

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED
MR. JUSTICE DOST MUHAMMAD KHAN
MR. JUSTICE FAISAL ARAB

CIVIL APPEAL NO. 908 OF 2012

(On appeal against the judgment dated 17.5.2012
passed by the Islamabad High Court, Islamabad in Writ
Petition No. 622/2007)

Pakistan Telecommunication Company Limited

... Appellant

VERSUS

Employees Old Age Benefit Institution and another

... Respondents

For the Appellant: Mr. Hamid Khan, Sr. ASC
Mr. M.S. Khattak, AOR

For the Respondents: Mr. Tariq Bilal, ASC

Date of Hearing: 01.03.2016

JUDGMENT

FAISAL ARAB, J.- Telegraph & Telephone Department was originally a department of the Federal Government. Under Pakistan Telecommunication Corporation Act, 1991 (Act XVIII of 1991) the Telegraph & Telephone Department was transformed into a Corporation and its affairs were entrusted to a board comprising of a chairman and 11 other directors appointed by the Federal Government. In the year 1996, for the purposes of reorganizing the telecommunication system in the country, the Pakistan Telecommunication (Re-organization) Act, 1996 (Act XVII of 1996) was passed. It was intended to dissolve the Corporation and in its place create five different entities in which the rights, properties and liabilities of the Corporation were to vest. These five entities

that were to form under the said Act are (i) Pakistan Telecommunication Authority, (ii) Frequency Allocation Board, (iii) National Telecommunication Corporation, (iv) Pakistan Telecommunication Employees Trust and (v) Pakistan Telecommunication Company Limited. Out of these five entities, the entity mentioned last was to be incorporated as a company limited by shares under the Companies Ordinance, 1984. The remaining entities were to come into existence as four distinct statutory bodies that were to perform various functions under the administrative control of the Federal Government. Relevant for the purposes of these proceedings is the status of 'Pakistan Telecommunication Company Limited' a company limited by shares which was incorporated with effect from 1.1.1996. This limited company that was formed is the appellant in the present proceedings. Under the Pakistan Telecommunication (Re-organization) Act, 1996, all employees of the defunct Corporation were to be transferred to the five distinct entities out of which a very large number was transferred to the appellant company. The employees of the defunct Corporation, who were transferred to the appellant company, their terms and conditions of service were secured under Section 36 of the Pakistan Telecommunication (Re-organization) Act, 1996.

2. In the year 1998, respondent No. 1 called upon the appellant company to pay contributions in terms of Sections 9 & 9-B of the Employees Old-Age Benefits Act, 1976 from the date of its incorporation. Such demand was resisted by the appellant

company by taking the plea that Section 47(f) of the said Act exempts all statutory bodies from the application of the said Act and as the appellant company was created under the Pakistan Telecommunication (Re-organization) Act, 1996, it enjoys the status of statutory body and thus not liable to pay contributions. This led to the issuance of show cause notice, which was then followed by registration of the appellant company under the Employees Old-Age Benefits Act, 1976. To challenge its registration on the ground that the appellant Company being a statutory body was not liable to make contributions, it first lodged a complaint with the Institution under Sections 33 of the Employees' Old-Age Benefits Act, 1976 and when its complaint was rejected it appealed to the Board of the Institution as envisaged under Section 35 of the said Act. Having availed both the statutory remedies provided under Sections 33 and 35 of the Employees' Old-Age Benefits Act, 1976 and failed, the appellant company was served with a demand notice in March, 2007. Faced with coercive action in the wake of the demand notice, the appellant company challenged the demand notice in a Constitution Petition filed under Article 199 of the Constitution of Pakistan. This petition was initially filed in the Rawalpindi Bench of the Lahore High Court. However, after the establishment of the Islamabad High Court, the same was transferred to it for disposal. The Constitution Petition was eventually dismissed vide impugned judgment dated 17.5.2012. Aggrieved by such decision, leave to appeal was filed in this Court, that was granted and Civil Petition No.1299 of 2012 was converted into present appeal.

