IN THE HIGH COURT OF SINDH AT KARACHI

C.P.No.D-3000 of 2012

LandiRenzo Pakistan (Pvt) Ltd.

Versus

Federation of Pakistan & others

BEFORE:

Mr. Justice Mushir Alam, CJ

Mr. Justice Mohammad Shafi Siddiqui

Date of Hearing: 22.11.2012

Petitioners: Through Mr. Aziz A. Shaikh Advocates.

Respondent No.1 Through Mr. Jawed FArooqui, DAG

Respondent No.3 Through Mr. Asim Iqbal along with Mr. Farmanullah Advocates.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- The petitioners being aggrieved and dissatisfied with the issuance of amending SRO 84(I)/2012 dated 01.02.2012 (hereinafter referred to as the said SRO) issued under section 3(1) of Imports & Exports (Control) Act 1950 (hereinafter referred to as the Act of 1950) read with Para 5(a) of Clause (viii) of Import Policy Order 2009 (IPO) have invoked the constitutional jurisdiction of this Court challenging the viries, transparency and discrimination being caused to the petitioners besides curtailment of vested rights allegedly acquired by them.

2. Briefly and precisely the facts are that the petitioners No.1 to 3 are importers of CNG cylinders and petitioner No.4 is the authorized manufacturer of CNG assembled vehicles. It is alleged that the respondents imposed ban vide said SRO on the import of CNG kits, equipment and cylinders and also restricted the local companies (petitioner No.4) from conversion of vehicle from petrol to CNG.

3. It is contended by the learned counsel for the petitioners that such ban is causing heavy losses to the petitioners besides being the fact that it is causing a very low impact on the consumption of CNG. It is urged that pursuant to such ban in

terms of the said SRO, referred to above, the country suffered 564 Billion extra because of replacing CNG and a sizeable foreign exchange would be consumed on import of petrol and would also expose country to various unemployment. It is contended that the ban on CNG give cause to the re-introduction of petrol and diesel which will cause environmental pollution as consumption of petrol and diesel emit carbon mono oxide 20 times and nitro oxide 3.6 times per kilo meter. Learned counsel in support of his contention submitted that it is violation of Article 9, 14 and 24 of the Constitution and violation of Environmental Protection Act, 1997. Learned counsel submitted that the said SRO is discriminative as on one hand it restrict/prohibit import of CNG Cylinders and conversion kits falling under respective PCT Heading and on the other hand gives relaxation to public transport vehicle fitted with CNG, such as buses and vans. He submitted that the discrimination is visible as only privately owned vehicles are prohibited which decision is arbitrary, contrary and against the established guidelines prescribed under Section 21 and 23 of the General Clauses Act, 1897 making it mandatory to invite objections from general public, stakeholders. It is submitted that the petitioners being foreign companies have invested billions of dollars on attraction and incentives of the respondents via Foreign Private Investment (Promotion) Act, 1976, therefore, learned counsel claims that the right to continue the business cannot be adversely affected vide sub-delegated legislative authority.

4. Learned counsel submitted that these foreign companies have made a sizeable foreign and local investment to establish CNG conversion kit and parts assembling industries during last 12 years. Said incentives were available under section 6 of the Protection of Economic Reforms Act, 1992 and remained intact till 31.1.2012. Such vested rights in terms of the learned counsel, cannot be abruptly taken away through the said SRO. He submitted that the petitioners hold valid licences to import, assemble, convert, market and sale CNG kits and cylinders in the local market as well as export and earned valuable foreign exchange for the country. He submitted that the facility allowed to one and denied to other is discriminatory and it lacks transparency. He submitted that the IPO of 2009 was issued under section 2 and 3 of Act of 1950 read with 2(xviii) of Rules of Business 1973 by Joint Secretary, Government of Pakistan while the said SRO was issued by a Section Officer thus not competently amended in view of Sections 21 and 23 of General Clauses Act, 1897. He averred that the said SRO contradicts Clause 21 of IPO 2009 as neither any public interest nor period of its validity is specified in the said SRO which itself claimed to be violative of the Environmental Protection Act, 1997. Thus conclusively he submitted that the said SRO is bad in law, void ab-initio and against the national interest beside violative of Article 4, 9 and 14 of the Constitution. Learned counsel for the petitioner in support of his contention has relied upon following case laws:

Vested Right

i) Gatron (Industries) Limited v. Government of Pakistan (1999 SCMR 1072)

ii) Theresa Henry v. Calixtus Henry (2012 SCMR 1074)

iii) Alleged Corruption in Rental Power Plants Etc. in the matter of (2012 SCMR 773)

iv) Collector of Customs v. Flying Kraft Paper Mills (1999 SCMR 709)

v) In the matter of Human Rights Cases (PLD 2010 SC 759)

vi) Babar Hussain Shah v. Mujeeb Ahmed Khan (2012 SCMR 1235)

vii) Ibrahim Fibres Ltd. v. Collector of Customs (PTCL 2010 CL 187)

Discrimination

i) Government of Pakistan v. Village Development Organization (PTCL 2005 CL 138)

ii) Mohsin Raza v. Chairman FBR (PTCL 2010 CL 671)

iii) Chief Secretary, Punjab, Lahore v. Naseer Ahmad Khan (2010 SCMR 431)

iv) All Pakistan Newspaper Society v. Federation of Pakistan (PLD 2012 Sindh 129)

Transparency

i) Collector of Customs v. Flying Kraft Paper Mills (1999 SCMR 709)

ii) Muhammad Afsar v. Malik Muhammad Farooq (2012 SCMR 274)

iii) In the matter of Human Rights Cases (PLD 2010 SC 759)

Viries

i) Muhammad Zargham Eshaq Khan v. University of Engineering (NLR 1989 CLJ 84)

ii) The Automobile Transport Rajasthan v. The State of Rajasthan (AIR 1962 RAJISTAN 24)

iii) Abdul Majeed Zafar v. Governor of Punjab (2007 SCMR 330)

iv) Nazir Ahmad Panhwar v. Government of Sindh (2005 SCMR 1814)

v) In the matter of Human Rights Cases (PLD 2010 SC 759)

vi) Mir Dost Muhammad v. Government of Baluchistan (PLD 1980 Quetta 1)

Environmental Protection Act, 1997

i) Pollution of Environmental caused by smoke emitting vehicles, traffic muddle. (1996 SCMR 543)

ii) Muzaffar Khan v. Evacuee Trust Property (2002 CLC 1819)

iii) Imdad Hussain v. Province of Sindh (PLD 2007 Karachi 116)

5. In reply learned DAG appearing for respondent No.1 submitted that the petition in the manner and from it has been filed is not maintainable as it is against the policy which cannot be challenged. He submitted that the summary was moved by the Ministry of Petroleum and Natural Resources and after decision of the Economic Coordination Committee (ECC) of the Cabinet, Ministry of Commerce only incorporated the ban in Import Policy Order 2009 vide said SRO. He submitted that the ban was neither abrupt nor sudden as it was not applied to CNG Cylinders and conversion kits for which letter of credits were issued/established prior to 15.12.2011. Learned DAG submitted that in terms of section 3 of the Act of 1950 the Central Government may order to publish in the official gazette and subject to such conditions and exceptions as may be made by or under the order, prohibit, restrict or otherwise control the import or export of goods of any specified description, or

regulate generally all practices (including trade practice) and procedure connected with import or export of such goods.

6. Learned DAG also relied upon subsection 3 of Section 3 of the Act of 1950 and submitted that all the goods to which any order under sub-section (1) applies shall be deemed to be goods of which the import or export has been prohibited or restricted under section 16 of the Customs Act, 1969(previously section 19 of Sea Customs Act, 1878) and all the provisions of the Act shall have effect accordingly except that Section 183 thereof shall have effect as if for the word "shall" therein the word "may" were substituted. Learned DAG submitted that in terms of Import Policy Order, 2009 vide Section 2(d), banned items means a commodity, import of which is banned under this Order.

7. Learned DAG submitted that in terms of Section 5 of the said Import Policy Order 2009 the prohibition and restrictions were defined in terms whereof goods specified in Appendix 'A' are banned for import. This ban however is not made applicable to the import of goods by the Federal Government for defence purposes. Learned DAG submitted that in terms of office memorandum dated 26.12.2011 in terms whereof the ECC of the Cabinet in its meeting held on 15.12.2011 while considering the summary on the above subject submitted by Ministry of Petroleum & Natural Resources, inter alia approved the following proposals to discourage new conversion of vehicles:

"i) A complete ban has been imposed on company fitted CNG cylinder kits in locally manufactured vehicles

ii) Moratorium on import of CNG cylinders and conversion kits has been imposed except where letter of credits have been established prior to approval of summary i.e. 15.12.2011.

iii) CNG fitted public transport vehicles i.e. buses/vans are exempted from this moratorium.

