

IN THE HIGH COURT OF SINDH AT KARACHI

C.P.No.D-2515 of 2010

Mirpurkhas Sugar Mills Limited & others

Versus

Federation of Pakistan & others

**A N D**

C.P. No.D-3364 of 2010

Ashfaq Sugar Mills Ltd & others

Versus

Federation of Pakistan & others

BEFORE:

Mr. Justice Mushir Alam, CJ

Mr. Justice Mohammad Shafi Siddiqui

Date of Hearing: 31.10.2012

Petitioners: Through M/s. Abdul Sattar Pirzada & Shabbir Shah  
Advocates

Respondents No.1&2 Through Mr. Muhammad Ashraf Khan Mughal Deputy  
Attorney General.

Respondent No.3: Through Mr. Waleed Khanzada Advocate

## **J U D G M E N T**

**Muhammad Shafi Siddiqui, J.**- One group of aggrieved persons have filed C.P. No. D-3364/2010 whereas another set of aggrieved persons have filed C.P. No. D-2515/2010. The petitioners in these petitions have challenged purported assumption of jurisdiction by Federal Government pursuant to the alleged exercise of powers under section 8 of the Pakistan Standard & Quality Control Act, 1996 (hereinafter called as “the Act of 1996). Pursuant to which they have formulated and notified a Pakistan Standard for refined sugar and white sugar PS 1822-2007.

2. Respondent No.3 through a notification bearing SRO No.01/2008 dated 27.2.2008 notified so called marking fee @ 0.1% of ex-factory price of sales as fee payable for placing PSQCA standard mark on the notified items.

3. Subsequent to the formulation and notification of PS 1822-2007 and the SRO dated 27.2.2008, the Federal Government in consultation with PSQCA issued a notification bearing No. SRO(1)/2008 dated 11.10.2008 pursuant to Section 14 of the Act of 1996.

4. Primarily the object and scope of the aforesaid SROs was

- (i) to prohibit (w.e.f. 1.10.2009) the manufacture, keeping stock and sale of refined/white sugar which goods have not been subjected to PS1822-2007 and
- (ii) requiring refined and white sugar which are subjected to PS 1822-2007 shall be marked with the standard mark of PSQCA.

5. Since these notifications PS 1882-2007, the impugned SROs dated 27.2.2008 and 11.10.2008 issued pursuant to Act of 1996 which is claimed to have been enacted without jurisdiction, powers and authority, to the extent of the goods in question are concerned, respondent No.3 claimed to have been acting in excess of their jurisdiction, authority, powers and duties and thus in response to the above issued notices from time to time to each petitioner demanding as under:

- (a) *The petitioners/ sugar mill owners are required to submit application forthwith to PSQCA to obtain a certification mark CM License in respect of PS 1822-2007 and*

*(b) On the basis of impugned SRO dated 27.2.2008 pay marking fee at 0.1% of the ex-factory price of all sales by each petitioners/ sugar mill owners including but not limited to panel and coercive action by PSQCA under section 22 of the Act 1996 in case of non-adherence to the demand in the aforesaid notice issued to all mill owners.*

6. It is the case of the petitioner that all the aforementioned steps and actions taken and notification and SROs issued by the respondents No.1 to 3 ostensibly in compliance to the Act of 1996 are without jurisdiction and lawful authority and of no legal effect. It is contended by the learned Counsel for the petitioner that pursuant to the issuance of said notification and SROs the petitioners are adversely affected which action in fact are ultra vires the Constitution of Islamic Republic of Pakistan, 1973 to the extent that it claims to apply on agricultural produce including but not limited to refined and white sugar and hence the impugned SROs dated 27.2.2008 & 11.10.2008 and notices are being challenged through this petition.

7. Learned Counsel submits that in view of Article 137 and 142 (c) of the Constitution of Islamic Republic of Pakistan, 1973 neither the Federal Government nor any other entity has any executive or legislative authority to prescribe the standards or to regulate licensing, marking or levying of any fee in respect of the matters related to “agricultural produce” including refined and white sugar. Learned Counsel submits that this agricultural produce is meant for home consumption and as such falls within the domain of provincial government and its related assemblies. It is

thus prerogative of provincial assemblies to legislate and regulate the standard of agricultural produce including but not limited to refined and white sugar and to prescribe a licensing and standards certification regime and impose, levy and collect fee in pursuance thereof. Learned Counsel submit that the impugned SROs/notices issued by the Federal Government and PSQCA are therefore, ultra vires the Constitution since the provisions of Act of 1996 including but not limited to (Sections 8 to 14) and to the extent that these are being applied to confer jurisdiction over matters such as agriculture and agricultural produce which are otherwise covered by Article 137 and 142 (c) of the Constitution of Islamic Republic of Pakistan, 1973.

