

Stereo. H C J D A 30.
Judgment Sheet
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Case No: I.C.A. No1456/2016

M/s. Chaudhry Sugar Mills Ltd. **Versus** The Province of Punjab, etc.

JUDGMENT

| | |
|-------------------------|--|
| Dates of hearing | 24.05.2017, 25.05.2017, 26.05.2017, 28.07.2017 and 11.09.2017 |
| Appellant(s) by | Mr. Makhdoom Ali Khan, Advocate for Ch. Sugar Mills Ltd. M/s. Salman Akram Raja, Malik Ahsan Mehmood, Muhammad Shabbir Hussain and Usman Ali Bhoon, Advocates for Ittefaq Sugar Mills Ltd. M/s. Ali Sibtain Fazali, Hasham Ahmad Khan, Umar Tariq Gill and Abad-ur-Rehman, Advocates for the HWSML & Abdullah Sugar Mills Ltd. M/s. Syed Ali Zafar and Mubashir Aslam Zar, Advocates for Indus Sugar Mills Ltd. M/s. Imtiaz Rashid Siddiqui, Shaharyar Kasuri and Raza Imtiaz Siddiqui, Advocates for Ashraf Sugar Mills Ltd. Mr. Shahzad A. Elahi, Advocate for Fatima Sugar Mills Ltd. Mr. Muhammad Raza Qureshi, Advocate for Tandlianwala Sugar Mills Ltd. |
| Respondents by: | Mr. Adnan Tariq, Assistant Advocate General, Punjab. M/s. Khawaja Haris Ahmad and Hasam Bin Haris, Advocates for the Punjab Government/Advocates for the appellants in connected ICAs. M/s. Aitzaz Ahsan, Shahid Saeed Ch. and Ch. Shaukat Ali Javed, Advocates for the JDW Sugar Mills Ltd. Mr. Waqas Alam, Cane Commissioner, Punjab. Syed Murtaza Ali Zaidi, Advocate for respondent-MEPCO. Mr. Haidar Zaman Qureshi, Advocate for Pakistan Cotton Ginners Association. Mr. Asif Mushtaq Ahmed, Senior Law Officer, Industries, Commerce & Investment Department. Malik Javed, Senior Economic Advisor, Industries, Commerce & Investment Department. |
| Research assistance by: | Mr. Mohsin Mumtaz, Civil Judge/Research Associate at LHCRC |

“The essence of law lies in the spirit, not in its letter, for the letter is significant only as being the external manifestation of the intention that underlies it”

- Salmond¹

¹ John W. Salmond. Jurisprudence (Stevens and Haynes, London, 1902. p.127

Syed Mansoor Ali Shah, C.J.

Statutory Backdrop

The Punjab Industries (Control on Establishment and Enlargement) Ordinance, 1963 (W.P. Ord. IV of 1963) (“Ordinance”) provides for organized and planned growth of industries in the Province. The Ordinance requires prior permission of the Government to set up an *industrial undertaking* in any area in Punjab under section 3. Section 11 of the Ordinance provides that the Government can exempt any industrial undertaking from the provisions of the Ordinance. Over the years, various notifications have been issued, primarily under section 11,² exempting the provisions of the Ordinance for an industrial undertaking, being set up in different areas in Punjab, in addition to, imposing certain restrictions and conditions. In respect of sugar mills, a series of notifications, spanning over years from 1986 to 2015³, have been issued under the Ordinance.

2. The two sets of cases⁴ involved in the present litigation relate to two different notifications issued by Government of Punjab under the Ordinance. The first set of cases stems from Notification dated 06.12.2006⁵(referred to as the “*Ban Notification*”) whereby a complete ban on establishment and enlargement of sugar mills was imposed in Punjab. These cases consist of writ petitions filed by various sugar mills in Punjab in the year 2015, against the relocation/shifting of existing sugar mills from Central Punjab to the South of Punjab. The prime contention of the petitioners in these cases is that the shifting/relocation of the sugar mills is illegal in the presence of the *Ban Notification*. They pray that the relocation/shifting be declared to be illegal and the Government be directed to proceed against the said sugar mills.

3. The second set of cases consists of appeals (ICAs) which are directed against the judgment passed by learned single judge of this Court dated 10.10.2016 reported as JDW Sugar Mills Ltd. and others v.

² Scope and legality of section 11 and the notifications issued thereunder are discussed later in the judgment.

³ See Schedule C

⁴ As provided in Schedules A & B.

⁵ No. AEA-III-3-5/2011 (Vol.-VIII)

Province of Punjab and others (PLD 2017 Lahore 68). In these cases, Notification dated 04.12.2015⁶ (“*Relocation Notification*”) has been impugned whereby relocation of existing mills has been permitted subject to certain conditions. It is contended that the *Relocation Notification* is *ultra vires* the Ordinance. Learned Single Judge of this Court accepted the writ petitions through the impugned judgment and held that the *Relocation Notification* is *ultra vires* the Ordinance.

4. The existing sugar mills that have relocated and established themselves in the South of Punjab from Central Punjab and are the subject matter of these writ petitions and appeals are: **M/s. Haseeb Waqas Sugar Mills Limited (HWSM), Ittefaq Sugar Mills Limited (ISML) and Chaudhry Sugar Mills Limited (CSML)** (collectively referred to as the “*Three Sugar Mills*”). The geographical shifting and establishment of these sugar mills has been in the following manner:

| <i>Sugar Mill</i> | <i>Earlier established at District</i> | <i>Relocated to District</i> |
|-------------------|--|------------------------------|
| HWSM | Nankana sahib | Muzaffargarh |
| ISML | Sahiwal | Bahawalpur |
| CSML | Toba Tek Singh | Rahim Yar Khan |

Arguments:

5. Learned counsel representing the appellants (the “*Three Sugar Mills*”) submit that the *Ban Notification* does not cover relocation of an existing sugar mill, therefore, relocation of the Three Sugar Mills is not illegal. They add that as relocation is not the subject matter of the Ordinance, therefore, no permission was required to be sought from the Government under section 3 of the Ordinance. It is submitted that during the shifting of the mills, *Relocation Notification* was issued, permitting the appellants to re-locate their mills within the Province of Punjab. The appellants, however, could not seek permission under the *Relocation Notification* because the same was suspended by the learned Single Judge on 04.01.2016. They submit that they can still seek *ex-post facto* permission under the *Relocation Notification* and regularize the establishment of the Three Sugar Mills.

⁶ No. AEA-III-3-5/2011 (Vol.-VIII)

6. Supporting the legality of the *Relocation Notification* they submit that as the *Relocation Notification* advances the purposes of the Ordinance, it can be considered as Rules under section 13 of the Ordinance instead of an exemption under section 11 of the Ordinance and be saved.

7. Khawaja Haris Ahmad, Advocate, representing the Government of the Punjab, submitted that setting up of the aforesaid Three Sugar Mills was without seeking permission under the Ordinance or under the *Relocation Notification* and frankly concedes that he does not support the contentions of the appellants. He, however, underlines that the *Relocation Notification* framed by the Government was a *bonafide* exercise; as it catered to the economic exigencies of the time and was geared towards alleviating the faltering financial condition of the sugar mills in Central Punjab. He submitted that a detailed exercise took place and reports were sought from all the relevant Departments and after a thorough environmental and ecological survey of the area, the *Relocation Notification* was framed. He submits that *Relocation Notification* confirms that there shall remain a ban on the setting up of new sugar mills but only permits relocation of existing sugar mills and that too after complying with certain very strict conditions. He, therefore, submits that there is no *malafide* on the part of the Government in promulgating the *Relocation Notification*.

