes’

or reasons thereof which, I shall insist, was / is the absolute and exclusive responsibility of the government as the guarantee regarding fundamental rights, was / is to be ensured by the government and government alone. I would add that none, normally, shall resort to such act (suicide) unless his mind succeed in convincing him that this act (suicide) would be a better idea than to face existing circumstances. I have no hesitation in saying that act of private lending of money on interest is one of the elements because the interests keeps on doubling while man (borrower) continues bogging down. The giver, being not run under any lawful legislation, takes liberty to effect recovery of interest by any illegal means which, undeniably, harms the 'mental health'. Needless to add that lending money on interest is 'haram (prohibited)' in Islam hence least such practice needs to be curbed which can't be hoped in absence of the legislation".

11. Mrs. Nasira Khalique v Mrs Rabia Sharif

<http://43.245.130.98:8056/caselaw/view-file/MTQ3ODc2Y2Ztcy1kYzgz>

Present: Salahuddin Panhwar, J

'Nikahnama' shall not operate as a 'registered document' such statement is not fulfilling three ingredients of gift i.e. declaration, acceptance and possession. The Authority was not competent to transfer the title merely with reference to such statement attached with nikahnama.

The Honourable Court held as under:-

"I would also not hesitate for a single moment even that statement with 'nikahnama' shall not operate as a 'registered document' hence in case of dispute or absence of the 'donor' such

declaration regarding validity of gift etc shall be required by none but a competent court of law. Such is also not the position rather it appears from perusal of the record that no effort was made by the Authorities to get statement of claimed donor nor any effort was made so as to put him on notice of such proceedings, therefore, the Authority, I would insist, was not competent to transfer the title merely with reference to such statement attached with nikahnama. Besides, such statement is not fulfilling three ingredients of gift i.e. declaration, acceptance and possession. Further, it is also matter of record that original nikahnama as well as statement attached is not produced and yet same is not in possession of respondents. In absence of original, a mentioning regarding gift of property of brother of bridegroom was always opening a question that 'whether this existed in original or otherwise?'. which question always burdens the beneficiaries to establish the gift coupled with validity thereof which was never discharged within meaning of Article 79 of the Qanoon-e-Shahadat Order 1984 whereby the examination of witnesses of gift (nikahnama) was nothing short of a mandatory obligation to establish the valid gift. This was never resorted to by respondents."

12. Lucky Cement Limited v Federation of Pakistan & Others

<http://43.245.130.98:8056/caselaw/view-file/MTQ3NjA4Y2Ztcy1kYzgz>

Present: Mohammad Junaid Ghaffar and Agha Faisal, JJ

Doctrine of election

The Honorable Court observed that;

“It is apparent that the petitioner had elected to avoid the departmental hierarchy of dispute resolution from the very onset of its grievance. The settled principles of the doctrine of election denote that the election to commence and follow an available course, from concurrent avenues, vests with a suitor, however, once an option is exercised then the suitor is precluded from re-agitating the same lis in other realms of competent jurisdiction. The august court has illumined that providing an option to elect a remedial recourse does not frustrate or deny the right to choose any remedy, which best suits under the given circumstances. However, the doctrine of election has been evolved by courts to curb successive / multiple adjudication processes in respect of a singular impugned action. As long as a party does not avail of a remedy before a forum of competent jurisdiction all such remedies remain open to be invoked, however, once the election is made then the party may not be allowed to hop over and shop for one after another coexistent adjudication process.

13. Asad Ali v The State

<http://43.245.130.98:8056/caselaw/view-file/MTQ3NjcwY2Ztcy1kYzgz>

Present: Zulfiqar Ahmad Khan J.

Despite negative DNA report, sole statement of victim lady is sufficient to disentitle the accused from the concession of bail.

The Honourable Court held as under:

“ Per FIR complainant has clearly stated that after obtaining Khulla from her first husband in the year 2018 she was residing alone in her house and was working in a Beauty Parlor when the present applicant by keeping her on false hopes of marriage, kept her in a rented house and committed Zina with her for about one year. It appears that statement of the landlord was also recorded in whose house the complainant / victim was kept by accused and he affirmed such position. The applicant has committed a serious offence of rape while keeping the victim on false hopes of contracting marriage. Per learned counsel DNA report is in negative but it is not a recent report and the alleged offence of Zina has not been committed recently hence, no reliance can be made on such report”

14. M/s. EFU General Insurance Ltd v M/s. Emirates Airline / Emirates Sky Cargo & others

<http://202.61.43.34:8056/caselaw/view-file/MTQ1MDMwY2Ztcy1kYzgz>

Present: Muhammad Faisal Kamal Alam, J

Attack on the Jinnah International Airport Karachi falls within the meaning of Non international armed conflict.

