

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Date

Order with Signature of Judge(s)

Present:

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Agha Faisal

C.P. No.D-5160 of 2019

Mirpurkhas Sugar Mills Limited & Others.....Petitioners

Versus

Province of Sindh & Others.....Respondents

1. For orders on CMA No.35061/2019.
2. For orders as to non-prosecution of CMA No.27811/2019.
3. For hearing of CMA No.22553/2019.
4. For hearing of main case.

Date of Hearing: 10.12.2019

Mr. Abdul Sattar Pirzada, advocate and Mr. Mamoon N. Chaudhry, advocate the petitioners.

Mr. Rafiq Ahmed Kalwar, advocate for the Applicant Intervener.

Syed Mureed Ali Shah, advocate/Applicant Intervener in person.

Mr. Jawad Dero, Additional Advocate General Sindh.

Agha Zaheeruddin, Secretary, Agriculture, Supply and Prices Department, Sindh.

Mr. Javed Sibghatullah Meher, Cane Commissioner, Sindh.

Abdul Qayyum Rajput, Deputy Agriculture Commissioner (Tech.), Agriculture, Supply and Prices Department, Sindh.

Abdul Samad Shaikh, Focal Person Legal Matters, Agriculture, Supply and Prices Department, Sindh.

Muhammad Ali Mazhar, J.: The miscellaneous applications i.e. CMA No.27811/2019 has been filed under Order 1, Rule 10 CPC, by Syed Mureed Ali Shah, advocate who is appearing in person for becoming party in this petition, whereas, Mr. Rafiq Ahmed Kalwar, advocate has filed application bearing CMA No.35061/2019 on behalf of the Sindh Abadgar Board for impleading in this petition. Both the applications are allowed and the interveners are impleaded as respondent Nos.6 and 7, respectively. Learned counsel for the petitioners is directed to file amended title in the office within five working days.

2. This petition has been filed by 22 sugar mills, whereas, the petitioner No.23 is a shareholder of Mehran Sugar Mills Limited. The petitioners have challenged the notification bearing No.8(142)/S.O(Ext)2017-18, dated 02.05.2019 issued under Section 16(3), Sugar Factories Control Act, 1950. The impugned notification is available at page 361 of court file. Learned counsel for the petitioners argued that so far the first part of the impugned notification is concerned, they have no objection, whereby, the Government of Sindh, Agriculture Supply & Prices was pleased to fix the minimum prices of the sugarcane at Rs.182/- per 40 kg for the crushing season 2018-19. Learned counsel submitted that first portion of the notification, the fixation and its decision conveyed through notification was taken by the Provincial Cabinet, However, in the second part of impugned notification, the Government has fixed the quality premium payable to the cane growers at the end of crushing season 2018-19 at the rate of 50 paisa per 40 kg cane for each 0.1 percent (including fraction thereof to be calculated prorated) of excess sucrose recovery above 8.7 percent determined on overall sucrose recovery basis of each mill. In order to determine the quality premium, the matter was not placed before the Provincial Cabinet. On last date we directed the learned Additional Advocate General to submit the Minutes of the Meeting of the Provincial Cabinet convened on 25.04.2019, under the Chairmanship of the Worthy Chief Minister Sindh. He has placed the minutes of the Cabinet Meeting and in Agenda Item No.13 of the Minutes of the Meeting, the fixation of minimum sugarcane price for the crushing season 2018-19 was taken up and the Provincial Cabinet decided to accord fresh approval of minimum purchase price of sugarcane at Rs.182/- per 40 kg for 2018-19 crushing season, in the light of directions given by this court. In fact, when the earlier notification for determination for minimum sugarcane price was issued, it was challenged by some of the petitioners on the premise that the decision was not taken by the Provincial Cabinet in terms of Mustafa Impex Judgment rendered by the Honourable Supreme Court and dictum laid down in that judgment was not followed by the Sindh Government. The notification was struck down by us with the directions to the Sindh Government to place the matter before the Provincial Cabinet to decide the same in terms of Mustafa Impex

judgment. In compliance of our judgment, which was given by the same Bench in CP No.D-8591 of 2018, the matter was placed in the Cabinet meeting and they have issued notification for fixation of price accordingly, but what we understand from the second portion of the impugned notification that the determination was not done by the Provincial Cabinet, even the minutes of the meeting did not transpire that the issue of quality premium fixation was taken up by the Provincial Cabinet, though under Section 16(3) of the Sugar Factories Control Act, 1950, this decision is also to be taken up by the Government.

3. After hearing arguments of learned counsels this petition is disposed of in the following terms:

The petitioners shall follow the first portion of the impugned notification bearing No.8(142)/S.O(Ext)2017-18, dated 02.05.2019, in accordance with law. So far as the second portion of the impugned notification is concerned, we are of the firm view that the decision was not taken by the Provincial Cabinet, so we strike down the second portion with regard to the fixation of quality premium with the directions to the Province of Sindh to convene a meeting of Provincial Cabinet within 20 days and determine the quantum of quality premium under Section 16 of the Sugar Factories Control Act, 1950.

The petition is disposed of in above terms.

JUDGE

JUDGE