

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

Date	Order with signature of the Judge
------	-----------------------------------

Present:

**Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Muhammad Osman Ali Hadi.**

C.P.No.D-3346 of 2021

Noor Ahmed & others	.....	Petitioners
	Vs.	
Federation of Pakistan & others	.....	Respondents.

C.P.No.D-3573 of 2021

Asadullah	.....	Petitioner
	Vs.	
Federation of Pakistan & others	.....	Respondents.

C.P.No.D-6455 of 2021

Aqeel Ahmed Qazi & others	.....	Petitioners
	Vs.	
Federation of Pakistan & others	.....	Respondents.

C.P.No.D-6456 of 2021

Wali Muhammad Khan & others	.....	Petitioners
	Vs.	
Federation of Pakistan & others	.....	Respondents.

C.P.No.D-6782 of 2021

Riaz Ali Chandio	.....	Petitioner
	Vs.	
Federation of Pakistan & others	.....	Respondents.

C.P.No.D-6783 of 2021

Pakistan WAPDA Employees Paigam Union	.....	Petitioner
	Vs.	
Federation of Pakistan & others	.....	Respondents.

C.P.No.D-5476 of 2022

Muhammad Rafique & others	.....	Petitioners
	Vs.	
Federation of Pakistan & others	.....	Respondents.

Date of short order: 29.05.2025.

Date of order: 21.06.2025.

Mr. Anwar Mansoor Khan, Advocate for petitioners along with
Meer Muhammad Ali Talpur, Advocate in CP No.D-3346/2021
Ms. Nazia Hanjrah, advocate for petitioners in CP No.D-3573 &
6455/2021

Mr. Muhammad Zeeshan Abdullah, advocate for petitioners in CP No.D-5476/2021

Mr. Kaleemullah Meerani, advocate for petitioner in CP No.D-6782/2021

Mr. Rizwan Faiz Muhammad, advocate for respondent No.10 & 11 a/w Mr. Shehzoor Ali Ghuri, Deputy Manager (Legal)

Mr. Muhammad Naqqash, advocate for respondent No.8

Mr. Muhammad Fahd, advocate for applicant/intervener

Mr. R.D. Kalhoro, Assistant Attorney General

ORDER

MUHAMMAD IQBAL KALHORO J: This is a bunch of seven (07) connected petitions (*leading petition is CP.D.No.3346/2021 filed by the Chairman All Pakistan WAPDA Hydroelectric Workers Union (CBA) and the Union itself through its Secretary of the Union Shop Stewards*) seeking a ruling regarding validity, legality and sustainability in law of the impugned Office Orders issued separately on different dates by Pakistan Electric Power Company (PVT.) Limited (PEPCO). By the said Orders, the petitioners, employees of Central Power Generation Company (GENCOs-I & II) working in different cadres in Thermal Power Station Jamshoro and Guddu, declared as surplus, have been adjusted in different DISCOs: SEPCO, HESCO, MEPCO, FESCO, etc. Petition No. 918/2021 has been filed by Pakistan WAPDA Employees Paigham Union (Regd) through its provincial president and authorized person seeking identical relief(s) for its members.

2. As per brief facts, disclosed in the petitions, the impugned orders came into being when Cabinet Committee on Energy (CCoE), a sub-committee of Federal Cabinet, directed the Ministry of Energy (Power Division) Generation and Transmission Wing to review implementation of tasks and targets qua GENCOs. Accordingly, a meeting was held on 10.8.2020 under the Chairmanship of Special Assistant to the Prime Minister on Power Division to discuss tariff rationalization, savings, operational and financial issues of GENCOs. In the said meeting, it was decided that low efficiency units should be shut down as soon as practicable. NTDC/ National Power Control Centre (NPCC) and GENCOs were advised to sit together and assess the need to continue operating less efficient plants due to technical limitations of the system stability. Finally, on 8.09.2020, Power Division moved a summary regarding Operational and Non-Operational Power Plants of GENCOs recommending closure of low efficiency plants. The CCoE while granting necessary approval on such summary directed Power Division to fix specific timelines for closure of power plants along with principles/benchmark set out for

their closure. A direction to submit a report to CCoE for consideration in this regard within two weeks was also given. It was also decided that a representation having all such details shall be made to the Federal Cabinet.