8. Learned Counsel then further submitted that subject of agriculture throughout remained a provincial issue as historically it was neither in the concurrent legislative list nor in the federal legislative list being in 4<sup>th</sup> schedule of the Constitution of Islamic Republic of Pakistan, 1973. After 18<sup>th</sup> Amendment in the Constitution of Islamic Republic of Pakistan, 1973 it further gained strength as pursuant to these amendments the legislative and executive powers and authority of provincial government and provincial assemblies have been reinforced by complete omission of the concurrent legislative list in the 4<sup>th</sup> Schedule of the Constitution of Islamic Republic of Pakistan, 1973. It is contended by the learned Counsel that so far as the federal legislative list in the 4<sup>th</sup> Schedule to the Constitution of Islamic Republic of Pakistan, 1973 is concerned it does not contain any entry whereby the Federation or the parliament

may assume authority to legislate on the subject in issue particularly the standard of agricultural produce including but not limited to sugar which per learned Counsel falls within the domain of provincial assemblies. Learned Counsel submits that the only reference regarding standard of quality of goods is found in entry No.27 which confers authority to regulate by law the quality of goods to be exported and imported out and into Pakistan which is not the case here.

9. Learned Counsel further submits that there is a series of provincial statute which regulates the matters relating to planting harvesting and sale of sugarcane and sugar as well as establishment and enlargement of sugar mills which are being regulated by the provincial statute and by provincial government. Learned Counsel submits that a reference to inter provincial trade and commerce in the same entry No.27 is obviously restricted to trade and commerce between two or more provinces and can by no stretch of imagination be construed as conferring power and authority on the Federal Government to prescribe standards for and otherwise control and regulate the manufacture, storage and sale of agricultural produce such as sugar (refined and white). Learned Counsel in support of his arguments relied upon the case of (i) Pakistan Flour Mills Association & another Vs. Government of Sindh & others (2003 SCMR 162), (ii) Sanofi Aventis Pakistan Limited & others Vs. the Province of Sindh & others (PLD 2009 Karachi 69), (iii) Collector of Customs & others Vs. Sheikh Spinning Mills)1999 SCMR 1402 wherein it is observed as follows:

### **2003 SCMR 162**

*“After reading Items Nos.49 and 54 of the Federal Legislative List and items/entries provided in the Concurrent Legislative List one could say that the subject matter of the imposition of fees on the agricultural produce does not fall substantially within any of the Legislative List, therefore, in view of sub Article (c) of Article 142 of the Constitution of Pakistan, 1973, Provincial Assembly could legislate/make the laws with respect to the matters not enumerated in either the Federal Legislative List or the Concurrent Legislative List.”*

It is submitted by the learned Counsel that this principle is followed by larger bench of Lahore High Court in the case of Crescent Jute Products v. Government of the Punjab (PLD 2004 Lahore 686).

### **2009 PLD Karachi 69**

*“30. A bare perusal of Article 142 of the Constitution would reveal that the Federal Parliament has the exclusive powers to make laws in respect of the matters mentioned in Federal legislative list, while both the Federal and Provincial Parliaments have the powers to legislate in respect of the matters mentioned in Federal legislative list. In case any item is neither mentioned in the concurrent nor in the federal legislative lists the same falls within the exclusive domain of the provincial legislature. This is what is called a residuary legislative clause in the parlance of constitutional jurisprudence. In other words, the residuary power to legislate in respect of items not appearing in the federal and concurrent legislative lists fall within the ambit of the Provincial Parliaments. Lastly, the Federal parliament is equipped with the exclusive powers to make laws with regard to matters not mentioned either in the concurrent or Federal legislative lists, pertaining to those area which do not fall in any of the provinces for example the Islamabad capital territories.*

*35. ....No doubt entries are to be construed in a board and pragmatic sense but where even upon the broadest possible interpretation of various entries the term of taxation could not fall within such entries, the courts would not stretch the connotation beyond the permissible limits.”*

**1999 SCMR 1402**

*“15. Considering the case from all angles, although the Federal Legislature is competent to legislate for the imposition of fees within the meaning of Entry 54, Part I, in the Federal Legislative List, Fourth Schedule to the Constitution, one has to see what is the nature of the legislation and whether the same could have been legislated within the ambit of the powers of the Federal Legislature. No doubt, legislation can be made to impose fee in respect of any of the matters in the Federal Legislative List, but definitely not for pre-shipment inspection, the benefit of which has to go to the companies appointed to carry out the inspection and not to the payees of the fees. The imposition of such fees is not in lieu of services to be rendered for the benefit of its payees.”*

