

JUDGMENT SHEET

IN THE LAHORE HIGH COURT, LAHORE JUDICIAL DEPARTMENT

I.C.A No.61692 of 2021

Hamza Sugar Mills Ltd. & others

Versus

Federation of Pakistan & others

J U D G M E N T

Date of Hearing.	02-10-2023
APPELLANTS/PETITIONERS BY:	M/s Imtiaz Rashid Siddiqui, Shehzad A. Elahi, Ali Sibtain Fazli, Waseem Ahmad Malik, Shahryar Kasuri, Hasham Ahmad Khan, Salman Zaheer Khan, Raza Imtiaz Siddiqui, Jamshed Alam, Fasih ur Rehman, Rana Muhammad Afzal Razzaq Khan, Ch. Sabir Ali, Muhammad Mussadiq Islam, Waqas Ahmad Aziz, Shahzad Ahmad Cheema, Mian Muhammad Naeem Watto, Abad ur Rehman, Muhammad Umer Tariq Gill, Esa Ahmad Jalil, Shahzad Ahmad and Kaiven Hussain Mir, Advocates.
RESPONDENTS BY:	M/s. Asad Ali Bajwa, D.A.G & Ijaz Rehmat Basra and Mr. Muhammad Zain Qazi, Asst. Attorney Generals. Mrs. Samia Khalid, Addl. A.G. Mr. Imran Khan Klair, A.A.G with M. Amin, Chief Agriculture Policy Institute, Abdul Rauf, Cane Commissioner, Punjab and Adnan Nazir, Asst. Cane Commissioner, Punjab. Mr. Imran Rasool, Advocate for FBR.

Shahid Karim, J:-. This litigation includes a number of

Intra Court Appeals arising out of a judgment passed by a learned Single Judge of this Court and reported as

Munir Ahmad v. Government of Pakistan through

Secretary Finance Islamabad and 19 others (PLD 2022

Lahore 108) as well as constitutional petitions which were filed on a subsequent time and raised a common issue of law. These appeals and constitutional petitions

have been given in the appendix attached to this judgment as Appendix-I. There is a common thread running through these appeals and petitions and challenges converge on the following issue of law which is engaged before this Court:

- *Does the power to fix price of essential commodities such as sugar in the present case lie in the Federal Government or the respective Provincial Governments under the Constitution of Islamic Republic of Pakistan, 1973; and*
- *Whether the Price Control and Prevention of Profiteering and Hoarding Act, 1977 is a valid piece of legislation.*

2. Mr. Shehzad A. Elahi, Advocate, learned counsel for the appellants/petitioners has handed a brief which narrates the historical facts leading up to this litigation. It would be expedient to set out the brief (edited for our purposes) which is done hereunder:

- i. *"On March 25, 2021, the Governor of the Punjab issued the Punjab Sugar (Supply-chain Management) Order 2021(the "Supply-chain Order") under the 1958 Act.*
- ii. *On April 02, 2021, the Director (Prices), Directorate General of Industries, Prices, Weights and Measures Punjab, issued a notice to all Commissioners and Deputy Commissioners of Punjab, directing them to fix the price of sugar (the "Director Notice"), based on purported calculations of cost of sugar production made by Federal Government, and directed them to convene a meeting of District Price Control Committee for this purpose. It is pertinent to highlight that an ex-mill price of Rs. 80/kg was stated in the Director Notice, without referring to any data, notice or information on basis of which such rate was stated. The Director Notice also imposed a cap on retail price of sugar at Rs. 85/kg.*
- iii. *On April 4, 2021, the Secretary Industries Department, Government of Punjab issued a letter to all deputy commissioners in Punjab directing them to*

- take certain actions under the Supply-chain Order in case of shortage of sugar in their districts.*
- iv. *A number of sugar mills filed Writ Petitions, including Writ Petition Nos. 23318/2021, 22970/2021, 22936/2021, 22977/2021, 30575/2021 and 30577/2021, before the Lahore High Court, Lahore, against, inter alia, the Supply-chain Order and the Director Notice dated April 2, 2021 and subsequent notifications issued by the concerned Deputy Commissioners. All of these petitions were heard together as connected matters. A learned Single Judge vide interim order dated April 7, 2021 allowed the respondents therein (Government of Punjab) to lift sugar up to the extent of 155,000 tons at a price of Rs. 80/kg as fixed by Government of Punjab on instructions of the Federal Government. The said quantity of sugar was lifted by the Government of Punjab. It was further directed that manner, mode of price fixation and the issue raised in the petition will be decided at the time of final hearing of the case.*
- v. *That subsequently, the Secretary, Ministry of Industries and Production, Government of Pakistan, in order to circumvent the orders of the Lahore High Court, Lahore, issued an order dated July 16, 2021, fixing consumer price of sugar at Rs. 88.24/kg. On the basis of said order, the Director General, Industries, Prices, Weight & Measures (Punjab) through notification dated July 16, 2021 fixed the ex-mill price of sugar at Rs. 83.24/kg while retail price at Rs. 88.24/kg. The aforesaid order and the notification were issued in an arbitrary manner without giving opportunity of hearing to the sugar mills. The sugar mills filed an application bearing C.M. No. 7 of 2021 for interim relief in the aforementioned Writ Petition No. 23318 of 2021 against the aforementioned order and notification. The C.M. was taken up for hearing by on July 23, 2021, on which date, the Court was pleased to pass an appropriate order.*
- vi. *In compliance of the aforementioned order of the Lahore High Court, Lahore dated July 23, 2021, the sugar mills and the Government representatives had a meeting on July 27, 2021. However, the Ministry of Industries and Production, Government of Pakistan illegally and in blatant disregard of the orders of Lahore High Court, Lahore, issued an order dated July 30, 2021 (“Secretary Order”), which fixed the maximum retail price of sugar at Rs. 89.50/kg and presumed an ex-mill maximum price at Rs. 84.50/kg (inclusive of sales tax). On the basis of the said order, the Director General of Industries, Prices, Weight & Measures (Punjab) also issued an order on the same date i.e. July 30, 2021 (“DG Order”), wherein the Secretary Order was reproduced in ditto, and fixed the ex-mill maximum price at Rs. 84.50/kg. In this new price fixation, the Secretary Order and the DG*

