Stereo HCJ DA 38

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No.498 of 2022

M/s Sadiq Poultry (Private) Limited **V/S** *Federation of Pakistan and others*

J U D G M E N T

Date of hearing	**09.09.2024**
Petitioner(s) by	Sardar Taimoor Aslam Khan, ASC with Uzair Shafie, Barrister Jahanzeb Awan and Arshad Mahmood, Advocates. Mr. Muhammad Imran Malik, ASC with Aakif Majeed Butt, Hassan Ismail and Asim Tufail Farooqi, Advocates for the Petitioner in connected W.P.No.1633 of 2024.
Respondent(s) by	Mr. Sajid Ilyas Bhatti, Additional Attorney General with Arshad Mahmood Malik, Assistant Attorney General. Barrister Asadullah Chattha and Barrister Ambreen Abbasi, Advocates for Respondents /Competition Commission of Pakistan with Hafiz Nasim, Senior Legal Advisor alongwith Musa Hayat Tarar, Adeel Peter and Hassan Raza, Legal Advisor for Competition Commission of Pakistan.

JAWAD HASSAN, J. This judgment will decide the connected petition bearing W.P.No.1633 of 2024, as common questions of law and facts are involved in both these constitutional petitions filed against show cause notices dated 24.01.2022 (the ***"impugned notices"***) issued by the Respondent No.2/Competition Commission of Pakistan (the ***"CCP"***) to protect the regime of anti-trust law.

2. This petition will decide the question regarding issuance of *"impugned notices"* by the *"CCP"*, remedies available to the

Petitioners as per the latest approach of Supreme Court of Pakistan in curtailing the litigation in Pakistan by adopting pro mediation bias and new principles settled by the Supreme Court of Pakistan in holding that a show cause notice can also be viewed as being akin to alternate dispute resolution as mentioned in detailed recent judgment of this Court in *STRATEGIC PLANS DIVISION and another Versus PUNJAB REVENUE AUTHORITY and others* **(PLD 2024 Lahore 545)**.

I. FACTS OF THE CASE

3. M/s Sadiq Poultry (Private) Limited and M/s Islamabad Feeds (Private) Limited (hereinafter to be referred as the ***"Petitioners"***) are engaged in running the businesses of poultry proceeds. They were issued the *"impugned notices"* by the *"CCP"* under Section 30 of the *"Act"* based on an inquiry report dated 21.05.2021 which according to the *"Petitioners"* is actually stemming from social media, pursuant thereto the *"CCP"* took cognizance of the matter by first initiating an inquiry, without hearing the *"Petitioners"* which thereafter resulted into issuance of the *"impugned notices"*.

II. PETITIONERS' SUBMISSIONS

4. Mr. Taimoor Aslam Khan, ASC for the *"Petitioners"* argued that the *"CCP"* published a press release dated 09.12.2021 on its website and pursuant thereto charge sheeted and declared the *"Petitioners"* guilty for forming a cartel in the *ex parte* enquiry report dated 06.12.2021 (the ***"enquiry report"***) without affording opportunity of hearing. He next argued that the *"CCP"* finalized the *"enquiry report"* without seeking comments and confronting allegations leveled therein and has issued the *"impugned notices"* under Section 30 of the *"Act"*. Mr. Uzair Shafie, Advocate stated that the *"CCP"* has carried out a fishing and roving enquiry by making the allegations in relation to eggs and broiler chicken which were not the subject matter of the *"enquiry report"* and thus is not in consonance with the scope of enquiry in terms of Section 37 of the *"Act"*. Barrister Jahanzeb Awan, Advocate adds that though enquiry under

Section 32(1) of the *"Act"* can be initiated by the *"CCP"* yet such discretion/powers cannot be exercised in an arbitrary manner. Mr. Arshad Mahmood, Advocate pointed out that the *"CCP"* may gather sufficient facts or *prima facie* evidence on the basis of a study conducted under Section 37(3) of the *"Act"* and then initiate an inquiry on its own however, the *"CCP"* has given incorrect and erroneous findings in the *"enquiry report"* and make it public without affording the *"Petitioners"* to confront the allegations.

