

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitutional Petition No. D-750 of 2023

(Sohail Ahmed Khoso v Federation of Pakistan & others)

Constitutional Petition No. D-762 of 2023

(Muhammad Uzair Shaikh v Federation of Pakistan & others)

Date	Order with signature of Judge(s)
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Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Muhammad Abdur Rahman

Date of hearing: 22.05.2024

Date of order: 23.01.2025

Sohail Ahmed Khoso petitioner in person.
Mr. Alam Shar Bozdar advocate.
Mr. Amir Ali Bhutto advocate.
Mr. Irfan Ali Soomro Advocate for respondents No. 3,4,5,7 and 8.
Mr. Zafar Ali Shah advocate for respondent No.9
None present on behalf of respondents 10 & 11.
Mr. Blosch A. Junejo advocate for respondent No.6
Mr. Liaquat Ali Shar, Additional AG Sindh
Mr. Kareem Bux, Jarwar Assistant Attorney General

ORDER

Adnan-ul Karim Memon, J; Petitioners seek two daily flights from Begum Nusrat Bhutto Sukkur airport to Karachi and Islamabad airports and vice versa by allowing private Airlines (respondents 9 to 11) to operate flights from Karachi to Sukkur.

2. These petitions are filed pro bono publico in the public interest of Sukkur Division and its suburbs. It is averred by the petitioners that the Sindh High Court Bench in Sukkur was established in 1985. Lawyers from across Pakistan, including Karachi, traveled to Sukkur to practice. The Sukkur Bar Association has approximately 3000 members. It is submitted that only Pakistan International Airline (PIA) operates flights from Sukkur, despite four Airlines existing in Pakistan. This creates a monopoly, allowing PIA to charge high fares for a single seat as of April 17, 2023. This restricts competition from other Airlines (respondents 9 to 11), who could potentially offer lower fares. They added that flight schedules from Sukkur to Islamabad are inadequate, with only four flights per week. This causes significant inconvenience for lawyers, citizens, and students. As per petitioners, Sukkur has universities and colleges serving Sindh and parts of Baluchistan. Students and patients face difficulties due to limited flight operations and a lack of specialized arrangements for medical needs. Petitioners further submitted that Sukkur is a crucial regional hub with a significant need for improved connectivity; that **the** National Institute of Cardiovascular Diseases (NICVD) Hospital and other hospitals in Sukkur, play a vital role in treating chronic heart diseases, particularly carcinoma, for residents of upper Sindh and Baluchistan; that limited access to emergency care leads to

high mortality rates among patients from upper Sindh; that Sukkur is a major commercial center with a Chamber of Commerce and Industry; that frequent travel to Karachi by businessmen and rice traders for business purposes creates significant inconvenience; that as a Divisional headquarters, Sukkur hosts key government offices, including police and judiciary. It is also a center of political activity, with frequent visits by government officials. As per petitioners, Sukkur and surrounding areas suffer from inadequate infrastructure and essential services. Petitioners emphasized that Begum Nusrat Bhutto Airport in Sukkur has been underperforming for a long time having no such adequate facility to allow other Airlines to operate due to runway issues which allow only ATR; that past daily flights have been reduced to a few per week, causing inconvenience to residents; that the lack of a dual carriageway to Karachi, coupled with poor law and order situation, makes road journeys risky; that despite repeated requests, authorities (PIA & CAA) have failed to increase flight frequency by managing affairs including establishing proper runway for Airbus. They restrict other airlines from operating flights to/from Sukkur, while the fares of PIA are high. They prayed for allowing the instant petitions.

3. Mr. Irfan Ali Soomro, advocate for respondents 3, 5, 7, and 8, argued that while PIA operates flights to/from Sukkur, it lacks authority to control other airlines. Despite challenges like inflation and rising fuel costs, PIA encourages competition and plans to expand its operations with new aircraft. He has further contended that PIA adjusts fares to combat rising inflation and fuel costs. He added that the Civil Aviation Authority (CAA) regulates airline operations, not PIA. Other airlines have denied the ability to operate on the Sukkur-Karachi route. He has further contended that the Civil Aviation Authority, not PIA, regulates airline operations in Pakistan, therefore, PIA cannot prevent other airlines from operating on routes like Sukkur-Karachi. He next contended that PIAC intends to acquire new aircraft to meet growing market demand and serve the needs of citizens in Sukkur. The lawyer argued that the growing market demand in Sukkur necessitates air service to meet citizens' needs. He emphasized that Aviation policy decisions, including route designations, fall under the National Aviation Policy 2023 purview. While PIACL acknowledges its responsibility for socio-economic routes, the policy has removed this category and reclassified some routes, including Sukkur, as secondary routes. He lastly contended that PIAC neither intentionally nor deliberately increases fares. Due to significant losses and low passenger travel, PIAC was/is unable to continue flights from Sukkur to Karachi on a daily basis, subject to the availability of passengers and other obstacles created by the CAA. PIAC constantly assesses market conditions and traffic trends. They assured that they would endeavor flights if operations become commercially viable, subject to the availability of aircraft. The

