

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Jawad Akbar Sarwana

High Court Appeal Nos. 336 of 2024  
and 91 other connected appeals as per Annexure "A"

Federation of Pakistan & Another

v.

Premium Textile Mills Limited & 24 Others

Dates of Hearing: 13.11.2024, 14.11.2024

Date of Announcement  
of Judgment: 03.02.2025

Messrs. Ghazi Khan Khalil, Ameer Nausherwan Adil, Abdul Hakeem Junejo, Syed Kumail Abbas, Zeeshan Ahmed, Awais Haroon and Hayat Muhammad Junejo, Zehra Sehar Vayani, Assistant Attorney General, Muhammad Ahmed, Assistant Attorney General, Ammar Saleem Butt, Manager Legal SSGCL, Raja Love Kush, Deputy Manager Legal, SSGC, advocates for Appellants in all Appeals.

Messrs. Ali Almani a/w Mustafa Naqvi for Respondent Nos.1 to 6, 8 to 11, 13 to 18, 21 & 22 in H.C.A. No.336/2024, for Respondent Nos.1, 4 & 5 in H.C.A. No.364/2024, Respondent No.1 in H.C.A. No.365/2024, Respondent No.1 in H.C.A. No.372/2024, Respondent No.1 in H.C.A. No.373/2024, Respondent No.1 in H.C.A. No.375/2024, Respondent No.13 in H.C.A. No.376/2024, Respondent No.4 in H.C.A. No.379/2024, Respondent No.1 in H.C.A. No.388/2024, Respondent No.71 in H.C.A. No.391/2024, Respondent No.5 in H.C.A. No.421/2024, Respondent No.2 in H.C.A. No.426/2024), (Ameen M. Bandukda a/w Sundar Lal Lohana for Respondent No.24 in H.C.A. Nos.336 of 2024, Respondent No.1 in H.C.A. No.343/2024, Respondent No.1 in H.C.A. No.350/2024, Respondent No.1 in H.C.A. No.358/2024 and Respondent Nos.10 & 11 in H.C.A No.364/2024, Respondent Nos.8, 10 and 29 in H.C.A. No.376/2024, Respondent No.5 in H.C.A. No.379/2024, Respondent No.3 in H.C.A. No.380/2024, Respondent Nos.28, 60, 91, 98, 106 & 116 in H.C.A. No.391/2024, Respondent No.4 in H.C.A. No.398/2024, Respondent No.1, 12, 17, 19, 23, 38, 39, 41, 44, 52 in H.C.A. No.400/2024, Respondent No.1 in H.C.A. No.401/2024, Respondent Nos.33, 35 & 36 in H.C.A. No.404/2024 Respondent Nos.9 & 46 in H.C.A. No.407/2024), (Naeem Suleman for Respondent No.4 in H.C.A. No.343/2024, Respondent No.1 in H.C.A. No.354/2024, Respondent No.1 in H.C.A. No.357/2024, Respondent Nos.8, 12 & 15 in H.C.A. No.364/2024, Respondent No.26 in H.C.A. No.366/2024, Respondent Nos.4, 6 to 11 in H.C.A. No.389/2024, Respondent Nos.2, 5, 7, 9, 12, 13, 21, 23 to 27, 34, 36, 37, 38, 39, 44, 45, 48, 49, 58, 59, 61, 62, 63, 64, 65, 100, 101, 103, 104, 116 in H.C.A. No.389/2024, Respondent Nos.1, 4, 8, 11, 16, 17, 18, 20, 29,

31, 33, 40, 41, 42, 46, 50, 52, 53, 55, 56, 68, 77, 81, 82, 83, 87, 88, 96, 99, 118, 119 in H.C.A. No.391/2024, Respondent No.7 in H.C.A. No.398/2024, Respondent Nos.3, 4 & 5 in H.C.A. No.403/2024, Respondent Nos.1, 18, 20, 23, 26, 28, 34, 39, 38, 42, in H.C.A. No.404/2024, Respondent Nos.3, 10, 12, 15, 47, 48, in H.C.A. No.407/2024, Respondent Nos.1, 2, 3, 4, 6, 8, 9 in H.C.A. No.409/2024, Respondent No.8 in H.C.A. No.422/2024, Respondent No.16 in H.C.A. No.429/2024), (Adil Khan Abbasi for Respondent No.2 in H.C.A. No.344/2024), (Rana Sajid Rasool for Respondent Nos.1 and 2 in H.C.A. No.347/2024, Respondent No.1 in H.C.A. No.420/2024), (Syed Mohsin Ali for Respondent Nos.2 to 8 in H.C.A. No.356/2024, Respondent No.4 in H.C.A. No.380/2024, Respondent No.8 in H.C.A. No.385/2024, Respondent No.1 in H.C.A. No.391/2024, Respondent No.1 in H.C.A. No.399/2024, Respondent No.1 in H.C.A. No.410/2024, Respondent No.6, 20, 24, 34, 37 & 48 in H.C.A. No.429/2024), (Junaid M. Siddiqui for Respondent Nos. 2 & 3 in H.C.A. No.369/2024, Respondent Nos.1, 3 to 5 in H.C.A. No.370/2024), (Muhammad Zeeshan Naeem a/w Abdul Karim Khan for Respondent No.6 in H.C.A. No.376/2024, Respondent No.94 in H.C.A. No.391/2024, Respondent No.25 in H.C.A. No.400/2024), (Jehanzeb Baloch for Respondent Nos.1 to 3 in H.C.A. No.379/2024), (Faiz Durrani a/w Samia Faiz Durrani and Shakeel Akbar for Respondent No.1 in H.C.A. No.413/2024, Respondent No.1 in H.C.A. No.414/2024), (Ali Nawaz Khuhawar for Respondent No.19 & 24 in H.C.A. No.336/2024).

### **J U D G M E N T**

**JAWAD AKBAR SARWANA, J.**: The two appellants, the Federation of Pakistan through the Ministry of Energy (Petroleum Division), Federal Government of Pakistan (Appellant no.1) and the Sui Southern Gas Company Limited (“SSGCL”)(Appellant no.2), jointly referred to as the “Appellants”, have impugned Judgment dated 06.09.2024 passed by the learned Single Judge in High Court Suit No.129/2017 and 91 other connected suits filed against the appellants. This “impugned Judgment” operating across 92 suits, is impugned in these 92 appeals.

