

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D-271 of 2020

alongwith

C.P Nos.D-1154, 1155, 1547, 1838, 2188, 2221, 426, 5326, 5798, 625, 626, 640, 6667 of 2020, C.P Nos.D-3929, 4804 & 6843 of 2021, C.P Nos.D-5468 & 6598 of 2022, C.P No.D-2083 of 2023 C.P Nos.D-635 of 2024

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Muhammad Osman Ali Hadi

Date of hearing : 21.05.2025

Date of decision : 08.09.2025

Chaudhry Atif Rafiq, Advocate for Petitioners in C.P Nos.D-271/2020 & D-635/2024

Mr. Makhdoom Muhammad Talha, Advocate for Petitioners in C.P Nos.D-1547 & D-640/2020

M/s. Naeem Suleman and Arshad Hussain, Advocates for Petitioners in C.P Nos.D-2221, D-426/2020, D-6598/2022 & D-2083/2023 alongwith Mr. Ali Raza Lanjar, Advocate

Mr. Ghareeb Shah, Advocate holds brief for Mr. Faiz Mehmood Khan Durrani, Advocate for petitioners in C.P Nos.D-3929, D-4804, D-6843/2021 & D-5468/2022

Sundar Lal Lohana, Advocate for Petitioners in C.P Nos.D-1154, D-1155, D-2188, D-5326, D-5798, D-625, D-626 & D-6667/2020

M/s. Ghulam Muhammad and Shakeel Akbar, Advocates

Mr. Waleed Rehan Khanzada, Advocate for Respondents.

Mr. Muhammad Hisham Mahar, AAG, Sindh.

JUDGMENT

Muhammad Osman Ali Hadi, J: The prelude to the matter is that the Petitioners are manufacturers and exporters of textiles products in Pakistan, having their factories situated in different parts of Karachi. Through these instant Petitions, the Petitioners have challenged a Notification dated 30.10.2019 (“**the Impugned Notification**”),¹ issued by Respondent No. 2/KWSB, whereby water tariff rates were increased by 9 percent with retrospective effect from 01-07-2017. The touchstone of their challenge rests on the powers and provisions under the governing Karachi Water & Sewerage Board Act 1996 (“**1996 Act**”), and its effect thereof, to the maintainability and outcome of the matter at hand.

¹ Available at page-851 of the File. **NB:** As there were several identical Petitions being heard together on the matter, we have used CP-D No. 271 of 2020 for purposes of page reference numbers etc.

2. Learned counsels² appearing for the Petitioners contended that under the Karachi Water & Sewerage Board Act 1996 (“**1996 Act**”), specifically referring to Sections 7 (ii) & 7 (xii), & 8, it was mandatory for Respondent No. 2 / KWSB to seek prior approval from Respondent No. 1, before increasing the water tariff rates. Counsel for the Petitioners argued that the Impugned Notification was *ultra vires* the KWSB Act 1996, in that the said Notification was passed without sanction of the Government of Sindh (“**GoS**”)/ Respondent No. 1. Counsel submitted that such delegation of power to Respondent No. 2 was impermissible and contrary to the powers conferred under the 1996 Act. They next averred that under section 8(4) of 1996 Act, it was incumbent upon the Government / Respondent No. 1 to sanction the increase in rates, but the said Notification was issued by the Deputy Managing Director (RRG) of Respondent No.2-KWSB which could not constitute a valid notification. In this regard, the Petitioners have relied upon the *Mustafa Impex* case,³ stressing that such sub-delegation of power was impermissible.

3. Counsel then argued that no provision existed for delegation of powers, and that several members of the KWSB Board sent their representatives to the meeting held on 08.05.2019, in which meeting the said resolution for enhancement of water and sewerage charge at the rate of 9% was passed. As per counsel, the said resolution was void as some of the Board members themselves were not in attendance, and their representatives could not be substituted for them. Consequently, without the attendance of five members of Respondent No. 2’s Board being present in person, the said resolution itself failed as there was no majority vote to carry the same forward, as is mandated under section 12 of the 1996 Act. Counsel contended that since the said resolution was not approved, therefore the Impugned Notification which was issued pursuant to the resolution would also be void and liable to be quashed.

