

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special STRA 73 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
------	----------------------------------

1. For orders on CMA No.1046/2025.
2. For hearing of main case.
3. For orders on CMA No.1047/2025.

06.05.2026

Mr. Zulfiqar Ali Bhutto, advocate files Vakalatnama on behalf of applicant, same is taken on record.

1. Exemption granted subject to all just exceptions.
- 2&3. Learned counsel states that identical matters have been dismissed *inter alia* vide order dated 04.05.2026, passed in Special STRAs 60 and 61 of 2025, which reads as follows:

"04.05.2026

Mr. Talha Abbasi, Advocate for the applicant
Mr. Javed Ali Sangi, Advocate for applicant

Mr. Wasif Ali Memon, Chairman SRB
Mr. Zamir A. Khalid, Commissioner SRB

These references, pending since March 2025, have impugned respective judgments of the learned Appellate Tribunal admittedly rested on a decision of the Council of Common Interests dated 23.12.2019. It is pertinent to denote that the said decision remains un-assailed till date. The said decision was also relied upon by a Division Bench judgment of this Court dated 21.01.2025 rendered in CP D 2689 of 2017 and connected matters and all petitions were disposed of in terms of the CCI decision. The said order observed as follows:

"Per learned counsel, these matters pertain to challenge by trans-provincial entities to imposition / collection of W.W.F. in the wake of the 18th amendment to the Constitution and subsequent pronouncements of the Supreme Court, including Sui Southern Gas Company Ltd. vs. Federation of Pakistan reported as 2018 SCMR 802. It remains the petitioners' case that trans-provincial entities may be treated independently of Provincial fiscal laws. These matters have been pending since 2013.

Notwithstanding the aforesaid, it was brought to the attention¹ of the Court that the Council of the Common Interests² had been seized of the matter and had been pleased to decide, on Agenda Item 14 bearing NO. CCI.14/1/2019 dated 23.12.2019, as follows:

"119. The CCI considered the Summary dated 23rd May, 2019 submitted by Ministry of Overseas Pakistani & HRD and observed that none of the provinces has developed a workable mechanism for resolution to address the post-devolution issues of pension of migrating employees. The Council held that being trans-provincial and inter-provincial matter, both the organizations i.e. EOBI & WWF should remain with the Federal Government to perform its functions under Employees Old-Age Benefits

¹ As denoted vide orders dated 16.10.2024 and 14.11.2024.

² Created per Article 153 of the Constitution.

Act, 1976 and Workers Welfare Fund Ordinance, 1971, till such time a mutually agreed mechanism is developed.”

The Court was assisted with the pertinent provision³ of the Constitution stipulating that decisions of the CCI are subject to challenge vide reference to the Parliament, hence, it was argued that post 2019 no occasion remained for these matters to continue to be entertained in writ jurisdiction.

The Council of the Common Interests is a representative body constituted inter alia to facilitate comity between the federating units and each Province has representation therein. In the event of either the Federal Government or a Provincial Government is dissatisfied with a decision of the Council, they remain at liberty to precipitate a reference before a joint sitting of the Parliament. Despite repeated opportunity, recorded vide orders dated 16.10.2024 and 14.11.2024, it is nobody's case that the aforesaid decision of the Council has been referred / assailed before the Parliament.

Therefore, the respective learned counsel have sought that all these matters be disposed of in terms of the Council of Common Interests' decision on Agenda Item 14 bearing NO. CCI.14/1/2019 dated 23.12.2019, referred to supra. Order accordingly.

It was articulated on behalf of the petitioners that their liberty to challenge the vires of the enactment, as and when occasion arises, not be curtailed by orders herein. The respondents' learned counsel articulated no cavil in such regard. Order accordingly.”

Needless to state that the decisions of the learned Tribunal in such regard are prima facie consonant with the law. Notwithstanding the foregoing the present references were instituted and on 20.04.2026 the following order was passed in SSTR 60 of 2025:

“This reference is pending since 2025 without any progress. Diary demonstrates that at no point during the last one year has the applicant taken any effort to have either the matter listed or heard. Perusal of the questions formulated demonstrates that the primary question is the vires of Sindh Workers Welfare Fund Act, 2014. The other major question is the validity of a decision of the Council of Common Interests.

Learned counsel is confronted as to whether the vires of an Act is amenable to challenge in reference jurisdiction and he responds in the negative.

Learned counsel is queried as to whether a decision of the Council of Common Interests can be challenged in this Court and he responds in the positive. Respectfully, his understanding is belied by the Constitution itself. Article 154(7) of the Constitution clearly states that if either the Federal Government or the Provincial Government is dissatisfied with a decision of the Council, it may refer the matter to a joint sitting of the Parliament. The issue has been opined upon by a Division Bench of this Court as well.