- Order unilaterally changed the calculations for recovery rates of molasses, profit ratio, sucrose recovery, etc. which were earlier agreed.*
- vii. *Vide Writ Petition No. 48555 of 2021 and other writs filed by various sugar mills including Writ Petitions Nos. 49551/2021, 51051/2021, 51043/2021, 51045/2021, 51050/2021, inter alia, the Secretary Order and the DG Order both dated July 30, 2021, were challenged before the Honourable Lahore High Court, Lahore, wherein the Honourable Court was pleased to grant interim relief vide order dated August 3, 2021.*
- viii. *The Federation of Pakistan through its Secretary Ministry of Industries and Production challenged the Interim Relief Order before the Supreme Court of Pakistan through C.P. Nos. 4540 and 4541 of 2021 and the Supreme Court modified the interim relief order and disposed of the matter vide order dated August 12, 2021.*
- ix. *Thereafter, the Government of Pakistan promulgated the Price Control and Prevention of Profiteering and Hoarding Order, 2021 dated August 24, 2021 (the “2021 Order”), under Sections 3 and 4 of Price Control and Prevention of Profiteering and Hoarding Act, 1977 (the “1977 Act”). Additionally, the Schedule to the 1977 Act has also been substituted, in terms of SRO No. 1065(I)/2021 dated August 24, 2021. Under Section 3(b) of the 2021 Order, in respect of the commodities specified in Part II of the Schedule to the 1977 Act (which includes sugar), the business of determining price of sugar stands allocated to the Secretary, Ministry of National Food Security and Research, who shall exercise the powers of Controller General under the 2021 Order.*
- x. *The Lahore High Court, Lahore vide order dated August 26, 2021 of in Writ Petition No. 23318/2021 and connected petitions, held: “learned Additional Attorney General has undertaken on behalf of the Federal Government that sugar price shall be determined afresh in accordance with the SRO 1062 and the Appellate Authority shall also be notified accordingly.” The High Court directed de novo proceedings to be undertaken to determine the price.*
- xi. *Subsequently, Pakistan Sugar Mills Association (“PSMA”) received on September 6, 2021, a letter dated September 2, 2021, titled “Meeting on the Price Control and Prevention of Profiteering and Hoarding Order, 2021 and Price Fixation of Sugar”. On September 07, 2021, PSMA submitted a detailed letter on subject of “Price of sugar” (the “PSMA Letter”), highlighting inter alia the background of the sugar industry and some of the adverse consequences of over-regulation and flawed government policies, how the ill-advised Government efforts to fix prices will completely distort the sugar supply chain and the*

- blatant and repeated errors of the Government in its estimated cost of production of sugar.*
- xii. *In compliance with above noted orders of the Lahore High Court, PSMA held three meetings with the Committee of Ministry of National Food Security & Research, on the matter of determination of sugar rate: meetings dated September 08, 2021, September 09, 2021 and September 13, 2021 respectively (collectively, the “Meetings”).*
- xiii. *Without appreciating or even addressing the detailed submissions made on behalf of sugar mills by PSMA, vide the PSMA Letter and during the Meetings, the Controller General of Prices/ Secretary, Ministry of National Food Security & Research arbitrarily issued the order bearing No.F.I-9/2014/DFSC-H/Sugarcane dated September 21, 2021 (the “2021 Sugar Price Order”), which fixed the maximum retail price of locally produced white crystalline sugar at Rs.89.75/kg and an ex-mill price maximum of Rs.84.75/Kg (inclusive of sales tax). The 2021 Sugar Price Order was issued in purported exercise of power under clause 3(b) of the 2021 Order.*
- xiv. *A number of sugar mills filed appeals against the 2021 Sugar Price Order before the Appellate Committee constituted vide SRO No. 1122(I)/2021 dated September 6, 2021 (which was later re-constituted).*
- xv. *Meanwhile Deputy Commissioners across Punjab issued orders pursuant to section 8 of the Supply-chain Order to sugar mills across the Province, arbitrarily directing mills to deliver sugar on daily basis to registered dealers in the concerned districts, at the ex-mill price of Rs. 84.75/kg as notified vide the 2021 Sugar Price Order, in complete and utter disregard of the pendency of the Appeals before the statutory appellate forum.*
- xvi. *Many sugar mills filed writ petitions, including WP Nos. 60005/2021, 59553/2021, 60010/2021, 59367/2021 and 60007/2021, before the Lahore Court, wherein the sugar mills challenged inter-alia the Supply-chain Order and orders of the respective Deputy Commissioners noted above. W.P. No. 59558/2021 titled ‘Shahtaj Sugar Mills Limited etc. vs. Federation of Pakistan etc.’ was also filed by various sugar mills raising, inter alia, several constitutional issues as well as the vires of the 1977 Act and all actions taken thereunder. The Court, vide consolidated order dated September 29, 2021, was pleased to refer to matter to the Appellate Committee, and dispose of the petitions.*
- xvii. *Meanwhile the earlier pending litigation mentioned above in para (4) above including Writ Petition Nos. 23318 of 2021 and 22977 of 2021 had been clubbed with a purported public interest litigation W.P. No. 3834/2020 titled ‘Munir Ahmad vs Government of Pakistan etc.’ filed before the Lahore High Court in*

