

Judgment Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui, CJ
Mr. Justice Jawad Akbar Sarwana

Constitution Petition No. D – 899 of 2020

M/S. Pakistan State Oil Co. Ltd. v. The Pakistan Civil Aviation
Authority & Three (3) Others

&

Constitution Petition No. D – 1858 of 2022

M/S. Pakistan State Oil Co. Ltd. V. The Pakistan Civil Aviation
Authority & Three (3) Others

- Petitioner : M/s. Pakistan State Oil Co. Ltd., through
Advocates Mr. Asim Iqbal Advocate
along with Ms. Syed Khizra Fatima
- Respondent No.1 : The Pakistan Civil Aviation Authority
through its Director General, through
Mr. Khurram Rasheed Advocate
- Respondent No.2 : Federation of Pakistan, through
Secretary Aviation Division, Islamabad,
through Mr. Khaleeq Ahmed, D.A.G.
- Respondent No.3 : Chief Operating Officer/Airport Manager
Through Mr. Muhammad Farooq Afzal,
Joint Director (Legal) JIAP Airport,
Karachi
- Respondent No.4 : Mr. Abdul Wahab Shaikh, through
Mr. Shaukat Ali Shaikh, Advocate

and

Constitution Petition No. D – 900 of 2020

M/S. Pakistan State Oil Co. Ltd. v. The Pakistan Civil Aviation
Authority & Three (3) Others

&

Constitution Petition No. D – 1859 of 2022

M/S. Pakistan State Oil Co. Ltd. v. The Pakistan Civil Aviation
Authority & Three (3) Others

- Petitioner : M/s. Pakistan State Oil Co. Ltd., through Advocates, Mr. Asim Iqbal Advocate along with Ms. Syed Khizra Fatima
- Respondent No.1 : The Pakistan Civil Aviation Authority through its Director General, through Mr. Khurram Rasheed Advocate
- Respondent No.2 : Federation of Pakistan, through Secretary Aviation Division, Islamabad, through Mr. Khaleeq Ahmed, D.A.G.
- Respondent No.3 : Chief Operating Officer/Airport Manager through Mr. Muhammad Farooq Afzal, Joint Director (Legal) JIAP Airport, Karachi
- Respondent No.4 : Mr. Aftab Aziz Bachani, through Mr. Mushtaq A. Memon Advocate along with Mr. Shahid Ali Ansari Advocate

and

Constitution Petition No. D – 933 of 2020

Dealer M/s. PSO (New Aero Service Station) v. Federation of Pakistan & Three (3) Others

- Petitioner : Dealer M/s. PSO (New Aero Service Station), through its dealer Abdul Wahab Shaikh, through Mr. Shaukhat Ali Shaikh, Advocate
- Respondent No.1 : Federation of Pakistan, through Secretary Aviation Division, Islamabad, through Mr. Khaleeq Ahmed, D.A.G.
- Respondent No.2 : The Pakistan Civil Aviation Authority through its Director General, through Mr. Khurram Rasheed Advocate
- Respondent No.3 : Imran Khan Chief Executive Officer/Airport Manager, through Mr. Muhammad Farooq Afzal, Joint Director (Legal) JIAP Airport, Karachi
- Respondent No.4 : Nemo (Zarin Gul Additional Director Estate & LR, Civil Aviation Authority)

Constitution Petition No. D – 959 of 2020

M/s. Shaheen Service Station v. Federation of Pakistan

& Three (3) Others

- Petitioner : M/s. Shaheen Service Station, Station, through its proprietor Aftab Aziz Bachani, through Mr. Mushtaq A. Memon Advocate along with Mr. Shahid Ali Ansari Advocate
- Respondent No.1 : Federation of Pakistan, through Secretary Aviation Division, Islamabad, through Mr. Khaleeq Ahmed, D.A.G.
- Respondent No.2 : The Pakistan Civil Aviation Authority through its Director General, through Mr. Khurram Rasheed Advocate
- Respondent No.3 : Imran Khan Chief Executive Officer/Airport Manager, through Mr. Muhammad Farooq Afzal, Joint Director (Legal) JIAP Airport, Karachi
- Respondent No.4 : M/s. Pakistan State Oil Company Limited, through Mr. Asim Iqbal Advocate along with Syeda Khizra Fatima Advocate
- Dates of Hearing : 26.09.2024
- Date of Judgment : 04.10.2024