2. The sole question before the trial court in the 92 suits was and, once again, before this Bench, in these appeals is whether the Oil and Gas Regulatory Authority’s (“OGRA”) Notification dated 30.12.2016 prescribing the gas sales price for various consumers for the Financial Year (“FY”) 2017 (“Notification”) is lawful.

3. The Appellants have raised the following challenge to the trial Court's impugned Judgment based on six (6) propositions argued by their Counsel, including the Assistant Attorney-General, summarised as herein below.

- (a) Appellant's Proposition "A" – "Mustafa Impex not violated": The manner in which the impugned notification was issued is not violative of the principle as enunciated in the case of Mustafa Impex Karachi & Others Versus the Government of Pakistan through Secretary Finance, Islamabad & Others, PLD 2016 SC 808, (hereinafter referred to as "**the Mustafa Impex Judgment**")
- (b) Appellant's Proposition "B" – "Mustafa Impex applies to fiscal and budgetary matters" and "Karamat Ali applies prospectively": Without prejudice, Appellant Counsel has argued that it is apparent from a bare reading of the Mustafa Impex Judgement (particularly paragraph 81) that post facto approval was held impermissible only to the extent of fiscal changes and budgetary expenditure.
- It may be noted in terms of paragraph(s) 12, 13, 14 and 15 of the *S.M. Kaleem Makki through Attorney Versus Province of Sindh through Chief Secretary and others*, 2021 PLC (C.S.) Note 11 (hereinafter referred to as "**the SM Kaleem Makki Judgment**") that the scope of the Mustafa Impex Judgement was enlarged by the Karamat Ali & Others Versus Government of Sindh, PLD 2018 Sindh 8 (hereinafter referred to as "**the Karamat Ali Judgment**") to the effect that Mustafa Impex would apply to matters other than fiscal and budgetary.
  - The Mustafa Impex Judgement was rendered on 16 August 2016. The impugned notification was issued on 30 December 2016; however, the Karamat Ali judgement, which enlarged the scope, was rendered on 6 September 2017.
  - Therefore, before the Karamat Ali Judgement, it was understood that Mustafa Impex only applied to fiscal and budgetary matters, the scope was enlarged by the Karamat Ali Judgement, which would only have effect "prospectively" (as per the principle as enunciated in the *Pakistan Medical and Dental Council through President and 3 others Versus Muhammad Fahad Malik and 10 others* (reported as 2018 SCMR 1956). The Impugned Notification being prior in time to the Karamat Ali Judgement ought to be saved in light of the above;
- (c) Appellant's Proposition "C" – "Notification should take effect from 13.01.2017, i.e. date of Cabinet Decision": The entire case of the Respondent(s)/Plaintiff(s) was premised on the fact that the impugned Notification was issued before ratification by the Federal Cabinet.
- On the basis of the foregoing, had the notification been issued after ratification of the federal cabinet, the Plaintiff(s) would not have any grievance.

- Therefore, once ratification had in fact been granted by the Cabinet, the defect has invariably been cured. On the said basis, the Notification ought to be given effect from the date of ratification by the cabinet i.e. 13.01.2017.
- The Honorable Supreme Court in the Government of Balochistan through Secretary Mines and Minerals Department and another Versus Attock Cement Pakistan Limited and another, 2024 SCMR 876) (hereinafter referred to as "**the Attock Cement Judgment**") Paragraph(s) 10 and 11 has, in similar circumstances disposed of the matter in similar terms.
- In paragraph 6 of the *Attock Cement* Judgment the following question of law was raised;

*"6. We have heard the learned Law Officer and learned counsel for the respondents and perused the available record with their able assistance. The primary question that arises in the present case is that "whether a notification that has received ex-post facto approval by the cabinet can have a retrospective applicability?""*

- Appellant Counsel contended that the Supreme Court categorically decided the question "based on a principle" of law in paragraph(s) 10 and 11;

*"10. The legal validity of the ex-post facto approval of the notifications by the Cabinet was considered by this Court in Mustafa Impex Case supra by holding that same cannot be considered valid under the law; relevant paragraph wherefrom is reproduced herein below: [...]"*

*11. In the present case, the High Court has correctly determined that the impugned notification takes effect from the date of authentication/approval by the cabinet, i.e. 01.02.2022. This interpretation aligns with the principle that if the provincial cabinet provides ex-post facto approval, the validity of the notification is recognized from that date of approval and cannot be applied retrospectively. **The rationale for this stems from the fact that, had a cabinet issued a new notification in 2022, its application would have been prospective. Consequently, whether it grants approval or issues a new notification, the resulting impact would remain unchanged.**"*

- On the basis of the above, Appellants submitted that the *Attock Cement* Judgment is a binding precedent in terms of Article 189, and the instant appeal may be decided based on the same principles and in the manner employed therein.

- (d) Appellant’s Proposition “D” – Procedural Irregularity “I” - “Advice rendered by Federal Government in respect of the impugned Notification fulfils the requirement of / Reliance on Rule 17(1)(c) of the Rules of Business, 1973
- (e) Appellant’s Proposition “E” – Procedural Irregularity “II” – Rule 21 to the rescue”
- (f) Appellant’s Proposition “F” – “Procedural Irregularity “III” – “No prejudice or injustice caused”

4. The Respondents/Respondent Counsels have vehemently opposed the arguments submitted by the Appellants. They contend that in accordance with Section 8(3) of the Oil and Gas Regulatory Authority Ordinance, 2002 (“OGRA Ordinance”), OGRA is required to notify the gas sales price based on advice it receives from the Federal Government, i.e., the Federal Cabinet (“Cabinet”). It is undisputed that it had not received such advice before 30.12.2016. Instead, the Notification was allegedly based on a summary approved by the Economic Coordination Committee of the Cabinet (“ECC”) on 15.12.2016. It is settled law that the Federal Government means the Federal Cabinet. The ECC is not the Federal Cabinet. Any approval by the ECC does not meet the statutory requirement of Section 8(3) or the constitutional requirement that the Federal Cabinet take all actions by the Federal Government. Therefore, the appeal is liable to be dismissed.

