

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D – 265 of 2024

Along with

C. Nos. D – 266, 267, 297, 298, 299, 300, 310, 321, 323, 324, 325, 326,
327, 328, 353, 373, 374, 382, 404, 428, 438, 460, 482, 497, 569, 584,
588, 653, 679, 727, 776, 778, 800, 828, 965, 988, 995, 1217, 1313, 1319,
1326, 1328, 1331, 1338, 1341, 1354, 1355, 1356, 1362, 1367 1383, 1441, 1412,
1430, 1506, 1577, 1737, 1790 & 1641 of 2024

<i>Date</i>	<i>Order with signature of Judge</i>
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PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI, C.J.

MR. JUSTICE ABDUL MOBEEN LAKHO.

- (1) Suraj Cotton Mills Limited & others
(C.P.No.D-265 of 2024)
- (2) Indus Dyeing & Manufacturing Co. Ltd.
(C.P.No.D-266 of 2024)
- (3) M/s Naveena Exports Ltd.
(C.P.No.D-267 of 2024)
- (4) M/s Pakistan Cables Ltd and Others.
(C.P.No.D-297 of 2024)
- (5) Latif Textile Mills Pvt Ltd and Others.
(C.P.No.D-298 of 2024)
- (6) M/s National Spinning Mills & Others.
(C.P.No.D-299 of 2024)
- (7) Union Apparel Pvt. Ltd.
(C.P.No.D-300 of 2024)
- (8) M/s Akhtar Textile Ind Ltd and Others.
(C.P.No.D-310 of 2024)
- (9) Lucky Cement Ltd & another.
(C.P.No.D-321 of 2024)
- (10) M/s Afetex Industries & Others.
(C.P.No.D-323 of 2024)
- (11) Nazeer Dyeing.
(C.P.No.D-324 of 2024)

- (12) Artistic Garments Ind. Pvt Ltd.
(C.P.No.D-325 of 2024)
- (13) Amreli Steel Ltd and Others.
(C.P.No.D-326 of 2024)
- (14) M/s Ismail Ind Ltd and Others.
(C.P.No.D-327 of 2024)
- (15) M/s Uni Bro Industries.
(C.P.No.D-328 of 2024)
- (16) Quality Dyeing & Finishing Pvt. Ltd. and Others.
(C.P.No.D-353 of 2024)
- (17) M/s Humera Industries & Others.
(C.P.No.D-373 of 2024)
- (18) Feroze 1888 Mills Ltd and Others.
(C.P.No.D-374 of 2024)
- (19) M/s Noor Processing & Another.
(C.P.No.D-382 of 2024)
- (20) ANY Textile Mills.
(C.P.No.D-404 of 2024)
- (21) M/s Star Beeds Works & Others.
(C.P.No.D-428 of 2024)
- (22) M/s Oxygen Pvt. Ltd.
(C.P.No.D-438 of 2024)
- (23) Zubair Silk Mills & Others.
(C.P.No.D-460 of 2024)
- (24) Fazal Sardar Textile Mills & Others.
(C.P.No.D-482 of 2024)
- (25) M/s Ganitex Industries.
(C.P.No.D-497 of 2024)
- (26) M/s Gatron (Ind) Ltd and Others.
(C.P.No.D-569 of 2024)
- (27) M/s Prime Pack Industries and Others.
(C.P.No.D-584 of 2024)
- (28) Quality Impex & Other.
(C.P.No.D-588 of 2024)
- (29) Combined Industries & Others.
(C.P.No.D-653 of 2024)