which a challenge was made to, *inter alia*, a purported price hike vis-à-vis ‘white crystalline sugar’. All the aforementioned cases were disposed of by the learned Single Bench vide a consolidated Judgment dated September 29, 2021 (reported as PLD 2022 Lah 108). Against the stated judgment, various Intra Court Appeals have been preferred including the Intra-Court Appeal Nos. 61721/2021, 61692/2021, 61698/2021, 61701/2021, 61690/2021, 61698/2021, 61704/2021, 61716/2021, 61694/2021, 61715/2021, 61692/2021, 61655/2021, which are pending before a Division Bench of the Lahore High Court.

xviii. *Thereafter the Appellate Committee of the Ministry of National Food Security & Research, Government of Pakistan passed the decision dated October 07, 2021 (the “2021 Decision”). The assumption of jurisdiction by the Federal Government, including the vires of the 1977 Act, the promulgation of the 2021 Order dated August 24, 2021 and the 2021 Sugar Price Order passed by Secretary MNFSR dated September 21, 2021 and the 2021 Decision passed by the Appellate Committee dated October 07, 2021 were challenged by many sugar mills through various writ petitions before the Honourable Lahore High Court, including Writ Petitions 63163/2021, 63016/2021, 63011/2021, 63013/2021, 63015/2021, 63012/2021, 63014/202, 62989/2021, which are being heard alongwith the aforementioned ICAs and are pending adjudication.*

xix. *Thereafter the Secretary, Ministry of National Food Security and Research arbitrarily, in undue haste, with mala fide and in an ex-parte manner issued the Order No.F.No.2-8/2022/SAB/A-IV dated April 20, 2023 (the “2023 Sugar Price Order”) wherein he fixed the ex-mill and retail price of sugar at Rs. 95.57/kg and Rs. 98.82/kg respectively. The Respondent functionaries of the Government of Punjab, vide the letters dated April 20 and 26, 2023, sought to enforce the illegal 2023 Sugar Price Order on the sugar mills in Punjab and threatened illegal and coercive measures to unlawfully implement and enforce the same. The aforementioned illegal actions were challenged by various sugar mills including, *inter alia*, through appeals before the Appellate Committee and through Writ Petitions including W.P. No. 28772/2023, 28771/2023, 28767/2023, 28768/2023, 28769/2023, 28647/2023, 28773/2023, 28766/2023, 28770/2023, 28641/2023, 288891/2023, 28881/2023, 28891/2023 and 30156/202 wherein this honourable Court, vide order dated May 2, 2023 issued notice and restrained the Respondents from taking any coercive measures. Thereafter, vide order dated May 4, 2023, this Honourable Court suspended the 2023 Sugar Price Order as well as suspended the proceedings before the Appellate Committee where appeals of the sugar mills are pending. Thereafter,*

- vide order dated May 24, 2023 these cases were transferred to be heard alongwith earlier cases (WPs and ICAs) pending before the learned Division Bench.*
- xx. *The Federal Government filed CPLAs against the aforementioned interim orders dated May 4, 2023 before the Supreme Court which were disposed on September 12, 2023 with no modification/withdrawal of the interim orders dated May 4, 2023.*
- xxi. *On July 28, 2023, the Governor of Punjab promulgated the Punjab Foodstuff (Sugar) Order, 2023 (the “**2023 Sugar Order**”) (purportedly in exercise of powers under Section 3 of the 1958 Act). Thereafter on July 30, 2023, which was a holiday, a notice was sent to Punjab Zone of the Pakistan Sugar Mills Association (a trade association of sugar mills) (“**PSMA**”), through Whatsapp to its Manager Admin, titled “COST OF PRODUCTION OF SUGAR TO FIX THE EX-MILL SUGAR PRICES UNDER SECTION 4 OF PUNJAB FOODSTUFFS (SUGAR) ORDER, 2023”.*
- xxii. *The 2023 Sugar Order as well above notices have been challenged by PSMA and a number of sugar mills through various writ petitions in the Honourable Lahore High Court (including Writ Petition Nos. 49812/2023, 49955/2023, 49833/2023, 49831/2023, 49826/2023, 49828/2023, 49825/2023, 49822/2023, 49824/2023, 49830/2023, 49829/2023, 50974/2023, 50982/2023, 49834/2023 and 50995/2023, wherein vide interim order dated August 1, 2023 the Honourable Lahore High Court was pleased to grant interim relief.*
- xxiii. *Subsequently, on September 5, 2023, the aforementioned cases were also transferred by the learned Single Judge to be heard alongwith earlier cases (WPs and ICAs) pending before the learned Division Bench.”*
3. It can be seen from the narration set out above that the challenges were made primarily to the Price Control and Prevention of Profiteering & Hoarding Order, 2021 (**the 2021 Order**) dated August 24, 2021 issued under the powers conferred on the Federal Government by Sections 3 and 4 of Price Control and Prevention of Profiteering and Hoarding Act, 1977 (**the 1977 Act**). In addition to the above, the Schedule to the 1977 Act has also been substituted in terms of SRO

No.1065(I)/2021 dated August 24, 2021. Under Section 3(b) of the 2021 Order in respect of the commodities specified in Part II of the Schedule to the 1977 Act (which include sugar) the business of determining price of sugar stands allocated to the Secretary, Ministry of National Food Security and Research who shall exercise the powers of the Controller General under the 2021 Order.