5. Heard Counsel, the Assistant Attorney General, read the impugned Judgment and perused the material available on record. To address the arguments raised by the Appellants, it would be appropriate to state the brief facts of the case. As the issues involve a definite timeline of events (“X”) and an interplay of such timeline with case precedent (“Y”), it may be efficient to set out the two issues in juxtaposition to each other in tabular format as follows:

Relevant Dates	Timeline of Events (“X”)	Case Precedent (“Y”)
18.08.2016	-	<u>Mustafa Impex v. Government of Pakistan</u> , PLD 2016 SC 808 decided by the Supreme Court of Pakistan.

06.10.2016	<p>OGRA issued its determination on SSGC's Petition for Determination of Estimated Revenue Requirement for FY 2016 to 2017. It determined a price for industrial consumers of Rs. 456.87/MMBTU with effect from 01.07.2016 and Rs. 340.52/MMBTU with effect from 16.11.2016.</p> <p>In accordance with Section 8(2) of the OGRA Ordinance, OGRA must advise the Federal Government of the prices it determines.</p> <p>In accordance with Section 8(3), within 40 days of receiving OGRA's advice, the Federal Government had to advise OGRA of the sales price for each consumer, based on which OGRA would then notify the gas prices for all consumers.</p>	
15.12.2016	<p>On 15.12.2016, the ECC approved a summary for a revision of the prices determined by OGRA ("ECC Decision").<sup>1</sup> This included an increase to Rs. 600/MMBTU for industrial consumers.</p>	
30.12.2016	<p>On 30.12.2016, OGRA issued the Notification prescribing the sales prices for all consumers based on the ECC Decision – with retrospective effect from 15.12.2016.<sup>2</sup></p>	
13.01.2017	<p>On 13.01.2017, the Cabinet approved the ECC Decision ("Cabinet Decision")<sup>3</sup> under Rules 17(1)(b) and 19 of the Federal Government Rules of Business 1973.</p>	
18.01.2017 ... 19.04.2017	<p>-</p> <p>-</p>	<p>Premium Textile Mills Ltd. and Others filed Suit No.336/2017</p> <p>...</p>

<sup>1</sup> Page 465.

<sup>2</sup> Page 269.

<sup>3</sup> Page 487.

...		Swano Enterprises and Others filed Suit No.1027/2017
17.10.2018	-	...
		Nadeem Power Generation (Pvt.) Ltd. and Others filed Suit No.1955/2018
07.09.2017	-	<u>Karamat Ali v. Federation of Pakistan</u> , PLD 2018 Sindh 8 decided by a Division Bench of the High Court of Sindh (Munib Akhtar and Arshad Hussain Khan, JJ.)
05.03.2019	-	<u>Mirpurkhas Sugar Mills Ltd. and 16 Others v. Province of Sindh and 7 Others</u> , 2020 CLC 232 (Muhammad Ali Mazhar and Agha Faisal, JJ).
28.10.2019	-	<u>S.M. Kaleem Makki v. Province of Sindh</u> , 2021 PLC (C.S.) Note 11 decided by a Division Bench of the High Court of Sindh (Muhammad Shafi Siddiqui and Adnan Iqbal Chaudhry, JJ).
06.09.2024	Impugned Judgment announced in the 92 suits	Impugned Judgment announced in the 92 suits

6. Section 8 of the OGRA Ordinance provides a complete mechanism for OGRA to determine and notify the gas sales price to be charged by SSGC for a financial year. The relevant parts thereof read:

*“8. Pricing for retail consumers for natural gas.—(1) The Authority shall determine an estimate of the total revenue requirement of each licensee for natural gas engaged in transmission, distribution and the sale of natural gas to a retail consumer for natural gas, in accordance with the rules, and on that basis advise the Federal Government the prescribed price of natural gas for each category of retail consumer for natural gas.*

*(2) A licensee for natural gas referred to in sub-section (1), shall submit for review by the Authority its total revenue requirement after incorporating the actual changes in the well-head prices, as notified by the Authority cost of the imported gases and other relevant factors and the Authority shall advise the Federal Government promptly of the revised prescribed prices for the licensee for natural gas.*

**(3) The Federal Government shall, within forty days of the advice referred to in sub-sections (1) and (2), advise the Authority of the minimum charges and the sale price for each**

**category of retail consumer for natural gas for notification in the official Gazette by the Authority of the prescribed price as determined in sub-sections (1) and (2), the minimum charges and the sales price for each category of retail consumers for natural gas:**

*Provided that the Federal Government shall ensure that the sales price so advised are not less than the revenue requirement determined by the authority.*

**(4) If the Federal Government fails to advise the Authority within the time specified in sub-section (3), the category wise prescribed prices so determined by the Authority under subsections (1) and (2), as the case may be, shall be notified by the Authority as the category wise sale prices:**

*Provided that sub-sections (1) to (4) shall not be applicable in case of RLNG price determined under section 43B.”*

(underlining added)

7. A combined reading of the foregoing provisions shows that under sub-sections (1) and (2), OGRA determines the revised prescribed price for each consumer of natural gas based on SSGC's Petition for Determination of its Revenue Requirement. OGRA then shares the determination with the Federal Government for its advice.

8. Under sub-section (3), within 40 days of receiving OGRA's advice, the Federal Government must advise OGRA of the sales price for all consumers. Based on the Federal Government's advice, OGRA must notify the sales price.

9. Sub-section (4) then provides a fail-safe in case the Federal Government fails to provide its advice within the prescribed period. In such case, OGRA notifies the prices determined by it under sub-sections (1) and (2).

10. In the instant case, on 15.12.2016, the ECC approved a summary circulated by the Ministry of Petroleum & Natural Resources for the revision of the prescribed prices for FY 2017, i.e., the ECC Decision. It approved an increase of the price for industrial consumers to Rs. 600/MMBTU.<sup>4</sup>

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<sup>4</sup> Page 465.



11. Section 8(3) specifically refers to the Federal Government. In the Mustafa Impex Judgment, the Supreme Court held that wherever any law refers to the Federal Government, that is a reference to the Federal Cabinet alone and no other body or entity. The advice under Section 8(3), therefore, is to be provided by the Federal Cabinet.

12. It is as clear as night and day that the ECC is not the Federal Cabinet. Therefore, the ECC Decision is not a decision of the Federal Cabinet. Yet, OGRA proceeded to issue the Notification on 30.12.2016 based on the ECC Decision.<sup>5</sup>

13. Therefore, at the outset, this bench is inclined to find the Notification is contrary to law on two counts, based on a constitutional and statutory violation.

