

PESHAWAR HIGH COURT PESHAWAR.

FORM "A"

FORM OF ORDER SHEET

Court of.....

Case Noof.....

Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of judge or Magistrate and That of parties or counsel where necessary
1	2	3
	<p>16.07.2015.</p>	<p><u>CM.NO.868-P/15 in WP No.3876-P/14 with IR</u></p> <p>Present: Mr.Kifayatullah Khan, DAG for the applicant-Federation.</p> <p>Qazi Ghulam Dastagir, Advocate, for the writ-petitioner.</p> <p>Mr.Asad Jan, Advocate, for PESCO.</p> <p>-----</p> <p><u>YAHYA AFRIDI, J.-</u> Through this common order in CMA No.868-P/2015 in WP No.3876-P/2014 this Court shall dispose of the following miscellaneous applications arising out of common questions of law involved in the constitutional petitions. The particulars of the said applications are given hereinbelow:-</p> <p>(1) CMA No.1044-P/2015 in WP No.3893-P/2014.</p> <p>(2) CMA No.1025-P/2015 in WP No.638-P/2015.</p> <p>(3) CMA No.1022-P/2015 in WP No.642-P/2015.</p>

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| | | <p>(4) CMA No.1027-P/2015 in
WP No.639-P/2015</p> <p>(5) CMA No.1035-P/2015 in
WP No.640-P/2015.</p> <p>(6) CMA No.1028-P/2015 in
WP No.641-P/2015.</p> <p>(7) CMA No.1059-P/2015 in
WP No.515-P/2015.</p> <p>(8) CMA No.1056-P/2015 in
WP No.529-P/2015.</p> <p>(9) CMA No.1041-P/2015 in
WP No.530-P/2015.</p> <p>(10) CMA No.1055-P/2015 in
WP No.3860-P/2014.</p> <p>(11) CMA No.1052-P/2015 in
WP No.779-P/2015.</p> <p>(12) CMA No.1034-P/2015 in
WP No.828-P/2015.</p> <p>(13) CMA No.1031-P/2015 in
WP No.820-P/2015.</p> <p>(14) CMA No.1029-P/2015 in
WP No.821-P/2015.</p> <p>(15) CMA No.1053-P/2015 in
WP No.822-P/2015.</p> <p>(16) CMA No.1038-P/2015 in
WP No.3827-P/2014.</p> <p>(17) CMA No.1036-P/2015 in
WP No.852-P/2015</p> <p>(18) CMA No.1058-P/2015 in
WP No.576-P/2015.</p> <p>(19) CMA No.1039-P/2015 in
WP No.545-P/2015.</p> <p>(20) CMA No.1026-P/2015 in
WP No.211-P/2015.</p> |
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| | | <p>(21) CMA No.1050-P/2015 in
WP No.911-P/2015.</p> <p>(22) CMA No.1021-P/2015 in
WP No.3877-P/2014.</p> <p>(23) CMA No.1049-P/2015 in
WP No.3879-P/2014.</p> <p>(24) CMA No.1033-P/2015 in
WP No.3881-P/2014.</p> <p>(25) CMA No.1032-P/2015 in
WP No.3883-P/2014.</p> <p>(26) CMA No.1024-P/2015 in
WP No.3886-P/2014.</p> <p>(27) CMA No.1046-P/2015 in
WP No.913-P/2015.</p> <p>(28) CMA No.1040-P/2015 in
WP No.914-P/2015.</p> <p>(29) CMA No.1037-P/2015 in
WP No.915-P/2015.</p> <p>(30) CMA No.1045-P/2015 in
WP No.916-P/2015.</p> <p>(31) CMA No.1054-P/2015 in
WP No.966-P/2015.</p> <p>(32) CMA No.1057-P/2015 in
WP No.589-P/2015.</p> <p>(33) CMA No.1047-P/2015 in
WP No.311-P/2015.</p> <p>(34) CMA No.1043-P/2015 in
WP No.315-P/2015.</p> <p>(35) CMA No.1048-P/2015 in
WP No.2286-P/2015.</p> <p>(36) CMA No.1030-P/2015 in
WP No.1821-P/2015.</p> <p>(37) CMA No.1042-P/2015 in
WP No.1822-P/2015.</p> <p>(38) CMA No.1023-P/2015 in
WP No.1865-P/2015.</p> |
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(39) CMA No.1020-P/2015 in
WP No.1863-P/2015.

(40) CMA No.1051-P/2015 in
WP No.1404-P/2015.

2. In essence, the Federation has sought for withdrawal of the interim relief granted by this Court in the above mentioned constitutional petitions on the ground that the Apex Court vide order dated 09-06-2015 has granted leave against the judgment of the Lahore High Court and suspended the operation thereof and thereby revived SRO No.908(1)/2014 dated 03-10-2014 issued by the Ministry of Water and Power, Islamabad ("Notification").

3. The brief and essential facts leading to the above mentioned miscellaneous applications are that the Notification was challenged through various constitutional petitions before this Court and also before the Lahore High Court, wherein the interim relief was granted to the petitioners by both the Hon'ble High Courts. Before this Court could decide the aforementioned

writ petitions, the Hon'ble Lahore High Court decided all the petitions vide consolidated judgment dated 29-05-2015. The respondents-Federation impugned the said judgment of the Lahore High Court before the Apex Court, which not only granted leave to appeal in favour of the Federation, but also suspended the operation of the judgment passed by the Lahore High Court vide its order dated 09-06-2015.