Prima facie this is a frivolous reference that has clogged the docket for over one year. It is also not the first reference of this kind as earlier three references of equal measure have been dismissed in limine, however, with little apparent effect upon the applicant.

The Supreme Court considers such conduct as that of a habitual litigant in the recent Supreme Court judgment in the case of Umar Tariq Khan⁴ especially paragraphs 8, 9 and 10 thereof; that read as follows:

It is apparent that precipitation and / or perpetuation of unmerited litigation has been unequivocally disapproved by the superior courts and the aforementioned judgment meticulously reiterates the same. Prima facie the present case appears to fall within the ambit of such proscription. Perpetuating such matters clogs the docket of the Courts

³ Article 154(7) - If the Federal Government or a Provincial Government is dissatisfied with a decision of the Council, it may refer the matter to Majlis-e-Shoora (Parliament) in a joint sitting whose decision in this behalf shall be final.

⁴ Per Miangul Hassan Aurangzeb J in ACIR Rawalpindi vs. Umar Tariq Khan (CPLA 1990 of 2025); judgment dated 15.01.2026.

and the consequence thereof is eventually borne by revenue. The learned counsel's assistance was sought, however, the outcome was as particularized supra. While exercising maximum restraint, we are constrained to seek the assistance of the Chairman, Sindh Revenue Board, before rendering any further orders in this regard. He shall be present in person on the next date to assist the Court."

On 22.04.2026 the following order was passed in SSTRAs 61 of 2025:

"This reference, pending unattended since 2024, essentially challenges vires of Sindh Workers Welfare Fund Act, 2014 and the validity of decision of Council of Common Interest.

It hardly merits repetition that the vires of an enactment is not amenable to challenge in "regular" reference jurisdiction. In so far as CCI decisions are concerned, Article 154(7) of the Constitution clearly states that if either the Federal Government or the Provincial Government is dissatisfied with a decision of the Council, it may refer the matter to a joint sitting of the Parliament. The issue has been opined upon by a Division Bench of this Court as well. The applicant is neither Federal nor Provincial Government and this forum is not the joint sitting of the Parliament.

Regretfully, this is also not the first reference of this kind as earlier three references of equal measure have been dismissed in limine, however, with little apparent effect upon the applicant.

It appears that notwithstanding the merit of the present reference, the preference and maintaining thereof may also run foul of judgments of the Supreme Court; including the recent judgment in the case of Umar Tariq Khan⁵. Article 187(2) of the Constitution provides for enforceability of such decisions within jurisdiction by the relevant High Court.

Therefore, let this matter come up on 04.05.2026, when an identical reference, SSTRAs 61 of 2025, is listed and the Chairman SRB has been directed to be present.

The office is instructed to communicate a copy hereof directly to the Chairman SRB; and the same may also be treated as notice per Article 187 of the Constitution."

The questions before the Court remain essentially a challenge to the vires of the Sindh Workers Welfare Fund Act, 2014 and the validity of decision of Council of Common Interest referred to supra. The matter had come before the Court in SSTRAs 57 to 59 of 2025 and vide order dated 08.04.2026 the Court had dismissed the references in terms below:

"These references are pending for the past one year without any progress. Diary demonstrates that no effort has been taken by the applicant to have the matter listed or heard in the interim period. Even today when the matter is brought up, perusal of the proposed questions demonstrates that essentially the applicant, Sindh Revenue Board, is seeking a constitutional declaration. Upon being queried as to how the present jurisdiction under Section 63 of the Sindh Sales Tax on Services Act, 2011, extends to issue such declaration, learned counsel remains unable to assist. He further states that the grievance of the applicant arises with respect to a decision of the Council of Common Interest (CCI). Upon being enquired as to whether any such decision is assailable before a Court of law or before a Joint sitting of the Parliament, he responds that the latter is the legal position. Under such circumstances, these references are found to be prima facie frivolous and devoid of merit. Since no question of law has been articulated to merit adjudication before this Court, these references are dismissed in limine."

Since the present references follow three similar references in the past that were dismissed by this Court, therefore, it was considered appropriate to require the assistance of the Chairman SRB prior to passing any further orders.

⁵ 4 Per Miangul Hassan Aurangzeb J in ACIR Rawalpindi vs. Umar Tariq Khan (CPLA 1990 of 2025); judgment dated 15.01.2026.

The Chairman appeared before us today and merely reiterated the earlier arguments of the applicants' learned counsel that the references were in fact sound on merit. The sole ground invoked was that the decision of the writ petitions, referenced supra, had been challenged by the applicant. It was never the applicant's / Chairman's case that the CCI decision stood vitiated or suspended.

