

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Syed Hassan Azhar Rizvi
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-1837 of 2014

Muhammad Arif Akhtar and othersPetitioners

Versus

The Federation of Pakistan & others Respondents

C.P No.D-3134 of 2015

Chairman and othersPetitioners

Versus

The Federation of Pakistan & others Respondents

**Date of hearing: 13.09.2017, 05.10.2017, 02.11.2017
14.11.2017**

Mr. Salahuddin Ahmed, Advocate for the Petitioners in
C.P No.D-1837/2014.

Mr. Munawar Hussain Yousufi, Advocate for the Petitioners
in C.P No.D-3134/2015.

Mr. Jamshed Malik, Advocate for Respondent No.2.

Mr. Masood Ahmed Khan and Mr. Sanaullah, Advocates for
Respondents No.3 and 4.

Mr. Shaikh Liaquat Hussain, Assistant Attorney General.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- Through the instant Petition,

the Petitioners have sought the following relief(s):-

a) Declare that the impugned directives contained, inter alia in the letters dated 11th October, 2012, 9th January 2013, 18th March, 2014 and 27th March, 2014 issued by the Privatization Commission are unlawful and of no legal effect;

b) Direct the Respondents to make full to the eligible employees (including the petitioners) of all dividends declared by the Respondent No.3 from August, 2012 till the respective dates of retirement of each employee, in accordance with the Trust Deed, along with compensation to the retiring employees in accordance with the terms of the Trust Deed.”

2. Brief facts of the case are that Petitioners were/are permanent employees of Pakistan Petroleum Limited Company. Petitioners have averred that the Petitioner No. 6, 7, 8 and 9 have attained age of superannuation; Petitioners further asserted that on 4th August 2009, Government of Pakistan, Ministry of Privatization Commission flouted summary for the Cabinet for empowerment of employees of State Owned Entities (SOEs)/other Government of Pakistan share-holding by giving them shares in their respective units. Petitioners further added that President of Pakistan directed that necessary measures should be taken in this regard by transferring 12% share to the employees. Petitioners added that Respondent No.2 was entrusted with the task to formulate a detailed scheme to implement the policy. Petitioners emphasized that Benazir Employees Stock Option Scheme (hereinafter referred to as the “BESOS) was established by the Respondent No.2 upon directives of the Government of Pakistan. Petitioners further added that Pakistan Petroleum Limited Empowerment Trust was established under the Benazir Employees Stock Scheme on 14th September, 2009. Petitioners have averred that shares were to be held in trust for the benefit of eligible

employees and administered for the purposes and objects as stated in the Trust Deed. Petitioners have claimed that the Trustees issued unit certificates to the eligible employees and 50% of all dividend received by the Trust in respect of the Shares were to be distributed amongst the employees on the basis of the number of units held by them; that in addition to the forgoing upon cessation of their employment the eligible employees would receive compensation in exchange for surrendering their units. Pursuant to the Trust Deed, regular/permanent employees having rendered at least 5 years of service at Pakistan Petroleum Limited were eligible under the Trust provided that they were on the payroll of the Respondent No.3 as on 14.08.2009; that up till August, 2012 all employees eligible to benefit from the Trust were receiving regular dividend disbursements and retirement payouts in accordance with the Trust Deed; that on 11th August 2012, the Board of Directors of the Respondent No.3 declared 65% cash dividend and the Trust received the said dividend on 8th October, 2012 for onward distribution amongst the eligible employees. Petitioners added that the Respondent No.2 through its impugned letter dated 11th October 2012 abruptly directed the Trust to refrain from disbursing dividend till further instructions on the ground that the Scheme was purportedly under review by the Federal Government. Petitioners added that the Respondent No.2 issued another directive dated 9th January 2013, wherein it was stated that the Scheme was being revamped by the Federal Government and that the cases of buyback claims and disbursement of dividend to the employees by Employees