14. It is based on a constitutional violation because treating the ECC Decision as the advice of the Federal Government under Section 8(3) violates the provisions of the Constitution under which the Federal Cabinet, and no other body or entity, can act as the Federal Government (as held in the Mustafa Impex Judgment).

15. It is based on a statutory violation because OGRA cannot issue a notification under Section 8(3) without receiving the advice of the Federal Government.

16. For the above reasons, and additional grounds discussed herein, this bench, in the first instance, finds that the Notification was, therefore, illegal on the date it was issued.

17. On 13.01.2017, the Cabinet passed the Cabinet Decision.<sup>6</sup> The Cabinet Decision was passed under Rules 17(1)(b) and 19 of the Rules of Business 1973.

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<sup>5</sup> Page 269.

<sup>6</sup> Page 487.

18. The Cabinet approved the ECC Decision but did not ratify it or grant post-facto approval, that is, retrospective approval.

19. The Federal Cabinet or the Federal Government only approved the proposed sales price on 13.01.2017. Section 8(3) requires OGRA to notify the sales price based on the Federal Government's approval. Appellant Counsel informed that OGRA, however, has not issued any notification based on approval from the Federal Government.

20. Even assuming that the Federal Cabinet had post-facto or retrospectively approved the ECC Decision, the Supreme Court has held that post-facto approval is illegal. It was declared by the apex Court in the Mustafa Impex Judgment:

*"81. ... Furthermore, the Prime Minister is not constitutionally mandated to authorize expenditure on his own. **In all cases the prior decision of the Cabinet is required since it is unambiguously that body alone which is the Federal Government. All discretionary spending without the prior approval of the Cabinet is contrary to law. We clarify that an ex post facto approval by the Cabinet will not suffice since money once spent cannot be unspent. ...**"<sup>7</sup>*

(emphasis supplied)

21. The Division Benches of this Court and the Supreme Court have recognized and applied this principle in subsequent cases.<sup>8</sup>

22. In accordance with the foregoing principle, the Cabinet Decision cannot grant any legal sanctity to the Notification which was based on a constitutional and statutory violation and was, therefore, illegal and void when it was issued.

23. Apart from the reasons stated above as to why the impugned Judgment challenge cannot be sustained, and the aforesaid reasons are ours, we now turn to the arguments raised

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<sup>7</sup> *Ibid* at 2327 KK.

<sup>8</sup> See (i) Karamat Ali v. Federation of Pakistan, PLD 2018 Sindh 8 at 92 paragraph 72; (ii) Mirpurkhas Sugar Mills Limited v. Province of Sindh, 2020 CLC 232 at 239 to 242 paragraphs 12 to 17; and (iii) S. M. Kaleem Makki v. Province of Sindh, 2021 PLC (C.S.) Note 11 at paragraph 18. See also Government of Sindh v. Dr. Nadeem Rizvi, 2020 SCMR 1 at 27 M, 34 and 41 S.

by the Appellants. As articulated in paragraph 3 above, Appellant Counsel has advanced six (6) propositions for the bench to consider as to why this bench should set aside the impugned Judgment. We will now address each of the Appellant's six (6) propositions, "A" to "F":

A. Appellant's Proposition "A" – "Mustafa Impex Judgment not violated":

24. The Appellant's general argument that the Mustafa Impex Judgment applies to the facts and circumstances of the case and is not violated is neither understood nor made out by Appellant Counsel. The onus was on him and he has not satisfied the same for the reasons discussed by us in this judgment.

B. Appellant's Proposition "B" – "Mustafa Impex applies to fiscal and budgetary matters" and "Karamat Ali applies prospectively":

25. Appellants argued that the Mustafa Impex Judgment only applies to fiscal and budgetary matters.

26. A bare reading of the Mustafa Impex Judgment itself, however, establishes otherwise. The Supreme Court declared that "[i]n all cases the prior decision of the Cabinet is required since it is unambiguously that body alone which is the Federal Government".<sup>9</sup> There is, therefore, no basis for circumscribing its scope and applicability as different from the apparent and obvious read of the said Judgment.

27. The Supreme Court observed that the principles set out in the Mustafa Impex Judgment apply to "[a]ny Act, or statutory instrument (e.g. the Telecommunication (Re-Organisation) Act, 1996) purporting to describe any entity or organisation other than the Cabinet as the Federal Government is ultra vires and a nullity".<sup>10</sup> The Telecommunication (Re-Organisation) Act, 19 is not a fiscal law.

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<sup>9</sup> 2016 PTD 2269 at 2327 KK

<sup>10</sup> *Ibid* at 2331 QQ.

28. The Mustafa Impex Judgment is based on the Supreme Court's interpretation and application of the Constitutional structure and specifically Articles 90, 91, 97, 98 and 99 of the Constitution. Appellants appear to be arguing that in accordance with the Constitutional structure and these Articles, if a decision does not relate to fiscal and budgetary matters, it can be taken by any individual, body or entity on behalf of the Federal Government but if it relates to fiscal and budgetary matters then it must be taken by the Federal Cabinet alone. In short, the Federal Government means something different depending on the decision that is being taken.

29. For the above reasons, this bench is not inclined to accept the Appellant's arguments raised in proposition "B". We agree with the learned Single Judge that neither the Supreme Court nor other superior courts that followed the Mustafa Impex Judgment have limited the ratio of Mustafa Impex to only fiscal matters. There is no reason to interpret the decision in any manner other than following its plain language.<sup>11</sup>

Karamat Ali applies prospectively

30. Appellants submitted that:

- (i) The applicability of the Mustafa Impex Judgment to matters beyond fiscal and budgetary matters was enlarged through the Karamat Ali Judgment, as held in the case of *S. M. Kaleem Makki v. Province of Sindh*<sup>12</sup> ("Kaleem Makki Judgment").
- (ii) The Karamat Ali Judgment post-dates the Notification.
- (iii) All judgments apply prospectively in accordance with the Supreme Court's judgment in *Pakistan Medical and*

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<sup>11</sup> Paragraph 19 of the Impugned Decision at Page 75.

<sup>12</sup> 2021 PLC (C.S.) Note 11

*Dental Council v. Muhammad Fahad Malik*<sup>13</sup> (“PMDC Judgment”).

- (iv) As such, the decision in the Mustafa Impex Judgment on post-facto approval does not apply to this case.