3. As a result, low efficient Power Plants were closed down and the employees (the petitioners including) thereof were absorbed in different DISCOs. Apart from challenging their absorption in different companies, the petitioners have also questioned the directives ordering closure of several Units operated by Jamshoro Power Company Limited (JPCL) on the grounds, among others, of being mala fide, illegal, unlawful, and ultra vires of the Constitution.

4. Mr. Anwar Mansoor, the leading counsel, argued that impugned notifications were issued without lawful authority and for reasons other than bona fide, only to benefit Independent Power Producers (IPPs); the said orders are based on the decision of Economic Coordination Committee (ECC) that had no authority to direct closure of economically viable and beneficial generation units or declare their employees as surplus; the impugned orders have not been issued with the approval of the Federal Government; the impugned notifications have been issued in violation of Articles 4, 18, 24 and 25 of the Constitution as the closure of Plants is likely to cause irreparable loss to the public at large and wastage of valuable assets; the expertise of employees of GENCOs is different from the jobs that are assigned to the petitioners in the DISCOs; that such exercise has been carried out sans the approval of the Federal Government or through an act of Parliament; that the adjustment of a huge number of employees in DISCOs is an invitation to disaster in overall efficiency of those companies; the GENCOs employees have expertise of power plants / power sector field, whereas they have been assigned to DISCOs where it will be difficult for them to perform: DISCOs are already working with full capacity hence GENCOs employees would be extra burden on them.

5. He next contended that the closure of Jamshoro Plants will create unemployment in the area as the said Plants are vital source of employment. He emphasized that the Government was in the process of procuring 3000 MW from IPPs in order to fulfill load demand. IPPs are attempting to sell all their power plants under the scheme "Build, Own, Operate & Transfer" back to the Government after expiry of their power Purchase Agreements. After which the Government will require

specialized workforce to operate such power plants, hence wastage of specialized skilled workforce of GENCOs is unreasonable and unjustified; the assets of Plants would be rendered unmanned resulting in wastage and destruction of such assets; the GENCOs, being entities derived out of WAPDA, itself a Government department, should not be allowed to be closed down without approval of the Parliament; the closure-decisions have been taken in haste and it will affect lifespan of the Plants. Instead, per him, these plants could be repowered and revived through the Business Plan submitted by the management of GENCO-I as requisite infrastructure for electricity generation is already available. Learned counsel in order to support his contentions relied upon the laws reported in **PLD 2014 SC 206, 2020 SCMR 513, 2013 SCMR 1383, PLD 1975 SC 244, PLD 2005 SC 806, PLD 1960 SC 266, 1993 SCMR 346, PLD 1981 SC 224, PLD 1984 SC 194, PLD 2014 Sindh 389, 1985 SCMR 758, 1995 CLC 1021, 2000 SCMR 1703** and **PLD 2006 Khi 479**.

6. The learned counsel in remaining petitions reiterated the same pleas as above in their arguments and added that the closure of the plants was in violation of provisions of the Company Act. They in order to exemplify their point referred to definition clauses of the Act, defined liquidation of the company, laying off the workers, besides referring to sections 83(4) (5), 183(2), 184, and 254.

7. Learned counsel of respondents and Assistant Attorney General defended the impugned actions of the Government and urged mainly that the petitions were not maintainable; the Supreme Court has already determined that High courts shall not dabble in policy-decisions of the Government; the hyper technical and intricate issues shall be left to the experts to decide; the Lahore High Court, when approached by the some other employees of GENCOs against the identical orders , disposed of the petitions as compromised when the petitioners agreed to join their duties in different DISCOs; that in these petitions as well, most of the petitioners have already joined their duties and drawing their salaries from respective DISCOs, hence the petitions have become verily infructuous.