10. In reply to the arguments raised by learned counsel for the petitioner, learned counsel for respondent No.3 submitted that the petitioners in CP No.3364 of 2010 have challenged the same questions in CP No.18228 of 2008 before Lahore High Court and as such the petitioners in CP No.3364 of 2010 cannot avail the remedy from two courts when earlier the matter is already subjudice before the Court of competent jurisdiction. Learned counsel in support of this submission has relied upon Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 and further submitted that almost all the petitioners are operating their sugar mills either in Punjab or are situated in Punjab and as such this Court has no territorial jurisdiction. He submitted that the directions which are likely to be given to respondents in CP No.3364 of 2010 are beyond the territorial limits of this Court as such pursuant to the language of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petition does not lie before this Court. He submitted that the persons to whom the



concerned Court would issue such a writ must be within the territorial jurisdiction of the High Court and in addition the impugned action done or proceedings taken by a person must have been done or taken within the territorial jurisdiction of the concerned High Court. He relied upon the case of Muhammad Shoaib Vs. Project Director National ICT Scholarship Program, Ministry of Information Technology, Islamabad & another (2011 CLD 23) and M/s. Brady & Co Vs. M/s Sayed Saigol Industries Ltd. (1981 SCMR 494).

11. He further submitted that the constitutional jurisdiction of different high Courts cannot be invoked on the same subject matter seeking same relief either on the same ground or on different and has relied upon the case of Muslim Commercial Bank Limited v. Momin Khan & others reported in 2002 PLC (CS) 898 Supreme Court.

12. He submitted that the petition also suffers from laches as act, notification and notices were issued in the year 2008 and as such rights, if any, were acquiesced due to lapse of this inordinate and unexplained delay. Learned counsel further submitted that in terms of Section 24 of the Act of 1996 no suit/prosecution or other legal proceedings shall lie against the federal government or the authority of respondent No.3 or any person acting under the authority of federal government or the authority for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or regulation made thereunder.

13. He further submitted that petitioners have no right to seek declaratory relief as they have also acquiesced and accepted and condoned the assigning of jurisdiction and authority and imposition of marking fee on white/refined sugar manufactured by them. He submitted that the concessional reduction in marking fee to 0.05% instead of 0.01% was effective from 1<sup>st</sup>. August, 2010 through relevant SRO dated August 2010 which in fact was in implementation of certain minutes dated January 15, 2009 executed between the respondents No.2 and 3 and all petitioners except petitioners No.22 and 23 and thus the entire Sugar Mills Association were represented and it does not lie in their mouth to now challenge the jurisdiction of respondent No.3 to perform pursuant to Act of 1996. Learned counsel further to explain the above point submitted that the Chief Executive of Indus Sugar Mills who was the Chairman of the Committee who entered into aforesaid negotiations and was ably supported by petitioner No.13 who was Secretary of Pakistan Sugar Mills Association Sindh Zone and MD Matyari Sugar Mills who is petitioner No.10 in CP No.2515 of 2010 and also represented by Director Ali Abbas Sugar Mills who is petitioner No.21 in CP No.2515 of 2010.

14. He further submitted that pursuant to the letter dated 24.12.2008 written by Pakistan Sugar Mills Association to PSQCA and also letter dated 22.12.2008 to Mr. Salman Farooqui, Secretary General of President of Pakistan wherein they requested for deferment along with accepting that the sugar is food item made of agriculture

produce item and not agricultural item. He further submitted that the petitioners have obtained licences from PSQCA and now are taking different pleas altogether just to delay the process.

15. He further submitted that the sugar is an industrial product and is not covered by the Act of 1937 as evident from the Schedule of the said Act. He submitted that the Schedule to the 1937 Act does not mention refined and white sugar and neither federal nor provincial government had notified refined and white sugar as agricultural produce for the purpose of Section 6 of 1937 Act hence it cannot be termed as an agricultural produce. They are termed as industrial product as they are subject to complicated purification and refining process. He submitted that there is no application of Article 137 and 142(c) of the Constitution of Islamic Republic of Pakistan, 1973.

16. He submitted that the entries No.3, 25, 30, 32, 54 and 59 in the federal legislative list allows the federal government to legislate on the subject (Standard of quality) mentioned against the aforesaid entries and as such it is within their competence to issue notification impugned in this petition. He further submitted that the viries of PSQCA 1986 has already been challenged and decided by a Division Bench of Peshawar High Court reported in Cherat Cement Company Limited Vs. Federation (2010 CLD 226) wherein PSQCA 1986 was held to be intra vires.

17. He submitted that the aforesaid notifications/SROs are neither the act of transgression of Article 137 and/or 142(c) whether prior to or after the 18<sup>th</sup> Amendment in the Constitution of Islamic Republic of Pakistan, 1973 and as such nothing could turn on the amendments made to the aforesaid Articles. He submitted that for the first time the issue of white and refined sugar was brought in canvass of the Act 1996 by virtue of Section 14 *ibid*. He submitted that the equity helps the diligent and not the indolent and the petitioners by approaching this Court at this stage have acted in a dilatory manner and as such not entitled to the relief prayed for.