31. The relevant part of the Karamat Ali Judgment, however, reads:

*“72. ... In our view, it was contrary to law and cannot be sustained. This is so for more than one reason. Firstly, the decision at the Provincial end had to be taken by the Provincial Cabinet since the statutory power can be exercised by it alone, and must be so exercised by it, in light of the Mustafa Impex case. It does not suffice, and is indeed contrary to law, for the decision to be taken elsewhere in the executive branch and then to be simply endorsed or approved by the Cabinet. The power vests only in the Cabinet and must be exercised there and nowhere else. ...”*

32. The foregoing extract shows that the Karamat Ali Judgment simply applied the ratio of the Mustafa Impex Judgment. It did not declare any new law in respect of post-facto approval by the Cabinet. As such, the date of the Karamat Ali Judgment does not impact this appeal.

33. The Mustafa Impex Judgment squarely covers this appeal. The judgment was passed on 18.08.2016. The Notification was issued on 30.12.2016. Applying the principle of prospective application in the PMDC Judgment, the instant case is squarely covered by the Mustafa Impex Judgment.

34. Even if the Appellants’ submission is accepted (hypothetically), the Karamat Ali Judgment was passed on 07.09.2017. At the time the decision was passed, Suit No.129/2017 was pending before the Single Judge of this Court as were the several other suits which were filed thereafter well into 2018. It is settled position that law declared

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<sup>13</sup> 2018 SCMR 1956.

during the pendency of a case applies to pending cases.<sup>14</sup> The Karamat Ali Judgment would, therefore, still apply to the Notification.

35. In other words, whether the Mustafa Impex Judgment or the Karamat Ali Judgment is applied, The Plaintiff/Respondents' case remained covered. Here, too, we agree with the learned Single Judge that the Supreme Court disapproved of post-facto approval in the Mustafa Impex Judgment, which Division Benches of this Court followed in the cases of the Karamat Ali Judgment and Mirpurkhas Sugar Mills v. Government of Sindh<sup>15</sup> ("the Mirpurkhas Judgment").<sup>16</sup> Accordingly, we are not inclined to accept the proposition "B" raised by the Appellants/Appellant's Counsel.

C. Appellant's Proposition "C" – "Notification should take effect from 13.01.2017, i.e. date of Cabinet Decision"

36. Appellants relied on the Attock Judgment to argue that the Notification should take effect from the date of the Cabinet Decision, i.e., from 13.01.2017.

37. The Attock Judgment is a leave refusing order. It does not set out any principle of law. Rather, it reiterates the principle set out in the Mustafa Impex Judgment. A bare reading of the Attock Judgment shows that it simply refuses to interfere with the decision of the Balochistan High Court:

**"12. The impugned judgment passed by the High Court is well reasoned and based on proper appreciation of all factors, either factual or legal. Neither any misreading and non-reading nor any infirmity or illegality has been noticed from the record which could make a basis to take a different view other than the High Court. The petitioners have failed to make out a case for interference.**

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<sup>14</sup> See (i) Mir Muhammad Khan v. Haider & others, PLD 2020 SC 233 at 247 to 248 paragraphs 20 to 21; (ii) Abbasi Enterprises Unilever Distributor Haripur v. Collector of Sales Tax & Federal Excise, 2019 SCMR 1989 at 1993 B; and (iii) Malik Asad v. Federation of Pakistan, PLD 1998 SC 161 at 345 to 346 paragraph 135.

<sup>15</sup> 2020 CLD 232 – Tab 2 of Respondent's case law bundle.

<sup>16</sup> Paragraph 9 of the Impugned Decision at Page 71.

13. Consequently, these petitions being devoid of merit are hereby dismissed. **Leave is refused.**<sup>17</sup>

(emphasis supplied)

38. It is settled law that leave refusing orders, particularly those that do not enunciate a principle of law, are not binding.<sup>18</sup>

39. In the alternative, even on the merits, the Attock Judgment is distinguishable from the case at hand. In this case, the Notification's validity is challenged and disputed by both parties in view of the Mustafa Impex Judgment. In the Attock Judgment, however, both sides admitted the validity of the notification impugned therein and the only question raised before the Supreme Court was whether the notification applied prospectively or retrospectively. The Attock Judgment reads as follows:

“4. The learned Additional Advocate General on behalf of petitioners contended that impugned judgments suffers from illegality; that ex-post facto approval granted to the impugned notification was valid and legal, thus it should have been given retrospective effect.

5. Contrarily, the learned counsel for the respondents defended the impugned judgment and contended that the impugned notification should be given prospective effect in light of the judgment of this Court reported as *Messrs Mustafa Impex Karachi and others v. The Government of Pakistan through Secretary Finance, Islamabad and others* (PLD 2016 SC 808).

6. We have heard the learned Law Officer and learned counsel for the respondents and perused the available record with their able assistance. **The primary question that arises in the present case is that “whether a notification that has received ex-post facto approval by the cabinet can have a retrospective applicability?”**<sup>19</sup>

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<sup>17</sup> 2024 SCMR 876 at 879 paragraphs 12 and 13.

<sup>18</sup> See (i) *Hammad Nabi v. Inspector General of Police Punjab, Lahore*, 2023 SCMR 584 at 592 B to 593; (ii) *Munir Hussain v. Province of Sindh*, 2022 SCMR 650 at 656 D; (iii) *Sara Jalil v. Muhammad Jamil Baber*, 2022 CLC 569 at 573 paragraph 10; (iv) *Commissioner Inland Revenue v. Secretary Revenue Division*, 2021 PTD 11 at 18 B; (v) *Gulistan Textile Mills Ltd v. Soneri Bank Ltd.*, 2018 CLD 203 at 217 G; (vi) *Province of Punjab v. Muhammad Rafique*, PLD 2018 SC 178 at 185 C; (vii) *Karachi Development Authority v. Hawa Bai*, 2017 SCMR 1801 at 1803 A; and (viii) *University of Health Sciences v. Mumtaz Ahmed*, 2010 SCMR 767 at 770 B.

<sup>19</sup> *Ibid* at 877 to 878 paragraphs 4 to 6.