III. RESPONDENTS' SUBMISSIONS

5. Barrister Asadullah Chattha, Advocate for the Respondents/CCP has objected to maintainability of these petitions against the *"impugned notices"* and *inter alia* stated that the *"impugned notices"* have been duly issued by the *"CCP"* under Section 30 of the *"Act"* after fulfilling all procedural requirements; that the *"CCP"* is fully authorized, entitled and permitted to conduct enquiries in cases of contravention of Chapter-II of the *"Act"* and sole purpose of Section 30 of the *"Act"* is to get the reply back with reasonable cause as to why an order under Section 31 and 38 should not be taken against the *"Petitioners"* for contravention of Section 3 and 4 of the *"Act"*. Hafiz Naseem and Ambreen Abbasi, Senior Legal Advisors for the *"CCP"* added that the *"Petitioners"* were provided opportunity of hearing however, they willfully avoided such opportunity and that alternate remedies under Section 41 to 44 of the *"Act"* are available to the *"Petitioners"* when proceedings under Section 30 of the *"Act"* culminates into penal consequences in terms of Section 31 and 38 of the *"Act"*. Barrister Asadullah Chattha, Advocate stated that enquiry report is just a fact finding exercise and hearing of parties is not required for its conclusion whereas the show cause notice proceedings cannot be concluded without providing opportunity of hearing to the parties and if it is assumed that full satisfaction is required at the time of issuance of show cause notice then the whole process of proceedings, opportunity of hearing and

recording of evidence become meaningless which, is not the intention or spirit of the legislation.

IV. DETERMINATION

6. The sole grievance of the *"Petitioners"* is that the *"enquiry report"* was finalized *ex parte* without affording opportunity of hearing and pursuant thereto, the *"impugned notices"* were issued by the *"CCP"* exercising powers in arbitrary manner and without gathering sufficient facts or *prima facie* evidence. While on the other hand, learned counsel for the Respondents stated that the *"impugned notices"* were duly issued by the *"CCP"* under Section 30 of the *"Act"* after fulfilling all procedural requirements and that too after providing an opportunity of hearing to the *"Petitioners"* to appear and defend their stance, however, they willfully avoided to appear before the *"CCP"*. This Court will examine certain provisions of the *"Act"* preamble of which provides for free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti competitive behaviour. The competition law is also known as antitrust law that regulates the conduct and organization of businesses in order to promote competition and prevent unjustified monopolies. In this case, the *"CCP"* issued the *"impugned notices"* under Section 30 of the *"Act"* mentioning that the *"CCP"* initiated inquiry under Section 37 of the *"Act"* on 21.05.2021 into possible anti-competitive activities in the poultry sector that was concluded on 06.12.2021 and the *"Petitioners"* were called upon to appear and place facts and material in their support failing which order under Section 31 of the *"Act"* might be passed against them.

a. Legal Pathology of Section 30 of the "Act"

7. Chapter-IV of the *"Act"* deals with the powers and functions of the *"CCP"*. Section 28 of the *"Act"* empowers the *"CCP"* to initiate proceedings against the individuals and undertakings committing contravention or non-compliance of the provisions of the *"Act"*. While Section 30 of the *"Act"* authorizes the *"CCP"* to pass

orders in case of breach and violation of Chapter-II and prior to passing any order, a notice highlighting the specific reasons for initiating proceedings coupled with providing an opportunity of hearing is also mandated. In addition, thereto, the *"CCP"* is also empowered under Section 37 of the *"Act"* to conduct enquiries and studies on matters relevant to the provisions of the *"Act"*.

8. It is observed that Section 30 (1) and (2) of the *"Act"* is perimetria to Section 16 of the Punjab Environment Protection Act, 1997 wherein the Authority, Commission or Agency has to be satisfied itself for contravention of provision of the Act before making any proceedings in the case but such satisfaction cannot be done unless sub-section 30(2) of the *"Act"* is invoked and thus it has to be read first as the *"CCP"* has to give notice of intention to make order and to give undertaking an opportunity to be heard the parties in details. Section 30(2) of the *"Act"* then comes into play with the notice issued by the *"CCP"* with its intention to make orders stating reasons to the undertaking of contravention with some material which the *"CCP"* based it on certain material it has then just to sit with the Respondents and clarify whether there is any contravention of the provision of the *"Act"* and such notice issued under this section has to be read with Section 37(4) of the *"Act"* as per enquiry initiated under Section 37 of the *"Act"* which has already been done by the *"CCP"* in this case. The language of Section 30(2) of the *"Act"* is very clear which states that the *"CCP"* firstly shall serve notice of its intention stating reasons to the undertaking and by giving an opportunity of being heard with supportive material whereas as per proviso to Section 30(2), the *"CCP"* can decide the case *ex parte* in case the undertaking does not avail the opportunity of being heard.