4. The learned counsel for the Petitioners next contended that the Impugned Notification has categorized the water charges as a *fee*, but submitted that there is no reciprocal service being provided, which is *sine qua*

² As there were several counsels appearing for the different Petitioners in identical petitions, we have referred to their arguments collectively. The arguments were commenced by Barrister Chaudhry Atif Rafiq in CP-D No. 271 of 2020

³ PLD 2016 SC 808

non for imposition of a fee. He submitted that in essence, without provision of services, the same charges should be considered as tax not fee.

5. They then stated that the Impugned Notification provided a retrospective application of increase in water tariff rates, with effect from 01.07.2017, which was impermissible. Counsel submitted that retrospective effect cannot be granted by Respondent No. 2, and since (as per learned counsel) no approval was obtained from the GoS/Respondent No.1, therefore the same stood void. He contended that even the prior Notification dated 04.10.2001 (relied upon in the Impugned Notification) was never approved by the Respondent No.1, and if Respondent No. 2's basis for holding power to pass the subsequent Impugned Notification was premised on the prior Notification dated 04.10.2001, the Impugned Notification would also automatically stand void. Learned counsel has relied upon 2018 SCMR 171 in support of this contention.

6. Counsels for the Petitioners concluded by stating that due to the several legal infirmities highlighted, the Impugned Notification is *ultra vires* with KWSB Act 1996; as well as the actions of the Respondents being in violation of fundamental rights guaranteed under the Constitution of Pakistan.⁴ He prayed the Impugned Notification be struck down by the Court.

7. Learned counsel appearing on behalf of Respondent No.2/KWSB stated at the outset that there was no requirement for any further approval for increase in water and sewerage tariff charges up to 9% percent, as the same had already been authorized by the Government of Sindh, which can be evidenced by Minutes of their Meeting dated 30.09.2019. Counsel referred to Minutes of the said Meeting, particularly Agenda Item No.7,⁵ whereby there was Cabinet decision stating that the said proposed increase with effect from 2017 was already notified in the year 2016, and such powers had been granted since the year 2001.⁶ Learned counsel next contended that a Government of Sindh letter dated 15.09.2015⁷ also reflected that the tariff could be revised @ up to 9% per annum by the KWSB/Respondent No. 2,

⁴ Counsel for the Petitioner referred to article 25 of the Constitution

⁵ Minutes of the Meeting available at page-113, with the relevant portion at page-1127

⁶ Through previous Notification dated 04.10.2001

⁷ Available at page 1063 of the File

and therefore he submitted that no further Cabinet approval was required. He contended that Respondent No. 1's Cabinet approval would only be required if KWSB were to increase the tariff rates beyond 9%.

8. Learned counsel then referred to Notification dated 29.09.2016⁸ in which Respondent No.1 had approved for the KWSB to increase tariffs up to 9%, with effect from 01.07.2016. He submitted therefore even the argument of the Petitioners pertaining to retrospective application of the increased water tariffs w.e.f. 01.07.2017, was also negated, since the increased approval was granted a year prior (in 2016).

9. Learned counsel for the Respondent No. 2 continued that all requisite prior Cabinet approvals were available on record, and therefore nothing further was required in this regard. He reiterated that approvals for increase the tariff was already granted prior in time, and the Constitutional Petition was devoid of merit and liable to be dismissed. He also contended that even under the new Karachi Water & Sewerage Cooperation Act 2023 (“**2023 Act**”),⁹ such increase in tariff can be done by Respondent No. 2 themselves, and no Government approval is required. He also controverted the Petitioners' stand of alleging the charges are not a *fee*, by stating that the Petitioners have been continuously using/receiving large quantities of water which is being supplied to them, for which evidence is easily available, and therefore it cannot be said that the payments are not in some form of reciprocity. He also submitted the Meeting of Respondent No. 2 dated 08.05.2019 was validly conducted with all the necessary persons present, and the Petitioners had not placed any evidence on record to dispel the same. Counsel stated that he could provide the requisite material in this regard, as and when required.

10. The learned AAG appearing on behalf of Respondent No. 1 supported Respondent No. 2's stance. He referred to page 1127 of the File which are Minutes of (Respondent No. 1's) Cabinet Meeting held on 30.09.2019, in which an increase of 9% water tariff rates for all consumers of Respondent No.2 with effect from 01.07.2017 was discussed. He stated that a perusal of the said Minutes shows the Respondents had already approved increasing the tariff rates, and there was no requirement for re-seeking

⁸ Available at page-1077 of the File

⁹ Which has repealed the erstwhile 1996 Act

approval. He highlighted the Government Gazette Notification¹⁰ dated 04.10.2001, which states Respondent No. 2 may revise the waiter tariff rates annually between 8 - 9 %. He then referred to the Impugned Notification¹¹ which he says draws from the previous Notification dated 04.10.2001, and on such basis the tariff increase of 9% was already approved, and as such did not require any further approval from Respondent No. 1.

