THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. D – 4353 of 2019

Present:
Mr. Justice Adnan Iqbal Chaudhry
Mr. Justice Muhammad Jaffer Raza

Petitioner	:	Tandianwala Sugar Mills Ltd., through Mr. Ali Almani Advocate a/w Mr. Sami-ur-Rehman and Shahzeb Ali Advocates.
Respondent No.1	:	Pakistan through its Secretary Ministry of Commerce Government of Pakistan and Secretary ministry of Finance Government of Pakistan, through Mr. Muhammad Akbar Khan, Assistant Attorney General and Ms. Alizeh Bashir, Assistant Attorney General.
Respondent No.2	:	State Bank of Pakistan, through Mr. Manzoor-ul-Haq, Law Officer a/w Muhammad Rehan Assistant Director and Muhammad Awais Jilani, Assistant Director SBP.
Respondent No.3	:	Trading Corporation of Pakistan, through Mr. Rafiq Ahmed Kalwar Advocate.
Dates of Hearing	:	21.08.2025, 04.09.2025 & 18.09.2025.
Date of Judgment	:	13.10.2025

JUDGMENT

MUHAMMAD JAFFER RAZA, J: Succinctly stated, the case of the Petitioner is that the Petitioner is entitled to "freight support claims" pursuant to the decisions of the Economic Coordination Committee **('ECC')** of the Cabinet dated 03.10.2017 and 07.12.2017, allowing cumulatively export of 2.0 MMT of sugar subject to conditions laid therein. It is the case of the Petitioner that the Respondents have illegally and unlawfully withheld the same.

2. It has been contended by the learned counsel for the Petitioner that the procedure for submissions of application for allocation of quota was laid down

vide Circular dated 11.10.2017 issued by Respondent No.2. Thereafter, according to the learned counsel, the Petitioner complied with the necessary conditions of the above noted Circular and was entitled to the claims as noted above. He has further argued that he is entitled to claim the amount of Rs.537,063,232/- as noted in paragraph No.17 of the memo of the petition. He has argued that through the instant petition he has impugned the acts and omissions of Respondent No.2 in failing to release the "sanctioned claim" of the Petitioner. He in this regard has further argued that Respondent No.2 was never bound by the instructions of Respondent No.1 or 3 and only had to access the claim of the Petitioner in light of the circular mentioned above and in accordance with the decision of the ECC. He has further averred that the acts and omissions of Respondent No.2 are illegal and unlawful and consequently has prayed for a direction to be issued to Respondent No.2 to release the "sanctioned claim" of the Petitioner.

3. Conversely, learned counsel for Respondent No.2 has raised a preliminary objection pertaining to the territorial jurisdiction of this Court. Learned counsel has stated that the Petitioner ought to have filed the instant petition before the Lahore High Court as the certificate issued to the said Petitioner, entitling him for the noted claim, was issued by the Cane Commissioner of Punjab. He has further stated that the Petitioner cannot invoke the writ jurisdiction of this Court as its claim lies beyond its territorial jurisdiction.

4. On merits, learned counsel has argued that the Petitioner is not entitled for the claims as mentioned in the memo of petition. He has categorically stated that Respondent No.2 being the State Bank of Pakistan is mandated under the law to follow the instructions issued by the relevant ministry. According to the learned counsel, the Respondent being represented by him, strictly followed the instructions and the said Respondent is unable to process the claim of the Petitioner due to the instructions duly received. He has further averred, that the scheme pertaining to the export subsidy was coined entirely by Respondent No.1

and in this regard the direction of the above Respondent ought to be complied with by Respondent No.2.

5. Learned counsel representing Respondent No.3 adopted the arguments advanced by learned counsel for the Respondent No.2. In addition to the same, learned counsel most vehemently argued that the Petitioner is not entitled for the said claims as the Petitioner had "defrauded" Respondent No.3 and a significant amount is due from the Petitioner to the Respondent being represented by him. In this regard, he has relied upon various documents, annexed with the parawise comments, which according to him, show the malafide intent of the Petitioner and disentitle him to the relief sought. He has clearly stated that Civil Suit No.832/2011 is pending adjudication before the Court of competent jurisdiction pertaining to the above noted dispute.

