

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP NO.D-4668/2015 & 1917/2017

Date Order with signature of Judge

CP NO.D-4668/2015

1. For order on Nazir report dated 06.09.2021.
2. For hearing of CMA see No.20252/2015
3. For hearing of main case.

CP NO.D-1917/2017

1. For hearing of Misc. No.9631/2017
2. For hearing of main case.

07.09.2021

Mr. Taimur Ali Mirza advocate for petitioner in CP No.D-4668/2015.

Mr. Waqas Shaikh advocate for petitioner in CP No.D-1917/2017.

Mr. Muhammad Nishat Warsi, DAG

Mr. Ali Safdar Depar, AAG alongwith Mr. Abdul Rasheed Solangi, Secretary Labour and Human Resources Department, Government of Sindh alongwith Mr. Rab Nawaz, Section Officer.

Ms. Nida Saleem associate of Mr. Ali Asadullah Bullo advocate for EOBI.

.....

ORDER

SALAHUDDIN PANHWAR, J. Brief facts of petitioners' case, as reflected in CP NO.D-4668/2015, are that petitioners being public limited company is registered with the EOBI under EOBI Act 1976; depositing contribution under that law; that pursuant to the Constitution (Eighteenth Amendment) Act 2010 and subsequent promulgation of Sindh EOBI Act 2014, EOBI established under the EOBI Act 1976 lost jurisdiction to take any action against petitioners however ignoring that aspect EOBI is raising demands for deposit of contribution by the petitioners while Provincial EOBI is not yet established under the Act of 2014. Accordingly petitioners have prayed that:-

- i. Declare the impugned letters dated 28.1.2015, 30.1.2015, 9.2.2015 and 2.3.2015 issued by the Respondent No.3 as illegal, arbitrary, vexatious, ultra vires to the Constitution, void ab initio and without lawful authority and set aside/strike down the same as the same have

been issued under the EOB Act, 1976 which has been repealed by the Sindh EOB Act, 2014 and has ceased to be on the statute book to the extent of the Province of Sindh;

- ii. Declare that the Respondent No.3 does not have jurisdiction to the extent of the Province of Sindh after the passing of the Sindh EOB Act, 2014;
- iii. Declare the Respondent No.4's impugned Order dated 13.7.2015 as illegal, arbitrary, vexatious, ultra vires to the Constitution, void ab initio and without lawful authority and set aside/strike down the same;
- iv. Restrain the Respondents No. 1 & 3 from taking any action, including any coercive action, pursuant to the impugned letters dated 28.1.2015, 30.1.2015, 9.2.2015 and 2.3.2015 or under the EOB Act, 1976 against the Petitioner which has been repealed by the Sindh EOB Act, 2014 and has ceased to be on the statute book to the extent of the Province of Sindh.

On similar footing is the case of petitioner/employer in CP No.D-1917/2017.

2. Objections were filed which speak of admission of Constitution (Eighteenth Amendment) Act 2010 as well existence of Sindh EOBI Act 2014.

3. Petitioners are employers and seeking declaration with regard to demand of contributions by the Federal EOBI under EOBI Act 1976 and before the 18th amendment that was a federal subject. On last date of hearing viz. 30.08.2021 this court called Secretary, Labour and Human Resources Department, with following order:-

“At the outset, learned counsel for the petitioner contends that Employees’ Old Age Benefits Institution (EOBI) is a provincial subject after 18th amendment though that enactment was promulgated on 2014, yet Sindh Government has failed to establish the same. He further contends that the petitioner is depositing contribution with the Nazir of this court, whereas, Federal EOBI has stopped pension and other benefits to their employees though they collected the amount before 18th amendment. Accordingly, Nazir shall submit complete description of funds received by different provincial organizations in respect of EOBI particularly. Office shall submit list of cases of identical nature. Besides, Secretary Labour and Human Resources Department, Government of Sindh shall be in

attendance and shall explain with regard to non-establishment of EOBI establishment in Sindh. He shall be aware with regard to applicability of EOBI laws in other provinces as well.”