8. This office memorandum was placed vide said SRO promulgated on 01.02.2012 which reads as under:-

"Government of Pakistan
Ministry of Commerce
Islamabad, the February 1, 2012

ORDER

S.R.O. 84(I)/2012. – In exercise of the powers conferred by subsection (1) of section 3 of the Imports and Exports (Control) Act, 1950 (XXXIX of 1950), the Federal Government is pleased to direct that the following further amendments shall be made in the Import Policy Order, 2009, namely:-

In the aforesaid Order:-

(a) In paragraph 5, in sub-paragraph (A) after clause "(vii)", the following new clause shall be inserted, namely:-

(viii) Import of CNG cylinders and conversion kits falling under respective PCT heading shall not be importable with immediate effect and unfit further orders. This bank shall however not apply on CNG cylinders and conversion kits for whom letters of credit were established prior to 15.12.2011. Furthermore, the aforesaid ban shall not apply on CNG fitted public transport vehicles i.e. buses and vans;

And

(b) in Appendix-B, in Part-I, against S. No.54 in column (3), the words "compressed or" within the bracket shall be omitted."

9. Learned DAG submitted that this amendment has been inserted as 5a(viii) in the Import Policy Order 2009. Learned DAG further submitted that in terms of Item 24 of the Rules of Business the Federal Government is vested with the authority to issue and promulgate such amendment and consequently the said SRO was issued and it was the Federal Government who was pleased to direct the amendment and not the Section Officer. Learned DAG submitted that in terms of rules of business it is the Government Officer who is required to issue such SRO which has been complied with.

10. Learned DAG submitted that there is no discrimination in the promulgation of the said SRO as the ban is imposed on the CNG cylinders and conversion kits whereas the aforesaid ban was not applied to CNG fitted public transport vehicles i.e. buses and vans. According to learned DAG public transport vehicles are meant for altogether different class of persons i.e. a class which utilizes public transport vehicles and fitted with CNG, CNG cylinders and conversion kits, and petitioners do not claim to be engaged in the business of installing CNG kits in public transport. Learned DAG submitted that under facts and circumstances, no case for discrimination under Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 has been made out. Learned DAG in support of his arguments has placed reliance on the cases of (i) Everlast Enterprises Ltd. v. Government of Pakistan (PLD

1971 Lahore 999), (ii) Zamir Ahmed Khan v. Government of Pakistan (1978 SCMR 327) and (iii) Noor Hussain v. The State (PLD 1966 SC 88).

11. Learned counsel appearing for respondent No.3 has contended that such policy is neither discriminatory nor unlawful as the same was considered on account of scarcity of natural gas and in terms of the priority for the use and consumption of natural gas such policy measures were taken in consultation with the Ministry of Petroleum and Natural Resources. Learned counsel submitted that the decision for the issuance of the said SRO was neither abrupt nor sudden, the decision was taken in the month of December, 2011 and the said SRO was gazetted on 01.02.2012. Learned counsel further submitted that as far as those LCs which were opened prior to 15.12.2011 are concerned the same were protected and this petition was filed in the month of August 2012 i.e. after more than nine months. Learned counsel submitted that in fact no vested right accrued in favour of the petitioners, which could be said to have been taken away or violated in terms of the said SRO. The petitioners are simply importers and assemblers and they provide such goods to the concerned manufacturer of vehicles or their companies. Learned counsel submitted that the issuance of licence of import does not give any vested right or guarantee to continue the business as long as they wishes. There is nothing on record to show that petitioner who are importing such cylinder/kits have invested huge amount for which

government has provided any guarantee amnesty or incentive or have floated invitation for establishing such assembling units.

12. We have heard learned counsels for the parties and have perused the material available on record and the case law cited.

13. The petitioners have raised multiple grounds while challenging the amending SRO and on priority wise we may deal with the ground as under.

14. The Import Policy Order 2009 was issued under section 2 and 3 of the Act of 1950. Section 2 of the Act of 1950 deals with definition of (a) Chief Controller, (b) Customs Collection and (c) import and (d) export whereas Section 3 reads as under:-

> *"3.(1) The Central Government may by order published in the official Gazette and subject to such conditions and exceptions as may be made by or under the order, prohibit, restrict or otherwise control the import or export of goods of any specified description, or regulate generally all practices (including trade practice) and procedure connected with the import or export of such goods, 3 and such order may provide for applications for licences under the Act, the evidence to be attached to such applications, the grant, use, transfer sale or cancellation of such licences, and the form and manner in which and the periods within which appeals and applications for review or revision may be preferred and disposed of, and the charging of fees in respect of any such matter as may be provided in such order.*
>
> *(3) All goods to which any order under sub-section (1) applies shall be deemed to be goods of which the import or export has been prohibited or restricted under section 19 of the Sea Customs Act, 1878, and all the provisions of the Act, shall have effect accordingly except that section 183 there of shall have effect as if for the word "shall" therein the word "may" were substituted."*

