

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Present: **Mr. Justice Muhammad Iqbal Kalhoro**
Mr. Justice Mohammad Abdur Rahman

C.P. No.D-4694 of 2017

United Mining Company & others
Versus
Government of Sindh & others

Date of Hearing: 09.10.2025

Date of decision: 09.10.2025

Petitioners: Through Mr. Ayan Mustafa Memon along with
Mr. Ghulam Mustafa Shah, Advocates

Respondents: Through Mr. Muhammad Hisham Mahar,
Assistant Advocate General and Mr.
Muhammad Ishaque, Assistant Attorney
General.

J U D G M E N T

Muhammad Iqbal Kalhoro, J.- Petitioners are mining companies have challenged Sindh Coal Mines Rules, 2016 to be ultra vires of the Sindh Coal Act, 2012 firstly on the ground that no cabinet approval was obtained at the time of framing of these rules and secondly through these Rules a new arrangement/scheme/power independent of the parent Act has been introduced/conferred, whereby volume of tax has been increased, certain offences have been created plus a new directorate has been established. In short, the petitioners are being regulated under these rules in a way unbeknownst to the parent law. To impress the point, learned counsel for the petitioner has mainly relied upon Mustafa Impex case¹ and read the relevant rules in the context of the Act 2012.

2. Learned Assistant Advocate General does not seem to dispute the fact that at the time of framing of Rules 2016, the Cabinet approval was not obtained and hence these rules prima facie are hit by the ratio laid down by the Supreme Court in the Mustafa Impex case. However, to establish validity of the rules, and to rebut the arguments of the petitioners' counsel, learned Assistant Advocate General has submitted that as ex

¹ Mustafa Impex and others Vs. Government of Pakistan & Others (PLD 2016 SC 808)

post facto approval of the rules was obtained in October 2017, hence the Rules 2016 would be held effective since then. To support his point, he has relied upon the case of Attock Cement².

3. Learned counsel for the petitioners however has submitted that the judgment relied upon by learned Assistant Advocate General is a leave refusing order hence it has no binding effect. More so, in the case before Supreme Court, the issue of validity of rules was not being considered in the backdrop of Mustafa Impex case, rather the question was that from which date the rules would be applicable. Whether from the time when they were framed or when ex post facto approval was conferred and the Supreme Court has held that the rules would be effective from the date of approval given by the cabinet and not from the date of framing. He has further referred to a judgment dated 03.02.2025 passed by a Division Bench of this Court in the case of Premium Textile Mills³ in which the ratio of the Supreme Court's judgment in the case of Attock Cement (Supra) was considered and it was held that this being a leave refusing order was not binding and furthermore the issue was not in regard to validity of the rules.

4. We tend to agree with learned counsel for the petitioners that the rules framed without prior approval of the cabinet would be hit by the ratio laid down in Mustafa Impex case and would be of no effect. The Supreme Court has settled this issue not only in the Mustafa Impex case but also in so many other cases cited by learned counsel for the petitioners: Pakistan Medical & Dental Council⁴, Controller General of Accounts⁵ and Mirpurkhas Sugar Mills⁶. Therefore, we need not dilate upon in detail upon the same issue, already conclusively settled by the Supreme Court and this Court. Learned Assistant Advocate General has not disputed that at the time of framing of the impugned rules, the approval from the cabinet was not obtained but afterwards it was done, hence they are valid. This question of ex post facto approval of any law, rules and notifications etc. came under discussion before this Court in Suit No.129 of 2017 (Premium Textile Mills Ltd. & others versus Federation of Pakistan & others) wherein the learned Single Judge framed, amongst others, the following two issues:

"1. Whether the impugned notification dated 30.12.2016 could have been issued without approval of the Federal Government under Section 8 of the OGRA Ordinance, 2002?"

² Government of Balochistan v. Attock Cement Pakistan Limited (2024 SCMR 876)

³ High Court Appeal No.336 of 2024 (Federation of Pakistan v. Premium Textile Mills Ltd.)