11. Learned counsel for the Petitioners rebutted the arguments of the Respondents and reiterated their previous stance. Counsel summed up by stating that the Respondents have failed to dispel the Petitioners arguments, and the Constitutional Petitions ought to be allowed.

12. We have heard the learned Counsels and have gone through the various documentation available on file.

13. The crux of this disparity stems from the Impugned Notification issued by Respondent No. 2 dated 30.10.2019 by virtue of which the Petitioners' water tariff charges were increased by 9% (annually). The Petitioners, being industry leaders and hence large consumers of water supply, have challenged imposition of increased water charges by Respondent No. 2 on the basis that the Impugned Notification was issued without sanction of Respondent No. 1 /GoS, which they submit is mandatory under section 8(4) of the 1996 Act. The Petitioners have premised their arguments on the basis that under the parental statute, i.e., the 1996 Act, it was mandatory for the Respondent No. 1 / GoS to sanction any increase in water tariff, which wasn't done. They relied on sections 7 & 8 of the 1996 Act, which read:

- 7(ii)** levy, collect or recover rates, charges of fees for water supply and sewerage service, including arrears thereof
- 7(xii)** prepare and submit to Government schedule of water and sewerage tariff, rates, charges or fees to be levied by it,
- 8(4)** Government shall, sanction with or without modifications schedule of water and sewerage tariff, rates, charges or fees to be levied for the supply of water and maintenance of sewerage service, within ninety days of its submission.

¹⁰ Available at page-855 of the File

¹¹ Available at page-851 of the File

14. Meanwhile, the Respondents have relied on the prior Notification dated 04.10.2001¹² (“**1st Notification**”) as well as other letters / notifications¹³ upon which they state Respondent No. 2 was already granted approval by GoS, and hence empowered to increase the tariff rates by up to 9% annually, without seeking further approval from GoS. The relevant portion of the 1st Notification¹⁴ reads:

“There shall be no tariff increase in the year 2001-2002. From the year 2002-2003 and in subsequent years KW&SB may revise the tariff between 8% to 9% annually. Government may direct KW&SB to revise the tariff beyond 9% if need arises.”

15. The Petitioners have heavily relied upon the Respondent No. 1 / GoS not having sanctioned the Impugned Notification, and by submitting Respondent No. 2 could not have issued the same without GoS approval (retrospectively or otherwise). This view was controverted by the GoS, who showed Minutes of a Cabinet Meeting dated 30.09.2019 in which Agenda Item No. 7¹⁵ discussed the said increase in water tariff by 9%, and the Cabinet held that there was no need for KWSB to seek its approval as the charges / rates were already approved, and notified in the year 2016 (by a 2nd Notification dated 29.09.2016¹⁶) and therefore no further approval by the Cabinet was necessary. These 1st and 2nd Notifications¹⁷ form the basis of support for arguments placed by the Respondents, through which they claim to hold adequate powers for issuing the Impugned Notification. All the contentions of the Counsels inherently stem from provisions of the 1996 Act.

16. Before we delve any further, it is imperative that an examination of the powers and measures provided under the KWSB Act 1996 be observed, so maintainability of the instant Petitions may be ascertained foremostly.

17. The Petitioners had first approached the Chairman of Respondent No. 2¹⁸ in a meeting held on 06.09.2019, in which the Petitioners discussed their grievances about the increase in water tariff rates and requested him to

¹² At pg. 855 of the File

¹³ Already cited in the arguments of the Respondents Counsels

¹⁴ At pg. 859 (last para)

¹⁵ At page 1122 of the File

¹⁶ At page 1077 of the File

¹⁷ Along with other letters issued by GoS/Respondent No. 1

¹⁸ In a Meeting held on 06.09.2019

look into revising the said rates. This illustrates the Petitioners had opened the doorway for redressal of their grievances, as provided under section 13(1)(b) of the [then] applicable 1996 Act.^{19 20}

18. Whilst there have been some novel and comprehensive arguments put forward by their Counsels, it appears clear from the record that the Petitioners had approached Respondent No. 2 to resolve the increase / collection of water tariff rates, showing at least *prima facie*, the Petitioners accepted Respondent No. 2's jurisdiction / authority to hear the matter under the KWSB 1996 Act.²¹ Once this above-stated mechanism for dispute resolution was invoked by the Petitioners, and the same remained unresolved, in the same vein the Petitioners should have continued pursuit of their available remedies under the 1996 Act.