40. The question before the Supreme Court was entirely different from that raised before this Court.

41. A further distinction between the Attock Judgment and this case is that in the former the approving and notifying authority were the same – the rates of fees for mining licenses had to be approved and notified by the Government of Baluchistan / Provincial Cabinet under the relevant rules. In this case the approving authority and notifying authority under the OGRA Ordinance are different. The approving authority is the Federal Government / Federal Cabinet, and the notifying authority is OGRA.

42. Under Section 8(3), the Federal Government is required to advise OGRA of the sales price. Based on this advice, OGRA must notify consumers of the prices. At the time OGRA issued the Notification on 31.12.2016, it had not received any advice from the Federal Government.

43. Any subsequent advice by the Federal Government cannot grant legal sanctity to the Notification. The Notification remained illegal. OGRA could have issued a new notification under Section 8(3) after receiving the Federal Government's advice. It did not.

44. As held by the learned Single Judge, the decision of the Cabinet must precede the notification by OGRA. Any other interpretation would render Section 8(3) of the OGRA Ordinance redundant as the role of OGRA would be read out of the law.<sup>20</sup> In short, OGRA would no longer have to notify the sales price for gas. Any sales price decided and approved by the Federal Cabinet would simply take effect from that date without any action on OGRA's part.

45. This is further buttressed by Section 8(4) of the OGRA Ordinance. If Appellants submission is accepted, OGRA can never

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<sup>20</sup> Paragraphs 12 to 15 of the Impugned Decision at Page 73.



exercise power under Section 8(4) (i.e., notifying the prices determined by it when it does not receive any advice from the Federal Government within 40 days) because the Federal Cabinet could step in at any time and approve a sales price which would override any notification by OGRA. This could not be the intent of the Legislature, and the Appellant's arguments under the head of proposition "C" cannot be sustained.

D. Appellant's Proposition "D" – Procedural Irregularity "1" - "Advice rendered by Federal Government in respect of the impugned Notification fulfils the requirement / Reliance on Rule 17(1)(c) of the Rules of Business, 1973

46. Appellants relied on Rule 17(1)(c) of the Rules of Business, 1973 ("**1973 Rules**") to argue that the ECC Decision is a decision of the Cabinet as it was ratified by the Cabinet.

47. Rule 17(1)(c) of the 1973 Rules reads:

*"17. Method of disposal of Cabinet cases. — (1)  
Cases referred to the Cabinet shall be disposed of –*

- (a) by a discussion at a meeting of the Cabinet; or*
- (b) by circulation amongst Ministers; or*
- (c) **by discussion at a meeting of a committee of the Cabinet:***

**Provided that the decisions of the Committee shall be ratified by the Cabinet unless the Cabinet has authorised otherwise."**

48. The proviso to Rule 17(1)(c) confirms that a case referred to the Cabinet can only be disposed of by a discussion at a meeting of a committee of the Cabinet, in this case the ECC, if the decision of the committee is ratified *unless the Cabinet has authorized otherwise*.

49. The proviso to Rule 17(1)(c), therefore, provides for two possibilities. The first is that the decision of the ECC could be ratified by the Cabinet. The second is that the Cabinet can authorize the ECC to take a decision on its behalf.

50. Appellants have not produced any prior authorization from the Cabinet to the ECC authorizing the ECC to take any decision in relation to gas sales price on the Cabinet's behalf. The second possibility is ruled out. The ECC Decision cannot, therefore, be treated as a decision of the Cabinet.

51. The text of the Cabinet Decision itself shows that it was not a decision under Rule 17(1)(c). It was a decision under Rule 17(1)(b). The Cabinet Decision reads:

*“The Cabinet disposed of the Summary titled “Confirmation of the Decision taken by the Economic Coordination Committee (ECC) of the Cabinet in its Meetings held on **15<sup>th</sup>,... December, 2016...**” dated 11<sup>th</sup> January 2017 submitted by Cabinet Division **by circulation in terms of rule 17(1)(b)** read with rule 19(1) of the Rules of Business, 1973 and approved the proposal...”*

(emphasis supplied)

52. The Cabinet did not ratify the ECC Decision under Rule 17(1)(c). It independently approved the proposal (for gas sales prices) contained in the ECC Decision, and this became an independent decision of the Cabinet, which was taken on 13.01.2017 under Rule 17(1)(b). Thus, we cannot accept Appellant's reliance on Rule 17(1)(c), which contradicts the Cabinet Decision itself. This rules out the first possibility.

53. Rule 17(1)(c), therefore, has no application to this case.

54. Even otherwise, if the Rule 17(1)(c) did apply, the Cabinet Decision would apply from the date it was passed, that is, 13.01.2017. It cannot have a retrospective effect. It is settled law that executive actions do not have retrospective effect unless specifically provided for in the law.<sup>21</sup> The Appellants did not cite any law providing for the retrospective effect of Cabinet Decisions.

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<sup>21</sup> See (i) *Government of Pakistan v. Muhammad Ismail*, 2023 PLC (C.S.) 740 at 742 C to D; (ii) *Sindh Petroleum and CNG Dealer Association v. Federation of Pakistan*, 2020 CLC 851 at 867 paragraph 32 till 868 paragraph 33; and (iii) *Anoud Power Generation Limited v. Federation of Pakistan*, PLD 2001 SC 340 at 348 A.

55. Given the above, Appellant's proposition "D" is reduced to a cipher on this ground too, and cannot be sustained.

E. Appellant's Proposition "E" – Procedural Irregularity "II" – Rule 21 to the rescue"

56. Appellants submit that this a simple case of a procedural irregularity and in accordance with Rule 21 of the Natural Gas Tariff Rules, 2002 ("2002 Rules") such an irregularity will not invalidate the Notification.

57. Rule 21 of the 2002 Rules, however, states that "*[n]o proceedings shall be invalid by reason of any defect or irregularity*". This provision relates to proceedings conducted by OGRA, such as under Sections 8(1) and 8(2) of the OGRA Ordinance when it holds public hearings for determining gas prices. The express language of the provision does not extend to matters beyond that. It is, therefore, inapplicable in this appeal.

58. Even otherwise, as discussed hereinabove, this is also not a simple case of a procedural irregularity. This is a case of a constitutional and statutory violation. A provision of the rules cannot save constitutional and statutory violations. Accordingly, we do not find merit in this proposition "E" raised by the Appellants.