15. The contention of petitioner's counsel that it is to be read with Rule 2(xviii) of the Rules of Business, 1973, as it says that the amending SROs to be issued by Joint Secretary, Government of Pakistan, is perhaps far stretched. It appears that the said SRO was issued in exercise of powers conferred by subsection 1 of Section 3 of Act of 1950 and it is not to be issued by a Joint Secretary or a Section Officer, as alleged. In terms of Section 3(1) ibid the Central Government is empowered to order to publish in the official gazette and subject to such conditions and exceptions as may be made by or under the order, prohibit, restrict or otherwise control the import or export of goods of any specified description, or regulate generally all practices (including trade practice) and procedure connected with import or export of such goods. This insertion was made in Para 5(a)(viii) in the Import Policy Order, 2009. Thus, it appears that in exercise of powers conferred by subsection 1 of Section 3 of the Imports & Exports (Control) Act, 1950 such amending SRO was promulgated/issued which is nothing but extension of import and Export Policy regulated under Act of 1950 and Import Policy Order, 2009 which amendment was made pursuant to subsection 1 of Section 3 of the Act of 1950.

16. Section 6 of the Import Policy Order reads as under:-

> *"6. Prohibitions and restrictions imposed under other Laws.—Notwithstanding anything contained in this Order, the prohibitions, restrictions, conditions and requirements as prescribed under any other law, Act or rules, for the time being in force, shall be applicable, mutatis mutandis, on specified imports."*

17. The arguments of the learned counsel for the petitioners were partially met by a Bench of Lahore High Court in case of Everlast Enterprises Ltd. v. Government of Pakistan reported in PLD 1971 Lahore 999 in which it has been held as under:-

> *"3. The first point argued was that the Orders contained in Annexs. R/1 and R/2 are of such a nature as fall under section 3 of the Act, which lays down that such orders should be published in the official Gazette. It was submitted that since these orders were not published in the official Gazette, therefore, they should be declared to be without lawful authority. It may be that so for the orders have not appeared in the official Gazette but since the intention of the Government is manifest that it is anxious to put them into operation and a Gazette can be issued any moment, especially, when the apparent tenor of Annexs. R/1 and R/2 itself shows (see para. Following condition No.19 in Annex. R/1) – that these decisions are to be announced through a public notice, we are not inclined to give effect to this objection in the peculiar circumstances of the present case.*
>
> *4. …..If once the power to issue Orders under section 3 is conceded to the Government, then on general principle, as well as on the principle of section 21 of the General Clauses Act, a power to alter, modify or make additions therein shall also have to be accepted. Even otherwise in Para. 10 of the Public Notice bearing No.326/102/59-E.P. III, dated 15.1.59, regarding "Export Bonus Scheme", printed in the form of Appendix 17 at page 296 of the "Manual of Imports and Exports Control", it is written that:-..*
>
> *5. …..It was then argued that the Orders in Annexs. R/1 and R/2 do not possess much merit and are not beneficial to the importers like the petitioners. This Court is not concerned with merits and demerits of a Policy issued under section 3 of the Act, which is the sole privilege of the Government and which cannot be dictated in this repsect by any extraneous agency….."*

18. Learned DAG next relied upon the case of Zamir Ahmed Khan v. Government of Pakistan reported in 1978 SCMR 327 in terms of which it has been held as under:-

"Civil Appeal No.21 of 1973 was preferred in this Court by the Government of Pakistan, and it was accepted on the 3rd of December 1974, on the view that the law is well settled that in the generality of cases a licence simpliciter is a privilege and not a legal right; much less there is a legal duty for its grant. Therefore, exceptional cases apart, mandamus would not issue in such matters. It was further held that in such cases the emphasis is on policy, and any discretion vesting in the authorities is directed towards attaining the policy's objectives. Under section 3(i) of the Exports Control Act, 1950, the Central Government enjoyed power of the widest amplitude to prohibit, restrict or otherwise control the import of goods. The decisions taken fall within the realm of policy making, and in all such cases orders made must conform to the policy decisions of the Government. Accordingly, the amendment made on 9.8.1972 in Item No.49 signified a change in policy and the petitioner was informed that he was being refused the licence because of the change in policy and not because of any other reason. On these facts it was not possible to subscribe to the proposition that a writ of mandamus would lie against the licensing authority so as to have the effect of defeating the policy competently made by the Federal Government."