4. Learned counsel for the appellants/ petitioners contended firstly that the challenge before the learned Single Judge was to the legislative competence of the Parliament to enact a law and thereafter for the Federal Government to determine the price of sugar of which the present appellants and petitioners are manufacturer and producers within the Province of Punjab. Earlier, the law which governed such matters was the Punjab Foodstuffs (Control) Act, 1958 (**the 1958 Act**). While on the subject it may be expedient to state that another law which had relation to the subject matter was the Essential Commodities Act, 1957 which was repealed by the 1977 Act. The learned Single Judge however turned his focus to the public interest litigation which was already pending and in most parts based the impugned judgment on that litigation and the contentions raised therein. Learned counsel for the appellants/ petitioners have submitted that they took serious issue regarding Federal Government's power to fix price of sugar under the 1977 Act and at no point of time was there a

concession on their part regarding this issue. It was held by the learned Single Judge that the 18th amendment had not taken away or affected the Federal Government's powers under the 1977 Act. Reliance was placed on a judgment of a Full Bench of this Court reported as LPG Association of Pakistan through Chairman v. Federation of Pakistan through Secretary, Ministry of Petroleum and Natural Resources, Islamabad and others (2021 CLD 214). In a nub, the impugned judgment by the learned Single Judge is based upon the concept of Inter-Provincial Trade as encapsulated in Article 151 of the Constitution of Islamic Republic of Pakistan, 1973 (**the 1973 Constitution**) and Entry 13 of Part II of the Fourth Schedule to the Constitution (**Entry 13**) which comprises the Federal Legislative List. In the present constitutional dispensation, there is only one list in our Constitution which is the Federal Legislative List on which the Parliament can legislate. The rest of the subjects which are not enumerated in the Federal Legislative List are within the competence of the Provincial Assemblies. During the oral arguments before us, learned D.A.G reiterated that competence of the Federal Government was derived from Article 151 read with Entry 13. In conclusion, it was held that the forum for price fixation had been determined by the 2021 Order and since the power lies with the Federal Government, the matter was referred in terms of the 2021 Order (SRO 1062) for decision by the Appellate

Committee constituted thereby to be treated as a representation on the Court's direction and decided through speaking order. Learned counsel for the appellants/ petitioners have challenged the impugned judgment as well as the act of the Federal Government in enacting the 2021 Order and the price fixation under that Order on the premise that these questions have not been determined by the learned Single Judge and the entire gemut of legal arguments raised in relation to the constitutionality of the 1977 Act and the 2021 Order have escaped the attention of the learned Single Judge.

5. At the outset, we would like to refer to the position taken by the learned Advocate General, Punjab in his submissions under Order XXVII-A of the Code of Civil Procedure, 1908 whose notice was issued by this Court. It has been stated that:

"i. Previously Essential Commodities Act, 1957 and Punjab Foodstuff (Control) Act, 1958 clearly defined the limits of authority of each Federal Government and Provincial Government i.e Provincial Governments were to fix price the maximum retail price of sugar in a province and if sugar is transported between provinces, the regulation and price fixation of the same shall be administered by Federal Government.

ii. The promulgation of Price Control and Prevention of Profiteering and Hoarding Act, 1977 claiming jurisdiction of the whole of Pakistan and repeal of Essential Commodities Act, 1957 blurred the scenario since Punjab Foodstuff (Control) Act, 1958 was still in force but a Federal Law hindered its operation.

iii. Since Punjab Provincial Government was acting under authority given to it by Entry No.14 of the Concurrent Legislative List, it started following the mandate of Price Control and Prevention of Profiteering and Hoarding Act, 1977 and kept acting under the delegated authority of Federal Government

under Section 4 of Price Control and Prevention of Profiteering and Hoarding Act, 1977.

iv. With the omission of Concurrent Legislative List, the Federal Government was stripped of the power to administer the subject of price fixation of sugar within the territorial limits of a Province.

The promulgation and later lapse of Price Control and Prevention of Profiteering and Hoarding Ordinance, 2022 does not leave the Punjab Provincial Government without any statutory authority to govern and administer the subject since (a) another provincial and valid law i.e Punjab Foodstuff (Control) Act, 1958 exists and after removal of the hurdle of a Federal Law, it can start functioning as before, and (b) Price Control and Prevention of Profiteering and Hoarding Act, 1977 has, automatically, become a Provincial Law clothing the Punjab Government with enough power to administer the provisions of it in light of PLD 2016 Lah. 433 & PLD 2016 Lah. 699. ”

6. Therefore, the Province of Punjab is in no manner of doubt that it has the capacity and the competence to control and fix prices of the essential food commodities including sugar and it is outwith the authority of the Federal Government under the Constitution. We approve the statement by the learned Advocate General Punjab which hews more closely to the constitutional scheme. Our reasons for holding so would be brought forth in the following paragraphs. It may also be noted that contentions and arguments of learned counsel for the parties shall be dealt with during the course of this judgment and will not be stated separately.

7. We firstly turn to the contentions raised by the learned D.A.G and the reliance on various provisions of law and the Constitution to seek an authority to vest in the Federal Government regarding price control and fixation of prices of essential foodstuff commodities.

Learned D.A.G firstly referred to Article 151 of the Constitution which provides that:

"151. (1) Subject to clause (2), trade, commerce and intercourse throughout Pakistan shall be free.

