

JUDGMENT SHEET

IN THE HIGH COURT OF BALOCHISTAN, QUETTA

CIVIL MISC APPEAL No.15 OF 2020

ALL PAKISTAN GLASS MANUFACTURERS IMPORTER AND EXPORTER
ASSOCIATION THROUGH ITS EX-SECRETARY GENERAL

Vs.

REGULATOR DIRECTORATE GENERAL OF TRADE ORGANIZATION & OTHERS

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CIVIL MISC APPEAL No.16 OF 2020

SCRAP IMPORTER ASSOCIATION THROUGH ITS EX-DIRECTOR M. YOUSAF

Vs.

REGULATOR DIRECTORATE GENERAL OF TRADE ORGANIZATION & OTHERS

=====

CIVIL MISC APPEAL No.17 OF 2020

GAS HEATER IMPORTER ASSOCIATION OF PAKISTAN THROUGH ITS
SECRETARY GENERAL

Vs.

REGULATOR DIRECTORATE GENERAL OF TRADE ORGANIZATION & OTHERS

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CIVIL MISC APPEAL No.18 OF 2020

PAKISTAN TRANSPORT ASSOCIATION THROUGH ITS EX-SECRETARY
GENERAL M. ASGHAR.

Vs.

REGULATOR DIRECTORATE GENERAL OF TRADE ORGANIZATION & OTHERS

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CIVIL MISC APPEAL No.19 OF 2020

ALL GHEE EXPORTER ASSOCIATION OF PAKISTAN THROUGH ITS EX-
SECRETARY GENERAL NAIMATULLAH

VS.

REGULATOR DIRECTORATE GENERAL OF TRADE ORGANIZATION & OTHERS

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CIVIL MISC APPEAL No.20 OF 2020

ALL PAKISTAN COPPER IMPORTER EXPORTER ASSOCIATION THROUGH ITS
EX-SECRETARY GENERAL

VS.

REGULATOR DIRECTORATE GENERAL OF TRADE ORGANIZATION & OTHERS

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CIVIL MISC APPEAL No.21 OF 2020

ALL PAKISTAN LAND ROUTE CUSTOM AGENT ASSOCIATION THROUGH ITS
EX-SECRETARY GENERAL M. SAFDAR

VS.

REGULATOR DIRECTORATE GENERAL OF TRADE ORGANIZATION & OTHERS

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CIVIL MISC APPEAL No.22 OF 2020

PLASTIC SCRAP ASSOCIATION THROUGH ITS EX-SECRETARY GENERAL

VS.

REGULATOR DIRECTORATE GENERAL OF TRADE ORGANIZATION & OTHERS

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CIVIL MISC APPEAL No.25 OF 2020

WOMEN CHAMBER OF COMMERCE & INDUSTRY

VS.

REGULATOR DIRECTORATE GENERAL OF TRADE ORGANIZATION & OTHERS

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CIVIL MISC APPEAL NO.82 OF 2020

LORALAI CHAMBER OF COMMERCE & INDUSTRY THROUGH ITS PRESIDENT

VS.

GOVERNMENT OF PAKISTAN THROUGH ITS SECRETARY MINISTRY OF
COMMERCE & TEXTILE & OTHERS

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JUDGMENT

In Civil Misc Appeal Nos.15, 17, 19, 21, 22 & 25 of 2020.

Date of hearing: 08th October, 2021 Reasons drawn on: 11th November 2021.

For appellant: M/s Dr. Pervaiz Khan Khilji & Syed Mohibullah Agha, Advocates.

For respondents: Mr. Tahir Iqbal Khatak, Assistant Attorney General.
Mr. Nasr-ud-Din Mengal, Assistant Advocate General.
Mr. Zain-ul-Abidin, GSP Officer Ministry of Commerce.

For Interveners: M/s Muhammad Amir Rana & Zahoor Hassan Jamote, Advocates.

In Civil Misc Appeal Nos.16 & 18 of 2020.

For appellant: M/s Munir Ahmed Kakar, Dr. Pervaiz Khan Khilji & Syed Mohibullah, Muhammad Nazeer Tareen, Advocates.

For respondents: Mr. Tahir Iqbal Khatak, Assistant Attorney General.
Mr. Nasr-ud-Din Mengal, Assistant Advocate General.
Mr. Zain-ul-Abidin, GSP Officer Ministry of Commerce.