6. The learned Assistant Attorney General adopted the arguments of both the learned counsels and did not advance any further arguments.

7. Prior to adjudicating the arguments advanced by all the learned counsels, it will be expedient to bifurcate the issues emanating from the dispute. Each of those shall be dealt with and adjudicated separately.

TERRITORIAL JURISDICTION.

8. As noted above, the learned counsels for the Respondent have most vehemently argued that this Court does not have the territorial jurisdiction to adjudicate the instant petition. Conversely, it has been argued by the learned counsel for the Petitioner, that irrespective of the certificate being issued by the Cane Commissioner of Punjab and Khyber Pakhtunkhawa, the Petitioner has invoked the writ jurisdiction of this Court, since denial of Respondent No.2 in releasing the "sanctioned claim" of the Petitioner was in Karachi. He has further argued that the Head-Office of Respondent No.2 is at Karachi and therefore cause of action only arose within the jurisdiction of Karachi.

9. A learned divisional bench of this Court was faced with a similar proposition in the case of ***A.R. Khan & Sons***[1] wherein relying on the judgment in the case of ***Ibrahim Fibers***[2] the learned bench held as under: -

> *"As is clear from this decision, a petition under Article 199 is always maintainable if the person or authority, by whose act the petitioner is aggrieved, is within the territorial limits of the High Court concerned or is otherwise amenable to its jurisdiction. In the present case, the central question is whether there has been a violation of the Rules, 2004 by TCP and whether the concession agreement between the concession-holder and GPA is without lawful authority. The relevant part of the concession B agreement has been novated in favour of PSA Gwadar. Since both PSA Gwadar and TCP are within the territorial limits of this court and are otherwise amenable to its jurisdiction, the petition is maintainable here. The mere fact that the actual physical acts, which would result from the illegalities allegedly committed by the aforesaid to respondents, would occur at Gwadar Port, is not a determinative factor. Furthermore, it is also possible that in a given situation, more than one High Court may have jurisdiction under Article 199 just as, in a suit, more than one civil court may have jurisdiction over the matter, in which case it is open to the aggrieved party or the plaintiff, as the case may be, to choose the court in which proceedings are to be initiated. For these reasons we repel the first preliminary objection regarding the maintainability of the present petition."*
> (Emphasis added)

10. We agree with the contention advanced by the learned counsel for the Petitioner that the Respondents are performing their affairs within the territorial jurisdiction of this court and the cause of action arose within the said limits, as the denial by Respondent No.2, which gave rise to the institution of the present petition, arose in Karachi. In light of the same, we repel the objection taken by the Respondents we hold that the Petitioner has correctly invoked the jurisdiction of this Court.

II-ENTITLEMENT OF THE PETITIONER.

11. It is apparent, from the perusal of the record and more particularly the comments furnished by Respondent No.2[3], that the claim of the Petitioner was duly processed by the noted Respondent. Briefly stated, the Petitioner filed a

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[1] A.R. KHAN & SONS (PVT.) LTD. through Authorized Officer and 3 others Versus FEDERATION OF PAKISTAN through Secretary, Ministry of Commerce, Islamabad and 3 others reported at **2010 CLD 1648**. Relevant paragraph No.14.
[2] Ibrahim Fibers Limited v. Federation of Pakistan and others reported at **PLD 2009 Kar.154**.
[3] Paragraph Number 9 of the comments.

cumulative claim of Rs.537,063,232/- and the noted Respondent processed the said claim to the tune of Rs.439,243,046/-. The claims amounting to Rs.97,820,186/- were found to be ineligible as the same were beyond the period of limitation as prescribed in the noted Circular. There is no dispute between the respective parties in that respect, and neither is the Petitioner claiming the amount to which the Petitioner was disentitled. In this regard it is held that claim of the Petitioner was duly processed by Respondent No.2, as averred by the learned counsel representing the said Respondent, after completing all the necessary formalities as enumerated in the above noted circular.