COMMON JUDGMENT

JAWAD AKBAR SARWANA, J.: These six (6) Petitions arise from particular action(s) taken by the Respondents, Pakistan Civil Aviation Authority (“PCAA”),¹ and the Federation of Pakistan through Secretary Aviation Division, Islamabad,² against the Petitioner, Pakistan State Oil Co. Ltd. (“PSO”),³ which action(s) allegedly adversely impacted the enjoyment, possession and operation of two petrol station(s) located

¹ PCCA is impleaded as Respondent No.1 in PSO’s CP Nos.D-899/2020, 900/2020, 1858/2022 and 1859/2022 and as Respondent No.2 in Abdul Wahab Shaikh d/b/a “New Aero Service Station” CP No.D-933/2020 and also as Respondent No.1 in Aftab Aziz Bachani d/b/a “Shaheen Service Station” CP No.D-959/2020.

² Federation of Pakistan is impleaded as Respondent No.2 in PSO’s CP No.D-899/2020, 900/2020, 1858/2022 and 1859/2022 and as Respondent No.2 in Abdul Wahab Shaikh d/b/a “New Aero Service Station” CP No.D-933/2020 and also as Respondent No.2 in Aftab Aziz Bachani d/b/a “Shaheen Service Station” CP No.D-959/2020.

³ PSO is Petitioner of CP Nos.D-899/2020, 900/2020, 1858/2022 and 1859/2022 and is impleaded as Respondent No.4 in CP No.D-959/2020 filed by Aftab Aziz Bachani d/b/a “Shaheen Service Station”.

outside the limits of the Jinnah International Airport, Karachi, being operated by PSO at the material time, through their two PSO's dealers, namely, Abdul Wahab Shaikh (d/b/a "New Aero Service Station"),⁴ and Aftab Aziz Bachani (d/b/a "Shaheen Service Station").⁵ PSO and PSO's two dealers (at the material time)⁶ sought relief from this Court under the writ jurisdiction of Article 199 of the Constitution of the Islamic Republic of Pakistan.

2. The six (6) Petitions involve similar facts and grounds, are filed by PSO and their two dealers against the same Respondents, and deal/raise and rely on common points of law. Hence, we intend to decide these six (6) Petitions with this common judgment. To avoid repetition and redundancy and for reasons that we will explain later in this common judgment, we have taken up and discussed herein primarily the facts as available from the record of CP No.D-899/2020 and submissions of Counsels, as generally accepted facts applicable and relevant across all the six (6) Petitions to decide this matter notwithstanding that none of the observations regarding these facts either are or will be deemed to be binding on the parties or may be interpreted as accrual of any rights whatsoever (either new, fresh or additional) in favour of the two dealers of PSO. The discussion, observations and decision herein are with the view of deciding the six (6) petitions efficiently and effectively.

3. As per PSO's two petitions, CP No.D-899/2020 and D-900/2020, articulated by the company, the background of the action(s) of PCAA arises from the execution and registration of a 30-year lease deed between PCAA and PSO for the period 01.09.1998 to 31.08.2018

⁴ Abdul Wahab Shaikh d/b/a "New Aero Service Station" is Petitioner of CP No.D-933/2020 and impleaded as Respondent No.4 in PSO's CP Nos.D-899/2020, and 1858/2022.

⁵ Aftab Aziz Bachani d/b/a "Shaheen Service Station" is Petitioner of CP No.D-959/2020 and impleaded as Respondent No.4 in PSO's CP Nos.D-900/2020, and 1859/2022.

