

**LAHORE HIGH COURT, LAHORE**

*Petitioner:*

**Hashim Aslam Butt.**

*Respondents:*

*Versus:*

**Federation of Pakistan  
etc.**

**Present:**

*Ms. Justice Ayesha A. Malik.*

W. P. No. 16001 of 2013 announced on dated 16th January, 2014.

**REPRESENTED:**

*Petitioner by:* Mr. Khurram Saeed, Advocate.

*Respondents by:* Mr. Salman Faisal, Advocate.

**JUDGEMENT:**

**MS. JUSTICE AYESHA A. MALIK.--(1).** The Petitioner has impugned summons issued to him under Section 37 of the

Sales Tax Act, 1990 on 21.6.2013 by the Respondent No. 4, Assistant Director/Investigation Officer, Directorate of Intelligence & Investigation Inland Revenue, Lahore.

2. The case of the Petitioner is that he is an Advocate who was engaged by Pearl Enterprises, Lahore, Shop No. 14, Shah Alam Paint Center, Shahalam, Lahore (the client). The client required the Petitioner to reply and to defend the client in show cause notice dated 6.5.2013 issued by the Commissioner Inland Revenue, Lahore. The Petitioner accepted the case and filed a reply to the said show cause notice on behalf of the client. Essentially the Petitioner was defending the client before the Commissioner Inland Revenue, Lahore. On 1.6.2013 the Respondent No. 4 issued a letter to the Petitioner stating therein that the Petitioner was representing the client before the Commissioner Inland Revenue Zone-5 Regional Tax Office. The Directorate of Intelligence and Investigation, Lahore was also investigating the client in the matter of tax fraud. Therefore, in order to proceed with the matter the Petitioner was requested to provide a power of attorney to represent the client before the Respondent No. 4. The Petitioner issued a reply to this letter on 4.6.2013 stating therein that he was engaged to represent the client before the Commissioner Inland Revenue and that he has not been engaged to represent the client before the Respondent No. 4, hence the Petitioner was unable to furnish the required power of attorney. The Respondent No. 4 replied to this letter through letter dated 7.6.2013 stating therein that while investigating matters related to the client the Directorate of Intelligence and Investigation tried to locate the client however they were unable to locate the client and that they required the Petitioner to share information with regard to the particulars of the person who had contacted or engaged the Petitioner so that they could proceed with their investigation. The Petitioner did not respond to this letter and on 21.6.2013 summons were issued to the Petitioner under Section 37 of the Sales Tax Act, 1990 (Act of 1990) requiring him to appear before the Respondent No. 4 so as to provide particulars of the client. The Petitioner has impugned the

said summon on the grounds that it is in violation of Article 9 of the Qanun-e-Shahadat Order, 1984 (Order of 1984) which renders all professional information communicated between the Petitioner and the client as privileged communication. Learned counsel for the Petitioner has relied upon the case titled '*Muhammad Maqsood Sabir Ansari Vs. District Returning Officer, Kasur and others*' (PLD 2009 SC 28) wherein it has been held that *the provisions of Article 9, Qanun-e-Shahadat, 1984 not only secures the secrecy of professional communication but prohibits in express terms an advocate from disclosing any information, communication, instruction and advice made to him, or received, obtained, and tendered by him during the course of his professional engagement and said prohibition is not limited to the knowledge of events or things acquired by him but also extends to facts observed by him in the course and for the purpose of his professional employment.* Learned counsel argued that the Respondents No. 3 to 5 cannot summon the Petitioner to obtain information from the Petitioner with regard to the client. Learned counsel argued that the Respondents are proceeding with an investigation against the client and the Petitioner cannot be compelled to disclose information with reference to his client because he is an Advocate representing the client in a case and all information between the client and the Petitioner is privileged, which will include the identity of the client. Learned counsel argued that the Petitioner cannot be forced to disclose any communication made to him as the Advocate of the client as this will destroy the trust and confidence between a client and his advocate and will destroy the essence of their relationship. Learned counsel argued that this privilege is to protect the client of the Petitioner such that he may freely consult with the advice of his advocate. Even otherwise he argued that the Respondents cannot summon the Petitioner under Section 37 of the Act of 1990 in furtherance of an inquiry that they are conducting against the client.

3. Report and parawise comments have been filed by the Respondents. In terms of the reply filed, learned counsel for the

Respondents argued that the Respondents required the assistance of the Petitioner with the investigation in a case of tax fraud allegedly committed by the client, causing heavy loss to the public exchequer. Learned counsel argued that the Petitioner is obligated to disclose the identity of the client under Article 9(2) of the Order of 1984. He argued that since the Petitioner resisted assistance to the Respondents, hence he was summoned under Section 37 of the Act of 1990. He further argued that the Petitioner is obligated in his capacity as a citizen of Pakistan to provide the required information to the Respondents in order to assist them in their ongoing investigation. Learned counsel argued that the Respondents are unable to locate the client of the Petitioner as all addresses given, telephone numbers provided are found to be fictitious. The Respondents in order to proceed with their investigation need to know who runs the business of the client and have simply asked for the name of the proprietor of the client of the Petitioner. Learned counsel argued that it is also the moral duty of the Petitioner to assist the Respondents catch persons who are involved in tax fraud. Learned counsel argued that the Respondents can summon any person whose attendance it considers necessary to tender evidence or produce documents in any inquiry which is being made under the Act of 1990.

4. I have heard the learned counsel for the parties and reviewed the record available on the file.

5. The issue before this Court in the instant petition is whether the identity of the client is privileged communication under Article 9 of the Order of 1984. The Petitioner has been called upon by the Respondent No. 4 to provide details with respect to the person who has contacted or engaged the Petitioner to defend him before the Commissioner Inland Revenue Zone.