3. Learned counsel for the appellant Mr. Hamid Khan argued that the appellant Company was the creation of a statute as it was created under Pakistan Telecommunication (Re-organization) Act, 1996 and thus being a statutory body, by virtue of Section 47(f) nothing in the Employees Old-Age Benefits Act, 1976 applies to the persons who are in service of statutory bodies. He, therefore, submitted that the demand raised by the respondent No. 1 for realizing contributions under Employees' Old-Age Benefits Act, 1976 was without jurisdiction. In the alternative, it was also argued that as many employees of the Pakistan Telecommunication Corporation were originally the employees of Telegraph & Telephone Department, who at that time enjoyed the status of civil servants and thereafter as employees of the statutory body, their terms and conditions of service were protected under Section 36 of the Pakistan Telecommunication (Re-organization) Act, 1996, therefore, the appellant company was not liable to make contributions under the provisions of Employees' Old-Age Benefits Act, 1976 in so far as such employees are concerned.

4. The only question that needs to be decided is whether the appellant company can be described as a statutory body as stated in Section 47(f) of Employees' Old-Age Benefits Act, 1976 and therefore not amenable to the provisions of the said Act.

5. The appellant company was incorporated as a limited company under the provisions of the Companies Ordinance, 1984.

It did not come into existence under the Pakistan Telecommunication (Re-organization) Act, 1996. This Act only provided that a company limited by shares shall be incorporated under the provisions of the Companies Ordinance, 1984, as is evident from Section 34 of the Pakistan Telecommunication (Re-organization) Act, 1996. This legal position is realized by the appellant Company itself as in the memo of appeal, it is stated that the appellant company remained a statutory body at-least till such a time it was transformed from a state owned statutory body to a public limited company and such transition took place upon transfer of the management of the appellant company to a foreign company i.e. Etisalat International Pakistan LLC in May, 2006 and therefore uptill May, 2006 it is to be regarded as a statutory body.

6. In our view only such entities can be described as statutory bodies which come into existence by virtue of a Statute. Where the legislature has not brought into existence an entity through a special law but the same has been incorporated under some existing statute then such entity cannot to be assigned the status of a statutory body. If every entity that is formed under some existing statute is to be described as 'statutory body' then we are afraid every limited company incorporated under the Companies Ordinance, 1984, every partnership concern formed under the Partnership Act, every association formed under the Societies Act and every co-operative society formed under the Cooperative Societies Act is also to be described as 'statutory body'. For an entity to be described as a 'statutory body', its birth itself

should have been caused by a special statute. In other words, such entity should come into existence by virtue of a statute itself and not established under the provisions of an already existing statute. Examples of some entities that are creatures of the Statues itself are Karachi Port Trust, Pakistan International Airlines, and WAPDA. Such entities only are to be regarded as statutory bodies. How the appellant company, which came into existence under the provisions of the Companies Ordinance, 1984, could be regarded as an entity incorporated under Pakistan Telecommunication (Re-organization) Act, 1996 when it was incorporated under the Companies Ordinance, 1984. As the appellant company was incorporated under an existing law, it cannot be regarded as a 'statutory body'. None of the employees of the appellant company also, from the date of its incorporation, can be regarded as employees of a statutory body so as to enjoy the benefit of the provisions of Section 47(f) of Employees' Old-Age Benefits Act, 1976. The management of the appellant company may have been transferred to a foreign company i.e. Etisalat International Pakistan LLC in May, 2006 but that cannot be made the starting point to reckon its transition from a statutory body to a non-statutory body. The deciding factor would be when the appellant company, as a separate and distinct entity limited by shares, was incorporated under the provisions of the Companies Ordinance, 1984. It matters not that at the time of its incorporation its shares were solely held by the Federal Government.

7. In view of the above discussion, the appellant company cannot be regarded as a statutory body and thus has become liable to pay contributions under the provisions of Employees' Old-Age Benefits Act, 1976 from the date of its in-corporation. This appeal is therefore dismissed.

JUDGE

JUDGE

JUDGE

Islamabad, the

Announced on _____ by Hon'ble Mr. Justice Faisal Arab

Approved For Reporting
Khurram