(2) I [Majlis-e-Shoora (Parliament)] may by law impose such restrictions on the freedom of trade, commerce or inter-course between one Province and another or within any part of Pakistan as may be required in the public interest.

(3) A Provincial Assembly or a Provincial Government shall not have power to—

(a) make any law, or take any executive action, prohibiting or restricting the entry into, or the export from, the Province of goods of any class or description, or

(b) impose a tax which, as between goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favour of the former goods or which, in the case of goods manufactured or produced outside the Province discriminates between goods manufactured or produced in any area in Pakistan and similar goods manufactured or produced in any other area in Pakistan.

(4) An Act of a Provincial Assembly which imposes any reasonable restriction in the interest of public health, public order or morality, or for the purpose of protecting animals or plants from disease or preventing or alleviating any serious shortage in the Province of any essential commodity shall not, if it was made with the consent of the President, be invalid."

8. The above provision in the Constitution relates to Inter-Provincial trade and clearly states that the trade, commerce and intercourse throughout Pakistan shall be free. This is the essential and primary purpose of Article 151 and it cannot be extended to encapsulate powers which are not envisaged and which do not reside in either the Federal Government or a Provincial Government. By clause 3, a Provincial Assembly and a Provincial Government has been enjoined from making

any law or taking any executive action prohibiting or restricting the entry into or the export from the Province of goods of any class or description and by paragraph (b) of clause 3, a tax which, as between goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favour of the former goods or which, in the case of goods manufactured or produced outside the Province discriminates between goods manufactured or produced in any area in Pakistan and similar goods manufactured or produced in any other area in Pakistan. This was elaborated in a judgment reported as *Murree Brewery Company Limited through Chief Executive v. Province of Punjab through Chief Secretary and others (PLD 2017 Lahore 230)* which was authored by one of us (Shahid Karim, J.) and on which learned D.A.G placed reliance. The dispute in *Murree Brewery Co.* related to a notification issued by the Governor of Punjab in terms of sections 31 and 32 of the Punjab Excise Act, 1940 and levied an excise duty on all Pakistan Made Foreign Liquor and Beer meant for consumption outside the Province of Punjab as well. Therefore, the notification under challenge impacted the manufacturers and producers of liquor outside the Province of Punjab and discriminated against them. They were, therefore, compelled to bring a constitutional petition before this Court which was decided by the judgment in *Murree Brewery Co.* It was further held that Article 151 was in

the same mould as the commerce clause in the U.S Constitution. Some of the observations made in Murree Brewery Co. would be relevant for our purposes and more particularly in order to stunt the arguments raised by the learned D.A.G in relying upon that judgment:

“30. Juxtaposing Art. 151 of our Constitution with the commerce clause of US Constitution would bring forth that there is no parallel provision to clause (1) of Art. 151 in the US Constitution. Clause (2) however replicates and echoes the spirit of the commerce clause. As if this was not enough, the framers of our Constitution, by drawing from the treatment which the US Supreme Court had given this clause throughout each stage in its history and its interpretation of the commerce power, enacted clauses (1) and (2) in order to leave nothing to imagination and reinforce and drive home the federal form of the Constitution. Article 151 epitomises the spirit of federalism not to be undone by subterfuge or an evasive device. Clauses (1) and (2), read together, sufficiently indicate that issues of Inter-Provincial Trade, commerce and intercourse have centered on the ability of the Parliament to regulate commerce among the Provinces. Clause (1) has been culled out from the American experience and is a leaf out of the Australian Constitution.”

“36. The above observations are the essence of Art. 151 as well. Where there is commerce which concerns more states than one, the power lies with the Parliament and a Province cannot regulate that activity. Thus commercial activities which were completely within a State, were immune from federal power, only. The rest must yield in favour of federal commerce power.”

“...A purely original and textualist approach based on what the founding fathers meant would lead to the conclusion that Article 151 gave expression to the important concept of federalism which underlies the scheme of the Constitution. It is a repository of the powers to vest in the Federal Government with regard to trade, commerce and intercourse throughout Pakistan. Also by clause (2) that power has come to reside in the Parliament to, by law, impose such restrictions on the freedom of trade, commerce or intercourse between one Province and another or within any part of Pakistan as may be required in the public interest. It follows, therefore, that a Provincial legislature is not empowered to enact a law which imposes such a restriction and it was with this intention that clause (1) stated in emphatic terms that the trade, commerce and intercourse throughout Pakistan shall be free.

Legislative history has always been treated as worthwhile aid to ascertain the intention behind an enactment and in particular a constitutional document. The speech of Abdul Hafeez Pirzada, the then Law Minister, who introduced the constitutional bill has been reproduced above. In a nub, the basic intention for enacting clauses (1) and (2) of Article 151 was based on experience from disputes which arose due to the omissions in a similar Article under the Constitution which resulted in unsavory situations..."

9. *Murree Brewery Co.* is not a case which supports the arguments of learned D.A.G nor does it render the act of the Federal Government in the enactment of the 1977 Act or the 2021 Order as valid and constitutional.

10. Prior to this we will have to analyse the crucial question which engages this Court in these matters. That question relates to the constitutionality of the 1977 Act. Notwithstanding the repeal of the Concurrent Legislative List after the promulgation of the 18th amendment in the year 2010, the Federal Government continues to exercise powers under the 1977 Act for the purpose of controlling and fixing prices of essential commodities mentioned in the Schedule to the 1977 Act. Thus we are called upon to dilate upon and determine whether the Parliament had the power to enact the 1977 Act by virtue of any of the entries in the Federal Legislative List. It is common ground between the parties that there has been no change in different provisions of the Constitution regarding entries in Fourth Schedule under which the Parliament derives its powers in respect of price control of essential

commodities. The source of that power as stated above is Entry 13 which provides that:

"13. Inter-Provincial matters and coordination".