9. From the perusal of the *"Act"*, it is evident that Section 28 of the "*Act*" delineates the functions and powers of the *"CCP"*, empowering it to initiate 'proceedings' in accordance with the procedures of the *"Act"*. This section explicitly states that the *"CCP"* may conduct enquiries into the affairs of any undertaking as may be

necessary for the purposes of the *"Act"*. This broad mandate underscores the CCP's role as a proactive regulator, capable of initiating investigations to promote competition and prevent anti-competitive behavior. Section 30(1) of the *"Act"* empowers the *"CCP"* to make orders in cases of contravention of the provisions of Chapter II. It mandates that the *"CCP"* must adopt due process by providing notice of its intention to make such an order, thereby ensuring that the undertaking has an opportunity to be heard. This procedural safeguard is essential for maintaining fairness and transparency in the regulatory process. However, it is crucial to note that the initiation of an enquiry under Section 37 does not equate to a formal proceeding under Section 30 of the *"Act"*, as the latter involves potential penal consequences. Section 37 of the *"Act"* is particularly pertinent to the CCP's authority to conduct enquiries. Sub-section (1) empowers the CCP to initiate enquiries on its own or upon a reference from the Federal Government. This provision is significant as it allows the *"CCP"* to act independently, without waiting for a complaint or external prompting. The Supreme Court of Pakistan, in the case of *DALDA FOODS LIMITED V. COMPETITION COMMISSION OF PAKISTAN* **(2023 SCMR 1991)** expounded the scope and powers of the *"CCP"* under Section 37 of the *"Act"*. The Court held that enquiries and studies are independent tools employed by the *"CCP"* to collect and assess information on market trends. Importantly, the Court emphasized that such enquiries do not constitute an adverse action or a formal proceeding under Section 30 of the *"Act"*. The relevant portion of the judgment read as under:-

> *"Section 37 of the Act provides for enquiry and studies and subsection (1) thereof provides that the CCP may, on its own, conduct enquiries and studies into any matter relevant to the purposes of this Act --- Therefore, in terms of sections 36 and 37 the power to call for information or conducting an enquiry or study do not constitute a proceeding against an undertaking under section 30 of the Act.*

> *It is important to draw a distinction between section 30"*

Likewise, the Supreme Court in *A. RAHIM FOODS (PVT) LIMITED COMPETITION COMMISSION OF PAKISTAN VERSUS K&N'S FOODS (PVT) LIMITED and others* **(PLD 2023 SC 516)** also noted that the *"CCP"* can initiate inquiries on its own accord under Section 37(1) of the *"Act"*, which allows it to address potential violations proactively. These judicial interpretations unequivocally affirm the CCP's authority to initiate enquiries based on its own assessment of market conditions, thereby enhancing its regulatory effectiveness. It leads to the obvious conclusion that the *"Act"* does not pose any embargo upon *"CCP"* rather it empowers the commission to initiate enquiries on its own against any undertaking to serve the purposes of the *"Act"*.

10. So far as the issuance of the *"impugned notice"* by the *"CCP"* is concerned, the jurisdiction to issue the *"impugned notices"* by the *"CCP"* has not been agitated. The relevant part of the *"impugned notices"* reads as under:

> *"NOW THEREFORE, you, the Undertaking, is called upon to show cause in writing within fourteen (14) days from the date of receipt of this show cause notice and to appear and place before the Commission, facts and material in support of the contentions and to avail the opportunity of being heard through a duly authorized representative on February 15, 2022 at the Office of the Commission i.e. 8th Floor South, ISE Towers, 55-B, Jinnah Avenue, Islamabad at 11:30 a.m. or as soon thereafter convenient to the Commission, and to explain as to why an appropriate order under Section 31 of the Act may not be passed and/or a penalty for violating the provisions of the Act may not be imposed under Section 38 thereof".*