- (30) Arbi Industries and Others.
(C.P.No.D-679 of 2024)
- (31) Anoud Power Generation Ltd.
(C.P.No.D-727 of 2024)
- (32) Nagaria Textile Mills Pvt. Ltd and Others.
(C.P.No.D-776 of 2024)
- (33) M/s Siddiqsons Ltd and Others.
(C.P.No.D-778 of 2024)
- (34) Arabian Textile Mills and Others.
(C.P.No.D-800 of 2024)
- (35) M/s United Industries and Others.
(C.P.No.D-828 of 2024)
- (36) Crescent Steel & Allied Products Ltd.
(C.P.No.D-965 of 2024)
- (37) Grain Food Industry.
(C.P.No.D-988 of 2024)
- (38) Towellers Ltd.
(C.P.No.D-995 of 2024)
- (39) Finishers Limited
(C.P.No.D-1217 of 2024)
- (40) Indus Dyeing & Manufacturing Co. Ltd. & others
(C.P.No.D-1313 of 2024)
- (41) Lucky Tex Pakistan (Pvt.) Ltd.
(C.P.No.D-1319 of 2024)
- (42) Continental Biscuits Ltd.
(C.P.No.D-1326 of 2024)
- (43) M/s.Hamsons Industries & others.
(C.P.No.D-1328 of 2024)
- (44) Unique Spinning Mills & others.
(C.P.No.D-1331 of 2024)
- (45) M/s.Kalachee International Pvt. Ltd. & another
(C.P.No.D-1338 of 2024)
- (46) M/s.Dayamer Packages & others.
(C.P.No.D-1341 of 2024)
- (47) Mask Processing & others
(C.P.No.D-1354 of 2024)

- (48) Olympia Power Generation (Pvt) Ltd.
(C.P.No.D-1355 of 2024)
- (49) M/s.Uni Bro Industries Ltd. & others.
(C.P.No.D-1356 of 2024)
- (50) M/s.M.Y. Bari Mills (Pvt.) Ltd. & others.
(C.P.No.D-1362 of 2024)
- (51) Fazal Sardar & others.
(C.P.No.D-1367 of 2024)
- (52) M/s Lucky Cement Ltd.
(C.P.No.D-1383 of 2024)
- (53) M/s Mian Nazir Sons Industries & Others.
(C.P.No.D-1441 of 2024)
- (54) Fasion Art International & others
(C.P.No.D-1412 of 2024)
- (55) M/s.National Spinning Mills
(C.P.No.D-1430 of 2024)
- (56) Unique Weaving.
(C.P.No.D-1506 of 2024)
- (57) Adamjee Enterprises & Others.
(C.P.No.D-1577 of 2024)
- (58) Qasim Weaving & Others.
(C.P.No.D-1737 of 2024)
- (59) Hasanna Textile & Others
(C.P.No.D-1790 of 2024)
- (60) Hamid Textile Industries.
(C.P.No.D-1641 of 2024)
- (61) M/s.Ismail Industries Limited & others
(C.P.No.D-2319 of 2024).....Petitioners

Versus

Federation of Pakistan & others.....Respondents

Date of hearing 27.03.2024.**FOR PETITIONERS:**

Mr.Rashid Anwar, Advocate.
 Mr.Syed Mustafa Ali, Advocate
 Mr.Jawad A. Qureshi, Advocate
 Ms.Sofia Saeed Shah, Advocate.
 Mr.Umer Sikander, Advocate.
 Mr.Syed Mohsin Ali, Advocate
 Mr.Ameen Muhammad Bandukda, Advocate.
 Syed Mohsin Ali, Advocate.
 Mr.Shariq A. Razzak, Advocate.
 Mr.Zeeshan Naeem, Advocate.
 Mr.Abdul Karim Khan, Advocate.
 Mr.Sunder Lal, Advocate.
 Mr.Ahmed Faraj, Advocate
 Mr.Naeem Suleman, Advocate.
 Mr.Arshad Hussain Shahzad, Advocate.
 Mr.Muhammad Ahmer, Advocate.
 Mr.Taimur Ali Mirza, Advocate.
 Mr.Ali Nawaz Khuhawar, Advocate.
 Mr.Ali Raza, Advocate.
 Mr.Zeeshan Naeem, Advocate.
 Mr.Muhammad Khalid Tanoli, Advocate.
 Mr.Azizullah Khawaja, Advocate.