8. We have considered arguments of the parties, perused available record and taken guidance from the case law relied upon at bar. Before dilating upon merits of the case in hand, we may encapsulate relevant circumstances necessary to comprehend the

issues in hand. A petition was filed¹ before this Court at Sukkur Bench seeking direction for restarting Thermal Power Station Sukkur. That petition was filed against a different backdrop -- unscheduled long power outages -- but was seeking more or less the same relief i.e. restart of a Power Plant. The petitioner had apprised the Court that requirement of Sukkur City was only 55 MW, while TPS Sukkur had the capacity of producing 250 MW electricity with an additional byproduct capacity of 35 MW electricity. He had voiced the same apprehension that valuable assets of the said TPS were liable to be mauled and damaged and its land encroached, in case it was not ordered to be resurrected. The court was pleased to call for relevant reports (technical including) that verified that TPS had become obsolete, it needed replacement, and its revival was not advisable. The court after taking into account such reports declined the relief and held that restoration of TPS Sukkur was neither feasible nor economically viable; and disposed of the petition by directing the SEPCO authorities to make efforts for redressing grievance of citizens of Sukkur relating to long load-shedding.

9. In Lahore, the identically placed petitioners aggrieved by the same impugned order – declaring employees of GENCO-III surplus and adjusting them in MEPCO – filed a petition² questioning the said order on analogous grounds. Respondents in reply asserted that the impugned order was a result of a policy decision taken at the highest level after approval of the Cabinet. The decision was taken after keeping in view the various financial and administrative exigencies and cannot be interfered with in the constitutional jurisdiction. This petition was disposed of with consensus of the parties whereby the petitioners agreed to resume their new assignment in compliance of the impugned order. The court nonetheless was pleased to put up a qualification in the order protecting right of the petitioners to pay and pension.

10. Here also, as transpired in the heat of arguments, most of the petitioners have already joined their duty and working at respective places (DISCOs). They are still bent upon perpetuating these petitions only on technical/legal basis that the closure of the Plants and the decision to declare them surplus and adjusting them in different DISCOs was taken without approval of the Federal Cabinet in

¹ PLD 2019 Sindh 506

² Writ petition No.7655 of 2021

contravention of the ratio laid down by the Supreme Court in *Mustafa Impex Karachi* case³. They argued that the decision was taken by sub-committees of the Cabinet (CCoE) and (ECC) that had no such authority as a subcommittee cannot be considered as the Federal Government.

11. The chronology of the facts reflects that in order to deliberate on tariff rationalization, savings, operational and financial issues of GENCOs, a meeting was held under the Chairmanship of Special Assistant to Prime Minister on Power Division on 10.08.2020. It was, *inter alia*, decided that low efficiency units should be shut down as soon as practicable. Various options in this regard were discussed and estimates appraised regarding minimum generation requirement at Musffargarh, Guddu and Jamshoro Units with the prescriptive of system stability and load management. Accordingly, National Power Control Centre (NPCC) and GENCO Holding were directed to devise a plan and come up with suggestions to operate only the most efficient Plants as per NPCC requirements. GENCO Holding was advised to submit a detailed plan for closing down the inefficient / low efficiency non-operational and operational units within two weeks

12. In compliance, various proposals were examined in lengthy discussions between NPCC and GENCOs. Finally, a meeting was held on 08.09.2020 where in System Operator-NPCC gave its suggestions on each Unit of GENCOs: Units that may be closed immediately and Units that may continue to be kept alive due to system constraints. The Unit wise proposals of NPCC were incorporated in the said meeting. It was realized that the expenditures on account of salaries and pensions of employees serving in GENCOs met through monthly capacity payments will no more be available upon closure of the Power Plants. It was anticipated that closure of defunct Plants will result in saving of Rs.5,674 million per annum CPP and permanent reduction in capacity by 1519 MW. As for the number of employees, they were estimated to be 2,015 and pensioners to be 2,077 whose annual salaries and pension impact were calculated as RS.2,318 million and Rs.4,461 million respectively. The accumulated liability on account of pensioners' benefits was estimated at Rs.24,614 million as on 30.06.2020.