⁴ Pakistan Medical And Dental Council v. Muhammad Fahad Malik (2018 SCMR 1956)

⁵ Controller General Of Accounts v. Fazal Ahmad (2021 SCMR 800)

⁶ Mirpurkhas Sugar Mills Limited v. Province Of Sindh (2020 CLC 232)

2. Whether the impugned notification could operate retrospectively from 15.12.2016?

Discussing the same in Para 9, he has held that:

“9. The Supreme Court disapproved of pari materia post facto ratification in Mustafa Impex itself as can be read from summation at the foot of paragraph 81 thereof. The issue also came before a Division Bench of this Court in A D Khawaja and the binding edict found the endeavor to be outside the purview of the Constitution. Speaking for the Court, Munib Akhtar J observed that the government can only mean the cabinet and it is not permissible for a decision to be taken in the executive branch and then be endorsed or approved by the cabinet. The edict also disapproved of post facto approval by the cabinet accorded to actions taken otherwise than in consonance with the law. It may be opportune to mention that A D Khawaja was followed by a subsequent Division Bench of this Court in the Mirpurkhas Sugar Mills²³ and both judgments are binding upon this court.” (emphasis supplied)

While concluding the discussion, he has held in Para 23 as under:-

“23. In view of the binding authority illumined by the Supreme Court vide Mustafa Impex, A D Khawaja and by Division Benches of this Court vide A D Khawaja, Mirpurkhas Sugar Mills and the SSGC case, the issue framed for determination herein is hereby answered in the negative; in favor of the plaintiffs and against the defendants. Therefore, the Impugned Notification, being the notification of fixation of gas prices issued by the Oil & Gas Regulatory Authority dated 30.12.2016, is declared as void ab initio.”

5. The judgment was challenged before a Division Bench of this Court in High Court Appeal No.336 of 2024⁷. Amongst others proposition, whether Mustafa Impex applies to fiscal and budgetary matters and Karamat Ali applies prospectively, was framed. The Division Bench has held following discussion and concluded as under:-

“26. A bare reading of the Mustafa Impex Judgment itself, however, establishes otherwise. The Supreme Court declared that “[i]n all cases the prior decision of the Cabinet is required since it is unambiguously that body alone which is the Federal Government”. There is, therefore, no basis for circumscribing its scope and applicability as different from the apparent and obvious read of the said Judgment.

27. The Supreme Court observed that the principles set out in the Mustafa Impex Judgment apply to “[a]ny Act, or statutory instrument (e.g. the Telecommunication (Re-Organisation) Act, 1996) purporting to describe any entity or organisation other than the Cabinet as the Federal Government is ultra vires and a nullity”.

⁷ High Court Appeal No.336 of 2024 (Federation of Pakistan & another versus Premium Textile Mills Ltd. & 24 others)

The Telecommunication (Re-Organisation) Act, 19 is not a fiscal law.

28.

29. *For the above reasons, this bench is not inclined to accept the Appellant's arguments raised in proposition "B". We agree with the learned Single Judge that neither the Supreme Court nor other superior courts that followed the Mustafa Impex Judgment have limited the ratio of Mustafa Impex to only fiscal matters. There is no reason to interpret the decision in any manner other than following its plain language."*

6. Lastly, it may be said that it is clear that the petitioners are aggrieved by the notices given under the said rules seeking their compliance in the areas and in respect of matters allegedly not covered by the parent law. We in view of above discussion with the consent of learned Assistant Advocate General set aside the impugned notices on the ground that the same are anchored in the rules nor framed in accordance with the requirement of ratio laid down by the Supreme Court in the cases as discussed above including Mustafa Impex case. Learned Assistant Advocate General has further undertaken that no action in terms of the said rules would be taken unless the matter is reconsidered by the cabinet and the fresh rules are framed. In view of such fact, we need not examine the said rules in the context of the ground of being inconsistent with parent law i.e. Sindh Coal Act, 2012.

7. The petition is accordingly disposed of in the above terms along with listed application.

Judge

Judge