FOR RESPONDENTS:

M/s. Ijaz Ahmed Zahid, Advocate for SSGCL (Respondent No.3).
 Mr.Asim Iqbal, Syed Naseebullah Shah, and Mr.Farmanullah, Advocates
 for OGRA (Respondent No.2).
 Mr. Khaleeq Ahmed, Deputy Attorney General.
 Mr.Hasmatullah, Advocate.

JUDGMENT

All the listed cases involve a common legal question, hence, were heard together and being decided through this common judgment.

2. Brief facts of the case are that the petitioners, who are engaged in the business of manufacturing textile and other products are consumers of natural gas have challenged inter alia gas bills issued by SSGC (Sui

Southern Gas Company Ltd.) for the month of December, 2023 on the ground that presently applicable Gas Tariff Notification was issued on 8.11.2023 by OGRA sought to be enforced from 01.11.2023 with retrospective effect meaning that gas bills issued to the petitioners for the month of December, 2023, also include arrears from 01.11.2023 to 07.11.2023 at a revised rates mentioned in the Gas Tariff Notification dated 8.11.2023. Prior to Gas Tariff Notification dated 8.11.2023 the petitioners were required to pay gas charges as per Gas Tariff Notification dated 15.02.2023 till 07.11.2023, are provided as under:-

General Industrial	Rs.1,200 per MMBTU
Captive Power (General Industry)	Rs.1,200 per MMBTU
Export Oriented (General Industry)	Rs.1,100 per MMBTU
Export Oriented (Captive Industry)	Rs.1,100 per MMBTU

Whereas, after issuance of impugned notification dated 8.11.2023 by Respondent (OGRA) gas prices applicable to all petitioners were revised upwards as under:-

General Industrial	Rs.2,200 per MMBTU
Captive Power (General Industry)	Rs.2,500 per MMBTU
Export Oriented (General Industry)	Rs.2,100 per MMBTU
Export Oriented (Captive Industry)	Rs.2,400 per MMBTU

Similarly, on 15.02.2024 OGRA issued another Gas Tariff Notification revising the sale prices upward in respect of natural gas with retrospective effect from 01.02.2024 as illustrated hereunder:-

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Captive Power (General Industry)	Rs.2,750 per MMBTU
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Therefore, the petitioners have received their gas bills for the month of February, 2024 in March, 2024 with new revised rates for the period between 01.02.2024 to 14.02.2024 despite the fact that the increase in gas prices are only applicable from 15.02.2024 i.e. the date of impugned notification.

3. Learned counsel for the petitioners argued that it is settled law enunciated by the Hon'ble Supreme Court of Pakistan as well as learned Division Bench of this Court that gas price notification cannot operate retrospectively. He further argued that in addition to illegal practice of the Respondents retrospectively applying gas tariff notifications are only challenging the impugned bills for the month of December, 2023 to the extent of their retrospective application pertaining to the period between 01.11.2023 to 07.11.2023 and similarly the impugned bills received in March, 2024 with revised rates for the period between 01.02.2024 to 14.02.2024 on the ground that the impugned Notification dated 15.02.2024 is not retrospectively applicable from 01.02.2024. Learned counsel for the petitioner argued that the right accrued to the consumers cannot be withdrawn retrospectively through impugned Notification. Learned counsel for the petitioners further argued that earlier also such gas tariff notification applying retrospectively has been declared as unlawful and illegal to the extent of their retrospective effect and the executive actions cannot be applied retrospectively unless the same are beneficial in nature. In support of their contention, learned counsel for the petitioners have relied upon on the following case law:-

- (1) PLD 2001 S.C. 340 (Anoud Power Generation Limited....v....Federation of Pakistan and others)**
(2) 2020 CLC 851 (Sindh Petroleum & CNG Dealers Association & others.....v.....Federation of Pakistan & others)

