

IN THE HIGH COURT OF SINDH, KARACHI

Constitution Petition No. D- 609 of 2025

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Mohammad Abdur Rahman,

Petitioners: Western Freight Shipping (Pvt.) Limited & others Through Mr. Khalid Jawed Khan Advocate.

Respondents No.1&2: Federation of Pakistan & another Through Mr. Kashif Nazeer, Assistant Attorney General.

Respondents No. 3&4. Directorate General of Transit Trade (HQ) & another through Mr. Muhammad Anas Makhdoom, Advocate.

Dates of hearing: 25.02.2025, 26.02.2025, & 03.03.2025.

Date of Judgment: 03.03.2025.

JUDGMENT

Muhammad Junaid Ghaffar, Acting Chief Justice: Though this petition, the Petitioners, claiming to be duly licensed custom-bonded carriers / transport operators, in terms of Rule 638 of the Customs Rules, 2001, have impugned Office Order No. 16/2025 dated 25.01.2025 through which the decision dated 09.01.2025 passed by the Licensing Committee constituted under the Tracking and Monitoring Rules, 2023 has been notified, whereby it has been decided to entrust transportation of Afghan Transit Cargo to Respondent No. 4 during the interim period up to 31.03.2025. The only prayer sought by the Petitioners is as under:-

- "I) Declare that the Impugned Office Order No. 16 of 2025 dated 25.01.2025 issued by the Respondent No. 3 is arbitrary, illegal and void and the Petitioners are entitled to constitute their operations as Bonded Carriers in accordance with law including the Customs Rules, 2001."

2. Learned Counsel for the Petitioners has contended that through impugned decision, Respondent No.4 has been given exclusive rights to transport transit cargo to Afghanistan and a monopoly has been created; that the impugned decision has been taken by the Committee, which was constituted under the Tracking and Monitoring Rules, 2023, under which no such restriction could be placed insofar as the bonded carriers are concerned; that the Petitioners are duly licensed bonded carriers and have fulfilled all requisite procedural requirements to transport Afghan Transit Cargo and have not violated any of the licensing rules; therefore, the impugned decision is without lawful authority and jurisdiction; that Respondent No.4 is also presently providing tracking services; and therefore, the same respondent cannot operate as bonded carrier at the same time and the impugned decision creates their monopoly; that the impugned decision has compelled the Petitioners to act as sub-contractors of Respondent No.4, who is charging a huge amount pursuant to the impugned decision; that in the case reported as ***E-Movers (Pvt) Limited***¹ it has been held by the Honourable Supreme Court that Respondent No.4 cannot be granted any advantageous position vis-à-vis other private companies; that for the present purposes any exercise of powers under Rule 1124 of the Customs Rules, 2001 is not relevant nor applicable to the transportation of Afghan Transit Cargo; hence the impugned decision is liable to be set-aside and be declared without lawful authority and jurisdiction. In support he has relied upon various reported² judgments / cases.

¹ Federation of Pakistan v. E-Movers (Pvt) Limited and another (2022 SCMR 1021)

² Collector of Customs and others v. Sheikh Spinning Mills (1999 SCMR 1402), Messrs Yousaf Enterprises v. Collector (2005 PTD 21), Messrs Mahmood & Company v. Assistant Collector, Sales Tax (Enforcement & Collection), Shalimar Division, Lahore and 2 others (2005 PTD 72) and Universal Recycling through authorized Representative v. Federation of Pakistan through Secretary, Revenue Division/Chairman FBR and 2 others (2024 PTD 754).