learned counsel for the respondent PIAC requested the dismissal of the petitions on the aforesaid analogy.

4. Balosh A. Junejo, counsel, representing CAA/respondent No. 6 argues that the 2019/2023 policy, requires other private airlines to operate on the Sukkur-Larkana route alongside PIA or pay compensation, if they refuse as per policy; that no other airlines are operating on this route without any rhyme and reason, and none are paying compensation to PIA in this regard; that as a result, PIA has largely ceased operations on this route more particularly Larkana; that despite issuing notices, PIA has not taken action against the non-compliant private airlines. Counsel argues that primary airports must meet 2023 policy traffic targets. Begum Nusrat Bhutto Airport (Sukkur), despite being secondary, enjoys an advantage due to its high traffic flow among secondary airports. This, combined with potential incentives, makes it a potential for RPP operations, tourism promotion, and regional integration. Counsel acknowledges the importance of promotion and regional integration for air travel. However, demand for air travel is influenced by various factors beyond airlines' control, such as market size, purchasing power, and alternative transport options. Consequently, direct intervention to boost demand is limited, and airport traffic flow may not be significantly impacted by promotional efforts. The learned counsel advocates for market forces of demand and supply to naturally determine adequate flight capacity. He argued that a private airline compelled to operate a specific route may demand compensation for any losses incurred. Reluctance to serve routes with low passenger numbers stems from financial concerns and aircraft incompatibility. The government/CAA has fostered air transport growth through initiatives like the National Policy 2019/2023, which aims to promote operations on underserved routes. However, he submits that the CAA can facilitate private Airlines to operate subject to policy. He prayed for the dismissal of the petitions.

5. Respondent No.9's counsel argues that lending A320/A321 aircraft is infeasible due to the limited fleet. He added that Air Blue operates only 12 Aircraft (7 operational), all A320/A321 models. These Aircraft have passenger capacities of 180 and 221, respectively, limiting flexibility. He further submitted that insufficient runway and other facilities hinder Aircraft landing/taking operations in Sukkur Airport. He argued that the Airfield cannot currently support A320/A321 operations due to inadequate facilities. Only ATR Aircraft are suitable for operation at Sukkur Airport under the present conditions, as such these petitions are liable to be dismissed on the aforesaid analogy, however, he agreed to the extent that if the proper facilities are provided, subject to economic viability, they can endeavor to operate the flights at Sukkur Airport.

6. Mr. Kareem Bux, Assistant Attorney General, argued that this matter involves a policy decision by the Civil Aviation Authority and therefore falls outside this court's jurisdiction. He contends that the petitions should be dismissed.

7. Learned Additional A.G. is of the same view in terms of the stance taken by respondent Nos. 6 & 9.

8. Having heard counsel for the parties and reviewed the record of the case as well as policy decisions on the subject issue.

9. The point raised by the learned counsel for the private Airline is worth considering the reason that the insufficient runway and other facilities at Sukkur Airport hinder aircraft landing and takeoff operations if this is an actual position that needs to be looked into by the CAA. This means that the airport's infrastructure, such as the runway and other ground equipment, may not be adequate to support the safe and efficient operation of Aircraft/Airbus. This could be due to several factors, such as the size of the runway, the quality of the runway surface, or the availability of ground handling equipment.