For Interveners: M/s Muhammad Amir Rana & Zahoor Hassan Jamote, Advocates.

In Civil Misc Appeal No.20 of 2020.

For appellant: M/s Dr. Pervaiz Khan Khilji & Syed Mohibullah Agha, Advocates.
Mr. Muhammad Asif Reki, Advocate.

For respondents: Mr. Tahir Iqbal Khatak, Assistant Attorney General.
Mr. Nasr-ud-Din Mengal, Assistant Advocate General.
Mr. Zain-ul-Abidin, GSP Officer Ministry of Commerce.

For Interveners: M/s Muhammad Amir Rana & Zahoor Hassan Jamote, Advocates.

In Civil Misc Appeal No.82 of 2019.

For appellant: Mr. Muhammad Rauf Atta, Advocate.

For respondents: Mr. Tahir Iqbal Khatak, Assistant Attorney General.
Mr. Nasr-ud-Din Mengal, Assistant Advocate General.
Mr. Zain-ul-Abidin, GSP Officer Ministry of Commerce.

For Interveners: M/s Muhammad Amir Rana & Zahoor Hassan Jamote, Advocates.

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MUHAMMAD KAMRAN KHAN MULAKHAIL, J: This Civil Misc Appeal No. 15 of 2020 filed under Section 21 (4) of the Trade Organization Act 2013, against the order Notification No. F. No. 3 (08)/2017 dated 20th April 2018 issued by Director General of Trade Organization (Office of Regulator of Trade Organization) and order dated 06th November 2020, passed by the Secretary Commerce, Government of Pakistan, whereby the appeals filed by the appellant was dismissed; similarly, the connected appeal Nos. 16 to 22, 25 of 2020 & 82 of 2019, against the order of the Regulator and Appellate Authority have also been filed. Since common question of law and facts have been raised, therefore, I propose to dispose of these appeals through this common judgment.

2. **Civil Misc Appeal No. 15 of 2020**

Brief facts of the case are that the appellant was lawful license holder bearing No. 247, issued under the Trade Organization Act, 2013 after fulfilling all legal and formal requirements; that the appellant was issued a notice No. F.No.12(02)/2017-TO dated 01st August 2018, by the respondent No.2 for sharing the post registration codal formalities, which notice was duly replied, but thereafter, a show cause No. 18(08)/2017-TO, dated 15th March 2018 issued to the appellant, in response whereof, the appellant's legal attorney visited the office of respondent No.2, but he was not allowed to represent the case, meanwhile, the appellant's license was cancelled vide letter No. F.NO3(08)/2017 dated 20th April 2018 (**impugned notification**), against which a constitutional petition was preferred, but, the matter was referred to the concerned authority vide order dated 12th November 2019 by this court, but the relevant forum viz respondent No.3 dismissed the appeal vide order dated 06th November 2020 (**impugned order**), hence this appeal.

Civil Misc Appeal No. 16 of 2020

Succinct facts of the case are that the appellant was lawful license holder bearing No. 232, issued under the Trade Organization Act, 2013, duly obtained after fulfilling all legal and formal requirements; that the appellant was issued a notice under Rule 6 (1) (k) of the Trade Organization Rules, 2013, dated 01st August 2018, by the respondent No.2 for sharing the post registration codal formalities, which notice was duly replied, but

thereafter, a show cause No. 18(13)/2016-TO, dated 09th March 2018 issued to the appellant, however, due to minimum time given to the appellant, he was not able to appear and defend his case before the DGTO, meanwhile, the appellant's license was cancelled vide letter No. F.NO3(13)/2016 dated 20th April 2018 (**impugned notification**), against which a constitutional petition was preferred, but, the matter was referred to the concerned authority vide order dated 12th November 2019 by this court, but the relevant forum viz respondent No.3 dismissed the appeal vide order dated 06th November 2020 (**impugned order**), hence this appeal.

