

PESHAWAR HIGH COURT ABBOTTABAD
BENCH

JUDICIAL DEPARTMENT

JUDGMENT SHEET

WP No. 500-A/2012.

Date of hearing 05.04.2022.

Petitioner/s (Khyber Pakhtunkhwa Forest Development Corporation, through its Manager Director & three others) Mr. Abdur Rehman Qadir, Advocate.

Respondent/s (Federation of Pakistan) by Mr. Touqeer ur Rehman, Assistant Attorney General.

Provincial Government by Raja Muhammad Zubair, AAG.

Respondents No. 3 to 9/Employees Old Age Benefits Institution & others by Mr. Mukhtiar Ahmad, Advocate.

WIQAR AHMAD. J. This order is directed to dispose of writ petition No. 500-A/2012 as well as Writ Petition No. 501-A/2012, as similar questions of law are involved in both the petitions.

2. WP No. 500-A/2012 has been filed by Khyber Pakhtunkhwa Forest Development Corporation (hereinafter referred as

“Corporation”), which is a statutory body, first established vide Khyber Pakhtunkhwa Forest Development Corporation Act, 1972. The Corporation had subsequently been reconstituted under the Khyber Pakhtunkhwa Forest Development Corporation Amendment Ordinance, 1980. This is second round of litigation of the Corporation with the authorities of Old Age Benefits Institution (hereinafter called as EOBI). In the earlier round of litigation, petitioners had claimed that their organization had been exempted from operation of Employees Old Age Benefit Institution Act, 1976 under section 47 thereof. They had also challenged their liability for payment of contribution in respect of persons employed by them. Said litigation terminated in favour of EOBI and august Supreme Court of Pakistan vide its judgment dated: 04.10.2021 held that the employees employed in the offices of petitioners’ Corporation had been entitled for coverage under EOBI Act. Petitioners Corporation was also held liable for making

contribution in said respect. Petitioners have also stated in the instant writ petition that thereafter certain payments had been made to EOBI on account of the contribution that had got piled up against them but subsequently through other notices, wrong, illegal and undue demands had been raised by EOBI, which had compelled them to file the constitutional petition. Petitioners have also mentioned that they had raised the issue of exorbitant, wrong and illegal demands with the EOBI authorities but instead of lending an air to grievance of the petitioners, EOBI resorted to coercive means against them, whereby their vehicles had also been attached. Petitioner has also challenged the functioning of EOBI under the EOBI Act, 1976 by claiming that after devolution of the subject to the province by way of 25th constitutional amendment, EOBI had lost validity and existence, therefore, said institution could not operate in the province of Khyber Pakhtunkhwa under the existing legal regime.

3. WP No. 501-A/2012 has been filed by 69 number of petitioners, some of whom claim

to be former employees of the corporation while some of them claim to be legal heirs of former employees of the Corporation. They have claimed their entitlement to the benefits allowable under EOBI Act and rules framed thereunder. They have also sought issuance of directions against the Corporation for payment of outstanding amount of contribution to the EOBI.

4. Mr. Abdur Rehman Qadir, Advocate representing petitioners in WP No. 500-A/2012 submitted in his arguments that with omission of concurrent legislative list by virtue of the Constitution (eighteenth amendment) Act, 2010, the subjects mentioned in said list stood devolved to provinces. He added that subject of labor and related matters have also been devolved to the provinces and that for such devolution a date of 30th day of June, 2011 had been specified in sub article 8 of Article 270-AA, which time has lapsed on 30.06.2011 and thereby EOBI had been left with no power to raise any demand or to adjudicate any dispute or to initiate any recovery proceedings under EOBI

Act, 1976. In this regard he placed reliance on judgment of Hon'ble High Court reported as **2013 PLC 143**. After raising this argument, learned counsel also raised an alternate plea that if EOBI Act is found a valid and operational law in Khyber Pakhtunkhwa, then also the demand raised had not been rational, legal and based on subjective realities. Learned counsel referred to letter No. 9/191-II/FDC/Admn/6810 dated: 29.02.2012 of Forest Development Corporation, Khyber Pakhtunkhwa, Peshawar, which has been annexed with writ petition as annexure 'E' and stated that a number of objections to the calculation of arrears and ancillary matters had been raised before EOBI but such objections had not been considered appropriately and instead coercive means adopted against petitioners.

5. Mr. Mukhtiar Ahmad, Advocate learned counsel for respondents No. 3 to 9 raised objection on maintainability of instant writ petition and stated that petitioner was having alternate remedy provided under sections 33, 34 and 35 of EOBI Act. He also added that issue of

registration of petitioner and its liability to pay the mandatory contribution under EOBI Act had finally been settled by Hon'ble Supreme Court of Pakistan in its judgment dated: 04.10.2011 given in CP No. 735-P of 2010, which matters could not be reopened. No-one was present on behalf of petitioners in writ petition No. 501-A/2012 but same being an old case relating to year 2012 was also taken for decision on merits.