10. In such circumstances, the writ of Mandamus can only be issued if the policy decision is based on an illegal or unconstitutional act, however in the present case, since the issue raised needs the proper attention of the competent authority of CAA, if the factors as discussed supra, hindering aircraft landing and takeoff operations at Sukkur Airport are corrected, it could lead to several positive outcomes, with improved infrastructure, the Sukkur Airport could handle a larger volume of flights, potentially increasing connectivity to other regions. Addressing the issues by the competent authority with the runway and other facilities would make flight operations safer for both passengers and crew. This could stimulate economic growth in the region by facilitating trade, tourism, and business travel. It would make Sukkur Airport more accessible to people from other parts of the country, potentially leading to increased investment and development.

11. Primarily, the Civil Aviation Authority (CAA) of Pakistan plays a crucial role in addressing the hindrances at Sukkur Airport and facilitating operations by other private Airlines. The CAA sets and enforces safety standards for all airports in Pakistan. This includes ensuring that the runway, navigational aids, and other facilities meet international safety standards. The CAA is responsible for licensing airports, including Sukkur Airport. This involves assessing the airport's compliance with safety regulations and operational requirements. The CAA oversees the day-to-day operations of airports, including air traffic control, ground handling, and security. They can intervene to address any safety or operational issues as well as the issue at hand. The CAA works with airlines to facilitate their

operations at airports. This includes issuing flight permits, providing Air navigation services, and ensuring that the Airport has the necessary infrastructure to support airline operations. Therefore, the CAA has the authority and responsibility to address the hindrances at Sukkur Airport and ensure that it can safely and efficiently accommodate operations by other private Airlines, and the bottleneck so created must be addressed with vigor within reasonable time.

12. In view of the above these petitions are disposed of in terms of paragraphs 8, 9, and 11.

J U D G E

MOHAMMAD ABDUR RAHMAN, J I have had the honour to read the order passed by my learned brother Adnan ul Karim Memon, J on the issues raised in this Petition and while I am in agreement with him regarding the role of the Pakistan Civil Aviation Authority (hereinafter referred to as the “CAA”) and its obligations under it’s constituting statute, I considered it expedient to add an additional note regarding the role and the obligations of the CAA authority in this regard.

2. The CAA is constituted and operating under the provisions of the Pakistan Civil Aviation Act, 2023 (hereinafter referred to as the “Act, 2023”) and which, inter alia, lists the functions and powers of the CAA to include:

- “ ... **4. Functions and powers of the Authority.**
- (1) *Subject to this Act, the Authority shall control and regulate civil aviation and the provision of aviation services, and take measures as are necessary or incidental to the safe, secure and orderly growth of civil aviation in Pakistan.*
- (2) *Without prejudice to the generality of sub-section (1), it shall be the duty of the Authority to—*
- (a) *control and regulate civil aviation and the provision of aviation services in Pakistan generally and particularly in respect of the following matters, namely*
- (i) *the development, operation and maintenance of Airports and the facilities and services as are necessary for, or incidental to the convenience, safety and security of **aircraft**, passengers and other persons using the Airports;*
- (ii) *the operation of all **aircraft** in or over Pakistan and the operation of all **aircraft** registered in Pakistan while being outside Pakistan; ...*
- (b) *take measures as are necessary or incidental to the protection and promotion of the interests of passengers and users of Airports in respect of the prices charged for, and the quality and variety of services provided; ...*

- (d) *encourage, promote, facilitate and assist in the development of civil aviation and aviation services in Pakistan; ...*

Pursuant to such functions, the CAA is responsible for regulating the air traffic serving an airport including, but not limited to the Begum Nusrat Bhutto International Airport that has been developed by the CAA at Sukkur.

2. The city of Sukkur is the third largest city in the Province of Sindh and the fourteenth largest city in Pakistan by population. Its geographical location in the north of the province of Sindh and its proximity to the provinces of Punjab and Balochistan should lead to it being developed as a transportation hub in Pakistan. As addressed by Mr. Blosch A. Junejo a policy known as the National Aviation Policy 2023 (hereinafter referred to as the “Policy,2023”) has been developed by the Government of Pakistan and which *inter alia* purports to regulate the services provided by airline operators in Pakistan. It would seem that statutory cover has been given to the Policy,2023 under Section 90 of the Act, 2023 and which reads as hereinafter:

“ ... 90. *Air Transport Facilitation Policy and Programme.*

(1) *As soon as may be, but not later than one hundred and eighty days of the coming into force of this Act-*

(a) *the Secretary shall draw a national air transport facilitation policy;*

(b) *the Director General shall draw a programme for bringing the policy into effect.*