Bare reading of above observation clearly reveals that the *"Petitioners"* have only been called upon to show cause in writing and to appear and place before the *"CCP"*, facts and material in

support of their contentions and to avail the opportunity of hearing. When confronted to learned counsel for the *"Petitioners"* whether they have filed reply to the *"impugned notices"*, he stated that the *"CCP"* had authorized enquiry in terms of Section 37(1) of the *"Act"* without fulfilling the mandatory prerequisites and it was necessary for the *"CCP"* to provide reasonings which had not been done. Evidently the *"Petitioners"* have knocked the door of this Court to agitate the issuance of show cause notice against them within the realm of Article 199 of the *"Constitution"*. The Court feel it imperative to discern that if this extraordinary jurisdiction can be determinatively applied to the situation in hand where the 'injury' is not actual rather perceived in the form of mere issuance of show cause notice. To begin with the literal understanding, the term *'show cause'* has been defined in **Black's Law Dictionary 11th edition,** as '*To produce a satisfactory explanation or excuse, usu. In connection with a motion or application to a court*'. The Supreme Court in *COMMISSIONER INLAND REVENUE, LAHORE Vs M/S. MILLAT TRACTORS LIMITED, LAHORE and others* **(2024 SCMR 700)** has eloquently examined, explicated and laid down the meaning and scope of the term show cause notice and held that it as a formal communication that informs the recipient of alleged legal violations and provides them an opportunity to respond, embodying the principles of natural justice and due process, which ensure a fair hearing and protection of rights before any adverse action is taken. The relevant portion of the esteemed judgment read as follows:-

> *"A show cause notice is a formal communication from an authority, informing the recipient of an alleged violation or non-compliance with a law, and providing them with an opportunity to respond to the said allegations. It embodies the principle of natural justice, which requires that parties to a dispute be given a fair hearing before any decision is made that may affect their rights or interests. The principles of due process and fairness mandate that the recipient of a show cause notice be given adequate time to respond and present their case,*

> *that they be given access to relevant evidence and information, and that they be given the opportunity to be heard before any action is taken against them. This ensures that the decision-maker is not biased, that the decision is based on the facts of the case and the relevant law, and that the recipient's rights and interests are protected. Thus, in addition to the fair hearing principle, there are other principles of natural justice that also apply for the purposes of issuance of show cause notices, including the principle of impartiality, which requires that the decisionmaker be impartial, and the principle of reasons, which requires that the decision-maker provide reasons for their decision.1 Therefore, a show cause notice is an important tool for enforcing the law, and to ensure that the recipient is given a fair and transparent opportunity to present their case before any adverse order affecting their rights and interests is passed".*

11. Similarly, the Supreme Court in *COMMISSIONER INLAND REVENUE and others Versus JAHANGIR KHAN TAREEN and others* **(2022 SCMR 92**) elaborated the concept of show cause notice in the following manner:-

> *"A show cause notice is delivered to a person by an authority in order to get the reply back with a reasonable cause as to why a particular action should not be taken against him with regard to the defaulting act. By and large, it is a well-defined and well-structured process to provide the alleged defaulter with a fair chance to respond the allegation and explain his position within reasonable timeframe".*

12. A show cause notice is therefore not a testament of an adverse proceeding against a party rather it is an intimation of initiation of a process, which requires certain answers and clarifications from the party being addressed to. As such a show cause notice is not and ought not to be a culmination of unfavorable determination against the party but it is, and it must be adopted as a mode of opportunity to enable the party to provide explanation of certain facts or missing information as required by the relevant law in a case where

shortcomings or omissions thereof surfaced or noted either through the enquiry, tentative or otherwise or by information received to the department in any other manner.

13. Now the question arises that against issuance of show cause notice whether a constitutional petition under Article 199 of the *"Constitution"* is maintainable or not. The Supreme Court in *DEPUTY COMMISSIONER OF INCOME TAX/WEALTH TAX, FAISALABAD and others Versus Messrs PUNJAB BEVERAGE COMPANY (PVT.) LTD* **(2008 SCMR 308)** has deprecated with emphasis the tendency to bypass legal remedies and resort to the constitutional jurisdiction of the High Court. The Court noted that the *"Petitioners"* should have responded to the show-cause notice before seeking intervention, as this practice undermines the department's ability to proceed with cases effectively. The relevant portion read as follows:-