Empowerment Trust are kept in abeyance. Petitioners added that the concerned officers of the Trust through regular meetings and correspondence repeatedly reminded the Respondent No.2 of the Trustees obligations under the Trust Deed to distribute the declared dividend amongst the Petitioners and made numerous attempts to hold meetings and discussions with the Respondent No.2 in order to communicate the Trustees concerns with regard to compliance of Trust Deed. Petitioners asserted that the officers of the Trust informed the Respondent No.2 on numerous occasions that withholding of dividend was causing serious unrest amongst the workers; however, Respondent No.2 refused to allow the trust to proceed with the disbursement of dividend in accordance with the Trust Deed. Petitioners have further averred that the last dividend was disbursed in the month of March, 2012 and thereafter the Respondent No.3 has declared four more dividend (on a half yearly basis) but, the same have not been distributed amongst the beneficiaries of the Trust on account of unlawful directives issued by the Respondent No.2 therefore, helpless employees have been wrongfully deprived of around Rupees 1.18 billion that was due to them by way of dividend; that in addition to their entitlement to receive the last five dividend declared by PPL, the Petitioners No. 6 to 9 have crossed retirement age and have duly surrendered their shares units in accordance with the Trust Deed, however, due to Respondent No.2's unlawful directives, the said Petitioners have been deprived of their due compensation payment; that the Petitioners have been diligently serving the Respondent No.2 for at least 5 years and as such they are not only

entitled to receive dividend and payment for their units upon retirement but have acquired vested rights in the same insofar as they have been relying upon the dividend as a substantial source of income and have made investments and accrued liabilities in reliance thereof. Petitioners further added that the Pakistan Petroleum Limited / Respondent No.3 issued letter dated 15th January, 2014 addressed to the Respondent No.1 assuring therein that as soon as Government directives are received for release of dividend and settlement of Buyback claims by Privatization Commission they will proceed accordingly but nothing has been done. Petitioners added that their claim is based on legitimate expectation of receiving compensation for their units upon retirement having relied heavily on the same without any alternate arrangements for their retirement, as such the Respondents No.1 and 2 are stopped from suspending or revoking the Trust until the stated purpose of the same is fulfilled and the beneficiaries of the same that is, the eligible employees pursuant to the Trust Deed including the Petitioners have received all their due benefits; that distribution of dividend and payment of compensation to retiring employees under the Trust has been unlawfully and indefinitely suspended since October, 2012. Petitioners further added that officers of the Trust have repeatedly urged Respondent No.2 to resolve the matter so as to enable the trustees to perform their obligations under the Trust Deed, however despite the passage of over a year and half, the Respondent No.2 has not only refused to revoke its unlawful directive but, has neglected to give any reasons or justification for the same; that the Respondent No.2 repeated

the said directive through its letters dated 18th and 27th March, 2014 respectively addressed to the Respondent No.1; that since public funds are involved and the Federal Government is yet to take decision on the fate of BESOS, therefore any utilization of income / accrued interest by the Trust must be avoided till decision of the Federal Government. Petitioners being aggrieved by the directives contained in the Respondent No.2's letters dated 11th October, 2012, 9th January, 2013, 18th March 2014 and 27th March 2014 (the impugned directives) have approached this Court on 10.04.2014.

3. Upon notice, the Respondents filed para-wise comments and denied the allegations.

4. Mr. Salahuddin Ahmed, learned Counsel for the Petitioners has argued that the impugned directives are unlawful and have no legal effect; that the impugned directives and the proposed dissolution of the Scheme and the Trust are in violation of Articles 23, 24 and 25 of the Constitution of Islamic Republic of Pakistan 1973; that it is the obligation of the Trustees to distribute the trust properties amongst the beneficiaries in accordance with the Trust Deed and the failure of the Trustees to do so on account of the unlawful directives of the Respondent No.2 is unlawful and in breach of the Trustees' obligation under the Trust Deed. He has further added that the primary purpose of the Trust was the promotion of the social and economic well-being of the Petitioners as envisaged under Article 38 of the Constitution and the ownership of shares as well as dividend received from the Trust by the Petitioners as the beneficiaries thereof constitute an enormous

