

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

Present:

**MR. JUSTICE QAZI FAEZ ISA**  
**MR. JUSTICE SAJJAD ALI SHAH**

**CIVIL PETITION NO. 371-P OF 2016**

*(Against the judgment dated 26.05.2016 of the  
Peshawar High Court, Peshawar passed in  
Writ Petition No. 1039-P of 2015)*

*Government of Khyber Pakhtunkhwa through Secretary  
Local Government and Rural Development  
Department, Peshawar and others.*

**... Petitioners**

**VERSUS**

*M/s Lucky Cement Limited.*

**... Respondent**

For the Petitioners : Mr. Mujahid Ali Khan,  
Addl. Advocate General, KPK  
Mr. Sabahuddin Khattak, ASC.  
a/w Fakhar Alam, Addl. Secretary.  
& Barkat Ullah Durrani, Dy. Secretary.

For the Respondent : Not represented.

Date of Hearing : 29.11.2018.

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

**QAZI FAEZ ISA, J.** The Government of Khyber Pakhtunkhwa through Secretary Local Government and Rural Development Department ("**the Government**") and others (the petitioners herein) have challenged the judgment dated 26<sup>th</sup> May, 2016 of a learned Division Bench of the Peshawar High Court, Peshawar, which by allowing the writ petition (Writ Petition No. 1039-P of 2015) filed by M/s Lucky Cement Limited had struck down the imposition of tax/cess/fee by the Government levied by letter No. AOII/LCB/9-2014 dated 8<sup>th</sup> January, 2015 (the "**letter of 8<sup>th</sup> January, 2018**"), which is reproduced hereunder:

The Chief Coordination Officer,  
District Council Lakki Marwat.

SUBJECT: **APPROVAL OF PROPOSED ANNUAL TAX CESS FEE**

I am directed to refer your letter No.1115/DC/LM dated 09/07/2014 on the subject cited above and to convey approval of the Competent Authority for imposition of Cess fee of District Council Lakki Marwat as per detail below:

S.No.	Name of Tax	Name of vehicle	Tax recommended by Sub Committee	Tax recommended for approval
1.	Cess fee on Sand, Shingle, Bajri, Mud, Block etc;	6-Wheels, Tractor Trolley	Rs.200/-	Rs.50/-
		Ten Wheeler	Rs.300/-	Rs.75/-
		14-Wheeler	Rs.400/-	Rs.85/-
		18-Wheels & other	Rs.500/-	Rs.100/-
		Mazda/Shahzor	Rs.80/-	Rs.50/-
2.	Production Cess on Cement	6-Wheels	Rs.200/-	Rs.150/-
		10-Wheeler	Rs.300/-	Rs.200/-
		14-Wheeler	Rs.400/-	Rs.300/-
		18-Wheels	Rs.500/-	Rs.400/-
		22-Wheelers & other	Rs.500/-	Rs.500/-

2. The petitioners had opposed the said writ petition and had filed written comments. Mr. Mujahid Ali Khan, the learned Additional Advocate General, mostly reiterated what was stated in the said comments, therefore, it will be appropriate to reproduce a few relevant extracts from the said comments:

"...the respondents have affixed the said Cess Fees for improvement of their financial sources to enable themselves for providing better services to the general public at large. Affixing of such like tax or taxes is the constitutional/legal right of the Provincial Government/District Government under Section 116 of the Local Government Ordinance, 2001. Section 116 Local Government Ordinance, 2005, Section 177 Local Government Ordinance, 2012 and Section 42 of Local Government Act, 2013." (page 3 of the comments)

"The Cess Fee has been imposed on transportation of cement, sand, and coal etc which will be recovered from the vehicles..." (page 4 of the comments).

"The respondents have imposed the Cess Fee after doing the legal formalities according to Section 116 Local Government Ordinance, 2001, U/S 116 Local Government Ordinance, 2005, U/S 177 Local Government Ordinance, 2012 and U/S 42 Khyber Pakhtunkhwa Local Government Act, 2013. The respondents No.01 to 03 first

published a public notice in various daily news papers, then a meeting of the concerned authorities was held and thereafter, the Chief Co-Ordination Officer, District Council, Lakki Marwat, sent the proposed Cess Fee to the Secretary Local Council Board K.P.K, Peshawar vide letter No.1115/DC/ LM dated 09.07.2014. Copy of which is annexed as ANNEXUR-"H". Thereafter, the Government of Khyber Pakhtunkhwa through Deputy Secretary-III Local Council Board Khyber Pakhtunkhwa, approved the proposed Cess Fee vide Notification No.AO-II/LCB/9/2014 dated 08/01/2015. Copy of the said Notification has already been annexed as ANNEXURE-"A"." (pages 5-6 of the comments)

"The District Administration is collecting the Cess Fee according to the approved Schedule from the vehicles who transports various kinds of elements i.e. Cement, Mud; Bajri, Shingle etc from District, Lakki Marwat to other Districts in the country. It is further submitted that no Cess Fee has been imposed on vehicles who transports/distributes the Cements etc inside District, Lakki Marwat." (pages 6-7 of the comments)

"According to Section 42 Part-I (3<sup>rd</sup> Schedule) Para 07 the District Government/Administration can collect charges prescribed for recovery of tax on behalf of the Government, other Local Governments or any statutory authority." (page 8 of the comments)

