

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.

CONST. PETITION NO. D-5366 to 5368 OF 2021

CONST. PETITION NO. D-5406 to 5411 OF 2021

CONST. PETITION NO. D-5562 to 5569 OF 2021

CONST. PETITION No. D-6406 of 2022

Dated

Order with signature of Judge.

30.03.2023

Mr. Mamoon N. Chaudhry, Advocates for the Petitioners.

Mr. Kazi Abdul Hameed Siddiqui, DAG

Mr. Hassan Akbar, Advocate General Sindh along with Mr. Jawad Dero and Mr. Saifullah, Additional Advocates General, and Syed Shahid Ali, Additional Secretary (Res) Finance, Department, Government of Sindh and Mr. Sikandar Hasan, Chief Law Officer, Finance Department, Government of Sindh.

Syed Masroor Ahmed Alvi Advocate for the Respondent in CP No. D-6406/2022 along with Mr. Asim Iqbal, OG-1, State Bank of Pakistan and Mr. Manzoor-ul-Haq and Mr. Alam Zaib, Law Officers, State Bank of Pakistan

Mr. Zamir Ahmed Jagirani, Cane Commissioner Sindh

Mr. Abdul Samad Shaikh, Incharge Legal matters Agriculture Department and Mr. Muhammad Idrees Khoso, Additional Secretary (Tech) Agriculture Department, Government of Sindh

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The Petitioner sugar mills seek settlement of certain claims said to be pending in respect of freight support/subsidy in terms of the Office Memoranda bearing No. F.No. 7(2)/2012- Exp. III dated 03.10.2017 and No. F.No. 7(2)/2012- Exp. III dated 07.12.2017 issued by the Ministry of Commerce, whereby it was communicated that the ECC of the Cabinet in Case No. ECC-96/19/2017 dated 14.09.2017 had allowed export of 0.5 MMT of sugar, subject to fulfillment of certain conditions, which was later enhanced by allowing sugar mills to export an additional 1,500,000 MT of sugar, with it inter alia being stated that:

- i. As recommended by Sugar Advisory Board (SAB) of Ministry of Industries and Production (MoIP), a cash freight support of Rs 10.70/kg may be given to the sugar millers on export of sugar subject to the condition that the said amount of freight support will be given on a sliding scale between the international price of US\$376/MT (as on 08.09.2017) and \$499/MT (the international sugar price which equals with the cost of production as calculated by the MoIP) i.e. once the price reaches at the level of \$499/MT in international market, the State Bank of Pakistan would effect the stoppage of the freight support. On issuance of any export

quota, the State Bank of Pakistan shall record the prevalent international price on the date of issuance of quota and calculate the amount of freight support that the exporter would become eligible to on utilization of export quota.

- ii. ...
- iii. Freight support will be shared by the federal and provincial governments on 50:50 basis.”

Per the Petitioners, in pursuance of the aforementioned Office Memoranda, they each exported a certain quantity of sugar, with their claims in that regard being verified by the State Bank of Pakistan (the “**SBP**”). However, whilst the Federal Government released its share of the freight subsidy, the Provincial Government repeatedly failed pay its share in respect thereof, hence these Petitions seeking that the Respondents 1 to 3 (i.e. the Province of Sindh, the Secretary Agriculture, Supply and Prices, and the Secretary Finance respectively) be directed to approve and settle those pending claims.

During the course of proceedings, the exercise of reconciliation of dues had been carried out by the SBP, with it being stated however that settlement had earlier been held in abeyance in light of certain orders made by the Honourable Supreme Court in HRC-39216/G2018, whereby a Joint Investigation Team (“**JIT**”) had been constituted, which had in turn placed a caution against the release of any subsidy, especially in the tractor manufacturing, sugar or captive power industries, to any business entity related to the OMNI Group or to one Anver Majid and his family without the JIT’s permission and advised that any subsidy approved but not yet disbursed or any cheque issued in that regard be cancelled/recalled. As such, in the wake of a blanket denial on the part of the Petitioners as to any such nexus, we had nonetheless sought to satisfy ourselves by calling for verification in the matter from the National Accountability Bureau (“**NAB**”), which was said to have since taken over the matter.

Following issuance of notice to the Chairman NAB, a statement then came to be filed by the Special Prosecutor NAB, under signature the DG NAB, Karachi, reflecting that the Petitioner sugar mills were not connected to Anver Majid, his family, or the OMNI Group.

Under such circumstances, it was stated today by the learned Advocate General that in compliance with the decision of Sindh Cabinet and Sub-Committee on financial matters, the Finance Department, Government of Sindh had earlier released funds amounting to Rs.2,91,675 Million in the financial year 2019-2020 vide Finance Department's advice No.F.D/(Res-II)12(2)/2007, dated 09.03.2020, being the Provincial share for payment of the outstanding claims of the Petitioners on account of cash freight support against export of sugar, and funds were placed at the disposal of SBP with the advice to maintain a complete record of all payments and ensure that all condition/criteria for release of funds be adhered to, however, for the aforementioned reasons the aforesaid funds were not disbursed and lapsed at the end of the financial year. He and Mr. Syed Shahid Ali, Additional Secretary, Finance Department, Government of Sindh, who is also present in Court, jointly state that in the wake of the clarification forthcoming from the NAB, the required funds would again be allocated in the forthcoming budget for the next financial year and placed at the disposal of the SBP for disbursement to the genuine claimants in accordance with law. They submit that the Petitions may accordingly be disposed of.

Under such circumstances and in light of the statements made by the learned AG and Additional Secretary, Finance, learned counsel for the Petitioners concedes to such disposal provided that an appropriate timeframe is set for allocation and settlement.

In view of the foregoing, the Petitions stand disposed of with the directions to the Respondents to ensure that all requisite steps are taken and completed for settlement of the reconciled claims of the Petitioners within the first quarter of forthcoming financial year. The office is directed to place a copy of this order in the connected petitions.

CHIEF JUSTICE

JUDGE

Amjad PS