

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Munib Akhtar
Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Shahid Waheed

Civil Petition No.167-Q and 168-Q of 2023

[Against Judgment dated 17.04.2023 passed by the High Court of Balochistan Quetta in C.P.No.1294 of 2017 and C.P.No.1826 Of 2021]

***Government of Balochistan through
Secretary Mines And Minerals
Department and another*** ***(in both cases)***
...Petitioners

Versus

***Attock Cement Pakistan Limited
D.G Khan Cement Company Limited*** ***(in C.P. No. 167-Q)***
(in C.P. No. 168-Q)
...Respondent(s)

For the Petitioner(s) : Mr. Muhammad Ayaz Sawati
Addl. AG Balochistan

For the Respondent(s) : Mr. Umar Soomro, ASC

Date of Hearing : 04.03.2024

JUDGMENT

Syed Hasan Azhar Rizvi, J:- Through these petitions filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 ("**Constitution**"), the petitioners have called in question the Judgment dated 17.04.2023 ("**Impugned Judgment**") passed by the High Court of Balochistan, Quetta ("**the High Court**") whereby the Constitutional Petitions No.1294 of 2017 and 1826 of 2021 filed by the respondents were partly allowed.

2. Brief facts of the case are that the respondents, being registered public limited companies, are carrying on the business of producing and selling cement. The production of cement requires mining of raw materials including Limestone, Shales and Sand. The

respondents entered into the mining lease agreements with the Petitioner No.1. Thereafter, in 2017, the Secretary Mines and Minerals Department, Government of Balochistan by virtue of a notification **No. SOT(MMD)4-1/2017/748-68** dated 06.09.2017(“**Impugned Notification**”) revised and enhanced the rates of application fee relating to mineral titles and mineral concessions mentioned in the first schedule, rates of annual rentals mentioned in the second schedule, and the royalties mentioned in the third schedule, part II and part III of the Balochistan Mineral Rules, 2002. (“**Rules of 2002**”)

3. Being aggrieved of the increased rates, respondents challenged the said notification through the above mentioned Constitutional petitions which were consolidated and partly allowed by the High Court through a single judgment that is impugned herein.

4. The learned Additional Advocate General on behalf of petitioners contended that impugned judgment suffers from illegality; that ex-post facto approval granted to the impugned notification was valid and legal, thus it should have been given retrospective effect.

5. Contrarily, the learned counsel for the respondents defended the impugned judgment and contended that the impugned notification should be given prospective effect in light of the judgment of this Court reported as Messrs Mustafa Impex Karachi and others versus The Governmet of Pakistan through Secretary Finance, Islamabad and others (PLD 2016 SC 808).

6. We have heard the learned Law Officer and learned counsel for the respondents and perused the available record with their able assistance. The primary question that arises in the present case is that “whether a notification that has received ex-post facto approval by the cabinet can have a retrospective applicability?”

7. Section 2 read with Section 6 of the Regulations of Mines and Oil Fields and Mineral Development (Government Control) Act, 1948 ("**Act of 1948**") authorizes the appropriate Government to frame rules regarding, *inter alia*, determination of the rates at which royalties, rents and taxes shall be payable, among various other matters. Consequently, Rules of 2002 were framed. Rule 102(1) of the Rules of 2002 provides that the royalties shall be charged at such rates as may be notified by the **Government** from time to time. Article 129 of the Constitution mandates that the executive authority of the Province is to be exercised on behalf of the Governor by the Provincial Government, which includes the Chief Minister and Provincial Ministers. Article 130 of the Constitution defines the Cabinet as a ministerial body with the Chief Minister serving as its leader.

8. In a seminal judgment of *Mustafa Impex supra*, this Court has considered constitutional meaning of "Federal Government", that by necessary implication also extends to "Provincial Government" and has held, that if any power is conferred on Government concerned, they can be exercised in the Cabinet and by Cabinet decisions, and not otherwise.

9. The perusal of the record reveals that neither the Chief Minister nor the Cabinet made any decision regarding price fixation prior to the issuance of the impugned notification which was solely passed by the Secretary Mines and Mineral Department, Government of Balochistan. Subsequently, on 01.02.2022, the Cabinet authenticated the impugned notification through ex-post facto approval.

10. The legal validity of the ex-post facto approval of the notifications by the Cabinet was considered by this Court in *Mustafa Impex Case supra* by holding that same cannot be considered valid

under the law; relevant paragraph wherefrom is reproduced herein below:-

“The above views are buttressed by the provisions of Article 91(6) which provide that the Cabinet shall be “collectively responsible to the Senate and the National Assembly”. It should be noted that it is not the Prime Minister by himself who is responsible to Parliament. It is the body known as the Cabinet, which is collectively responsible. It follows that to allow him to act on his own would enable him to escape from responsibility to Parliament for the consequences of his actions, which cannot conceivably be the intention of the constitution. The underlying substratum of any representative form of government is to link acceptance of responsibility with the exercise of power. This principle applies across the board. It applies with special force in relation to fiscal or budgetary matters. He cannot make fiscal changes on his own and nor can he engage in discretionary spending by himself. Furthermore, the Prime Minister is not constitutionally mandated to authorize expenditure on his own. In all cases the prior decision of the Cabinet is required since it is unambiguously that body alone which is the Federal Government. All discretionary spending without the prior approval of the Cabinet is contrary to law. We clarify that an ex post facto approval by the Cabinet will not suffice since money once spent cannot be unspent.” (Emphasis supplied).

11. In the present case, the High Court has correctly determined that the impugned notification takes effect from the date of authentication/approval by the cabinet, i.e. 01.02.2022. This interpretation aligns with the principle that if the provincial cabinet provides ex-post facto approval, the validity of the notification is recognized from that date of approval and cannot be applied retrospectively. The rationale for this stems from the fact that, had a cabinet issued a new notification in 2022, its application would have been prospective. Consequently, whether it grants approval or issues a new notification, the resulting impact would remain unchanged.

12. The impugned judgment passed by the High Court is well reasoned and based on proper appreciation of all factors, either factual or legal. Neither any misreading and non-reading nor any infirmity or illegality has been noticed from the record which could make a basis to take a different view other than the High Court. The petitioners have failed to make out a case for interference.

13. Consequently, these petitions being devoid of merit are hereby dismissed. Leave is refused.

JUDGE

JUDGE

Bench-IV
Islamabad, the
04th March, 2024
APPROVED FOR REPORTING
Paras Zafar, LC*

JUDGE