3. On the other hand, learned Counsel appearing on behalf of Respondents No. 3 & 4 has contended that through impugned decision, the Respondent No.4 has not been authorized to either carry out any tracking services; nor it is acting as a bonded carrier for transportation of Afghan Transit Cargo; but is only providing monitoring services as an interim measure till 31.03.2025; that the previous tracking company's license has been cancelled for various reasons; whereas, presently three different companies³ are offering tracking services including Respondent No.4; however, the trackers presently available are not of the required specifications and at times due to loss of signals, the tracking facility is suspended or stopped; and therefore, Respondent No.4 being qualified to provide manual supervision and tracking of the cargo has been asked to perform such duties; that Rule 1124 of the Customs Rules 2001 empowers the Committee so constituted to take emergent measures and for the present purposes, it is not the transportation of Afghan Transit Cargo, which has been entrusted to Respondent No.4; but only a service relating to tracking and monitoring of such cargo; that Respondent No.4 categorically states that they are not providing any transportation services nor are carrying out any tracking of the cargo in question; and therefore, the allegations levelled against Respondent No.4 are baseless; that the impugned decision is an emergent decision of an interim nature and is kind of a hybrid solution being the best available option; that the customs staff is unwilling / unable to escort the convoy's in the present law and order situation, whereas, the Standard Operating Procedures (SOPs) notified by the Respondents are not being complied with by the bonded carriers; whereas, Respondent No.4 has volunteered to offer compliance of the SOPs; and therefore, the impugned decision is fully justified; that charges being demanded from the bonded carriers have

³ V-Tracking; Falcon-I & NLC Smart Solutions.

been agreed upon by the Association of the bonded carriers; whereas, even some of the Petitioners have entered into such agreement and have worked with Respondent No.4 in terms of the impugned decision; therefore, they have no locus standi to challenge the same in these proceedings; that it is expected that by 31.03.2025, the required monitoring and tracking facility would be available and then the issue would be resolved permanently. He has prayed for dismissal of the petition based on these submissions.

4. Learned Assistant Attorney General has referred to Rule 638 of the Customs Rules, 2001 and submits that Monitoring Rules would also apply on the bonded carriers; whereas, the impugned decision is an interim measure and has been issued in compliance of Rule 1124 of the Customs Rules, 2001; whereas, the said Rules have not been challenged; therefore, no case for indulgence is made out.

5. Heard learned Counsel for the parties including Assistant Attorney General and perused the record. The Petitioners' claim to be bonded carriers duly licensed by the Respondents under the Customs Rules, 2001 and as to their grant of license and working as bonded carriers, there appears to be no dispute in hand. The bonded carrier can handle and transport Afghan Transit Cargo including other cargos being sent to respective dry ports. For the present purposes, the issue is in respect of Afghan Transit Cargo being handled by the bonded carriers. As noted hereinabove, the Petitioners have not challenged any rule or vires thereof and the only prayer is to the effect that the impugned decision dated 25.01.2025 is without lawful authority and jurisdiction as well as beyond the mandate of the Committee in question. It is to be clarified that this bench being a Regular Bench has heard this matter keeping in mind the only prayer made by the Petitioners and by exercising jurisdiction

under Article 199(1)(a)(ii) of the Constitution of Islamic Republic of Pakistan, 1973. Learned Counsel for the petitioners was also confronted with this and he has conceded that the Petition is only confined to this prayer and falls within the ambit of Article 199(1)(a)(ii) of the Constitution, whereas no other relief has been sought or prayed for. The impugned decision available at Page-67 dated 25.01.2025 reads as under: -

GOVERNMENT OF PAKISTAN
DIRECTORATE OF TRANSIT TRADE (HQ)
2ND FLOOR, OLD CUSTOM HOUSE
KARACHI
PH: 021-99210355

SI/Misc/12/2021-DTT-HQ-Part(V)/LC/76

Dated: 25.01.2025

OFFICE ORDER NO. 16/2025

SUBJECT: **MINUTES OF THE MEETING OF THE LICENSING COMMITTEE TO DISCUSS ISSUE OF MONITORING OF AFGHAN TRANSIT TRADE CARGO THROUGH NATIONAL LOGISTIC CORPORATION**

Kindly refer to the subject cited above.

“2. In order to address the issue of port congestion and effective monitoring of the movement of the Afghan Transit Trade Cargo, the Licensing Committee, constituted under the Tracking and Monitoring Rules, 2023 as amended from time to time, has entrusted, M/s NLC, vide its decision dated 09.01.2025, to transport Afghan Transit Trade Cargo during the interim period up to March 31, 2025.”

