

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. D – 3336 of 2024

Date	Order with signature of Judge(s)
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- 1.For hearing of CMA No.14698/24 (stay)
- 2.For hearing of main case

02.08.2024

Mr. Khalid Jawed Khan, Advocate for the Petitioners
Mr. Mamoon Choudhry, Advocate for Respondent Nos. 10 to 38
Mr. Manzoorul Haq, Law Officer, State Bank of Pakistan along
with Muhammad Danish Farooq, Joint Director State Bank of
Pakistan
Peer Muhammad Riaz, DAG for Federation of Pakistan
Mr. Muhammad Kamran Khan, Assistant Advocate General for
Government of Sindh
Zameer Ahmed Jagirani, Cane Commissioner Sindh
Muhammad Mulook, PS to Cane Commissioner Sindh
Mushtaq Ahmed Garwan, Assistant Director on behalf of
Secretary Agriculture
Muhammad Faisal Secretary PSMA Sindh Zone
Mohsin Jokhio Assistant Manager Mir Pur Khas Sugar Mills Ltd.
Tariq Yosouf for Faran Sugar Mills Ltd.
Tariq Mahmood, for Kiran Sugar Mills Ltd.

At the outset, the Counsel for the Petitioners and Respondent Nos.10 to 38 have submitted today an Additional Joint Statement and supplied a copy of the same to the learned Assistant Attorney General and Assistant Advocate General as well as the Cane Commissioner (Respondent No.8).

1&2. On 04.07.2024, the learned Counsel for the four (4) Petitioners (three (3) Petitioners are sugar mills in Sindh) filed this Petition (concerning sugar cane crushed during the crushing season 2023-2024) seeking certain reliefs against the Cane Commissioner (Respondent No.8) Order No.SCB/290 dated 01.07.2024 (available on page 59 of the Petition)(hereinafter referred to as the “impugned CC Order”) alleging that the said CC Order was/is not consistent with the allocation of quota for export of sugar based on ECC’s decision of the Cabinet in Case No.ECC-116/12/2024 dated 13.06.2024 (available on page 31) duly ratified by the Federal Cabinet vide Cabinet Case No.181/22/2024 dated

25.06.2024 (available on pages 33-35) and implemented by the Federal Ministry of Industry & Production (“MOIP”), and the Federal Ministry of Commerce (ExIm Wing) Office Memorandums (“O.M.”) dated 26.06.2024 available on pages 37-43). The Petitioners also sought certain interim relief under CMA No.14698/2024, and on 15.07.2024, this Court passed an ad-interim ex-parte Order suspending the impugned CC Order till the next date of hearing, i.e. 10.07.2024.

1(b) On 10.07.2024, the Respondent Sugar Mills (10 to 12, 14 to 16, 18 to 19, 21 to 24, 28 to 30, 32 to 35, 37 and 38) entered appearance through Counsel along with the learned Assistant Attorney-General and the learned Assistant Advocate-General. The Counsels also requested that this Petition and HCA Nos.64~67/2023, may be fixed along with this Petition, and the matter was adjourned to 15.07.2024.¹

1(c) On 15.07.2024, the Counsels for the Petitioners and Respondent Mills (Respondent Nos. 10 to 12 and 14 to 38) filed a Joint Statement dated 15.07.2024, which was taken on record. This bench required further assistance regarding the Joint Statement dated 15.07.2024 and set out these clarifications in its Order dated 15.07.2024 directing the Respondent Nos.1 to 3 (Federal Government/relevant Ministry/Ministries) and Respondent No.7 (Sindh Agricultural Department) and Respondent No.8 (Cane Commissioner) to submit their comments on the Joint Statement dated 15.07.2024 and to respond to these clarifications sought by the Court.

1(d) In summary, the above-mentioned clarifications concerned the interpretation and impact of the direction of the Federal Government to the Provincial Cane Commissioners to allocate quota for export of sugar “as per policy approved by ECC based on stocks available on 05.06.2024.” The Court queried parties whether, as a first impression, in the ECC’s decision of 13.06.2024, the reference to allocation of export

¹ On 31.07.2024, the Court had clarified that this Petition and HCA Appeal Nos.64~67/2023 concerned separate matters which were not inter-related. CP No.D-3336/2024 concerned the Sugar Cane Crushing Session of 2023-2024, and the HCA Nos.64~67/2023 concerned the Sugar Cane Crushing Session of 2022-2023. Accordingly, the Court passed separate orders in the Petition and HCAs on 31.07.2024 noting that the Bench had passed a common order of 29.07.2024 “inadvertently” and directed the office not to club the two lis.