“Term an act of war or armed conflict as mentioned in Rule 18(2)(c) of the Fourth Schedule of Carriage by Air Act, 2012, also means non-international armed conflict (NIAC). Armed attack at Jinnah International Airport on 08.06.2014 falls within non-international armed conflict (NIAC) or at least it may be categorized as a hybrid phenomena;

where repeated acts of terrorism in furtherance of defined objectives translated into a non-international armed conflict.

The Honorable Court held as under:

“---32. A non-international armed conflict (NICA) is said to be in existence, when there are hostilities between armed forces of a State and organised armed groups (militias) having a command structure, recruits and conduct military training and has ability to plan, coordinate and carry out military operations, which in fact has been done within the territory of a State (Country) for a considerable period of time and the hostility and violence has gained a certain degree of momentum.

33. In view of the above discussion, the attack at the Karachi Airport, cannot only be termed as a terrorist attack, but was rather part of a wider armed conflict within the state of Pakistan. The attackers were personnel of a proscribed organised group, that was engaged in a series of hostilities, ranging from suicide bombings at public places to organised attacks on the armed forces of Pakistan, defence installations, and even religious places, and as per the official figures, thousands of civilians and servicemen have lost their lives these are also barred under Rule-18, sub-rule-2(c) of the Fourth Schedule of CAR (the Carriage of Air Act, 2012) because the intense fighting between attackers / militants and personnel of Law Enforcement Agencies of Pakistan at the Jinnah International Airport (JIAP) falls within the term of Armed Conflict as envisaged in above provision; therefore, the exemption from any liability as contained in the above Rule-18(2)(c) relating to an Act of War or an Armed Conflict

35. It is an undeniable fact that the situation that was prevalent in the Country when the Karachi Airport was attacked, if looked at in a holistic perspective, would constitute part of a large-scale violence perpetrated against the State of Pakistan by proscribed organisations, and it would not constitute isolated terrorist activities but rather a non-international armed conflict (NIAC), or at least it may be categorised as a hybrid phenomena; where repeated acts of terrorism in furtherance of defined objectives translated into a non-international armed conflict”.

15. Kashif Feroz versus Federation of Pakistan & another

<http://43.245.130.98:8056/caselaw/view-file/MTQ4MTczY2Ztcy1kYzgz>

Present: Muhammad Faisal Kamal Alam, and Agha Faisal, JJ.

“In the absence of suspension order by the supervening jurisdiction, delay in implementation of the order by subordinate fora by the Federal Board of Revenue and Custom department, will expose them to appropriate proceedings”

The Honourable Court observed as under:-

“5. It is noted with concern that copious litigation is pending before this Court wherein the petitioners are seeking implementation of orders in original, orders in appeal and judgments of the learned appellate tribunal. Such is the volume of these petitions that in colloquial parlance they are referred to as implementation petitions. In these matters the orders / judgments are not being implemented

by the department, notwithstanding the absence of any supervening orders suspending the operation of the said orders / judgments. The tax payers are left with little alternative but to approach this Court seeking execution of the respective departmental orders / judgments. It has been observed that departmental disregard of such orders / judgments has become practice as it remains unconcerned with the implementation thereof and only deigns to contemplate implementation once appropriate orders are obtained from this Court.

6. While under Article 187(2) of the Constitution, the decisions of the august Supreme Court can be executed by this Court; however, it is ironic that recourse to the writ jurisdiction of this Court is being sought for execution of orders / judgments of subordinate fora. If suspension orders have been obtained from the supervening jurisdiction then the same ought to have been communicated to the parties; however, in the absence there of there is no justification to delay or deny implementation. If there are no supervening suspension orders then it may be reasonable to apprehend that implementation is being denied due to extraneous considerations by the concerned officers; for which they ought to be exposed to appropriate proceedings (departmental or otherwise).”

LIST OF ARTICLES :-

1. Current Legal Problems

<https://academic.oup.com/clp>

More than Just a Different Face? Judicial Diversity and Decision-making by

Rosemary Hunter.

2. Law, Probability and Risk

<https://academic.oup.com/lpr/issue/19/2>

Are judges influenced by legally irrelevant circumstances? by

Bergius, Emelie Ernberg, Christian Dahlman, Farhan Sarwar.

3. International Journal of Constitutional Law

<https://academic.oup.com/icon/article/18/2/441/5880196>

Gendered nationalism and constitutionalism by Ruth Rubio-Marín.

4. Gas Theft Control and Recovery Act 2016 A Flawed and Ambiguous Law

https://www.academia.edu/40894924/Gas_Theft_Control_And_Recovery_Act_2016_A_flawed_And_ambiguous_Law, by

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