

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESNT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.

Mr. Justice Ch. Ijaz Ahmed

Mr. Justice Mahmood Akhtar Shahid Siddiqui

CIVIL MISCELLANEOUS APPLICATION NO. 2080 OF 2009

AND

CONSTITUTION PETITIONS NO. 33 & 34 of 2005

CONST. P. No. 33/2005

Engineer Iqbal Zaffar Jhagra

... PETITIONER

VERSUS

Federation of Pakistan through Secretary, Ministry of Law and Justice, Government of Pakistan, Islamabad & 12 others

Justice, Government of Pakistan, Islamabad & 12 others

CONST. P. No. 34/2005

Senator Rukhsana Zuberi

...

PETITIONERS

VERSUS

Federation of Pakistan & others

...

RESPONDENTS

For the petitioners:

Mr. Muhammad Ikram Chaudhry, ASC.
(Const. P. No. 33/2005)

(Const. P. No. 33/2005)

Ms. Rukhsana Zuberi in person
(Const. P. No. 34/2005)

(Const. P. No. 34/2005)

For the applicant
(C.M.A. No. 1526/2009)

Mr. Muhammad Akram Sheikh, Sr. ASC

On Court notice:

Sardar Muhammad Latif Khan Khosa
Attorney General for Pakistan
Khan Dil Muhammad Khan Alizai, DAG

Attorney General for Pakistan

Khan Dil Muhammad Khan Alizai, DAG

For the Oil & Gas
Regulatory Authority:

Khwaja Saeed-uz-Zafar, ASC
Mr. Nazir Malik, Senior Law Officer, OGRA

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For the Ministry of Petroleum:	Mr. Mahmood Saleem Mahmood, Secretary Ministry of Petroleum, Government of Pakistan Islamabad.
For the Ministry of Finance:	Mr. Ayub Khan Tareen, Additional Secretary Ministry of Finance, Government of Pakistan Islamabad
For other respondents:	Nemo.
Date of hearing:	07.07.2009

ORDER

Iftikhar Muhammad Chaudhry, C.J. — The Commission on Oil and Gas Products Pricing Mechanism has submitted its report. The Registrar may supply copy of the same to the petitioners and all the respondents on costs. Similarly, spare copies shall be supplied to the Hon'ble Members of the Bench for their perusal. The learned counsel appearing for the parties shall come prepared for preliminary consideration of the report on the next date of hearing.

2. Listed C.M.A. No. 2080/2009 has been filed on behalf of the petitioner in Constitution Petition No. 33/2009 with the prayer that the notification dated 30th June, 2009/1st July 2009 issued and enforced by the Oil & Gas Regulatory Authority, Islamabad (OGRA) and respondents No.1 & 2 be suspended till the final disposal of the cases.

3. The learned counsel for the applicant contended that carbon tax was imposed in place of Petroleum Development Levy (PDL) in pursuance of the Finance Act, 2009 whereby the Petroleum Products (Petroleum Development Levy) Ordinance, 1961 (Ordinance No. XXV of 1961) was amended. According to the learned counsel, there was neither any statement of objects nor any document was placed on record to show that carbon surcharge in place of PDL was essential. According to him, the known object for the imposition of the carbon tax was to provide petroleum

products free of carbon dioxide to the citizens so as to minimize the pollution. Therefore, unless the Ministry of Environment had spelt out the objects and purposes for imposing carbon surcharge, the Government could not have issued the notification in question. According to him, even if amendment of law had taken place, the government ought to have withheld the notification until it was able to provide petroleum products free of carbon and the consequential pollution free environment. He further stated that while replacing PDL with the carbon tax, ex-refinery prices of other components were increased tremendously and sales tax was also being charged on all the components, though there was no such provision in the Sales Tax Act, 1990 which authorized the Customs Department to levy such a tax along with other taxes.

