

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-879 of 2000

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Zafar Ahmed Rajput

J U D G M E N T

Dates of hearing: 07.04.2016 and 15.04.2016.

Petitioner: Shell Employees Union through Mr.Shahenshah Hussain, Advocate. _____.

Respondent No.1: Government of Pakistan through Mr. Asim Mansoor Khan, Deputy Attorney General for Pakistan. _____.

Respondent No.2: Shell Pakistan Limited through Mr. Kashif Paracha, Advocate. _____.

IRFAN SAADAT KHAN, J. This petition was admitted for regular

hearing on 26.3.2004 to consider the following points:-

"i) *Whether the petitioner is the aggrieved person.*

ii) *Whether the Respondent No.2 is subject to deposit of interest accrued on funds."*

2. Briefly stated, the facts of the case are that the petitioner is a trade union of the workers employed by Respondent No.2 and is registered under the Industrial Relations Ordinance, 1969 (**the Ordinance**) with Respondent No.1. The petitioner is also a Collective Bargaining Agent (CBA) for the establishment of the Respondent No.2. As per the provisions of Section 3 of the Companies Profits (Workers Participation) Act, 1968 (**the Act**) it was incumbent upon the Respondent No.2 to establish a

scheme for Workers' Participation Fund (**WPF**) and to pay to that fund every year a prescribed percent i.e. 5% of its profit towards the said fund. All the workers of the companies are eligible to participate in the fund and are also entitled to their respective shares in the annual allocation to the fund. As per the schedule of the Act the entire income of the fund is to be distributed amongst its workers and excess if any shall be transferred to the Workers Welfare Fund (**WWF**). The management of the fund is entrusted to a Board of Trustees constituted under Section 4 of the Act. The Board consists of two trustees elected by the workers among themselves and two trustees nominated by the management of the company. These trustees have the power to elect a Chairman of the Board from amongst themselves for a period of one year. The only dispute which has arisen in the present petition is with regard to whether the interest accrued on the investment made by the Board out of the surplus of the fund has to be distributed among the workers or to be transferred to the WWF.

3. Mr. Shahenshah Hussain, learned counsel, has appeared on behalf of the petitioner and submitted that the purpose of creation of fund is to provide benefit to the workers. He has submitted that it is only the amount which remains after the distribution of fund among the workers becoming entitled in that year which is to be transferred to the WWF and not anything else. He in this behalf read out the relevant provisions of the Act and submitted that from the reading of above provisions of law, as specifically mentioned in the Act, the interest accrued on the amounts invested by the Board also has to be distributed among the workers and could not be transferred to WWF. The learned counsel further stated that this issue came-up for hearing before the Hon'ble Supreme Court of Pakistan in two judgments in National Tanker Company (Pvt.) Limited and another v. Federal Government of Pakistan (**2006 SCMR 1059**) and

Dilshad Hussain and another v. Islamic Republic of Pakistan (**2005 SCMR 530**) and, therefore, requested that the instant petition may be disposed of in the same terms as has already been decided by the Hon'ble Supreme Court of Pakistan in the above referred two judgments.

4. Mr. Asim Mansoor Khan, the learned DAG, has appeared for Respondent No.1 and has vehemently refuted the arguments of learned counsel for the petitioner and submitted that the definition of worker given in the Act is different from the definition of worker as given in the Ordinance. He submitted that all the employees working in the Respondent No.2-company fall under the definition of worker, as given in the Act, hence are not eligible for the grant of the relief as provided under Section 3 of the said Act. He further submitted that the interpretation placed by the learned counsel for the petitioner is misplaced since it is only the profits of the company which are to be distributed among the workers and not the amount of any profit/interest accrued on the investment of the fund made by the Board. He has submitted that there is no dispute between the petitioner and Respondent No.1 with regard to the distribution of the allocated amount to the workers but the only dispute between them is whether the profit/markup accrued on the investment made by the Board on the surplus of the said fund could also be distributed among the workers or not? He submitted that from the reading of different sections of the law specially Section 2(f), Clauses 3 and 4(d) of the Schedule it would become evident that the workers are not entitled for the interest/profit accrued on the amounts invested by the Board as the said interest/profit accrued on the investment made by the Board also has to be transferred to the WWF and could not be distributed among the workers. The learned DAG further submitted that the Respondent No.2 is allocating the fund in the prescribed percentage of the profits of the company in accordance with law and is not illegally obliged

to distribute the profit/interest accrued on the investment made by the Board to the workers. He further submitted that the decisions relied upon by the learned counsel for the petitioners are distinguishable. In the end he has submitted that no illegality has been committed by Respondent No.2 hence the instant petition may be dismissed.