19. Under the 1996 KWSB Act, section 13(1)(b) provides a mechanism for an appeal to lie to the Chairman against any decision by the Managing Director or any other officer subordinate to the Chairman. It reads:

13 (1) *An appeal shall lie to:-*

(b) *The Chairman from a decision of the Managing Director or any other officers subordinate to the Chairman.*

20. Presumably, this was the route taken by the Petitioners, when they approached the Chairman of Respondent No. 2 in the meeting dated 06.09.2019 (*ibid.*) to discuss the water tariff rates increase imposed by the Respondents. Subsequently, the Impugned Notification was issued by the Board of Respondent No. 2.²² At this juncture, the provisions of section 13(1)(a) of the 1996 KWSB Act would have come into play, which reads:

13 (1) *An appeal shall lie to:-*

(a) *Government from a decision of the Board or Chairman*

21. The above section shows that any decision of the Board would be appealed to the Government. 'Government' is defined in section 1(e) of the 1996 Act as the 'Government of Sindh' i.e. Respondent No. 1. The Petitioners had initially approached the Chairman and it remained incumbent

¹⁹ Which permits persons aggrieved by a decision of any person subordinate to the Chairman to first approach the Chairman. This is elaborated further down in this Judgement.

²⁰ Minutes of the Meeting are available at pg. 875 of the File

²¹ Reference is made to Para 8 Memo of Petition in CP No. 271 of 2020 & Minutes of the Meeting with Respondent No. 2 *ibid.*

²² The Impugned Notification was issued on 30.09.2019

on them to continue pursuing the statutory remedy by appealing to Respondent No. 1, once the Impugned Notification was issued by the Board of Respondent No. 2.

22. We briefly refer to the case of *Flying Board and Paper Products Ltd.*²³ in which a challenge was made concerning NEPRA tariff notifications. In such case, the Hon'ble Supreme Court upheld the view passed by the High Court, in which the aggrieved party was directed to follow the statutory mechanism provided for redressal of their grievance against tariff rates (i.e. by approaching NEPRA).

23. It is trite law that where an alternate remedy is available, the same should be availed before approaching this Court. We find that without the Petitioners having exhausted their proper forum created for adjudication, as provided under law (i.e. KW&SB Act 1996), these Constitutional Petitions were premature.

24. The Constitutional Jurisdiction of this Court was never intended to bypass executive decisions or substitute other statutory remedies. This should be kept in mind considering the Petitioners have also raised certain factual disputes (which of course cannot be decided under the Constitutional Jurisdiction), relating to the exact amounts of increase in tariff, and if the sums payable by the Petitioners are higher than the 9% or not? The Petitioners have also further urged as to whether the charges being collected by the Respondents are a tax and not a fee, since (as per the Petitioners) there is no *quid pro quo*?

25. The Petitioners also made allegations relating to conduct of Respondent No. 2's Board Meeting dated 08.05.2019, which (as per the Petitioners) was not in accordance with law and process.

26. All these assertions (abovementioned) were fervently denied by the Respondents, and were contested on a factual basis at the time of arguments. Ergo, as factual controversies also arise, which cannot be entertained herein, particularly considering an alternative statutory remedy is available for determination of the same.

²³ 2010 SCMR 517

27. An entire mechanism was provided by the section 13 of the 1996 KWSB Act (referred above). Even under the current *de jure* statute, being the Karachi Water and Sewerage Corporate Act 2023 (“**2023 Act**”), which has since repealed the KWSB 1996 Act, a clear statutory provision for redressal of grievances is provided. Section 37 of the 2023 Act reads:

37. (I) As soon as after the commencement of this Act Government shall establish a Water and Sewerage Tribunal consisting of the following:-