12. The question now before is whether Respondent No.2 was bound by the instructions of Respondent No.1 to withhold the payment of the sanctioned amount. For the said purpose it shall be necessary to examine Section 21[4] of the State Bank of Pakistan Act, 1956 **("SBP Act").** It is apparent from the bare perusal of the noted provision, more particularly subsection (1), that one of the functions ascribed to Respondent No.2, is to act as a banker for the Federal Government in accepting monies for its account and to make payments from such account. The noted subsidy, for eligible claims, was undeniably to be paid by Respondent No.1. Respondent No.2, by virtue of BPD Circular No.20/2017, only coined the mechanism for such disbursement and was for all intents and purposes acting upon the policy and the instructions of Respondent No.1. Therefore, as banker for the Federal Government, the Respondent No.2 was bound to follow the latter's instructions when it was asked to withhold subsidy

[4] 21. Government business. (1) The Bank shall undertake to accept monies for account of the 140[Federal Government and Provincial Governments] and to make payments up to the amount standing to the credit of their accounts respectively and to carry out their exchange, remittance and other banking operations, including the management of public debt.
(2) (a) The 141[Federal Government] and Provincial Governments shall entrust the Bank, on such conditions as may be agreed upon between the Government concerned and the Bank, with all their money, remittance, and banking transactions in Pakistan, and, in particular, shall deposit free of interest all their cash balances with the Bank.
(b) Nothing in this sub-section shall be deemed to prevent the 142[Federal Government] and any Provincial Government from carrying on money transactions, at places where the Bank has no office, branch or agency or from holding at such places such balances as they may require.
(c) The 143[Federal Government] and each Provincial Government shall entrust the Bank, on such conditions as may be agreed upon between the Government concerned and the Bank, with the management of the public debt and with the issue of any new loans.
(d) In the event of any failure to reach agreement on the conditions referred to in this section, the 144[Federal Government] shall decide the conditions and its decision shall be final.

payments from the account of the Federal Government. We are of the view that in following such instructions, the act of the noted Respondent cannot be termed as unlawful.

III-SET-OFF.

13. It has already been held above that the refusal of Respondent No.2 in not releasing the subsidy to the Petitioner was lawful, in light of the instructions received from Respondent No.1. At this juncture, we shall now examine the legality of the noted instructions issued by Respondent No.1[5]. The basis of withholding the subsidy, as noted above, is the civil suit pending between the Petitioner and Respondent No.3. It is evident from the comments filed by Respondent No.1 and 3 that the said Respondents are in essence claiming a set-off in light of the suit which is pending adjudication. It is further clarified that the set-off claimed by the noted Respondents is not a set-off as understood and envisaged under Order VIII Rule 6 CPC. The Respondents, without articulating it specifically, are claiming, what in law can be classified as an "equitable set-off".

14. To understand the concept and the doctrine further it will first be expedient to note that in essence a set-off is a cross demand which essentially allows a debtor to subtract a sum the creditor owes to the debtor. The doctrine of "equitable set-off" finds its roots in the Courts of Equity in England and has been expounded in various judgements[6] in Pakistan and India. In the case of ***Syed Naimat Ali*** the Hon'ble Supreme Court expounded the doctrine in the following words: -

> *"Thus a plea of legal set-off, in its essential character is a defence and a counterclaim combined, defence to the extent of the plaintiff's claim and a claim by the defendant in the suit itself for the balance. This rule read with Order XX, rule 19, C. P. C., permits what is in essence a counter claim of*

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[5] Letter dated 10.06.2019. Page 1059 of the file. The said letter reflects the directions to Respondent No.2, to withhold the subsidy till the outstanding dues of the Petitioner are cleared in respect of Respondent No.3 (subject matter of the suit).