source of income and empowerment for the latter; that the arbitrary and unlawful suspension or revocation or winding-up of the Trust would not only defeat the principles of the policy articulated in Article 38 of the Constitution but would also set a deplorable precedent, whereby social benefits conferred upon the citizen could be revoked at whim by successive Governments to enhance their own gains, which would create severe inequities as well as undermine public confidence; that the beneficial ownership and enjoyment of shares was transferred to the Petitioners upon the creation of the Trust and as such the impugned directives amount to an unlawful and unconstitutional confiscation of the Petitioner's property; that the Petitioners have acquired valuable vested rights in the Trust property and the impugned directives amount to an unlawful violation of the said rights; that the Petitioners have been diligently serving the Respondent No.3 for at least several years and as such they are not only entitled to receive dividend and payment for their units upon retirement but have acquired vested rights in the same insofar as they have been relying upon the dividend as a substantial source of income; that the Petitioners acquired a legitimate expectation of receiving compensation for their units upon retirement in accordance with the Trust Deed as such the Respondents No. 1 and 2 are stopped from suspending or revoking or windup the Trust until the stated purpose of the same is fulfilled and the beneficiaries of the same (i.e. the eligible employees pursuant to the Trust Deed, including the Petitioners) have received all their due benefits; that trust cannot be revoked or dissolved until the said purpose thereof has

been fulfilled and all the eligible employees have received their due benefits in accordance with the Trust Deed. Learned counsel has further contended that no revocation/dissolution is possible without the consent of the Trustees and in any event, without reasonable cause or justification and without prejudice to the foregoing the trust may only be wound up in accordance with the mechanism specified in the Trust Deed, which include the dues owed to be paid to the Petitioners as mentioned hereinabove as such the unlawful suspension of the Trust constitutes a clear violation of the Trust Deed as well as a violation of the Petitioners' property rights enshrined under the Constitution. Learned counsel in support of his contention has relied upon the case of Messrs. Mustafa Impex, Karachi and others Vs. the Government of Pakistan and others (PLD 2016 SC 808) and argued that the Impugned Order has been passed by incompetent person and the decision if any, has to be passed by the Cabinet i.e. Prime Minister and Federal Minister, therefore the Impugned Order is in violation of Article 91 of the Constitution of Islamic Republic of Pakistan 1973. He further relied upon the case of Mst. Surraya Begum and others Vs. Mst. Sunhan Begum and others (1992 SCMR 1652), Watan Party Vs. Federation of Pakistan and others (PLD 2006 SC 697) and argued that the Privatization Commission has no power and authority to pass the Impugned Order. He further relied upon in the case of Khalid Mehmood Vs. Federation of Pakistan and others (PLD 2003 Lahore 629) and Pakistan International Airline Corporation through Chairman Vs. Inayat Rasool (2003 SCMR 1128) and argued that the trust has been

created, therefore certain right in favour of the Petitioners cannot be withdrawn or rescinded to determine of those rights as per principle of locus poenitentiae. He further relied upon the case of Bashir Ahmed Solangi v. Chief Secretary Government of Sindh and others (2004 SCMR 1864), Bosicor Corporation Limited V. Amanur Rehman and others (2006 CLD 265), Muhammad Younus Ahmed Zai Vs. Executive Officer Malir Cantonment (2017 MLD 1094), Zohra and others Vs. Government of Sindh and others (1996 PLD Karachi 01) and Khalid Malik Vs. Federation of Pakistan (PLD 1991 Karachi 01) and argued that the transaction was finalized and the employees started receiving their due share of PPL dividend as per the terms of the Trust Deed the same cannot be taken back to deprive the Petitioners from their due share. He further added that the Respondent Commission has no authority to call in question the decision of the full Cabinet. He lastly prayed that the captioned petitions may be allowed.

5. Mr. Munawar Hussain Yousufi advocate for the Petitioners in C.P No.D-3134/2015 has adopted the arguments of learned counsel for the Petitioner in C.P No.D-1837/2014.

