

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

I.C.A. No.94/2016

The Pakistan Tourism Development Corporation & another
Versus
The Federation of Pakistan & 4 others

| S. No. of order/ proceedings | Date of order/ proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
|------------------------------|----------------------------|--|
| | 22-02-2022 | Mr Muhammad Munir Paracha, Mr Arfanullah Khan, Advocates for appellant. Mr M. Jalil, Assistant Advocate General, Balochistan. Sardar Ali Raza, Addl. Advocate General, Khyber Pakhtunkhwa. Mr Fawzi Zafar, Addl. Advocate General, Sindh. Barrister Qasim Ali Chohan, Assistant Advocate General, Punjab. Syed Rashid Qadri, Dy. Manager, TDCP, Punjab. Mr Sana Ullah, Dy. Director, CTA, Khyber Pakhtunkhwa. Mr Zahid Abbas, Director TDCP, Sindh. |

Athar Minallah, C.J.- This appeal is directed against judgment, dated 24-02-2016, passed by the learned Single Judge in Writ Petition No.3989/2014.

2. The facts, in brief, are that Pakistan Tourism Development Corporation (*hereinafter referred to as the "Corporation"*) was incorporated as a juridical person under the Companies Act, 1913. It was incorporated as a "company limited by shares". The Government of Pakistan owns 88% of its shares while 12% are held by its employees. Disputes had arisen between the provinces and the petitioner Corporation after the Constitution (Eighteenth Amendment) Act, 2010 was passed and the Constitution of the Islamic Republic of Pakistan, 1973

(hereinafter referred to as the '**Constitution**') was amended. The controversy was regarding the assets of the petitioner Corporation. It is an admitted position that winding up proceedings were not initiated under the Companies Ordinance, 1984. The affairs of the petitioner Corporation are now governed and regulated under the Companies Act, 2017.

3. The learned counsels for the petitioner Corporation as well as the respondents have been heard at great length. The question that has arisen out of the arguments advanced by the learned counsels is regarding the status of the petitioner Corporation and its assets pursuant to promulgation of the Constitution (Eighteenth Amendment) Act, 2010.

4. The petitioner Corporation was incorporated as a juridical person. The affairs of the petitioner Corporation are now governed under the Companies Act, 2017. It is noted that since the petitioner Corporation was not established through an Act of the Majlis-e-Shoora (Parliament), therefore, its status remained unaffected after promulgation of the Constitution (Eighteenth Amendment), Act, 2010. Likewise the provisions of Article 270AA of the Constitution were, therefore, not attracted. The assets owned by the petitioner Corporation can only be dealt with and regulated in the manner prescribed

under the Companies Act, 2017. The respondent provinces could not claim the assets of the petitioner Corporation merely because the Constitution was amended. In essence, the disputes raised by the provinces are regarding one of the shareholders of the petitioner Corporation i.e. the Government of Pakistan/Federal Government.

5. We are of the opinion that it is not a case that attracts Article 184(1) of the Constitution. There is no bar, even after passing of the Constitution (Eighteenth Amendment) Act, 2010, for the Federal Government to own shares in a company incorporated under the relevant law. The assets would continue to be owned by the juridical entity i.e. the company incorporated under the relevant law. Nonetheless, the Federal Government is empowered to take such decisions regarding its shares in the petitioner Corporation, as it deems appropriate. The respondent provinces obviously cannot assert a right nor take over the control or possession of the assets of the petitioner Corporation otherwise than as provided under the repealed Companies Ordinance, 1984 or the now enforced Companies Act, 2017. The disposal of assets of a juridical person can only be dealt with in conformity with the provisions of the relevant law i.e. in the case in hand, the Companies Act, 2017. In our opinion the learned Single Judge has not correctly appreciated the status of

the petitioner Corporation and the law governing its assets.

6. In view of the above discussion, we allow the appeal and set aside the impugned judgment, dated 24-02-2016. We, therefore, declare that the assets of the petitioner Corporation can only be dealt with in the manner prescribed under the governing law i.e. the Companies Act, 2017. The assets of the petitioner Corporation cannot be interfered with in violation of the provisions of the aforementioned law.

(ARBAB MUHAMMAD TAHIR)
JUDGE

(CHIEF JUSTICE)

Luqman Khan/*