3. This is issued for information and necessary action by all the concerned.

Encl: (As Above)

Sd/-
(Agha Saeed Ahmed)
Director

6. The aforesaid office order is based on a decision dated 09.01.2025 arrived at by the Licensing Committee constituted under the Tracking and Monitoring Rules, 2023 and relevant extract of the minutes of the meeting of the said Committee reads as under:-

GOVERNMENT OF PAKISTAN
DIRECTORATE OF TRANSIT TRADE (HQ)
2ND FLOOR, OLD CUSTOM HOUSE
KARACHI

PH: 021-99210355

Si/Misc/12/2021-DTT-HQ-Part(V)/LC/

Dated: 09.01.2025

SUBJECT: **MINUTES OF THE MEETING OF THE LICENSING COMMITTEE TO DISCUSS ISSUE OF MONITORING OF AFGHAN TRANSIT CARGO THROUGH NATIONAL LOGISTIC CORPORATION**

A meeting of the Licensing Committee was scheduled on 09-01-2025 to discuss the issue of port congestion due to 2000 stuck up Afghan Transit Trade containers at various ports of Karachi. The committee deliberated to address the issue of congestion of port and effective monitoring of movement of Afghan Transit Trade Cargo.

2. (Afghan Transit Cargo is not being transported by the bonded carrier after the issuance of SOP. The Board has authorized the licensing Committee to ensure effective monitoring of Afghan Transit Trade Cargo during the interim period. In order to deal with the urgency of the situation M/s National Logistics Corporation (NLC) is entrusted to transport Afghan Transit Trade Cargo during the interim period upto March 31, 2025 for which NLC has already communicated its willingness vide letter No 2501/ Gen/ NLC/ Transit dated 03.01.2025.

3. The meeting ended with the vote of thanks to and from the Chair.

Sd/-
(Amjadur Rehman)
Director Transit Trade,
Peshawar

Sd/-
(Masood Ahmad)
Director (I&I), Karachi

Sd/-
(Muhammad Ismail)
Director Transit Trade, Quetta

Sd/-
(Sana Ullah Abro)
Director Reforms & Automation,
Karachi

Sd/-
(Muhammad Nayyer Shatique)
Collector, Appraisalment (PMBQ)
Karachi

Sd/-
(Moinud din Wani)
Collector, Collectorate
of Enforcement,
Karachi

Sd/-
(Agha Saeed Ahmad)
Director (Transit Trade- HQs), Karachi

Sd/-
(Azhar Hussain Merchant)
Collector, Appraisalment (East)
Karachi

Sd/-
(Naveed Elahi)
Collector, Appraisalment (West)
Karachi

Sd/-
(Mahmood ul Hassan)
Director Technology Services, R & A
Islamabad

Sd/-
(Muhammad Mohsin Rafique)
Director General
Directorate General of Transit Trade, Karachi
/ Chairman Licensing Committee

7. From perusal of the aforesaid decision, it reflects that firstly due to cancellation of licence of the earlier authorised

tracking company and changes in Monitoring & Tracking Rules, some 2000 trucks are stuck at Karachi Port with Afghan Transit Containers and such cargo was not being transported by the bonded carriers (including Petitioners) after issuance of certain SOPs with which they were unable to comply with; whereas, the Licensing Committee was authorized by FBR to ensure effective monitoring of the cargo in question during the interim period; and therefore, in order to deal with the urgency, Respondent No.4 has been entrusted to transport Afghan Transit Trade Cargo till 31.03.2025 as they have also shown their willingness to do so. Though in the decision words have been used to the effect that Respondent No.4 is entrusted to transport Afghan Transit Trade Cargo; however, it is an admitted position and so stated on behalf of the Respondents, which has not been denied by the Petitioners that for the present purposes, Respondent No.4 is not transporting the Afghan Transit Cargo in its own trucks; but is using the trucks provided by the Petitioners and other bonded carriers. It is also an admitted position that though Respondent No.4 is also an authorized service provider for tracking services; but in respect of the cargo in question they are also not performing any tracking services; but such services are being provided by two other tracking companies as mentioned hereinabove. The above decision has been taken by the Licencing Committee in terms of Rule 1124 of the Tracking and Monitoring Rules, 2023, which reads asunder:-