19. The signatures of the Section Officer who purportedly issued the said amending SRO does not suggest that it was under his authority that it was issued. For all intent and purposes it was issued in exercise of powers conferred by subsection 1 of Section 3 of the Act of 1950 which has been highlighted in the said SRO as well.

20. As evident, the summary in relation to Amending SRO was moved by Ministry of Petroleum & Natural Resources and in pursuance of such summary the decision was taken by the Economic Coordination Committee of the Cabinet and consequently a decision regarding ban in the Import Policy Order 2009 was taken. It is the case of the petitioners that the Import Policy Order 2009 was issued under section 2 and 3 of the Act of 1950 read with Rule 2(xviii) of the Rules of Business 1973 by the Joint Secretary, Government of Pakistan, therefore, this Amending SRO

ought to have been issued by the same authority. These arguments cannot stand in the presence of Rule 24 and Rule 55 of the Rules of Business 1973. For the purpose of assistance both these rules are reproduced as under:-

> *"24. Action on decision of the Cabinet, Inter-Provincial Conference, National Economic Council or their Committees, etc.- (1) When a case has been decided by the Cabinet, the Inter-Provincial Conference or the National Economic Council or their Committees, the Minister-in-Charge shall take prompt action to give effect to the decision.*
>
> *(2) When the decision is received by the Secretary of the Division concerned, he shall –*
>
> *(a) acknowledge the receipt of the decision in the form provided;*
>
> *(b) transmit the decision to his Division for action;*
>
> *(c) keep a register with himself of the decision received, for the purpose of ensuring that prompt and complete action is taken on those decisions and*
>
> *(d) coordinate action with any other Division concerned with the decision.*
>
> *(3) The Secretary of the Division concerned shall, on receipt of the Cabinet decision, communicate it to the Division but shall not forward the original documents. The decision shall be formally conveyed as decision of the Federal Government and details as to the Ministers present at the meeting of the Cabinet Committee of Cabinet, etc., shall not be disclosed.*
>
> *55. Protection and communication of official information.- (1) Information acquired from official documents relating to official matters shall only be communicated by a government servant or, as the case may be, designated official to the press, to non-officials, or even to officials belonging to other government offices in accordance with the procedure laid down in section 3 of the Freedom of Information Ordinance, 2002 (XCVI of 2002)."*

21. Thus, it appears that when the case has been decided by the Cabinet, the Intra-Provincial Conference and National Economic Council (or their committees), the Minister Incharge is required to take prompt action to give effect to the decision. It is

also evident in terms of sub Rule (3) of Rule 24 ibid that the Secretary of the Division concerned on receipt of Cabinet decision communicate it to the Division and that it shall be conveyed as a decision of the Federal Government. In terms of Rule 55 ibid which contains the methodology to communicate suggest that the information acquired from official documents relating to the official matters shall only be communicated by a "government servant" or as the case may be, designated official to the press, to non-officials, or even to officials belonging to other government offices in accordance with the procedure laid down in Section 3 of the Freedom of Information Ordinance, 2002. Thus it does not lie in the mouth of the petitioners to say that the Amending SRO ought to have been issued by the Secretary who has issued the policy. For all intent and purposes it was issued in the exercise of powers conferred by subsection (1) of Section 3 of the Act of 1950 by the Federal Government in the manner, provided for in the Rules of Business, 1973. Thus the argument of the learned counsel for the petitioners that impugned SRO was issued by a Section Officer is of no consequence.

22. As far as the objection of the learned counsel for the petitioners relating to clause 21 of IPO 2009 is concerned that the Amending SRO does not specify the period of ban, we may observe that in terms of Clause 21 of the IPO 2009 the Federal Government where it deems fit to be in the public interest may "suspend" for a

specified period or ban the import of any goods from all or any source. Clause 21 of the SRO 2009 is reproduced hereunder:-

> "**21. Suspension or ban of import**---The Federal Government may where it deems it to be in public interest suspend for a specified period or ban the import of any goods from all or any source."

23. Thus, the period/time frame was only attached to the "suspension". Of course the suspension is only a temporary phase which needs to be specified by prescribing time limit, whereas the SRO which is the subject matter of this petition relates to ban on the import of the goods for which clause 21 does not specify any time frame or period and as such the Federal Government was well within its right to issue such SRO without providing any period/time frame. More importantly if same meaning is to be assigned to both the words i.e. "suspend and ban" then there was no need for incorporating the word "ban" in clause 21 ibid.

24. The reliance of the learned counsel petitioner that it was hit by Section 21 and 23 of General Clauses Act is also not mind diverting as section 23 of the General Clauses Act deals with making of rules or bylaws whereas section 21 deals with "powers to make, to include power, to add to amend, create or rescind orders, rules, bylaws". In fact it carried weight for the arguments advanced by learned Counsel for the respondent.

