HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.D-455 of 2025

[Mustaqim Dyeing & Printing Industries Pvt Ltd vs. Federation of Pakistan and others]

Before:

JUSTICE ADNAN-UL-KARIM MEMON
JUSTICE MUHAMMAD JAFFER RAZA

Petitioner:	Through M/s Danish Nayyar and Najiullah Siddique, advocates
Respondent No.1	Through Mr. Ghulam Abbas Sangi, Assistant Attorney General
Respondents 2&3:	Through Mr. Gul Hassan Panhwar, Advocate
Date of hearing	10.11.2026
Date of Decision	10.11.2026

O R D E R

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ADNAN-UL-KARIM MEMON J:- The petitioner, a private limited company is engaged in the business of textile manufacturing, has filed the instant Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, challenging the demand notice dated 03.03.2025, issued by the Employees Old-Age Benefits Institution (EOBI), demanding Rs.3,25,81,080/- as arrears of revised contributions for the period from June 2013 to December 2024, along with the consequential warrant of distraint of movable property issued on the same date.

2. Learned counsel for the petitioner submits that the petitioner is duly registered with EOBI and has regularly deposited contributions in respect of its 300 to 500 insured employees. However, the respondents have arbitrarily calculated additional contributions on the basis of enhanced minimum wages, without conducting any inquiry, determining the actual liability, or providing a proper calculation. It is contended that the enhancement of minimum wages under the Federal Government notification dated 17.02.2016 did not apply to Sindh and the matter is also pending adjudication before the Hon'ble Supreme Court. Learned counsel further submits that the respondents issued the demand notice and warrant of distraint simultaneously, without affording an opportunity of hearing or determining the liability in accordance with Sections 12 and 13 of the EOBI Act, 1976. Such action, including coercive recovery under the Land Revenue Act, 1967, is without lawful authority, arbitrary and violative of Article 18 of the Constitution. It is further contended that the petitioner is not required to exhaust the remedies

under Sections 33 to 35 of the Act, as the impugned action is without jurisdiction. Accordingly, the petitioner seeks setting aside of the demand notice and warrant of distraint and restraint against coercive recovery. He has relied upon (i) 1988 PLD SC 67, (ii) 1999 SCMR 1072, (iii) 1999 SCMR 1881, (iv) 2022 PLD 1163 and (v) 1990 PLC 21 Quetta High Court. he prayed to allow this petition.

3. Conversely, learned counsel for the respondents submits that EOBI is a statutory institution established under the EOBI Act, 1976, for providing social security benefits to insured employees and their families. The petitioner was/is legally bound to deposit contributions at six per cent of the applicable minimum wages, whereas it continued depositing contributions at the previous rates of Rs.170/- to Rs.480/- per employee per month instead of the applicable enhanced rate as per law. It is contended that the petitioner deposited such amounts through ordinary bank deposit slips in EOBI's Investment Account rather than through the prescribed online facilitation system and PR-03 payment slips, without furnishing the requisite particulars of insured employees and contribution periods. Learned counsel further submits that, following the judgments of this Court in M/s Dairy Land (Pvt.) Limited v. Federation of Pakistan (CP No.D-1995/2016), decided on 03.12.2021, M/s Aziz Tabba Foundation (CP No.D-1567/2022), decided on 14.12.2022, and M/s Matco Foods (CP No.D-7347/2022), decided on 14.02.2023, the employers are liable to pay contributions based on enhanced minimum wages. It is argued that the petitioner is liable to pay the differential contribution along with statutory increase under Section 13 of the Act, 1976, and Rule 4 of the EOBI (Contributions) Rules, 1976. The demand has been calculated on the basis of the petitioner's declared insured employees and the short-paid contributions. It is further contended that the petition is not maintainable as the petitioner has failed to avail the statutory remedies provided under Sections 33 to 35 of the Act, 1976. Accordingly, dismissal of the petition with costs and direction for payment of outstanding contributions along with statutory increase has been sought.