8. Submitting further, he clarifies that while the position of the Government of the Punjab before the august Supreme Court of Pakistan in the case titled *Tariq Khan Mazari and 3 others v. Government of Punjab through Secretary Industries and 3 others* (PLD 2016 S.C. 778) was that the ban on the new sugar mills should be up-held, it had no bearing on the *Relocation Notification* as it did not deal with establishment of new sugar mills but was confined to the relocation of the existing sugar mills. He submits that *Relocation Notification* is not inconsistent with the ban but creates an exception in the public interest for the ailing sugar mills of Central Punjab facing acute economic and operational problems. It is for this reason that the Government of the Punjab, while supporting the ban on establishment of new sugar mills did

not discuss or raise the concept of relocation before the august Supreme Court of Pakistan in the cited case.

9. In the end, he reiterated that he does not support the setting up of the Three Sugar Mills mentioned above and states that they should have applied for permission under the *Relocation Notification*. His main emphasis is that the *Relocation Notification* is not tainted with *malafide* but is rather a *bonafide* effort of the Government to address the acute economic, financial and operational problems faced by the sugar mills located in Central Punjab.

10. Mr. Aitzaz Ahsan, learned counsel for the respondent company, in the ICAs, submits that inspite of the ban imposed by the Government, the Three Sugar Mills started setting up their mills in the South of Punjab. He submits that inspite of repeated stay orders/injunctions granted by this Court the sugar mills, without any remorse, continued to establish their mills. He prays that the establishment of the Three Sugar Mills be declared illegal and the mills so established by offending and violating the Court orders be directed to be demolished and the position at the time of issuance of first stay order be restored.

11. The second limb of the arguments of learned counsel for the respondents companies was that during the process of setting up of the Three Sugar Mills, the Government promulgated *Relocation Notification*, which was in violation of the Ordinance, as the Ordinance did not provide for relocation, as a concept, separate from that of an establishment of a sugar mill in an area. It is submitted that establishment of a sugar mill *after relocation* or *afresh* has no distinction under the Ordinance and both require prior permission of the Government under the Ordinance. They submitted that *Relocation Notification* offends the provisions of the Ordinance. It is also submitted that the sugar mills established by the appellants are in violation of section 12 of The Punjab Environmental Protection Act, 1997 (“PEPA”) (amended up-to date), as the Three Sugar Mills, never had an Environmental Impact Assessment submitted or approved under PEPA.

12. Lastly, submits that the *Relocation Notification* itself is tainted with *malafide* as it was conceived to give legal cover to the Three Sugar Mills, which belong to the ruling Sharif family and their cousins.

OPINION OF THE COURT

Impugned judgment (PLD 2017 Lahore 68).

13. Learned Single Judge in impugned judgment dated 10.10.2016 has held that the *Three Sugar Mills* have been set up without obtaining permission under the Ordinance and in violation of explicit Court orders restraining establishment of sugar mills in the South of Punjab. It has also been held that *Relocation Notification* is in violation of the scheme of the Ordinance, as there is no difference between *relocation* and *establishment* of a new sugar mill in the area.

14. Learned Single Judge has also held that in the presence of the ban imposed under the *Ban Notification*, *Relocation Notification* was not justified, specially when the said ban had been upheld by the august Supreme Court of Pakistan in *Tariq Khan Mazari and 3 others v. Government of Punjab through Secretary Industries and 3 others* (PLD 2016 S.C. 778).

Questions of law

15. This judgment, while deciding the above two sets of cases, examines the following questions:

- A. *Whether the shifting/relocation of the Three Sugar Mills did not require permission under the Ordinance and fell outside the purview of the ban on establishing new sugar mills under the Ban Notification ?*
- B. *Whether the setting up of the sugar mills was in violation of the law and restraining orders passed by the Court, if so, its effect ?*
- C. *Whether Relocation Notification dated 04.12.2015 is ultra vires the Ordinance and smacks of malice ?*
- D. *Whether the establishment of the Three Sugar Mills is in violation of the Punjab Environmental Protection Act, 1997 ?*

Legal Framework.

16. The preamble to the Ordinance provides for organized and planned growth of industries in Punjab. This organization and planning is actualized through section 3 of the Ordinance, which provides for seeking prior permission of the Government before establishing or enlarging an industrial undertaking. The permission is to be granted after meeting the public interest requirements listed in section 3 of the Ordinance, which is reproduced hereunder for convenience:-

Section 3 Restrictions on establishment of industrial undertakings

3. No person shall establish or cause to be established any industrial undertaking or enlarge or cause to be enlarged any existing industrial undertaking except with the previous permission in writing of Government:

Provided that the application of any person for the grant of such permission shall not be rejected –

- (a) without giving such person an opportunity of showing cause against it; or
- (b) unless the Government is satisfied, on the basis of information available to it and after making such inquiry as it may deem fit, that the grant of permission to such person will be prejudicial to the national interest, or injurious to the health of or a source of nuisance for, the residents of the local area in which the industrial undertaking is proposed to be set up or, as the case may be, the industrial undertaking which is proposed to be enlarged is situated.”

17. Information regarding any industrial undertaking, to meet the requirement of section 3, can be procured by the Government, from any person under section 5 of the Ordinance which states:

Section 5. Power of obtaining information and of entry.—

5. For the purpose of giving effect to the provisions of this Ordinance, Government or the Director may—

- (a) by order in writing require any person to furnish such information in his possession relating to any industrial undertaking as may be specified in the order;
- (b) enter or authorize any person to enter an industrial undertaking and take such action as may be necessary.”

18. The mandatory and obligatory requirement of section 3, is underlined by sections 4 and 8, which provide for sanctions and penalty in case section 3 is not complied with.

“Section 4. Check on unauthorized establishment or enlargement of industrial undertaking. – Where the establishment of an existing industrial undertaking is likely to be commenced or has been commenced or has been completed in contravention of the provisions of this Ordinance, Government or the Director, after giving the person responsible therefor an opportunity of being heard, may by order require him –

- (a) to refrain from such establishment or enlargement; or
- (b) to stop further construction and to remove the unauthorized undertaking or part thereof and the person concerned shall comply with the order within such period as may be specified.

Section 8. Penalty for contravention.— Whoever contravenes any of the provisions of this Ordinance or the rules, or fails to comply with any order made thereunder, or willfully furnishes incomplete or false information required thereunder, or obstructs any person in the discharge of his duties or functions thereunder, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.”

19. Section 11 provides that an industrial undertaking or class of industrial undertakings can be exempted from all or any of the provisions of the Ordinance.

“Section 11. Exemption. – Government may, by notification in the official Gazette, exempt any industrial undertaking or class of industrial undertakings from all or any of the provisions of this Ordinance or the rules.”

20. Perusal of the above key provisions of the Ordinance reveals that the purpose of the Ordinance is to carryout organized and planned growth of industries in Punjab. For this purpose section 3 provides that any *industrial undertaking* desirous of establishing or enlarging any existing industrial undertaking, has to seek permission from the Government. Industrial undertaking has been defined as an undertaking pertaining to an industry carried out in a *local area*.⁷ Under section 3, Government has to be satisfied on the basis of the

⁷ Section 2(c) of the Punjab Industries (Control on Establishment and Enlargement) Ordinance, 1963.

information available to it and after making such inquiry as it may deem fit that the industrial undertaking being established or enlarged is not :

- i. Prejudicial to *National Interest*; or
- ii. Injurious to *health* of the residents of the local area in which the industrial undertaking is proposed to be set up/enlarged; or
- iii. A source of *nuisance* for the residents of the local area in which the industrial undertaking is proposed to be set up/enlarged.