Civil Misc Appeal No. 17 of 2020

Brief facts of the case are that the appellant was lawful license holder bearing No. 249, issued under the Trade Organization Act, 2013, having been obtained after fulfilling all legal and formal requirements; that the appellant was issued a notice under Rule 6 (1) (k) of the Trade Organization Rules, 2013, dated 01st August 2018, by the respondent No.2 for sharing the post registration codal formalities, which notice was duly replied, but thereafter, a show cause No. 17(04)/2017-TO, dated 13th March 2018 issued to the appellant, however, without extending an adequate opportunity of hearing to the appellant, his license was cancelled vide letter No. F.No.3(04)/2017-TO dated 25th April 2018 (**impugned notification**), against which a constitutional petition was preferred, but, the matter was referred to the concerned authority vide order dated 12th November 2019 by this court, but

the relevant forum viz respondent No.3 dismissed the appeal vide order dated 06th November 2020 (**impugned order**), hence this appeal.

Civil Misc Appeal No. 18 of 2020

Brief facts of the case are that the appellant was lawful license holder bearing No. 241, issued under the Trade Organization Act, 2013 after fulfilling all legal and formal requirements; that the appellant was issued a notice under Rule 6 (1) (k) of the Trade Organization Rules, 2013, dated 01st August 2018, by the respondent No.2 for sharing the post registration codal formalities, which notice was duly replied, but thereafter, a show cause No. 18(13)/2016-TO, dated 09th March 2018 issued to the appellant, however, due to minimum time given to the appellant, he was not able to appear and represent his case before the DGTO, meanwhile, the appellant's license was cancelled vide letter No. F.NO.3(22)/2016 dated 20th April 2018 (**impugned notification**), against which a constitutional petition was preferred, but, the matter was remanded to the concerned authority vide order dated 12th November 2019 by this court, but the relevant forum viz respondent No.3 dismissed the appeal vide order dated 06th November 2020 (**impugned order**), hence this appeal.

Civil Misc Appeal No. 19 of 2020

Brief facts of the case are that the appellant was lawful license holder bearing No. 236, issued under the Trade Organization Act, 2013 after fulfilling all legal and formal

requirements; that the appellant was issued a notice under Rule 6 (1) (k) of the Trade Organization Rules, 2013, dated 01st August 2018, by the respondent No.2 for sharing the post registration codal formalities, which notice was duly replied, but thereafter, a show cause No. 18(15)/2016-TO, dated 13th March 2018 issued to the appellant, however, due to minimum time given to the appellant, he was not able to appear and represent his case before the DGTO, meanwhile, the appellant's license was cancelled vide letter No. F.NO.3(15)/2016 dated 20th April 2018 (**impugned notification**), against which a constitutional petition was preferred, but, the matter was referred to the concerned authority vide order dated 12th November 2019 by this court, but the relevant forum viz respondent No.3 dismissed the appeal vide order dated 06th November 2020 (**impugned order**), hence this appeal.

Civil Misc Appeal No. 20 of 2020

Brief facts of the case are that the appellant was lawful license holder bearing No. 248, issued under the Trade Organization Act, 2013 after fulfilling all legal and formal requirements; that the appellant was issued a notice under Rule 6 (1) (k) of the Trade Organization Rules, 2013, dated 01st August 2018, by the respondent No.2 for sharing the post registration codal formalities, which notice was duly replied, but thereafter, a show cause No. 18(05)/2017-TO, dated 09th March 2018 issued to the appellant, but on the date fixed for hearing of the matter, the appellant was not allowed to appear and represent his case before

the respondent No.2, meanwhile, the appellant's license was cancelled vide letter No. F.NO.3052)/2017 dated 23rd April 2018 (**impugned notification**), against which a constitutional petition was preferred, but, the matter was referred to the concerned authority vide order dated 12th November 2019 by this court, but the relevant forum viz respondent No.3 dismissed the appeal vide order dated 06th November 2020 (**impugned order**), hence this appeal.

Civil Misc Appeal No. 21 of 2020

Brief facts of the case are that the appellant was lawful license holder bearing No. 238, issued under the Trade Organization Act, 2013 after fulfilling all legal and formal requirements; that the appellant was issued a notice under Rule 6 (1) (k) of the Trade Organization Rules, 2013, dated 01st August 2018, by the respondent No.2 for sharing the post registration codal formalities, which notice was duly replied, but thereafter, a show cause No. 18(16)/2016-TO, dated 13th March 2018 issued to the appellant, however, due to minimum time given to the appellant, he was not able to appear and represent his case before the DGTO, meanwhile, the appellant's license was cancelled vide letter No. F.NO.3(16)/2016 dated 20th April 2018 (**impugned notification**), against which a constitutional petition was preferred, but, the matter was referred to the concerned authority vide order dated 12th November 2019 by this court, but the relevant forum viz respondent

No.3 dismissed the appeal vide order dated 06th November 2020 (**impugned order**), hence this appeal.