4. On the other hand, learned counsel for the Respondent No.3 (SSGC) this Court cannot interfere with the performance of statutory duties by Respondents No.1 and 2 as it would result in a complete breakdown of functions of control and regulation of the natural gas market. He further argued that such disruption in the performance of statutory duties by Respondents No.1 and 2 will create a chaotic situation and shall cause immense loss to the fragile economy of the country. According to learned counsel for Respondent No.3 gas price has been set pursuant to sovereign obligation of the country and any shortfall in the collection of price will lead to default of such obligations. Learned counsel for the Respondent No.3 argued that any dispute with regard to billing are within the exclusive jurisdiction of Respondent No.2 (OGRA) and if the petitioners have any grievance in this respect, the remedy available under Section 11 of the Oil and Gas Regulatory Authority Ordinance, 2002 and further that the impugned notification pertains to price of the gas and the principle relating to retrospective of actions has no applicability to the impugned notification. He further argued that determination of gas prices are statutory functions and duties of the Respondent Nos.1 and 2, which are binding upon the respondent No.3 as well as the petitioners, therefore, the petitioners have no cause of action against the Respondent No.3. Per learned counsel, in order to ensure that the revenue requirements of Respondent No.3 are met, the gas prices have to be revised at least annually, therefore, no vested right is created in favour of the petitioners in respect of the gas supplied to them. Learned counsel for the petitioners further argued that the judgment relied upon by the petitioners pertains to the tax regime and has no application in the facts of the instant case. He also referred to the Section 8 of the OGRA Ordinance, 2002, which provides the process for determination of estimated revenue requirements and final revenue requirements and the sale price of the gas, therefore, any gas supplied during the pendency of this process for a particular financial year is on a provisional basis and the petitioners have no basis to assume that the gas sale price will not change. Learned counsel further argued that retrospective applicability is restricted

where the same would destroy vested rights or open past and closed transactions, therefore, a legislative instrument including delegated legislation can apply retrospectively. He also referred to the case of *Sindh Petroleum & CNG Dealers Association & others...v...Federation of Pakistan & others (2020 CLC 651)* and argued that the Court was not properly assisted on this issue as is also recorded in the judgment. He also argued that the Court relied on two previous decisions of Hon'ble Supreme Court of Pakistan reported as *PLD 2001 SC 340 (Anoud Power Generation Limited....v....Federation of Pakistan and others)* and *PLD 2016 SC 398 (Zila Council Jehlum.....v.....M/s. Pakistan Tobacco Company Ltd. and others)*, but both of the decisions encompass the taxation regime, however, the price of the gas cannot be treated as tax, which are based on certain cost factors. He further argued that the Respondent No. 3 is unable to make payments to the gas suppliers and is under severe pressure from such suppliers as well as Respondent No.1 for payment of such amounts and Respondent No.3 is compelled to raise additional financing as well as divert other sources to meet its revenue requirements and financial impact of such measures is more than Rs.39 billion until now and in addition Respondent No.3 incurs huge exchange losses since gas payments are made in US Dollars. He further contended that the Petitioners have abused the previously granted relief as they have been enjoying the benefit without complying the conditions of such orders and if this state of affairs is continued, the Respondent No.3 will be in peril merely on account of unscrupulous tactics of the Petitioners, therefore, he prayed that in the interest of justice, that these Petitions may kindly be dismissed with exemplary costs. The learned D.A.G. supported the arguments of learned counsel for the Respondent No.3 and argued that the Federal Government is competent to issue, rescind or amend any notification or legislation, which may be favourable to a party.

5. Learned counsel for Respondent No.2 (OGRA) in his brief arguments candidly conceded that the subject controversy had already been decided by Division Bench of this Court as well as Hon'ble Supreme

Court of Pakistan in the judgments quoted supra in paragraph 3, therefore, he could not controvert the facts.

