

Form No.HCJD/C-121
ORDER SHEET

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

W. P. No.50232 of 2024

Muzammal Rafiq **Versus** Federation of Pakistan, etc.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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04.09.2024	Mr. Asif Shahzad Sahi, Advocate for the petitioner. Ch. Imtiaz Elahi, Deputy Attorney General for Pakistan. M/s Hamza Sheikh and Muhammad Mansoor Ali Sial, Assistant Attorneys General for Pakistan. M/s Afrasiab Mohal, Adeel Khawar Nahra and Muhammad Ali Butt, Advocates for the respondents/Utility Store Corporation.
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This order shall dispose of the titled petition and W.P.No.51306 of 2024 as common questions of law and facts are involved therein.

2. Through the titled petition, the petitioner has made the following prayer: -

“It is therefore most respectfully prayed that the instant writ petition may kindly be accepted, impugned Act/letters dated 07.08.2024 & 19.08.2024 issued by the respondents No.1 & 2 requiring the respondents No.2 to 12 to share plans for winding up a profitable entity (Utility Stores Corporation of Pakistan Private Limited) under the vague of restricting/transformation of State Owned Enterprises (SEP) may very kindly be declared as illegal, unlawful void ab-initio, nullity in the eye of law, violative to fundamental rights of the petitioner / employees of Utility Stores Corporation and general public at large, without lawful authority and of no legal effect and the same may be graciously be set aside and reversed and the respondents may very kindly be restrained from interfering in smooth functioning of Utility Stores Corporation of Pakistan, in any manner, whatsoever, in the interest of justice.”

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W.P.No.51306 of 2024

In W.P.No.51306 of 2024, following prayer has been made: -

“It is therefore most respectfully prayed that the instant writ petition may very kindly be accepted, and acts of the respondents No.1, 2 & 8 to 13 may very kindly be declared as illegal, unlawful, void ab-initio, nullity in the eye of law, violation of fundamental rights of the petitioner / employees of Utility Stores Corporation and general public at large, without lawful authority and of no legal effect and the same may very graciously be set aside and that the respondents No.3, 8 to 14 are directed to continue operational systems of BISP under PMP 40, and maintained services / salaries of the employments / employers of corporation and secure the exchequer of government organization, in the interest of justice.”

3. The Utility Stores Corporation (‘USC’) is a state owned enterprise established in the year 1971 to provide basic commodities to the general public at prices lower than the open market. However, on 14.06.2024 through a notification issued by the Cabinet Division, Government of Pakistan (impugned herein) a High-Powered Committee comprising nine members including the Chairman was constituted for a detailed review and analysis on the basis of initial work done by the earlier committee for reducing the size of the Federal Government. On 07.08.2024 an office memorandum (impugned herein) was issued by the Finance Division to the Secretary, Ministry of Industries and Production to share restructuring/ transformation plans of the entities which were declared as strategic or essential. Thereafter, the Prime Minister of Pakistan in the meeting of rightsizing of the Federal Government on 16.08.2024 passed a direction that the USC should be wound up and an alternate arrangement should be explored which might include cash transfer to the recipients. Hence, these petitions.

4. Learned counsel for the petitioner contends that the USC being a state owned entity registered under prevailing laws of Pakistan has its own vigilance system to snub any sort of pilferage or malpractice and is self-sustaining organization which has never taken a single penny from the Government to run its business including disbursement of salaries to staff rather it generates revenue for the Government so no question for winding up this profitable entity arises. He maintains that subsidy allowed by the Government is passed on to the general public by the USC in a systematic and transparent manner. According to him, procedure for winding up of a state owned enterprise has been provided in section 293 of the Companies Act, 2017 which has not been adopted properly. He further contends that as many as 12000 employees have been working in USC, half of which are either on daily wages or contract basis who cannot be absorbed in any other department/organization. He adds that the Rightsizing Committee earlier decided to privatize the USC but now contrary to that has illegally decided to wind it up without adopting any legal course. According to him the Board of Directors of the USC has also passed a resolution by virtue of which the USC has been declared a profitable and essential state owned enterprise. He further adds that if the Government does not provide food subsidy the USC will run its operation on commercial model after restructuring.

5. The USC has filed report and parawise comments wherein contention of the petitioner has been supported.

6. Conversely, learned Law Officer appearing on behalf of the Federation of Pakistan contends that no adverse order has been passed against the employees of

the USC, therefore, this petition is pre-mature. He further contends that decision of the Government to wind up the USC is a policy matter which cannot be assailed as the Courts in exercise of jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973(‘Constitution’) have refrained from interfering in this domain. He adds that the matter in question entails factual inquiry which exercise cannot be undertaken in constitutional petition.

7. Arguments of both the sides have been heard.

8. Earlier, the low-income people were being provided basic commodities through the USC and now the Government, as per minutes of meeting of Committee on rightsizing of the Federal Government attached with the petitions, has decided to explore alternate arrangement, which is a matter of policy involving complicated economic factors.

9. The scope of judicial review of Government’s policy is now well-settled. The Courts cannot assume the role of Appellate Authority to examine the rightness, suitability and appositeness of a policy. The scope of judicial review while examining a policy of the Government is to see whether it encroaches upon fundamental rights of the citizens or violates any provision of the Constitution or any statute.

10. The Courts cannot interfere with the policy either on the ground that it is erroneous or that a better, fairer or wiser alternative is available. The duty of the Court is to confine itself to the question of legality and its concern should be whether a decision making authority exceeded its powers or committed an error of law. The policies of the Government may not remain stagnant, rather with the change in economic climate, the wisdom

and the manner for the Government to run commercial projects may require reconsideration. A policy might have been in the public interest at a point of time, however, the same cannot be considered so at some other point of time. Therefore, any decision of the Government that it cannot run the Corporation departmentally or any other form is not justiciable. Indeed Parliament is the forum for debates on questions involving political economy and not the Court. In support of above propositions, reliance is placed on the cases of Dr. Akhtar Hussain Khan and others vs. Federation of Pakistan and others (2012 SCMR 455), Watan Party through President vs. Federation of Pakistan through Cabinet Committee of Privatization, Islamabad and others (PLD 2006 Supreme Court 697), Directorate of Film Festivals & Ors. vs. Gaurav Ashwin Jain & Ors. (AIR 2007 Supreme Court 1640) and BALCO Employees Union (Regd.) vs. Union of India and others (AIR 2002 Supreme Court 350).

11. The petitioner has not been able to make out a case that decision of the Government to wind up USC is illegal or opposed to the Constitution. Although the Government's decision may have an impact on the employees' rights in future upon implementation of the policy decision, who may avail the remedies in accordance with law for violation of their legal rights, if any, before the concerned forum. As far as this case is concerned, since no adverse action has so far been taken against employees of the USC, no writ can be issued against the Government to prevent its policy decision. It is well-settled that a writ lies when some legal right of any party is infringed which clearly is not the case here. Reliance in this regard is placed on the

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cases of Mian Muhammad Shahbaz Sharif vs. Federation of Pakistan through Secretary, Ministry of Interior, Government of Pakistan, Islamabad and others (PLD 2004 Supreme Court 583) and Union of India & Anr. vs. Kunisetty Satyanarayana (AIR 2007 Supreme Court 906). Needless to mention here that for access to the information the petitioner may exhaust remedies under the Right of Access to Information Act, 2017.

12. In view of the foregoing reasons, both the petitions filed by the petitioner are dismissed for being devoid of any merit.

(RAHEEL KAMRAN)
JUDGE

APPROVED FOR REPORTING

JUDGE

Saeed Akhtar