

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No. D-7939 of 2015
Along with
Suit No. 929 of 2018 and 2090 of 2019
C.P. D-3864, 8566, 8387 of 2019, D-1044, 1045, 1744 & 620 of 2024

Date	Order with Signature of Judge
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18-03-2025

Mr. Faiz Ahmed Advocate for the Petitioner in CP D-620/2024
Mr. Ahmed Shahmeer Advocate for Petitioner in CP D-3864/2019
Mr. Arshad Hussain Shahzad Advocate
Mr. Muhammad Naqqash Siddiqui Advocate for Petitioner
Mr. Anas Habib Advocate for the Respondent
Mr. Ameer Nausherwan Adil Advocate for Respondent/FBR
Mr. Irtafa-ur-Rehman Advocate for Respondent
Mr. Shahid Ali Qureshi Advocate for FBR
Mr. Karim Khan Rezy Advocate for SRB
Mr. Kashif Nazir, Assistant Attorney General
Mr. Sandeep Malani, Assistant Advocate General

This order determines the applications, listed / pending in each of the respective petitions / suits, filed by the FBR seeking release of the security put in place to secure the obligations of the petitioners / plaintiffs therein.

These petitions / suits were determined vide Order dated 21.01.2025, which reads as follows:

“Per learned counsel, these matters pertain to challenge by trans-provincial entities to imposition/collection of W.W.F. in the wake of the 18th amendment to the Constitution and subsequent pronouncements of the Supreme Court, including Sui Southern Gas Company Ltd. vs. Federation of Pakistan reported as 2018 SCMR 802. It remains the petitioners’ case that trans-provincial entities may be treated independently of provincial fiscal laws. These matters have been pending since 2013.

Notwithstanding the aforesaid, it was brought to the attention of the Court that the Council of the Common Interests had been seized of the matter and had been pleased to decide, on Agenda Item 14 bearing NO CCI 14/1/2019 dated 23.12.2019, as follows:-

“119. The CCI considered the Summary dated 23rd May, 2019 submitted by Ministry of Overseas Pakistani & HRD and observed that none of the provinces has developed a workable mechanism for resolution to address the post-devolution issues of pension of migrating employees. The Council held that being trans-provincial and inter-provincial matter, both the organizations i.e. EOBI & WWF should remain with the Federal Government to perform its functions under Employees Old-Age Benefits Act, 1976 and Workers Welfare Fund Ordinance, 1971, till such time a mutually agreed mechanism is developed.”

The Court was assisted with the pertinent provision of the Constitution stipulating that decision of the CCI are subject to challenge vide reference to the Parliament, hence, it was argued that post 2019 no occasion remained for these matters to continue to be entertained in writ jurisdiction.

The Council of Common Interest is a representative body constituted inter alia to facilitate comity between the federating units and each Province has representation therein. In the event of either the Federal Government or a Provincial Government is dissatisfied with a decision of the Council, they remain at liberty to precipitate a reference before a joint sitting of the Parliament. Despite repeated opportunity, recorded vide orders dated 16.10.2024 and 14.11.2024, it is nobody's case that the aforesaid decision of the Council has been referred/assailed before the Parliament.

Therefore, the respective learned counsel have sought that all these matters be disposed of in terms of the Council of Common Interests decision of Agenda Item 14 bearing NO. CCI.14/1/2019 dated 23.12.2019 referred to supra. Order accordingly.

It was articulated on behalf of the petitioners that their liberty to challenge the vires of the enactment as and when occasion arises, not be curtailed by orders herein. The respondents' learned counsel articulated no cavil in such regard. Order accordingly."

Learned counsel for FBR articulated that the entitlement of the Federation stood resolved by the Council of Common Interests and the fate of the petitions / suits was consequent thereupon. Mr. Ameer Nausherwan Adil articulated that no challenge was preferred to the CCI decision, rendered in 2019, and there is no suggestion of any appeal having been preferred against the determinant order herein. Therefore, it was just and proper that the all amounts secured, including any accretion thereon, be released to the Federation / FBR forthwith.

Learned counsel representing the SWWF stated that since the amount secured obligations of the petitioners / plaintiffs towards the Province, hence, the same ought not to be released to the FBR. Learned AAG also adopted the said stance.

Mr. Ameer Nausherwan Adil countered that the security was with respect to the obligations of the petitioners / plaintiffs and the CCI decision clearly recognized the dominion of the Federal Government in such regard. He articulated that the obligation of the petitioners / plaintiffs was not in doubt, hence, the amounts secured could not be returned thereto. He further added that since the primacy of the Federal Government in the subject matter was not in dispute, hence, no amount could be released to the Province. Therefore, no case was conceivable to deny the secured amounts to the Federation. The learned AAG and the counsel for SWWF could not dispel the aforesaid. Even otherwise, despite issuance / service of notice of the respective applications, neither the Province nor the SWWF have filed any counter affidavits to contest the applications under consideration.

Therefore, in view of the unanimous CCI decision dated 23.12.2019, and the apparently un-assailed consequent order dated 21.01.2025, there appears to be no impediment for grant of the applications for release of surety filed by FBR, hence, the same are allowed. The Nazir is directed to release the aforesaid amounts, along with any accretion thereon, forthwith. The office is directed to place a copy hereof in each connected file

Judge

Judge