21. The Ordinance requires the Government to thoroughly probe into these matters (section 5 also empowers the Government to collect information regarding the industrial undertaking) and only upon the *satisfaction* of the Government that the above factors are not attracted, can permission be granted for establishing or enlarging an industrial undertaking in a local area. Section 4 provides that in case the industrial undertaking is established in violation of the Ordinance, the said construction can be removed and demolished while penalties can be awarded under section 8. Section 11 empowers the Government to exempt any industrial undertaking or class of industrial undertakings from all or any of the provisions of this Ordinance or the Rules.

22. Notifications issued, over the years, under sections 3 or 11 (or both) of the Ordinance, starting in the year 1986, not only allow exemption from the Ordinance but also impose restrictions and conditions on the industrial undertakings. The relevant notifications for the purposes of this case are; *Ban Notification* dated 6.12.2006 and the *Relocation Notification* dated 04.12.2015 issued by the Industries Department, Government of the Punjab, which provide as under:

Ban Notification

“No new sugar mill shall be set up and no enlargement in capacity of the existing Sugar Mills is allowed in the Province.”

Relocation Notification

**GOVERNMENT OF THE PUNJAB
INDUSTRIES, COMMERCE & INVESTMENT
DEPARTMENT**

Dated Lahore, the 4th December, 2015

NOTIFICATION

No.AEA-III 3-5/2011 (Vol-VIII).- In exercise of the powers conferred under Section 11 of the Punjab Industries (Control on Establishment and Enlargement) Ordinance, 1963 (IV of 1963) and subject to the following exceptions and conditions, Governor of the Punjab is pleased to exempt all industries throughout Province of the Punjab from the provisions of Section 3 of the Ordinance.

Exceptions and Conditions

1. An industrial unit mentioned in First Schedule or an industrial unit exceeding a total cost of Rs.100.00 million (rupees one hundred million) shall not be set up within 16 Kms of the international border.
2. A District Government may declare “negative area” for industry. Such negative area shall be determined by a District Committee after consultation with all stake-holders in light of general policy guidelines to be issued by the Industries, Commerce and Investment Department and exemptions allowed under Second Schedule.
3. An industrial unit mentioned in Third Schedule shall not be set up anywhere in the Punjab without prior approval of the Government.
4. An industrial unit shall not be set up in the areas affected by flood flowing transversely in the strip of 1.6 Km of either side across the Grand Trunk Road from Shahdara Town to Muridke Town, without prior permission in writing of the Government.
5. No new sugar mill shall be set up in the Province, and the capacity of an existing sugar mill shall not be enlarged.
6. Subject to clause 5 and the conditions, criteria and guidelines mentioned in clause 8, the Government, on the recommendations of the appropriate Committee mentioned in clause 10, may, in public interest, allow the relocation of a functional sugar mill.
7. A sugar mill, which fulfills the requisite criteria and conditions, may submit an application, along with the requisite documents and the proof of deposit of the processing fee, for the relocation of the sugar mill or merger of the sugar mills to the Government in the Industries, Commerce and Investment Department.
8. The appropriate Committee may recommend the relocation of a functional sugar mill, if the following conditions and criteria are fulfilled by the applicant-mill:
 - (a) The applicant-mill has cleared all the outstanding amount due to the Government and the farmers; and, for the purpose, a certificate to this effect issued by the Cane Commissioner, Punjab shall be annexed with the application.
 - (b) The applicant-mill has continuously been in operation for the last five years immediately before the submission of application.
 - (c) The application for the purpose of relocation shall:

- (i) Contain complete details and justification for the proposed relocation; and
 - (ii) be accompanied by the requisite documents, including environmental, ecological and spatial planning feasibility and NOCs from Government departments or the agencies concerned, and the original receipt of the deposit of non-refundable process fee of rupees five hundred thousand.
- (d) The applicant-mill, on relocation, shall not in any manner whatsoever, enlarge the crushing capacity of the sugar mill.
- (e) The ownership of a relocated mill shall not be changed or altered for at least three years from the date the mill starts functioning at relocated site.

9. The Government, on the recommendations of the appropriate committee, may allow the merger of two or more mills which will be subject to surrendering of idle capacity of the sugar mills applying for merger.

10. The following Committees shall be the appropriate committees for purposes of this Notification:-

(a) **Intra-district Committee:**

- (i) Divisional Commissioner; Convener
- (ii) Administrator/DCO; Member
- (iii) District Officer Agriculture; Member
- (iv) District Officer IPW&M; Member
- (v) Executive Engineer Irrigation; and Member
- (vi) District Officer Environment. Member

(b) **Inter-district Committee:**

- (i) Secretary to Government IC&I Department; Convener
- (ii) Secretary to Government Agriculture Department; Member
- (iii) Secretary to Government Law & PA Department; Member
- (iv) Secretary to Government Food Department; Member
- (v) Secretary to Government Environment Protection Department; Member
- (vi) Member, Board of Revenue, Punjab; Member
- (vii) Member, Planning & Development Board; Member
- (viii) Administrators or DCOs of the districts concerned; and Member
- (ix) Any co-opted member. Member

11. The Government may, after recording reasons, refuse the establishment or enlargement of an industrial unit if it is in derogation of public interest, ecology or environment or contravenes any law or rules for the time being in force.

12. The Government may, for reasons to be recorded, relax any of the provisions of this Notification in case of any class of units or industries.

13. Government of the Punjab, Industries Mines and Minerals Department Notification No.AEA-III 3.9/91 dated 17th September 2002 is hereby repealed.

First Schedule
LIST OF STRATEGIC INDUSTRIES
(see clause 1)

Second Schedule
LIST OF SERVICE INDUSTRIES
(see clause 2)

Third Schedule
LIST OF INDUSTRIES WHICH CANNOT BE SET UP
WITHOUT PRIOR APPROVAL OF THE GOVERNMENT
(see clause 3)

SECRETARY
GOVERNMENT OF THE PUNJAB
INDUSTRIES, COMMERCE & INVESTMENT
DEPARTMENT

23. With this legal framework, we address the questions of law before us:

A. Whether the shifting/relocation of the Three Sugar Mills did not require permission under the Ordinance and fell outside the purview of the ban on establishing new sugar mills under the Ban Notification ?

Schedule A consists of petitions filed in the year 2015 (prior to the *Relocation Notification*) whereby the petitioner sugar mills prayed that the government functionaries be directed to restrain the appellant (respondent) sugar mills from shifting/relocating to various areas in the South of Punjab for the reason that these mills had not obtained permission as visualized under section 3 of the Ordinance, besides shifting/relocating cannot be carried out in the presence of the ban imposed on the establishment of new sugar mills in Punjab under the *Ban Notification*.

24. The respondents/appellants sugar mills in these writ petitions have argued that under section 3 of the Ordinance, permission is only required for establishing a new sugar mill or for the enlargement of the existing sugar mill and similarly the ban under the *Ban Notification*, is regarding setting up of new sugar mills and/or

enlargement of the existing sugar mills, both these requirements don't apply to their case as they have shifted/relocated their existing sugar mills from one place to another within the Province.

Scope and Purpose of the Ordinance

25. Preamble to the Ordinance provides for *organized and planned* growth of industries in Punjab. Organized and planned growth of industries in Punjab is unquestionably in the public interest and is effectively regulated through section 3. The mechanism provided under section 3 is that no person can establish or cause to establish (i.e., take steps to establish) an industrial undertaking, unless the following conditions, fashioned to protect public interest, are fully met to the satisfaction of the Government. The establishment or enlargement of an industrial undertaking must not be:

- i. Prejudicial to National Interest; or
- ii. Injurious to the health of the residents of the local area, and
- iii. A source of nuisance for the residents of the local area.

