P L D 2021 Supreme Court 327

Present: Mushir Alam, Faisal Arab and Syed Mansoor Ali Shah, JJ

Messrs CHERAT CEMENT CO. LTD., NOWSHERA and others---Petitioners/Applicants

Versus

FEDERATION OF PAKISTAN through Ministry of Petroleum and Natural Resources and others---Respondents

Civil Review Petitions Nos. 421 to 454, 458 and 459 of 2020 and Civil Miscellaneous Applications Nos.6317 to 6353, 6355 to 6421, 6423 to 6427, 6735, 6736, 6839, 6841, 6843 and 6845 of 2020 in Civil Review Petitions Nos. Nil of 2020.

(On review of this Court's judgment dated 13.08.2020 passed in Civil Appeal No. Civil Appeals Nos.1113 to 1155 of 2017 and Civil Petitions Nos.3124, 387-P, 389-P, 392-P, 393-P, 394-P, 399-P, 400-P, 3027, 3028, 3029, 3030, 3138, 3241, 3259, 3260, 3327, 3411 of 2017 and 3385 of 2018 etc.).

Per Mushir Alam, J; Faisal Arab, J; agreeing; Syed Mansoor Ali Shah, J. dissenting [Majority view]

(a) Gas Infrastructure Development Cess Act (IV of 2015)---

----Ss. 3 & 4---Industrial and commercial consumers of natural gas---Gas Infrastructure Development Cess (GIDC cess)---Gas Infrastructure Development Cess Act, 2015 (GIDC Act, 2015'), vires of---[Per Mushir Alam, J: Supreme Court in the judgment under review had declared the GIDC Act, 2015 as intra vires the Constitution---When, the GIDC Act, 2015 had been declared to be intra vires by the Supreme Court then every provision of it, which either created an obligation or granted any relief was enforceable in law---None of the grounds urged by the petitioners called for reviewing the judgment under review---Review petitions were dismissed and the Gas Infrastructure Development Cess Act, 2015 (by a majority of 2:1, with Syed Mansoor Ali Shah, J dissenting) was held to be intra vires the Constitution.

Per Syed Mansoor Ali Shah, J. dissenting [Minority view]

(b) Supreme Court Rules, 1980---

----O.XXVI, R. 8---Civil Procedure Code (V of 1908), O. XLVII, R.1---Constitution of Pakistan, Art. 188---Review petition, hearing of---Constitution of Bench---Scope---Application/petition for review shall, as far as practicable, be posted before the "same Bench" that delivered the judgment or order sought to be reviewed---Judge who dissented from the majority judgment should be Member of the Bench that was to hear the review petition, as a judgment pronounced in terms of the majority opinion of a larger Bench could not be reviewed by a smaller Bench consisting of only the Judges holding the majority opinion---Jurisdiction and judicial power of the Judge who earlier dissented from the majority judgment of the Bench was similar and co-extensive with that of those Judges whose opinion became the majority judgment of the Bench, in hearing the review petition against that majority judgment. [Minority view]

Rule 8 of Order XXVI of the Supreme Court Rules, 1980 very clearly and firmly prescribed that the application for review shall, as far as practicable, be posted before the "same Bench" that delivered the judgment or order sought to be reviewed. The expression "same Bench" left little room to speculate the constitution of the Bench: the "same Bench" meant the same judges, as far as practicable, and the same number of judges, i.e. the same numeric strength of the Bench.

PLD 2013 SC 1024; PLD 1979 SC 741; PLD 1979 SC 53 and 1979 SCMR 427 ref.

The Judge who dissented from the majority judgment, if available, should be Member of the Bench that was to hear the review petition, as a judgment pronounced in terms of the majority opinion of a larger Bench could not be reviewed by a smaller Bench consisting of only the Judges holding the majority opinion. It was utmost necessary to maintain quorum of the Bench that delivered the judgment under review. It was because of such legal compulsion, that new Members were added to the Bench when any of its earlier Members retired or was not available for any other reason, to maintain the quorum of the Bench for hearing the review petition.

Gadoon Textiles Mills v. WAPDA 1997 SCMR 641; Gandaf Steel Industries v. Federation 1997 SCMR 1669; Benazir Bhutto v. President of Pakistan PLD 1998 SC 388; Benazir Bhutto v. President of Pakistan

PLD 2000 SC 77; Nawaz Sharif v. Imran Khan PLD 2018 SC 1; Sheonandan Paswan v. State of Bihar AIR 1987 SC 877 and Shyam Lal Sharma v. Union of India AIR 1987 SC 1137 ref.

Grounds of review which were, in fact, limitations on the power of review of the Supreme Court applied equally to the Judges whose opinion prevailed for being the majority view and to the Judge whose opinion remained inoperative for being the minority view. The Judge whose opinion remained the minority view in the main case could review the Judgment of the Bench that was pronounced in terms of the majority opinion, on any of the said grounds of review, as could a Judge who delivered the majority opinion.

PLD 1979 SC 741; PLD 1979 SC 53; AIR 1987 SC 877; Union of India v. Tulsiram Patel AIR 1985 SC 1416; Shyam Lal Sharma v. Union of India AIR 1987 SC 1137; [2011] 1 MLJ 25; Aamer Zaman v. Omar Ayub 2015 SCMR 890 and 2015 SCMR 1303 ref.

(c) Supreme Court Rules, 1980---

----O. X, R. 1---Judgment/order delivered by a Bench of the Supreme Court---Majority view/opinion---Scope---Judgment pronounced or Order made in terms of the majority opinion was the judgment or order of the Bench, and not of the Judges holding the majority opinion. [Minority view]

When a case was heard by a Bench of two or more Judges, the case was decided in accordance with the opinion of such Judges or of the majority of such Judges. Judgment or order of the Court was pronounced in terms of the majority opinion; such judgment or order was of the Bench that heard the case and, for that matter, of the Court, and not only of the Judges whose opinion prevailed as a majority opinion. Numeric strength of the whole Bench determined the judicial power of its Members, and not the numbers of the individual Judges in majority.

(2018) 11 SCC 305 ref.

(d) Supreme Court Rules, 1980---

----O. X, R. 1 & O.XI---Judgment of larger Bench of the Supreme Court---Scope---Such judgment was binding on the Benches of the Supreme Court consisting of Judges less than the larger Bench---Smaller Bench could not request for constitution of a larger Bench to revisit the opinion of a larger Bench on any question or principle of law; only a Bench of co-equal strength could make such request. [Minority view]

Muhammad Saleem v. Fazal Ahmad 1997 SCMR 315; Babar Shehzad v. Said Akbar 1999 SCMR 2518; All Pakistan Newspapers Society v. Federation PLD 2004 SC 600; Ata Ullah v. Surraya Parveen 2006 SCMR 1637; Azhar Siddiqui v. Federation PLD 2012 SC 774 and Central Board of Dawoodi Bohra Community v. State of Maharashtra AIR 2005 SC 752 ref.

(e) Cess---

----Scope---Visible co-relation must exist between the collection of Cess and its expenditure---In a case where the fee was to be utilized for service that was to be rendered in future, it was important to see how the moneys collected were being expended and whether there was a transparent and confidence inspiring co-relation between the two---Furthermore amount of Cess so collected was for a specified purpose and must be accounted for accordingly---Cess was not the collection of general revenue which could be utilized anywhere. [Minority view]

(f) Gas Infrastructure Development Cess Act (IV of 2015)---

----Ss. 3 & 4---Industrial and commercial consumers of natural gas---Gas Infrastructure Development Cess (GIDC cess)---Whether there was any co-relation between the collection of the GIDC cess and expenditure therefrom---Held, that the data provided by the Government showed that it already had Rs.101.357 billion of GIDC cess in excess after factoring in the expenditure to be incurred on certain gas pipelines and gas storage projects (the Projects) unless another gas pipeline project was put into motion---Co-relation between the collection and expenditure of GIDC cess stood completely frozen since the year 2011 raising fingers on the credibility and transparency of the Projects and on the availability of service (supply of natural gas) against the fee charged, in the near future---Further collection of arrears (in terms of the majority view of the judgment under review) in the sum of Rs. 456.946 billion, leading to an excess of Rs. 355.589 billion unduly promoted unjust enrichment and seriously offended the right to property and business of the petitioners guaranteed under the Constitution---After a decade of charging GIDC cess from gas consumers and after having collected Rs 295.40 billion to-date there was no sign of development of the gas pipeline projects in the country---Absence of the said projects and emphasis on the import of LNG suggested that the Government was either not willing to or was unable to complete the Projects and therefore the shortfall in gas supply was being increasingly plugged through imported LNG---Direction to recover arrears given by the majority in the judgment under review, was, therefore, not justified and legally sustainable and was liable to be recalled---Review petitions were allowed. [Minority view]

(g) Gas Infrastructure Development Cess Act (IV of 2015)---

----Ss. 3 & 4---Constitution of Pakistan, Arts 78(1) & 78(2)---Industrial and commercial consumers of natural gas---Gas Infrastructure Development Cess (GIDC cess)---Whether GIDC cess was to be deposited in the Federal Consolidated Fund or the Public Account of the Federation---GIDC cess amount collected under the Gas Infrastructure Development Cess Act, 2015 (GIDC Act) was to be credited in the Public Account with an entity distinct from the other revenues credited to it, and must be earmarked for utilization for the purposes specified in the GIDC Act only---No disbursement could be made from the GIDC cess amount for general governmental expenditures or any other purpose---Observations (of the majority in the judgment under review) regarding deposit of the GIDC cess amount in the Federal Consolidated Fund without appreciating the difference between the Federal Consolidated Fund and the Public Account under Article 78 of the Constitution, were, therefore, liable to be recalled. [Minority view]

Article 78(1) of the Constitution provided that all revenues received by the Federal Government, all loans raised by that Government, and all moneys received by it in repayment of loans shall form part of consolidated fund, to be known as the Federal Consolidated Fund. While all other moneys received by or on behalf of the Federal Government, or received by or deposited with the Supreme Court or any other court established under the authority of the Federation were to be credited to the Public Account of the Federation as per Article 78(2) of the Constitution. The expression "all revenues" used in Article 78(1) covered the revenues (taxes, duties, etc) raised for Governmental purposes, and did not include the revenue that could not be used for any Governmental purpose, like the compensatory fee collected for rendering any service to the payers of that fee. Such compensatory fee fell within the expression "all other moneys" used in Article 78(2) and was to be credited to the Public Account, and not to the Federal Consolidated Fund.