6. Mr. Jamshed Malik, learned counsel for Respondent No.2 has contended that petition is not maintainable as the subject matter does not fall within the purview of Article 199 of the Constitution of Islamic Republic of Pakistan 1973; that the Petitioners are apparently and merely beneficiaries of the Trust thus cannot invoke the Constitutional jurisdiction of this Court. He has further contended that the petition is not maintainable as the

Petitioners are seeking the enforcement of an act, which is ultra vires to the Constitution and that at the time of creation of the trust, the necessary requirements of Article 154 of the Constitution were not fulfilled, which provided the functions and rules of procedure of Council of Common Interest as:-

“The Council shall formulate and regulate in relation to matters in Part II of the Federal Legislative List and shall exercise supervision and control over related institutions”

Item No.3 in the Part II of the then Federal Legislative List provided for the, “Development of industries where development under Federal control is declared by Federal law to be expedient in the public interest institutions establishments, bodies and corporations administered or managed by the Federal Government immediately before the commencing day including the (Pakistan Water and Power Development Authority and the Pakistan Industrial Development Corporation) all undertakings projects and schemes of such institutions establishments bodies and corporations industries projects and undertakings owned wholly or partially by the Federation or by a corporation set up by the Federation”

He has further contended that the Council of Common Interest has not accorded permission for the creation of so called “Benazir Employees Stock Option Scheme” and therefore any such scheme or gained illegal benefits whether through any trust or otherwise are ultra-vires to the provision of the Constitution. He has further contended that the payment so far received by the Petitioners are to be returned to the Federal Government as the same are unjust infringement and contrary to the Provisions of the Constitution and the directions passed by the Federal Government to hold the Scheme in abeyance till final decisions are taken in accordance with law and Constitution; that the Scheme and the

Trust are ultra vires to the Provision of the Constitution and the Federal Government cannot continue the violation of the Constitution without putting the matter before the Council of Common Interest, which is the Competent Constitutional body to authorize, supervise and control any such scheme; that there is no violation of Article 38 of the Constitution as the subject that is unconstitutional benefits are no more than ill-gotten gains and all such gains are liable to be returned to its owner unless otherwise required by the Council of Common Interest; that there is no such property vesting with the Petitioners as the same are no more than ill-gotten gains, contrary to the mandate of the Constitution and no property was even otherwise transferred to the Petitioners, thus no violation of Article 23 and 24 of the Constitution has taken place; that the Petitioners were performing their duties for which they were paid just the same way as their contemporaries/co-workers, who are not entitled to any such illegal benefits, therefore the Petitioners are not entitled to these additional benefits unless the Council of Common interest so desires/regulates under the Constitution. Lastly he prays for dismissal of the instant petitions. He relied upon the case law reported in the case of Watan Party Vs. Federation of Pakistan and others (PLD 2006 SC 697), Nazir Ahmed Vs. Government of Sindh and others (2005 SCMR 1814) and Muhammad Nadeem Arif and others Vs. Inspector General of Police of Punjab and others (2011 SCMR 408).

7. Mr. Masood Ahmed Khan, learned counsel for Respondent No. 3 & 4 has contended that Respondent No.3 is a self-Funded

Public Limited Company incorporated under the Companies Ordinance, 1984; that it has no “statutory Rules of Service” neither it is connected with the affairs of the Federation nor the Province or a Local Authority, thus the instant Petitions are not maintainable under Article 199 of the Constitution. He has further contended that the Respondent No.3 does not use any Funds from the Federal Government or its divisible pool for its operation; that so far as the relief claimed against the Respondent No.3 is concerned the instant Petitions are not maintainable; that Petitioners have not produced any document along with the petition, except its Registration Certificate at page 127; that the Petitioners are equating their Association with the CBA Union, which is functioning in accordance with the Provisions of Industrial Relations Act, 2012; that the Petitioners’ Association cannot perform the same functions, which said CBA Union is performing under the said Law, therefore no question of discrimination or violation of the Constitution arises as alleged by the Petitioners. He prays for dismissal of the instant petitions.

8. Mr. Shaikh Liaquat Hussain, learned Assistant Attorney General representing the Respondents No.1 and adopted the arguments of learned counsel for Respondents No.2.

9. We have heard learned Counsel for the parties and perused the material available on record and case law cited at the bar.