11. Mr. Shehzad A. Elahi, Advocate referred to the historical context in which this Entry has found mention in the constitutional documents preceding the 1973 Constitution. In the 1956 Constitution, the subject ‘price control’ finds mention in the concurrent list whereas in the 1962 Constitution the subject of price control did not figure in the third schedule which was the only list in the 1962 Constitution. Once again, the 1973 Constitution did not contain the subject of price control in the Federal Legislative List nor was it included in the concurrent legislative list as originally enacted on 17th of April, 1973. Later on by the 18th amendment the concurrent legislative list was done away with and, therefore, the only entry which finds mention now and which remotely deals with the subject, according to the learned D.A.G, is Entry 13. As adumbrated, we do not find the subject of price control and fixation of prices of essential commodities to inhere in Entry 13 as the subject matter of this Entry is essentially regarding Inter-Provincial matters and has direct nexus with Article 151 of the Constitution. In the case of *Murree Brewery Co.*, it has clearly been held that scope of Article 151 was quintessentially related to matters amongst the Provinces and cannot be used to encroach upon the legislative field

of the Provinces. If this were allowed to be done, there would be a complete constitutional muddle and undermining of the concept of federalism as also this would run contrary to the intention of the framers of the 18th amendment which was designed to empower the Provinces and not to curtail their legislative powers. This aspect of the matter has been brought forth in another judgment relied upon by Mr. Shehzad A. Elahi, Advocate, learned counsel for the appellants/petitioners and rendered by one of us (Shahid Karim J.). That judgment is reported as Vice Chairman Punjab Bar Council & others v. Govt. of the Punjab & others (PLD 2021 Lah. 544) and the following paragraphs are being set out below which shed light on the proper concept of federalism on which the 1973 Constitution is structured:

“28. The Constitution envisages a limited government which means that it has put in place a system of restraints and limitations to constrain its power and to define its periphery. Ours is a representative democracy in which the people act not directly but through their representatives. This system of government is called republicanism. Thus, a republic is a democracy but a representative democracy.”

“38. Thus the constitutional balance of federal and provincial powers would be upset if there are no restrictions on actions by the Federal Government which threatens the separate existence and vitality of provincial and local government which play an important role in the constitution’s architecture.”

“...A strong national government is indeed necessary yet it has to be balanced by a robust provincial autonomy so that the rights of individuals in the provincial sphere are ably protect and granted to them to be enjoyed to the fullest extent. For, we must bear in mind the indubitable fact that our constitution delineates different fields within which the respective legislatures i.e. Parliament and provincial assemblies are empowered to legislate and so within these fields of activity, only the relevant legislature may legislate and none else.”

*"50. These features of federalism are scattered throughout the Constitution. The principles have to be adhered by different constitutional authorities, by the Federal Government as well as provincials governments as this would, in turn, engender rule of law. We must bear in mind that in a country governed by a written constitution, the written constitution is the rule of law. While the rule of law underlies our entire Constitution in particular, Articles 4 and 5 seem to embody the essence of the rule of law. It was observed by Kaikaus J. in *Jamal Shah v. Election Commission* (PLD 1966 SC 1) that rule of law prevents "the government from taking any action in this country from which there is no legal sanction and at the same time bars the legislature from creating an authority whose actions are not subject to law." The legislature cannot enact that whatever action a particular person may take shall be immune from challenge. All persons exercising authority in Pakistan must do so only in accordance with law. In *Ahmad Nawaz v. Pakistan* (PLD 1998 Sindh 180) it was held that —Pakistan is a republic. In this country, there is government of laws and not men. ”"*

12. Entry 13 reads “inter-provincial matters and coordination”. At first blush it seems that the Entry targets matters which arise amongst Provinces and which require resolution by a neutral arbiter. There may be a wide variety of matters on which the Provinces may have a falling out and lest those matter get out of hand, the Federal Government may intervene which, by Entry 13, is its constitutional duty. But the underlying theme of Entry 13 is for an inter-provincial matter to arise in order to clothe the Federal Government the power to step in. That is, one Province shall have to raise a grievance against another which then gives rise to an inter-provincial matter. The Parliament may enact a law to deal with such a situation but it cannot, under a misplaced notion, have a legislative blank check to encroach upon Provinces’ primary powers to legislate on a field of activity. The statutory wording makes it clear

that the field of ‘food’ is within the legislative competence of a Provincial Assembly. By necessary implication therefore, the price control of foods as an essential commodity is also within the Province’s competence. This flows from the holding of superior Courts as well. There can be no contention that if only a Provincial Assembly can legislate upon the subject matter of ‘food’, all ancillary matters including price control would be included in the broad power so conferred. The Parliament cannot arrogate to itself the power of price control in the guise of Entry 13 (which is an entry having unspecific contours) while a specific subject-matter lies within the power of a Provincial Assembly. If this were allowed to the Parliament, the entire edifice of federalism and provincial autonomy will have dissipated.