AIR 1953 Bom. 242 ref.

The GIDC cess amount collected under the Gas Infrastructure Development Cess Act, 2015 (GIDC Act) was to be credited in the Public Account with an entity distinct from the other revenues credited to it, and must be earmarked for utilization for the purposes specified in the GIDC Act only. No disbursement could be made from the GIDC cess amount for general governmental expenditures or any other purpose. The Supreme Court was not assisted on said point at the time of the hearing of the judgment under review, and made the observations (in the majority view) regarding deposit of the GIDC cess amount in the Federal Consolidated Fund without appreciating the difference between the Federal Consolidated Fund and the Public Account under Article 78 of the Constitution. The said observations were, therefore, liable to be recalled in review.

In case the GIDC Act became in-operational on failure of the Federal Government to take steps to commence work on the laying of the North South Gas Pipeline within six months, the amount of the GIDC cess collected were liable to be returned and refunded to the payers. Review petitions were allowed.

(h) Gas Infrastructure Development Cess Act (IV of 2015)---

----Ss. 3 & 4 & Second Sched.---Constitution of Pakistan, Art. 25---Industrial and commercial consumers of natural gas---Gas Infrastructure Development Cess (GIDC cess)---Different rates of GIDC cess for different industrial and commercial consumers---Discrimination---Judgment under review did not consider the rationale behind fixing different rates for GIDC cess within different sectors but instead discussed the question of discrimination between the industrial/commercial consumers and the domestic consumers, which was not the question agitated by the petitioners---No intelligible differentia seemed to exist amongst the different industrial and commercial gas consumers mentioned in the Schedule for the purposes of the

Gas Infrastructure Development Cess Act, 2015 (the GIDC Act)---Discrimination in providing maximum limit of GIDC cess for different sectors was overlooked in the judgment under review, and thus provided a valid ground to review it---In terms of Art. 25 of the Constitution which ensured equality and equal treatment among equals, the Federal Government could not charge the GIDC cess at the rate more than Rs.100 per MMBTU from any category of gas consumers---Review petitions were allowed. [Minority view]

(i) Gas Infrastructure Development Cess Act (IV of 2015)---

---Ss. 3 & 4---Civil Procedure Code (V of 1908), S. 11---Industrial and commercial consumers of natural gas---Gas Infrastructure Development Cess (GIDC cess)---Res judicata, principle of---Scope and applicability---Four-Member Bench of the Supreme Court in the case of Pir Bukhsh and others v. Chairman, Allotment Committee (PLD 1987 SC 145) (the Pir Bukhsh case) elaborately discussed the principle of res judicata and concluded that in a controversy raising a dispute inter parties, the matter adjudged was conclusive as between the parties both on question of fact and question of law---However, an exception to said principle was created in the judgment under review, heard by a three-member Bench, by holding that it would be difficult to apply such a principle in matters where a power or a right or an obligation solely depended upon the very legitimacy of the enactment that had come under challenge in a Court of law on the touchstone of the Constitution---It was, not appropriate for the Three-Member Bench hearing the judgment under review to deviate from principle of res judicata laid down by an earlier Four-Member Bench---Three-Member Bench had two options: first, to follow the law declared earlier by the Four-Member Bench; or second, to refer the matter to a Four-Member Bench to decide whether that opinion should be reconsidered by a larger Bench---As the majority in the judgment under review did not opt for the second option, the principle of res judicata as settled in the Pir Bukhsh case was fully applicable to the decree holders/petitioners in the suit decided by the (Sindh) High Court---Review petitions were allowed. [Minority view]

Pir Bukhsh and others v. Chairman. Allotment Committee PLD 1987 SC 145 ref.

(j) Gas Infrastructure Development Cess Act (IV of 2015)---

----Ss. 3 & 4---Constitution of Pakistan, Fourth Sched., Pt. I, Entry No. 51---Industrial and commercial consumers of natural gas---Gas Infrastructure Development Cess (GIDC cess)---Tax imposed on natural gas through a Money Bill---Constitutionality---In the judgment under review while interpreting Entry No.51 of Part I of the Federal Legislative List contained in the Fourth Schedule to the Constitution, the majority took a view contrary to that of a Bench of co-equal strength expressed in Federation of Pakistan through Secretary Petroleum and Natural Resources v. Durrani Ceramic (2014 SCMR 1630 : PLD 2015 SC 354: 2014 PTD 2016) (the Durrani Ceramic case) by stating that "the National Assembly was fully competent to impose tax on natural gas through a Money Bill on the strength of Entry No. 51 of the Federal Legislative List. ---Said finding was against settled principles of the law of precedent and needed to be recalled---Review petitions were allowed. [Minority view]

Federation of Pakistan through Secretary Petroleum and Natural Resources v. Durrani Ceramic 2014 SCMR 1630 : PLD 2015 SC 354 and 2014 PTD 2016 ref.

(k) Gas Infrastructure Development Cess Act (IV of 2015)---

----Ss. 3 & 4---Constitution of Pakistan, Fourth Sched., Pt. I, Entry No. 27 & Pt.II, Entry Nos. 2 & 15---Industrial and commercial consumers of natural gas---Gas Infrastructure Development Cess (GIDC cess)---Whether Entry No.27 of Part I of the Federal Legislative List justified the legislative power of the Federation to enact the Gas Infrastructure Development Cess Act, 2015 (the GIDC Act)---Held, that Entry No. 27 of Part I of the Federal Legislative Listread that "Import and export across customs frontiers as defined by the Federal Government, inter-provincial trade and commerce, trade and commerce with foreign countries; standard of quality of goods to be exported out of Pakistan."---Said entry clearly related to trade with foreign countries (import and export), and inter-provincial trade and commerce, and in no way covered the subject of "natural gas"---Gas Infrastructure Development Cess Act had not taxed or charged fee on the foreign or inter-provincial trade and commerce; it had charged fee on use of natural gas---Entry No.27, in no terms, justified the legislative power of the Federation to enact the GIDC Act---Gas Infrastructure Development Cess Act fells under Entry No. 2 read with Entry No.15 of Part II of the Federal Legislative List---Parties were not heard on said point at the time of original hearing of the case; which point, therefore, escaped notice of the Bench that heard the judgment under review---Such error appeared to be apparent on the face of the record and was liable to be recalled---Review petitions were allowed. [Minority view]

Makhdoom Ali Khan, Senior Advocate Supreme Court for Petitioners/Applicants (in C.R.Ps. Nos. 444 to 447, 453, 454 of 2020, C.M.As. Nos. 6326, 6330, 6332 and 6333 of 2020).

Muneer A. Malik, Senior Advocate Supreme Court for Petitioners/Applicants (in C.R.Ps. Nos. 451 of 2020 and C.M.A. 6418 of 2020).

Isaac Ali Qazi, Advocate Supreme Court for Petitioners/Applicants (in C.R.Ps. Nos. 421, 437, 438, 449, 452 and C.M.A. 6407 of 2020).

Syed Ali Zafar, Advocate Supreme Court for Applicants (in C.M.As. Nos. 6411 and 6412 of 2020).

Rashid Anwar, Advocate Supreme Court for Petitioners/ Applicants (in C.R.Ps. Nos. 426 to 428, C.M.As. Nos. 6342 to 6346, 6348 to 6353, 6355 to 6382, 6384 to 6406, 6413 to 6415 of 2020).

Naeem Bokhari, Advocate Supreme Court for Applicants (in C.M.A. No.6341 of 2020).

Salman Akram Raja, Advocate Supreme Court for Petitioners/ Applicants (in C.R.Ps. Nos.422, 423 and 450 of 2020 and C.M.As. Nos. 6320, 6323 to 6325, 6327 to 6329, 6334, 6339 and 6340 of 2020).

Sardar Muhammad Ghazi, Advocate Supreme Court for Petitioners (in C.R.Ps. Nos. 424, 425 and 426 of 2020).

Abid S. Zuberi, Advocate Supreme Court for Petitioners/ Applicants (in C.R.P. No. 427 and C.M.As. Nos. 6423 and 6424 of 2020).

Abdul Sattar Pirzada, Advocate Supreme Court for Applicants (in C.M.A. No. 6319 of 2020).

Qazi Ghulam Dastgir, Advocate Supreme Court for Petitioners (in C.R.Ps. Nos. 439 to 443 of 2020).

Mahmood A. Sheikh, Advocate-on-Record/Advocate Supreme Court for Petitioners/Applicants (in C.R.Ps. Nos. 448, 453, 424 to 426 of 2020 and C.M.As. Nos. 6317 to 6421 of 2020).