³ PLD 2016 SC 808

13. In the said meeting, it was finally decided that in order to reduce overall cost of the system low efficiency Units as decided in the meeting on 10.08.2020, and subsequent modalities settled by GENCO Holding Company Limited and NPCC, a proposal to CCoE be sent to consider closure of low efficiency Plants and decide fate of employees and pensioners thereof. It was in compliance of the said decision (taken in the meeting dated 08.09.2020) that a summary was prepared for the Cabinet Committee on Energy (CCoE). The said committee in its meeting held on 10.09.2020 decided to close down immediately low efficiency Plants including Jamshoro, Lakhara *et al* in line with recommendations of Power Division.

14. Likewise, on realization that closure of power plants would give rise to issue of salary and pension of employees and pensioners because GENCOs were paying salaries & pension out of capacity charges, which they were receiving in tariff. Once capacity charges were no more available, GENCOs will not be financially in a position to pay salaries to employees as well as pension to pensioners. Hence, a summary was prepared by Power Division on the basis of an exercise under taken to work out the number of working employees and retired ones including those who had died, transferred or removed from service. Also, on the direction of Power Division, a possibility of adjusting working employees in various DISCOs was thought out. Value of pensionary expenses was determined and in this regard advice from the Finance Division was also sought which agreed, on the analogy of unbundling of WAPDA and adjustment of its employees in DISCOs/ GENCOs, to transfer liability qua salary and pension of surplus employees of soon-to-be-closed Power Plants to respective DISCOs in a rationalized manner. In the summary, therefore, a request was made to Finance Division to release a one-time grant of Rs.14.5 billion to GENCOs for onward payment to DISCOs, so that the latter could take over liability of payment of pension to pensioners of the said Power Plants.

15. This summary dated 2.4.2021 titled as “*GENCO-Wise/Plant-Wise Pensioners & Employees’ Cost*” came before ECC on 7.04.2021 for a decision. The ECC gave no objection to absorption of surplus GENCOs employees in DISCOs, but refused to grant approval to financial aspect of the matter and directed Power Division to analyze viable options for resolution of the pension issues of GENCOs employees and submit the same before it for a consideration.

16. In line with the said direction, and in continuation of decision made by CCoE in a meeting held on 10.09.2020 --immediate closure of certain power plants --, Power Division again prepared a summary on 07.09.2021 titled as “*Adjustment Of Pensioners Of GENCOs Power Plants Under Closure*” for Economic Coordination Committee (ECC). In the said summary, after highlighting history, albeit in brief, of problems in meeting with expenses being incurred on pay and pension of GENCOs employees on their closure, it was urged that GENCOs and DISCOs are companies fully owned by Government of Pakistan in the same manner as WAPDA, a statutory body, is. The employees and pensioners of such companies have protected pensionary rights and their pension payments are covered in tariffs of respective GENCOs. If these employees and pensioners are transferred and allocated to the DISCOs/WAPDA, they both will claim its impact in their respective tariffs. Hence, there will be no additional impact on the consumer-end tariff.

17. In the light of such stance, it was proposed that 2368 pensioners of GENCOs and their pension may be adjusted/disbursed in DISCOs or WAPDA. Similarly, 1753 employees of soon-to-be-closed Plants would be adjusted in DISCOs. Pension of these employees will be paid by the relevant DISCOs on their retirement according to rules of the relevant DISCOs. In turn, the respective DISCOs & WAPDA would claim adjustment of the same from NEPRA in their respective tariffs. This summary was circulated to Finance Division, NEPRA & Water Resources Division for views and comments, and finally was placed before ECC in a meeting held on 23.09.2021, the ECC after due deliberation and consideration approved the proposal and decided adjustment of employees and pensioners in relevant DISCOs under the terms and conditions proposed in the summary.

18. It was in compliance of such summaries and approvals granted by the relevant committees that the low efficiency Power Plants were closed down ultimately and impugned orders were issued adjusting serving employees in different DISCOs. Now the first question is whether or not these decisions are legal and sustainable in law. Petitioners’ emphasis is that the impugned orders adjusting them in different DISCOs and causing closure of the Power Plants are a result of decisions taken by the subcommittees of the Cabinet, and not

by the Federal Government. *Mustfa Impex*⁴ case was cited repeatedly by them to bring home their point that Federal Government means the Prime Minister and Federal Ministers (the Cabinet). The decision of the Cabinet is the decision of the Federal Government, any decision taken individually even by the Prime Minister, let alone by a subcommittee of the Cabinet, cannot be termed as a decision by the Federal Government. The executive power of the Federal Government has to be exercised through the mandatory modalities of Rules of Business, and a violation thereof would be fatal to the exercise of such powers. The Federal Government does not have discretion to not follow the Rules of Business which are mandatory and binding on the Federal Government, a failure to follow them would render the order invalid lacking any legal authority.

