

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP D 895 of 2019

Date	Order with signature of Judge(s)
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1. For hearing of CMA No.4061/2019.
2. For hearing of main case.

27.01.2025

Mr. Ovais Ali Shah, advocate for the petitioner.
Messrs. Javed Ali Sangi and Anas Habib advocates for respondent
Mr. Irtafa-ur-Rehman advocate for respondent No.4
Ms. Alizeh Bashir, Assistant Attorney General.
Mr. Kailash A. Vaswani, Additional Advocate General Sindh.

Learned counsel submits that this petition has been filed by trans-provincial entity seeking exclusion from payment/deduction of WWF etc. Learned counsel submits that identical petitions have been disposed of by Division Bench of this Court in CP D 2689 of 2017 dated 21.01.2025. The relevant part is reproduced as follows:

Per learned counsel, these matters pertain to challenge by trans-provincial entities to imposition / collection of W.W.F. in the wake of the 18th amendment to the Constitution and subsequent pronouncements of the Supreme Court, including *Sui Southern Gas Company Ltd. vs. Federation of Pakistan* reported as 2018 SCMR 802. It remains the petitioners' case that trans-provincial entities may be treated independently of Provincial fiscal laws. These matters have been pending since 2013.

Notwithstanding the aforesaid, it was brought to the attention¹ of the Court that the Council of the Common Interests² had been seized of the matter and had been pleased to decide, on Agenda Item 14 bearing NO. CCI.14/1/2019 dated 23.12.2019, as follows:

"119. The CCI considered the Summary dated 23rd May, 2019 submitted by Ministry of Overseas Pakistani & HRD and observed that none of the provinces has developed a workable mechanism for resolution to address the post-devolution issues of pension of migrating employees. The Council held that being trans-provincial and inter-provincial matter, both the organizations i.e. EOBI & WWF should remain with the Federal Government to perform its functions under Employees Old-Age Benefits Act, 1976 and Workers Welfare Fund Ordinance, 1971, till such time a mutually agreed mechanism is developed."

The Court was assisted with the pertinent provision³ of the Constitution stipulating that decisions of the CCI are subject to challenge vide reference to the Parliament, hence, it was argued that post 2019 no occasion remained for these matters to continue to be entertained in writ jurisdiction.

¹ As denoted vide orders dated 16.10.2024 and 14.11.2024.

² Created per Article 153 of the Constitution.

³ Article 154(7) - If the Federal Government or a Provincial Government is dissatisfied with a decision of the Council, it may refer the matter to Majlis-e-Shoora (Parliament) in a joint sitting whose decision in this behalf shall be final.

The Council of the Common Interests is a representative body constituted *inter alia* to facilitate comity between the federating units and each Province has representation therein. In the event of either the Federal Government or a Provincial Government is dissatisfied with a decision of the Council, they remain at liberty to precipitate a reference before a joint sitting of the Parliament. Despite repeated opportunity, recorded vide orders dated 16.10.2024 and 14.11.2024, it is nobody's case that the aforesaid decision of the Council has been referred / assailed before the Parliament.

Therefore, the respective learned counsel have sought that all these matters be disposed of in terms of the Council of Common Interests' decision on Agenda Item 14 bearing NO. CCI.14/1/2019 dated 23.12.2019, referred to supra. Order accordingly.

It was articulated on behalf of the petitioners that their liberty to challenge the vires of the enactment, as and when occasion arises, not be curtailed by orders herein. The respondents' learned counsel articulated no cavil in such regard. Order accordingly.

Office is instructed to place copy of this order in connected matters.

Counsel for the petitioner states that it may be just and proper if this petition is disposed of in the same terms.

Learned counsel for respondents, DAG and AAG are present and submit that it may be just and proper for petition to be disposed of as aforesaid. Order accordingly.

Judge

Judge

Amjad