Tariq Aziz, Advocate Supreme Court/Advocate-on-Record for Applicants (in C.M.As. Nos. 6317 and 6318 of 2020).

Mian Mahmood Rashid, Advocate Supreme Court for Applicants (in C.M.As. Nos. 6321 to 6322 of 2020).

Shahzada Mazhar, Advocate Supreme Court for Applicants (in C.M.As. Nos. 6331 and 6335 of 2020).

Arshad Ali Chaudhry, Advocate-on-Record and Habib-ur-Rehman, Advocate for Applicants (in C.M.As. Nos. 6336 and 6408 of 2020).

Ahsan Mehmood, Advocate Supreme Court for Applicants (in C.M.A. No.6338 of 2020).

M. Anas Makhdoom, Advocate Supreme Court for Applicants (in C.M.A. No. 6383 of 2020).

Haider Waheed, Advocate Supreme Court for Applicants (in C.M.As. Nos. 6409 and 6410 of 2020).

Mrs. Tasneem Amin, Advocate Supreme Court/Advocate-on-Record for Petitioners/Applicants (in C.R.Ps. Nos. 458 of 2020 and C.M.A. No. 6416 of 2020).

Barrister M. Abdur Rahman, Advocate Supreme Court for Applicants (in C.M.As. 6417, 6419 and 6420 of 2020).

Kh. M. Saeed, Advocate Supreme Court for Petitioners (in C.R.P. No. 458 of 2020).

Mrs. Navin Salim Merchant, Advocate Supreme Court for Petitioners/Applicants (in C.R.P. No. 459 and C.M.A. 6736 of 2020).

Naeem Suleman, Advocate Supreme Court for Applicants (in C.M.As. 6425, 6426, 6839, 6841 and 6843 of 2020).

Abdul Qadir Khan, Advocate-on-Record/Advocate Supreme Court for Applicants (in C.M.As. Nos. 6425 to 6427 of 2020).

Khalid Javed, Advocate Supreme Court for Applicants (in C.M.A. No. 6735 of 2020).

Syed Rifaqat Hussain Shah, Advocate-on-Record/Advocate Supreme Court for Petitioners/Applicants (in C.R.Ps. Nos. 422, 423, 450, 428 to 436, 439 to 443, 450 of 2020 and C.M.As. Nos. 6320 to 6330, 6332 to 6334, 6337 to 6340, 6342 to 6353, 6365 to 6406, 6413 to 6415 of 2020).

K.A. Wahab, Advocate-on-Record for Petitioners/Applicants (in C.R.Ps. Nos. 427, 459 of 2020 and C.M.As. 6423, 6424, 6735, 6737 and 6846 of 2020).

M. Kasim Mirjat, Advocate-on-Record for Petitioners (in C.R.Ps. Nos. 444 to 447, 451, 453 and 454 of 2020).

Ch. Akhtar Ali, Advocate-on-Record for Applicants (in C.M.As. Nos. 6331 and 6335 of 2020).

Ch. Aamir Rehman, Additional Attorney General for Respondents.

Dr. Arshad Malik, EDG, Ministry of Energy.

Abdul Rasheed Jokhio, Director (Technical), Ministry of Energy.

Umar Farooq, AD (Legal), Ministry of Energy.

Muhammad Waqar Rana, Advocate Supreme Court, Barrister Mian Belal Ahmed, Advocate Supreme Court, Assisted by Abdul Malik Baig, Advocate (for SNGPL).

Dates of hearing: 27th to 29th October and 2nd November, 2020.

JUDGMENT

C.M.As. Nos.6341, 6409, 6410, 6417, 6419, 6420, 6418 and 6421/2020

MUSHIR ALAM, J.---Since the counsel in the main cases have been appointed as Federal Law Minister/Advocate General KPK, subject to all just exception, these applications are allowed, the respective ASCs are granted permission to argue. Let the review petitions be numbered, which shall be disposed of along with other review petitions.

2. Applications for joinder by parties who were either not party in earlier round and/or not heard in the main appeals, in view of the order proposed to be passed in main CRPs' all the applications stand disposed off.

All Review Petitions and C.M.As.

3. The Infrastructure Development Cess Act, 2015 (the GIDC, Act, 2015) became Act of the Parliament on 15.05.2015. Vires of the said Act was challenged. In the Sindh High Court suits were filed on its Original Side. The High Court declared the levy under the said Act to be unconstitutional vide its judgment dated 26.10.2016. Similar challenge was made in the Peshawar High Court by invoking its constitutional jurisdiction; which held the levy under the said Act to be intra vires the Constitution, vide its judgment dated 31.05.2017, Appeals from the judgment of the Peshawar High Court were preferred before this Court, whereas against the judgment of the Single Judge of the Sindh High Court only one High Court Appeal was filed in one suit though judgment dated 26.10.2016 was rendered in 377 suits.

4. On 22.10.2019 when this Court was hearing appeals arising from the decision of the Peshawar High Court it was pointed out to it that in so far as the decision of the Sindh High Court is concerned High Court Appeal No. 361 of 2016 is pending before Division bench of the High Court. On that date this Court passed an order that in all identical matters pending in all High Courts, opportunity be given to such litigants and their counsel to present their case before us on the merits of the controversy. This was done so that the challenge to the vires of the said Act be adjudicated upon once and for all at this Court's level. Pursuant to our order dated 22.10.2019 several miscellaneous applications for joining in these proceedings as party were filed by those who had challenged the vires of the GIDC Act, 2015 in various other High Courts. All of them were given opportunity to present their point of view on the merits of the controversy. Certain other petitions which were filed against the judgment of the Peshawar High Court and had not come up for hearing at the time of grant of leave to appeal were also taken up for hearing so that the same could be decided together with the appeals. This Court then finally vide its judgment dated 13.08.2020 declared that the Act in question is intra vires of

the Constitution. The petitioners in all these petitions fixed before us are seeking review of our judgment dated 13.08.2020.

5. This Court distinguished the principle of res judicata enunciated by this Court in the case of Pir Bukhsh and others v. Chairman Allotment Committee (PLD 1987 SC 145) in paragraphs 10 and 11 of the judgment under review. The contents of paragraphs 10 and 11 of the judgment for convenience sake are reproduced below:-

> 10. Any relief which a litigant seeks in a judicial proceeding with regard to any power or a right or an obligation connected with some property or an office which power or right or obligation is not dependent upon the legitimacy of a legislative enactment and stands or falls on its own strength then in such cases when the decision rendered by a court of competent jurisdiction attains finality, there is no difficulty in applying the principle of res judicata to such a decision. However, it would be difficult to apply such a principle in matters where a power or a right or an obligation solely depends upon the very legitimacy of the enactment that has come under challenge in a Court of law on the touchstone of the Constitution. In such a situation the existence of such power or right or obligation would solely depend on the final adjudication as to the legal validity of the enactment itself. This could be understood from a situation where a controversy as regards constitutional validity of an enactment has come under challenge before two High Courts, one declaring the enactment ultra vires the Constitution and the other intra vires. If the principle of res judicata is applied to the decision of the High Court that declared the law ultra vires as the same was not challenged any further by the Government then two conflicting declarations would stand side by side on the legitimacy of a legislative enactment, one party treating the law valid and the other invalid. This would lead to treating an Act of the parliament valid for some and invalid for others though both the set of persons are similarly placed. If the decision rendered by the High Court that declared the law intra vires the Constitution is only challenged before the Supreme Court and after examining the merits of the case the enactment is declared by this Court to be intra vires the Constitution, then in such peculiar situation when this Court finally validates the legislative enactment then the same has to be applied uniformly to every person falling within its ambit. Such final judicial determination on the legitimacy of a legislative enactment has to be treated as a judgment in rem regardless of the fact that the judgment of the High Court that invalidated the very same enactment was not challenged before this Court. Such a situation warrants departure from the doctrine of res judicata. Omission of a public functionary to file appeal cannot put fetters on the universal application of a legislative enactment declared by this Court to be constitutionally valid as it would amount to repealing the statute for some and treating it valid for others. Hence conflicting decisions on the vires of a legislative enactment of two High Courts, decision of one remains unchallenged in the hierarchy as no appeal was preferred and the other is challenged before this Court, then the verdict of the High Court that went unchallenged, which is in conflict with the final decision. of this Court has to be treated as outmoded and no longer executable.
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> 11. In the case of Pir Bukhsh and others v. Chairman Allotment Committee (PLD 1987 SC 145), on which much reliance was placed by Mr. Muneer A. Malik, the learned counsel for one of the intervenors, the controversy was with regard to a right of allotment of land which did not depend on the constitutionality of a legislative enactment. In that case, the principle of res judicata clearly applied but this principle, as discussed above, cannot be applied in the same manner to a case where any power or a right or an obligation of a person solely depend upon the legitimacy of a legislative enactment without which such power or right or obligation has no existence of its own. Hence, when the power of the government to charge and the obligation of the persons to pay a tar a fee depends on the determination of vires of a legislative enactment then the final determination of this Court has to be uniformly applied on all those upon whom the law was intended to apply otherwise it would be applied in a discriminatingly manner to a section of persons belonging to one and the same class of persons. The final determination of this Court on the legitimacy of a law has to apply

even to those who had succeeded in obtaining a judgment from a Court lower in the hierarchy that the law is ultra vires the Constitution, they too would be bound by the judgment of this Court which being the final Court of the judicature has through a judicial pronouncement declared a legislative enactment to be valid. The power of the Federal Government to charge the Cess and the obligation of the payers to pay under GIDC Act, 2015 would depend upon such final determination by this Court. Such power or obligation arising from an enactment will not cease to exist for the reason that the High Court in some other proceedings has declared the said Act ultra vires the Constitution which remained unchallenged. We in our minds are therefore clear that where there are two conflicting adjudications with regard to the constitutionality of a legislative enactment, standing side by side, then the one that has the binding effect on the other has to become the law of the land on the subject without any distinction whatsoever as an Act of the Parliament in its application cannot be allowed to be regarded as intra vires the Constitution for one set of persons and ultra vires for another at the same time when both belong to the same class of persons. If this is allowed, it would result in discrimination as some would be bound to discharge the obligation arising from the Act of the Parliament thereby putting them in disadvantageous position against those who are discharged from the obligation on the principle of res judicata. Such a position cannot be allowed to be sustained.'