26. The above conditions date back to the year 1963⁸ and in these last 54 years, the public safeguards provided in the above three conditions, have found new expression. *National Interest* today would mean that the industrial undertaking, being established, will promote economic, trade, fiscal, environmental, climate change, irrigation or agricultural policies of the Federal and Provincial Governments. *Health and Nuisance*, in today's complex, over-populated and technologically advanced society, are guarded with better or efficient: urban planning, sanitation, drainage, sewerage, solid waste disposal, water supply system, public transport, traffic management, public safety, nutrition, arboriculture, ecology and environment, etc. As the industrial undertaking is restricted to a local area, the above conditions are also local area specific and are contained within a geographic area. *National interest, health and nuisance*, alongwith their contemporary variants (discussed above) have to be weighed and

⁸ Year of the Ordinance.

evaluated in order to achieve organized and planned growth of industry in Punjab.

27. Purposive interpretation⁹ of the Ordinance shows that the law is geared to protect the social, environmental, ecological, civic and economic interests of the local residents while achieving planned and organized growth of industry in Punjab. This legislative policy under the Ordinance, synchronizes with the constitutional values, as set out in the preamble, of social and economic justice and provides safeguards to the legitimate interests of backward and depressed classes. It also promotes the Fundamental Rights (articles 9, 14, 18 etc.) and the Principles of Policy, in particular, the promotion of social and economic well-being of the people (article 38).

28. The permission required under section 3 of the Ordinance is for the establishment of an industrial undertaking in a *local area*. Therefore, when an existing sugar mill, located in Central Punjab (local area), is shifted or relocated to the South of Punjab (another local area), it is no different from a sugar mill being established for the first time in that local area. Relocation means “to move to or establish in a new place; to become established in a new residence or place of business.”¹⁰ The word “establish” under section 3 means to “set up on a firm or permanent basis¹¹” or “start or create a new organization¹²” and is not concerned whether the establishment is totally new or a result of relocation or shifting from another local area. Relocation or shifting, at best, can be a part of the business plan of an industrial undertaking as it signifies relocation or shifting of the mills or the plant & machinery, but has no relevance for the purposes of section 3 of the Ordinance, which only deals with the setting up or *establishment* of an industrial undertaking or mills in a local area. The vintage of the mills or the plant and machinery is not relevant. What is relevant is the protection of the local area and its residents and the effects of such establishment on National Interest. *Establishment* in

⁹ see 2015 CLC 272 & PLD 2014 Lahore 583

¹⁰ The American Heritage® Dictionary of the English Language, Fifth Edition, URL: <https://ahdictionary.com/word/search.html?q=relocate>

¹¹ Oxford Dictionary (URL: <https://en.oxforddictionaries.com/definition/establish>)

¹² Oxford Advanced Learner’s Dictionary p.498

the context of any local area amounts to setting up of a new industrial undertaking. Similarly, the word “new” sugar mill, under *Ban Notification* means new in the context of the local area and its residents, but not for the owners or proprietors of the industrial undertaking. It is of little significance for the local area and its residents or the national interest, if an existing industrial undertaking is being relocated and shifted to a new local area or is a totally new industrial undertaking. The purpose and focus of the law is to ensure organized and planned growth in the local areas of Punjab, hence every local area matters and establishment in any local area by an industrial undertaking has to be examined and evaluated afresh by considering the parameters provided under section 3 of the Ordinance.

29. The appellant sugar mills, even though they were relocating or shifting, for the purposes of the Ordinance, they were being established anew in the new local area (South of Punjab) and required prior permission of the Government under section 3 of the Ordinance. Thus, relocation/shifting of the sugar mill, infact amounts to, setting up and establishing a new sugar mill in the local area and is regulated under section 3 of the Ordinance. *Relocation Notification*, therefore, offends the *Ban Notification*.

B. Whether the setting up of the sugar mills was in violation of the law and restraining orders passed by the Court, if so, its effect ?

30. The appellants not only established their sugar mills by relying on a wholly misconceived and self-styled interpretation of the *Ban Notification* and section 3 of the Ordinance, they also, with contemptuous obstinacy disregarded the restraining orders of the Court. This is the bleakest aspect of the case, which tells tales of how court orders have been repeatedly flouted and rule of law trampled upon by the appellants.

31. HWSM and ISML started shifting/relocating their sugar mills in the year 2015 when the *Ban Notification* was in vogue. Besides the ban, section 3 of the Ordinance unequivocally ordained that no industrial undertaking can be set up without prior permission of the Provincial Government. Any violation of section 3 attracts sanctions

and penalties under sections 4 and 8 of the Ordinance. It is an admitted fact that, HWSM and ISML never obtained any permission, under the Ordinance, for the establishment of the sugar mills in the South of Punjab. They also went ahead to establish their sugar mills despite the *Ban Notification*. The establishment of the sugar mills has been in violation of the law. Furthermore, the sugar mills blatantly violated a series of restraining orders passed by the Court. Following is the trajectory of various court orders restraining HWSM and ISML from shifting and relocating the sugar mills to the South of Punjab:

- i. On 08.05.2015 a Single Bench of this Court comprising of Mr. Justice Amin-ud-Din Khan in W.P. No. 6802 of 2015 titled *Fatima Sugar Mills Ltd. v. Government of Punjab etc.* directed, inter alia, HWSM (Respondent no. 10 in the said petition) **to maintain status quo at the spot with a specific direction that no further construction will be raised.** (emphasis supplied)
- ii. In another Writ Petition bearing No. 7006 of 2015 titled *Ashraf Sugar Mills Ltd. etc. v. Province of Punjab etc.* **similar order was passed** by a learned Single Bench of this Court comprising of Mr. Justice Amin-ud-Din Khan against HWSM on 13.05.2015.
- iii. Yet another order was passed against HWSM and ISML on 29.05.2015 in W.P. No. 12879/2015 titled *JDW Sugar Mills Ltd. v. Govt. of Punjab etc.* by a Single Bench of this Court comprising of one of us (Syed Mansoor Ali Shah, J) restraining HWSM and ISML **“from setting up or enlarging their existing sugar mills in terms of the bar contained in notification dated 06.12.2006.”** (emphasis supplied)
- iv. Subsequently, it was brought to the notice of this Court that the restraining orders were being violated by HWSM and ISML and a prayer for appointment of local commission was made by means of C.M. No. 4080/2015

in W.P. No. 12879/2015. Vide Order dated 18.06.2015 (per Syed Mansoor Ali Shah, J) Mr. Irshad Hussain Watto, Advocate was appointed as local commission to verify the factual position on the ground relating to HWSM and Mr. Muhammad Safdar Shaheen Pirzada, Advocate was appointed as local commission to inspect the construction site of ISML. The said local commissions were mandated to submit report along with photographs regarding the status and nature of construction at the site of HWSM situated in Mauza Jagmal, Tehseil Jatoi, District Muzaffargarh and at the site of ISML located at Channi Goth, District, Bahawalpur.