Civil Misc Appeal No. 22 of 2020

Brief facts of the case are that the appellant was lawful license holder bearing No. 237, issued under the Trade Organization Act, 2013 after fulfilling all legal and formal requirements; that the appellant was issued a notice under Rule 6 (1) (k) of the Trade Organization Rules, 2013, dated 01st August 2018, by the respondent No.2 for sharing the post registration codal formalities, which notice was duly replied, but thereafter, a show cause No. 18(14)/2016-TO, dated 09th March 2018 issued to the appellant, however, due to minimum time given to the appellant, he was not able to appear and represent his case before the DGTO, meanwhile, the appellant's license was cancelled vide letter No. F.NO.3(14)/2016 dated 20th April 2018 (**impugned notification**), against which a constitutional petition was preferred, but, the matter was referred to the concerned authority vide order dated 12th November 2019 by this court, but the relevant forum viz respondent No.3 dismissed the appeal vide order dated 06th November 2020 (**impugned order**), hence this appeal.

Civil Misc Appeal No. 25 of 2020

Brief facts of the case are that the appellant was lawful license holder bearing No. 145, issued under the Trade Organization Act, 2013 after fulfilling all legal and formal requirements; that since the appellant was working primarily for

promoting interests of women business community of the province, but was restricted by the respondent from functioning its work; that the appellant was issued a show cause No. 12(01)/2018-TO, dated 03th October 2018, which was duly replied explaining the delay in filing the application for renewal of the license, but the appellant's license was cancelled vide letter No. F.NO.04(07)/2013-TO dated 28th March 2019 (**impugned notification**), however, after lapse of 18 months of direction issued by this court in Civil Appeal No. 23 of 2019 vide order dated 24th April 2019, the respondent No. 3 dismissed the appeal vide order dated 06th November 2020 (**impugned order**), hence this appeal.

Civil Misc Appeal No. 82 of 2019

Brief facts of the case are that the appellant was lawful license holder bearing No. 185, issued under the Trade Organization Act, 2013 after fulfilling all legal and formal requirements and was incorporated with the Securities and Exchange Commission of Pakistan under Companies Ordinance, 1984 and was allotted Universal Identification No. 0094621 and was also registered with Federation of Pakistan Chambers of Commerce & Industry (FPCCI) as a trade body; that on 02nd May 2019, the appellant was called for personal hearing in the office of respondent No.2 in response to complaint filed by the respondent No.3, but on 14th June 2019 the appellant's license was cancelled, against which an appeal was preferred, but the same was also

declined vide order dated 01st July 2019 (**impugned order**), hence this appeal.

3. During pendency of the appeals, the applicant/intervener *Jamal-ud-Din*, filed applications in each appeal with request to be arrayed as party to the appeal on the ground that on his application, the licenses of the appellants were cancelled. The said applications were contested by the appellants on legal as well as factual grounds, by filing separate rejoinders to the same.

4. Dr. *Pervaiz Khan*, learned counsel for the appellant in Civil Misc Appeal Nos. 15, 17, 16, 18, 19, 21, 20, 22 & 25 of 2020 contended that the impugned orders are outcome of certain illegalities and irregularities manifesting *malafide* on part of the respondent No.2; that without adhering to the relevant provision of law and rules the respondent No.2 has ordered for cancellation of the appellant's license that too on the strength of not fulfilling post-license conditions, whereas no opportunity of hearing was afforded to the appellants to explain their position in pursuance of explanation letters and show cause issued by the respondent No.2; that as per law and Rules the Director General Trade Organization was appointed as Regulator, but in the instant case the impugned notifications/orders have been passed by the respondent No.2 (Deputy Director, Trade Organization, but there is nothing on record with regard to appointment of respondent No.2 nor any power has been delegated by the Regulator to the respondent, thus,

the impugned notifications are not sustainable and liable to be set aside.