[6] Syed Niamat Ali & Others versus Dewan Jairam Dass & another reported at **PLD 1983 SC 5.**
Civil Aviation Authority, Quaid-e-Azam International Airport, Karachi versus Japak International (Pvt) Limited, Lahore reported at **2009 SCMR 666.** The case of Syed Niamat Ali was cited with approval in the noted judgment.
Jitendra Kumar Khan & Others versus The Peerless General Finance & Investment Company Limited & Others reported at **MANU/SC/0867/2013**. Supreme Court of India.
Union of India versus Karam Chand Thapar and Brs reported at **MANU/SC/0209/2004.** Supreme Court of India.

> *a specific kind, namely, where it is for an ascertained amount exceeding the plaintiff's claim in his suit for recovery of money. The doctrine of equitable set-off permits on equitable considerations a defendant, to raise a plea of set-off even in respect of an unascertained, sum of money on the principle that if there be some connection between the plaintiff's claim for a debt and; the defendant's claim to set off, it will be inequitable to drive the defendant to a separate suit. Instances of such equitable set-off are when the claims of the two parties arise out of the same transaction or transactions which can be regarded - as one transaction or the cross demands are so connected , in their nature and circumstances that they can be looked upon as part of one transaction. Such a get-off was called an equitable set-off, as it was allowed by the Courts of Equity in England, as distinguished from a legal get-off, which was allowed by the Courts of Common Law in respect only of an ascertained sum. In a number of decisions in the Sub-Continent, it has been held that although a claim for equitable set-off falls outside the provisions of Order VIII, rule 6, C. P. C., it is permissible for a defendant to plead an equitable set-off as effectively as a legal set-off. This view find support from - the proposition that the provisions of the Code regulate procedure only, and they have not the effect of taking away any right of set-off which a defendant may have independently of its provisions. Order XX, rule 19 is a further statutory recognition of the right of a defendant to plead an equitable set-off and obtain relief thereon. However, there is well-recognized distinction between a set-off and a counter claim. Although in one sense both are identical inasmuch as they are cross actions on the part of the defendant but a set-off is essentially a weapon of defence. If the defendant succeeds in establishing it, it serves the purpose of answering the plaintiff's claim either wholly or pro tanto because a set-off is really a debt claimed by the defendant against the plaintiff to counter-balance a debt claimed- by the plaintiff against the defendant."* (Emphasis added)

15. Similarly, the Supreme Court of India in the case of ***Union of India*** enunciated the doctrine and in paragraph number 18 held as under: -

> *"What the rule deals with is legal set-off. The claim sought to be set-off must be for an ascertained sum of money and legally recoverable by the claimant. What is more significant is that both the parties must fill the same character in respect of the two claims sought to be set-off or adjusted. Apart from the rule enacted in Rule 6 abovesaid there exists a right to set-off, called equitable, independently of the provisions of the Code. Such mutual debts and credits or cross-demands, to be available for extinction by way of equitable set-off, must have arisen out of the same transaction or ought to be so connected in their nature and circumstances as to make it inequitable for the Court to allow the claim before it and leave the defendant high and dry for the present unless he files a cross-suit of his own. When a plea in the nature of equitable set-off is raised it is not done as of right and the discretion lies with the Court to entertain and allow such plea or not to do so."* (Emphasis added)

16. For the Respondents to successfully take the plea of an *"equitable set-off"* it will be essential for the said Respondents to establish that the dispute between the parties pertains to the *"same transaction"*. A plea of *"equitable set-off"* therefore cannot be sustained in unrelated and *"unascertained"* disputes. It is apparent, from the bare perusal of the documents annexed along with the objections filed by Respondent No.3, that the dispute between the parties, subjudice in the noted Civil Suit, is isolated from the present case and cannot by any stretch of the imagination be classified as the *"same transaction"*. We have deliberately refrained ourselves from making any observation regarding the merits of the claim, as the suit, as noted above, is pending adjudication before the court of competent jurisdiction. There is no dispute that the said claim is, till the date of writing this instant judgement, unascertained. In this regard we shall restrict ourselves in holding that Respondent No. 3 is not entitled to take the plea taken.