> *"We have heard learned counsel and have gone through the reported judgment carefully wherein it has been held that tendency of bypassing the remedy provided under law, and resort to constitutional jurisdiction of High court was deprecated. In view of the contents of the notice the Department only contemplates to take action against them. The petitioner instead of rushing to the High Court and consuming sufficient time should have submitted reply before invoking the jurisdiction of the High Court. We have held in the judgment that such practice is to be deprecated because if merely on the basis of show-cause notice proceedings are started then in such position department would never be in a position to proceed with the cases* ----------
> ----
> *Therefore, merely for the purpose of convenience, availing the remedy of the High Court under Article 199 of the Constitution cannot be appreciated".*

The Islamabad High Court in *SAEED AHMAD AND OTHERS VERSUS CHAIRMAN O.G.D.C.L. and others* **(2020 PLC 27)** also laid down the same principle while enumerating the grounds, on the

basis of which, though, a writ is maintainable in circumstances. The relevant portion was read as follows:-

> *"It is well settled that mere issuance of a show cause notice does not amount to an adverse action. Although in the case at hand the N.I.R.C. has dismissed the petitioners' petitions against the show cause notices issued by O.G.D.C.L., it is also well settled that a writ petition against a show-cause notice is not maintainable unless such a notice has been issued without lawful authority, is wholly without jurisdiction, coram non judice or is based on mala fides".*

This Court in *ABDUL RAZZAQ Versus LAHORE DEVELOPMENT AUTHORITY through Director General and another* **(2017 PLC (C.S.) Note 2)** also reiterated the same principle in the following manner:-

> *"It is settled principal of law that the writ petition is not maintainable against show-cause notice, summons or notice as final order is yet to be passed and if any adverse order is passed then the petitioner may be at liberty to challenge the same by taking all objections/points available to him. I am not persuaded to accept the contention of the learned counsel for the petitioner that show-cause notice, summons or notice may be assailed before this Court in Constitutional Jurisdiction. Therefore, interference of High Court in the matter is not warranted by law".*

14. It is thus a well settled principle of law that mere issuance of a show cause notice is not an adverse order and writ petition thereagainst is not maintainable. This Court in its recent judgment *STRATEGIC PLANS DIVISION and another versus PUNJAB REVENUE AUTHORITY and others* **(PLD 2024 Lahore 545)** has conclusively summed up the principles regarding maintainability of writ petition against mere issuance of show cause notice. The relevant part of holding is reproduced as under:-

> *i. Show-cause notice is not an adverse order unless it could be clearly shown to the satisfaction of the Court that it has been issued*

by an authority not vested with jurisdiction or it was issued for mala fide reasons.

ii. *The exception relating to want of jurisdiction does not include every jurisdictional error. A wrong exercise of jurisdiction or interpretation of the law cannot be treated as want of jurisdiction.*

iii. *Constitutional jurisdiction is exercised if the Court is satisfied that the person is an 'aggrieved party' within the context of Article 199 of the Constitution and no adequate remedy is provided by law. If adequate statutory remedies are provided under the relevant statute, it is to be taken into consideration while exercising discretion under Article 199 of the Constitution.*

iv. *By passing or circumventing statutory forums is to be discouraged.*

v. *The approach should be to advance the object and purpose of a statute and every effort made to uphold the sanctity of the legislative intent rather defeating it.*

15. Since through the *"impugned notices"* a chance is given to the *"Petitioners"* to appear and produce evidence/material in response to the allegations leveled in the "enquiry report" therefore, the *"Petitioners"* grievance is not actual rather perceived. Moreover, the *"Petitioners"* has not controverted or challenged the authority of the *"CCP"* to issue 'notice' so no question of issuance of show cause notice without valid jurisdiction arises in any manner for maintainability of instant petition. Even otherwise, from the jurisprudential aspect, the version of the "Petitioners", at this juncture, is also contradictory to the doctrine of ripeness. This doctrine is also a determinative parameter for maintainability and merit adjudication of a constitutional petition within the bound of Article 199 of the *"Constitution"*. From the literal standpoint the term '*ripeness'* has been defined in **Blacks'Law Dictionary, 11th Edition** as '*The state of a dispute that has reached, but has not passed, the point when the facts have developed sufficiently to permit an intelligent and useful decision to be made. The requirement that this state must exist before*