Mr. Munir Ahmed Kakar, Muhammad Nazeer Tareen and Muhammad Asif Reki, appearing for appellants in Civil Misc Appeal Nos. 16, 18 & 20 of 2020, while relying on the arguments advanced by the *Dr. Pervaiz Khan*, added that the impugned orders have been passed without having any authority in the matter, thus, are not sustainable; that even otherwise the post license conditions were satisfactorily fulfilled by the license holders, while the minor deficiencies, if any, could have been met with or dealt with by at least imposing minor fine, thus, the impugned orders besides being passed without any authority are also harsh in nature; he therefore, urged for setting aside of the impugned orders/notifications.

Conversely, *Mr. Tahir Iqbal Khatak*, Assistant Attorney General. *Mr. Naseer-ud-Din Mengal*, Assistant Advocate General, assisted by *Mr. Zain-ul-Abidin*, GSP Officer Ministry of Commerce Learned Additional Advocate General submitted that the appellants failed to fulfill the conditions of post license requirements despite lapse of one year period and thus, the impugned orders were passed by the respondent No.2 that too with the approval of the Regulator; that the entire proceedings were carried put in accordance with the prevailing Act and Rules and with the approval of the Regulator of Trade Organization; he therefore, urged for dismissal of the appeals.

Mr. *Muhammad Amir Nawaz Rana*, Advocate appearing for the intervener, contended that the intervener/applicant was/is necessary party to the appeal as on his complaint the licenses of the appellants were cancelled, but the appellants intentionally failed to array the applicant as party to the appeal; that the appeals are filed beyond the stipulated period, therefore, the same being time barred are not sustainable; that the instant appeals are filed just to disturb the forthcoming election of Chamber of Commerce; the learned counsel requested for arraying the applicant as necessary party to the petition and also urged for dismissal of the petition.

In rebuttal, the learned counsel for the appellants contended that the intervener/applicant has nothing to do with the these appeals as the matter is in between the appellants and the Trade Organization, thus, the applicant/intervener is neither necessary party nor he has any *locus standi* to file the instant application; therefore, the application merits dismissal.

5. I have heard learned counsel for the parties and the learned Advocate General at reasonable length and have also gone through the record of the case with their able assistance. However, before dilating upon the merits of case, it would be apt to reproduce the sections 22(1) of Trade Organization Act 2013:

Section 22. Delegation of Powers.—(1) The Federal Government may, by notification in the official Gazette, direct that all or any of its powers under this Act shall, in relation to such matters or subject

to such conditions as may be specified therein, also be exercisable by the Regulator.

(2) The Regulator may, by order in writing, authorise the Administrator or any other officer to exercise and perform any of his powers and functions under this Act.”

6. The afore quoted provision unequivocally reveals that the Federal Government may delegate its power to the Regulator to exercise its powers under the Act, while sub-Section (2) of the Section 22 speaks that the Regulator may further delegate its powers to any other subordinate officer. In the case in hand the Government of Pakistan vide Notification dated 06th March 2013, appointed the Director General Trade Organization as Regulator to perform the functions and exercise the powers vested in the “*Regulator*” under the Act 2013. In order to ascertain the legality of appointment of Regulator and delegation of powers to him, this court vide order dated 27th August 2021, directed the official respondents to produce the documents whereby the Regulator was appointed. The order runs as under:

“Mr. Irshad Ahmed, Director, representative of Trade Organization, Islamabad is in attendance along with Mr. Tahir Iqbal Khattak, Assistant Attorney General, who apprised the court about the relevant provisions of Section 12 & 22 of Trade Organization Act, 2013.

After perusal of referred to provisions, he is directed to produce the relevant notification/summary and order in writing with

regard to delegation of powers initially to the Regulator and thereafter to any other officer of the Directorate of Trade Organization.

Mr. Jamaluddin, intervener requests for adjournment on account of non-availability of his counsel, while one Mr. Daroo Khan, entered appearance and submitted an application under Order 1 Rule 10 CPC filed in Civil Misc: Appeal No.15 of 2020. Copy whereof has been delivered to the counsel for the appellant, who seeks time to go-through the same and file a reply, if so advised.

To come up on 17.09.2021.

In compliance, the Director General, Trade Organization appeared and submitted details, however, expressed his inability to file the requisite summary with regard to appointment of Regulator of the Organization and requested for direction to the Ministry of Commerce for submitting the requisite details, and thus the learned Deputy Attorney General was directed to file the requisite summary. But despite clear direction of this court the relevant documents pertaining to appointment of Regulator, followed by order of delegation of powers to him was not filed.