3. The learned judges of the High Court were of the opinion that the issue of the constitutionality and legality of the said levy had already been determined by a three member Bench of this Court in the case of Lucky Cement Factory Limited v Government of N.W.F.P (2013 SCMR 1511). It therefore needs to be examined whether this Court had already decided the matter which was in issue before the High Court. Accordingly, it will be appropriate to reproduce certain relevant extracts from the cited judgment with regard to the facts of that case, to see if

they are similar to those in the present case, and the reasons for the decision, to consider if such reasoning was applicable in this case too:

“The common question in these connected cases is regarding legality of imposition of loading and unloading tax on the cement and sand etc. ... of the imposition of Rs.5 per ton on loading and unloading of cement and sand” (pages 1513-1514)

“neither of the learned counsel for the respondents was able to show if any services were provided by the local council to the appellants for loading and unloading or for the purpose of transporting cement or other material in trucks or other vehicles. It was feebly contended on behalf of the respondents that the Tehsil Council is to maintain the roads used by the carriers for transporting the material. If that be the justification, the fee cannot be limited to the trucks engaged in carrying out material but shall be charged on all vehicles using the roads.” (page 1519)

“The learned counsel for the respondents has not been able to refer to any provision of the Ordinance or the Schedules which would legally justify the imposition of tax by the Tehsil Council on activity such as loading and unloading of material or on their carriage.” (page 1519)

The said judgment of this Court concluded as under:

“11. In the light of the foregoing discussion, we hold that the levy of license fee on the manufacture of cement and the fee on loading and unloading of cement as well as the minerals was not within the powers of the Tehsil Councils, Lucky [Lakki] Marwat and Nowshera. The appeals are therefore allowed. The impugned notifications to the extent of imposition of license fee on manufacture of cement and tax on loading and unloading of cement and other material are set aside having being issued without lawful authority. Civil Petition No. 208/2013 is converted into appeal and allowed in the same terms.” (pages 1519-1520)

4. The levy in the case reported in 2013 SCMR 1511 was on the *"loading and unloading of cement and sand"* which was to be calculated on the weight of cement and sand. In the present case the levy is on the vehicles carrying cement, sand, shingle, bajri, mud, blocks etc. and the rates charged depend of the type of vehicle. These minor differences however do not make any difference. The levy in the case reported in 2013 SCMR 1511 was imposed under the Khyber Pakhtunkhwa Local Government Ordinance, 2001 and in the present the applicable law is the Khyber Pakhtunkhwa Local Government Act, 2013 ("**Act of 2013**"), the relevant provisions whereof are not significantly different. Incidentally the parties in both cases are the same. It appears that the petitioners wanted to undo the effect of the judgment reported in 2013 SCMR 1511 which was sought to be done by changing the wording of the letter of 8<sup>th</sup> January, 2015, however, these changes are not materially significant. Unfortunately, through such questionable means the levy which had already been struck down by this Court was sought to be resurrected. The High Court in allowing the respondent's petition had relied upon the judgment of the Supreme Court reported in 2013 SCMR 1511, which judgment is equally applicable to the letter of 8<sup>th</sup> January, 2015. Therefore, the issuance of letter of 8<sup>th</sup> January, 2015 and imposing the said levy was illegal and void.

5. There are also a number of other matters noted by us which are of concern. The public notice, which was published prior to the issuance of letter of 8<sup>th</sup> January, 2015, did not mention the proposed tax/cess/fee and referred to statutes which had already been repealed or replaced. The said publication did not comply with section 42 (2) of the Act of 2013 which mandates that, *"the tax proposal"* must be published and by *"inviting and hearing public objection"* thereto. To enable the public to

meaningfully object to any tax proposal it must first know what is proposed to be done.

6. The letter of 8<sup>th</sup> January, 2015 demonstrates that the petitioners did not know the difference between a tax, fee and cess. The letter of 8<sup>th</sup> January, 2015 is titled "TAX CESS FEE"; the heading of the table therein states, "Name of Tax" and thereunder "cess fee" is mentioned at serial No. 1 and "production cess" at serial No. 2. The second column of the said table mentions "*Cess fee on Sand, Shingle, Bajri, Mud, Blocks etc.*" and "*Production cess on Cement*" and in the third column mentions "Name of vehicle" from which the levy is recoverable. The use of "*etc*" in the letter of 8<sup>th</sup> January, 2015 is yet another anomaly. The petitioners themselves are not clear whether they are imposing a tax, cess or fee. It is also standard drafting practice to identify the particular legal provision which has been invoked, but the letter of 8<sup>th</sup> January, 2015 does not mention any law and the particular provision thereunder which has been invoked. In this case the petitioners themselves do not seem to know whether they were imposing a tax, cess or fee.

7. Taxing provisions must be drafted with clarity and precision. The letter of 8<sup>th</sup> January, 2015 is unclear, imprecise and badly worded. Uncertainty is an anathema in taxing provisions. Imprecision and vagueness results in unnecessary litigation and may also be used as a tool of exploitation. The caliber of those drafting taxing provisions needs to be improved. The Government is well advised to redress the demonstrable deficiency in the drafting ability of the concerned department/s.

8. For the aforesaid reasons leave to appeal is declined and the petition is dismissed. Copy of this judgment be sent to the: Advocate

General, Chief Secretary, Secretary Finance, Secretary Law, Parliamentary Affairs and Human Rights, Government of Khyber Pakhtunkhwa, and to the petitioners.

**Judge**

**Judge**

*Bench-I*  
**Peshawar:**  
29.11.2018

**Approved for Reporting**  
*(M. Tauseef)*