18. We have heard the learned counsel for the parties and perused the record. The core issue which is the subject matter of this petition is the assumption of jurisdiction by Pakistan Standard Quality Control Authority pursuant to Act of 1996 and also as to whether refined or white sugar is or is not within the definition of Articles mentioned in the Act of 1937 or in the alternate covered by Act of 1996. The other issue that emerges out is as to whether the Federal Government/Federal Assembly are within competence to legislate on standard of quality in terms of entry No.27 in 4<sup>th</sup> Schedule of the Constitution of Islamic Republic of Pakistan with regard to the goods/articles be it agriculture produce or not, for local/provincial consumption as entry No.27 relates to export and import and intra-provincial trade.

19. PS 1822-2007, Annexure A to the petition, titled as “membership list of sugar industries technical committee”, appears to be containing some specification standard

for refined sugar and white sugar which was admittedly consented by a number of petitioners forming the association of sugar mills owner "Sindh Zone". It is one of the contentions of the learned counsel for the respondents that by such conduct the petitioners acquiesced their rights to agitate in the manner the petition has been filed.

20. These specifications contained in PS 1822-2007 appear to be self-assumption of jurisdiction through bilateral actors.

21. The issue regarding the jurisdiction, as raised by the learned counsel for the respondents, needs to be thrashed out first in order to proceed further in the matter, if the law permits. The objections of the learned counsel for the respondents that a similar petition with the same prayer by almost the same Petitioners is subjudice before Lahore High Court and that the petitioners in CP no.D-3364 of 2010 who have availed the jurisdiction of Lahore High Court cannot maintain the instant petition bearing No.3364 of 2010 has compelled us to focus our mind on this crucial point. In addition to the above, the learned counsel for respondent submits that in terms of the notification on Pakistan standard for refined sugar and white sugar, the petitioners and their association have consented to formulate the standard of specification for refined and white sugar and as such it does not lie in their mouth to object to levy of such marking fee since they themselves consented to frame the specifications to maintain standard of refined sugar and white sugar.

22. The issue of jurisdiction of Court has always been a pivotal part of proceedings under writ jurisdiction and in this regard while touching the question, we see that participation of petitioner and their association in the meeting to formulate specification for quality standard issued with mandate to impose and/or assume jurisdiction.

Jurisdiction of Court, which is to be exercised in the matter and manner as is conferred by the Constitution of Islamic Republic of Pakistan, 1973 under its Article 175(2) or by law. Jurisdiction can neither be conferred nor curtailed even by consent of parties

23. Likewise, legislative competence (i.e. authority to legislate and pass statute on any given subject) of Federal Government through National Assembly and by the Provincial Government through respective Provincial Assemblies is regularized and controlled by Chapter I Part V of the Constitution of Islamic Republic of Pakistan, 1973. Federal Government through National Assembly has exclusive authority to make laws with respect to any matter in the Federal Legislative List including power to make law in respect of criminal law, criminal procedure and evidence and so also with respect to all matters pertaining to such areas in Federation as are not included in any province. Likewise legislative competence or authority of Provincial Government through Provincial Assemblies has exclusive authority to legislate on all matters not enumerated in the Federal Legislative List. Provincial Assembly exercise co-extensive

authority to legislate like National Assembly on criminal law, Criminal procedure and evidence, however last mentioned coextensive authority and legislative instruments are subject to Article 143. Pakistan is governed by and under written Constitution. Power and authority to legislate law is very well defined. Neither the Federal Government can legislate on any matter beyond Federal Legislative List nor the Provincial Government/Assembly can overstep on any matter which is covered by Federal Legislative List. Only exception to this constitutional limitation of legislative authority is catered under Article 144 of the Constitution of Islamic Republic of Pakistan, 1973; where the Parliament may legislate on residuary subject only when one or more Provincial Assemblies pass resolutions requiring or entrusting such authority on the Parliament and even in such case authority to amend such Statute remains with the Provincial Assembly and not on Parliament. Thus, it becomes very clear that Parliament and Provincial Assembly exercise legislative competence to the extent conferred under Constitution of Islamic Republic of Pakistan, 1973.

24. From the scheme of the Constitution of Islamic Republic of Pakistan, 1973, as regard legislative competence one thing is very clear that the Parliament could frame law on subject not provided in Federal Legislative List, provided it is so requested or authorized by Resolution of Provincial Assembly. The Authorization to legislate by the Parliament could only emanate from Provincial Assembly in the form of Resolution, and by none else. Therefore, contention of learned counsel for

respondent that Association of which the petitioners are members, has consented to such course of impugned levy is of no consequence. Legislative competence on residuary matter or matter that fall out of Legislative List cannot be conferred on the Parliament by any person, group of persons, authority, representative body etc. except by the Provincial Assembly in the manner provided under Article 144 i.e. through Resolution and by no other means.

