

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
REGISTRY BRANCH SKARDU.**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.
Mr. Justice Shahbaz Khan, Judge.**

**Civil Appeal No. 15/2015 in
CPLA. No. 49/2015.**

1. The Deputy Commissioner Skardu.
2. Assistant Commissioner Kharmang Skardu.
3. Chief Engineer Works Skardu.
4. Superintending Engineer Works Skardu.
5. Chief Engineer Power Division Skardu.
6. Superintending Engineer Power Division Skardu.
7. Executive Engineer Works PWD Skardu.
8. Provincial Government through Chief Secretary Gilgit-Baltistan, Gilgit.

Petitioners.

Versus

1. Akhond Muhammad Ali Advocate Skardu counsel for the legal heirs of affectee deceased in the Kamango Bus Accident dated 03.10.2014.
2. Legal heirs of affectee deceased (i). Ahmad F/O Alia (ii). Musa F/O Sheikh Mr. Muhammad Issa senior Advocate, (ii). Qasim Shah F/O Syed Amir Shah, (iv) Wazir Ehsan f/o Wazir Yasir (v). Wazir Ghulam Muhammad Kaleem F/O Wazir Shakir Ali, (vi). Taqqi F/O Ms. Razia, (vii). Wazir Ehsan F/O Ali Raza, (viii) Kazim F/O Ms. Azra, (ix). Zulfiqar Ali alive in person, (x). Ms. Abida alive in person residents of Kamango, Parri Kharmang, Astore, Gayul Skardu District Skardu.

PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60 OF GILGIT-BALTISTAN (EMPOWERMENT & SELF GOVERNANCE) ORDER 2009 READ WITH RELEVANT PROVISIONS OF GILGIT-BALTISTAN THE IMPUGNED JUDGMENT OF THE LEARNED CHIEF COURT GILGIT-BALTISTAN DATED 08.11.2014, WHEREBY THE LEARNED GILGIT-BALTISTAN CHIEF COURT REGISTRY BRANCH SKARDU IN SUE MOTO CASE NO. 01/2014 WHEREBY TAKING SUO MOTO ACTION THE LEARNED CHIEF COURT HAS DIRECTED THE PETITIONERS/DISTRICT ADMINISTRATION SKARDU TO BEAR THE EXPENDITURE AMOUNTING TO R. 300,000/- TO LEGAL HEIRS OF DECEASED WHICH WAS PAID TO THE ROCK RAFTERS, HELPERS AND DRIVERS.

PRESENT:-

1. The Advocate General Gilgit-Baltistan for the petitioners.

2. Akhond Muhammad Ali respondent is present in person.

DATE OF HEARING: - 26.04.2016.

DATE OF DETAIL JUDGMENT:- 02.05.2016.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This petition for leave to appeal has been arisen out of the impugned judgment/Order dated 08.11.2004 in SMC. No. 01/2014 passed by the learned Chief Court Gilgit-Baltistan whereby the application filed by the respondent was accepted and the petitioners were directed to bear the expenditure amounting to Rs. 300,000/- (rupees three lac) only incurred during the recovery of the dead bodies by each legal heirs of the deceased which they paid to the Rock Rafters, Helpers and Drivers. The remaining operative part of the impugned judgment is hereby reproduced as under:-

- i. *“The District Administration is directed to establish fully equipped rescue staff for rescue in such like incidence.*
- ii. *The in charge traffic police and SP licensing Authority is directed to carry out the verification of valid driving license of drivers employed with public transport vehicles as well as school and college (s) vehicles.*
- iii. *the private school owners are directed not to employ any person (s) as driver having less than five years experience for playing buses couches and Vans holding the license of HTV (Heavy Transport Vehicle) in future.*
- iv. *The owners of private school and colleges are directed to insured their buses/couches/Vans from recognized insurances companies.*
- v. *The PWD authority is directed to remove sharp cuts and winding the road and installed safety guards where necessary especially the place where the fateful accident occurred.*