4. On the other hand, Khwaja Saeed-uz-Zafar, ASC appearing for the OGRA stated that as for as PDL was concerned, it was replaced with the carbon tax and no fresh tax was imposed. As to the increase in prices of other components, the learned counsel stated that it was done in view of the prices of the petroleum products prevailing in the international market. On the Court query, he gave the following break-up of the prices of petrol, diesel and kerosene oil as they stood on 30th June, 2009 and 1st July, 2009:-

COMPARATIVE CHART OF PRICES

Name of product	Prices as on 30.06.2009	Prices as on 01.07.2009
Petrol		
Ex refinery price	31.91	36.59
Oil marketing companies margin	01.39	01.60
Petroleum development levy	10.54	--
Dealers margin	01.74	02.00
Sales tax	07.75	08.57
Inland freight	02.88	03.37
Carbon tax	---	10.00
Total:	56.21	62.13

Diesel		
Ex. Refinery Price	34.78	40.94
Oil marketing companies margin	01.35	01.35
Dealers margin	01.50	01.50
Petroleum development levy	08.53	---
Inland freight	01.87	02.22
Carbon tax	---	08.00
Sales tax	07.68	08.64
Total:	55.71	62.65
Kerosene Oil		
Ex. refinery price	32.77	39.26
Oil marketing companies margin	01.46	01.74
Dealer margin	----	---
Petroleum development levy	06.88	---
Inland freight	03.61	04.16
Carbon tax	----	06.00
Sale tax	07.15	08.19
Total:	51.87	59.35

A cursory view of the above comparative statement clearly shows that petroleum development levy has been replaced with carbon tax and mainly the ex-refinery price of the petroleum products as well as sales tax thereon has been increased.

5. The learned Attorney General submitted that he had not received notice of the aforesaid application. However, he stated that the prices of the petroleum products were required to be increased due to many factors, such as the rates prevailing in the international market, the budgetary demands for running the affairs of the country, provision of subsidies on various items, e.g. wheat, etc. He stated that the budget was already deficit.

6. We have heard the learned counsel for the parties as well as the learned Attorney General and have gone through the above comparative statement. On the pricing mechanism of petroleum products, a Commission has already been constituted by this Court, which has submitted its report. The question raised before us requires deeper consideration in the light of the report of the Commission and the

provisions of the Constitution, e.g., Articles 4 and 9 of the Constitution as well as the Preamble of the Constitution, which guarantees social justice.

7. Having gone through the amendment in the Petroleum Products (Petroleum Development Levy) Ordinance, 1961 as introduced by the Finance Act, 2009, *prima facie*, we are of the view that there was no justification for imposition of carbon surcharge in place of PDL because such a tax could be imposed subject to certain conditions, such as provision of petroleum products free of lead or carbon dioxide and consequential pollution free atmosphere to all citizens. Further, it was also necessary that the Ministry of Environment had demanded funds for the purpose of catering to its requirements of providing pollution free atmosphere to the general public. Such funds would only be used for the purpose of pollution free atmosphere. It was not a new tax because it was in force in other countries but at the same time they were providing pollution free atmosphere. This tax could be imposed upon the price of the components but not upon the total price after adding sales tax, etc.

8. In view of the above facts and circumstances, the operation of the impugned notification to the extent of imposition of carbon tax is hereby suspended pending decision of the petitions before this Court. The OGRA and concerned authorities are directed to issue notification which shall be applicable from 8th July, 2009. This arrangement has been made temporarily. The final decision in this behalf will be taken after hearing of the main petitions and after taking into consideration the report of the Commission as well as other components which have been referred hereinabove.

9. The Secretary, Ministry of Environment, Government of Pakistan is directed to appear in person along with the summary placed

before the Cabinet demanding additional funds for carrying out projects to provide pollution free atmosphere or other similar objects on the basis of which request for imposition of carbon surcharge was made.

Adjourned to 9th July, 2009.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad
07.07.2009