25. Reverting back to the facts of the case, via meetings the question of jurisdiction cannot be determined. The jurisdiction is to be governed by law and not through bilateral agreement. It has now been a settled law that the jurisdiction cannot be conferred upon the Court by consent of the parties. Similarly the jurisdiction cannot be taken away by the consent or by any act of the party which otherwise vests with constitutional authorities. We thus observed that the point of jurisdiction is to be decided under the law and it cannot be altered by negotiation or by any act of the party over a table.

26. As far as the question of territorial jurisdiction is concerned, learned Counsel has cited judgments of *M/s. Brady & Co Vs. M/s Sayed Saigol Industries Ltd.* reported in 1981 SCMR 494 goes against the arguments of learned counsel for respondent No.3 as Hon'ble Supreme Court held that "Corporation can be said to be carrying on business at head office, or at place where its branches exist in respect of cause of action arising wholly or in part at place where its branch office is situated.



27. As far as those petitioners who have availed and surrendered to jurisdiction of Lahore High Court (having concurrent jurisdiction) and who have challenged the same act of respondent, the petitioner cannot avail remedy by filing petitions in two different Courts even having concurrent jurisdiction. On a similar question the Hon'ble Supreme Court in the case of Muslim Commercial Bank Limited v. Momin Khan & others reported in 2002 PLC (CS) 898, clarified that the petitioners cannot approach two different forums simultaneously be it concurrent or otherwise. The Hon'ble Supreme Court held at page No.906 last para as under:-

*“We may point out that the respondent being in contest with the appellants in the Constitutional petition pending before the High Court of Sindh on the same subject could not maintain an independent/ similar petition before the Peshawar High Court and since the matter was sub judice before the High Court of Sindh at Karachi, therefore, the respondent neither should agitate the implementation of recommendations made by the Review Board in his favour on the basis of which Ombudsman disposed of his complaint against the Bank or should have filed a separate petition before the High Court which had already taken cognizance of the matter. The invoking of Constitutional jurisdiction of the different High Courts on the same subject seeking the same relief either on the same grounds or on different grounds is not permissible. The relief being sought by the respondent from the Peshawar High Court was substantively under adjudication in the Constitutional petition filed by the appellants in the High Court of Sindh and the result of said petition in either way would be relevant to determine the rights of parties. Since the same matter was under adjudication in both the petitions on different grounds, therefore, we are of the considered view that pending disposal of Constitutional petition filed by the appellants before High Court of Sindh, the Constitutional petition on the same subject before the High Court of Peshawar was not maintainable.”*

28. We are therefore of the view that petitioners who have not approached Lahore High Court for the same issue challenging the same act can maintain petitions before

this Court since the respondent No.3 is operating within the jurisdiction of this Court and pursuant to whose authority notifications have been issued and also demand notices pursuant to the said SRO, were issued to the petitioners by respondent No.3 or on its behalf who operates within territorial jurisdiction of this Court.

29. The other objection of the learned counsel for the respondent No.3 that in terms of Section 24 of the Act of 1996 the protection is provided with regard to actions taken under this Act is now being discussed. Relevant section 24 is reproduced as under:-

*“24 Protection of action taken this Act.-*

*No suit, prosecution or other legal proceeding shall lie against the Federal Government or the Authority or any person acting under the authority of the Federal Government or the Authority for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or regulation made thereunder.”*

30. It is the same language which is contained in invariably all Statute where under public functionaries perform functions and duties in due observance of and furtherance of any particular Statute, and such provision safeguard and protect public functionaries to cover anything done or intended to be done in good faith, within the framework of the Statute. However, such immunity is not extended to malafide acts and or act in excess of authority or beyond the purview of power conferred under the Statute. The moment act complained of is beyond the delegated authority, immunity

and protection under the law is lost. Needless to point out that the entire act of the authority has been challenged wherein it is claimed that all acts of the authority pursuant to the Act of 1996 are not done in good faith and not in accordance with law and/or are without jurisdiction and as such the same has been challenged on account of having no jurisdiction and authority.

31. As far as question of latches is concerned it is a fact that the action of respondents have been challenged to be as without jurisdiction and malafide. On such score alone the question of applicability of latches is not relevant. Even otherwise latches alone cannot be equated with statutory bar of limitations. Bar of limitation operates as legal bar for grant of remedy whereas latches operates bar under equity. Therefore dictate of justice and equity and balance of legitimate rights are to be kept in view in applying the principles of latches. The argument of learned counsel for the respondents that the petition suffers from latches is also of no benefit to them as the lis is pending since 2010, hence the question of application of latches does not apply.