6. Heard arguments. The general principle is that laws are not to be applied retrospectively unless expressly stated otherwise. Retrospective legislation is viewed with caution as it can disrupt settled legal exceptions and rights. In the instant case impugned Notification dated 8.11.2023 issued by Respondent (OGRA) revising the gas prices upwards with retrospective effect from 01.11.2023 and similarly, on 15.02.2024 OGRA issued another Gas Tariff Notification revising the sale prices upward in respect of natural gas with retrospective effect from 01.02.2024 without prior notice conflicts with principle of natural justice, fairness and legal certainty. Fundamental principal of natural justice requires that individuals/companies/taxpayers etc. should not be slapped with such imposition without notice which would generally be considered unfair.

Retrospective laws especially those that impose financial liabilities or penalties must be justified and clear. Superior Courts in seminal judgments have invalidated retrospective charges without notice as arbitrary and unreasonable.

7. The grievance of the petitioners is against the retrospective effect of the impugned notifications, which is detrimental from their point of view. No provision of law or rules has been cited by the Respondents to demonstrate that notification of gas prices can be made effective retrospectively. The Hon'ble Supreme in its judgment reported in *PLD 2001 S.C. 340 (Anoud Power Generation Limited....v....Federation of Pakistan and others)* has held as under:-

“8. A perusal of impugned judgment indicates that the amending Notifications i.e. SRO 584(1)/95 dated 1st July, 1995, has been declared discriminatory .qua the Companies, who have opened letters of credits or submitted bills of entry before the date of issuance of notification, thus holding that it will have no effect retrospectively but prospectively. The conclusion so drawn by learned High Court is entirely in consonance with the law laid down by this Court from time to time that a notification cannot operate retrospectively and benefits and advantages if already accrued in favour of a party during subsistence of the notification shall be available to it until the notification is amended or rescinded as held in *M/s. Army Welfare Sugar Mills Limited and others v. Federation of*

Pakistan 1992 SCMR 1652; Taj Mahal Hotel Limited v. Karachi Water and Sewerage Board 1997 SCMR 503; Hashwani Hotels Limited v. Federation of Pakistan and others PLD 1997 SC 315; Messrs Elahi Cotton Mills Limited and others v. Federation of Pakistan through Secretary, Ministry of Finance, Islamabad and 6 others PLD 1997 SC 582; Federation of Pakistan v. Shaukat Ali Mian and others PLD 1999 SC 1026. At this juncture another important aspect of the retrospectivity of notification may also be noted that if the notification has been used for the benefit of the subject then it can be made operative retrospectively but if its operation is to the disadvantage of a party who is the subject of the notification then it would operate prospectively. This point has been elaborately discussed by this Court in the judgment pronounced in the case of M/s. Army Welfare Sugar Mills Limited and others 1992 SCMR ih52”

Likewise the Division Bench of this Court in the case of *Sindh Petroleum & CNG Dealers Association & others.....v.....Federation of Pakistan & others, reported in 2020 CLC 851*, by placing reliance on the aforesaid judgment of the apex court has held as under:-

“32. There is also an ancillary issue to consider before parting with this issue, i.e. retrospective effect of the Impugned Notification. While the Impugned Notification was issued on 04th October 2018, it sought to be enforced with effect from 27th September 2018 and it is this issue of retrospectivity that needs to be addressed. Learned counsel for the petitioners had cited the judgment of the august Supreme Court in *Anoud Power Generation Limited and others v. Federation of Pakistan and others* reported as PLD 2001 Supreme Court 340 in order to argue that the Impugned Notification could not have been given retrospective effect. In the aforesaid pronouncement it had been maintained that a notification cannot operate retrospectively and that benefits accruing in favour of a party, per an earlier notification, shall subsist unless the same is rescinded or modified.”

8. In view hereof, these petitions were allowed and the impugned Notifications dated 08.11.2023 and 15.02.2024 to the extent of their retrospective effect are declared as illegal and without any lawful authority.

9. Above are the reasons of our short order passed on 27.03.2024.

10. The Constitution Petition listed at Sr.Nos.57 to 61 filed after passing of short order dated 27.03.2024 involving the same subject controversy are also allowed mutatis mutandis in the aforesaid terms.

Chief Justice

Judge

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