5. The Respondent No. 4 issued summons to the Petitioner when the Petitioner failed to provide the information so required and because he did not respond to letter dated 7.6.2013. There is no cavil to the proposition that the Respondents can summon any person under Section 37 of the Act of 1990 in relation to a pending

inquiry. However in this case the question is whether an Advocate who has been engaged by a client can be summoned under Section 37 of the Act of 1990 to provide information with respect to his client. Respondents No. 3, 4 and 5 are conducting an investigation of tax fraud against the client. They are unable to locate the proprietor of the client, hence in the first instance they required the Petitioner to file a power of attorney in the inquiry pending before them and then required the Petitioner to provide information with respect to the person who had engaged him for representation before the Commissioner Inland Revenue. I am of the opinion that letter dated 1.6.2013 issued by the Respondents requiring the Petitioner to furnish a power of attorney in the inquiry pending before the Respondent No. 4 is totally without any legal justification. The Respondent No. 4 does not have the authority to compel or even require an Advocate to represent a person who is under inquiry before him. The very request of the Respondent No. 4 in letter dated 1.6.2013 is misconceived. The Petitioner responded to the Respondent No. 4 by stating that the client has not engaged him for the inquiry pending before the Respondent No. 4, therefore, he cannot file a power of attorney in that inquiry. Instead of accepting the reply of the Petitioner, the Respondents went further to demand particulars from the Petitioner with respect to his client. Specifically the Petitioner has been summoned to provide information with respect to the identity of his client and the whereabouts of his client so that the client can be interrogated by the Respondents.

6. Article 9 of the Order of 1984 reads as follows:--

*"No Advocate shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such advocate, by or on behalf of his client, or to state the contents or conditions of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment.*

Provided that nothing in this Article shall protect from disclosure;

- (1) any such communications made in furtherance of any illegal purpose; or
- (2) any fact observed by any advocate, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment, whether the attention of such advocate was or was not directed to such fact by or on behalf of his client.

Professional communication is privileged communication meaning that an advocate cannot be asked to disclose any communication made to him by his client in the course of his employment as the advocate. This privilege is necessary to ensure that a client has absolute confidence in his advocate from whom he seeks professional advice. The privilege promotes the freedom of consultation with legal advisors by clients. Communication held to be privileged information includes instructions, advice, documents communicated to the advocate during the course of his professional relationship with a client. It extends to information that the advocate becomes acquainted with in the course of his employment. Reliance is placed on the case titled '*Syed Ali Nawaz Gardezi Vs. Lt. Col. Muhammad Yusuf*' (PLD 1963 SC 51). The identity of a client or the fact that a person has become a client of an advocate would generally not be termed as professional communication, hence it is not considered as privileged communication. This is because the relationship of advocate-client is generally not confidential information and is not information given by the client for the purposes of the employment as his advocate. It is usually a pre-requisite to the advocate-client relationship. However the circumstances in the instant case are unusual. The client has engaged the Petitioner to represent it before the Commissioner Inland Revenue in relation to a notice issued under Section 21(2) of the Act of 1990. The matter pertains to fraudulent input tax adjustment and issuance of fake sale tax invoices. The notice under Section 21(2) of the Act of 1990 was also copied to the Director, Directorate of Intelligence and

Investigation, Inland Revenue with a request to depute an officer to attend the hearing alongwith record. The Respondent No. 4 on the basis of the same show cause notice initiated an investigation against the client. Since the stated Respondent was unable to identify and contact the proprietor of the client, he required that the same information be provided to him by the Petitioner. Essentially the Respondent No. 4 required the Petitioner to identify the client so that the investigation initiated by the Respondent No. 4 can proceed against its proprietor. The Respondents have argued Article 9(2) of the Order of 1984 in their defense, however the said Article is not applicable or relevant as the identity of the client is not a fact that the Petitioner observed in the course of his employment. A communication is professional communication for the purposes of Article 9 of the Order of 1984 when it is made to the advocate in confidence, not intended to be disclosed to any person. The privilege is that of the client and not the advocate. The question of whether a client's identity is privileged communication is one of fact and should be decided on the basis of the facts of that case. In this case the client has not required the Petitioner to appear or represent the client before the Respondent No. 4 and it has not disclosed the identity of its proprietor before the Respondent No. 4. The Petitioner has been called upon to disclose the identity of the client because the Petitioner has been engaged by the client in a case and the Respondent No. 4 wants to use the information that the Petitioner has about the client in furtherance of his investigation. It is also important to note that the client has not revealed its identity to the Respondent No. 4 in its ongoing investigation. In such a situation the identity of the client becomes privileged communication under Article 9 of the Order of 1984. The Respondents cannot use the machinery available to them for the purposes of investigation to compel an Advocate engaged by a client to disclose the whereabouts of his client when the whereabouts and the identity of the client are under investigation. In the instant case, the Petitioner has been summoned so that he may provide the identity and the whereabouts of the client so that the client can be interrogated with respect to the allegations of tax

fraud levied against it. This fact is apparent from the letter issued by the Respondent No. 4 dated 7.6.2013 wherein the Respondent No. 4 has clearly stated that he is unable to locate the proprietor of Pearl Enterprises and that the Petitioner should reveal the identity of the proprietor of Pearl Enterprises, the client, since he is representing the client in a matter pending before the Commissioner, Inland Revenue. The Respondent No. 4 cannot compel the Petitioner to disclose the identity of the client on the grounds that he is representing the client before some other forum or in some other case. In such a circumstance the identity of the client becomes privileged communication under Article 9 of the Order of 1984.

7. In view of the aforesaid, this petition is **allowed** and the impugned summon dated 21.6.2013 issued by the Respondent No. 4 is declared to be illegal.

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