19. With due respect to what has been reproduced above, in our view the present case does not fall within its ambit. It is not mere decisions of the subcommittees (CCoE or ECC) that have been followed in this case and impugned orders issued after closing down inefficient power plants. The decisions were made by the relevant subcommittees on the recommendations of Power Division which after a lengthy exercise of deliberations involving all aspects of the matter including generation capacity, profit margin, expenses, liabilities, future prospects etc. of the power plants had decided in the public interest to close down those plants finding them economically unviable putting heavy burden in the shape of extra tax on the general public. The plants were not earning any profit and were not making any contribution to the national economy over all either, and on the contrary were being maintained and run on additional grants etc. approved by the Government from time to time. After only such long premeditations, advice from Experts in the relevant fields and taking input from management of those power plants, and scrutiny of *pros and cons* in favour of retaining them or otherwise, the summary by the Power Division was prepared and placed before CCoE which endorsed the same in its meeting held on 10.09.2020.

20. After such development, the Cabinet Division prepared a summary titled as “*Ratification of the Decisions taken by the Cabinet committee on Energy (CCoE) in its meetings held on 10.09.2020 and 18.09.2020*” and placed it before the Cabinet for a consideration and

⁴ PLD 2016 SC 808

decision. The Cabinet sat on 22.09.2020, held a meeting and ratified the said decisions. It may be reminded that the decisions ratified in such meeting included, *inter alia*, a decision by CCoE to close down low efficiency Power Plants, which decision itself was founded on the suggestions sorted out in the meeting held on 10.08.2020 under the Chairmanship of SAPM on Power Division and subsequent modalities settled between GHCL and NPCC.

21. Insofar as the case of employees and pensioners of those Power Plants is concerned, the same procedure was pursued. In the wake of decision of closure of uneconomical Units, the Power Division prepared a summary titled “*GENCO-Wise/Plant-Wise Pensioner & Employees’ Cost*”, of course after getting feedback from all the concerned and exploring economic fallout, in April 2021 for ECC to consider adjustment of employees of such Units on the same pattern already followed in the case of unbundling of WAPDA and transfer of its employees to the then newly created DISCOs/GENCOs. This summary was placed before ECC on 7.04.2021 and the relevant recommendation deliberated and endorsed. After such exercise, finally the Cabinet Division prepared the summary titled “*Ratification of the Decisions taken by the Economic Coordination Committee (ECC) of the Cabinet in its meeting held on 07.04.2021*” and put it before the Cabinet on 20.04.2021, when the latter sat to consider various issues decided by the ECC along with the above issue of adjustment of employees and pensioners of inefficient Power Plants. The Cabinet deliberated at length and ratified all the decisions. So not only the closure of economically unviable Power Plants but adjustment of their employees both have been duly ratified by the Cabinet in separately held meetings on 22.09.2020 and 20.04.2021 respectively.

22. Ratification of decisions of the Committees is provided in Rule 17 of the Rules of Business, 1973. This rule stipulates several methods of disposal of Cabinet cases, and provides that the decisions of the Committee shall be ratified by the Cabinet unless the Cabinet has authorized otherwise. In *Mustafa Impex*⁵ case, the Supreme Court has already held that the Rules of Business are mandatory and binding and any order passed bypassing them would lack legal validity. It is also held that in the case of the Rules, the authority flows

⁵ PLD 2016 SC 808

from the Constitution and the Federal Government has no discretion to refuse to follow the Rules of Business.

23. Meaning thereby, compliance of the Rules of Business, being mandatory in nature, would tend to sanctify the order which may otherwise be considered lacking legal sanctity for any reason including but not limited to the ones involving decisions by the subcommittees of the Cabinet like the case in hand. Ratification in law refers to the process of confirming or validating an action, agreement or document, making it officially binding and enforceable. Ratification can be express (clearly stated) or implied (inferred from actions or circumstances). Its primary purpose is to provide legal certainty and enforceability, ensuring that all parties are bound by the terms of the agreement or action in question.