⁶ Service/Filing Station License Agreement (Pump Sites/Building Facilities owned or Lease by the Co.) undated dated executed between PSO and New Aero Service Station is available in PSOs CP No.D-899/2020 on pages 55-81, and the Dealership License Agreement for Company Financed Sites dated 2011 executed between PSO and Shaheed Services Station is available in PSO's CP No.D-900/2020 on pages 67-119.

in respect of the two petrol stations.⁷ After the expiration of the two leases, the parties tried to negotiate a fresh lease for another 30 years.⁸ PSO contended that in 2019, the company had received a notice of renewal of the lease agreement pursuant to PCAA's Board decision taken in its 175th meeting held on 17.04.2018, whereby the board apparently approved the lease renewal for another term of 30 years commencing from the date of the expired period subject to certain conditions.⁹ No lease deed was subsequently executed between the parties. PSO's Counsel submitted that post-September 2018, PSO initially continued to deposit rent directly with PCAA, which the latter accepted, including payments of monthly rent, enhanced rent, etc. PSO also continued to retain physical possession of the two petrol pumps during this period. However, when PCAA served a termination notice to PSO,¹⁰ the company started to deposit the monthly rent towards the two petrol stations with the Rent Controller.¹¹ Additionally, PCAA also allegedly blocked access to both the petrol stations, whereafter PSO filed the two 2020 petitions mentioned above seeking, inter alia, a declaration that the company be allowed to continue to retain peaceful possession of the two petrol stations and obtained an ad-interim stay order dated 12.02.2020, suspending the termination notice and directing the PCAA officials to remove the barricades placed at the petrol stations immediately ("first stay order"). PSO's Counsel argued that while PCAA withdrew clause 2 of the termination notice (relating to handing over possession to PCAA) by its letter in February 2022,¹² yet on the same date, PCAA issued another notice of even

⁷ Copy of Lease Deed dated 26.02.2013 executed between PCAA and PSO is available in PSO's CP No.D-899/2020 on pages 31-47.

⁸ See communication between the parties, PCAA and PSO, available in PSO's CP No.D-899/2020 from pages 83 to 177.

⁹ CAA letter dated 15.01.2019 available in CP No.D-899/2020 on page 109-111.

¹⁰ CAA letter dated 31.01.2020 available in CP No.D-899/2020 on page 193.

¹¹ A copy of the MRC Receipt Nos.04/2020 and 05/2020 deposited with the Rent Controller No. IV, Malir, Karachi, dated 30.08.2021, marked as Court Ledger Nos.37 and 39, respectively, are available in CP No.D-899/2020, Part-II of the Petition, attached to the Contempt of Court Application (CMA No.10138/2022) filed on 08.04.2022 as Annexures "A/1" and "A/2", respectively.

date under section 3 of the Federal Government Lands and Buildings (Recovery of Possession) Ordinance, 1965, read with Section 11(5) of PCAA Ordinance, 1962, giving PSO seven (7) days to deliver vacant possession of the two petrol stations to PCAA and others.¹³ As a counter-blast, PSO filed the two (2) 2022 Petitions in the month of March 2022, namely, CP No.D-1858/2022 and CP No.D-1859/2022 against PCAA, seeking, inter alia, a declaration to retain possession of the two petrol stations for another period of 30 years commencing from 01.09.2018 to 31.08.2048 and cancellation of PCAA's notice under the 1965 Ordinance. On 24.03.2022, PSO obtained a second ad-interim Order in the fresh (new) 2022 petitions, directing PCAA not to act against PSO without adopting due process of law. However, PCAA in violation of the Court's stay orders, issued against PSO yet another notice (second notice) under section 3 of the 1965 Ordinance to PSO on 05.04.2022 (during the pendency of the first and second stay orders) to handover peaceful possession of the site within three (3) days of receipt of the second notice, failing which PCAA would take action against PSO, in accordance of law.¹⁴ As ad-interim Orders of this Court were in operation, PSO filed contempt proceedings against PCAA in the 2020 Petitions, which proceedings were still pending hearing when these six (6) petitions were taken up for arguments.

4. The learned Counsel for PCAA has vehemently opposed the arguments of Counsel for PSO, as recorded herein. PCAA Counsel contended that PSO was a mere licensee, and neither any vested

¹² PCAA letter dated 16.02.2022 pertaining to (i) PSO New Aero Services Station, available in CP No.D-1858/2022, filed on 24.03.2022 as Annexure "P/36" at page 171, and (ii) PSO Shaheen Services Station available in CP No.D-899/2020, Part-II of the Petition, attached to the Contempt of Court Application (CMA No.10138/2022) filed on 08.04.2022 as Annexure "A/3" (PSO Shaheen Service Station), respectively. The second paragraph of the termination notice dated 31.01.2020, stated as follows: "Therefore it is advised to vacate peacefully the premises in accordance with Clause 6 of the executed lease agreement and handover the subject site to CAA."