Secretary Labour and Human Resources Department present, contends that in spite of 18th amendment, that department has not been devolved to the Provinces and there is only Sindh Province that has enacted the law on the subject (Sindh EOBI Act 2014) whereas in other provinces there is no such enactment and all employers and employees are being regulated by the EOBI Act 1976; though under the Act, Board was constituted but that is dis-functional as per decision of the (CCI) (Council of Common Interests); he has placed minutes of the meeting and decision taken by the CCI.

4. By order of this court with regard to this controversy direction was issued to the employer to deposit the contributions with the Nazir of this court; accordingly such contribution is being deposited with the Nazir of the court regularly. Secretary Labour and Human Resources Department submits letter dated 06.08.2020 containing therein “EOBI shall remain with Federal Government and WWF shall remain with the Federal Government till such time a mutually agreed mechanism is developed.” This is extract of Minutes of 41st Meeting of CCI.

5. Learned A.A.G Sindh contends that provinces will not claim any dues from the petitioner until issue is resolved between the federation and the provinces. At this juncture learned DAG contends that since due to this enactment employers are not depositing the contributions to the EOBI therefore employees are suffering as the EOBI is an autonomous body with independent powers and has own means and ways to invest and work for the welfare and protection of the rights of the employees.

6. What, *prima facie*, surfaces from above background could well be summarized as follows:-

- i) The EOBI, before 18th amendment, was the Federal subject and EOBI was functioning under Act 1976;
- ii) After 18th amendment the EOBI became subject of provinces but except enactment of Act 2014 by Sindh Province, the affairs relating to EOBI continued under Act, 1976 in other provinces;
- iii) The Sindh Province *did* enact the Act 2014 but could not establish the Institution;

These had been the reasons because of which the extract of Minutes of 41st Meeting of CCI came as:-

“EOBI shall remain with Federal Government and WWF shall remain with the Federal Government till such time a mutually agreed mechanism is developed.”

We are surprised that when the position is so then why the petitioner (s) are avoiding to pay the contribution under EOBI Act 1976 when they do not dispute their registration as well payment of contributions before 18th amendment, particularly when nothing has been brought on record that they (petitioners) are paying contributions under Act 2014. None can take an exception to the fact that such position shall result into no benefit of the ‘employees’ but shall surely affect their entitlement as was/ is aimed under the EOBI whether it be Act 1976 or Act 2014. Further, learned A.A.G Sindh was fair enough that province will not claim any dues from the petitioner until issue is resolved between the federation and the provinces. The contribution by the *employer* is normally deducted amount of the employees themselves which by way of investment is to be returned to the *employee(s)* with profit, therefore, no useful purpose was / is appearing by withholding or avoiding payment of such contribution when the respondent by owning liabilities of receipt of such contribution, as arising from Act 1976, are

demanding the same. The petitioners can't take benefit of dispute between the Federation and Province, particularly when:-

- i) it is not the claim that the petitioners are being charged both by federation and province;
- ii) province *itself* agrees that till mutual settlement / agreement the federation shall continue with the subject;
- iii) the *ultimate* affectee (s) were / are employees and not the employer (s);

7. Under these circumstances, until the issue is resolved, without commenting on the *ultra vires* of enactment of the federal law we deem it fit that **priority must be given to the employees as the Old Age Benefit law is a beneficial law, aimed for the benefit of the employees therefore in case contribution amount is not received by the EOBI ultimately it is the employees who will suffer.** Hence these petitions are disposed of in terms that petitioners shall deposit the contributions and other dues according to EOBI Act 1976; all amount deposited with the Nazir shall be returned in favour of the EOBI established under the EOBI Act 1976. Petitioner shall continue old practice while depositing contribution with the Federal EOBI until issue is resolved between the Federation and the Province and legislation is being implemented and departments are functional, however, Provincial EOBI will not claim that amount from the employer (petitioners). It is pertinent to mention that if Province feel that they have any claim with regard to contribution deposited with the federal EOBI, they would be at liberty to sue that remedy against the Federal EOBI and will not drag the employer for that controversy.

8. Office shall fix all identical petitions on 14.09.2021 at 11.00 a.m.

J U D G E

J U D G E