- v. Mr. Irshad Hussain Watto, Advocate, the local commission in HWSM submitted his report and concluded that:

“[I]n my humble opinion construction process to install a new sugar mill is under process by Haseeb Waqas Sugar Mills Ltd. at Mauza Jagmal, Muzaffargarh. A continuous construction work is under process and the construction work was stopped temporarily just two hours prior to the local commission proceedings,” (emphasis supplied)

- vi. Mr. Safdar Shaheen Pirzada, Advocate, the local commission in ISML opined in his report that:

“[D]uring the entire visit both the parties remained with the undersigned who shared their views regarding construction, its nature and age. It is considered view of the undersigned that construction of civil work is stopped 5-7 days ago, while the nature and volume of construction categorically bespeak that it is a Sugar Mill foundation. There is no doubt that most of the foundation/civil work has been completed after the issuance of the injunctive order dated 29.05.2015 in which the Hon’ble Court have restrained the respondent No. 12 to 15 from setting or enlarging their existing sugar mills as it is clear from the

freshness of construction work shown through various pictures.” (emphasis supplied)

- vii. This Court (Muhammad Farrukh Irfan Khan, J) vide Order dated 06.07.2015 passed in W.P. No. 12879/2015 observed as follows:

“6. In view of the reports submitted by the Local Commissions prima facie a case of contempt of court is made out against respondents No. 12 & 13 (ISML and HWSM respectively). However, further proceedings in this regard will be taken after perusing their replies.” (emphasis supplied)

- viii. It requires mention here that after the said Order was passed learned Counsel for ISML submitted C.M. No. 05/2015 in W.P. No. 12879/2015 whereby it was clarified on behalf of ISML that the construction work being undertaken by ISML at the site was meant for installation of a power plant and did not relate to new installation or shifting of a Sugar Mill. On 28.07.2015 learned counsel for HWSM also took the same plea before the Court that the construction work was in relation to a power plant. This being so, this Court (Muhammad Farrukh Irfan Khan, J) reinforced the earlier restraining orders by passing the following order in W.P. no. 12879/2015 even dated:

“7. May that as it be, no further construction work whether for a power plant or for any other purpose will be undertaken by respondents No. 12 and 13 until a specific order is obtained from this Court.....” (emphasis supplied)

- ix. The matter again came up before this Court (Mamoon Rashid Sheikh, J) on 29.09.2015 when the Court was informed of the continuing breach of its earlier restraining orders and a contempt petition bearing No. CrI. Org. No. 710-W/2015 was also moved. Taking stock of the situation, this Court warned HWSM and ISML while passing the following order:

“6. It is clarified that if the various restraint/stay orders of the Court are being violated or have been violated by any person/company then strict action shall be taken against the violators in accordance with the law.

7. The learned counsel representing the various respondents are directed to apprise the respondents of the instant order and to advise them to strictly follow the restraint/stay orders in letter and spirit.” (emphasis supplied)

- x. This was followed by a C.M. No. 06/2015 in W.P. No. 12879/2015 whereby it was pointed out that in sheer violation of the above restraining orders, construction work at the sites of HWSM and ISML was being carried out. This Court (Muhammad Farrukh Irfan Khan, J) took it up on 16.10.2015 and sought replies from the said Mills and also directed the DCOs of Bahawalpur and Muzaffargarh Districts to submit their respective reports regarding the issue.
- xi. Afterwards, another application bearing C.M. No. 07/2015 in W.P. No. 12879/2015 was filed whereby it was prayed, inter alia, that the advocates who had earlier visited the respective sites of construction as local commissions be again appointed as such to re-inspect the said sites. This Court (Muhammad Farrukh Irfan Khan, J) after conducting the hearing on the said application passed order on 26.10.2015 and appointed Mr. Muhammad Safdar Shaheen Pirzada, Advocate as local commission to visit the construction site of ISML located at Channi Got, District Bahawalpur and also appointed Mr. Irshad Hussain Wattoo, Advocate as local commission to visit the construction site of HWSM situated in Mauza Jagmal, Tehsil Jatoi, District Muzaffargarh. This Court also directed the law officer to obtain reports from DCOs as visualized by the preceding

order. Mr. Safdar Shaheen Pirzada, Advocate (Local Commission) in his report about ISML reported:

“Both of the parties have contrary claims regarding the status and nature of the construction. According to the humble opinion of the undersigned/local commission overall status and natures of the work is abundantly clear from the photographs taken during the presence of both parties, which demonstrates that 60% to 70 % (approximately) civil as well as mechanical work of the project i.e. Ittefaq Sugar Mills Limited stood completed. As far nature of construction is concerned, no doubt it is a sugar mill not power project and construction is being carried out at quite high pace and the work is stopped only couple of days ago as mentioned above and shown by way of pictures at page No. 20”. (emphasis supplied)

xii. Mr. Irshad Hussain Watto, in his report regarding HWSM stated:

“In my humble opinion, respondent (Haseeb Waqas Sugar Mills) has installed a lot of machinery at site (Haseeb Waqas Sugar Mills Ltd at Mauza Jagmal Muzaffargarh). The respondent has completed about 65% to 75% civil as well as mechanical work at site. Further, in my opinion regarding nature of construction, no doubt sugar mill is under-construction and continues construction work is under progress.” (emphasis supplied)

xiii. The *Relocation Notification* was suspended on 4.1.2016 in W.P. No.37/2016 by the learned single judge in the following manner:

“Subject to notice and in the meanwhile, the operation of impugned notifications AEA-III-3-5/2011 (Vol-VIII) dated 04.12.2015 and No. AEA-III-3-5/2011 (Vol-VIII) dated 04.12.2015 shall remain suspended. The respondents are directed to maintain status quo with respect to shifting and relocation of the existing sugar mills from one district to districts of Bhawalpur, Muzzafargarh, Rajanpur, Rahimyar Khan or elsewhere in the Punjab.” (emphasis supplied)

32. The above is a detailed narrative depicting the desecration of the court orders which were passed from time to time restraining HWSM and ISML from constructing and establishing the sugar mills in the south of Punjab. We confronted the learned counsel for HWSM and ISML with the above orders of the Court and sought their explanation, but they failed to render any plausible justification. These sugar mills did not even bother to file any objections against the Reports of the local commissions, which reconfirms the veracity of these Reports. We also note with grave concern that ISML endeavored to mislead this Court by misrepresenting that the construction on site was being carried out for the purpose of setting up a power plant. HWSM also took the same plea. Now that it is admitted position that HWSM and ISML have become operational at their new locations in the South of Punjab, the plea regarding construction of power plant was no less than a fraud played on the Court.

33. In the case of CSML no permission was sought under section 3 of the Ordinance or under the *Relocation Notification*. The *Relocation Notification* was suspended on 04.01.2016 by the learned Single Judge in W.P. No.37/2016 and in W.P. No.23145/2016 the learned Single Judge passed the following order on 01.07.2016;

“... Subject to notice for the above said date and in the meanwhile the parties are directed to maintain status-quo until the next date of hearing.”

Inspite of the above order, CSML was established and went into operation in November, 2016. Court order was totally ignored. The saddest part is that CSML admittedly belongs to Mian Muhammed Nawaz Sharif, former Prime Minister and his family (see Form As for the years 2015-2016 placed on the record by Securities Exchange Commission of Pakistan).

34. The Three Sugar Mills, in disregard of the law and the Court orders relocated, completed construction of the sugar mills and went into operation at the new locations in the South of Punjab. The operations of the Three Sugar Mills were stopped and the said mills

were ordered to be sealed vide interim orders dated 14.02.2017 and 02.03.2017 passed by this Court in ICA No. 1456/2017.

35. In spite of the restraining orders of this Court, the Three Sugar Mills have been established and operationalized. It has also been submitted by the Government that several sugar mills in Central Punjab belonging to other established industrial groups of the country were facing similar operational and financial difficulties as the Three Sugar Mills, however, no other sugar mill adopted this course of lawlessness. Initially, we were minded to keep the said mills sealed till such time that they procure permission under the Ordinance, if and when, the ban on setting up new sugar mills were to be lifted, however, considering that if Court orders are allowed to be disobeyed by the elite, it would destroy the trust and confidence of the people in the system of justice. It would also debilitate and enfeeble the foundations of the rule of law in country. We cannot let this happen. The strength of our democracy is in its core values of fairness, justice and accountability. Any step taken in violation of the restraining order of the Court has to be reversed and the parties are bound to restate and restore the original position as it was on the day when the restraining order was passed. Any compromise on this principle will decimate the sanctity of court orders and make a mockery of the judicial system. The august Supreme Court of Pakistan in *Bakhtawar etc. v. Amin etc.* (1980 SCMR 89) held:

“6.It is well settled that when by contravening an injunction order the party against whom the order is passed has done something for its own advantage to disadvantage of the other party, it is open to the Court under its inherent jurisdiction to bring back the party to a position where it originally stood, as if the order had not been contravened. The exercise of this inherent power is based on the principle that no party can be allowed to take advantage of his own wrong in spite of the order to the contrary passed by the court.”