6. The other ground taken in the review petitions is about the non-utilization of the Cess-fee that had been so far collected. This Court dealt with the said question in paragraph 39 of the judgment in review. The findings arrived at were as follows:

39. The background of the legal history of the controversy in question can be traced back to 2011, when the levy under GIDC Act, 2011 was challenged before the Peshawar High Court which in 2013 declared the levy as ultra vires the Constitution and struck down the GIDC Act, 2011. The Islamabad High Court followed the same course in its judgment in 2014. As a result of these decisions, the matter came before this Court in the case which has come to be known as Durrani Ceramics case. This Court in its judgment refused to interfere with the decision rendered by the Peshawar High Court and declared the GIDC Act, 2011 as unconstitutional, holding that the levy in question was in fact a fee and not a tax, hence, it could not have been imposed through a Money Bill. The case came before this Court again in review, which was dismissed in 2015. Later, the Government enacted the GIDC Act, 2015 as a fee imposing enactment. The constitutional validity of the said Act was also challenged before the High Courts. The Sindh High Court declared the levy unconstitutional vide its judgment dated 26.10.2016 whereas the Peshawar High Court upheld the constitutionality of the new Act vide its judgment dated 31.05.2017. While several other similar matters awaited adjudication before other High Courts issue came before this Court for a second time, in which we vide order dated 22.10.2019 allowed the parties concerned to join the present proceedings as intervenors so that they can have a chance to assist us in the present proceedings and get an opportunity to present their version of the case before us. If we look at this matter in retrospect, there has been continuous litigation pertaining to the constitutional validity of the GIDC cess right from 2011 till July 2020 when we are finally deciding the controversy in these proceedings. Apart from continuous litigation on the issue, we were also told that due to international sanctions on Iran, the response to international tender for EPC contract was very poor as no contractor was willing to undertake the project. On TAPI it is stated that land acquisition proceedings is at an advance stage however work on laying of the pipeline could not start in Afghanistan on account of the insurgency in Afghanistan. It is also stated at the bar that now there are signs that work on laying the pipeline in Afghanistan may commence soon as the final draft of TAPI Project Land Management Law is on final review of the Government of Afghanistan. Hence the delay in the commencement of work on laying the pipelines on account of continuous proceedings in the High Courts as well as before this Court and the levy under both the enactments having been struck down as unconstitutional in the year 2013 and 2016, geopolitical situations in

the neighboring countries which are beyond the control of the Federal 'Government. This means that the projects have not been deliberately abandoned and there is also no material on record to doubt the intentions of Federal Government in this behalf. The Executive, therefore, cannot be blamed for not laying down the pipelines in question. In such a situation where work has not yet started on the laying of the pipelines and no contract has been awarded it would also be premature to ask for laying any report before the National Assembly.

7. An argument, which was extraneous to the scope of the review, was that the benefits granted under its Section 8(2) of the GIDC Act, 2015 are not being extended by the government. We in our decision have not held that the benefit granted under Section 8(2) ibid, which has been extended to a particular class of the consumers of gas on certain. conditions shall not be extended. When the G1DC Act, 2015 has been declared to be intra vires by this Court then every provision of it, which either creates an obligation or grants any relief is enforceable in law. We may further clarify that to seek the relief granted under Section 8(2) of the GIDC Act, 2015 to a particular class entitled to it under certain conditions the remedy lies elsewhere and not in review.

8. However, before parting with this order, we may add here that the learned Additional Attorney General, has stated that the government is agreeable to recover the arrears in 48 installments instead of 24 installments but, the government may also be granted one year's time instead of six months as provided in paragraph 46 of the judgment in review.

9. Several other grounds were also urged before us but one of the grounds in our considered view call for review, hence we dismiss all the review petitions, All the C.M.As. for joinder are also dismissed.

Sd/- JUDGE

Sd/- JUDGE

Sd/- JUDGE

ORDER OF THE BENCH

By majority of 2:1, all the review petitions are dismissed.

SYED MANSOOR ALI SHAH, J.---I have had the privilege to go through the judgment of my learned brother Mushir Alam, J., with which Faisal Arab, J. has concurred. I, with respect, have not been able to agree with the majority view for the reasons discussed hereunder. As matter of background I had recorded a dissenting view in the judgment under review. While I maintain my view I hear the present review petitions not as a judge carrying a dissenting view but as a member of the Bench that delivered the judgment under review.

Constitution of a Review Bench

2. It may be pertinent to state that initially a three member Bench was constituted to hear these review petitions of which I as a dissenting judge was not a member. Perhaps for the reason that Order XXVI, Rule 8 of the Supreme Court Rules, 1980, which requires that the same Bench to hear the review petition, was over-looked. Subsequently, the roster was revised and I was also made a member of the Bench, making it a four member Bench. The four-member Bench sat and unanimously decided to bring that aforesaid provisions of the Rules to the notice of the Hon'ble Chief Justice for re-constitution of the Bench, vide order dated 21.10.2020. The present Bench, which had earlier heard the case and delivered the impugned judgment, was thus constituted. This made me examine the office noting contained in the file. There seems to be lack of clarity regarding the meaning and scope of Order XXVI Rule 8 of the Supreme Court Rules, 1980. I, therefore, before going into the merits of the case wish to state the legal position in this regard.

3. Article 188 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") states that the Supreme Court shall have power, subject to the provisions of any Act of Majlis-e-Shoora (Parliament) and of any rules made by the Supreme Court, to review any judgment pronounced or any order made by it. The Parliament has not so far passed any Act under this Article; Order XXVI of the Supreme Court Rules,

1980, however, contains the rules that regulate the power of review of the Court. Rule 8 of that Order is relevant to the question under discussion. It is, therefore, reproduced hereunder for ease of reference:

8. As far as practicable the application for review shall be posted before the same Bench that delivered the judgment or order sought to be reviewed.

Rule 8 very clearly and firmly prescribes that the application for review shall, as far as practicable, be posted before the "same Bench" that delivered the judgment or order sought to be reviewed. The expression "same Bench" leaves little room to speculate the constitution of the Bench: the "same Bench" means the same judges, as far as practicable, and the same number of judges, i.e., the same numeric strength of the Bench. There is no ambiguity in this regard, in the said rule. Mian Saqib Nisar, J., in the review[1] of Judges' Pension case observed:

1 PLD 2013 SC 1024

There is great wisdom in law, that the review, generally and ordinarily, should be heard by the same Court and the Court in this context is an interchangeable term with the Judge.

4. A seven-Member Full Court Bench of this Court heard the review petition in Zulfikar Ali Bhutto's case.[2] The main appeal[3] in that case was decided by a majority of four to three Judges. All the Judges comprising majority and minority, both, were on the Bench hearing the review of the majority judgment. While deciding an application[4] made for adding two other Judges on the review Bench, Anwarul Haq, C.J., speaking for the Bench, held:

2 PLD 1979 SC 741

3 PLD 1979 SC 53

4 1979 SCMR 427

The position under the Supreme Court Rules is clear and unambiguous. Rule 6 of Order XXVI lays down that "as far as practicable the application for review shall be posted before the same Bench that delivered the judgment or order sought to be reviewed". Now, in the present case, the judgment under review was delivered by seven Judges of this Court, who are all available on the Bench for the disposal of the Review Petition. There is, accordingly, no justification for any departure or deviation from the relevant rule just mentioned.

(Emphasis added)

A question as to the inclusion of the three learned Judges who gave the dissenting judgment, in the Bench hearing the review petition also arose in that case, and it was held that as they were part of "the Bench that delivered the judgment sought to be reviewed" and were "available for the disposal of the review petition", their presence on the Bench was necessary. Muhammad Akram, J., mentioned the said decision of the Bench on this question, in his final order[5] made on the review petition, thus:

5 PLD 1979 SC 741

At a subsequent stage a question arose as to the position of the three learned Judges of this Court who had recorded dissenting opinions in regard to the disposal of the petitioner's appeal. Again, relying upon the aforesaid rule 6, we took the view that as they were part of the Bench that delivered the judgment sought to be reviewed, their presence on the Bench was necessary, as they were continuing as Judges of the Supreme Court and were available for the disposal of the review petition.

(Emphasis added)

The notable point in the phrases underlined in the above quoted observations of Anwarul Haq, C.J., and Muhammad Akram, J., are that they both mentioned that the judgment sought to be reviewed was delivered by the Bench comprising seven judges of the Court. They did not consider that judgment as the judgment delivered by only four Judges comprising the majority. These observations of their lordships are in line with the language of Rule 8, which contains the expression "same Bench that delivered the judgment or order sought to be reviewed", and not the majority Members of the Bench who delivered the majority judgment or order sought to be reviewed.

5.