quota based on stocks available on 05.06.2024 specifically in the directions to the Cane Commissioner meant that the Cane Commissioner had to allocate export quota for individual mills in Sindh based on stocks available with each mill on 05.06.2024. The Case Commissioner insisted verbally that the Federal Government had delegated the manner of quota distribution to the discretion of the Cane Commissioner. He contended that in ECC's decision of 13.06.2024, the reference to the quota for the export of sugar based on the availability of stocks on 05.06.2024 was limited to the purpose of allocating the percentages of the quota for the export of sugar between the provinces as per the current year's actual production (2023-2024). For 2023-2024, the Federal Government had allocated an export quota for Sindh of 30% of 150,000 M.T. of sugar, totalling 45,000 MT. He submitted that ECC's direction to the Cane Commissioner did not require him to apply the criterion of the actual production of stocks as of 05.06.2024 (meant for deciding allocation to Provinces) to the allocation of quota for the export of sugar by individual sugar mills of Sindh. Therefore, the Bench sought:

“ . . . clarity in writing from the concerned Ministry that the Joint Statement, which is allocating quota for export based on a criterion other than the Federal Government's direction to the Provincial Cane Commissioners to allocate quota for export of sugar “as per policy approved by ECC based on stocks available on 05.06.2024” is not violative of the direction of the ECC. Prima facie, the Joint Statement dated 15.07.2024 does not appear to be allocating quota for the export of sugar based on stocks available on 05.06.2024 with all the functional sugar mills of the Province of Sindh. The Joint Statement seems to be at variance with the Ministry of Commerce notification of 26.06.2024 read in the light of the ECC decision of 13.06.2024, as it is apparently applying a different criterion. We cannot accept a verbal “No Objection” from the learned DAG on a national policy matter, particularly when the ECC decisions for the export of sugar in the crushing year 2022-23 and 2023-24 are seemingly different. If this is so, subject to clarification from the Federal Government, then the Cane Commissioner cannot apply in 2023-2024, the sugar export criterion settled by the ECC for 2022-2023, which was the subject matter of the Order in HCA No.64/2023 for the crushing year 2023-24.

Additionally the Court also sought the complete list of ALL the 31 functional Sugar Mills of Sindh whose stock was counted as available on 05.06.2024 as per ECC's decision dated 13.06.2024. Finally, based

on further consideration of continuing submissions of Counsels, this Court raised the issue of suitability of determining the points of controversy in writ jurisdiction.

The matter was adjourned to 29.07.2024.

1(e) On 29.07.2024, the Cane Commissioner (Respondent No.8) filed his Comments, whereupon learned AAG opposed the same and requested for some time as the AAG Office had not reviewed the said Comments. Accordingly, the matter was adjourned to 31.07.2024.

1(f) On 31.07.2024, the learned DAG appeared on behalf of Respondent No.2 (Ministry of Industries & Production, Government of Pakistan)(“MOIP”) and submitted a Report on behalf of MOIP stating that:

“The word stocks available as on 05.06.2024 only refers to stocks in mills on which export was allowed by the ECC of the Cabinet. It has nothing to do with the distribution of quota to mills.

PRAYER:

It is most respectfully prayed that as per ECC decision the Provincial Cane Commissioners would allocate mill wise sugar export quota.”

MOIP’S Report did not expressly address the implication of the reference in ECC’s decision dated 13.06.2024 to the Cane Commissioner to allocate quota for export of sugar based on “policy approved by ECC based on stocks available on 05.06.2024” as raised by this Court in its Order dated 15.07.2024. Further, we were not provided with a copy of “the policy approved by ECC” mentioned in ECC’s decision.

1(g) Additionally, on 31.07.2024, the Cane Commissioner (Respondent No.8) Statement dated 29.07.2024, after being duly scrutinised by the Office of the Advocate-General Sindh, was also presented to the Court, once again, this time bearing the customary QR Code of the Office of the AG Sindh. The Cane Commissioner and the

Agricultural Department (Respondent No.7) submitted in the said Statement that:

“The Joint Statement [dated 15.07.2024] submitted by the PSMA (Sindh Zone) in the aforementioned C.P. No.3336/2024 is reasonable and is endorsed in the large interest of both the Sugar Mills owners and sugarcane growers. This will enable growers to clear the liabilities before the upcoming sugarcane sowing season, thereby facilitating the cultivation of sugarcane over a larger area to address the crop shortage, particularly in the southern region of the province.”

