

**JUDGMENT SHEET  
IN THE LAHORE HIGH COURT, MULTAN BENCH,  
MULTAN  
JUDICIAL DEPARTMENT**

**Writ Petition No.17576 of 2018**

**Jamil Ahmed & others**

**Versus**

**Government of Pakistan through Secretary, Ministry of  
Communication, Islamabad & others**

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

Date of hearing: 22.01.2019.  
Petitioners by: M/s Muhammad Ali Siddiqui, Rai Husnain Nasir, Malik Sajjad Haider Maitla, Mahar Fakhar Raza Malana, Muhammad Suleman Bhatti, Malik Ghulam Qasim Rajwana, Muhammad Javaid Arshad, Hafiz Muhammad Naveed Akhtar, M. Sohail Iqbal Bhatti, Mian Muhammad Asif Rasheed Sial, Barrister Malik Kashif Rafique Rajwana, Ch. Bashir Ahmad Ansari, Sohail Ahmad Janjua and Muhammad Maalik Khan Langah, Advocates.  
Respondents by: M/s Barrister Malik Muhammad Yousaf Hanjra, Assistant Attorney General, Malik Muhammad Tariq Rajwana, Mian Muhammad Ashfaq Hussain, Rehmat Sahreen Khan and Asma Khan, Advocates.

**MUHAMMAD SAJID MEHMOOD SETHI, J.:** This consolidated judgment shall dispose of instant writ petition along with following connected writ petitions as common questions of law and facts are involved in these cases:-

1. **W.P.No.17120 of 2017** titled *Apex Petroleum Services & others v. Govt. of Pakistan, Ministry of Communication, Islamabad through its Secretary & others*
2. **W.P.No.1421 of 2018** titled *M/s Hussain Mills Ltd. v. General Manager, Pb-South NHA, Multan & others*

3. **W.P.No.1968 of 2018** titled Ahmed Fine Weaving Limited v. Government of Pakistan, Ministry of Communications through its Secretary, Islamabad & others
4. **W.P.No.2432 of 2018** titled M/s Seven Star Petrol Pump (PSO) v. Chairman, National Highway Authority, Islamabad & others
5. **W.P.No.3535 of 2018** titled Sheikh Oil & Co. v. Govt. of Pakistan, Ministry of Communication, Islamabad through its Secretary & others
6. **W.P.No.10080 of 2018** titled Hamza Flexible Printing & Packages (Pvt.) Ltd. v. Govt. of Pakistan, Ministry of Communication, Islamabad through its Secretary & others
7. **W.P.No.10081 of 2018** titled S.M. Food Makers Limited v. Govt. of Pakistan, Ministry of Communication, Islamabad through its Secretary & others
8. **W.P.No.10082 of 2018** titled Vision Foods & Packaging (Pvt.) Ltd. v. Govt. of Pakistan, Ministry of Communication, Islamabad through its Secretary & others
9. **W.P.No.10083 of 2018** titled Volca Food International Limited v. Govt. of Pakistan, Ministry of Communication, Islamabad through its Secretary & others
10. **W.P.No.10084 of 2018** titled S.M. Food Makers Limited v. Govt. of Pakistan, Ministry of Communication, Islamabad through its Secretary & others
11. **W.P.No.10111 of 2018** titled M/s Al-Noor Flour Mills v. Government of Pakistan through Secretary, Ministry of Communication, Islamabad & others
12. **W.P.No.10338 of 2018** titled Syed Qasim Husnain Naqvi v. Government of Pakistan through Secretary, Ministry of Communications, Islamabad & others
13. **W.P.No.10501 of 2018** titled Memon Motors Pvt. Ltd. & others v. Government of Pakistan, Ministry of Communications through its Secretary, Islamabad & others
14. **W.P.No.13677 of 2018** titled Yaqub Soap Factory Limited v. Government of Pakistan, Ministry of Communication through its Secretary, Islamabad & others
15. **W.P.No.13678 of 2018** titled Yaqub Packages v. Government of Pakistan, Ministry of Communication through its Secretary, Islamabad & others