It is well-established practice of this Court that when a case is heard by a Bench of two or more Judges, the case is decided in accordance with the opinion of such Judges or of the majority of such Judges. Judgment or order of the Court is pronounced in terms of the majority opinion; such judgment or order is of the Bench that heard the case and, for that matter, of the Court, and not only of the Judges whose opinion prevailed as a majority opinion. This is why a unanimous opinion of a five-Member Bench on a legal question can be overruled by a majority of four Judges while sitting in a seven-Member Bench. It is the numeric strength of the whole Bench that determines the judicial power of its Members, and not the numbers of the individual Judges in majority. Justice Nariman of the Indian Supreme Court has stated this position in Shanti Fragrances v. Union of India,[6] as under:

6 (2018) 11 SCC 305.

> Under the present practice, it is clear that the view of four learned Judges speaking for the majority in a 7 Judge Bench will prevail over a unanimous 5 Judge Bench decision, because they happen to speak for a 7 Judge bench.[7]

7 He has though expressed his desire to review this principle.

It is also a well-established principle of precedent that judgment of a larger Bench of this Court is binding on the Benches of this Court consisting of Judges less than that larger Bench.[8] A smaller Bench cannot request for constitution of a larger Bench to revisit the opinion of a larger Bench on any question or principle of law; only a Bench of co-equal strength can make such request.[9] This principle also necessitates that the Judge who dissented from the majority judgment should be Member of the Bench that is to hear the review petition, as a judgment pronounced in terms of the majority opinion of a larger Bench cannot be reviewed by a smaller Bench consisting of only the Judges holding the majority opinion. It is utmost necessary to maintain quorum of the Bench that delivered the judgment under review. It is because of this legal compulsion, that new Members are added to the Bench when any of its earlier Members retires or is not available for any other reason, to maintain the quorum of the Bench for hearing the review petition. Many instances may be cited in this regard: Gadoon Textiles Mills' case[10] was decided by a five-Member Bench with three-two majority. The review petitions[11] were filed against the majority judgment. The dissenting judges, Justices Saleem Akhtar and Fazal Karim, had retired by the time the review petitions were taken up for hearing; therefore, other Judges were added to the Bench to maintain the quorum of five Members, for hearing the review petitions. Benazir Bhutto case[12] was decided by a seven-Member Bench with six-one majority. The review petition[13] filed against the majority judgment of six Judges was heard by the Bench of seven Judges, not of six Judges. The quorum of the Bench was, thus, maintained for hearing the review petition. There are many other cases[14] of our jurisdiction as well as the Indian jurisdiction wherein the dissenting Judges were part of the Benches that heard the review petitions against the judgments of the Court pronounced in terms of the majority opinion. It can, therefore, be safely concluded that a judge who dissented from the majority judgment, if available, must be Member of the Bench for hearing the review petition filed against that majority judgment.

8 See Muhammad Saleem v. Fazal Ahmad, 1997 SCMR 315; Babar Shehzad v. Said Akbar, 1999 SCMR 2518; All Pakistan Newspapers Society v. Federation, PLD 2004 SC 600; Ata Ullah v. Surraya Parveen, 2006 SCMR 1637; Azhar Siddiqui v. Federation, PLD 2012 SC 774, para 37.

9 See Central Board of Dawoodi Bohra Community v. State of Maharashtra, AIR 2005 SC 752

10 Gadoon Textiles Mills v. WAPDA, 1997 SCMR 641.

11 Gandaf Steel Industries v. Federation, 1997 SCMR 1669.

12 Benazir Bhutto v. President of Pakistan, PLD 1998 SC 388.

13 Benazir Bhutto v. President of Pakistan, PLD 2000 SC 77.

14 See Nawaz Sharif v. Imran Khan, PLD 2018 SC 1 (Justices Asif Saeed Khosa and Gulzar Ahmed, the dissenting Judges, were on the Bench); Sheonandan Paswan v. State of Bihar, AIR 1987 SC 877 (Justice Tulzapurkar, the dissenting Judge, was on the Bench that admitted the review for hearing); Shyam Lal Sharma v. Union of India, AIR 1987 SC 1137 (Justice Thakkar, the dissenting Judge, was on the Bench to which the review petition was presented for decision by circulation.

6. So far as the scope of jurisdiction and judicial power of such Judge in hearing the review petition against the majority judgment is concerned, there is nothing in the Constitution or the Supreme Court Rules, 1980 that limits his jurisdiction and judicial power in a review in comparison with the Judges who delivered a majority judgment. He is a Member of the Bench with same jurisdiction and power like the other Members of that Bench. As afore-explained, the judgment pronounced or order made in terms of the majority opinion is the judgment or order of the Bench, and not of the Judges holding the majority opinion.

7. Rule 1 of Order XXVI of the Supreme Court Rules, 1980 provides that subject to the law and the practice of the Court, the Court may review its judgment or order in a Civil proceeding on grounds similar to those mentioned in Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 and in a criminal proceeding on the ground of an error apparent on the face of the record. As per Order XLVII, Rule 1 of the Code of Civil Procedure, 1908, the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the applicant or could not be produced by him at the time when the judgment was pronounced or order made, some mistake or error apparent on the face of the record, and any other sufficient reason are the grounds for review of a judgment or order made in a civil proceeding. These grounds of review which are, in fact, limitations on the power of review of this Court applies equally to the Judges whose opinion prevails for being the majority view and to the Judge whose opinion remains inoperative for being the minority view. The Judge whose opinion remained the minority view in the main case can review the Judgment of the Bench that was pronounced in terms of the majority opinion, on any of the said grounds of review, as can a Judge who delivered the majority opinion.

8. In Zulfiqar Ali Bhutto review case,**15** review petition was dismissed unanimously by all the seven Judges who were divided into four-three in the judgment pronounced in the main appeal case.**16** Muhammad Akram, J. speaking for the majority dismissed the review petition with the observations that "the errors and omissions pointed out by [the petitioner's counsel]... have been found by us to be of inconsequential import, having no material bearing upon the fundamental and essential conclusions reached in the majority Judgment as to the guilt of the petitioner, on the various counts on which his convictions have been upheld, as well on the question of sentence." And Dorab Patel, J. speaking for the minority also held that the review petition had to be dismissed and further agreed with the view of Akram, J. that the question of sentence could not be raised in a review petition, and if they were to alter the sentence in this review, they would be unsettling the settled law. Similar is the legal position in Indian jurisdiction: In the case of Sheonandan Paswan v. State of Bihar,**17** Justice Tulzapurkar, the Judge who earlier dissented with the majority judgment, was on the review-Bench, and admitted the review against the majority judgment for hearing, along-with two other Judges, i.e., one Judge who was earlier party to the majority judgment and the other judge added due to non-availability of a Judge**18** in majority. Tulsiram

case[19] was decided by a five-Judge Bench of the Indian Supreme Court with four-one majority. Justice Thakkar delivered the dissenting opinion. The review petitions[20] filed against the majority judgment were dismissed in limine by the four Judges, but Justice Thakkar held that the issues raised in the review petitions needed examination and the Review Petitions deserved to be admitted for hearing.

15 PLD 1979 SC 741

16 PLD 1979 SC 53

17 AIR 1987 SC 877

18 Justice Baharul Islam, who was by that time had resigned.

19 Union of India v. Tulsiram Patel, AIR 1985 SC 1416

20 Shyam Lal Sharma v. Union of India, AIR 1987 SC 1137

9.

A judgment of the Federal Court of Malaysia delivered in the case of Terengganu Forest Products v. Cosco Container Lines[21] may also be referred to on this point. The Federal Court, in that case, did not accept the argument that a judge who dissents at leave granting stage should not sit on the Bench hearing appeal, with the reason that the issues, considerations and arguments at the leave stage are different from that of the appeal hearing stage. Likewise, the considerations and grounds at the hearing of the review petition are different from that of the original hearing of the case; therefore, the judge who dissented at the original hearing of the case can sit on the review-Bench, and examine the considerations and grounds of review while hearing the review petition. There is another aspect of the matter to look at, i.e., when a Member newly added in the review Bench due to non-availability of an earlier Member, who was not earlier even part of the Bench, can make review of judgment, then how can any restriction or limitation be imposed on the jurisdiction and judicial power of review of the Member who earlier dissented. There are several instances when Members newly added on the Bench had recalled or reversed the original judgment or order in review jurisdiction despite contrary view of the Member who had earlier authored the judgment of the Court.[22] It can, therefore, be said with certainty that the jurisdiction and judicial power of the Judge who earlier dissented from the majority judgment of the Bench is similar and co-extensive with that of those Judges whose opinion became the majority judgment of the Bench, in hearing the review petition against that majority judgment.

21 [2011] 1 MLJ 25.