32. As stated earlier that it matter less that some of the petitioners operate from Punjab or that they have their mills in another province, what matter is that the respondent No.3 on whose authority and on whose behalf such impugned SROs pursuant to Section 8 and 14 of the Act of 1996 have been issued remains within the jurisdiction of this Court. The answer to the above objection regarding maintainability

of the petition is over ruled to the extent of the petitioners who have not approached the Lahore High Court. If at all respondent had any grievance on such score that all these petition are to be heard and decided by one High Court of any province they could have approached the Hon'ble Supreme Court under Article 186-A of the Constitution of Islamic Republic of Pakistan, 1973 to seek transfer of these petitions to Lahore High Court, where similar petitioners are pending or could have sought transfer of such petitions as are pending in Lahore to Sindh High Court or any other High Court. There is no bar under the law to adjudicate a controversy pending or agitated by some parties in one province and some parties chose to invoke constitutional jurisdiction of courts in other province.

33. The other impugned notification bearing SRO No.I/2008 dated 27.2.2008 was issued in pursuance of Section 8 of Act 1996 whereby the Authority was pleased to direct the levying of licence, marking and inspection fee w.e.f. 01.04.2008 and the other notification dated 11.10.2008 bearing SRO No.(I)/2008/ dated 11.10.2008 which appears to have been issued in pursuance of Section 14 of Act 1996. By this second notification, manufacturer keeping a stock in the sale of articles specified in column 2 of the schedule mentioned therein was prohibited. The Article at Sr. No.13 of this schedule SRO No.(I)/2008 include refined sugar and white sugar thus the manufacturing and keeping stock and sale of refined sugar and white sugar was prohibited unless they are in conformity to Pakistan Standard specifications and

as required in the earlier notification dated 27.2.2008. The issue that needs to be thrashed out is as to whether this refined/white sugar would come within the scope of the Act of 1937 or should it be the subject matter of Act of 1996. In order to understand as to whether the refined sugar/white sugar is covered by the Act of 1937 or by the Act of 1996 we may reproduce the relevant provisions of such Act as under:-

“Agricultural produce Grading and Marking Act, 1937:

Section 2: explanations.--- .....

*“agricultural produce” includes all produce of agricultural or horticulture and all articles of food or drink, wholly or partly, manufactured from any such produce and fleeces and the skins of animals.”*

Section 6:---Extension of application of Act.---The ~~—{Appropriate}~~ Government, such consultation as it thinks fit of the interests likely to be affected, may by notification in the official Gazette declare that the provisions of this Act shall apply in article of agricultural produce not included in the Schedule or to an article other than an article of agricultural produce, and on the publication of such notification such article shall be deemed to be included in the Schedule.

**14 Power to prohibit, manufacture, keeping in stock and sale of certain articles.-**

(1) The Federal Government, may, in consultation with the Authority and by notification in the official gazette, prohibit, with effect from such date as may be specified in the notification, the manufacturer, storage and sale of any article specified therein which does not conform to the Pakistan Standard.

(2) The Federal Government may, by notification in the official Gazette, require any article which conforms to a particular Pakistan standard to be marked with such distinctive mark as may be specified in the notification.

34. By virtue of Section 6 of Act of 1937 it was clarified that the government after consultation as it thinks fit of the interests likely to be affected may by notification in the official gazette declare that the provisions of Act of 1937 shall apply to an article of agricultural produce not included in the schedule or to an article other than an article of agricultural produce and on the publication of such notification such article shall be deemed to be included in the schedule, means list is not exhaustive. The word appropriate Government in the aforesaid section mean and include “Provincial Government”. The contention of the learned counsel for the petitioners that in pursuance of Article 137 and 142 (c) of the Constitution of Pakistan 1973, after the 18<sup>th</sup> Amendment, it is the prerogative of the provincial assembly and that by virtue of Article 142(c) *ibid*; the Parliament shall have the exclusive powers to legislate with respect to the matters enumerated in the Federal Legislative List. Apart from this as to whether these products such as refined sugar and white sugar are covered or not by the Act of 1937, it is further to be seen as a paramount question whether there is any Entry in the Federal Legislative List with regard to the goods in question and its treatment accordingly is provided or not. Learned counsel for the respondents has pointed out six entries such as Entry No.3, 25, 30, 32, 54 and 59 which he claimed to cover the case of subject goods (i.e. agricultural produce) and its treatment. Before we deal with the Act of 1937, let us first understand as to whether any of these six entries would cover the “subject” or not.

35. The Entry No.3 deals with the issues of external affairs, implementation of treaties and agreement and as such it has no application to the case in hand.