4. Let us first consider the Constitutional provision governing the grant and term of the interim relief allowed by a Constitutional High Court. Under sub-article (4-A) of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 ("Constitution"), the interim relief, so granted, has been made time-bound. In this connection, the said provision originally read as under:-

"199(4-A). An interim order made by a High Court on an application made to it to question the validity or legal effect of any order made, proceeding taken or act done by any authority or person, which has been made, taken or done or purports to have been made, taken or done under any

law which is specified in Part-I of the First Schedule or relates to, or is connected with, assessment or collection of public revenues shall cease to have effect on the expiration of a period of sixty days following the day on which it is made, unless the case is finally decided, or the interim order is withdrawn, by the court earlier. (emphasis provided)."

The matter came under thorough judicial scrutiny by the Apex Court in United Sugar Mills' case (PLD 1977 Supreme Court 397), when the Constitutional amendment came under serious challenge on the ground that the amendment is a clog to judicial independence. The challenge, however, failed as the august Supreme Court upheld the vires of Clause (4-A) and also declared that the High Courts do not have the power to extend interim orders beyond sixty days.

The period of sixty days was, however, later enlarged to six months by virtue of Article 2, Sch.item 40(3)(b) of the Revival of Constitution of 1973 Order, 1985 (President's Order No.14 of 1985), with effect from March 2, 1985.

Through same Revival of Constitution Order, 1985, another clause 4-B was also inserted, which read:

"199 (4-B). Every case in which, on application under clause (1), the High Court has made an interim order shall be disposed of by the High Court on merits within six months from the day on which it is made, unless the High Court is prevented from doing so for sufficient cause to be recorded."

In view of 4-B, the scope of clause 4-A was once again put to test before the apex Supreme Court in Zahur Textile Mills's case (PLD 1999 Supreme Court 880) when it was argued that if the case is not decided under aforesaid Clause (4-B), High Court would have powers to extend the interim relief. Supreme Court, however, disagreed and declared the two as independent clauses, thus 4-B not regulating or controlling 4-A.

Later, however, through Article 3(1), Sch. item 18 of the Legal Framework Order, 2002 (Chief Executive's Order No.24 of 2002) (with effect from August 21, 2002) words "unless the case is finally decided, or the interim order is withdrawn, by

the Court earlier" were substituted with "provided that the matter shall be finally decided by the High Court within six months from the date on which the interim order is made". This amendment clearly addressed the deficiency pointed out by the apex Supreme Court in Zahur Textile Mills's case (supra), that 4-B is independent.

Thereafter, through Section 72 of the Constitution (Eighteenth Amendment) Act, 2010 (with effect from April 19, 2010), this amendment was further reaffirmed, and Clause (4-A) of Article 199 presently reads:

"199(4-A). An interim order made by a High Court on an application made to it to question the validity or legal effect of any order made, proceeding taken or act done by any authority or person, which has been made, taken or done or purports to have been made, taken or done under any law which is specified in Part I of the First Schedule or relates to, or is connected with, State property or assessment or collection of public revenues shall cease to

have effect on the expiration of a period of six months following the day on which it is made:

Provided that the matter shall be finally decided by the High Court within six months from the date on which the interim order is made.
(emphasis provided).

5. The amendment introduced in sub-Article (4-A) of Article 199 of the Constitution through Eighteenth Amendment by inserting a proviso and deleting the words "unless the case is finally decided or the interim order is withdrawn, by the Court earlier", clearly reveals the intention of the Legislature to bring about change in the judicial consensus on the powers of a Constitutional Court to extend the interim order beyond the six months provided therein. The judicial consensus on the said power was very clear that the period for interim order could not be extended. Had the intention of the Legislature being not to allow the Constitutional Court to

extend the interim order passed by it beyond the period of six months, no further amendment would have been made in the aforesaid sub-article of Article 199 of the Constitution.

6. Thus, this Court is of the view that the interim order passed by a Constitutional Court would have a life of six months provided the main constitutional petition is finally decided. In cases where the main constitutional petition is not decided within six months period, the interim order passed therein would remain in force till its revocation or its merger in the decision of the main writ petition.

7. Now moving to the ground taken up by the respondent-Federation in seeking revocation of the interim order passed by this Court. The grant of leave to appeal by the Apex Court cannot be the sole ground for revoking the interim order passed a Court in a case pending before the High Court.

Each case has to be decided on its own merits. Neither the reasons, which prevailed upon the Hon'ble Lahore High Court in arriving at the conclusion to finally decide the case impugned before the Apex Court nor has this Court heard the contentions of the parties in the cases pending adjudication before it. In such circumstances, recalling of the interim order passed by this Court in the petitions before us on the sole ground of leave granting order and the suspension of operation of the Lahore High Court's decision rendered by the Apex Court would not be legally appropriate, being premature. In fact, it would result in prejudging the *lis* before the *aggrieved* is properly heard.

8. What is crucial to note is that the '*effect*' of suspension order passed by the Apex Court has brought about a clear division between the consumers in the Provinces of Punjab and the Khyber Pakhtunkhwa. The former are being made to pay the levy under SRO 908, while the latter are not paying the same. By

allowing the interim order to be continued, it would lead to discrimination, abuse of the process of law and inconsistency in the orders emanating from Superior Courts. In such circumstances, this Court cannot allow its order to remain in the field, in view of suspension order passed by the Apex Court. This Court, in the peculiar circumstances, withdraws its interim orders to bring in parity and consistency amongst all the consumers without any discrimination.

9. Accordingly, for the reasons stated hereinabove, this Court holds that:

(i) The interim order passed by this Court staying the recovery of levy under the *ibid* Notification is vacated.

(ii) The recovery of the stayed amount shall be decided at the time of final decision of the main writ petitions.

10. All the above mentioned miscellaneous applications are allowed in the above terms.

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**Announced on
23rd July, 2015.**