22 See Aamer Zaman v. Omar Ayub, 2015 SCMR 890 reviewed in 2015 SCMR 1303

Grounds of Review

10. A number of grounds highlighting errors apparent on the face of the record were agitated seeking review of the impugned judgment. It was argued: (i) that the principle of co-relation between the collection and expenditure of the amount of Cess as settled in the judgment under review was applied to stop further recovery of Cess, but it was not extended to restrain the collection of arrears of Cess, inspite of the fact that no developmental expenditure has taken place since 2011 and the Government has already collected Cess in excess of what is required for the foreseeable Projects; (ii) that the Court ordered that in case no work is carried out on North-South Gas Pipeline within six months, the Gas Infrastructure Development Cess Act, 2015 ("GIDC Act") would become permanently in-operational and considered dead for all intents and purposes, but has not made any order regarding return of the Cess collected to their payers or how and for what purpose the Cess collected would then be expended; (iii) that the decision of the Sindh High Court in 377 suits declaring the GIDC Act to be ultra vires the Constitution, being res judicata, has attained finality between the parties to those suits as it went unchallenged by the Federal Government, hence arrears, as well as, recovery of Cess in future could not be demanded of the petitioners who are decree holders in those suits. It was urged that the view expressed by a four-member Bench of this Court in Pir Bakhsh[23] was not fully appreciated; (iv) that the Second Schedule of the Act giving different maximum rates of Cess for different sectors is discriminatory as it lacks reasonable classification, giving no intelligible differentia that has any rational nexus with the object sought to be achieved by the statute in question; (v) that while interpreting Entry 51 of Part I of the Federal Legislative List the impugned judgment has disagreed with,

rather overruled, the interpretation made in Durrani Ceramics. It was urged that this point was never pleaded before the Court by the parties and no arguments were heard on the point besides this Bench being of co-equal strength could not have so done as per the settled principles of precedent; (vi) that the GIDC Act does not fall within the scope of Entry No.27 of Part-I of the Federal Legislative List. It was submitted that the petitioners were not heard on this point before holding the said Entry applicable to the GIDC Act; (vii) that the petitioners have been wrongly deprived of the benefit of the first proviso to Section 8(2) of the GIDC Act by making order of recovering arrears of the Cess that are exempted under that proviso; and (viii) that the statement made in the impugned judgment that the Cess collected may form part of the Federal Consolidated Fund is not consistent with the Constitutional provisions.

23 PLD 1987 SC 145

11. My learned brothers have dealt with only two grounds: one, relating to res judicata and the other, regarding proviso to Section 8(2) of the GIDC Act. They have disposed of other grounds with the observation that "Several other grounds also urged before us but none of the grounds in our considered view call for review". I, thus, do not have the advantage to see the reasons that prevailed with their lordships in rejecting those grounds. My learned brothers have clarified that the impugned judgment has not held that "the benefit granted under Section 8(2) ibid, which has been extended to a particular class of the consumers of gas on certain conditions shall not be extended." I respectfully agree with this clarification. However, on the ground of res judicata I have a different view that I shall explain later herein.

Co-relation of collection and expenditure of Cess.

12. I now advert to the question whether there is any visible co-relation between the collection of Cess and expenditure therefrom. The impugned judgment held:

> 20. ..The other kind of a fee-levying legislation is where Cess is imposed as a compulsory exaction in the same manner where taxes are imposed with the distinction that it is imposed for achieving a specific purpose promised in the enactment itself which when realized would bring some advantage or benefit for the payers in future. It can be described as 'purpose specific' and in many judicial pronouncements have been termed as 'Cess-fee'. In such a form of levy, the specified purpose is pre-committed to the payers before the revenue is collected under the legislation. To quote a few examples, Cess is imposed to meet the extraordinary costs involved in providing infrastructure such as construction of dams or for importing oil or gas from abroad through pipelines or to build farm to mill roads in order to facilitate marketing of the agricultural produce or for conducting research and development in some specialized field. In such a form of levy the rule of quid pro quo does not exist in the same sense as it exists in a case where an existing service is rendered or a privilege is extended directly to the payer for a fee. What needs to be taken into consideration is whether the enactment has promised some benefit or advantage for the payers to be made available in future by utilizing the revenue, making it more akin to a fee then a pure revenue raising measure like taxes in general are imposed with no precondition attached for their spending.
>
> 25. When Cess as a fee is levied to meet an earmarked financial exigency spelt out in an enactment, it preserves the levy for such purpose only even with the change in the government setup. It cannot be levied as a general revenue collecting tool and the government would not be justified to collect it if the funds are diverted to some other expenditure .. The proceeds of Cess should be clearly identifiable in the accounts by using separate accounting codes so that its collection and utilization is reconcilable with the purposes stated in the enactment. A correlation between the revenue collected and the expenditure incurred for the promised specific purpose should always be maintained. In this manner the earmarked levy also provides information on the amount collected and spent. This also inculcates confidence in the payers as it contains the promise that the revenue would be utilized for the specific purpose only for which it was collected and they would have a claim to transparency and accountability of the utilization of the revenue so collected. They can claim that the revenue cannot be utilized for any other purpose other than for which they have been charged. When the revenue can only be utilized for the purpose promised in the fee-levying

enactment then in that sense the levy could also be regarded as a temporary levy. Once the purpose for which it was imposed stands served, the justification for its imposition also comes to an end. The collection of Cess therefore should be based on some calculation keeping in view the funding requirements and as and when the purpose is achieved, the government loses it right to collect Cess regardless of the fact that the enactment continues to remain in force.

The principle settled by this Court was that there must exist a visible co-relation between the collection of Cess and its expenditure. In a case where the fee is to be utilized for service that is to be rendered in future, it is important to see how the moneys collected are being expended and whether there is a transparent and confidence inspiring co-relation between the two. The other principle settled was that the amount of Cess so collected is for a specified purpose and must be accounted for accordingly. It is not the collection of general revenue which can be utilized anywhere. Relying on these principles settled in the impugned judgment, further collection of Cess was stopped in the following manner:

42 However, keeping in view the ground realities discussed in the preceding paragraph and the fact that around 295 billion rupees have already been collected towards Cess-revenue and together with the outstanding amount the total sum by the end of this month would be in the vicinity of seven hundred billion rupees, which is more than what is the estimated cost of the projects mentioned in Section 4 of the GIDC Act, 2015, we are constraint to issue following directions: -

(i) From the date of this judgment, we restrain the Federal Government from charging Cess which power of the Federal Government shall remain suspended until the Cess-revenue collected and that which is accrued so far but not yet collected is expanded on the projects listed in Section 4 of the GIDC Act, 2015.

According to the figures given by the Government the Cess collected as on 30.06.2019 was as under:

TOTAL COLLECTION OF GIDC

Levy and Collection of GIDC				Rs. In Million
Sr.#	Sector	GIDC Accrued	GIDC Collected	GIDC Outstanding
1	Fertilizer Feed (old)	192,240.31	111,814.62	80,425.69
2	Fertilizer Feed (New)	68,281.71	1,142.89	67,138.82
3	Fertilizer Fuel	31,772.12	15,205.66	16,566.46
4	General Industry	70,729.64	24,402.27	46,327.37
5	IPPs	60,845.19	51,713.50	9,131.69
6	KESC	40,421.05	3,912.18	36,508.87
7	GENCO/WAPDA	67,317.33	44,753.78	22,563.55
8	Captive Power	119,247.65	17,522.73	101,724.92
9	CNG Region-I	53,420.68	11,765.63	41,655.05
10	CNG Region-II	48,073.10	13,169.51	34,903.59
	Grand Total	752,348.78	295,402.77	456,946.01

TOTAL EXPENDITURE OF GIDC

Project	Iran Pakistan (IP) Gas Pipeline Project	TAPI Pipeline Project	North South Gas Pipeline Project	Underground Gas Storages	Total
All amounts in PKR					
Estimated Project Cost	271 billion	1,500 billion	405 billion	75 billion	2,251 billion

Pakistan share	271 billion	31.353 billion	20.25 billion	75 billion	397.6 billion
Development Phase expenditure already incurred funded through GIDC (received todate)	Nil	0.483 billion	Nil	Nil	0.483 billion
Development Phase expenditure- already incurred funded by GHPL	3.3 billion	0.756 billion	0.135 billion	0.040 billion	4.2 billion
Total development and construction cost- to be funded through GIDC	271 billion	30.513 billion	20.250 billion	75 billion	396.7 billion

TOTAL AMOUNT COLLECTED	Rs.295.403
Expenditure required for (1) TAPI +	
North South Gas Pipeline (2) +Underground Gas Storage (3)	Rs. 125.763
Balance after deducting (1 + 2 + 3)	Rs. 169.643
Required for Iran Pak	
(IP) Gas Pipeline	Rs.271.000
Balance available for IP	Rs. 169.643
Excess- required if at all	
IP proceeds	Rs.101.357
Collection Ordered	Rs.456.946
Excess	Rs.355.589

The above working shows that the Government already has Rs. 101.357 in excess after factoring in the expenditure to be incurred on TAPI Gas Pipeline, North South Gas Pipeline and Underground Gas Storages unless the Iran Pak (IP) Project is put into motion. The co-relation between the collection and the expenditure stands completely frozen since 2011 raising fingers on the credibility and transparency of the Projects and on the availability of service (supply of natural gas) against the fee charged, in the near future. The direction for further collection of arrears in the sum of Rs. 456.946 billion leading to an excess of Rs. 355.589 billion unduly promotes unjust enrichment and seriously offends the right to property and business of the petitioners guaranteed under the Constitution. The status of the Projects submitted before this Court during the hearing of these review petitions reveals that the Government plans to start the North South Gas Pipeline (NSGP) Project only. This Project will not generate natural gas but is a support infrastructural Project and will not redress the shortage of natural gas in the country. The Government without any further collection of fresh amount of Cess or the arrears has an excess amount in the sum of Rs.101 billion including the expenditure for TAPI which has not even begun as yet. The impugned judgment though stops further collection of Cess on the principle that there has been no expenditure and no development on the Projects mentioned in the Act yet at the same time allows recovery of arrears in the sum of Rs. 456.946 billion. Reference is made to Chapter 14 on "Energy" in the Pakistan Economic Survey 2019-2020 which states:

Pakistan is successfully overcoming energy crisis, which has direct and indirect impact on all sectors of the economy. Presently, Energy Sector is confronted with demand supply gap....in terms of energy-mix, Pakistan's reliance on thermal which includes imported coal, local coal and RLNG and natural gas has been decreasing over the last few years. Pakistan's dependence on natural gas in the overall energy mix is on decline and the reduction of its share in the energy mix may be attributed to declining natural gas reserves as well as to the introduction of LNG since 2015.