16. **W.P.No.17478 of 2018** titled Zahid Hussain & another v. Government of Pakistan through Secretary, Ministry of Communication, Islamabad & others
17. **W.P.No.17587 of 2018** titled Rao Abid Ali Khan v. Government of Pakistan through Secretary, Ministry of Communication, Islamabad & others
18. **W.P.No.17932 of 2018** titled Mahmood Textile Mills Limited v. National Highway Authority & others
19. **W.P.No.18132 of 2018** titled Talib Hussain v. Govt. of Pakistan through Secretary, Ministry of Communication, Islamabad & others
20. **W.P.No.18136 of 2018** titled Muhammad Kashif Bashir & others v. Government of Pakistan through Secretary, Ministry of Communication, Islamabad & others
21. **W.P.No.18139 of 2018** titled Muhammad Iqbal Khan v. Govt. of Pakistan through Secretary, Ministry of Communication, Islamabad & others
22. **W.P.No.18145 of 2018** titled Roomi Industries (Pvt.) Ltd. v. Govt. of Pakistan through Secretary, Ministry of Communication, Islamabad & others
23. **W.P.No.677 of 2019** titled Muhammad Ali & another v. Government of Pakistan through Secretary, Ministry of Communication, Islamabad & others
24. **W.P.No.919 of 2019** titled Muhammad Hanif v. Government of the Pakistan through Secretary, Ministry of Communication, Islamabad & others
25. **W.P.No.989 of 2019** titled Mutee-ur-Rehman v. Government of Pakistan through Secretary, Ministry of Communication, Islamabad & others

2. Through instant petition, petitioners have assailed the vires of the National Highways and Strategic Roads (Control) Rules, 1998 (“**the NHA Rules 1998**”) as amended in 2002, specifically Rules 4, 8 & 12 read with Chapter – IV of Regulatory Framework and Standard Operating Procedures for Preservation and Commercial Use of Right of Way (ROW) - 2002 (“**Regulations 2002**”), whereby requirements of obtaining NOC and payment of approach rental charges (“**ARC**”) have been imposed, being *ultra vires* the

mandate of the National Highway Authority Act, 1991 (“**the Act of 1991**”) and the Constitution of the Islamic Republic of Pakistan, 1973 (“**the Constitution**”). Petitioners have also assailed recovery notices for payment of outstanding dues / rental charges, issued by the respondent-authority and have sought direction from this Court to restrain the respondent-authority from taking any coercive measures against them.

3. Learned counsel for petitioners submit that demand in the shape of impugned notices, raised by the respondent-authority, being against the provisions of the Act of 1991 and Articles 4, 8, 9, 18, 23, 24 & 38 of the Constitution, is *ultra vires* the basic principles of natural justice and equity including Easement Rights of the petitioners attached with their respective privately owned properties / businesses. They add that the rules and regulations framed thereunder are always subservient to the provisions of main statute. Further submit that the Act of 1991 does not provide that respondent-authority can rent out its any function, license, authority, property, road and access to any person, therefore, demand of any type of NOC / registration fee or ARC is not only in violation of the provisions of the Act *ibid*, but also in derogation of the provisions of the Constitution. They add that the only charges, which can be received by the respondent-authority under the statute, is the tolls, one of the sources of income of respondent-authority as mentioned in Section 21(3) of the Act of 1991, whereas no license fee or ARC is provided in the said Act. They further submit that tax or any other charges can only be imposed in accordance with the mechanism provided in Article 70 of the Constitution. In support of their submissions, they have relied upon *Khawaja Ahmad Hassaan v. Government of Punjab and others* (PLD 2004 Supreme Court 694 = 2005 SCMR 186), *Suo Motu Case No.13 of 2009* (PLD 2011 Supreme Court 619), *Suo Motu Case No.11 of 2011* (PLD 2014 Supreme Court 389), *Hyderabad Cantonment Board v. Raj Kumar and others* (2015 SCMR 1385),

Pakistan Telecommunication Authority (PTA), Islamabad through Chairman v. Pakistan Telecommunication Company Limited, Headquarters, G-8 Markaz, Islamabad (2016 SCMR 69), Messrs D.S. Textile Mills Limited v. Federation of Pakistan and others (PLD 2016 Lahore 355), Independent Newspapers Corporation (Pvt.) Ltd. and others v. Federation of Pakistan and others (PLD 2017 Lahore 289), Continental Biscuits Ltd. v. Federation of Pakistan through Secretary Defence, Ministry of Defence, Islamabad and 3 others (2017 PTD 1803) and Mazhar v. Station House Officer, Police Station Garh, Faisalabad and another (2018 YLR Note 115).