- (1) A serving District & Session Judge to be Chairperson appointed by Government from a panel of three Judges nominated by the High Court of Sindh.
- (ii) A Technical Member Water having Member expertise in water related matters/ issues to be appointed by Government.
- (iii) A Technical Member Sewerage having Member expertise in sewerage related matters/issues to be appointed by Government.
- (2) The Chairperson and Members appointed under sub-section (1) shall hold office for a period of three years and shall be eligible for reappointment for further one more term of three years only on the terms and conditions as may be determined by Government.
- (3) The Tribunal shall decide the case within a period of thirty days following the termination of the hearing it affords the parties as prescribed.
- (4) The Tribunal shall exercise the summoning powers of the party and the procedures adopted in its hearings shall be guided by the Code of Civil Procedure (CPC), 1908, and by the Code of Criminal Procedure (Cr.PC), 1898.
- (5) Government shall make and approve the Schedule of expenditure and budget of the Tribunal.
- (6) An appeal shall lie to -
 - (a) the Board, from a decision of the Chief Executive Officer on any matter related to the recovery of dues or tariffs, or the granting of a license or permit, including respecting Trade Waste or action taken by the Corporation in its interest;
 - (b) the Water and Sewerage Tribunal from a decision of the Board; and
 - (c) the High Court from a decision of the Water and Sewerage Tribunal.

28. Where an alternative remedy remained present, the same should have been availed. In the case of *Syed Masood Ali v Mst. Feroza Begum*²⁴ the Apex Court held:

“30. It is a well-settled principle of law that where an alternative and efficacious remedy is available under the ordinary legal framework, constitutional jurisdiction cannot be invoked to bypass the statutory mechanisms in place. Constitutional jurisdiction is not intended to substitute the ordinary remedies provided under the law”.

29. In the case of *Raja Muhammad Ramzan v Union Council Bajnial*,²⁵ the Hon’ble Supreme Court held:

“Learned counsel for the petitioners argued that in facts and circumstances of this case those provisions are not attracted. We do not agree with him. The questions of fact which were agitated before the High Court including the question, whether, the tax in question in reality is not a market fee as asserted from the respondents side could more properly and easily be debated and agitated before the functionaries mentioned in above-referred provisions (and even the remedy by way of suit in the circumstances can be filed particularly in cases involving the disputed question of fact) can be better agitated before a forum which can easily record evidence. Learned counsel for the respondent also cited Messrs Punjab Feeds Ltd. v. Abdul Ghafoor 1990 SCMR 439(2), to show that the provisions contained in the Ordinance provide sufficient adequate alternative remedy which is normally followed in such like cases. In so far as the judgment relied upon goes it does show that a similar case has gone before the Commissioner prior to the extraordinary writ jurisdiction of the High Court.”

30. Furthermore, it is settled law the courts need to be cautious when exercising constitutional jurisdiction, and should not interfere when a statutory remedy is available. In the case of *Peshawar Electric Supply Co. Ltd.*²⁶ the Apex Court held:

“24.In the instant case with all due respect, the learned High Court has overstepped its jurisdiction under Article 199 of the Constitution and, has overridden the policy/framework of NEPRA which matter is beyond the jurisdictional parameters of the High Court. In such a situation, the learned High Court was required to exercise self-restraint and defer the matter for determination to NEPRA. Reliance in this respect is placed on the case of Elabi Cotton Limited v. Federation of Pakistan (PLD 1997 Supreme Court 582.”

25. “.....this was done by the High Court by ignoring the various formulae devised by NEPRA and, by ignoring the fact that an

²⁴ PLD 2025 SC 339

²⁵ 1994 SCMR 1484

²⁶ PLD 2023 SC 316

alternative remedy was available under the relevant law. As such, the learned High Court's findings are erroneous and therefore, cannot be upheld." (emphasis supplied)

31. As already discussed in detail *ibid.*, the Petitioners approached Chairman of Respondent No. 2 for redressing their grievances. Once this statutory mechanism was availed by them, or even otherwise, the Petitioners ought to have continued down the same path and filed an appeal to the Government as provided under the 1996 Act, for a decision on their complaint. The factual controversies raised by the Petitioners could also have been addressed through such forum, and not in this constitutional jurisdiction.

32. Therefore, for reasons aforementioned, we find the Petitioners have not been able to successfully demonstrate maintainability of these Petitions, which are accordingly dismissed. However, the Petitioners remain at liberty to pursue / invoke any statutory remedy which may be available to them, in accordance with law.

These Constitutional Petitions (along with all pending applications) stand dismissed.

JUDGE

JUDGE