10. In the first place, we would like to examine the issue whether Privatization Commission was lawfully entrusted with the task to

formulate a detailed scheme to implement the policy viz Benazir Employees Stock Option Scheme established upon the directives of the Government of Pakistan. Features of the BESOS are given hereunder:-

- i. Empowerment of /employees of SOEs / other GoP share-holding through transfer of twelve percent 12% of the GoP shareholding and a seat on the Board.
- ii. All permanent employees and contractual employees (with minimum service of five years) are eligible for the BESOS and can only exit on retirement or otherwise ceasing to be Employee of the SOE.
- iii. Twelve percent (12%) of the GoP shareholding to be transferred for free.
- iv. SOEs to create a Trust for BESOS with token cash. The Board of Trustees to consist of Government Nominees and Employees representative.
- v. Trust to assign units to Employees in proportion to their entitlement on the basis of length of service through Unit Certificate.
- vi. Unit Certificates are not saleable; however, these can be pledged or hypothecated.
- vii. Trust to make payment for surrendered unit.
- viii. Employees to surrender the Unit Certificates to Trust on retirement or otherwise ceasing to be an employee.
- ix. Trust to make payment for surrendered Unit.
- x. surrendered Units to be returned by Trust to the Federal Government.
- xi. The GoP will guarantee the buyback of the surrendered units on the following basis:-
 - The market value of the listed companies,
 - Break-up value at historical cost based on the last audited financial statements excluding re-valuation reserves for the un-listed and private limited companies,

- On net-worth based on the last audited financial statements excluding re-valuation reserves for SOEs established under Special Acts and Ordinance till such time they are corporatized.
- xii. Employees representative on the Board to be nominated by GoP through Line Ministry/ Holding Corporation on the recommendation of Trust. Such representative to be a Chartered Accountant or a Corporate Lawyer or , an eminent professional having minimum professional experience of 15 years or a Senior Government Official not below the status of a Joint Secretary.
 - xiii. Trustees are entitled to receive dividends, if any, from the date of applicability of the BESOS.
 - xiv. Funding arrangement:-
 - * 50% of the dividends to be transferred to central revolving fund for annual payout and 50% to be distributed amongst the employees. This will result into an annual payout of Rs. 1.670, billion which will be funded by GoP.
 - xv. A central revolving fund out of the future dividends to be established in Privatization Commission for payments against surrendered Unit Certificates.
 - xvi. The BESOS to be implemented by the Privatization Commission in coordination with the line Ministry/holding Corporation/ respective SOEs. A cell costing Rs. 10 million per annum will be created in the Privatization Commission for the purposes of effectuating the scheme. Rs. 107 million for formulation and 1st year implementation including publicity campaign is also required.
 - xvii. Corporatization of the SOEs established under Special Act/ Ordinance by the Privatization Commission in-coordination with the Line Ministries.

5. The salient features of the scheme have already been circulated to all concerned Ministries/ Organizations (Annex-I & II) with the request to indicate their view including legal/procedural requirements if any for the

implementation of the scheme. No comments have been received. Similarly amendments to PC rules for this purpose have been sent to the Law Division on 30th July, 2009 for vetting (Annex-III).

6. MYASCO has asked to make a detailed presentation on the scheme to the cabinet.

7. The Cabinet is requested to consider the main features for the scheme as stated at para 4 above and accord approval for implementation.

8. The Minister for Privatization has seen and authorized submission of this summary.

11. The second question which requires decision is whether Pakistan Petroleum Employees Empowerment Trust is established in accordance with the Provision of the Privatization Commission Ordinance 2000, Companies Ordinance 1984 and the Constitution of Islamic Republic of Pakistan 1973.

12. Pakistan Petroleum Limited Empowerment Trust was established under the Benazir Employees Stock Scheme on 14th September 2009 with the following objectives:-

1. To constitute, establish and administer the Trust and to take all necessary steps for the effective and efficient empowerment of the Employees; to enhance Employees loyalty and commitment for improving the efficiency of the Company to enable the Employees to participate at highest level in decision making process of the Company with a view to ensuring Employees participation in profits and increased worth of the Company.
2. To establish the FUND and to realize, administer, invest and distribute the income of the FUND.
3. To issue Unit Certificates and distribute profits against such Unit Certificates from time to time for the benefit of the

Employees as per the Plan and to administer the Plan on regular basis.