a court will decide a controversy'. On the other hand, the term *'doctrine of ripeness'* has been defined in **Advanced Law Lexicon 4th Edition p. 4276** as "*A doctrine prohibiting federal Courts from exercising jurisdiction over a case until an actual controversy is presented involving a threat of injury that is real and immediate"*. Apart from the dictionary definition, the concept of doctrine of ripeness is also the subject of discussion in multiple legal article. One of which was published in Chicago Law Journal (Volume No.75) under the title *"No Time Is the Right Time: The Supreme Court's Use of Ripeness to Block Judicial Re o Block Judicial Review of Forrest Plans for Environmental Plans for Environmental"* in which the author of the article articulated the doctrine of ripeness in the terms "ripeness is a doctrine that relates to the timing of judicial review, asking if the court is equipped to adjudicate the issues before it. The basic rationale of the ripeness doctrine is to prevent the courts through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formulized and its effects felt in a concrete way by the challenging parties".

16. The principle at hand is grounded in the notion that judicial resources must be preserved, ensuring that Courts engage only with disputes that are actual and immediate. It reflects the view that Courts should concern themselves with tangible, present, or imminent issues, avoiding the exhaustion of their efforts on abstract or perceived questions layered in probabilities and apprehensions. As such, judicial intervention is discouraged in matters that, at least for the time being, do not bear a direct or substantial impact on the parties involved. Furthermore, this Court in *MUGHAL-E-AZAM BANQUET COMPLEX through Managing Partner versus FEDERATION OF PAKISTAN through Secretary and 4 others* **(2011 PTD 2260)** made a detailed analysis of the doctrine and highlighted its applicability and significance while holding that the doctrine of "Ripeness" ensures that

Courts avoid premature adjudication by requiring disputes to be concrete and focused, preventing abstract disagreements over policies. This principle protects agencies from judicial interference until their decisions are formalized and felt by the challenging parties, allowing courts to benefit from agency expertise and a developed record. The relevant portion of the judgment read as under:-

> *"Just as a case can be brought too late, ... it can be brought too early, and not yet be ripe for adjudication ... until the controversy has become concrete and focused, it is difficult for the court to evaluate the practical merits of the position of each party.' The basic rational behind the 'Ripeness' doctrine is 'to prevent the courts through avoidance of premature adjudication, from entangling themselves, in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.' 'Ripeness' requires that an issue be sufficiently found and felt to be a justifiable controversy ... As courts insist on a concrete context, that context enables them to better see the problems that they are supposed to redress. As courts insist on completed agency action, that insistence may (1) eliminate the waste of courts deciding disputes that might be mooted as an agency runs its course, (2) assure the courts of the knowledge gained from applied agency expertise, and (3) provide them with a record already developed by the agency".*

In *SABIRA KHATOON versus GOVERNMENT OF THE PUNJAB and others* **(2021 PLC (C.S.) 1600)**, the Court held that *"Ripeness is a doctrine which courts use to enforce prudential limitations upon their jurisdiction". It is founded on the principle that judicial machinery should be conserved. It "reflects concerns that courts involve themselves only in problems that are real and present or imminent" and should not exhaust themselves in deciding theoretical or abstract questions that have no impact on the parties at least for the time being. This doctrine postulates that the "lawsuit must be well developed and specific and appropriate for judicial*

resolution. Courts may not decide cases that involve uncertain and contingent future events that may not occur as anticipated, or indeed may not occur at all." In *MUHAMMAD HAMMAD UR REHMAN ZAFAR versus DIRECTOR, FEDERAL INVESTIGATION AGENCY, LAHORE and another* **(PLD 2022 Lahore 177)**, the Court held that *"the doctrine of prematurity and ripeness suggests that a matter is not amenable to adjudication in constitutional jurisdiction if it is either premature or not ripe for adjudication inasmuch as the impugned step or the executive act complained of does not give rise to any tangible grievance that can be addressed in law. It may also be that the time of challenge coincides with a yet not complete intervening process leading up to the final act or that an opportunity or chance, besides resort to Constitutional jurisdiction, is still available with the litigant".*

b. Basic Object and Purpose of CCP Reflected in the Preamble of the "Act"