25. Needless to mention that such SRO was published in the official gazette on 01.02.2012 for the public benefit. The amending SRO thus fall within the decision of policy making and in terms of the judgment of Zamir Ahmed Khan referred to above all such cases, orders made must conform to the policy decision of the government. In matter of policy decisions, the Government is the best judge and it is not for the Court to sit on the policy matters unless they appear to be violative of constitutional guarantees, arbitrary, malafide or on account of colourable exercise of powers.

26. Dealing with the rights and entitlements of the petitioners who were issued certain licences we may observe that Licenses issued by the respondent to the petitioner No.4 M/s Pak Suzuki Motors Company Limited for compression of natural gas for the purpose of testing of CNG conversion in automotive vehicles under CNG (Production & Marketing) Rules 1992 and it is not a subject matter of the said SRO. The subject license is only meant for compression, storing and filling of CNG in vehicles. License to petitioner No.4 was never issued in pursuance of import of cylinder or CNG kits and thus nothing could turn on the basis of this licence. Apart from this Mr. Aziz learned counsel for the petitioners also placed copies of the provincial licence to install CNG filling station dated 30.01.2009 along with additional period validity dated 14.3.2011 for two additional years which would meet the same fate. He also placed copy of approval for establishment of facilities for the manufacturing and assembling of CNG conversion kit (Model No.CNG-04 manufactured under standard R-110) and related electronic

components in favour of petitioner No.1. However a close reading of this lead us to conclude that this licence/approval does not create any vested rights to the petitioner No.1 nor any vested right seems to or have been curtailed by issuance of the said SRO. These licences do not guarantee that the petitioners would continue to enjoy said licence and would continue to enjoy the import of such goods uninterruptedly. Restrictions under section 3(1) of the Act of 1950 imposed in the interest of general public having regard to the imperative necessity to control such import for the consumption of one of the natural resources for its use by other consumers who are other than its user through motor vehicles for economic stability of the country, such as for generating electricity which is basic, prime and utmost need of a common people.

27. Powers to impose conditions and to give exception from such matters either generally or specially have also been conferred upon the federal government. Once the power to issue orders under section 3 is conceded to the government, then all general principle as well as on the principle of Section 21 of the General Clauses Act, a power to alter, modify or make addition therein shall also have to be accepted. Needless to emphasis that any notification issued under section 3(1) of the Act of 1950 prohibiting the import and export of good shall be deemed to be a notification under section 16 of the Customs Act, 1969 and all the provisions of this Act of 1969.

28. Issuance of such licences under the law are only privileges and does not confer a vested right and is often required as condition precedent to the right to carry on some

business. The State may by law direct that certain trades or professions will not be carried on except under a licence and it may by lcience determine the place where and the time when certain business are to be conducted. Such views were observed by Indian Supreme Court in case of Ramdhandas & another Vs. State of Punjab reported in AIR 1961 SC 1559.

29. Thus conclusively we hold that the said amending SRO is neither ultra vires nor any vested right appear to have been curtailed in terms of this amending SRO. Hence, we proceed further to discover as to whether petitioners have been meted out any discrimination on the touch stone of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973.

30. The said amending SRO prohibits the import of CNG cylinders and conversion kits falling under respective PCT heading. This ban was not applied to CNG Cylinders and conversion kits for which letter of credits were issued/established prior to 15.12.2011. Furthermore, the aforesaid ban was not made applicable on CNG fitted public transport vehicles i.e. buses and vans. Learned counsel for the petitioners argued that by this amending SRO import of CNG cylinders were allowed for public transport vehicles. Contention are preposterous. On bare reading of impugned SRO it is clear that the "ban shall not apply on CNG fitted public transport vehicle i.e. buses and vans".

31. In terms of the case of Shehzad Riaz v. Federation of Pakistan (2006 YLR 229), it was held that under Article 25 of the Constitution all citizens are equal before the law and were entitled to equal protection of law, however, said article did not prohibit treatment of citizens by State on the basis of reasonable classification. Classification could be held to be unreasonable if in any one given set of circumstances the person placed in similar situation were given different treatment. If the persons placed in different circumstances and in different set of facts were given different treatment, it would not be treated as unreasonable. In the case referred above, Economic Reforms Committee had taken a policy decision and a classification given for the import of certain goods was allowed to only those companies who had their tractor manufacturing units in Pakistan or were in the process of installing such units. This was held to be a reasonable classification and the classification prepared through the policy of Economic Coordination Committee was neither held to be monopolistic nor classification could be held to be arbitrary or unreasonable for the reason that it had been extended to the cases of all manufacturers including those who were in the process of installing manufacturing units.