"1124. Tracking and monitoring in emergency situation.- In an emergency situation requiring immediate action to limit or avoid loss to public revenue, the Licensing Committee may prescribe an interim procedure for not more than ninety days to track and monitor the cargo."

8. The above rule provides that in an emergent situation requiring immediate action to limit or avoid loss to public revenue, the Licensing Committee may prescribe an interim procedure for not more than ninety days to track and monitor

the cargo. The impugned decision appears to be fully justified pursuant to Rule 1124 of the Customs Rules, 2001, inasmuch admittedly the decision only requires Respondent No.4 to track and monitor the cargo, whereby they are managing and escorting the convoys of Afghan Transit Cargo' providing a single point to ensure that port congestion does not take place and if one bonded carrier refuses to carry transit cargo, another one can be called on to replace them. Moreover, as stated this mechanism is an interim measure till 31.03.2025, by which time, it is expected that "GSM (dual network), GPRS and hybrid satellite communication will be in place in line with Rule 1097 of the Customs Rules, 2001. For the present purposes, Respondent No.4 has devised a procedure to transport the Afghan Transit Cargo in convoys of trucks being provided by the bonded carriers, (in some cases, including the Petitioners) to ensure proper tracking and monitoring with their own resources manually, till the containers reach their destination / exit points for onward transportation to Afghanistan. As to charging any excessive fee for this service, as contended by the Petitioners, at least the Petitioners being bonded carriers have no locus standi to challenge levy of such fee. The fee, if any, is payable by Afghan importers, who are not before us. Even otherwise, the charges have been agreed upon by the Association of bonded carriers, and it is not that the Petitioners are in a position to provide the service of monitoring of Afghan Transit Cargo as has been undertaken by Respondent No.4, to the satisfaction of Respondent No.3. Secondly, it is not a case of creating any monopoly of Respondent No.4 in the business as alleged, inasmuch as they are not providing transportation or tracking services in respect of the cargo in question. The same is still being done by the Petitioners and other bonded carriers and two other tracking companies as mentioned hereinabove. Lastly, the official Respondents are required to ensure that the transit cargo reaches the destination without any pilferage and

for that they are required / authorized to track the monitoring of such cargo under the Tracking and Monitoring Rules, 2023. We may reiterate for the sake of clarity that the said Rules are not under challenge before us. The decision taken by the Committee pursuant to Rule 1124 *ibid* appears to be fully justified in the given facts and falls within their domain and jurisdiction. It is also a matter of exercising discretion to ensure proper transit of the cargo in question. We, in our constitutional jurisdiction, are not required to upset the exercise of such discretion, which otherwise appears to be lawful and fully justified. We are mindful that though the court can examine and judicially review the executive discretion exercised by the public authorities, and in appropriate cases it can even quash exercise of discretionary powers in which there is not a reasonable relationship between the objective which is sought to be achieved and the means used to that end as an administrative measure must not be more drastic than necessary⁴. In the instant matter, in our considered view the Licensing Committee has neither acted arbitrarily, nor unreasonably; rather the impugned decision is in furtherance of the amended Rule 1124 *ibid*, whereas, it has acted after taking into consideration the aim, object and the exigency of the matter, for which it was duly authorized. After all, it is the duty of the said Committee to ensure safe transit of the cargo in question with effective tracking and monitoring. Thus, it is a case of exception and need not be interfered with by this Court while exercising Constitutional jurisdiction. Per settled law a discretionary statutory power can only be exercised on a ground to achieve an object or purpose that is lawfully within the contemplation of the statute⁵. This discretion in the instant matter, has been lawfully exercised for the purpose

⁴ Sabir Iqbal v Cantonment Board Peshawar (PLD 2019 SC 189)

⁵ Commissioner Inland Revenue v Pakistan Beverage Limited (2018 SCMR 1544)

specified in the Monitoring and Tracking Rules, 2023, and no exception can be drawn to it.