The Cane Commissioner’s Statement dated 29.07.2024 did not address in writing the implication of the specific reference in ECC’s decision dated 13.06.2024 to the Cane Commissioner to allocate quota for export of sugar based on “policy approved by ECC based on stocks available on 05.06.2024” as raised by this Court on the several dates of hearing. Further, the Cane Commissioner could not identify how he came:

“to conclusion that equal share becomes 1451.612 M ton out of 45,000 M ton is justified and fair distribution to clear the Grower Dues. . .”

in the impugned CC Order dated 01.07.2024. The impugned CC Order also did not disclose any reason for the Cane Commissioner’s silence on the Federal Government’s policy as approved by ECC, which, for the first time, directed the Cane Commissioner to allocate the export quota based on stocks available on 05.06.2024.

1(h) As a result of the several open-ended threads/issues continuing to remain unaddressed to the satisfaction of the Court on 31.07.2024, the matter was adjourned to 02.08.2024 to enable the learned Counsels for the Petitioners and Respondents Mills Nos. 10 to 38 as well as the Counsels for the Official Respondent Nos.2, 7, 8 and 9 through the learned Assistant Attorney General and Assistant Advocate General to file appropriate application/statement.

1(i) Today, 02.08.2024, learned Counsels for the Petitioners and the Respondent Mills Nos.10 to 38, have submitted an Additional Joint Statement dated 02.08.2024 stating that:

“by way of clarification [they] submit the following which may kindly be read as integral part of the earlier Joint Statement filed by them in title petition on 15.07.2024.

“It is submitted that in the event this Hon’ble Court is pleased to allow inter se distribution of 30% quota (i.e. 45000 MT) allocated to the operational sugar mills in Sindh for the export of sugar 2023-24 in terms of the Joint Statement dated 15.07.2024 filed by the Petitioners and Respondent Nos. 11 to 38, **and distribution/release of the amount deposited with the Nazir as per Order dated 30.06.2023 passed by this Hon’ble Court in H.C.A. No.64/2023 in terms of the Joint Statement dated 15.07.2024 filed in H.C.A.64/2023,** the Petitioners and Respondent Nos.11 to38 undertake that they will, neither jointly nor severally, file any case or claim in Court or otherwise for recovery of any sum being proceeds of export of 30% quota for export of 45000 MT sugar allocated by the Federal Government vide O.M. dated 26.07.2024. This shall be so irrespective of the outcome of the title petition on merit (bold and underlining added).”

1(j) As Counsel for the Petitioners and Respondent Mills sought linking HCA Nos.64~67 of 2023 with this Petition, once again, and as the Joint Statement dated 15.07.2024 also referred to the said HCAs, we put it to the parties that HCA Nos.64~67/2023 involved a separate subject matter and had been already de-tagged earlier by this Court on 31.07.2024.² We have consistently been of the tentative view that the HCAs and this Petition should not be co-mingled. The HCAs related to the sugarcane crushing season of 2022-23 (as per information available on pages 71-139); whereas this Petition deals with the sugarcane crushing season of 2023-24. Further, the wording of the ECC decisions in 2023 (in the HCAs) and the ECC decision of 13.06.2024 (in this Petition) are different. Additionally, the total number of functional sugar mills of Sindh, as per the Cane Commissioner’s Orders of 2023, were recorded as 32 sugar mills, whereas in 2024, they were 31. Consequently, the Petitioners and Respondents impleaded in the HCAs and in this Petition were/are different too. Finally, the Consent Order dated 30.05.2023 passed in HCA Nos.64~67/2023 (available on pages

² On 31.07.2024, the Court had clarified that this Petition and HCA Appeal Nos.64 to 67 of 2023 concerned separate matters which were not inter-related. CP No.D-3336/2024 concerned the Sugar Cane Crushing Session of 2023-2024, and the HCA Nos.64~67/2023 concerned the Sugar Cane Crushing Session of 2022-2023. Accordingly, the Court passed separate orders in the Petition and HCAs on 31.07.2024 noting that the Bench had passed a common order of 29.07.2024 “inadvertently” and directed the office not to club the two lis.

153-159 of the Petition) had its own contours/conditions regarding the release of funds deposited by the Sugar Mills with the Nazir, in particular, to be released by the Nazir if the case is finally decided on merit (paragraph (ix)). As we were/are not inclined to accept references to HCA Nos.64~67/2023 in this Petition, to move matters forward, Counsels agreed to its removal in the final Order passed by this Court today.