24. In the present context, there could be no other justification of ratification other than to equalize the decision of subcommittees with the decision of the Cabinet itself. Therefore, the impact of ratification by the Cabinet of decisions made by its subcommittees would be as if the decision has been made by the Cabinet itself. After ratification, the relevant decision would not be considered merely a decision of the subcommittee, but a decision made by the Cabinet, binding on all the relevant parties and enforceable in the same manner like a direct decision of the latter. Ratified decisions are not open to challenge in the constitution petition on the ground that the same have been taken by a subcommittee of the Cabinet which is not the Federal Government, and therefore the same are illegal or without any legal validity. Once the decision is ratified by the Cabinet in compliance of the Rules of Business, it would be deemed to have been made by the Cabinet for all the purposes leaving no room to consider it as lacking sustainability in law. Ratification even can validate an otherwise invalid or unauthorized decision, making it legally binding. Ratification can have retrospective effect, meaning it can apply to actions taken before the ratification. It, ineffect, estops a party from denying or challenging the decisions or actions.

25. Therefore, after ratification of impugned decisions by the Cabinet their legality and ensuing enforceability is undisputed. The petitioners cannot maintain the petitions on the ground that the

decisions taken by the sub-committees are illegal, void *ab initio* and lack validity. On ratification, all the impugned decisions would be deemed to have been made by the Federal Government, binding on all the parties and enforceable in law.

26. There is another aspect to the matter that strongly makes the impugned decisions valid and beyond the pale of being interfered with by the High Court in Constitutional Jurisdiction. These decisions are essentially policy matters. The Federal Government after considering every feature – economic viability, expenses, profits, losses, future prospect etc. of the inefficient Units -- decided to close them down to save further damages and burden, borne by public at large, on the national exchequer. The said decisions were taken after getting inputs, and opinions from all the concerned including the experts of the relevant fields, who after examining minutely all the proposed prospects went in favour of closure of the said Units. Proceedings leading to these policy decisions started in due course from Power Division, when it was realized that such faulty Power Plants were beyond retrieval and their running would not bear but only losses to the Government. These proceedings after fulfillment of legal requirements landed before the relevant subcommittees of the Cabinet for further analysis. There they were examined and re-examined, some items endorsed and some sent back for reconsideration. After scrutiny of every nook and cranny of the issues involved by all the concerned, finally the proceedings came before the Cabinet, discussed and then ratified in the interest of public.

27. It is undisputed that the High Court has no jurisdiction to interfere in the policy decisions of the Government. The Supreme Court in the case of *Gul Zarif Khan and others Vs. Government of Khyber Pkhtunkhwa through Chief Secretary, Peshawar and others*⁶ has explained that the power of review of a government policy is now well-settled: neither the court can act or represent as an appellate authority with the aim of scrutinizing the rightness or aptness of a policy nor may it act as an advisor to the executives on matters of policy which they are entitled to formulate. But review can be sought when a decision maker fails to observe statutory procedures, misdirects itself in law, exercises a power wrongly, improperly purports to exercise a power that it does not have, or the policy decision was so unreasonable that no reasonable authority could ever have come to it.

⁶ Civil Petitions No.1925 to 2006 of 2024.

28. On the same point, in the case of *Senior General Manager Pakistan Railways and others Vs. Muhammad Pervaiz*⁷, the Supreme Court has said that the court can neither act as an appellate authority with the aim of scrutinizing the propriety, suitability, and/or adequacy of a policy, nor may it act as an advisor to the executive on matter of policy which they are entitled to formulate. The object of judicially reviewing a policy is to ascertain whether it violates the fundamental rights of the citizens, or is at variance with the provisions of the Constitution, opposed to any statutory provision, or demonstrably arbitrary or discriminatory. The court may invalidate laws, acts and government actions that are in- compatible with a higher authority, or an executive decision for being unlawful which maintains a check and balance. Such a declaration can be sought on the ground that the decision-maker misdirected itself in law, exercised a power wrongly or improperly or purported to exercise a power that it did not have, which is known as acting ultra vires. It is further observed, a decision may be challenged as unreasonable if it is so unreasonable that no authority could ever have come to it, or due to a failure to observe the statutory procedure. The dominance of judicial review of the executive and legislative action must be kept within the precincts of the constitutional structure so as to avoid any misgivings or apprehension that the judiciary is overstepping its bounds by engaging in unwarranted judicial activism.