17. The basic emphasis was focused on its preamble of the *"Act"* where it has been clearly mentioned that it was made to ensure ***(i)*** free competition in all spheres of commercial and economic activity; ***(ii)*** enhance economic efficiency; ***(iii)*** protect consumers from anti-competitive behaviour; ***(iv)*** provide for establishment of the *"CCP"* to maintain and enhance competition and for matters connected therewith or incidental thereto. The preamble to a statute is though not an operational part of the enactment but it is a gateway, which opens before us the purpose and intent of the legislature, which necessitated the legislation on the subject and also sheds clear light on the goals which the legislator aimed to secure through the introduction of such law. The preamble of a statute, therefore holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law. The Supreme Court of Pakistan in *DIRECTOR GENERAL, FIA AND OTHERS Versus KAMRAN IQBAL and others* **(2016 SCMR 447)** laid down the similar principle by holding that

"indeed, preamble to a Statute is not an operative part thereof, however, as is now well laid down that the same provides a useful guide for discovering the purpose and intention of the legislature. Reliance in this regard may be placed on, the case of Murree Brewery Company Limited v. Pakistan through the Secretary of Government of Pakistan and others (PLD 1972 SC 279). It is equally well-established principle that while interpreting a, Statute a purposive approach should be adopted in accord with the objective of the Statute and not in derogation to the same". This Court in *DILSONs (Private) Limited and others versus SECURITY & EXCHANGE COMMISSION OF PAKISTAN and another* **(2021 CLD 1317 Lahore)** has already declared the *"CCP"* as Regulator in Pakistan by holding that *"the CCP was established under Section 12 of the Competition Act, with the intent to ensure free competition and economic efficiency and to carry out the administrative function of the executive to promote consumer welfare with the sole objective to regulate anti-competitive behaviour. Purpose of the CCP is to ensure fair competition by regulating the prohibitions set out in Chapter-II of the Competition Act. Therefore, it has a regulatory objective to promote free competition and prevent anti-competitive behaviour and prescribe enforcement mechanisms to ensure compliance"*. The object of the *"Act"* was elaborated by the Supreme Court of Pakistan in *A. RAHIM FOODS (PVT.) LIMITED and another versus K&N'S FOODS (PVT.) LIMITED and others* **(2023 CLD 1001)** holding that *"free and fair competition is a fundamental concept in economics that involves providing a level playing field for all market participants. It is based on the principles of a free market where businesses compete on equal terms, and consumers make decisions based on price, quality, and preference. Free and fair competition is competition that is based on quality, price, and service rather than unfair practices. Predatory pricing, competitor bashing, and the abuse of monopoly-type powers, for example, are unfair practices. When competitors can compete freely on a 'level playing field,' economies*

are more likely to thrive". In *COMPETITION COMMISSION OF PAKISTAN and others versus DALDA FOODS LIMITED, KARACHI* **(2023 SCMR 1991)** it has held that *"the Act aims to regulate the fundamental right to conduct any lawful trade or business guaranteed by Article 18 of the Constitution of Pakistan, in the interest of free competition as provided in clause (b) of the proviso to that Article. As one of the primary objectives of enshrining a right within the Constitution is to safeguard it from being susceptible to ordinary legislation, the regulatory laws that have the effect of impacting a constitutionally guaranteed right are to be strictly construed. The wide and liberal interpretation of such laws may make the constitutional guarantee redundant. Therefore, the provisions of the Act that authorize the Commission, in the public interest of ensuring free competition, to interfere in the exercise of the fundamental right to conduct any lawful trade or business must be strictly construed"*. The object of the *"Act"* was further discussed in *LPG ASSOCIATION OF PAKISTAN through Chairman versus FEDERATION OF PAKISTAN through Secretary, Ministry of Petroleum and Natural Resources, Islamabad and others* **(2021 CLD 214)** whereby the Court has held that *"the objective of the Act is economic welfare and consumer welfare. The Act sets out to improve economic efficiency through its regulatory mechanism by prohibiting anti-competitive behaviour as it impacts all spheres of commercial and economic activity"*

c. Legal Anthropology of "CCP" and the Previous Laws.