4. Learned Assistant Attorney General adopts the submissions advanced by learned counsel for EOBI and submits that the instant petition is misconceived, as the impugned demand has been raised in exercise of statutory powers conferred upon EOBI under the Employees' Old-Age Benefits Act, 1976. He contends that under Section 9 of the Act, 1976, every employer is legally obligated to pay monthly contributions at the rate of six per cent of the wages of each insured employee, calculated in accordance with the applicable minimum-wage legislation. The petitioner, having employed 300 to 500 insured persons, cannot avoid its statutory liability merely on the ground that it had been depositing contributions at the previously applicable rates. Learned AAG further submits that the controversy regarding the applicability of enhanced minimum wages and the corresponding liability of employers to pay revised EOBI contributions has already been examined

by this Court in M/s Dairy Land (Pvt.) Limited v. Federation of Pakistan and others (2021 SHC KHI 620), wherein the connected constitutional petitions were dismissed, inter alia, because the petitioners had not exhausted the statutory remedies available under the Act, 1976, and had challenged the notification dated 17.02.2016 without assailing the vires of the amending legislation under which it was issued. He further relies upon M/s Aziz Tabba Foundation v. Federation of Pakistan and others, wherein this Court declined to grant relief against similar demand notices, holding that the controversy concerning the notification dated 17.02.2016 had already been adjudicated by this Court and was pending before the Hon'ble Supreme Court, without any restraining order operating against EOBI. Learned AAG also places reliance upon the judgment in M/s Matco Foods Limited and others v. Federation of Pakistan and others C.P. No.D-7347/2022 and connected petitions, order dated 22.02.2023, wherein this Court, after examining Sections 2(p) and 9 of the Act, 1976, the effect of the 18th Constitutional Amendment, the Minimum Wages legislation and the judgment of the Hon'ble Supreme Court reported as PLD 2017 SC 28, held that the determination of minimum wages for the purpose of EOBI contributions could not be divorced from the applicable minimum-wage framework. It was further observed that, following the judgment in M/s Dairy Land (Pvt.) Limited, EOBI was entitled to continue the prevailing mechanism of collecting contributions until the relevant provincial mechanism became operational. This Court also relied upon Shams Textile Mills Limited and others (1999 SCMR 1477), holding that social security contributions should not be less than the remuneration payable under the Minimum Wages legislation. Accordingly, the challenge to the enhanced contribution rates was dismissed, particularly in view of the failure of the employers to avail the remedies under Sections 33, 34 and 35 of the Act, 1976. Learned AAG contends that the petitioner is attempting to circumvent the statutory mechanism by directly invoking the constitutional jurisdiction of this Court, whereas any dispute regarding the correctness of the assessment, computation of arrears, number of insured employees or adjustment of amounts already deposited is required to be raised before the competent authority under Section 33 of the Act, followed by review under Section 34 and appeal under Section 35 thereof. He further submits that the mere pendency of proceedings before the Hon'ble Supreme Court against the judgment in M/s Dairy Land (Pvt.) Limited does not suspend the operation of the judgment or restrain EOBI from recovering the contributions, particularly when no interim restraining order has been passed by the Hon'ble Supreme Court. As regards the allegation of arbitrary calculation and issuance of the warrant of distraint, learned AAG submits that the petitioner cannot claim immunity from its statutory financial obligations merely by disputing the demand. However, the respondents are required to demonstrate that the amount claimed has been calculated in accordance with the applicable statutory provisions and that the recovery proceedings have been initiated through the procedure prescribed by law. He,

therefore, submits that the petitioner has failed to establish any jurisdictional defect warranting interference under Article 199 of the Constitution. Accordingly, he prays for dismissal of the petition.