F. Appellant's Proposition "F" – "Procedural Irregularity "III" – "No prejudice or injustice caused"

59. Appellants lastly argued that, in any event, the Federal Government's failure to provide timely advice for the purpose of Section 8(3) causes no prejudice or injustice to Respondents and so even if the Notification is illegal, every illegal act is not required to be struck down if there is no prejudice being caused.

60. This plea is based in equity. The case before this Court, however, is not one of grant on injunction where the principles of

equity may be applied. It is a case of a constitutional and statutory violation. Equitable considerations cannot sanctify and save such violations.

61. Even otherwise, there is no prejudice caused to SSGC in this case. When submitting its petition to OGRA to determine its ERR each year, SSGC includes the shortfall from previous years as part of its revenue requirement. OGRA considers this shortfall when determining the gas tariff for subsequent years (as the Federal Government has guaranteed a specific rate of return to SSGC). Saving the Notification on this basis would give SSGC a double benefit and require Respondents to pay twice.

62. Given the above reasoning, the Notification was, therefore, illegal on the date it was issued. The Federal Cabinet's subsequent approval on 13.01.2017 of the ECC's decision cannot grant any validity to the Notification. This approval operates from the date it was made. It does not and cannot cure the statutory and constitutional violations on which the Notification is based. The Notification was illegal on the date it was issued and remains illegal.

63. OGRA could have issued a new notification after the Cabinet Decision. It did not.

64. Appellants have failed to make out any case for interference with the Impugned Judgment. In view of the foregoing, the instant appeals are dismissed, and the impugned Judgment of the Single Judge in the 92 suits is upheld in the above terms, including and in addition to the reasons articulated by the learned Single Judge in the suits.

Judge

Chief Justice

## Annexure "A"

S. No.	Case No	Case Title
1	H.C.A. No.336/2024	Federation of Pakistan & another VS Premium Textile Mills Ltd & others
2	H.C.A. No.340/2024	Federation of Pakistan & another VS Kashif Ayub & others
3	H.C.A. No.341/2024	Federation of Pakistan & another VS M/S. Asian CNG Station & others
4	H.C.A. No.342/2024	Federation of Pakistan & another VS M/S Farooq Ghee & Cooking Oil Mills
5	H.C.A. No.343/2024	Federation of Pakistan & another VS M/S Nova Leathers (Pvt.) Ltd. & others
6	H.C.A. No.344/2024	Federation of Pakistan & another VS M/S Shafiq Dyeing & Bleaching & others
7	H.C.A. No.345/2024	Federation of Pakistan & another VS Alam Cotton Mills (Pvt.) Ltd. & others
8	H.C.A. No.346/2024	Federation of Pakistan & another VS Muhammad Shafi & others
9	H.C.A. No.347/2024	Federation of Pakistan & another VS Kohinoor Textile Mills Limited & others
10	H.C.A. No.348/2024	Federation of Pakistan & another VS ISIS Pharmaceuticals & Chemicals Works & others
11	H.C.A. No.349/2024	Federation of Pakistan & another VS Artistic Apparels (Pvt.) Limited & others
12	H.C.A. No.350/2024	Federation of Pakistan & another VS Al-Ahmed Textile Mills Limited & others
13	H.C.A. No.351/2024	Federation of Pakistan & another VS M/S Rauf Textile & Printing Mills (Pvt.) Ltd. & others
14	H.C.A. No.352/2024	Federation of Pakistan & another VS Nishat Mills Limited & another
15	H.C.A. No.353/2024	Federation of Pakistan & another VS M/S Irfan Steel Re-Rolling Mills & others
16	H.C.A. No.354/2024	Federation of Pakistan & another VS M/S Garibsons (Pvt.) Ltd. & others
17	H.C.A. No.355/2024	Federation of Pakistan & another VS M/S English Biscuit Manufacturers (Pvt.) Limited & others
18	H.C.A. No.356/2024	Federation of Pakistan & another VS M/S Paracha Textile Mills Ltd. & others
19	H.C.A. No.357/2024	Federation of Pakistan & another VS M/S Quick CNG Station
20	H.C.A. No.358/2024	Federation of Pakistan & another VS M/S Stitchwell Garments & others
21	H.C.A. No.359/2024	Federation of Pakistan & another VS M/S Any Textile Mills (Pvt.) Ltd & others
22	H.C.A. No.360/2024	Federation of Pakistan & another VS M/S Crown Apparel & others
23	H.C.A. No.361/2024	Federation of Pakistan & another VS M/S Knitwear (Pvt.) Ltd. & others
24	H.C.A. No.362/2024	Federation of Pakistan & another VS M/S Yaqoob Oil Processing & Extracting M & others

25	H.C.A. No.363/2024	Federation of Pakistan & another VS Crescent Fibers Limited & others
26	H.C.A. No.364/2024	Federation of Pakistan & another VS Gul Ahmed Textile Mills Ltd. & others
27	H.C.A. No.365/2024	Federation of Pakistan & another VS Engro Polymer & Chemicals Limited & others
28	H.C.A. No.366/2024	Federation of Pakistan & another VS M/S International Industries Ltd. & others
29	H.C.A. No.367/2024	Federation of Pakistan & another VS M/S Iffco Pakistan (Pvt.) Ltd. & others

30	H.C.A. No.368/2024	Federation of Pakistan & another VS Hiba Weaving Mills (Pvt.) Ltd. & others
31	H.C.A. No.369/2024	Federation of Pakistan & another VS M/S Hashwani Hotels Ltd. & others
32	H.C.A. No.370/2024	Federation of Pakistan & another VS M/S Avari Hotels Ltd. & others
33	H.C.A. No.371/2024	Federation of Pakistan & another VS M/S Model CNG Point & others
34	H.C.A. No.372/2024	Federation of Pakistan & another VS Engro Polymer & Chemicals Limited & others
35	H.C.A. No.373/2024	Federation of Pakistan & another VS Indus Motor Company Ltd. & others
36	H.C.A. No.374/2024	Federation of Pakistan & another VS M/S Gulzar Towels & others
37	H.C.A. No.375/2024	Federation of Pakistan & another VS Nagina Cotton Mills Ltd. & others
38	H.C.A. No.376/2024	Federation of Pakistan & another VS Pakistan Synthetics Ltd. & others
39	H.C.A. No.377/2024	Federation of Pakistan & another VS M/S Amreli Steel Limited & others
40	H.C.A. No.378/2024	Federation of Pakistan & another VS M/S Ambreen Glass Industries & others
41	H.C.A. No.379/2024	Federation of Pakistan & another VS Pakistan Beverage (Pvt.) Ltd. & others
42	H.C.A. No.380/2024	Federation of Pakistan & another VS M/S SWANO Enterprises & others
43	H.C.A. No.381/2024	Federation of Pakistan & another VS M/S Arm. S. Snack Food & others
44	H.C.A. No.382/2024	Federation of Pakistan & another VS M/S Richko Textiles & others
45	H.C.A. No.383/2024	Federation of Pakistan & another VS M/S International Industries Ltd. & others
46	H.C.A. No.384/2024	Federation of Pakistan & another VS M/S Kohinoor Spinning Mills Ltd. & others