.....

“9.....A cumulative study of these provisions will show that securing compliance and execution of an order of injunction to restore or reconstruct the khal by directing arrest and detention, etc. of (as this term is usually used) a judgment debtor is an independent subject by itself whereas punishing a judgment

debtor for violation of the injunction of status quo is quite a different matter altogether though in certain respects apparently they may look to be overlapping but that is only incidental. The object of first is to seek compliance by a, Court of its orders as otherwise these orders would be a mere farce. The aim of the second machinery is the punishment of the defaulter. The former is regulated by section 58 whereas the latter by Order XXXIX, rule 2 (3), C.P.C. The former is applicable when stage for execution has not passed out or in other words the order is still capable of execution whereas the latter is attracted at all stages. The plea of double jeopardy thus fails and is hereby repelled.”

36. This Court in *Iftikhar Ali v. Javaid Dastager Mirza and 6 others*, (PLD 1975 Lah. 126) ruled:

“5.....An injunction is a most solemn and authoritative form of order made by the Court expressly enjoining a party either to do a particular act, in which case the injunction is known as a mandatory injunction, or to refrain from doing a particular act, in which case the injunction is known as a prohibitory injunction. When an injunction order has been issued, it must be obeyed; and the only remedy of the aggrieved party is to come up in appeal to a superior Court to have the order vacated. So long as the order stands and its operation has not been suspended by another Court or by the Court which passed the order, it will not be tolerated that any person should disobey that order. It is so because the administration of justice can only be effective if it has the means to enforce Court orders and to punish acts tending to impair public confidence in the authority or integrity of the Judges who administer the course of justice. In *Spokes v. Banbury Board of Bealth* (1865) L R 1 Eq. 42, Wood, V-C., said that "the simple and only view is that an order must be obeyed, that those who wish to get rid of that order must do so by the proper course, an appeal. So long as it exists, the order must be obeyed, and obeyed to the letter, ". Again, in *Knight v. Clifton* (1971) 2 All E R 378 at p. 393 (C A) Sachs, L. J., observed that "when an injunction prohibits an act, that prohibition is absolute, and is not to be related to intent unless otherwise stated on the face of the order" In *Eastern Trust Co. v. McKenzie Mann & Co. Ltd.* 1915 A C 750 (P C), Sir George Farwell observed that it should perhaps be added that an interim or interlocutory injunction has the same force as a final order, and that the same principles of obedience apply. It is thus settled that a person cannot disregard an order or an injunction of a Court, and if he, in fact, disobeys it, he does so at his peril.”

.....

“8.... Interference with the orders of the Courts affects the administration of justice. It is for the good not of the plaintiff or

of any party to the action, but of the public, that the orders of the Court should not be disregarded, and that people should not be permitted to assist in the breach of those orders in what is properly called contempt of Court.....”

37. In Mst. Hamida Akhter vs. Nazir Muhammad and 2 others, reported as **(1995 CLC 2020)** the following order was passed:

“8. Since the entire construction has been made by outrageously disgracing the order of status quo by respondents 2 and 3 deliberately therefore, they have to remove the unlawful construction and have to restore the original position as existed on the day when the order of status quo was issued. In case they fail to remove the superstructure within two months, they shall be sent to civil prison for one month and the property shall stand attached for securing compliance and execution of this order.”

38. In Meera Chauhan vs Harsh Bishnoi & Anr, **2007(1) R.C.R.(Civil) 597** the Indian Supreme Court held:

“17. At the same time, it is also well settled that when parties violate order of injunction or stay order or act in violation of the said order the Court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order.”

39. Similarly, in Mohd. Imthiazuddin and others versus E. Balaveera Raghavaiah, **(1996(1) Andh LD 1230)** it was laid down:

“7..... of status quo ante is available not only in a civil contempt but a criminal contempt as well. The Full Bench has held that in case of violation of or disobedience to orders of the Court, the court can grant temporary mandatory injunction pending a contempt petition or independent of it and pending a decision on the desirability of issuing a temporary mandatory injunction and restoration of status quo ante, the court can pass such orders or give such directions of interim nature for restoration of status quo ante or to ensure that until issue of the grant of mandatory injunction and restoration of status quo ante, no injury is caused.”

40. In view of the above law and the present circumstances of the case, we direct the Three Sugar Mills to dismantle and remove their sugar mills (plant & machinery) from the present location and restore and reconstitute the original position as it stood on the day when the first stay order was passed in their case. The Three Sugar Mills are directed to restore the original position within a period of **three months** from today. Government will submit progress report on the administrative side. In case the order is not complied with, the office shall put up this case before the court for appropriate orders. This is without prejudice to the proceedings initiated against the Three Sugar Mills under sections 4 and 8 of the Ordinance.

C. Whether Relocation Notification dated 04.12.2015 is ultra vires the Ordinance and smacks of malice ?

Scope of Section 11

41. *Relocation Notification* has been issued by the Government while exercising power of granting exemption under section 11 of the Ordinance. Section 11 states that the Government can exempt any industrial undertakings or class of industrial undertakings from the provisions of the Ordinance. Section 11 does not provide any express statutory guideline or parameters for the grant of exemption by the Government. The executive discretion under section 11 is, therefore, unstructured and unguided. Such unfettered powers are susceptible to abuse and are considered to be ex-facie discriminatory, hence not permissible under the Constitution and the law. In order to save the constitutionality and validity of the power/discretion vested in the Government under section 11, the said provision is read down and the exercise of discretion structured in the light of the Ordinance.

42. Organized and planned growth of industries under the Ordinance is actualized by protecting the following three fundamental considerations:

- i. National Interest; or
- ii. health of the residents of the local area, and

- iii. prevention of nuisance to the residents of the local area.

This is the legislative policy under the Ordinance. The power or discretion to exempt enjoyed by the executive cannot be exercised in a manner that frustrates or defeats the legislative policy under the Ordinance, as it rests on public interest. Power to exempt under section 11 is, therefore, read down¹³ and restricted to situations where the Government is satisfied that the substantive requirement of section 3 is fully met or theoretically speaking, where there exists such an overwhelming justification (for reasons to be recorded) to override the three fundamental considerations mentioned above for even a greater public good.

43. Section 11 can, therefore, act as a stimulus for national development and growth. Government in order to promote a particular industry can grant an exemption to the investors from making a formal application and seeking an approval, provided the Government has first satisfied itself that the three substantive requirements of section 3 have been fully met. Similarly, Industrial Estates can be set up by the Government to incentivize people to set up industries. This can easily be achieved through an exemption under section 11, after the Industrial Estate (local area) meets the substantive requirement of section 3. The power of exemption under section 11 is, therefore, read down and the discretion enjoyed by the Government is so structured that it considers and meets the substantive requirements of section 3 of the Ordinance. Exemption is, therefore, an enabling provision. It provides facility for businesses desirous of setting up industry. At this junction it is important to point out that it is section 3 that can impose restrictions on establishment of industrial undertakings and not section 11. If the Government is of the view that an overall ban is to be imposed in a local area(s) it can do so through a notification under section 3. After the imposition of the ban, there is no need to entertain applications for establishment of industrial undertakings in that local area. The power to issue a ban for the local

¹³ see 2016 SCMR 931 & PLD 2014 Lahore 221

area and freeze the application process under section 3 is now settled by the august Supreme Court of Pakistan in *Tariq Khan Mazari and 3 others v. Government of Punjab through Secretary Industries and 3 others* (PLD 2016 S.C. 778) which upholds the *Ban Notification*.