4. On the other hand, learned Law Officer, duly assisted by learned Legal Advisors for respondent-authority, while referring to Sections 2(k), 2(j), 7, 10, 31 & 32 of the Act of 1991, contends that the Rules of 1998 have been framed in accordance with the authority assigned by the parent statute, therefore, the demand of NOC / registration fee and ARC is strictly in accordance with law. He further contends that issue to this extent has already been dealt with by this Court in Irshad Noor CNG Station through Proprietor v. National Highway Authority, Islamabad and others through Chairman (2016 CLC Note 15), Messrs Colony Sugar Mills Ltd. through Deputy Manager v. Province of Punjab and 5 others (2017 PTD 406) and Muhammad Khalid Qureshi v. Province of Punjab through Secretary, Excise and Taxation Department, Lahore and another (2017 PTD 805).

5. Arguments heard. Available record perused.

6. Respondent-authority has been established under the Act of 1991 for planning, development, operation and maintenance of National Highways and Strategic Roads and matters connected therewith. The management of the respondent-authority vests with the Executive Board, which is authorized to exercise all powers, functions and does all acts and things, which are to be done by the respondent-authority. Precise submission of the petitioners is that

respondent-authority has no authority to issue NOC and demand ARC as the Rules 4, 8 and 12 of NHA Rules 1998 read with Regulations in Chapter – IV of Regulations 2002 are ultra vires the Act of 1991 and the Constitution. In order to analyze the submission of the petitioners it is necessary to peruse the assailed Rules 4, 8 and 12 of NHA Rules which are reproduced hereunder:

**“4. Prohibition to Construct or Layout any Means of Access:-** No person shall, without the consent, in writing, of the Authority, construct or layout any means of access to or from a national highway, motorway, strategic road or any other road or bridge declared as such under the Act.”

**“8. Construction of Means of Access to or From the Road or to Construct a Building, Structure and Other Amenities Within a Building Line:-** (1) Any person wishing to obtain the consent of the Authority to construct a means of access to or from the highway or to construct a building, structure and other amenities within the Building Line determined under Rule-5 or under any provincial law before the commencement of Act shall apply to the Authority for grant of its permission.

(2) The applicant shall furnish to the Authority such plans, other relevant documents and fees as it may require in this behalf as prescribed under NHA regulatory framework and standard operating procedures for preservation and commercial use of Right of Way (ROW).

(3) The Authority shall, subject to due consideration to highway safety and convenience of road users and if satisfied that the permission to construct a means of access to, or from, the highway or to construct a building, structure and other amenities within the building line may be granted, inform the applicant accordingly, subject to such conditions as it may deem fit to impose on payment of such fees as it may fix.

(4) In case the Authority is of the opinion that such permission may not be granted, it shall record its reasons, in writing, for refusal to grant such permission and inform the applicant accordingly with reasons for such refusal.”

**“12. License for the grant of permission to construct approach roads or culverts for the use of Government land for construction, installation of filling/CNG stations, other amenities and laying of utility lines through, across, under and over the road or bridge:-** (1) The authority may, at its discretion, with due regard to the safety and convenience of the road user and subject to such conditions as it may impose and on payment of such fees and rental/lease charges as it may fix, permit any person or agency to; (a) setup filling/CNG stations, hotel/motel, restaurants, sign boards, nurseries, shops, khokhas, hoardings, banners for a

specific period; (b) to carry any cable, wire, pipeline, drain, duct, sewer or channel of any kind through, across, under or over any national highway, motorway, strategic road and bridge under its control; (c) to manage the national highway, strategic road or bridge corridor including all amenities in sections or sub-sections or part thereof as commercial entity through management contractor on behalf of the authority, at a fee or ground rental charges prescribed by the authority in the duly executed contract agreement approved by the Board or as prescribed under Regulatory Framework and Standard Operating Procedures of the Authority.