¹³ PCAA letter dated 16.02.2022 under section 3 of the 1965 Ordinance for (i) PSO New Aero Services Station as available in CP No.D-1858/2022 marked as Annexure "P/37" on pages 173-175, and (ii) PSO Shaheen Services Station as available in CP No.D-1859/2022 marked as Annexure "P/40" on pages 259-261.

¹⁴ CAA letter dated 05.04.2022 (second notice under Section 3 of the 1965 Ordinance) available in Part-II of CP No.D-899/2020, attached to the Contempt of Court Application (CMA No.10138/2022) filed on 08.04.2022 as Annexure "A/9" (PSO New Aero Services Service Station).

rights had accrued to them nor had PSO fulfilled its payment obligations as a matter of contract. He alleged PSO was a trespasser and illegally occupying PCAA's subject property after the expiry of the license/lease. PCAA's Counsel additionally argued that the officer dealing with the matter on behalf of PCAA did not have lawful authority to bind the parties, and even otherwise, the license sought by PSO was contrary to policy, and the subject property on which the petrol stations were being operated was subject to permission(s) of the Federation under the 1965 Ordinance. Counsel argued that the matter of the alleged lease/license of the two petrol stations, New Aero Services Station and Shaheen Services Station, in the six (6) petitions, was at par with the petrol station that was the subject matter of the Total Parco Pakistan case, CP No.D-750/2020. Counsel argued that the Division Bench of this Court had dismissed the petition filed by Total Parco, and directed the petitioner to "approach Civil Court, as it deems fit and proper for performance of the alleged offer, which is accepted by the petitioner."¹⁵ Therefore, the Counsel for PCAA submitted that this bench should dismiss the six (6) petitions too, on the same score.

5. We now turn to the Petitions filed by PSO's two (2) dealers, namely, Abdul Wahab Shaikh's "New Aero Service Station" CP No.D-933/2020, and Aftab Aziz Bachani's "Shaheen Service Station" CP No.D-959/2020. The two petitions essentially impleaded as respondents, PCAA, the Federation, PSO, etc. and Mr. Shaukat Ali Shaikh, and Mr. Shahid Ali Ansari, Advocates, appeared on behalf of the two PSO dealers. The rights of the two dealers cannot be better than the stance of PSO, with whom PCAA had executed the alleged lease deed. The dealers could not agitate a better case than that pleaded by PSO. Mr. Shahid Ali Ansari submitted that Senior Counsel, Mr. Mushtaq Memon, Advocate, who had also signed the Vakalatnama in CP No.D-959/2020 intended to make certain submissions in the Petition but was unavailable as he had got injured at home and

¹⁵ Certified copy of the High Court of Sindh's Division Bench Judgment dated 28.11.2020 (unreported) passed in Total Parco Pakistan Ltd. v. Federation of Pakistan and Three Others in CP No.D-750/2020 is available in Part-II of the said Petition.

requested for time. However, as all parties concluded their arguments, this bench requested Mr. Ansari, Advocate, to submit to the Court Associates, within 4-5 days, the written synopsis/arguments, if any, of Mr. Mushtaq Memon, Advocate, on behalf of the concerned petitioner. However, nothing has been received by this bench from the concerned petitioner. Nevertheless, this bench has considered the position of PSO's two dealers as set out in their petitions and submissions of the Counsels available on the last day of the hearing before this Court.

6. We have heard learned Counsels and the Deputy Attorney General and perused the material available in the six (6) petitions.