32. The same principle was followed in the case of Pakistan Newspaper Society v. Federation of Pakistan reported in PLD 2012 Sindh 129 where classification was recognized provided it is on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out and secondly the

differentia must for rationale nexus to the object sought to be achieved by such classification.

33. The legislature in its wisdom is competent to legislate general law and special law for any specialized class of persons. Needless to mention that there is no estoppel against the legislature provided it passes the test prescribed above on the touch stone of the fundamental rights guaranteed under the Constitution.

34. Hon'ble Supreme Court while dealing with the subject issue in the case of Pakcom Limited v. Federation of Pakistan reported in PLD 2011 SC 44 has held as under:-

> *"(i) The expression 'equality before law' or the 'equal protection of law' does not mean that it secures to all persons the benefit of the same laws and the same remedies. It only requires that all persons similarly situated or circumstanced shall be treated alike.*
>
> *(ii) The guarantee of equal protection of law does not mean that all laws must be general in character and universal in application and the state has no power to distinguish and classify persons or thing for the purpose of legislation.*
>
> *(iii) The guarantee of equal protection of laws forbids class legislation but does not forbid reasonable classification for the purpose of legislation. The guarantee does not prohibit discrimination with respect to things that are different. The state has the power to classify persons or things and to make laws applicable only to the persons or things within the class.*
>
> *(iv) The classification, if it is not to offend against the constitutional guarantee must be based upon some intelligible differential bearing a reasonable and just relation to the object sought to be achieved by the legislation.*
>
> *(v) Reasonableness of classification is a matter for the courts to determine and when determining this question, the courts may take into consideration matters*

of common knowledge, matters of common report, the history of the times and to sustain the classification, they must assume the existence of any state of facts which can reasonably be conceived to exist at the time of legislation.

(vi) The classification will not be held to be invalid merely because the law might have been extended to other persons who in some respect might resemble the class for which the law is made because the legislature is the best judge to the needs of particular classes and the degree of harm so as to adjust its legislation according to the exigencies found to exist.

(vii) One who assails the classification must show that it does not rest on any reasonable basis.

(viii) Where the legislature lays down the law and indicates the persons or things to whom its provisions are intended to apply and leaves the application of law to an administrative authority while indicating the policy and purpose of law and laying down the standards or norms for the guidance of the designated authority in exercise of its powers, no question of violation of Article 25 arises. In case, however, the designated authority abuses its powers or transgresses the limits when exercising the power, the actual order of the authority and not the State would be condemned as unconstitutional.

(ix) Where the State itself does not make any classification of persons or things and leaves it in the discretion of the Government to select and classify persons or things, without laying down any principle or policy to guide the Government in exercise of discretion, the statute will be struck down on the ground of making excessive delegation of power to the Government so as to enable it to discriminate between the persons or the things similarly situated."

35. The above principles were also highlighted by the Hon'ble Supreme Court earlier in case of Government of Balochistan v. Azizullah Memon reported in PLD 1993 SC 341.

36. In the case of Pakcom Limited ibid the Hon'ble Supreme Court dealt with the power to frame the policy to regulate the affairs and so also the provisions of Article 18 and 25 of the Constitution. The relevant paragraphs of which are as under:-

"52. The interpretation of Article 18 has been made variously and the judicial consensus seems to be that the "right of freedom of trade, business or profession guaranteed by Article 18 of the Constitution is not absolute, as it can be subjected to reasonable restrictions and regulations as may be prescribed by law. Such right is therefore not unfettered. The regulation of any trade or profession by a system of licensing empowers the Legislature as well as the authorities concerned to impose restrictions on the exercise of the right. They must, however be reasonable and bear true relation to 'trade' or profession and for purposes of promoting general welfare. Even in those countries where the right to enter upon a trade or profession is not expressly subjected to conditions similar to this Article, it was eventually found that the State has, in the exercise of its policy power, the authority to subject the right to a system of licensing, i.e., to permit a citizen to carry on the trade or profession only if he satisfies the terms and conditions imposed by the prescribed authority for the purposes of protecting and promoting general welfare….

53. The competent authority is at liberty to regulate its affairs and "a form of regulation is unconstitutional only if it is arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty. This principle of regulation of trade has been given judicial sanction in Pakistan…..

54. ….

55. ….