13. In the present case, Punjab has not had the chance to fix prices. That power has been usurped by the Federal Government as a permanent feature. No other Province therefore had a grouse in respect of an executive action taken by Punjab. This begs the question: How does this become an inter-provincial matter? At worst, this may degenerate into a matter between the Federal Government and a particular Province which may choose to dispute the price fixed by the Federal Government. Worse still, an essential food commodity may be such that it is not exported to other Provinces at all. Would that still be an inter-provincial matter to empower the Parliament to enact a law. It follows

indubitably that the primary task of price fixation of an essential food commodity is within a provincial government's competence. It can only transition into an inter-provincial matter if another Province raises serious objections to it on plea that the price affects businesses adversely in that Province. Apart from this, the subject-matter of food and its allied matters such as price fixation remain within the armoury of powers of a Provincial Assembly.

14. Learned D.A.G submits that intention in residing this power in the Parliament is to have uniformity in prices across all Provinces. Clearly, this is not the intention of Article 151 nor is there any such power conferred upon the Parliament by virtue of Entry 13. In a given situation, the manufacturers and producers of essential commodities in the Province of Punjab may not be dealing with their commodities for export to other Provinces. Can it conceivably be held that the Parliament would still have the power to regulate the prices of commodities which do not have any Inter-Provincial connotation. The answer is clearly in the negative and what is conceived by Article 151 of the Constitution is to prohibit making of laws which constrict the freedom of trade, commerce or intercourse between one Province and another. By Article 151, the power of the Provinces and the Provincial Governments is limited and they cannot make laws which prohibit or restrict the entry into or export from the Province of goods of any class or description. It is not the case of

the Federal Government that the Province of Punjab is indulging in any of these acts and, therefore, must be constrained by the enactment of the 1977 Act.

15. Mr. Imtiaz Rashid Siddiqui, Advocate learned counsel for some of the appellants/petitioners alluded to various provisions of the 1977 Act. In particular, section 3 confers the powers on the Federal Government to make orders to provide for regulating the prices, production, supply, distribution and sale of essential commodities (including food and foodstuff) and for the price to be charged or paid for it at any stage of the transaction. In fact, the preamble of the 1977 Act provides that:

“Whereas it is expedient to provide for price control and prevention of profiteering and hoarding.”

16. The 1977 Act essentially deals with price control yet there is no power under the Constitution for the Parliament to enact such a law which relates to price control of essential food commodities being manufactured and produced in a Province and regarding which that Province has the exclusive jurisdiction to make laws. The power of the Parliament is limited to regulating the Inter-Provincial trade and commerce and no more. This does not include the power of price control or price fixation of an essential commodity. For the purpose, a Provincial Government is best suited to determine that price considering various circumstances

which exist in that Province and will do so upon consideration of the factors necessary to be taken into account while fixing the price of an essential commodity. It will also be noted that the price control of an essential commodity is not required to be undertaken at all times. It can vary from one Province to the other and it may not be necessary to be done in one Province as against another Province and regarding this aspect too, that Province would be the best judge under the circumstances. The Federal Government cannot be conferred the power to do so across all Provinces without regard to the fact that the action to control price of an essential commodity is not required to be undertaken in a particular Province.

17. It is interesting to note that by amendment in the Schedule to the 1977 Act , the power was delegated upon the officers of the Provinces by a notification dated 12.06.2006. The Province of Punjab stepped forward and seized the opportunity while enacting the Price Control and Prevention of Profiteering and Hoarding (Amendment) Ordinance, 2022 and which was an attempt to adapt the 1977 Act for the purposes of Province of Punjab. This was done purportedly upon the notion that price control was a Provincial subject and that the 1977 Act was an existing law which could be adapted for the purposes of Province of Punjab. This was a fallacy on the part of the Province of Punjab. In fact the 1977 Act is clearly not an existing law under the

1973 Constitution and could not have been adapted for the purposes of Province of Punjab. That is why perhaps it was allowed to lapse as a binding law at the end of its life. In the meantime the Province promulgated the Punjab Prevention of Speculation in Essential Commodities Act, 2021 as well which was done to provide for prevention of speculation in essential commodities to curb artificial price hike and profiteering in the best public interest. Once again, this was done under the powers conferred upon the Province of Punjab by the Constitution. The Province of Punjab also brought in the Punjab Prevention of Hoarding Act, 2020 to provide for the prevention of hoarding in respect of scheduled articles. All of these laws point to the firm belief by the Province of Punjab that under the 1973 Constitution it has the power to enact laws relating to food and price control and this was the exclusive domain of the Provincial Assembly.

18. Learned counsel for the appellants/ petitioners rely upon a judgment rendered by the Sindh High Court and reported as *Nadeem Mumtaz Raja v. Sindh Food Authority (2021 MLD 478)* which has held that the subject of **food** did not find mention in the Federal Legislative List as it stands today and therefore is a subject within the Provincial domain. While doing so, reliance was placed on another judgment of the Sindh High Court authored by Munib Akhtar J. and reported as *Azfar Laboratory (Pvt.) Ltd. V. Federation of Pakistan*

and others (**PLD 2018 Sindh 448**) wherein the learned Judge articulated the scope of legislative entries. During the course of that judgment reliance was also placed on a finding given by the Supreme Court of Pakistan in the '**Bottled Water**' case where it was held that food as a subject was within the Provincial domain under the Constitution. We concur with the findings in these judgments.

19. In view of the above, it is declared that:

- a) The 1977 Act is *ultra vires* the powers of the Parliament to the extent that it applies to price control of essential foodstuff commodities and prevention of profiteering and hoarding in relation to the Province of Punjab and is held to be without lawful authority and of no legal effect.
- b) The 1977 Act to the extent that it extends to the whole of Pakistan is an action *extra jus* and thus unconstitutional.
- c) Consequently, the actions taken pursuant of the 1977 Act, by the Federal Government and its officers and the Govt. of the Punjab (and its officers) on the dictation of Federal Government (more particularly mentioned in paragraph 2 (XVIII and XIX) are *ultra vires* and *non est*.
- d) Both the 1977 Act to the extent mentioned above as well as the 2021 Order are hereby struck down.