7. Section 22 (2) of Trade Organizations Act, 2013, deals with the delegation of powers to the Regulator and in compliance, the Federal Government vide Notification dated 06th March 2013 appointed the Director General Trade Organizations as Regulator to perform the functions and exercise the powers vested in the Act 2013. Though, as per Notification dated 06th March 2013 the powers were delegated, however, due to non-filing of the requisite

documents pertaining to delegation of powers to the Regulator, whether the powers were duly exercised by the Federal Government. In order to elucidate the meaning of the term 'Federal Government' as well as the concept of 'executive powers', the Hon'ble Apex court conducted a detailed exposition of Pakistan's constitutional and political history, in case of "*Mustafa Impex, Karachi vs The Government of Pakistan through Secretary Finance, Islamabad (PLD 2016 Supreme Court 808)*", whereby it was held that:

"84. We may now summarize our conclusions:-

(i) *The Rules of Business, 1973 are binding on the Government and a failure to follow them would lead to an order lacking any legal validity.*

(ii) *The Federal Government is the collective entity described as the Cabinet constituting the Prime Minister and Federal Ministers.*

(iii) *Neither a Secretary, nor a Minister and nor the Prime Minister are the Federal Government and the exercise, or purported exercise, of a statutory power exercisable by the Federal Government by any of them, especially, in relation to fiscal matters, is constitutionally invalid and a nullity in the eyes of the law. Similarly budgetary expenditure, or discretionary governmental expenditure can only be authorized by the Federal Government i.e. the Cabinet, and not*

the Prime Minister on his own.

(iv) *Any Act, or statutory instrument (e.g. the Telecommunication (Re-Organisation) Act, 1996) purporting to describe any entity or organization other than the Cabinet as the Federal Government is ultra vires and a nullity.*

(v) *The ordinance making power can only be exercised after a prior consideration by the Cabinet. An ordinance issued without the prior approval of the Cabinet is not valid. Similarly, no bill can be moved in Parliament on behalf of the Federal Government without having been approved in advance by the Cabinet. The Cabinet has to be given a reasonable opportunity to consider, deliberate on and take decisions in relation to all proposed legislation, including the Finance Bill or Ordinance or Act. Actions by the Prime Minister on his own, in this regard, are not valid and are declared ultra vires.*

(vi) *Rule 16(2) which apparently enables the Prime Minister to bypass the Cabinet is ultra vires and is so declared.*

(vii) *Fiscal notifications enhancing the levy of tax issued by the Secretary, Revenue Division, or the Minister, are ultra vires. (it is clarified, in passing, that this court has in the past consistently held that a greater latitude is allowed in relation to beneficial notifications and that principle still applies).*

(viii) *In consequence of the above findings the*

impugned notifications are declared ultra vires and are struck down.”

In the case in hand though, Notification No. F. No. 12(1)/2012-TO dated 06th March 2013 for appointment of Director General Trade Organization as “Regulator” and Notification of even number of even date for delegation of powers to the Regulator were placed on record, purporting to have been issued by the Federal Government, but nothing has been placed on record to show that whether the approval of the cabinet was sought or otherwise? Through separate notifications, but of even number and even date the Regulator has been appointed and has also been delegated the powers, however, I am unable to reconcile that whether the notification of appointment was issued earlier or the powers were delegated at first instance, whatever the case may be, both these exercises appears to have not been taken place with the authority of the cabinet. And thus, it cannot be concluded that the Notifications dated 06th March 2013, are in line with guidelines framed by the Hon’ble Supreme Court in case of *Mustafa Impex* supra.

8. The record is indicative of the fact that initially notices under Section 6 (k) of the Rules 2013 were issued to the appellants by the Deputy Director and thereafter show cause notice was also issued to the appellants by the said Deputy Director and finally the impugned orders followed by the impugned Notifications, whereby the license(s) of the appellant(s) was/were cancelled were issued

by the Deputy Director, but it is evident that no powers were delegated to the Deputy Director by the Regulator under sub-Section (2) of Section 22 of the Act. Albeit, it was contended that the entire proceedings were carried out with the approval of the Regulator, but the record is silent about any order in writing of the Regulator, either authorizing the respondent No.2 or delegating any such power to her to perform any powers or functions. The law is also silent to the effect that the proceedings are to be conducted with the approval of the Regulator, but it is clear enough that the powers are to be delegated to any officer and without issuing any order to the effect and nominating any officer, the proceedings carried out by the Deputy Director, Trader Organization, cannot be termed as legal proceedings. Thus, the entire proceedings carried out by the respondent No.2 commencing from issuance of notice, and finalizing with the passing of impugned order and issuance of impugned notification, are carried out without having any authority in the matter and without being empowered to exercise such powers. The learned appellate authority while deciding the appeals filed by the appellants also overlooked, rather ignored this legal aspect of the case and wrongly upheld the impugned orders of the respondent No.2.