(2) *The policy and programme*

(a) *shall be consistent with Pakistan's obligations under the Convention; and*

(b) *shall respectively be approved by the Federal Government and the Minister.*

(3) *It shall be the duty of every operator and aviation service provider to comply with, at all times, the provisions of the policy and the programme.”*

The Policy, 2023 differentiates as between Domestic Routes and classifies them in two categories of airports in cities i.e. Primary Route and Secondary Route and which are designated as hereinafter:

“ ... 3.1.10. *Categories of Domestic Routes*

1. *Primary Routes*

The following are designated as Primary Airports:

Faisalabad, Islamabad, Karachi, Lahora, Multan, Peshawar, Ouetta and Sialkol.

Flight operations between any two primary airports will form a primary route.

2. *Secondary Route*

The following are designated as Secondary Airports:

Bahawalpur, Bannu, Chitrat, Dalbandin, D.G. Khan, D.I. Khan, Gilgit Gwadar, Hyderabad, Khuzdar, Moenjo Daro, Muzaffarabad, Nawabshah, Panigur, Parachinar, Pasni, Rahim Yar Khan Rawalakot, Saidu Sharif, Sehwan Sharif, Sibi, Skardu, Sukkur, Turbat and Zhob.

Flight operations between any Primary Airport and Secondary Airport or between two Secondary Airports would form a Secondary Route. ...

4. DGCAA shall be the Competent Authority to notify exemption of Landing and Housing Charges for scheduled services at Secondary airports. ...

3.2 Conditions for Air Service Licenses

3.2.1 RPT Operations

RPT operators are the primary contributors to commercial air transport operations and form significant share in Aviation's contribution to the economic development of a country,

3.2.1.1 Conditions for RPT Operations

...

5. RPT operators shall be required to float sufficient capacity on domestic routes to meet the requirement of domestic sector.

6. RPT operators shall be required to serve a minimum of two (2) Primary Routes.

*7. RPT operators shall be required to operate 5% of their total capacity in terms of ASKs floated on domestic Primary routes on at least one secondary route. This provision may be subject to review by PCAA on development of TPRI operations' **Non-conformance may result in penal action as determined by DGCAA***

8. RPT operators may engage in commercial arrangement or joint ventures with other air service operators for operations on Secondary Routes''

The expression “RPT” is an acronym for the expression Regular Public Transport and is used to refer to airlines that operate to provide services to the general public e.g., Pakistan International Airlines. Under the Aviation Policy 2023, such airlines are required to service two primary airports and in addition to operate at least 5% of their “Available Seat Kilometers” to at least one “Secondary Route”.

3. Mr. Blosch A. Junejo next referred us to the Licensing/Certification of Flying Training and Commercial and Private Air Operations – AIR Navigation Order (hereinafter referred to as the “Air Navigation Order”) that the Director General, CAA can issue under Section 148 of the Act, 2023 and which, in respect of the service of primary and secondary routes, implements the Policy,2023 and which reads as hereinunder:

“ .. *D11 OPERATIONS ON DOMESTIC ROUTES BY RPT OPERATORS:*

D-11.1 After acquiring AOC, the licensee shall be required to operate on at least two (02) Domestic Trunk routes.

D-11.2 In addition to operation on domestic Trunk routes, Pakistani scheduled air carriers shall operate on at least one Primary or one Socio-Economic route as per detailed category of routes given as under.

D-11.3 Trunk Routes

D-11.3.1. Routes between any two of the following cities would form a Trunk Route:-

D-11.3.2 Karachi, Lahore, Islamabad, Peshawar and Quetta

D-11.4 Primary Routes

D-11.4.1 Air link with the following destinations would form a Primary Route:-

D-11.4.2 Faisalabad, Multan, Sialkot, Sukkur, D.G. Khan, Rahim Yar Khan, Bahawalpur, Nawabshah, D.I. Khan, Hyderabad.

D-11.5 Socio Economic Routes Category-A

D-11.5.1 Air link with the following would form a Secondary Route:-

D-11.5.2 Gwadar, Zhob, Mohenjo-daro, Mirpur Khas, Muzatfarabad, Skardu, Gilgit, Chitral, Saidu Sharif, Bannu,

D-11.6 Socio Economic Routes Category-B

D-11.6.1 Turbat, Panjgur, Khuzdar, Dalbandin, Rawalako, Parachinar, Sehwan Sharif, Ormara, Jiwani, Pasni, Jacobabad, Sibi, Mangla, Kohat, Bhagtanwala, Mianwali, Talhar,

Note 12 There shall be no landing and housing charges at Socio-Economic airports for scheduled services.

