

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CP D-3040 of 2019

Order with signature of Judge

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

Lucky Cement Limited
vs.
Province of Sindh & Others

1. *For hearing of CMA 13634 of 2019*
2. *For hearing of main case*

05.11.2019

Mr. Ali Almani, Advocate for the petitioners.
Mr. Ishrat Zahid Alavi, Assistant Attorney General.
Mr. Jawad Dero, Additional Advocate General Sindh.
Mr. Azizullah Memon, Director General, Energy Department,
Government of Sindh.

Muhammad Ali Mazhar J., The petitioner has sought the directions against the respondents to process the pending applications of the petitioner seeking tariff differential amount under the provisions of Sindh New Captive Power Plan Subsidy Act, 2017 (“Act of 2017”) within thirty days of the receipt of the application. Further directions have been sought to process all pending applications seeking tariff differential amount under the Act of 2017. Learned counsel for the petitioner pointed out section 3 of the Act, 2017, which provides that after receipt of payment of an invoice issued pursuant to a power purchase agreement, the power producer may seek payment of tariff differential amount from Government by making an application in the prescribed form to the Government accompanied by copy of the paid invoice certified as having been paid by the power purchaser and certificate issued by a Chartered Accountant certifying the tariff differential amount payable in respect of such invoice in accordance with the provisions of the Act 2017. Subsection 2 of Section 3 of the Act, 2017 further provides that within thirty days of the receipt of all the documents referred to in sub-section 1, Government shall pay the tariff differential amount to the power producers. Learned counsel submits that since April, 2018 continuously monthly applications are being submitted for subsidy claim but these applications have not been decided. Mr. Azizullah Memon, Director General, Energy Department, New Capital Power Plant Subsidy

Committee is present and he has shown us letter dated 25th October, 2018 issued by the Secretary (Imp: & Coordination), Services, General Administration and Coordination Department, Government of Sindh to various Secretaries including the Secretary to Government of Sindh, Energy Department, Karachi. In fact this letter is issued under Section 5(5) of the FIA Act, 1974 and Section 23(A) of the National Accountability Ordinance, 1999 with case reference 04 of 2018 of FIA State Bank Circle Karachi. Contents of the letter are reproduced as under:

“I am directed to enclose herewith copy of letter No.ECW/HRC-39216-G/NB/2018/829, dated 25.10.2018 received from Joint Investigation Team (JIT), Federal Investigation Agency (FIA), Karachi, on the above subject.

2. The Chief Secretary, Sindh has directed to take immediate action in the matter, and to ensure that no subsidy to any business entity of accused Anver Majid, his family and associates, especially in tractor manufacturing industry, sugar industry and captive plants may be released to any business entity related to accused Anver Majid, his family or OMNI Group or any of their accounts without permission of the JIT. Any subsidy approved but not disbursed or any Cheque issued in this regard may also be cancelled/recalled.

a. The matter may please be assigned ‘Top-priority’.

Sd/=
 “Secretary (Imp: & Coordination)”

He has further referred to another letter dated 23rd November, 2018 issued by Section Officer, Energy Department, Government of Sindh to the General Manager (Finance) of the petitioner in which it was communicated that NCPP Subsidy committee has decided to keep on hold all subsidy claims till the availability of funds, as there is no funds were allocated for NCPP subsidy claims in the budget 2018-19. It was further communicated that the matter is under consideration of Sindh Cabinet and the Energy Department will consider the subsidy claim after completion of all codal formalities.

Non-availability of fund is totally a different aspect of the matter but so far as the notice dated 25th October, 2018 is concerned, its niceties unequivocally demonstrate that it was purely focused on the

case 4 of 2018 and the directions have been issued that no subsidy to any business entity of accused Anver Majeed, his family and associate may be released to any business entity and OMNI Group. We specifically asked the Director General Energy Department whether Lucky Cement is owned by OMNI Group. He informs us that he does not know. Further under section 3 of the Act, 2017 it is the responsibility of the respondent No.3 to decide all pending applications of the petitioner seeking tariff differential amount, therefore this petition is disposed of with the directions to the respondents to decide the pending applications of the petitioner seeking tariff differential amount, within a period of one month and make payments in accordance with law. The petition is disposed of. Copy of this order may be transmitted to the learned D.A.G., A.A.G. and Director General, Energy Department Government of Sindh.

J U D G E

J U D G E

*Farooq ps/**