44. We have examined the chain of notifications since 1986 under section 11 of the Ordinance. These notifications instead of granting an exemption from section 3, actually impose restrictions and conditions which amount to offending the legislative policy under the Ordinance. We do not wish to comment on the previous notifications as they are not under challenge before us and, therefore, restrict ourselves to the latest and impugned *Relocation Notification*.

Relocation Notification

45. Earlier in the judgment we have held that *relocation* is at best a business term and has no relevance for the purposes of section 3 which only provides for *establishment* of a new industrial undertaking in the local area. Having held that *relocation*, for the purposes of the Ordinance, is no different from *establishment of a new industrial undertaking* in the local area, the *Relocation Notification* cannot co-exist with the *Ban Notification* and, therefore, has no legal basis or justification.

46. This brings us to the vires and legality of the *Relocation Notification*, when examined in the context of the Ordinance. The Notification provides a new concept of *relocation*, which can co-exist with a ban on setting up of a new sugar mill. Clause 5 of the *Relocation Notification* imposes a ban on setting up of new sugar mills, yet relocation and consequent setting up of sugar mills in the same local area is permissible subject to other conditions. This shows that *relocation*, according to the Government, is a new concept, that is different from *establishment* of a new sugar mill envisaged under section 3. A concept, that can be operationalized while there is a ban under section 3. Review of clauses 6 to 8 of the *Relocation Notification* shows that the Government under section 11 has tried to construct a legislative scheme parallel to section 3, allowing relocated

sugar mills preference over the substantive requirements of section 3 or overriding the requirements of section 3 on the grounds of relocation. The *Relocation Notification* renders the *Ban Notification* or the concept of *Ban* totally irrelevant. There is a clear usurpation of legislative policy under the Ordinance by the Government and as a result a blatant abuse of the limited powers available to the Government under section 11.

47. The concept of relocation has not been introduced through an amendment in the Ordinance but under section 11 which does not authorize the Government to amend or alter the legislative scheme of the Ordinance. In fact the executive discretion under section 11 is regulated and controlled by section 3. The *Relocation Notification* announces that relocation does not amount to establishment of a new sugar mill in the local area but is a class of its own and must be given special preference and such relocation can also take place during a ban on the establishment of a new sugar mill which means that relocation of a sugar mill need not be examined on the touchstone of national interest or on the ground of public health and nuisance in the local area. *Relocation Notification* wrongly assumes that the relocation or shifting of an existing sugar mill from one local area to another does not affect the requirements of section 3 or in any manner upset the legislative assumptions behind the imposition of a ban on the establishment of new sugar mills. *Relocation Notification* totally overshoots and overreaches the scheme of the Ordinance and is, therefore, clearly *ultra vires* the scheme of the Ordinance and not sustainable in law. Notification dated 17.09.2002 as amended by the *Ban Notification* stands restored.

48. It has also been argued, in the alternative, that the *Relocation Notification* can be saved by treating it as Rules under section 13 of the Ordinance. This argument is equally fanciful and misconceived. Rules under section 13 are to advance the purposes of the Ordinance. The *Relocation Notification* being *ultra vires* the Ordinance cannot stand as subordinate legislation and, therefore, cannot qualify as Rules under the Ordinance.

Malice

49. It has been held that relocation is no different from establishment of a new sugar mill in the local area and the *Relocation Notification* has been declared to be *ultra vires* the Ordinance. In this background, the very initiation of the relocation policy by the Government is diametrically opposed to the scheme of the Ordinance, and, therefore, bad in law and hopelessly misconceived. As a result, the entire process (summaries and reports) adopted by the Government leading to the *Relocation Notification* comes to naught and passes for malice-in-law.

The way forward

50. In case of change in circumstances i.e., ecology, economics, environment, etc, the Government is free to reconsider the ban in the light of section 3 of the Ordinance, if so advised. It is also clarified that in future if any sugar mill wishes to relocate or shift from one local area to another in Punjab, it can make an application under section 3, if there is no ban on the establishment of a new sugar mill. Any such application will be considered in accordance with the provisions of the Ordinance, especially section 3.

D. Whether the establishment of the Three Sugar Mills is in violation of the Punjab Environmental Protection Act, 1997 ?

51. Section 12 of The Punjab Environmental Protection Act, 1997 and Regulation 4 of the Pakistan Environmental Protection Agency Review of IEE and EIA Regulations, 2000 (“Regulations”), read with item B(4) of the Schedule II require that a sugar mill with total cost of Rs. 100 million and above requires an Environmental Impact Assessment (EIA). EIA is mandatory *before the commencement of the project*, which starts with the financial firming up and physical construction of the project. In the present case no Environmental Impact Assessment was undertaken. Water scarcity and climate change are some of the most serious challenges faced by this country. These challenges closely tie in with national interest and health issues provided in section 3 of the Ordinance. Setting up of the Three Sugar

Mills without an EIA approval under the law also renders the establishment of these mills illegal.

Relief

52. For the above reasons:

- i. **Impugned judgment dated 10.10.2016 of the learned Single Judge is upheld and it is declared that shifting/re-location of the aforesaid Three Sugar Mills, from Central Punjab to South of Punjab is in violation of the Ordinance, as well as, the *Ban Notification*, hence the establishment of the Three Sugar Mills is declared illegal and without lawful authority.**
- ii. ***Relocation Notification* dated 4-12-2015 is declared *ultra vires* the Ordinance, and is, therefore, set aside.**
- iii. **Three Sugar Mills are directed to restore and retribute the position, as it stood when the first restraining order was issued in their case, respectively, by dismantling and removing the said mills from the present location within a period of three months from today.**
- iv. **Commencement and setting up of the Three Sugar Mills in the South of Punjab, without Environmental Impact Assessment under the Punjab Environmental Protection Act, 1997 also renders the establishment of the Three Sugar Mills illegal.**

53. In view of above writ petitions mentioned in **Schedule A** are allowed and ICAs mentioned in **Schedule B** are dismissed.

(Shujaat Ali Khan)
Judge

(Syed Mansoor Ali Shah)
Chief Justice

APPROVED FOR REPORTING

SCHEDULE A
(WRIT PETITIONS)

| Sr. No. | Case W.P. No. |
|---------|---------------|
| 1. | 4046/2015 |
| 2. | 6802/2015 |
| 3. | 6972/2015 |
| 4. | 7006/2015 |
| 5. | 12878/2015 |
| 6. | 12879/2015 |

(Shujaat Ali Khan)
Judge

(Syed Mansoor Ali Shah)
Chief Justice

SCHEDULE B
(ICAs)

| Sr. No. | Case ICA Number |
|---------|-----------------|
| 1. | 1455/2016 |
| 2. | 1489/2016 |
| 3. | 1490/2016 |
| 4. | 1491/2016 |
| 5. | 1492/2016 |
| 6. | 1493/2016 |
| 7. | 1501/2016 |
| 8. | 1502/2016 |
| 9. | 1503/2016 |
| 10. | 1506/2016 |
| 11. | 1507/2016 |
| 12. | 1508/2016 |
| 13. | 1509/2016 |
| 14. | 1510/2016 |
| 15. | 1511/2016 |
| 16. | 1632/2016 |
| 17. | 1633/2016 |
| 18. | 1634/2016 |
| 19. | 1635/2016 |