(2) Any person or agency wishing to obtain the consent of the authority to construct or lay out a means of access to or from or to construct a building, structure and other amenities within ROW and building line to which restrictions have been applied by or under subsection (1) of rule 3, 6 and 11 and shall furnish with his application such plans and other particulars as may be prescribed by authority and the authority may refuse to grant the application or may grant the application subject to such conditions as it may deem fit to impose and ground rental charges and fees prescribed under Regulatory Framework and Standard Operating Procedures of the Authority.

(3) If the owner of CNG/Filling stations, restaurants, hotels/motels, factories, nurseries, shops/khokhas and any other amenities or Government agencies, departments, cantonment boards fails to pay the lease or ground rental charges in the prescribed time and fail to comply with the instructions of the authority, a surcharge fee shall be charged at the prescribed rates as given in the regulatory framework and standard operating procedures of the authority.

(4) The land utilized other than approach road as specified by NHA shall be mandatory for the applicant to pay ground rental charges as determined by DCO or prescribed by the Authority @ 7% of the land value."

7. Rule 4 of NHA Rules prohibits construction or laying out any means of access to or from a national highway, motorway, strategic road or any other road or bridge without written consent of the respondent-authority. As per Rule 8 of the Rules of 1998, any person can apply for the consent of respondent-authority for construction of a building or means of access etc. within the building line, which may be granted on the conditions, respondent-authority deems fit to impose including any fee / charges. Similarly, Rule 12 of the Rules of 1998 deals with license for the grant of permission to construct approach roads or culverts for the use of Government land for

construction, installation of filling / CNG Stations, other amenities and laying of utility lines through, across, under and over the road or bridge, which may be subject to any conditions imposed by respondent-authority. Under the authority of Rules of 1998, respondent-authority framed Regulation of 2002 and its Chapter-IV provides provisions to regulate procedure for lease of Government land for installation of filling / CNG Stations and NOC requirements including charges for using NHA land for approaches to filling / CNG Stations installed out of NHA ROW.

8. Bare perusal of the provisions of the Acts of 1991 shows that Section 10 of the Act of 1991 enlists the powers of respondent-authority including the power under Section 10(2)(viii) of the Act *ibid* to license facilities on roads under its control on such terms as it deems fit. Likewise, Section 10(2)(xiii) of the Act empowers the respondent-authority to raise funds (local and foreign) through borrowing, floating of bonds, sharing or leasing of assets or any other means, from time to time. Section 21(3) of the Act of 1991 enlists the funds respondent-authority have to its credit which not only includes the income from tolls under Section 21(3)(iv) but also other sums received by the respondent-authority, such as fees, damages costs, refund, forfeitures, sale proceeds, lease money rentals and fines under Section 21(3)(vii). Section 21(3) of the Act of 1991 is reproduced hereunder:

**“21. National Highway Authority Fund.— (1) ...**

**(2) ...**

**(3)** The National Highway Authority Fund shall have to its credit all funds received by the Authority from which the Authority can incur expenditure related to its functions including –

- (i) loans obtained from the Federal Government;
- (ii) other loans obtained by the Authority;
- (iii) grants made by the Federal Government;
- (iv) income from tolls;
- (v) funds provided by the Federal Government;
- (vi) foreign aid, grants and loans negotiated and raised by the Authority;

- (vii) all other sums received by the Authority, such as fees, damages costs, refund, forfeitures, sale proceeds, lease money, rentals and fines;
- (viii) income from the sale of assets, land or vehicles; and
- (ix) funds from floating bonds, shares or through any other means.”