Gas Sector

Natural Gas is a clean, safe, efficient and environment friendly fuel. Its indigenous supplies contribute about 38 percent in total primary energy supply mix of the country. Pakistan produces around four (4) Billion Cubic Feet Per Day (Bcfd) of indigenous natural gas against an unconstrained demand of over six (6) Bcfd. To meet the shortfall, the GoP has initiated the import of LNG. (emphasis supplied)

Pakistan Economic Survey is silent regarding these Projects since 2015 and shows that the shortfall in natural gas is being successfully plugged through the import of LNG, which surprisingly, is not a GIDC funded Project. The above documents show that after a decade of charging GIDC from gas consumers and after having collected Rs 295.40 billion to-date there is no sign of development of the gas pipeline projects in Pakistan. Absence of the said projects and emphasis on the import of LNG in the latest Pakistan Economic Survey hazards a guess that the Government of Pakistan is either not willing to or is unable to complete these projects and therefore the shortfall in gas supply is being increasingly plugged through LNG imported from Qatar. There is a huge disconnect between the principle settled by the Court and its application leading to a material omission in assessing the correct ground and factual reality. The direction to recover arrears is, therefore, against the principle settled by this Court and is not justified and legally sustainable and is liable to be recalled.

Deposit of Cess (GIDC) in the Federal Consolidated Fund

13. The other principle established in the impugned judgment was:

25 .It cannot be levied as a general revenue collecting tool and the government would not be justified to collect it if the funds are diverted to some other expenditure . The proceeds of Cess should be clearly identifiable in the accounts by using separate accounting codes so that its collection and utilization is reconcilable with the purposes stated in the enactment. A correlation between the revenue collected and the expenditure incurred for the promised specific purpose should always be maintained.

38...it matters not if the revenue so collected forms part of the Federal Consolidated Fund as it is the mandate of Article 78 of the Constitution itself that all revenues of the Federal Government has to be made part of Federal Consolidated Fund.

The learned DAG was asked time and again during the hearing to provide the statement of GIDC account within the Federal Consolidated Fund but he failed to furnish the statement of account and instead furnished a general statement showing the amount so far collected to be Rs. 307.23 billion as on 30.07.2020. Initial reluctance and then the failure on the part of the Federal Government to place on record the statement of the account of GIDC gives rise to an adverse inference against the Federal Government under Article 129(g) of the Qanun-e-Shahadat Order, 1984. It shows that the collected amount of Rs. 307.23 billion is not physically present in the account and has already been expended elsewhere. This offends the principle settled by the Court. Additionally, it is also highlighted that even today the amount of GIDC has been shown as a Tax Revenue in the Annual Budget Statements for the years 2019-2020 and 2020-2021 as under:

FEDERAL BUDGET 2019-2020

ANNUAL BUDGET STATEMENT

REVENUE RECEIPTS

Tax Revenue

(Rs. in million)

Object Code	Description	Budget Estimates 2018-19	Revised Estimates 2018-19	Budget Estimates 2019-20
B.	Tax Revenue			
	a. FBR Taxes (i+ii)	4,435,000	4,150,000	5,555,000
B01	I. Direct Taxes	1,735,000	1,659,000	2,081,945
B011	Taxes on Income	1,709,939	1,651,584	2,073,000
B0 15	Worker's Welfare Fund	18,636	4,186	5,050
B0 17-18	Capital Value Tax (CVT)	6,425	3,230	3,895
B02	ii. Indirect Taxes	2,700,000	2,491,000	3,473,055
B020-22	Customs Duties	735,000	735,000	1,000,500
B023	Sales Tax	1,700,000	1,490,000	2,107,738
B024-25	Federal Excise	265,000	266,000	364,817
b. Other Taxes		453,645	243,876	267,160
B026-30	Other Indirect Taxes	37,555	7,492	11,100
B03064	Airport Tax	90	30	35
B03083	Gas Infrastructure Development Cess	100,000	25,000	30,000
B03084	Natural Gas Develop-ment Surcharge	16,000	8,000	10,000
B03085	Petroleum Levy	300,000	203,354	216,025
Total Tax Revenue (a+b)		4,888,645	4,393,876	5,822,160

FEDERAL BUDGET 2019-2020

ANNUAL BUDGET STATEMENT

REVENUE RECEIPTS

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(Rs in million)

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14. The above Annual Budget Statements for the year 2019-2020 and 2020-2021 show the said collection under the head "other tax revenue" as a part of Federal Consolidated Fund. Provinces are paid their respective shares under the National Finance Commission Award24 from the Federal Consolidated Fund, and the possibility of the amount of GIDC being distributed amongst the Provinces cannot be ruled out. This Court, in the impugned judgment, held that "it matters not if the revenue so collected forms part of the Federal Consolidated Fund as it is the mandate of Article 78 of the Constitution itself that all revenues of the Federal Government has to made part of Federal Consolidated Fund."25 The Court in the impugned judgment ordered that "in case no work is carried out on North-South Gas Pipeline within the prescribed time and for laying any of the two other major pipelines (IP and TAPI) though the political conditions become conducive, the purpose of levying Cess shall be deemed to have been frustrated and the GIDC Act, 2015 would become permanently in-operational and considered dead for all intents and purposes." In that eventuality, the amount of Fee already collected under the GIDC Act will have to be refunded to the payers of fee. It would not be possible for the Federal Government to refund the same, if the amount of GIDC is made part of the Federal Consolidated Fund and shown as an amount available for general expenditures of the Government in the Annual Budget Statement.

24 Prescribed Share of all Provinces under the Distribution of Revenues and Grants-in-Aids Order, 2010

25 Para 38 of Impugned Judgment (Majority View)

15. Article 78(1) of the Constitution provides that all revenues received by the Federal Government, all loans raised by that Government, and all moneys received by it in repayment of loans shall form part of

consolidated fund, to be known as the Federal Consolidated Fund. While all other moneys received by or on behalf of the Federal Government, or received by or deposited with the Supreme Court or any other court established under the authority of the Federation are to be credited to the Public Account of the Federation as per Article 78(2) of the Constitution. The expression "all revenues" used in Article 78(1) covers the revenues (taxes, duties, etc.) raised for Governmental purposes, and does not include the revenue that cannot be used for any Governmental purpose, like the compensatory fee collected for rendering any service to the payers of that fee. Such compensatory fee falls within the expression "all other moneys" used in Article 78(2) and is to be credited to the Public Account, and not to the Federal Consolidated Fund. This view is supported by Ratilal Gandhi v. State of Bombay,**26** wherein the provisions of Article 266 of the Indian Constitution that are similar to that of Article 78 were interpreted in the following manner:

26 AIR 1953 Bom 242.

It is only taxes raised and revenues raised for Governmental purposes that form part of this fund. But when moneys are received as a result of fees imposed for a specific purpose and when the fund collected is earmarked and set apart, such a fund does not form part [of the Consolidated Fund contemplated under Article 266 of the Indian Constitution].

The Cess amount collected under the GIDC Act is to be credited in the Public Account with an entity distinct from the other revenues credited to it, and must be earmarked for utilization for the purposes specified in the GIDC Act only. No disbursement can be made from the Cess amount for general governmental expenditures or any other purpose. The Court was not assisted on this point at the time of the hearing of the main case, and made the observations regarding deposit of the Cess amount in the Federal Consolidated Fund in the impugned judgment without appreciating the difference between the Federal Consolidated Fund and the Public Account under Article 78 of the Constitution. The said observations are, therefore, liable to be recalled in review. Further it is clarified that in case the GIDC Act becomes in-operational on failure of the Federal Government to take steps to commence work on the laying of the North South Gas Pipeline within six months, the amount of the Cess collected are liable to be returned and refunded to the payers.

Discrimination

16. The Act provides for the following maximum rates of cess for different Sectors:

SECOND SCHEDULE OF THE ACT

S.No.	Sector	Maximum Rate of Cess (Rs./MMBTU)
(1)	(2)	(3)
	Fertilizer-Feed (Old)	300.00
	Fertilizer-Feed (New)	300.00
	Fertilizer-Fuel	150.00
	Captive Power	200.00
	Industry	100.00
	KESC/GENCO	100.00
	IPPs	100.00

On the question of discrimination, the impugned judgment, with respect, did not consider the rationale behind fixing different rates within different sectors but instead discussed the question of discrimination between the industrial/commercial consumers and the domestic consumers, which was not the question agitated by the petitioners. There appears to be no intelligible differentia amongst the different Industrial and Commercial gas consumers mentioned in the Schedule for the purposes of the GIDC Act. The upper limit of GIDC for the

Industry, KESC/GENCO and IPPs has been fixed as Rs.100 per MMBTU, while remaining categories of gas consumers have been allowed to be charged at the rate higher than that. This discrimination, with respect, was overlooked in the impugned judgment, and thus provides a valid ground to review it. As per Article 25 of the Constitution which ensure equality and equal treatment among equals, the Federal Government cannot charge the Cess at the rate more than Rs. 100 per MMBTU from any category of gas consumers.

