

THE HIGH COURT OF SINDH KARACHI

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

C.P. No. D – 4094 of 2024

[M/s. Rehan Enterprises vs. FOP & others]

Petitioner : M/s. Rehan Enterprises through Mr. Kamran Iqbal Bhutta, Advocate.

Respondent 1 : Federation of Pakistan through Secretary, Ministry of Finance, through Ms. Mehreen Ibrahim, DAG.

Respondents 2-4 : Director (FEAD), State Bank of Pakistan and two others through M/s. Alam Zeb and Faraz Khan Jadoon, Law Officers alongwith Mr. Babar Jadoon, Deputy Director, SBP.

Respondents 5-6 : Nemo.

Date of hearing : 18-11-2025

Date of decision : 18-11-2025

ORDER

Adnan Iqbal Chaudhry J. - Against judgments of the Adjudication Officer delivered under the Foreign Exchange Regulation Act, 1947 [FERA], the Petitioner preferred two appeals to the Foreign Exchange Regulation Appellate Board under section 23C of the FERA. Those appeals were not admitted and eventually dismissed by the Appellate Board on 14.02.2024 for non-compliance of sub-section (4) of section 23C of the FERA, which required a deposit of security as a condition to the appeal. Through this petition, the Petitioner assailed those orders and also the *vires* of sub-section (4) of section 23C of the FERA. While this petition was pending, the Honorable Supreme Court of Pakistan, by judgment dated 20.03.2025 in *Senior Joint Director, Foreign Exchange Operations Division, SBP v. Federation of Pakistan* (PLD 2025 SC 440), declared sub-section (4) of section 23C of the FERA as unconstitutional. The Petitioner then made an application to the Appellate Board to recall the dismissal of the appeals. However, the Appellate Board dismissed that application on 30.07.2025 taking the view

that it did not have power to review its order. In these changed circumstances, the Petitioner was allowed to amend the petition.

Petitioner's counsel submits that since sub-section (4) of section 23C of the FERA has been struck-down by the Supreme Court, the order of the Appellate Board dismissing the Petitioner's appeals on the basis of said provision, are liable to be set-aside. He relies on orders passed by another Division Bench of this Court to revive appeals similarly dismissed by the Appellate Board. Learned counsel for the SBP opposes the petition. He first submits that judgment of the Supreme Court declaring sub-section (4) of section 23C of the FERA as unconstitutional, operates prospectively, and will not apply to orders already passed by the Appellate Board. His second submission is that the petition suffers from laches in that, it was filed on 23.08.2024, whereas the appeals had been dismissed by the Appellate Board on 14.02.2024.

As regards the first submission of SBP's counsel, this petition, filed to challenge the dismissal of the Petitioner's appeals by the Appellate Board pursuant to sub-section (4) of section 23C of the FERA, was pending when the Supreme Court declared that provision unconstitutional. In other words, the appeal-dismissal orders dated 14.02.2024 passed by the Appellate Board were *sub-judice* and had not attained finality when judgment of the Supreme Court was announced. In such circumstances, no question arises with regards to retrospectivity of the Supreme Court's judgment.

Regards the objection of laches, since similar petitions have already been allowed by this Court, we are inclined to condone the delay.

Sub-section (4) of section 23C of the FERA having been declared unconstitutional by the Supreme Court, the impugned orders dated 14.02.2024 and 30.7.2025 passed by the Appellate Board pursuant to that provision, cannot sustain and are hereby set-aside. Consequently, the Petitioner's appeals shall be deemed to be pending before the Appellate Board. Petition is allowed in said terms.

JUDGE

JUDGE