- vi. *The authorities of PWD are also directed not to use the roads for installment of electric polls and water channels etc without prior written permission from the department concerned and land owners.*
- vii. *Excise and Taxation officers are directed to carry out the fitness of the school/couches/Vans as well as public transport on monthly basis and report be submitted to concern Deputy Commissioner with the intimation.*
- viii. *Principal/Administration of Al-Zahra College is directed to furnish detail of their vehicles with certified copies of CNIC and driving licenses of drivers to the Deputy Commissioner Skardu within 10 days”.*

2. The learned Advocate General Gilgit-Baltistan submits that the learned Chief Court Gilgit-Baltistan in exercise of its jurisdiction under Article 71 of “The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009” was not supposed to enter into the realm of factual controversy and give any opinion/verdict thereto. He maintained that under no circumstances the learned Chief Court Gilgit-Baltistan could meddle with the affairs in which an adequate and efficacious remedy can be had from the Court below. He also submits that “Article 71 of The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009”, does not provide to the Chief Court to exercise of Suo Motu jurisdiction and an order passed in exercise of such jurisdiction shall be corrum-non-judice. While saying so he relied upon the judgment the judgment of the Hon’ble Supreme Court of Pakistan in a case of Dr. Imran Khattak and others versus Ms. Sofia Waqas Khattak & others, reported as 2014, SCMR, Page 122, and the judgment of this court in case

CPLA. No. 86/2014, The Secretary Works Gilgit-Baltistan & three (03) others versus Talib Shah & thirty Five (35) others.

3. On the other hand, the learned Counsel appearing on behalf of the respondents supports the impugned Judgment and argued that the learned Chief Court on getting information about infringement of any fundamental right was well within its rights to step in and pass an appropriate order. He contends that where fundamentals rights of the citizens are trampled over, the Chief Court can exercise of its Suo Motu Jurisdiction. He finally submits that the learned Chief Court, Gilgit-Baltistan has rightly taken cognizance of the matter and passed an appropriate order redressing the grievances of the persons aggrieved.

4. We have heard the learned Counsels for the respective parties at length, perused the materials placed on record and gone through the impugned Judgment. The question arises as to whether Article 71 of The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009 read with Article 199 of the Constitution of Pakistan, 1973, expressly or by implication, provides for exercise of Suo Motu Jurisdiction or not by the learned Chief Court Gilgit-Baltistan. The case laws cited by the learned Advocate General are applicable. For convenience we hereby reproduced both the articles i.e. Article 71 of “The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009”, and “Article 199 of the Constitution of Islamic Republic of Pakistan 1973” as under:-**Under Article 71:- Jurisdiction of Chief Court Gilgit-Baltistan:-**

(1) *The Chief Court shall have such jurisdiction as is conferred on it by this Order or by any other law.*

2. *Subject to this Order, the Chief Court may if it is satisfied that no other adequate remedy is provided by law:-*

(a). *The Government, exercising any power or performing any function in, or in relation to, Gilgit-Baltistan as may be appropriate for the enforcement of any of the fundamental rights conferred by this order. On the application of any aggrieved party, make an order.*

(i). *Directing a person performing functions in connection with the affairs of Gilgit-Baltistan or local authority to refrain from doing that which he is not permitted by law to do, or to do that which he is required by law to do; or*

(ii). *Declaring that any act done or proceedings taken by a person performing functions in connection with the affairs of Gilgit-Baltistan or a local authority has been done or taken without lawful authority, and is of no legal effect; or*

(b). *on the application of any person, make an order.*

(i). *Directing that a persons in custody in Gilgit-Baltistan be brought before the Chief Court so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or*

(ii). *Requiring a persons holding or purporting to hold a public office in connection with the affairs of Gilgit-Baltistan to show under what authority of law he claims to hold that office; or*

(c). *On the application of any aggrieved person, make an order giving such directions to the persons or authority including the council.*