9. ROW has been defined in Section 2(j) of the Act of 1991, which is reproduced hereunder:-

“Right of Way” (ROW) means the land acquired for the purpose of construction of a National Highway or any other road assigned to the Authority;”

The roads have also been defined in Section 2(k) of the Act *ibid*, according to which, “road” means a road including land within the right of way and all works, such as, carriageways, cartways, footpaths berms, side drains, culverts, bridges, tunnels, fences, posts, sign boards, plantation and lighting arrangements, intersections and medians assigned to the Authority.

10. Sections 31 & 32 of the Act of 1991 empower the respondent-authority to make rules and regulations. The said Sections are reproduced hereunder:-

**“31. Rules.—** The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.”

**“32. Regulations.—** The Authority may make regulations, not inconsistent with the rules, on all matters for which regulations are expedient.”

11. Aforementioned provisions of the Act of 1991 clearly shows that the impugned Rules regarding License, NOC, ARC and undertakings are totally in line with the parent statute. The power is vested with the Federal Government to make rules and respondent-authority can make regulations not inconsistent with the rules on all matters for which regulations are expedient. The Rules 4, 8 & 12 of the Rules of 1998 read with Regulations 2002 have been framed under the valid authority of law. Under the afore-mentioned Rules particularly Rules 3, 6, 11 & 12, any person / petitioner desirous of *inter alia* carrying out commercial activity has to obtain the consent in writing of the respondent-authority and pay the ARC. The

notices have been issued to the petitioners as per provisions of the Act of 1991 and the Rules of 1998. The purpose of delegating powers to respondent-authority to frame rules and devise regulations is only to facilitate implementation of the law to the best of its object and mandate. No vested or legal right of the petitioners has been infringed. Under the law, rules and regulations made under a statute are treated for the purpose of construction as if they were in the enabling statute and are to be of the same effect as if contained in the statute, and it is a settled law that the Courts should always lean in favour of validity of a Statutory Instrument and should be slow to strike it down and an interpretation, which saves the law, should be adopted rather than holding a law to be invalid, unconstitutional or ultra vires. Reference, in this behalf, may be made to the judgments reported as Pakistan Telecommunication Authority (PTA), Islamabad Through Chairman v. Pakistan Telecommunication Company Limited, Headquarters, G-8 Markaz, Islamabad (2016 SCMR 69), Mehreen Zaibun Nisa and others v. Land Commissioner, Multan and others (PLD 1975 SC 397), Multiline Associates v. Ardeshir Cowasjee and 2 others (PLD 1995 SC 423), Messrs Elahi Cotton Mills Ltd and others v. Federation of Pakistan through Secretary, M/o Finance, Islamabad and 6 others (PLD 1997 SC 582), Federation of Pakistan through Secretary, Ministry of Finance and others v. Haji Muhammad Sadiq and others (PLD 2007 SC 133), Syed Aizad Hussain and others v. Motor Registration Authority and others (PLD 2010 SC 983), and Dr. Tariq Nawaz and another v. Government of Pakistan through the Secretary, Ministry of Health, Government of Pakistan, Islamabad and another (2000 SCMR 1956).

12. Issue regarding grant of licenses and fixation as well as recovery of ARC by respondent-authority came before this Court in the case of Irshad Noor CNG Station (supra) in which it was held that NHA has authority to grant license facilities on roads and to

give its assets on lease. The road on which CNG Stations / Rice Mills of petitioners (in said writ petitions) were constructed, were under the control and management of respondent-authority and they were required to obtain NOCs to use the roads / ROW for their business. It was also observed that respondent-authority was empowered to grant consent for construction on the building line, approach roads or culverts etc. by imposing certain conditions including fee / rental charges. It was also noticed that Regulations were framed in 2002 deriving powers from the Act of 1991 and the Rules of 1998, wherein all the requirements for grant of NOC were mentioned including the charges for registration / NOC fee as well as charges for the establishment of CNG Stations. As the respondent-authority has been established to manage roads, therefore, the roads assigned to the authority are to be managed and operated by the authority on the terms as deemed fit by the authority. It has not been denied by any of the petitioners that roads on which their businesses exist are assigned to the respondent-authority, and therefore, the same are under control and management of the respondent-authority.