9. It has also come on record that after the decision taken by the Licensing Committee in its meeting held on 09.01.2025, a meeting was convened by All Pakistan Customs Bonded Carrier Association and a Resolution was passed by them on 17.01.2025 in the following terms: -

“All Pakistan Customs Bonded Carrier Association

*Room # 02, State Life Building # 7, G-Allana Road, Tower Karachi.
Ph:32201905, 32203101, Fax: 32202196, Web: www.apcbca.com.pk*

Resolution

On this date 17 January 2025 it is unanimously agreed by all the participants attended the meeting (list attached) arranged by the association in office # 501, Business and finance Centre, Karachi.

That future working patron for bonded cargo movement (Transit Cargo) as brief by NLC authorities in today's meeting held at NLC office Karachi is agreed too. It is further agreed that modalities for the operation presumed to be started from 25 Jan 2025 by NLC in coordination with the transport operator approved by FBR and Directorate of Transit Trade Karachi, as per terms & conditions agreed between NLC and the Transport Operators.

Sd/-

Syed Shams Ahmed Burney
Chairman

Sd/-

Qazi Zahid Hussain
Ex Officio President
PAJJCI

Sd/-

Lt. Col Saeed Ahmed Khan (R)
General Secretary”

Along with this Resolution the names of participants are also annexed, which reflects that Petitioner No.2 and Petitioner No.3 also participated in this meeting, wherein, it was agreed that the operation to be started by Respondent No.4 is agreed upon and modalities for such purposes would be settled as per terms and conditions between Respondent No.4 and Transport Operators. It further appears that after this procedure had commenced, a dispute arose between Bonded Carriers as to

the distribution of transport business amongst the Bonded Carriers under this new procedure. To resolve this issue once again a meeting was conducted by All Pakistan Customs Bonded Carrier Association and on 20.02.2025 after considering the two options i.e. equal distribution amongst all or performance-based distribution. By majority, it was resolved that for the time being, it should be equal distribution amongst all. These two documents placed on behalf of Respondents have not been denied or disputed by any affidavit-in-rejoinder. The Respondents have also brought on record certain documents, which reflects that most of the Petitioners have already participated in this new procedure; therefore, even otherwise it does not seem to be appropriate for the Petitioners to approach this Court seeking exercise of discretion in their favor. It is settled law that one, who approaches this Court for exercise of any discretion under Article 199 of the Constitution, must come with clean hands and be fair with the Court. This conduct of the Petitioners does not seem to be in consonance with this principle of law, therefore, on this ground as well no case for indulgence is made out.

10. In view of hereinabove facts and circumstances of this case, by means of a short order⁶ dated 03.03.2025 this petition was dismissed in the following terms and above are the reasons thereof.

⁶ "The Petitioners claiming to be duly licensed custom-bonded carriers / transport operators have impugned Office Order No. 16/2025 dated 25.01.2025 through which the decision dated 09.01.2025 passed by the Licensing Committee constituted under the Tracking and Monitoring Rules, 2023 has been notified whereby it has been decided to entrust transportation of Afghan Transit Cargo to Respondent No. 4 during the interim period up to 31.03.2025. The only prayer sought by the Petitioner is as under:-

- "I) Declare that the Impugned Office Order No. 16 of 2025 dated 25.01.2025 issued by the Respondent No. 3 is arbitrary, illegal and void and the Petitioners are entitled to constitute their operations as Bonded Carriers in accordance with law including the Customs Rules, 2001."

Heard learned Counsel for the parties. For reasons to be recorded later and subject to what is set out therein by way of amplification or otherwise, Petition is hereby dismissed with pending applications.

ACTING CHIEF JUSTICE

J U D G E

Ayaz