1(k) Counsels for the Petitioners and Respondent Mills Nos.11 to 38 do not wish to press Paragraph 6 of the Joint Statement dated 15.07.2024. Counsels further confirm and assure that all the 31 functional Sugar Mills of Sindh whose stock has been counted as available on 05.06.2024 as per ECC decision dated 05.06.2024 are all impleaded in this Petition as Petitioners and Respondent Nos.11 to 38. The Cane Commissioner (present in person) has also confirmed this fact. The learned Counsels of the Official Govt. Respondents, including the Cane Commissioner (present in person) have No Objection to the proposed additional paragraph of the Additional Joint Statement to be read into the Joint Statement dated 15.07.2024, the deletion/removal of paragraph 6 of the Joint Statement dated 15.07.2024 and the removal of all references to HCA Nos.64~67/2023 from the Joint Statements dated 15.07.2024 (as amended) and the Additional Joint Statement dated 02.08.2024 subject to the condition that the quantum of quota for export of sugar in this Consent Order is an interim arrangement until the final Order is passed in the Main Petition, and without prejudice to the rights of the Official Govt. Respondents as against the said 31 functional sugar mills. Further, this Consent Order shall constitute neither any release nor waiver of liability and/or statutory or legal obligations of the sugar mills of Sindh for the sugarcane crushing year 2023-24.

1(l) Accordingly, in view of the above, at the sole risk as to costs and consequences of the parties, who have decided to enter into this interim measure inter-se, entirely on their own free will, as recorded in this Consent Order (with the Main Petition, yet to be decided by this Court),

the listed application, CMA No.14698/2024 stands disposed of by consent as follows:

**“JOINT STATEMENT ON BEHALF OF THE
PETITIONERS AND RESPONDENT NOS.10 TO 38”**

That in order to secure the interests of all parties and stakeholders and to ensure inflow of substantial foreign exchange in the country, and the fact that the allocation of quota for exports of sugar by Federal Government is meant for distribution amongst operational sugar mills in the Province, it is submitted, without prejudice to the rights and interests of the parties ~~and consistent with the Order dated 30.05.23 passed by this Hon'ble Court in HCA 64/2023 and others (page 141) made on a Joint Statement of sugar mills,~~ that this Hon'ble Court may be pleased to allow export of 45,000 MT of the present quota of sugar allocated for exports by the sugar mills in the Province of Sindh by the Federal Government vide O.Ms. dated 26.06.2024 (Page 37) which is subject matter of the title petition, in the following manner:

1. Petitioner No.1 to 3 shall be entitled to export 22.22% of the total allocated quota for export of sugar for the Province of Sindh, which comes to a total quantity of 10,000 MT.
2. Subject to Clause 3 below, the balance 35,000 MT shall be equally distributed amongst the remaining 28 operational sugar mills in Sindh, which comes to 1,250 MT for each one of the 28 sugar mills.
3. The Respondent 38 (Khoski Sugar Mills Ltd.) shall only be allocated the quota 1,250 MT by the Cane Commissioner and Khoski Sugar Mills may only export such allocated quantity, subject to prior deposit by it an aggregate amount of Rs. 24,217,200/- with the Nazir.
4. The Respondents No.19 (Digri Sugar Mills Ltd.) and No.36 (Tharparkar Sugar Mills) shall only be allocated the quota 1,250 MT by the Cane Commissioner and each of the 2 sugar mills may only export such allocated quantity, subject to prior deposit by each, of Rs.26,715,800/- with the Nazir.

5. The Cane Commissioner, Sindh shall conduct oversee and facilitate the entire exercise, which shall be completed no later than 45 days from the date of the present Order of the Court. The Federal Government and SBP shall also facilitate the expeditious export of 45,000 MT sugar.
- ~~6. Unless agreed otherwise or as provided otherwise by the Federal Government, for any future allocation of quota by the Federal Government for export of sugar from the crushing season 2023-2024 by the sugar mills in the Province of Sindh, the Cane Commissioner shall distribute the quota in the same ratio as provided in Para 1 above, namely 22.22% of the total allocated Provincial quota for Sindh shall be allocated to the Petitioner Nos.1 to 3, while the remaining quantity shall be equally distributed amongst the remaining operational sugar mills in Sindh.~~
- ~~7. It is submitted that in the event this Hon'ble Court is pleased to allow inter se distribution of 30% quota (i.e. 45000 MT) allocated to the operational sugar mills in Sindh for the export of sugar 2023-24 in terms of the Joint Statement dated 15.07.2024 filed by the Petitioners and Respondent Nos. 11 to 38, and distribution/release of the amount deposited with the Nazir as per Order dated 30.06.2023 passed by this Hon'ble Court in H.C.A.No.64/2023 in terms of the Joint Statement dated 15.07.2024 filed in H.C.A.64/2023, the Petitioners and Respondent Nos.11 to 38 undertake that they will, neither jointly nor severally, file any case or claim in Court or otherwise for recovery of any sum being proceeds of export of 30% quota for export of 45000 MT sugar allocated by the Federal Government vide O.M. dated 26.07.2024. This shall be so irrespective of the outcome of the title petition on merit."~~

To come up on 07.08.2024 for hearing of the Main Petition according to Roster.

JUDGE

JUDGE