36. Entry No.25 deals with the copyright, invention, designs, trademarks and merchandise marks. Respondent No.3 by relying on this entry perhaps claimed standard mark equivalent to copy right/trademark/ merchandise mark for which the fee is being claimed by respondent No.3. We may point out that 'Copyright' is an exclusive right conferred by Government on the creation of original, literal or artistic works such as books, articles, drawings, photographs, musical compositions, recordings, films and computer programs etc. Similarly, a "Trade Mark" is symbol of identification of goods, it may consist of name, signature, distinctive device, picture, word or label which is applied to the goods so as to distinguish them from similar goods of other traders. Invention is the finding out or discovery of something not found out or discovered before. It is necessary that the invention should be of something complicated, and the inventor must be the first one to adopt it. The thing discovered must be novel or new. The marks placed upon goods and articles of commerce to denote their maker or called marks of merchandise and by the common law would protect it likewise that of trademarks are protected viz. the prevention of frauds upon the public, and indirectly upon the manufacturer of the counterfeit goods. Under this Entry, already Copy Right Act, Trade Mark Act, Merchandise Act, Patent & Design Act already occupy the field. The Entry No.25 does not deal with

quality or standards specification of any merchandise or goods. Prima facie, there appears to be no application of this entry to the goods in question.

37. Entry No.30 deals with stock exchange and future markets as such there are not even a remote chances of application of this Entry.

38. Entry No.32 deals with international treaties, conventions and agreements of international arbitration. As far as this entry is concerned it loses its applicability (to the issue in question i.e. goods for home consumption) when petitioners conceded that the respondent No.3 would have a role to play, when the goods were likely to be exported from its original destination. It perhaps relates to entry number 27 which will be discussed subsequently, though not relied upon by respondent.

39. Entry No. 54 and 59 deal with the fee in respect of matters of Part of I of IVth Schedule. However, apart from the Entry No.32 that deals with the international trade, the respondent No.1 has not specified any entry which deals with the goods in question so as to enable Federal Government to legislate on the subject. Hence, after detailed discussion of these entries we do not find a single entry which could enable the federation/ parliament (Majlis-e-Shoora) to legislate on the subject. The only relevant entry which by far and could be applicable to the goods in question in the entry number No.27 import and export, inter provincial trade “standard of quality of goods to be exported out of Pakistan”. Thus it could be seen that Federal



Government has legislative competence to “Set out standard of quality of goods to be exported out of Pakistan”; such legislative competence does not extend to set out standard of quality of goods for domestic or local consumption within province.

40. In addition as argued by petitioner’s counsel, we may take advantage of historical assessment of the subject of agriculture which never find mention either in the concurrent list or on federal legislative list in the IVth. Schedule to the Constitution of Islamic Republic of Pakistan, 1973. Consequently, throughout it remained within the exclusive legislative and executive jurisdiction of provinces which further strengthened after promulgation of the 18<sup>th</sup> Amendment in the Constitution of Islamic Republic of Pakistan, 1973., which completely eroded the concurrent legislative list.

41. The federal legislative list in the IVth Schedule to the Constitution of Islamic Republic of Pakistan, 1973 does not contain any item of the entry which may be construed as conforming authority on the federal government or the parliament to enact laws regulating the standard of agricultural produce more particularly for internal/provincial consumption. In fact the position that these matters fall within the exclusive jurisdiction of respective provinces could be easily gathered by Entry No.27 which read as under:-

*“Import and export across customs frontiers as defined by the Federal Government, inter provincial trade and commerce, trade and commerce with foreign countries, standard of quality of goods to be exported out of Pakistan.”*

42. This is the only entry which deals with the subject of maintaining standard of quality of goods. However, Entry No.27 narrowed down the scope of the “standard of quality” of articles/goods/products for import and export across customs frontiers and inter provincial trade and commerce, trade and commerce with foreign countries only but by no stretch of imagination this could apply to a trade within one province. By this specific entry it is clear beyond reasonable doubt that the framers of the Constitution of Islamic Republic of Pakistan, 1973 never intended the federal government to have any power or authority in the prescription of standards or otherwise the regulation of the standard of and marking on agricultural produce such as sugar intended for consumption within the province. The consequence of the above leads to clarity that all such residual powers and authorities vest in the provincial assemblies as required by Article 142(c) and 137 of the Constitution of Islamic Republic of Pakistan, 1973.

43. On reaching to the above conclusion that federal Government does not enjoy legislative authority to legislate to prescribe standard of quality of goods for local and domestic consumption/use within province. Thus, it now become irrelevant to

discuss any more Act of 1996. However, as an academic debate, we may take a look at the definitions provided under the Act of 1996 such as 2(c) which deals with the definition of ‘article’ which is reproduced as under:-

*“article” means (as respects standardization and marking) any substance, artificial or natural, or partly artificial or partly natural, whether raw or partly or wholly processed or manufactured, but does not include any article to which the Agricultural Produce (Grading and Marking) Act, 1973 (I of 1937) for the time being applies”*

44. Even this provision excludes the inclusion of goods/articles which are covered by definition of article under section 2 of Act of 1937.