4. For securing vicarious representation on the Board of Directors of the Company as Employees nominee (the Employees Nominee) a person shall be appointed who will be chartered accountant or a corporate lawyer or an eminent senior government Official not below the status of a Joint Secretary selected through a pre-defined criteria to represent the Employees on the Board of Directors of the Company as prescribed in the Plan; and
5. To promote, support and advance such other objectives of the Trust as per the decisions of the Trustees and MOPNR.

13. Perusal of Trust Deed dated 14th September 2009, shows that it is created by the Ministry of Petroleum and Natural Resources with the objective of regulating a trust known as Pakistan Petroleum Employees Empowerment Trust. The same has been approved by the Government of Pakistan, under the Benazir Employees Stock Option Scheme, the establishment of the trust for the purposes and objects and administering the same in accordance with the Provision and direction contained in the trust deed for the benefit of the eligible employees as per the criteria attached as annexure 'A' with the trust deed.

14. The entire matter arises out of the Cabinet decision, which translated into a Scheme for transfer of the shares to the employees of PPL. The said shares i.e. 12% of the total shares were vested in a trust. The beneficiaries were serving or retired employees of PPL, who were granted unit certificate with the proportionate amount of share, attached thereto. It appears that a part of dividend was to be paid to the share-holders / unit holders

i.e. employees and the balance was to be placed in a Central Revolving Funds. It has further been stated under the Scheme on retirement, an employee was entitled to redemption of units/shares on surrender thereof at a price quoted in the Stock Exchange in a previous month for the said share. In the above perspective, the Respondent No.2 failed to make payment to the employees and some of the employees i.e. Petitioners have invoked jurisdiction of this Court. In pith and substance it is the case of Respondent No.2 i.e. Government of Pakistan that the amount required to be paid for reduction of shares is perhaps 10 times more than the amount in the Central revolving Fund result for such resumption. Respondent No.2 adds that such payment in terms of Scheme would be borne out by the Government, which is not feasible. On our query the learned Assistant Attorney General stated that the Cabinet Decision on the basis whereof the Scheme was to put in place and the Trust Deed executed still holds the field. He explained as to how such decision of the Cabinet is to be modified by the Privatization Commission. Learned counsel for Respondent No.2 has argued that the Privatization Commission was established as body corporate under the Privatization Commission Ordinance 2000 as an autonomous corporate for implementing privatization policy of the Federal Government in accordance with the Provision of the Privatization Commission Ordinance and Rules and Regulations made there under. The Benazir employees Stock Scheme is presently under review by the Government of Pakistan, therefore, Employees Empowerment Trust established in State Owned Entities for the purpose of

implementing Benazir Scheme Employees option Scheme were directed not to disburse the 50% dividend to the employees of PPL on the premise that since the public funds are involved the Federal Government has to take definite decision on the fate of BESOS therefore any utilization of income / approved interest by the trust was required not to be awarded till the decision of the Federal Government, which is a policy matter does not require interference under Article 199 of the Constitution.

15. We have gone through Pakistan Petroleum Employees Empowerment Trust, which was established under BESOS and trust deed was signed on 14th September 2009 by the representative of Ministry of Petroleum of Natural Resources and trustees, as per criteria 2993, employees who were on the payroll of Respondent No. 3 Company, on 14th August 2009 were included in the said scheme and were issued unit certificates by the Respondent No.4 as per objective of the Scheme and Trust Deed disbursed seven dividend to the employees of the Respondent No.3 Company, except cash dividend received on five issues of bonus share issued subsequently for implementation of BESOS Scheme, record reflects the Respondent No.2 also settled 44 cases of buyback claims up to the quarter pending 30th June 2012 without intact of Bonus share, which were disbursed to the retired employee / nominee of deceased employee. Respondent No.2 vide letter dated 11th October 2012 addressed to Respondent No.4 advised that BESOS is under review by the Government of Pakistan. We have noticed that the Trust has not yet been revoked

or wound up therefore apprehension of the Petitioners is unjustified, however payment has been withheld under the directives of Privatization Commission, which prima-facie is a policy matter does not require interference under Article 199 of the Constitution.