9. As regards the right of the appellants for having protected right of business and trade, Article 18 of the Constitution of Islamic Republic of Pakistan protects the right of every citizen to

have freedom of business and trade. The provisions of Article 18 ibid are reproduced below for ease of reference:-

18. *Freedom of trade, business or profession.*
Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:

Provided that nothing in this Article shall prevent:

- (a) the regulation of any trade or profession by a licensing system; or*
- (b) the regulation of trade, commerce or industry in the interest of free competition therein; or*
- (c) the carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons.”*

[Emphasis supplied]

10. Likewise, Article 25 of the Constitution provides equal protection of law to the citizens, thus, no restriction can be imposed upon a citizen relating to the freedom of trade, business or profession and if the same is imposed, it will be subject to Article 18 ibid, which does not confer on any individual or association, the monopoly right to carry on trade or business without competition from other eligible persons rather it prohibits the same. Article 25, while ensuring equality of all citizens, covers the entire field of

State action, it would extend not only when a citizen is discriminated against in the matter of exercise of his rights, but also in matter of granting privileges vis-a-vis giving jobs by the State granting permits or licenses, inviting tenders for Government contracts or issuing quotas. Article 25 of the Constitution of Pakistan 1973 stipulates as follows:-

"25. Equality of citizens. (1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex.

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children."

11. A rule of procedure also cannot be excluded from Article 25 of the Constitution as every citizen is entitled to availability of same procedural venues as are provided to others including the State institutions, in like circumstances. Any discrimination in the procedure while dealing with the citizen shall offend Article 25 of the Constitution, whereas, the aforesaid action taken by the respondents resulting into cancellation of the license of appellants are highly discriminatory in nature while jeopardizing the rights of the appellants. Article 25 not only protects the petitioner against discriminatory procedural laws, but equally applies against the discriminatory substantive actions, especially in the present scenario, when the country more particularly the province is facing the financial constraints, and therefore, the citizens are also facing financial fixes, but instead of providing

them fair and free opportunity of trade and business, they are being restrained from carrying out their businesses, that too, on mere technical basis and without adopting the due course of law.

12. As far as, the application filed under Order 1 Rule 10 CPC by the intervener is concerned, admittedly the matter is in between the appellants and the respondent Department, and the applicant has failed to show his *locus standi* to be arrayed as party to the appeals. The parties can either be classified as a necessary party or a proper party. A person, who ought to have been joined, is a necessary party, and a person whose presence is necessary to effectually and completely adjudicate upon and settle all points involved in the lis, is a proper party. Parties cannot be added in any other case. In the instant case no relief is sought against the intervener and thus he is not a necessary party and similarly, his presence is also not necessary, as the decision can be made in his absence, and thus, he also does not fall within the definition of proper party. The matter might have been reported and initiated on the complaint of the intervener, but it does not entitle the applicant to be arrayed as necessary party, therefore, the applications filed by the intervener under Order 1 Rule X CPC are dismissed.

However, without rendering any observation on merits and demerits of the case, we deem it appropriate to set aside the impugned orders and notifications, whereby the license of the appellants were cancelled, consequently, the licenses of the

appellants are restored and the matter is remanded to the Regulator, Trade Organization, with the direction to ensure the appointment and delegation of powers as per law and dictum laid down by the Hon'ble Supreme Court of Pakistan, It's further directed that at least two months' (60 days) time be extended in favour of the appellants to make-up the deficiencies in their post licensing documents and thereafter, their cases be decided afresh, but strictly in accordance with law and keeping in view the observations made herein above, with an opportunity of hearing to the appellants.

Order accordingly.

These details shall constitute the reasons of short order dated 28th October 2021.

Quetta,
Reasons drawn:
On 11th November, 2021.

Sd/xxxxx
JUDGE