13. Learned counsel for the petitioners argued that no government or authority can compulsorily extract money from any class of persons either in form of tax, fee, charge or levy unless specifically authorized under the law and the parent statute does not empower the Government to make rules regarding ARC, hence, the impugned rules as well as demand are *ultra vires* the parent statute. This argument is devoid of merits for the reason that the parent statute clearly empowers the government to make rules for carrying out the purposes of Act of 1991 and one of the source of income of the respondent-authority, as mentioned in Section 23 of the Act of 1991, is sums received by the respondent-authority as lease money and rentals. The case law cited by learned counsel for petitioners is not applicable to the proposition in hand for the reason that in those cases, parent statute does not authorize the levy of tax, fee or charge

and keeping the relevant statute in view, the Superior Courts came to the conclusion that rules / provisions of law were *ultra vires* and impugned demand was not justified, thus, those cases are clearly distinguishable. Further, petitioners are estopped by their own words and conduct by submitting the owners / dealers undertakings to the answering respondents, wherein they have undertaken to pay the lease rental charges and rent of approaches to the respondent-authority before 31<sup>st</sup> July each year, payable in advance as required in the NHA Office letter in favour of NHA, Road Maintenance Account, Islamabad. Even otherwise, “license” means official or legal permission to engage in a regulated activity and it creates a corresponding duty on the part of beneficiary to abide by the terms and conditions mentioned therein.

14. It is not denied that some of the petitioners are using the approach road of respondent-authority within the ROW / between ROW and building line in violation of the restriction on ribbon development in respect of the National Highway / Motorway / Strategic Road and doing commercial activities, without permission / obtaining NOC and paying ARC within the meaning of the Rules of 1998. Petitioners are bound to get NOC from the respondent-authority and pay the ACR under the above referred Rules and their undertakings in shape of demand draft in favour of NHA, Road Maintenance Account, Islamabad for further process of NOC. Clause N of NOC, issued to the petitioners, mandates as under:-

“This NOC is liable to be cancelled at any stage on coming to the notice of National Highway Authority that any of the terms and conditions mentioned above is found to be bogus or has been obtained / arranged by mis-representation. In such case the ground rental charges deposited by the lessee, as advance of five years shall be forfeited in the name of NHA revenue account.”

15. Needless to say that that power to levy charges / taxes is a *sine qua non* for the State insofar as the same is essential for the purposes of generating financial resources and utilization of those resources for welfare of the public at large. Legislature enjoys

plenary power to impose taxes within the framework of the Constitution and such power rests on necessity as it is an essential and inherent attribute of sovereignty belonging to a matter of right to every independent State or Government. By exercising such powers, *mala fide* cannot be attributed to the Legislature. Wisdom of Legislature cannot be questioned by Courts as long as the law in question is not violative of fundamental rights guaranteed by the Constitution. As long as Legislature has competence to legislate, grounds or wisdom of Legislature remains its exclusive prerogative. Legislature is not debarred from promulgating provisions of law under the Constitution.

16. In view of the above discussion, the Rules of 1998 and Regulations 2002 are held to be *intra vires* the provisions of the Act of 1991 as well as the Constitution and the petitions to this extent are devoid of any merits. However, some of the petitioners claim that they are not covered by the said Rules but still the notices have been issued to them demanding ARC, and some also alleged that the impugned demand is excessive and is not in conformity with the Rules and Regulations framed by the respondent-authority itself. To this extent, the matter is remitted to respondent-authority. The petitioners shall appear before the respondent-authority along with copy of this Court's order and file objections/replies. The respondent-authority shall provide opportunity of being heard to the petitioners and decide the matter strictly in accordance with law within thirty days, from the date of receipt of certified copy of this order, and shall not take coercive measures against the petitioners till decision of the notices already issued. If any of the petitioners is not covered by the impugned Rules / Regulations or impugned demand is exaggerated, their grievance shall be redressed strictly in accordance with law.

17. In view of the above, this writ petition, along with all the aforementioned cases, is accordingly disposed of.

**(Muhammad Sajid Mehmood Sethi)**  
**Judge**

*Approved for reporting.*

**Judge**

**\*A.H.S.\***