5. Mr. Kashif Paracha appeared on behalf of Respondent No.2 and has adopted the arguments of learned DAG for Respondent No.1 and submitted that as per the understanding of the law of the Respondent No.2 they are not legally obliged to distribute the profit/interest accrued on the surplus amount invested by the Board of the funds of the said scheme and hence this petition is liable to be dismissed. In support of his contention the learned counsel has placed reliance upon the decision given in *Messrs Aventis Ltd., Karachi v. Ministry of Labour, Manpower and Overseas Pakistanis Labour and Manpower Division, Government of Pakistan and another* (**2011 PLC 1**). In the alternative, the learned counsel stated that whatever orders are passed by this Court would be complied with by the said respondent No.2 in letter and spirit.

6. Mr. Shahenshah Hussain, learned counsel for the petitioner, in his rebuttal has reiterated his earlier submissions and stated that the learned counsel for Respondent No.1, though, has referred to Clause 4(f) of the Schedule but has not read Clause 5(f) of the said schedule. He in the end has stated that in view of the above provisions of law the instant petition may be allowed with costs.

7. We have heard all the learned counsel for the parties at considerable length and have also perused the record and the case law cited before us.

8. Before proceeding any further we would like to reproduce hereinbelow the relevant Sections 2, 3 and 4 of the Act and paragraphs 2, 4 and 5 of the Scheme set out in the schedule of the Act:

Sections 2, 3 and 4 of the Act:

2. Definitions. – In this Act, unless there is anything repugnant in the subject or context, -

- (a)
- (b)
- (i)
- (ii)
- (c) **“Fund”** means a Workers’ Participation Fund established under Section 3;
- (d)
- (dd)
- (e)
- (f) “worker” in relation to a company means an employee of the company, including employed by or through the contractors, who falls within the definition of a worker as defined in clause (xxx) of section 2 of the Industrial Relations Ordinance, 2002 (XCI of 2002) and has been working for or in the company for a period of not less than six months.

3. Establishment of Fund. – (1) Every company to which the scheme applies shall –

- (a) establish a Workers’ Participation Fund in accordance with the scheme as soon as the accounts for the year in which the scheme becomes applicable to it are finalized, but not later than nine months after the close of that year;
- (b) subject to adjustments, if any, pay every year to the Fund not later than nine months after the close of that year, five per cent of its profits during such year; and
- (c) furnish to the Federal Government and the Board, not later than nine months after the close of every year of account, its audited accounts for that year, duly signed by its auditors.

(2) The amount paid to the Fund under clause (b) of subsection (1) in relation to a year shall be deemed to have been allocated to the Fund on the first day of the year next succeeding that year.

4. Management of the fund. – (1) As soon as may be, but not later than two months, after the establishment by a company of a Fund under section 3, there shall be constituted a Board of Trustees consisting of the following trustees, namely :-

- (a) two persons elected by the workers of the company from amongst themselves; and
- (b) two persons nominated by the management of the company of whom at least one shall be a person from the accounts branch of the company.

(2)

(3)

(4)

(5) The Board shall manage and administer the Fund in accordance with the provisions of this Act, the scheme and any rules made in this behalf.

Paragraphs 2, 4 and 5 of the Scheme:

"2. Investment of Fund. – (1) The amount allocated or accruing to the Fund shall be available to the company for its business operations. The company may, however, request the Board to utilize the amount in the Fund for investment under sub-paragraph (7) and the Board may decide to so invest the amount."

"4. Distribution of benefits to workers. -

(a)

(b)

(c)

(d) Notwithstanding anything contained in this scheme, no worker shall, in any one year, be entitled out of the annual allocation to units exceeding the amount of four times of the minimum wages for unskilled workers as given in the schedule of Minimum Wages for Unskilled Workers Ordinance, 1969 (W.P. Ord. XX of 1969) in value in so far as such allocation is relatable to clause (b) of sub-section (1) of section 3. Any amount left out of the annual allocation after the units have been so allocated shall be transferred to the Fund constituted under section 3 of the Workers' Welfare Fund Ordinance, 1971 (XXXVI of 1971). No part of such amount shall be deemed to be included in the net asset value of the Fund established under this Act and no individual worker shall have any lien on this amount by virtue of holding any units."

5. Disbursement of benefits. – The disbursement of the benefits from the Fund shall be as under:-

- (a) 100 per cent of the annual income of the Fund, including capital gains realized, shall be distributed each year to workers in proportion to their units of entitlement;
- (b) A worker who voluntarily leaves the employment of the company or whose service are terminated shall be entitled to receive 100 per cent of the net asset value of the units standing in his name;

* * * * *

- (f) A worker who continues in the service of the company shall be entitled to receive 100 per cent of the net asset value of the units in his name each year or he may choose to leave his share in the Fund:

Provided that a worker while in employment may choose to encash all the units standing in his name at any time at his discretion; and

- (g) A worker, in the event of his retirement or, his nominated beneficiary, in the event of the worker's death (from whatsoever cause) while in the employment of the company, shall receive 100 per cent of the net asset value of the units standing in the worker's name."