45. Section 8 of the Act of 1996 deals with the powers and definitions of the authority and the relevant subsections are 8(ii), (vii), (x) which are reproduced as under:-

*“(ii) inspection and testing of products and services for their quality, specification and characteristics during use and for import and export purposes;*

*(vii) grading the products when requested by manufacturers, or whenever necessary for the purpose of quality improvement;*

*(x) to stop manufacture, storage and sale of such products which do not conform to the Pakistan or any other country’s standards recognized by the Authority.”*

46. As already observed by virtue of Section 2(c), the Act of 1996 it excludes the articles to which Agricultural Produce (Grading & Marking) Act, 1937 (I of 1937)

applies. The perusal of the definition provided in the Act of 1937 shows that it includes produce of agricultural or horticulture and all articles of food and drink, wholly or partly, manufactured from such produce and fleeces. It further get strength by virtue of Section 6 *ibid*; when the provisions of the Act of 1937 were applied to an article of agricultural produce not included in the schedule or to an article other than article of agricultural produce and on publication of such notification such article shall be deemed to be included in the schedule. Means that this list of schedule is not exhaustive or limited but within the competence of provincial government.

47. While concluding this debate, we may observe that so far as grading and marking for the specified standard of the quality is concerned, it does not find any room in the federal legislative list and on this score alone the Act of 1996 loses its strength for application on goods forming part of Act of 1937 for home (local or domestic) consumption, which is a provincial subject. In view of provisions of Article 137 and 142(c) of the Constitution of Islamic Republic of Pakistan, 1973, neither the federal government nor any entity established by the federal government by virtue of any federal statute in executive or legislative authority enjoys powers to prescribe standards for or otherwise article licencing, marking or levying of any fee in respect of matters relating to agriculture and agricultural produce which includes refined and white sugar being product of sugarcane crop for home consumption. In substance these matters fall within the exclusive executive and legislative authority of respective

province/provincial government. It is thus the provincial assemblies which have powers and authority to frame any law and/or regulate the standard of agricultural produce and to prescribe licence and standard certification and to regulate, levy and collect fee in relation thereto.

48. Section 14 of the Act 1996 thus appears to have conferred powers on the Federal Government acting in consultation with PSQCA to prohibit manufacture, stocking and sale of certain articles. It is pertinent to mention here that although provisions of Section 14 relates to manufacture, stocking, sale of “articles”. The definition of the express/word “article” in Section 2(c) of the Act, 1996 specifically excludes from the scope thereof any article to which Act of 1937 applies. In terms of definition of article under Act of 1996 means “(as respects standardization and marking) any substance, artificial or natural, or partly artificial or party natural, whether raw or partly or wholly processed or manufactured, but does not include any article to which the Agricultural Produce (Grading and Marking Act 1937 (I of 1937), for the time being applies.”

49. The object of 1937 Act in terms of its preamble is to provide for grading and marking of the agricultural and other produces. The definition of agricultural produce is already described above. The cumulative effect of all such definition in Acts of 1937 thus would include refined sugar and white sugar which are the products of sugarcane which is a produce of agriculture. It may get further strength when it is observed that

Gorh (Jaggri) is notified article in the schedule to the 1937 Act. That by virtue of Agricultural Produce (Grading and Marking) Amendment Act 1972 a new clause “aa” was inserted to Section 2 of 1937 Act in which appropriate Government means, in relation to the grading and marking of agricultural produce intended for consumption within the province, the Provincial Government, **in relation to the grading and marking of agricultural produce intended for the export or for trade between the provinces, Federal Government.** It is thus that under the scheme of Constitution of Islamic Republic of Pakistan, 1973 it is only the provincial Government which possess executive authority and the related Provincial Assemblies which has been conferred by the legislative authority to frame policies and law in respect of agricultural produce including refined and white sugar intended for consumption within the province. Even for the sake of arguments if it is considered that refined and white sugar is not within the definition of agricultural produce, even then the Federal legislative list would restrict Federal Government to legislate on the quality of standard of the white sugar and refined sugar for its consumption within the province as entry No.27 excludes Federal Government to legislate on the quality of standard regarding the goods in question for consumption within the province.

50. We, however, do not agree with the contention of learned counsel for the petitioners that with respect to the inter provincial trade and commerce in the same Entry, it is restricted to the trade and commerce between two or more provinces i.e.

in the public sector meaning thereby that Entry No.27 has its application in inter-provincial trade.

51. In view of the above C.P.No.D-2515 of 2010 is allowed in the above terms However, CP No.D-3364 of 2010 is allowed to the extent of those petitioners who have directly approached this Court only while petition in respect of those petitioners who have earlier filed CP No. D-18228/08 claiming same remedy before the learned Lahore High Court on the same or other grounds, is dismissed being not maintainable.

Dated:

**Judge**

**Chief Justice**