Respectfully, we find the stance taken by the Chairman to be consistently innocent of the law. The vires of a statute are not amenable to challenge in statutory reference jurisdiction, per Section 63 of the Sindh Sales Tax on Services Act, 2011, before a regular bench of this Court. Notwithstanding the prima facie lack of locus standi of the applicant to challenge a CCI decision, the Constitution has designated the joint sitting of Parliament to be the only forum in such regard, hence, under no circumstances could the said jurisdiction be exercised by this Court under Section 63 of the Sindh Sales Tax on Services Act, 2011.

Regretfully, the matter ought not to end here. The Supreme Court has taken judicial notice of the fact that the fiscal docket in the superior courts has been clogged with unmerited litigation, including that precipitated / perpetuated at the behest of Revenue. The Supreme Court considers such conduct as that of a habitual litigant in the recent Supreme Court judgment in the case of Umar Tariq Khan⁶ especially paragraphs 8, 9 and 10 thereof; that read as follows:

"8. When government departments routinely file appeals/petitions (often up to the High Courts and the Supreme Court) on questions of law that have already been authoritatively settled, the practice results in serious institutional harms. The most 1 As sought vide statement dated 13.02.2026; filed in Court and hereby taken on record. immediate consequence is the clogging of court dockets. Courts are compelled to spend scarce judicial time revisiting issues that are no longer res integra at the cost of undecided legal and constitutional questions, criminal appeals involving personal liberty, and civil disputes pending for years. This undermines the constitutional mandate of speedy justice. Repeated appeals/petitions on settled law weaken respect for Article 189 of the Constitution, the doctrine of stare decisis, and judicial discipline within the executive branch. When the State itself disregards binding precedents, it sends the wrong signals to subordinate courts, tribunals, and litigants. Such appeals/petitions result in unavoidable litigation costs, consumption of public funds for counsel, court fees and administrative processing.

9. The State is expected to act as a responsible and fair litigant, not as a compulsive appellant/petitioner. The practice and tendency within government departments to file appeals/petitions mechanically, particularly when the outcome is foreseeable in light of settled law, has already been deprecated by this Court in the judgments reported as Federal Public Service Commission through Secretary, Islamabad Vs. Kashif Mustafa (PLJ 2025 SC 386), Director General, Rawalpindi Development Authority Vs. Mian Muhammad Sadiq (PLD 2006 SC 142), Regional Manager, NADRA RHO, Hayatabad, Peshawar Vs. Mst. Hajira (2024 SCMR 197), State Life Insurance Corporation of Pakistan Vs. Mst. Zubeda Bibi (2024 SCMR 426) and Amjad Ali Vs. Board of Intermediate and Secondary Education (2001 PLC (CS) 280).

10. Courts already possess both constitutional authority and jurisprudential tools to address the problem of repeated appeals/petitions by government departments on settled questions of law. Not just can the courts dismiss such appeals/petitions in limine, one of the most effective tools is the imposition of costs. In egregious cases, courts may require identification of the officer for authorizing the appeals/petitions. It is imperative for there to be internal accountability by government departments and careful legal scrutiny before filing appeals/petitions. Had such scrutiny taken place before the filing of the instant petition, it would have been realized that the primary question of law sought to be agitated by the petitioners already stands authoritatively settled by a number of judgments of this Court referred to herein above. In the case

⁶ Per Miangul Hassan Aurangzeb J in ACIR Rawalpindi vs. Umar Tariq Khan (CPLA 1990 of 2025); judgment dated 15.01.2026.

of order to address this problem it is imperative for the Chairman, F.B.R. to consider constituting committees which function with the highest degree of independence and includes a retired Judge of the superior judiciary, an experienced tax practitioner, and senior serving or retired officers of the F.B.R. with distinguished record and impeccable credentials with the mandate to timely examine each case before a decision is made to file a reference before the High Court or a petition before this Court. The F.B.R. may also consider undertaking review of all pending cases in order to determine whether the questions of law sought to be agitated therein already stand settled by judgments of superior courts.”

It is apparent that precipitation and / or perpetuation of unmerited litigation has been unequivocally disapproved by the superior courts and the aforementioned judgment meticulously reiterates the same. Prima facie the present matters appear to fall within the ambit of such proscription. Perpetuating such matters clogs the docket of the Courts and the consequence thereof is eventually borne by revenue. The Chairman’s assistance was sought, however, the outcome was as particularized supra.

In view hereof, we find these references to be prima facie misconceived, devoid of merit and frivolous. Therefore, they are hereby dismissed in limine with costs of Rs. 100,000/- per reference to be deposited by the applicant with the Sindh High Court Clinic within seven days hereof. The office is directed to place a copy hereof in each connected file.”

Learned counsel states that this reference application may be dismissed for the same reasons and upon same terms as aforesaid. Order accordingly.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Tribunal, as required per section 63(5) of the Sindh Sales Tax on Services Act, 2011.

Judge

Judge