17. Having adjudicated that the act of Respondent No.2 in withholding the claim of the Petitioner was lawful and the Respondent No.3 is not entitled to a set-off, the present adjudication shall now turn to the relief, if any, which can be granted to the Petitioner. In this respect, we specifically confronted the learned counsel appearing for Respondent No.2 to apprise us if the funds are still available with the said Respondent. The learned counsel in response categorically stated that the amount of the sanctioned claim of the Petitioner is no longer available and neither was it available, at least in its entirety, at the time when the instant petition was filed. More specifically, it was also submitted that at the time it was instructed to stop payment[7], only a sum of Rs. 139,448,776/- was left in the account of the Federal Government from the supplementary grant made for the subsidy. More crucially, the authority of Respondent No.2 to debit such account had expired after the financial year ended on 30.06.2019, as reflected in the letter dated 18.06.2019 issued by the Accountant General to Respondent No.2.

[7] Vide interim order dated 28.06.2019.

18. The power to issue a supplementary grant lies with the Federal Government under Article 84[8] of the Constitution of Pakistan. Further, Section 23[9] of the Public Finance Management Act, 2019 **("PFM Act")** stipulates that every grant approved by the national assembly for a given financial year lapses or ceases to have effect at the close of a particular financial year. In view of sub-section (3) of the noted section, when the supplementary grant made by Respondent No.1 for the subsidy has ceased to have effect along with the authority of Respondent No.2 to debit that account of the Federal Government, we do not see how a writ can be issued to the Respondent No.2 to make payment to the Petitioner from said account, even if any amount still remains there. BPD Circular No. 20/2017 had categorically stipulated that *"Moreover, freight support payment shall be subject to budget allocation by the Federal Government and the respective Provincial Governments."*

19. We have also noted that the prayers in the instant petition do not seek any relief against Respondent No.1. The record reflects that the stance of Respondent No.1 became apparent in the year 2019 and no effort was made on part of the Petitioner to amend the petition or to institute a civil suit for a money

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[8] **Supplementary and excess grants**
84. If in respect of any financial year it is found—
(a) that the amount authorized to be expended for a particular service for the current financial year is insufficient, or that a need has arisen for expenditure upon some new service not included in the Annual Budget Statement for that year; or
(b) that any money has been spent on any service during a financial year in excess of the amount granted for that service for that year; the Federal Government shall have power to authorize expenditure from the Federal Consolidated Fund, whether the expenditure is charged by the Constitution upon that Fund or not, and shall cause to be laid before the National Assembly Supplementary Budget Statement or, as the case may be, an Excess Budget Statement, setting out the amount of that expenditure, and the provisions of Articles 80 to 83 shall apply to those statements as they apply to the Annual Budget Statement.

[9] 23. Expenditure from Federal Consolidated Fund [and Public Account].—
(1) No authority shall incur or commit any expenditure or enter into any liability involving expenditure from the Federal Consolidated Fund and Public Account of the Federation until the same has been sanctioned by a competent authority duly empowered and the expenditure has been provided for the financial year through—
(a) schedule of authorized expenditure; or
(b) supplementary grant and technical supplementary grant as per Article 84 of the Constitution; or
(c) re-appropriation as per section [11].
(2) No authority shall transfer public moneys for investment or deposit from government account 1 [including the assignment accounts] to other bank account without prior approval from the Federal Government [:]
[Provided that the principal accounting officer in respect of all the spending units under his control shall submit a certificate to the Finance Division on half yearly basis.]
(3) Every grant approved by the National Assembly for a financial year and every other authority or sanction issued under this Act in respect of a financial year, shall lapse and cease to have any effect at the close of that financial year.

decree against Respondent No.1. We are not inclined to accept the argument of the learned counsel appearing for the Petitioner that the relief can be "molded" and necessary directions may be issued to Respondent No.1 to release the sanctioned amount inasmuch as, "molding" of such relief would entail issuance of a writ to the Respondent No.1 to issue another supplementary grant under Article 84 to settle the Petitioner's outstanding claim. Though no argument was advanced to support that proposition, in our view no such writ can be issued in the given circumstances as an alternative to a money decree.

20. In light of what has been held above the instant petition is dismissed with no order as to cost.

JUDGE

JUDGE

Nadeem Qureshi P.A.