7. At the very outset, it is common ground that PSO has been submitting monthly rent with the concerned Rent Controller, notwithstanding that PSO and PCAA are not at ad-idem regarding the legal status of the relationship between the Petitioner and Respondent No.1 (PCAA) following the expired 30-years lease deed(s), i.e. whether or not PSO has acquired the rights of a monthly statutory tenant or whether PSO is a mere licensee? Further, while PSO argues that the rent being deposited with the Rent Controller constitutes "rent agreed", however, PCAA vehemently opposes such contention, including on without prejudice basis, the quantum of the sum being deposited by PSO with the Rent Controller. Additionally, PCAA has relied on several documents in an attempt to demonstrate to this bench that the officers of PCAA with whom allegedly PSO corresponded and/or executed documents were not authorized and were not competent to bind PCAA. Finally, PCAA contends that the lease was contrary to policy in force at the material time; hence no vested rights can accrue to PSO. Suffice it to say all these questions and issues cannot be determined by this Court exercising writ jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan. The matters require evidence and this Court is inclined to stay its hand and let the court of competent jurisdiction decide these matters as determined by the parties as they deem fit subject to the consequences which flow

from the election of their choice of forum to challenge the impugned notices/letters and/or safeguard their rights.

8. We now address the contention of PCAA Counsel that the six (6) Petitions should be dismissed based on the unreported judgment in the Total Parco case, authored by one of the members of this bench. Counsel's submission cannot be accepted. The Total Parco case was decided on an entirely different plane. First, Total Parco could not establish (at the prima facie level) that it had any rights viz. the lease deed which PCAA executed in favour of Chevron Pakistan Limited (formerly Caltex Oil (Pakistan) Ltd.). The judgment observed no transposition of the lessee, Total Parco. The Division Bench observed that the Petitioner (Total Parco) was a separate legal entity and distinct from the leasee (Chevron/Caltex). The Division Bench in the Total Parco case also observed that, as and when Total Parco approached the Court (and until the time of the decision), PCAA had taken no coercive action against the Petitioner except for issuing the impugned termination notice. The Total Parco Judgment is not binding on us.

9. In the present case, according to the documents available on record in the six (6) Petitions as well as PCAA filings in 2020, PCAA had cordoned off the petrol stations, denying access to and dispossessing PSO, its dealers and the general public. PCAA had closed the business operations of the petrol stations in question. This was not so in the Total Parco case, and no such observations can be found in the judgment. Additionally, in spite of this Court's two stay orders, PCAA continued to pursue PSO and even re-issued a second notice to dispossess PSO/PSO dealers from the two (2) petrol stations under the 1965 Ordinance. The second notice to dispossess PSO and its two dealers was issued during the stay order against PCAA on the same date; PCAA had withdrawn the second paragraph from the impugned first notice, in which PCAA had directed PSO to hand possession of the two petrol stations. PCAA did not engage any court of law for lawful challenge. Counsel for PCAA accepted that the events above (including the Petitioner's dispossession) had occurred and took

back its actions, handing back possession to PSO, all along while PSO was/is depositing monthly rent, notwithstanding PCAA's objections regarding the nature and quantum of these payments. Given the above background, we disagree with PCAA Counsel's submission that the fate of Total Parco's petition should be the same for the six (6) Petitions. Thus, we are not inclined to treat the six (6) Petitions at par with the Total Parco case.

10. In our understanding, as discussed above, the issues raised in these six (6) Petitions can only be addressed with the recording of evidence to be determined by a court of competent jurisdiction. The relationship between tenant and landlord or lessee or lessor or licensee and licensor or otherwise remains to be determined in terms of the finding of evidence. Can PSO and its dealers seek specific performance post the expiration of the 30-year lease? We cannot decide these in writ jurisdiction. Accordingly, we are inclined to leave it open to the parties to pursue their remedy before the appropriate forum as elected by them, meanwhile restraining PCAA from dispossessing PSO and from interfering, directly or indirectly, in the smooth operations of PSO's two petrol stations subject to, moving forward, any orders whatsoever passed by the competent court, if any, and (i) PSO continuing to deposit payment towards mesne profit, howsoever, eventually determined by the competent court, as either "rent", or "lease payment" or "license fee" and (ii) such deposit being ultimately subject to adjustment with whatever final total payment becomes due and payable by PSO to PCAA for peaceful possession and operation of the two petrol stations.

11. In view of the above, the six (6) Petitions, along with all listed applications, are disposed of in the above terms.

Dated: 04.10.2024

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