29. None of the dominant features, detailed above, which could justify taking cognizance of the matter involving a government policy by the court are available in the present case. Before deciding in favour of closing down the inept Power Plants and surplussing their employees and adjusting them in different DISCOs, the Federal Government thoroughly examined the issue, as detailed in preceding paras, through experts of the relevant fields, tried at first to save the Plants by injecting in them tax-payers hard earned money in the shape of additional grants, but nothing changed. The Plants stayed as economically unviable as before, incurring losses instead of earning profits and contributing to the national economy. There was no recourse available to the Government in such circumstances except to shut them down and evade any further losses.

30. The petitioners who have apparently no legal right to take exception to such a process, have come in the Court not out of any

⁷ 2024 SCMR 581.

altruism for the dying Plants, but to avoid presumed-inconvenience of being adjusted in different companies situated not at the place of their convenience/choice. Which fact is evident from disposal of petitions, as compromised, filed before the Lahore High Court by some other employees of the GENCOs faced with the same situation, when they were given joining options in respective DISCOs and their right to pay and pension was protected by the court. Most of the petitioners here also finding it convenient have already sailed the ship and joined their new posting places. After joining duty at new places and working as employees of DISCOs, they hardly have any right to assail closure of Power Plants, which were entrusted to them to run efficiently, but apparently they failed to do so, and hence had to be shut down by the Government. Without any legal right to challenge the decision of the Government qua Power Plants, mere element of concern to their closure founded on no solid ground, legal or factual, will hardly make petitioners' case stronger in the eyes of law which allows the court to object to the government policy only when it is manifestly mala fide, violates the fundamental rights of the citizens, or is at variance with statutory provisions or the Constitution, or demonstrably arbitrary or discriminatory.

31. Although, a number of articles from Part-II of Chapter 1 of the Constitution (fundamental rights) were referred by learned counsel in their arguments in defense of the petitioners, but they could not explain as to which fundamental right of the petitioners enumerated in the said Chapter stood violated by closure of inefficient Power Plants that despite best measures by the Government did not get reanimated. Or that absorption in the companies, owned by the Government equally with the same perks and privileges including protection to their right to pension, has resulted into curtailment of some right, which they were enjoying earlier but on absorption stood slashed. In absence of any fundamental right of the petitioners having been abridged, their choice to challenge the above actions of the Government is without any legal right to stand on.

32. The Supreme Court in the case of *The Commissioner Inland Revenue and others*⁸ while elaborating on government policy in economic matters (*Economic impact of closure or non-closure of the Power Plants being primary element in this case*) has said that in such matters, most legislative and executive decisions are essentially

⁸ PLD 2024 SC 1168

empirical based on experimentation or what might be called the trial and error method. The problems of government are practical and may sometimes justify rough accommodations based on unscientific formulas. In complex economic matter, the best solution are often not easily discernible, the wisdom of any choice may be debated or criticized, but mere errors of policy judgment are not subject to judicial review. Only clear and definite violations of fundamental rights or other constitutional provisions warrant judicial intervention. The legislative and executive branches of the State are entitled to make pragmatic adjustments which may be called for by particular circumstances. Courts cannot strike down an economic policy decision taken by them merely because they feel that another policy decision would have been fairer, wiser, or more scientific or logical. It is for the legislature, not the courts to balance the advantages and disadvantages of various economic concerns.