16. On merits, we have also noticed that the Petitioners were performing their duties against which they were paid their salaries; therefore the question of additional benefits does not arise.

Article 154 of the Constitution 1973 provides as under:-

“154. Functions and rules of procedure.—(1) The Council shall formulate and regulate policies in relation to matters in Part II of the Federal Legislative List and shall exercise supervision and control over related institutions.”

17. The Council of common interest is responsible to formulate and regulate the matters in relation to the business mentioned in Part II of the Federal Legislative List and shall supervise and control the related institutions. Item No.3 in Part II of the then Federal Legislative List provided for the, Development of industries where development under Federal control is declared by Federal law to be expedient in the public interest institutions establishments, bodies and corporations administered or managed by the Federal Government immediately before the commencing day including the (Pakistan Water and Power Development Authority and the Pakistan Industrial Development Corporation) all undertakings, projects and schemes of such institutions establishments bodies and corporations industries projects and

undertakings owned wholly or partially by the Federation or by a Corporation set up by the Federation.

18. We have further noticed that a great loss to a public exchequer has been caused by creation of the subject Trust and the public money has been influxed in the trust in order to give benefits to the employees of State Owned Entities. Apparently the Council of common interest has not accorded any permission for creation of such trust under the law.

19. We are of the considered view that the Petitioners have neither authority nor title to claim amount, which is public money. We believe that the shares of State Owned Entities held in the Trust by the Federal Government cannot be transferred to a selected group of employees. The Petitioners have received ill-gotten gain throughout their service tenure, therefore all the persons, who have created such Trust and have received benefits out of the public money are liable to be accounted for in law and the public money accumulated in the trust must be returned to public exchequer account forthwith, in accordance with law.

20. We have also noticed that the employees of PPL and representative of Ministry of Petroleum namely Muhammad Afzal Chaudhary Section Officer was not competent to execute instrument by the name of Pakistan Petroleum Limited Employees Empowerment Trust Deed on 14.09.2009, which is ex-facie against the mandate of Article 173 of the Constitution of Islamic Republic

of Pakistan 1973 read with Rule 7 of the Rules of Business, 1973, which provides as under:-

“7. Orders and instruments, agreements and contracts.

1. Subject to Article 173, all executive actions of Government shall be expressed to be taken in the name of the President.
2. The officers listed in Schedule IV may authenticate by signature all orders and other instruments made and executed in the name of the President.

Provided that in certain cases an officer may be so authorized for a particular occasion by order of the Prime Minister.

3. Instructions regarding the manner of authentication of orders and instruments in connection with the representation of Pakistan in foreign countries or at international conferences and of international agreements and treaties shall be issued by the Foreign Affairs Division.
4. Instructions for the making of contracts on behalf of the President and the execution of such contracts and all assurances of property, shall be issued by the {Law and Justice Davison}

21. We are of the view that the action of a Chief Executive of the Federation and the Province has to be within the fore corner of the Constitution and law framed there under. These authorities cannot overlook their competence by entrusting public money to any other persons nor could they confer a right to any person or organization or organizations without complying with the legal sanction. We have noticed that transferring 12% share-holding in PPL by the Federal Government, which benefits only selected group of employees is in violation of Articles 154 and 173 of the Constitution, and therefore such a transfer is nullity in the eyes of law.

22. We are further of the view that the contractual obligation cannot be enforced by invoking constitutional jurisdiction of this Court. Besides the subject matter in these proceedings is a policy matter and Privatization Commission has issued letter dated 11th October 2012 whereby it has directed the State Owned Entities restraining them to disburse the 50% dividend to the employees of PPL, which is correct approach in the given circumstances of the case, therefore does not warrant interference by this Court under its Constitutional jurisdiction, for the reasons already given herein above.

23. In the light of the above facts and circumstances of the case the Respondent Company has erroneously created the Trust and gained the benefits out of the public money without any justifiable reason, therefore the Respondent No.2 has rightly restricted the payment of the dividend to the Petitioners. These petitions for the above reasons are misconceived, and are accordingly dismissed.

Karachi

JUDGE

Dated: 03.01.2018

JUDGE

Shafi Muhammad P.A