47	H.C.A. No.385/2024	Federation of Pakistan & another VS M/S T.S. International & others
48	H.C.A. No.386/2024	Federation of Pakistan & another VS Lucky Cement Limited & others
49	H.C.A. No.387/2024	Federation of Pakistan & another VS M/S Al-Amin Denim Mills (Pvt.) Ltd. & others
50	H.C.A. No.388/2024	Federation of Pakistan & another VS Engro Fertilizers Limited & others
51	H.C.A. No.389/2024	Federation of Pakistan & another VS M/S Lucky Aluminum (Pvt.) Ltd. & others
52	H.C.A. No.390/2024	Federation of Pakistan & another VS M/S United Towel Exporters (Pvt.) Limited & others
53	H.C.A. No.391/2024	Federation of Pakistan & another VS M/S ATM Industries (Pvt.) Ltd. & others
54	H.C.A. No.392/2024	Federation of Pakistan & another VS M/S Al-Momin Packaging Ind. (Pvt.) Ltd. & others
55	H.C.A. No.393/2024	Federation of Pakistan & another VS M/S Kohinoor Soap & Detergents (Pvt.) Ltd. & others
56	H.C.A. No.394/2024	Federation of Pakistan & another VS M/S B.P. Industries (Pvt.) Ltd. & others
57	H.C.A. No.395/2024	Federation of Pakistan & another VS Khas Textile Mills (Pvt.) Ltd. & others
58	H.C.A. No.396/2024	Federation of Pakistan & another VS Sanam Textile Mills & others
59	H.C.A. No.397/2024	Federation of Pakistan & another VS M/S Babar (Pvt.) Ltd. & others
60	H.C.A. No.398/2024	Federation of Pakistan & another VS Super CNG Station & others
61	H.C.A. No.399/2024	Federation of Pakistan & another VS M/S Fimotex Industries (Pvt.) Ltd. & others
62	H.C.A. No.400/2024	Federation of Pakistan & another VS M/S Kama Ceramics Ltd. & others
63	H.C.A. No.401/2024	Federation of Pakistan & another VS M/S Denim International & others
64	H.C.A. No.402/2024	Federation of Pakistan & another VS M/S Universal Cables Industries Ltd. & others
65	H.C.A. No.403/2024	Federation of Pakistan & another VS M/S Pakistan Cables Ltd. & others
66	H.C.A. No.404/2024	Federation of Pakistan & another VS M/S Collapsible Tube Co. (Pvt.) Ltd. & others
67	H.C.A. No.405/2024	Federation of Pakistan & another VS

		M/S Ahmed Oil Industries (Pvt.) Ltd. & others
68	H.C.A. No.406/2024	Federation of Pakistan & another VS M/S Irfan Noman Bernas Pvt. Ltd. & others
69	H.C.A. No.407/2024	Federation of Pakistan & another VS M/S Zahra Industries Pvt. Ltd. & others
70	H.C.A. No.408/2024	Federation of Pakistan & another VS M/S Caltex Oil Pak Limited (Aijaz Auto) & others
71	H.C.A. No.409/2024	Federation of Pakistan & another VS M/S Proline Pvt. Ltd. & others
72	H.C.A. No.410/2024	Federation of Pakistan & another VS M/S Pakistan Oil Mills Pvt. Ltd. & others
73	H.C.A. No.411/2024	Federation of Pakistan & another VS M/S Spotlight Printers Pvt. Ltd. & others
74	H.C.A. No.412/2024	Federation of Pakistan & another VS M/S Hamid Textile Industries & others
75	H.C.A. No.413/2024	Federation of Pakistan & another VS Prime Safety Limited & others
76	H.C.A. No.414/2024	Federation of Pakistan & another VS Beltexco Limited & others
77	H.C.A. No.415/2024	Federation of Pakistan & another VS Stealex Pvt. Ltd. & others
78	H.C.A. No.416/2024	Federation of Pakistan & another VS M/S Pak Dyeing & Bleaching & others
79	H.C.A. No.417/2024	Federation of Pakistan & another VS Dawood Spinning Mills Pvt. Ltd. & others
80	H.C.A. No.418/2024	Federation of Pakistan & another VS M/S Winner Foods Pvt. Ltd. & others
81	H.C.A. No.419/2024	Federation of Pakistan & another VS ShahzadTejani & others
82	H.C.A. No.420/2024	Federation of Pakistan & another VS Idrees Textile Mills Limited & others
83	H.C.A. No.421/2024	Federation of Pakistan & another VS G.S. Industries Pvt. Ltd. & others
84	H.C.A. No.422/2024	Federation of Pakistan & another VS M/S Padela Twisting Pvt. Ltd. & others
85	H.C.A. No.423/2024	Federation of Pakistan & another VS M/S Kangore Traders & others
86	H.C.A. No.424/2024	Federation of Pakistan & another VS M/S Al-Rehmat Steel & others
87	H.C.A. No.425/2024	Federation of Pakistan & another VS M/S Any Textile Mills Pvt. Ltd. & others



88	H.C.A. No.426/2024	Federation of Pakistan & another VS Nadeem Power Generation Pvt. Ltd. & others
89	H.C.A. No.427/2024	Federation of Pakistan & another VS M/S N.S. Food & others
90	H.C.A. No.428/2024	Federation of Pakistan & another VS M/S Golden Steel Re-Rolling Mill & others
91	H.C.A. No.429/2024	Federation of Pakistan & another VS M/S Fatima Weaving Mills Pvt. Ltd. & others
92	H.C.A. No.430/2024	Federation of Pakistan & another VS Sun Metal Industries Pvt. Ltd. & others