33. In addition to above, it may be stressed that the courts interfere in such like matters under the constitutional jurisdiction only when the party which is invoking such remedy is successful in establishing that it has a clear legal right, so much so that it does not admit of a reasonable doubt or controversy.⁹ Here, the petitioners have miserably failed to achieve that bar and demonstrate that they have a clear right in law to challenge closure of uneconomical Power Plants. Second, their status -- employees of the bodies having no statutory rules to govern service of employees -- does not allow them to question their absorption in other government-owned-organizations with the same perks and privileges plus protection to their pensionary rights. This proposition is so settled that it does not admit of any doubt and controversy so as to justify invoking of constitutional jurisdiction by the petitioners. The Supreme Court has time and again held in the contexts encompassing, more or less, some of the main features of present controversy that a writ does not lie against an organization having no statutory rules of service. Enhancing the scope of the same, the Supreme Court in the case of *Pakistan Eclectic Power Company*¹⁰ has explained that where conditions of service of employees of even an statutory body are not regulated by rules/regulations framed under the Statute but only by rules or instructions issued for its internal use, any violation thereof could not normally be enforced through

⁹ 2011 SCMR 1813

¹⁰ 2022 SCMR 991

constitutional jurisdiction and they would be governed by the principle of “master and servant”.”

34. A number of provisions of the Companies Act, 2017 were cited in arguments by the learned counsel to explain that neither closure of (faulty) Power Plants, nor absorption of the petitioners in different DISCOs was lawful. Apart from section 2 (54), defining public sector company, following provisions were read to clinch the point;

Sec. 83 (Further issue of capital) [4] (Power of the Government to convert loan obtained by PSC into shares in that company) [5] (direction that in doing so the Government shall have regard to financial position of PSC, the terms of the rate of interest payable thereon, etc.,

Sec. 183(Powers of board) [2] (list of powers to be exercised by the board), Sec. 184(Prohibition regarding making of political contributions), and

Sec. 254 (Power of registrar to call for information or explanation).

35. The aforesaid provisions, as is obvious from their title, did not assist us in understanding the controversy, nor provided any help to decide the issues in hand. On the contrary, reference of these provisions generated more confusion than cohesion in determining the facts and applicability of relevant laws. In our view, the aim and object of citing the said provisions was nothing but to obfuscate the entire context of the matter with a view to deter the court from arriving at a just decision timely and easily. But, be that as it may, impact of the said provisions of law is not discussed in detail here as they are not relevant to the issues in hand, they have no concern what so ever either with closure of inefficient Power Plants by the Federal Government through informed decision taken after unsuccessful painstaking measures to resuscitate them or absorption of their employees in DISCOs as a result thereof.

36. It goes without saying that aim and object of state-owned enterprises is, among others, to operate in an efficient manner, achieving the objectives contained in, and acting in accordance with their respective Acts or articles and memorandum of associations, to generate sufficient revenues to cover their costs and be financially sustainable¹¹. The Federal Government is empowered¹² to exercise all

¹¹ Sec.7 (Objectives of state-owned enterprises) of the State-owned enterprises (Governance and Operations) Act, 2023.

¹² Sec. 29 of *ibid* law

the powers and rights that shareholders have in relation to the state-owned enterprises under the law or the constitution of the state-owned enterprise. The Federal Government on realizing that a state-owned enterprise is not up to the mark and is incurring losses instead of earning profits and despite efforts to put back it on the course is not functioning in a manner economically viable, it can proceed and order for its closure to avoid further financial losses. The petitioners have failed to cite any circumstances under which despite aforesaid doomsday scenario qua the subject Power Plants, the Federal Government should have still acted like an ostrich and shied away from taking a decision closing the inefficient enterprises down to save government exchequer and lessen the burden of tax payers who out of their hard-earned money were being forced to keep such Units live. The plea, insisted by the petitioners in arguments, seeking direction to the Government to keep on injecting more money into such fatally wounded Power Plants to revive them will not serve any purpose except resulting into wastage of more time and extra money, as such exercise, undertaken many times in the past in the shape of additional grants, failed to bear any fruit and revive the fate of the Plants.

37. We in the light of above discussion conclude that the petitioners have no case on merits and these petitions therefore must fail. Accordingly, all the petitions in hand are dismissed and these are the reasons for our short order dated **29.05.2025**.

All the petitions are accordingly disposed of along with all the pending applications. Office to place a copy of this order in connected petitions.

J U D G E

J U D G E

DATED: 21.06.2025