20. It is made clear that food and price control of essential food commodities as a field of legislation are within the power of the Provincial Assembly to enact and which may be done by the Province of Punjab by appropriate legislation or the Provincial Government may proceed under the existing law.

21. Before we tear away, it may be stated that we have refrained from giving an opinion on whether the 1977 Act still applies to the Islamabad Capital territory as that question does not arise before us. The Constitution and law will take its own course, in this regard.

Appeals and petitions allowed.

Announced in open Court on 05.10.2023.

Approved for reporting.

JUDGE

JUDGE

Rafaqat Ali

Appendix-A

Sr. No.	W.P. Nos.	Title
1.	I.C.A No.61655 of 2021	M/s. Indus Sugar Mills Ltd & others Vs. Province of Punjab & others
2.	I.C.A No.61694 of 2021	Etihad Sugar Mills Ltd. Vs. Federation of Pakistan & others
3.	I.C.A No.61698 of 2021	J.K Sugar Mills Pvt. Ltd. & others Vs. Federation of Pakistan & others
4.	I.C.A No.61715 of 2021	Two Star Industries Pvt. Ltd. Vs. Federation of Pakistan & others
5.	I.C.A No.61704 of 2021	RYK Mills Ltd Vs. Federation of Pakistan & others
6.	I.C.A No.61716 of 2021	SW Sugar Mills Ltd. Vs. Federation of Pakistan & others
7.	I.C.A No.61690 of 2021	J.K Sugar Mills Pvt. Ltd. & another Vs. Province of Punjab & others
8.	I.C.A No.61701 of 2021	A.K Sugar Mills Pvt. Ltd. & another Vs. Province of Punjab & others
9.	I.C.A No.63537 of 2021	Seven Star Sugar Mills Pvt. Ltd. Vs. Federation of Pakistan & others
10.	I.C.A No.61721 of 2021	M/s. Hunza Sugar Mills Pvt. Ltd. Vs. Province of Punjab & others
11.	W.P. No.28600 of 2023	M/s. Tandianwala Sugar Mills Pvt. Ltd. & others Vs. Province of Punjab & others
12.	W.P. No.28766 of 2023	Fatima Sugar Mills Pvt. Ltd. Vs. Federation of Pakistan & others
13.	W.P. No.28769 of 2023	Eithad Sugar Mills Ltd. Vs. Federation of Pakistan & others
14.	W.P. No.28770 of 2023	Indus Sugar Mills Ltd. Vs. Federation of Pakistan & others
15.	W.P. No.28771 of 2023	J.K Sugar Mills Pvt. Ltd. Vs. Federation of Pakistan & others
16.	W.P. No.28773 of 2023	Sheikhoo Sugar Mills Ltd. Vs. Federation of Pakistan & others
17.	W.P. No.28641 of 2023	Noon sugar Mills Ltd. Vs. Federation of Pakistan & others
18.	W.P. No.28647 of 2023	Two Star Industries Pvt. Ltd. Vs. Federation of Pakistan & others
19.	W.P. No.28767	JDW Sugar Mills Ltd. Vs. Federation of

	of 2023	Pakistan & others
20.	W.P. No.28768 of 2023	RYK Mills Ltd. Vs. Federation of Pakistan & others
21.	W.P. No.28889 of 2023	Baba Farid Sugar Mills Ltd. Vs. Federation of Pakistan & others
22.	W.P. No.28881 of 2023	The Thal Industries Corporation Ltd. Vs. Federation of Pakistan & others
23.	W.P. No.28891 of 2023	Almoiz Industries Ltd. Vs. Federation of Pakistan & others
24.	W.P. No.30156 of 2023	Hamza Sugar Mills Ltd. Vs. Federation of Pakistan & others
25.	W.P. No.31772 of 2023	M/s. G.B (Pvt.) Ltd. Vs. Province of Punjab & others
26.	W.P. No.36792 of 2023	M/s. Rasool Nawaz Sugar Mills Pvt. Ltd. Vs. Province of Punjab & others
27.	W.P. No.28772 of 2023	Adam Sugar Mills Ltd. & others Vs. Federation of Pakistan & others
28.	W.P. No.62989 of 2021	Hamza Sugar Mills Ltd. & others Vs. Federation of Pakistan & others
29.	W.P. No.63011 of 2021	JDW Sugar Mills Ltd. Vs. Federation of Pakistan & others
30.	W.P. No.63015 of 2021	SW Sugar Mills Ltd. Vs. Federation of Pakistan & others
31.	W.P. No.63016 of 2021	JK Sugar Mills Pvt. Ltd. Vs. Federation of Pakistan & others
32.	W.P. No.63014 of 2021	Two Star Industries Pvt. Ltd. Vs. Federation of Pakistan & others
33.	W.P. No.63013 of 2021	M/s. RYK Mills Ltd. Vs. Federation of Pakistan & others
34.	W.P. No.63012 of 2021	Eithad Sugar Mills Ltd. Vs. Federation of Pakistan & others
35.	W.P. No.63017 of 2021	M/s. Hunza Sugar Mills Pvt. Ltd. Vs. Province of Punjab & others
36.	W.P. No.63163 of 2021	Sheikhoo Sugar Mills Ltd. Vs. Federation of Pakistan & others

(SULTAN TANVIR AHMAD)
JUDGE

(SHAHID KARIM)
JUDGE