6. We have heard arguments of learned counsel for parties as mentioned above and perused the record.

7. We would first take up the effect of 18th constitutional amendment on the existence and validity of EOBI Act, 1976 as well as validity of functioning of EOBI under the Act. There is no doubt about the fact that subject of labor and matters ancillary thereto including matters relating to welfare of laborers as well as their pensionary and other emoluments do not figure anywhere in the existing federal legislative list given in 4th schedule of the constitution. Same is therefore, a residual

subject, which falls in provincial domain. It is also pertinent to mention here that such subject had earlier been falling in concurrent legislative list, which was omitted vide eighteenth constitutional amendment. The EOBI Act of 1976 was also federal law but the fact remains that province of Khyber Pakhtunkhwa has not yet enacted any law on the subject nor has it amended, altered or repealed the EOBI Act. Sub article 6 of Article 270-AA of the Constitution has provided that notwithstanding omission of concurrent legislative list by the Constitution (eighteenth amendment) Act, 2010, all laws with respect to the matters enumerated in said act which were enforced in Pakistan or any part thereof immediately before commencement of the amending Act would continue to remain enforce until altered, repealed or amended by the competent authority. It is admitted fact that EOBI Act has neither been amended nor repealed by the competent authority i.e provincial legislature. As such it shall be treated as continuing to have continued to remain

enforce. Learned counsel for petitioner has raised an argument that sub article 8 of article 270-AA had given a time period for completion of process of devolution of the matters in erstwhile, concurrent list, which time was available till 30th day of June, 2011 and that such laws could only be deemed operational till said date when sub article 8 is read jointly with sub article 6 of article 270-AA. It is relevant to be mentioned here that for actualizing the process of devolution, it had been provided in sub article 9 of article 270-AA that federal government would constitute an implementation commission within 15 days of the commencement of eighteenth amendment. The implementation commission had accordingly been constituted but said commission had also left the matter of devolution of EOBI unfulfilled due to certain problems and such body could not be devolved to the province till date. The province of Khyber Pakhtunkhwa has not affected any legislation thereafter, in this respect, as stated earlier. Arguments of learned counsel for petitioners that

after passing of the cut of date as provided in sub article 8, sub article 6 had lost its effect, is difficult to be agreed with. Article 254 of Constitution provides in express words that if an act is required to be done in a certain time and such act is not done within given time, the act or thing would not be invalid or otherwise ineffective for the reason that it had not been done within that period. Said Article being relevant is reproduced here for ready reference:

When any act or thing is required by the Constitution to be done within a particular period and it is not done within that period, the doing of the act or thing shall not be invalid or otherwise ineffective by reason only that it was not done within that period.

8. Not making devolution of the subject within time provided in sub article 8 would thereof neither render the subsequent devolution invalid nor shall same render the provision of sub article 6 of article 270 AA, (which had provided a mechanism for intervening period), illusory, invalid or ineffective. Despite passing of cutoff date given in sub article 8, the

mechanism provided under sub article 6 for regulating matters in the period till devolution takes place or the law is amended, shall continue to remain effective and functional.

9. It is also noticeable that sub Article 8 of Article 270-AA while providing a cutoff date had not provided for the consequences for not observing the time schedule given therein. Sub Article 8 was an independent provision, while mechanism provided in sub Article 6 of Article 270-AA was independent in itself and the two clauses of Article 270-AA cannot be read conjointly. So far as reliance of learned counsel on the case of Syed Imran Ali Shah supra is concerned, said judgment was returned on different set of facts having different questions in its purview and ratio of said judgment cannot be stretched to the effect of either declaring the EOCI Act as invalid or the institution established and working therein as ineffective after the cutoff date. Said judgment had only clarified that after the cutoff date, executive and legislative authorities of provinces would be deemed to

have been operative and Act of EOBI shall be deemed to be a provincial law. It is apparent that the law or institutions established thereunder had not been declared invalid and said ratio cannot be extended so as to declare functioning of EOBI as against law or invalid.

10. We can therefore, easily conclude that EOBI Act, 1976 has been effective and operational in the province of Khyber Pakhtunkhwa even after commencement of 18th Constitutional amendment. The bodies established therein shall have its normal functioning to the extent provided and authorized under such law.

11. After finding the existence of EOBI and various forums constituted under EOBI Act validity exercising their powers, we find that grievance of the petitioners as raised in letter dated: 29.02.2012 of the petitioners corporation and the issues raised therein have never been considered by the institution despite the fact that the institution was having such adjudicatory powers under sections 33 and 34 of the Act. An

appeal was also provided under section 35 of EOBI Act and therefore, a full-fledge mechanism has been existing for resolution of the disputes between the parties. This Court cannot enter into the matters of calculating contribution, the dates from which the petitioners Corporation would be liable to such contribution, the number of employees registered with them, dates of their retrenchment or retirement and other ancillary matters as raised in letter dated: 29.02.2012. All such issues are required to be adjudicated upon by the forums established under the law at the first instance. We therefore, by allowing the instant constitutional petition partially direct that letter No. 9/191-II/FDC/Admn/6810 dated: 29.02.2012 (annexed with writ petition as annexure 'E') shall be treated by the EOBI as a complaint filed under section 33 of the EOBI Act and shall decide all the issues raised in said complaint as well as instant petition according to law. The institution shall also afford opportunity of hearing to the petitioners Corporation through their nominated representative or counsel and

shall thereafter pass a well-reasoned order regarding the issues highlighted in the complaint or those issues which have been raised in the instant writ petition, except the issue of validity of EOBI Act, which has already been settled in earlier part of this judgment. Till such determination, order of attachment, whereby vehicles of petitioners had been seized and taken into custody shall stand set-aside. Such vehicles shall be returned to the corporation and no coercive measures shall be adopted against the corporation, till the institution decides the matter one way or another. Such decision shall be made within a period of four months after issuance of notice to the petitioners.

12. Since, the matters raised in writ petition No. 501-A/2012 are also relating to issues agitated in writ petition No. 500-A/2012, therefore, this writ petition is also ordered to be converted into a complaint filed under section 33 of the EOBI Act and same is also sent to EOBI, where this petition shall also be decided within given period of four months, after issuance of

notices to petitioners or their counsel or representative/s. Both the writ petitions stand disposed of accordingly.

Announced.
05.04.2022.

J U D G E

J U D G E

Tahir PS

*Hon'ble Justice Wiqar Ahmed &
Hon'ble Justice Kamran Hayat Miankhel*