5. We have heard learned counsel for the parties and have examined the available record.

6. The controversy requiring determination is whether the respondents were legally justified in raising the impugned demand of Rs.3,25,81,080/- towards alleged differential EOBI contributions and statutory increase for the period from June 2013 to December 2024, and initiating recovery proceedings through a warrant of distraint dated 03.03.2025.

7. It is an admitted position that the petitioner is a registered establishment under the Employees' Old-Age Benefits Act, 1976, and that contributions in respect of its insured employees were deposited during the relevant period. The dispute, therefore, is not regarding the petitioner's liability to contribute under the Act, but relates to the alleged short payment arising from the application of enhanced minimum wages and the consequential statutory increase.

8. Under Section 9 of the Act, 1976, the employer is liable to pay contributions at the prescribed rate in respect of every person in insurable employment, whereas Section 9-B provides for the contribution payable by an insured person. However, such liability must be determined and recovered strictly in accordance with the procedure prescribed by law. Section 12 provides the mechanism for assessment of contributions, including assessment based on available evidence where an employer fails to maintain the requisite records or submit returns, thereby making it difficult to ascertain the identity of insured persons or the amount of contribution payable.

9. In the present case, the respondents maintain that the petitioner deposited contributions at the previous minimum wage rates instead of the enhanced rates and that the amounts deposited in the Investment Account could not be treated as valid payment of contributions. Conversely, the petitioner asserts that it regularly deposited contributions and that the respondents failed to undertake any lawful determination of the alleged differential liability. Such competing assertions raise questions of fact and law, particularly regarding the applicable minimum wage rates, the number of insured employees, the amounts actually deposited and the period for which any differential contribution may be recoverable.

10. The power conferred upon EOBI under Section 12(3) cannot be exercised arbitrarily or in disregard of the statutory safeguards. Where the employer has maintained records and submitted returns, the respondents are required to examine the relevant record and determine the actual contribution payable in accordance

with the Act and the applicable regulations. Even where assessment under Section 12(3) becomes necessary, the assessment must be supported by relevant material and a rational basis. A mere assertion that contributions were deposited at an earlier rate, without disclosing the period-wise calculation, number of insured employees, applicable wage rates and payments adjusted, cannot by itself constitute a lawful determination of liability.

11. As regards the applicability of enhanced minimum wages, the judgments of this Court in M/s Dairy Land (Pvt.) Limited, M/s Aziz Tabba Foundation and M/s Matco Foods, relied upon by the respondents, cannot be ignored. The respondents are entitled to rely upon the law declared therein while determining the contributions payable by the petitioner. The mere pendency of appeals before the Hon'ble Supreme Court does not, by itself, render the judgments of this Court inoperative, unless their operation has been suspended or a contrary declaration of law has been made by the superior Court. Therefore, the petitioner's objection regarding the applicability of enhanced minimum wages cannot be accepted merely on the ground that the matter is pending before the Hon'ble Supreme Court.

12. Nevertheless, the applicability of enhanced minimum wages does not dispense with the statutory obligation of the respondents to determine the actual liability of the petitioner in accordance with law. The respondents must establish the differential amount payable after giving due credit for all contributions actually received, irrespective of the account in which such amounts were deposited, subject to verification and their lawful adjustment. The mere fact that payments were deposited in the Investment Account rather than through the prescribed online facilitation system may constitute non-compliance with the prescribed payment procedure; however, such circumstance alone cannot justify forfeiture or disregard of amounts actually received by the Institution.

13. So far as the statutory increase is concerned, Section 13 of the Act, 1976, read with Rule 4 of the EOBI (Contributions) Rules, 1976, authorizes the respondents to impose an increase upon contributions remaining unpaid beyond their due dates, subject to the statutory maximum of fifty per cent. Such increase is a statutory consequence of delayed payment and is not dependent upon proof of mala fide intention on the part of the employer. However, the respondents must first establish the principal contribution legally payable, determine the actual period of default and calculate the increase strictly in accordance with the prescribed rate and statutory ceiling. No statutory increase can be sustained on an amount which has neither been lawfully determined nor found to be outstanding after adjustment of payments already received.