9. It is noted that since it was the claim of the petitioners that they have not been given due share from the funds on the basis of incorrect interpretation placed by Respondent No.1 and since they are entitled to the benefits derived out of the profits /mark-up earned on the investment made by the Board, in our view, the petitioners fall under the category of aggrieved person. Hence, so far as the question No.1 is concerned we answer the same in affirmative by holding that the petitioners are aggrieved person.

10. So far as the question No.2 is concerned, in our view, the only point which requires determination by this Court is whether the petitioners are entitled for the profits accrued on the amount invested by the Board. So far as the issue whether the workers of Respondent No.2 fall under the

definition of worker or not, it is an admitted position on behalf of Respondent No.1 that the workers who fulfill the conditions clearly mentioned in Section 2(f) of the Act are entitled for the benefits from the scheme and hence so far as the contention raised by the learned counsel for Respondent No.1 with regard to the status that all employees working with Respondent No.2 do not fall under the definition of worker is found to be not an issue requiring deliberation in the instant petition and therefore the objection of Respondent No.1 raised in this behalf is hereby rejected. However, it would remain open to the Respondent No.2 to grant benefit of the scheme only to the employees who fall under the definition of "worker" as specifically mentioned in the Act. As far as the aspect of the interpretation that whether the Respondent No.2 is obliged to deposit the interest /profit accrued on the investment made by the Board with regard to the surplus fund is concerned, in our view the answer to this question has already been given by the Hon'ble Supreme Court of Pakistan in the decision of National Tankers Company, referred above, wherein the Hon'ble Apex Court has decided the issue as under:

"6. For the foregoing reasons, this appeal is hereby partly accepted and the judgment impugned is modified to the extent that on compliance by the appellant No.1 with the provisions of the Act of constitution of the Board of Trustees, as pointed out in the impugned judgment of the High Court and intimation to the Federal Government, the amount of profit credited to the Government shall be paid to the said Board of Trustees for distribution to the workers of the appellant No.1-Company. As to what is the exact amount of profit, if there is a dispute, the same shall be settled between the appellant No.1 and Board of Trustees on the one hand and Federal Government on the other hand, after going through the relevant record and accounts. There shall be no order as to costs." (Underline ours)

The Hon'ble Supreme Court of Pakistan in case of Dilshad Hussain (supra) has observed as under:

"10. It is pertinent to mention here that High Court of Sindh, in its earlier judgment pronounced in C.P. No.D-682 of 1991, while taking into consideration the above provisions of para.5, has opined

that "the worker is entitled for the interest which has accrued on the investment of allocated funds" but in the subsequent judgment, learned Division Bench did not agree with this conclusion in the case of National Tanker Company (Pvt.) Ltd. (ibid) as petition filed by the company was dismissed on 3rd March, 1998. However, this judgment was challenged before this Court in Civil Appeal No.1231 of 1998 and vide judgment dated 18th February, 1998, authored by Mr. Justice Munir A. Sheikh (as he then was) it has been concluded that:--

"(5) The High Court was justified in law in not granting relief of the refund of the said amount at present on account of noncompliance of the provisions as to constitution of the Board of Trustees and intimation of their names to the Government and other formalities as mentioned in the judgment under appeal but the fact remains that the amount, profits accrued on the amount, is to be paid to the workers of the company after compliance with the provisions of law."

Therefore, in view of above judgment of the Court, we are persuaded to hold that the amount of profit accrued on the allocated fund has to be paid to the workers of the company, after compliance with the provisions of law."

11. So far facts of the decision given in the case of Messrs Aventis Ltd. (supra) is concerned, the same is found to be distinguishable as in this judgment the issue of distribution of profit to the workers was left unanswered by observing as under:

"28. However since no arguments in respect of the interest took place, and rightly so because the impugned letter dated 10-2-2005 does not refer to the interest and is therefore only in respect of allocation we leave this question for determination in an appropriate case.

Hence, in our view, this case is of no help to the Respondent No.2.

12. We, therefore, in view of what has already been observed by the Hon'ble Supreme Court of Pakistan in the above referred two judgments hold that the profits accrued on the investment made by the Board is to be distributed among the workers of the company and the amount, if any, already credited in this regard to the Government is to be refunded to the Board for distribution among the workers. Since the matter requires calculation, we, therefore, give two months' time to the Respondent No.1

for doing the needful from the date of the announcement of this judgment.

13. Petition stands allowed in the above terms. Listed applications stand disposed of accordingly.

JUDGE

JUDGE

Karachi:

Dated: _____.