Principle of Res-Judicata

17. On the ground of res judicata, the petitioners vehemently relied upon Pir Bukhsh. My learned brothers have distinguished that case in the impugned judgment by highlighting the difference of facts of that case and the facts of the present case, and have repelled the ground of review by quoting the observations made in paras 10 and 11 by them in the impugned judgment. I am afraid if this is the correct approach to distinguish a principle of law declared by a larger Bench of this Court, which is binding on this Bench. Pir Bukhsh was decided by a four-member Bench of this Court in 1987 almost 33 years ago and still holds the field. The Court, in that case, elaborately discussed and expounded the doctrine of res judicata and its application between the parties both on questions of law and fact. The Court, in that case, approvingly referred to a judgment of Full Bench of the Calcutta High Court delivered in Tarini Charan[27] wherein it was held:

27 Tarini Charan v. Kedar Nuth (A I R 1928 Cal. 777)

To say ... that the previous decision was wrong and that it was wrong on a point of fact, or on a pure point of law, and that therefore, it may be disregarded, is an indefensible form of reasoning. For this purpose, it is not true that a point of law is always open to a party.

Finally, this Court in Pir Bakhsh came to the conclusion that in a controversy raising a dispute inter parties, the matter adjudged is conclusive as between the parties both on question of fact and question of law. However, an exception to this principle declared by a larger Bench was created in the judgment under review by holding that it would be difficult to apply such a principle in matters where a power or a right or an obligation solely depends upon the very legitimacy of the enactment that has come under challenge in a Court of law on the touchstone of the Constitution. It was, with respect, not appropriate for a three-member Bench to deviate from principle of res judicata laid down by an earlier four-member Bench. This Bench had two options: first, to follow the law declared by that Bench; or second, to refer the matter to a four-member Bench to decide whether that opinion should be reconsidered by a larger Bench. As the majority did not opt for the second option, the principle of res judicata as settled in Pir Bukhsh is fully applicable to the decree holders in the suit decided by the Sindh High Court.

Interpretation of Entry No. 51 of Part 1 of the Federal Legislative List

18.

The Court, in the impugned judgment while interpreting Entry No.51 of Part I of the Federal Legislative List contained in the Fourth Schedule to the Constitution took a view[28] contrary to that of Bench of co-equal strength expressed in Durrani Ceramics[29] by stating that "the National Assembly was fully competent to impose tax on natural gas through a Money Bill on the strength of Entry No.51 of the Federal Legislative List." This finding, it is submitted with respect, is against settled principles of the law of precedent[30] and needs to be recalled.

28 In *Durrani Ceramics* case all items contained in Entry No.51 were read conjunctively, meaning thereby that Federal Government can levy tax on natural gas and mineral oil only if these sources of energy can be used to generate nuclear energy. It appears that no proper assistance on scientific lines was rendered by the law officers to this Court during the hearing of the

Durrani Ceramics case hence the scientific fact that it was not possible to generate nuclear energy from mineral oil and natural gas, as these sources cannot be used as nuclear fuel was not taken into consideration. (Para 41 of the judgment under review)

29 ***Federation of Pakistan through Secretary Petroleum and Natural Resources v. Durrani Ceramic*** **(2014 SCMR 1630 : PLD 2015 SC 354: 2014 PTD 2016)**

30 The Province of East Pakistan v. Dr. Azizul Islam, PLD 1963 SC 296; the Province of East Pakistan v. Abdul Basher Cohwdhury, PLD 1966 SC 854; Multiline Associates v. Ardeshir Choasjee, PLD 1995 SC 423; Ardeshir Cowasjee v. Karachi Building Control Authority, 1999 SCMR 2883; Gulshan Ara v. The State, 2010 SCMR 1162; Zahid Rehman v. The State PLD 2015 Supreme Court 77; Messrs WAK Limited Multan Road v. Collector Central Excise and Sales Tax, 2018 SCMR 1474; Shafqat @ Shafaat v. The State PLD 2019 Supreme Court 43;

Entry No.27 of Part-I of the Federal Legislative List

19. The Federation had defended its authority to legislate the GIDC Act on the basis of Entry No. 2 read with Entry No. 15 of Part II of the Federal Legislative List in the present case, and on Entry No. 51 of Part I of the Federal Legislative List in Durrani Ceramics. It was never the case of the Federation that it has competence to legislate a law relating to tax or fee on natural gas on the basis of Entry No. 27 of Part I of the Federal Legislative List. Entry No.27 reads as follows: "Import and export across customs frontiers as defined by the Federal Government, inter-provincial trade and commerce, trade and commerce with foreign countries; standard of quality of goods to be exported out of Pakistan." This entry clearly relates to trade with foreign countries (import and export), and inter-provincial trade and commerce, and in no way covers the subject of "natural gas". The GIDC Act has not taxed or charged fee on the foreign or inter-provincial trade and commerce. It has charged fee on use of natural gas. Entry No.27, in no terms, justify the legislative power of the Federation to enact the GIDC Act. The parties were not heard on this point at the time of original hearing of the case; this point, therefore, escaped notice of the Bench, and this error appears to be apparent of the face of the record and is liable to be recalled.

20. In view of the above errors that have been found apparent on the face of the record, the review petitions are allowed in the following terms:

(i) The benefit available under the provisos to section 8(2) of the GIDC Act shall not be affected by the judgment under review.

(ii) The direction to recover arrears of Cess is recalled.

(iii) In case the GIDC Act becomes in-operational on failure of the Federal Government to take steps to commence work on the laying of the North South Gas Pipeline within six months, the amount of the Cess collected shall be returned and refunded to the payers.

(iv) The principle of res judicata as settled in Pir Bukhsh, is fully applicable to the decree holders in the suits decided by the Sindh High Court.

(v) The Federal Government shall not charge the Cess at the rate more than Rs. 100 per MMBTU from any category of gas consumers in view of Article 25 of the Constitution.

(vi) The observation that "it matters not if the revenue so collected forms part of the Federal Consolidated Fund" is recalled and the amount of GIDC is to credited to the Public Account under Article 78(2) of the Constitution while maintaining a separate statement of account.

(vii) The finding on Entry No. 27 of Part I of the Federal Legislative List is recalled. The GIDC Act falls under Entry No. 2 read with Entry No. 15 of Part II of the Federal Legislative List.

(viii) The observations as to the interpretation of Entry No. 51 of Part I of the Federal Legislative List in the judgment under review being contrary to the judgment of co-equal Bench in Durrani Ceramics are recalled.

MWA/C-23/SC Order accordingly.

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[1] PLD 2013 SC 1024

[2] PLD 1979 SC 741

[3] PLD 1979 SC 53

[4] 1979 SCMR 427

[5] PLD 1979 SC 741

[6] (2018) 11 SCC 305.

[7] He has though expressed his desire to review this principle.

[8] See Muhammad Saleem v. Fazal Ahmad, 1997 SCMR 315; Babar Shehzad v. Said Akbar, 1999 SCMR 2518; All Pakistan Newspapers Society v. Federation, PLD 2004 SC 600; Ata Ullah v. Surraya Parveen, 2006 SCMR 1637; Azhar Siddiqui v. Federation, PLD 2012 SC 774, para 37.

[9] See Central Board of Dawoodi Bohra Community v. State of Maharashtra, AIR 2005 SC 752

[10] Gadoon Textiles Mills v. WAPDA, 1997 SCMR 641.

[11] Gandaf Steel Industries v. Federation, 1997 SCMR 1669.

[12] Benazir Bhutto v. President of Pakistan, PLD 1998 SC 388.

[13] Benazir Bhutto v. President of Pakistan, PLD 2000 SC 77.

[14] See Nawaz Sharif v. Imran Khan, PLD 2018 SC 1 (Justices Asif Saeed Khosa and Gulzar Ahmed, the dissenting Judges, were on the Bench); Sheonandan Paswan v. State of Bihar, AIR 1987 SC 877 (Justice Tulzapurkar, the dissenting Judge, was on the Bench that admitted the review for hearing); Shyam Lal Sharma v. Union of India, AIR 1987 SC 1137 (Justice Thakkar, the dissenting Judge, was on the Bench to which the review petition was presented for decision by circulation.

[15] PLD 1979 SC 741

[16] PLD 1979 SC 53

[17] AIR 1987 SC 877

[18] Justice Baharul Islam, who was by that time had resigned.

[19] Union of India v. Tulsiram Patel, AIR 1985 SC 1416

[20] Shyam Lal Sharma v. Union of India, AIR 1987 SC 1137

[21] [2011] 1 MLJ 25.

[22] See Aamer Zaman v. Omar Ayub, 2015 SCMR 890 reviewed in 2015 SCMR 1303

[23] PLD 1987 SC 145

[24] Prescribed Share of all Provinces under the Distribution of Revenues and Grants-in-Aids Order, 2010

[25] Para 38 of Impugned Judgment (Majority View)

[26] AIR 1953 Bom 242.

[27] Tarini Charan v. Kedar Nuth (A I R 1928 Cal. 777)

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[30] The Province of East Pakistan v. Dr. Azizul Islam, PLD 1963 SC 296; the Province of East Pakistan v. Abdul Basher Cohwdhury, PLD 1966 SC 854; Multiline Associates v. Ardeshir Choasjee, PLD 1995 SC 423; Ardeshir Cowasjee v. Karachi Building Control Authority, 1999 SCMR 2883; Gulshan Ara v. The State, 2010 SCMR 1162; Zahid Rehman v. The State PLD 2015 Supreme Court 77; Messrs WAK Limited Multan Road v. Collector Central Excise and Sales Tax, 2018 SCMR 1474; Shafqat @ Shafaat v. The State PLD 2019 Supreme Court 43;