14. We further find that the recovery of contributions as arrears of land revenue under Section 13(2) of the Act, 1976, read with the relevant provisions of the Land

Revenue Act, 1967, is a consequential remedy and cannot be exercised independently of a lawful determination of the amount due and payable. The principle laid down by the Hon'ble Supreme Court in Agricultural Development Bank of Pakistan v. Sanaullah Khan and others (PLD 1988 SC 67) supports the proposition that before invoking recovery proceedings as arrears of land revenue, the liability sought to be recovered must first be duly ascertained and determined by the competent authority.

15. An additional circumstance requiring consideration is that the demand notice and warrant of distraint were issued on the same date, i.e., 03.03.2025, whereas the demand notice itself afforded the petitioner fifteen days to make payment. In the absence of any material demonstrating an independent lawful basis for immediate recovery, issuance of a warrant of distraint simultaneously with a demand notice allowing fifteen days for compliance appears premature and inconsistent with the opportunity expressly afforded to the petitioner. The respondents cannot, on the one hand, allow time for payment and, on the other, simultaneously initiate coercive recovery without establishing that the amount has become recoverable in accordance with law.

16. We are also mindful of the preliminary objection regarding the availability of statutory remedies under Sections 33, 34 and 35 of the Act, 1976. It is settled law that constitutional jurisdiction under Article 199 of the Constitution is ordinarily not exercised where an adequate and efficacious statutory remedy is available. However, such rule is not absolute and does not preclude interference where the impugned action is patently without lawful authority, suffers from a jurisdictional defect or has been taken in violation of the principles of natural justice. Nevertheless, the existence of disputed questions relating to the number of insured employees, applicable wage rates, payments made and calculation of differential contributions ordinarily falls within the domain of the statutory forum constituted under the Act.

17. In the circumstances, we are of the considered view that the petitioner cannot claim complete exemption from payment of contributions merely because it had deposited amounts at the previously applicable rates or through a different banking channel. Equally, the respondents cannot enforce an unverified or inadequately determined demand through coercive recovery proceedings without first establishing the petitioner's actual outstanding liability in accordance with the statutory procedure.

18. Consequently, without prejudice the rights of the parties, the instant petition is disposed of with the following directions:

i. Respondent No.2 shall provide the petitioner with a complete and period-wise statement of account, reflecting the number of insured

employees, applicable minimum wage rates, contributions payable, amounts already deposited and the differential amount, if any, outstanding against the petitioner.

ii. The respondents shall afford the petitioner an opportunity of hearing and verify all receipts and deposits made by it, including those deposited in the EOBI Investment Account, before passing a speaking order determining the actual liability under the relevant provisions of the Act, 1976.

iii. The question of statutory increase under Section 13 of the Act, 1976, shall also be reconsidered and determined strictly in accordance with law, after establishing the principal amount actually outstanding and the period of default, while ensuring that the statutory ceiling is not exceeded.

iv. Until such determination is made and communicated to the petitioner, the impugned warrant of distraint dated 03.03.2025 shall remain in abeyance, and no coercive recovery shall be undertaken pursuant thereto. The aforesaid exercise shall be undertaken within three weeks postevely.

v. In case the petitioner remains aggrieved by the determination made by the competent authority, it shall be at liberty to avail the remedies available under Sections 33, 34 and 35 of the Act, 1976, in accordance with law.

19. Needless to observe that the above exercise shall not be construed as an exemption from the petitioner's statutory obligation to pay contributions lawfully due in respect of its insured employees, nor shall it prejudice the respondents' right to recover any amount found payable after lawful determination.

20. The petition stands disposed of in the above terms, along with pending applications, if any. There shall be no order as to costs.

Copy of this order be communicated to all concerned for compliance in time.

JUDGE

JUDGE

Sajjad Ali Jessar