56. Now we intend to examine the provisions as enumerated in Article 25 of the Constitution which has been examined in depth on various occasions in different cases and judicial consensus seems to be that this Article "enjoins that all citizens are equal before law and are entitled to equal protection of law, i.e., all persons subjected to a law should be treated alike under all circumstances and conditions both in privileges conferred and in the liabilities imposed. The equality should not be in terms of mathematical calculation and exactness. It must be amongst the equals. The equality has to be between persons who are placed in the same set of circumstances. The dominant ideal common to both the expressions is that of equal justice. The dominant ideal common to both the expressions is that of equal justice. The guarantee contained in this right is only this – that no person or class of persons shall be denied the same protection of law which is enjoyed by other persons or other classes in like circumstances. ….

57. It must, however, be kept in view that though the persons similarly situated or in similar circumstances are to be treated in the same manner but the "equality clause particularly the provision about the equal protection of the laws does not mean that all

citizens shall be treated alike under all set of circumstances and conditions; both in respect of privileges conferred and liabilities imposed. Whatever else the expression 'equal protection of law' may mean it certainly does not mean equality of operation of legislation upon all citizens of the State. (Mohd Mukhtar v. Special Tribunal PLD 1977 Lah. 524). Equality of citizens does not mean that all laws must apply to all the subjects or that all subjects must have the same rights and liabilities. The conception of equality before the law does not involve the idea of absolute equality among human beings which is a physical impossibility. The Article guarantees a similarity of treatment and not identical treatment. The protection of equal laws does not mean that all laws must be uniform. It means that among equals the law should be equal and should be equally administered and that the like should be treated alike, and that there should be no denial of any special privilege by reason of birth, creed or the like and also equal subjection of all individuals and classes of the ordinary law of the land…… In out view the classification which is not arbitrary, capricious or in violative of the doctrine of equality cannot be questioned. It is the basic requirement of law that all persons shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed……."

37. The above interpretation of SRO and discussions were made on the basis of very conservative interpretation as taken by the learned counsel for the petitioners that said SRO allowed import of CNG cylinders and kits for public transport vehicles. However, we may observe that the said amending SRO does not allow the import of CNG cylinders and conversion kits for public transport or for any other transport, be it private or public. In fact in terms of the said Amending SRO, only public transport vehicles fitted with CNG were allowed. Meaning thereby that an independent import of CNG cylinders and conversion kits under the garb of its fitting or affixation in the public transport vehicle is also prohibited so that there should not be a misuse of such import.

38. The next point that has been argued by the learned counsel for the petitioners that opportunity of fair trial to the petitioners whose stake is involved before issuance of the said SRO has not been given. We may observe that powers to legislate and promulgate law is not a trial before which the interested parties are required to be heard. As observed there is no estoppel against the legislature and it is within the powers, jurisdiction of the government and legislative authorities to frame the policy and to regulate the affairs in accordance with law. The right of freedom of trade, business or profession guaranteed by Article 18 of the Constitution is not absolute as it can be subject to reasonable restrictions and regulations, as may be prescribed by law. Such right to trade, business and profession guaranteed under the Constitution is not unguarded. Such restrictions could only be held unconstitutional if the authority competent to regulate its affairs acts arbitrarily, discriminately or act contrary to the policy. This principle of regulation of trade has been given judicious approval.

39. Lastly learned counsel for the petitioners relied upon Section 15 of the Pakistan Environmental Protection Act, 1997 in terms whereof the person who operates or drive a motor vehicle from which polluted air or noise are being emitted in an amount, concentration or level which is in excess of National Environmental Quality Standards or where applicable the standard established under clause (g) of subsection 1 of Section 6 ibid are subjected. Learned Counsel's assertion that by constant use of petrol and diesel such standard could not be achieved, is far from reality. This Section

of Environmental Protection Act, 1997 would turn nothing in favour of the petitioners as the said Section would still be in operation and would continue to cause its effect despite use of petrol driven vehicles. Pakistan is not the only country where petrol and diesel vehicles ply. In most of the countries petrol/diesel cars are plying and those countries are maintaining better environment. We are pained to observe that in Pakistan environmental pollution caused by cars/vehicles, using either petrol, diesel or CNG, is a serious issue, which needs to be addressed by Environmental Protection Authority under the Act 1997. Thus the responsibility of the authority under Pakistan Environmental Protection Act, 1997 would not come to an end by virtue of conversion of petrol cars into CNG as the pollution by way of smoke and by way of noise could still be made by CNG fitted cars.

40. In view of the aforesaid findings/discussion we are therefore of the view that no case for discrimination is made out by the petitioners.

41. We therefore, conclude that there is no substance in the petition and the same is dismissed.

Dated: **Judge**

Chief Justice