Note 13. The inclusion /deletion of airports in any of above category of Routes would be at the discretion of DGCAA with the approval of Aviation Division.”

He contended that under the Licenses that had been issued to Air Blue i.e. the Respondent No. 9, it had agreed to serve Begum Nusrat Bhutto International Airport as one of its Primary Routes but despite the same being an obligation under the terms of its license, the respondent No. 9 was not serving Begum Nusrat Bhutto International Airport. He stated that there were various penal clauses in the license agreement and which could be invoked as against the Respondent No. 9 in this regard by CAA was holding its hand and had not been invoking such action as against the Respondent No. 9.

4. Mr. Zafar Ali Shah entered appearance on behalf of the Respondent No. 9 and contended that Air Blue had selected Skardu as its secondary route on

account of the Begum Nusrat Bhutto International Airport not being able to accommodate aircraft of the size that are operated by Air Blue.

5. After hearing the contentions of each of the concerned parties and while acknowledging the inconvenience caused to the general public in Sukkur, there is clearly a need to be careful in interfering in such policy matters as mandated by the Supreme Court of Pakistan¹ and which interference would only be warranted where the policy was “developed in an arbitrary exercise of power, mala fide, patently illegal or manifestly unreasonable”² or are found to be “manifestly inconsistent with constitutional commands, retrogressive in nature and discriminatory.”³ Keeping in mind the sensitivities of such operations, while there has been some information placed before the Court regarding a lack of enforcing terms of license agreements and while noting that the residents of Sukkur have a right to ensure that the Policy, 2023 and the Air Navigation Order is followed, I would consider it expedient to refer the matter to the Director General, CAA with directions to:

- (i) carry out an inquiry as to how many airlines are serving Begum Nusrat Bhutto International Airport as a Secondary Route;
- (ii) as to whether in fact the number of airlines that are serving Begum Nusrat Bhutto International Airport are actually doing so or not; and
- (iii) In the event that it is found that the requisite number of airlines are not serving Begum Nusrat Bhutto International Airport in accordance with the terms of their license as to whether any action is mandated to be taken as against such Airlines by the CAA or not.

¹ See *Peshawar Electric Supply Company Ltd. (PESCO) vs. SS Ploypropylene (Pvt.) Ltd., Peshawar* PLD 2023 Supreme Court, 316; *Sadiq Poultry (Pvt.) Ltd. vs. Government of Khyber Pakhtunkhwa* PLD 2023 Supreme Court 236; *Syed Azam Shah vs. Federation of Pakistan through Secreary Cabinet Division Cabinet Secretariat* 2022 PLC (CS) 383; *Government of Khyber Pakhtunkhwa Through Secretary Agriculture, Livestock And Cooperative Department Peshawar vs. Saeed-ul-Hassan* 2022 PLD (CS) 164; *Government of Khyber Pakhtunkhwa vs. Sher Aman* 2022 SCMR 406; *Federation Of Pakistan through Secretary, Ministry of Industries and Production vs. Hamza Sugar Mills Ltd.* PLD 2021 Supreme Court 806; *National Engineering Services Pakistan (NESPAK) (Pvt.) Limited vs. Kamil Khan Mumtaz* 2018 SCMR 211; *Power Construction Corporation of China Ltd. vs. Pakistan Water and Power Development Authority* PLD 2017 Supreme Court 83; *Ghulam Rasool vs. Government of Pakistan through Secretary, Establishment Division Islamabad* PLD 2015 Supreme Court 6; *Wukala Mahaz Barai Tahafaz Dastoor Vs. Federation Of Pakistan* 2014 SCMR 111; *Cutting of Trees for Canal Widening Project, Lahore* 2011 SCMR 1743; *Syed Muhammad Arif vs. University of Balochistan* PLD 2006 Supreme Court 564;

² *Abdul Hammed vs. Water and Power Development Authority* 2021 PLC (CS) 1439;

A report in this regard may be filed by the Director General CAA personally within one month with the Sub-Registrar of this Court for further orders.

J U D G E

ANNOUNCED BY

JUDGE

JUDGE

Shafi