18. In order to ensure free competition in all spheres of commercial and economic activity and to enhance economic efficiency and to protect consumers from anti-competitive behaviour, the reasons for enacting the *"Act"* and the establishment of *"CCP"* being the Regulator, has to be seen from its legal anthropology. The history of competition law in Pakistan dates back to the 1970s when The Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (the ***"Ordinance of 1970"***) was

promulgated with the object to provide for measure against concentration of economic power, growth of unreasonable monopoly power and unreasonably restrictive trade practices. The Competition Ordinance, 2007 (the ***"Ordinance of 2007"***) was thereafter promulgated preamble of which provides for free competition in all sphere of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive behaviour. The said Ordinance was finally enacted through new legislation namely the Competition Commission Act, 2010 preamble whereof is identical to that of the *"Ordinance of 2007"*. This legal anthropology has the existence of *"CCP"* being the Regulator from time to time under the various statutes in order to achieve the main goal of enhancing economic efficiency and for protection of consumers from anti-competitive behaviour. It is observed that till the time the "Ordinance of 1970" remained in field there was only one (1) judgment of the Supreme court of Pakistan (PLD 2005 SC 193), thirteen (13) of the High Court and six (6) of the Authority under the *"Ordinance of 1970"*. Moreover, under the *"Ordinance of 2007"* there were one twenty-eight (128) judgments passed by the *"CCP"* and its members/Chairman; six (6) judgments were passed by the Sindh High Court, four (4) by Islamabad High Court, Islamabad, four (4) by Lahore High Court and one (1) by the Competition Appellate Tribunal and three (3) judgments by the Supreme Court of Pakistan.

V. CONCLUSION

19. This petition was filed against the *"impugned notices"* by the *"Petitioners"*, which is not an adverse order and by agitating the same against such an injury which is neither actual nor immediate rather perceived and suppositious. The issuance of the *"impugned notices"* is an initial yet primary step of the process to ensure fair opportunity, which is also akin to probability of mediation as well pointed out by the Supreme Court in *COMMISSIONER INLAND REVENUE versus Messrs RYK MILLS* **(2023 SCMR 1856)**. It is an opportunity for the *"Petitioners"* to explain their position and if they do so, the

"impugned notices" are and ought to be deemed satisfied without any further adverse action. As the matter has not been ripened under Chapter IV of the *"Act"* under which certain powers have been given to the Regulator to decide the matter and once it is decided by the *"CCP"*, the "Petitioners" have the remedies under Section 41 of the *"Act"* by way of an appeal before the Appellant Bench of the Commission and appeal to the Competition Appellate Tribunal under Section 42 of the *"Act"* and further appeal to the Supreme Court under Section 44 of the *"Act"*, and such remedies have not been exhausted by the *"Petitioners"*. This Court in *CHENAB FLOUR & GENERAL MILLS versus FEDERATION OF PAKISTAN and others* **(PLD 2021 Lahore 343)** has held that if a Regulator is barred from exercising any of such functions, the purpose of law will not only be compromised but the intent behind making of such law will also be jeopardized. Moreover, if the Court starts interfering at initial steps of the Regulator for not initiating inquiry, then it will create hurdle for the Regulator to proceed in the matter to protect the very purpose and object of law. It is settled law by now that this Court, before granting relief to a Petitioners by exercising its extraordinary jurisdiction under Article 199 of the *"Constitution"*, must satisfy itself regarding the non-availability of any alternate remedy, or in case Court is inclined to grant relief even in presence of alternate remedy, Court should be satisfied that circumstances of the case make the other remedy inadequate. While dealing with question of maintainability of a petition before this Court, in presence of an alternate efficacious remedy available to a litigant, the Supreme Court of Pakistan in judgments reported as *"INDUS TRADING AND CONTRACTING COMPANY Versus COLLECTOR OF CUSTOMS (Preventive) Karachi and others"* **(2016 SCMR 842),** *"DR. SHER AFGAN KHAN NIAZI Versus ALI S. HABIB and others"* **(2011 SCMR 1813) and** *"MUHAMMAD ABBASI Versus S.H.O. Bhara Kahu and 7 others"* **(PLD 2010 SC 969)** has held that in presence of availability of an alternate efficacious remedy, jurisdiction of this Court under Article

199 of the *"Constitution"* cannot be invoked. This petition, in the instant point of time is therefore contradictory to the doctrine of ripeness and is also hit by doctrine of prematurity.

20. For what has been discussed above and in the light of case law of the Supreme Court of Pakistan, referred to above, these writ petitions are disposed of with a direction to the *"Petitioners"* to file their replies by agitating all points raised in these petitions before the *"CCP"* who shall proceed ahead with an objective approach to the matter strictly as per law.

(JAWAD HASSAN)
JUDGE

APPROVED FOR REPORTING

JUDGE

*Usman**