3. *an order shall not be made under clause (2) on application made by or in relation to a person in the Armed forces of Pakistan in respect of his terms and conditions of his service, in respect of any matter arising out of his service or in respect of any action in relation to him as a member of the Armed Forces of Pakistan.*

4. *Where:-*

(a). *an application is made to the Chief Court for an order under sub clause (a) or sub-clause (c) of clause (2); and*

(b). *The court has reason to believe that the making of an interim order would have the effect of prejudicing or interfering with the carrying out of public work or otherwise being harmful to the public interest, the Court shall not make an interim order unless the Advocate General has been given notice of the application and the Court, after the Advocate General or any officer authorized by him in this behalf has been given an opportunity of being heard, is satisfied that the making of the interim order would not have the effect referred to in sub-clause (b) of this clause.*

5. *in this article unless the context otherwise requires , the expression “person” includes anybody politic or Corporate, any authority of or under control of the Council or the Government and any Court or Tribunal other than the Gilgit-Baltistan Supreme Appellate Court , the Chief Court or a Court or Tribunal Established under a law relating to the Armed Forced of Pakistan.*

Under Article 199, Jurisdiction of High Courts of Pakistan:-

- (1) *Subject to the Constitution, a High Court may, if it is satisfied that no oilier adequate remedy is provided by law,*
- (a) *On the application of any aggrieved party, make an order.*
- (i) *directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, o to do anything he is required by law to do; or*
- (ii) *declaring that any act done or proceeding 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; or*
- (b) *On the application of any person, make an order.*
- (i) *directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or*
- (ii) *requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or*
- © *on the application of any aggrieved person, make order giving such directions 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.*
- (2) *Subject to the Constitution, the right to move a High Court for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part 11 shall not be abridged.*
- (3) *An order shall not be made under clause (1) on application made by or in relation to a person who is a member of the Armed Forces of Pakistan. Or who is for the time being subject to any law relating to any of those Forces. In respect of his terms and conditions of service, in respect of any matter arising out of his service, or in respect of any action taken in relation to him as a member of the Armed Forces of Pakistan or as a person subject to such law.*

(4) Where—

(a) An application is made to a High Court for an order under paragraph (a) or paragraph (c) of clause (1), and

(b) the making of an interim order would have the effect of prejudicing or interfering with the carrying out of a public work or of otherwise being harmful to public interest or State property 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 authorized 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---

(i) Would not have such effect as aforesaid; or

(ii) Would have the effect of suspending an order or proceeding which on the face of the record is without jurisdiction.

(4A) 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:

Provided that the matter shall be finally decided by the High Court within six months from the date on which the interim order is made.

(4b) 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.]

(5) In this Article, unless the context otherwise requires---

“Person” includes any body politic or corporate, any authority of or under the control of the Federal government or of a Provincial government, and any Court or tribunal, other than the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan; and

“Prescribed law officer” means---

(a) In relation to an application effecting the Federal Government or an authority of or under the control of the Federal Government, the Attorney General, and

(b) In any other case, the Advocate General for the Province in which the application is made.

5. The careful perusal of both the articles reproduced herein above and the parameter laid down in case of Dr. Imran Khattak and others versus Ms. Sofia Waqas Khattak & others supra would show that the learned Chief Court Gilgit-Baltistan & High Courts of Pakistan would exercise its extraordinary discretionary/ constitutional Jurisdiction where it is satisfied that, subject to the constitution, no other adequate remedy is provided by law, on the application of a person whether aggrieved or not on an information or on its own knowledge.

6. In view of the above discussion we hold that the learned Chief Court Gilgit-Baltistan cannot exercise Suo Motu Jurisdiction under Article 71 of Gilgit-Baltistan (Empowerment & Self-Governance) Order, 2009. Consequently, we converted this petition into an appeal and the same was allowed vide our short order dated 26.04.2016. The respondents, if, aggrieved may approach the proper forum /Court Of Law for redressal of their grievances. These were the reasons of our said short order.

7. The appeal is allowed.

Chief Judge.

Judge.

Judge.

Whether the case is fit to be reported or not?