(Shujaat Ali Khan)
Judge

(Syed Mansoor Ali Shah)
Chief Justice

SCHEDULE C

| Sr. No. | Notification No. | Date | Provision of the Ordinance under which issued | Effect |
|----------------|-------------------------|--------------------------------|--|--|
| 1 | AEA-III-4-1/85 | 26 th October, 1986 | S. 11 | Exempted all Industries from the operation of S. 3 of the Ordinance except the ones mentioned in the notification and in Schedule C attached to it. Sugar Industry was placed in Schedule C i.e. permission was required for setting up of Sugar Mill. |
| 2 | AEA-III-4-1/85 | 3 rd November, 1988 | S. 11 read with S.3 | Amended the 1986 notification and a ban was imposed upon setting up of sugar mills in the Divisions of Multan, Bahawalpur and D.G. Khan and District Okara |
| 3 | AEA-III-4-1/85 | 29 th April, 1989 | S. 11 read with S.3 | Amended the 1986 notification and Sugar Mills were omitted from Schedule C i.e. Sugar Mills generally were exempted from operation of S. 3 of the Ordinance but the ban of establishing Sugar Mills in the said three division and one district remained intact. |
| 4 | AEA-III-4-1/85 | 21 st June, 1989 | S. 11 read with S. 3 | Amended the 1986 Notification and Sugar Industry was again included in Schedule C i.e. the list of Industries for setting up of which permission was |

| Sr. No. | Notification No. | Date | Provision of the Ordinance under which issued | Effect |
|----------------|-------------------------|---------------------------------|--|---|
| | | | | necessary. |
| 5 | AEA-III-4-1/85 | 4 th March, 1990 | | ----- |
| 6 | AEA-III-4-1/85 | 7 th March, 1990 | S.11 read with S.3 | Did not relate to Sugar Industry |
| 7 | AEA-III-4-1/85 | 6 th August, 1990 | S.11 read with S.3 | Amended the earlier 1986 notification and excluded Tehseil Rahim Yar Khan and District Rajanpur from the ban of setting up of Sugar mills in South Punjab. |
| 8 | AEA-III-4-1/85 | 14 th October, 1990 | S. 11 read with S.3 | Amended the 1986 notification and also excluded Tehsil Bahawalnagar from the ban of setting up of Sugar Mills in South Punjab. |
| 9 | AEA-III-4-1/85 | 22 nd October, 1990 | | Not related to Sugar Industry |
| 10 | AEA-III-4-1/85 | 18 th November, 1990 | | Amended the 1986 notification and also excluded District Muzaffargarh from the ban of setting up of Sugar Mills in South Punjab |
| 11 | AEA-III-4-1/85 | 8 th January, 1991 | | Amended the earlier 1986 Notification and Sugar Mills were omitted from Schedule C i.e. exemption was granted for establishment of Sugar Mills in general while the location restriction mentioned above remained intact. |
| 12 | AEA-III-4-1/85 | 25 th April, 1991 | S. 11 read | Not related to Sugar |

| Sr. No. | Notification No. | Date | Provision of the Ordinance under which issued | Effect |
|---------|-------------------------|----------------------------------|---|--|
| | | | with S.3 | Industry |
| 13 | AEA-III-4-4/92 (PL-III) | 19 th December, 1994 | S.11 read with S.3 | Amended the earlier 1986 notification and further excluded Tehseil Depalpur from the ban of setting up Sugar Mills in the South. |
| 14 | AEA-III-3-9/91(A) | 21 st November, 1998 | | Amended the earlier 1986 notification and ban on setting up of sugar mills in whole of Multan and DG Khan Divisions was again imposed. BahawalPur Division (Excluding Tehseil Bahawalnagar) and District Okara were also included in the Ban. |
| 15 | AEA-III-3-4/91(II) | 12 th February, 2000 | S. 11 read with S. 3 | Not related to Sugar Industry |
| 16 | AEA-III-4-5/98 | 9 th March, 2000 | --- | Not Relevant |
| 17 | AEA-III-3-9/91 | 30 th September, 2002 | S.11 | Earlier 1986 notification was superseded. Ban was imposed upon setting up of new Sugar Mills and enlargement of existing Sugar Mills in the Districts of Multan, Sahiwal, Vehari, Khanewal, Pakpattan, Lodhran, Bahawalpur, Rahim Yar Khan, Bahawalnagar, DG Khan, Rajanpur, Layyah, Muzaffargarh and Okara. Other than these areas the Sugar Industry was |

| Sr. No. | Notification No. | Date | Provision of the Ordinance under which issued | Effect |
|---------|------------------|---------------------------------|---|--|
| | | | | exempted from operation of S. 3 of the Ordinance. |
| 18 | AEA-III-3-9/91 | 4 th September, 2003 | | Amended the earlier notification of September 2002 and imposed an omnibus ban on setting up of new sugar mills and enlargement of existing sugar mills anywhere in Punjab. |
| 19 | AEA-III-3-9/91 | 9 th October, 2003 | | Amended the earlier notification of September 2002. Ban was imposed upon setting up of new Sugar Mills in the Districts of Multan, Sahiwal, Vehari, Khanewal, Pakpattan, Lodhran, Bahawalpur, Rahim Yar Khan, Bahawalnagar, DG Khan, Rajanpur, Layyah, Muzaffargarh and Okara. However, enlargement of existing sugar mills was allowed. |
| 20 | AEA-III-3-5/2003 | 1 st April, 2004 | S. 11 read with S.3 | Amended the earlier notification of September 2002. Ban was imposed upon setting up of new Sugar Mills in the Districts of Multan, Sahiwal, Vehari, Khanewal, Pakpattan, Lodhran, Bahawalpur, Rahim Yar Khan, Bahawalnagar, DG Khan, Rajanpur, Layyah, Muzaffargarh, Okara and Toba Tek Singh. |

| Sr. No. | Notification No. | Date | Provision of the Ordinance under which issued | Effect |
|---------|---|---------------------------------|---|--|
| | | | | However, enlargement of existing sugar mills was allowed except Districts of Sahiwal, Pakpattan and Toba Tek Singh. |
| 21 | AEA-III-3-5/2003 | 12 th October, 2004 | S.11 read with S.3 | Amended the earlier notification of September 2002. Ban was imposed upon setting up of new Sugar Mills in the Province. However, enlargement of existing sugar mills was allowed except Districts of Sahiwal, Pakpattan and Toba Tek Singh. |
| 22 | AEA-III-3-5/2003 | 15 th July, 2005 | | Amended the earlier notification of September 2002. New Sugar Mills upto the capacity of 16,000 TCD was allowed. Enlargement was banned above the capacity of 16,000 TCD. |
| 22A. | Letter from Secretary Industries Department to all DCOs in Punjab | 23 rd November, 2005 | | All DCOs in Punjab were prohibited from issuing site clearance for establishment of Sugar mills and from carrying out any enlargement of any Sugar Mill until the decision of a committee formed to examine the location policy. The letter also suspended the implementation of July 2005 notification. |

| Sr. No. | Notification No. | Date | Provision of the Ordinance under which issued | Effect |
|---------|------------------------------|--------------------------------|---|--|
| 23 | AEA-III-3-5/2003 (Vol. III) | 6 th December, 2006 | S.11 read with S.3 | Amended the September 2002 notification in suppression of earlier amending notifications. Ban was imposed upon setting up of new sugar mills and enlargement in capacity of Sugar Mills in the Province. |
| 24 | AEA-III-3-5/2011 (Vol. VIII) | 4 th December, 2015 | S.11 | Relocation Policy Notification |

(Shujaat Ali Khan)
Judge

(Syed Mansoor Ali Shah)
Chief Justice