

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE MUSHIR ALAM
MR. JUSTICE TARIQ PARVEZ

CIVIL APPEALS NO.1049 TO 1055/2011, CIVIL MISC. APPLICATION NO.1841/2016 IN CIVIL APPEAL NO.1054/2011, CIVIL APPEALS NO.24 TO 26, 64 TO 66, 918 TO 944, 961 AND 1061/2013, 1266 TO 1299, 1364 TO 1379/2014, 72 TO 74, 178, 179, 388, 316 TO 321, 583 TO 585/2015 AND CIVIL PETITION NO.1767/2012, CIVIL MISC. APPLICATION NO.8118/2015 IN CIVIL PETITION NO.1767/2012, CIVIL APPEALS NO.107 TO 114 AND 755/2016, CIVIL PETITION NO.1005/2016, CIVIL APPEALS NO.1022 AND 1341/2016 AND CONSTITUTION PETITIONS NO.5 TO 8/2016, CIVIL APPEAL NO.1298/2016, CIVIL MISC. APPLCIATIONS NO.3520 TO 3522/2016 IN CONSTITUTION PETITIONS NO.5 TO 7/2016

(Against the judgment dated 19.8.2011/3.10.2012,15.2.2012/1.3.2013/20.5.2013/1.5.2013/28.5.2013/29.5.2014/11.3.2011/29.10.2015/27.10.2015/23.9.2014/25.2.2016/17.11.2015/20.5.2015/12.1.2016 of the Lahore High Court, Lahore/High Court of Sindh, Karachi/Lahore High Court, Lahore/High Court of Sindh, Karachi/Peshawar High Court, Peshawar/High Court of Sindh, Karachi/Peshawar High Court, Peshawar/Islamabad High Court, Islamabad/Peshawar High Court, Peshawar passed in W.Ps.No.8763, 3643, 4216, 4217, 8766, 8767 & 8768/2011, Const.Ps.No.1588-D, 1589-D & 1743-D/2012, W.Ps.No.2100 to 2102/2012, Const.Ps.No.3753-D/2009, 1483-D, 4119-D, 4120-D & 4121-D/2011, 3618-D/2010, 367-D, 699-D, 3482-D, 3483-D, 3484-D, 3488-D to 3494-D & 495-D/2011, 3521-D/2010, 702-D, 703-D, 704-D, 706-D, 1048-D & 1619-D/2011, 452-D/2010, 2109-D/2013 & 2039/2010, T.Rs.No.2 to 4, 38 & 42/2012, 9, 34, 42, 44, 45, 76, 79, 86, 98 & 100/2013, 4/2014, 43, 46, 48, 64, 65, 77, 78, 80, 81, 82, 84, 85, 97, 99, 101 & 123/2013, 5/2014, 87/2013, W.Ps.No.1425/2010, 981 & 3420/2012, 3155 & 3156/2013, 144, 1139 & 579/2014, 3155 & 3156/2013, 3420/2012, 1139/2014, 981/2012, 144 & 579/2014, 1425/2010, T.Rs.No.9/2012, 19 & 102/2013 & 15 & 16/2014, 74, 18, 55 to 57, 51, 52 & 81 to 83/2014, Const.P.No.260/2008, T.Rs.No.35, 38 & 45 to 50/2015, W.Ps.Nos.2250 & 4203/2012 & T.Rs.No.58/2015, W.P.No.31/2015 and T.R.No.54/2015)

Workers Welfare Funds M/o Human Resources Development, Islamabad through Secretary	In C.As.1049 to 1055/2011, 64 to 66/2013 & 1364 to 1371/2014
Employees Old Age Benefits Institution through its Chairman and another	In C.As.24, 25 & 26/2013
Karachi Electric Supply Company Ltd.	In C.A.918/2013
Agar International (Pvt.) Ltd.	In C.A.919/2013
M/s Sindh Abadgar's Sugar Mills Ltd.	In C.A.920/2013
M/s Mirza Sugar Mills Ltd.	In C.A.921/2013
M/s Pangrio Sugar Mills Ltd.	In C.A.922/2013

M/s Naveena Exports Ltd.	In C.A.923/2013
M/s Gul Ahmed Textile Mills Ltd.	In C.A.924/2013
M/s Indus Dyeing & Manufacturing Co. Ltd.	In C.A.925/2013
M/s Blessed Textile Ltd.	In C.A.926/2013
M/s Bhanero Textile Mills Ltd.	In C.A.927/2013
M/s Nagina Cotton Mills Ltd.	In C.A.928/2013
M/s Faisal Spinning Mills Ltd.	In C.A.929/2013
M/s Sapphire Textile Mills Ltd.	In C.A.930/2013
M/s Sapphire Finishing Mills Ltd.	In C.A.931/2013
M/s Sapphire Fibers Ltd.	In C.A.932/2013
M/s Reliance Cotton Spinning Mills Ltd.	In C.A.933/2013
M/s Amer Cotton Mills (Pvt.) Ltd.	In C.A.934/2013
M/s Diamond Fabrics Ltd.	In C.A.935/2013
M/s Hassan Ali Rice Export Company	In C.A.936/2013
M/s Lucky Cement Ltd.	In C.A.937/2013
M/s Lucky Textile Mills Ltd.	In C.A.938/2013
M/s Lucky Energy (Pvt.) Ltd.	In C.A.939/2013
M/s Lucky Knits (Pvt.) Ltd.	In C.A.940/2013
M/s Fazal Textile Mills Ltd.	In C.A.941/2013
M/s Adamjee Enterprises etc.	In C.A.942/2013
M/s Younus Textile Mills Ltd.	In C.A.943/2013
M/s Younus Textile Mills Ltd.	In C.A.944/2013
Sohail Textile Mills Ltd.	In C.A.961/2013
Arif Habib Corporation Ltd. through its Chief Financial Officer & Company Secy.	In C.A.1061/2013
Chief Commissioner Inland Revenue, RTO, Peshawar	In C.As.1266 to 1281 & 1372 to 1377/2014 & 72, 74, 178, 179 &

	316/2015, 1341 & 1298/2016
Commissioner Inland Revenue, RTO, Peshawar	In C.As.1282 to 1299, 1379/2014, 388, 317 to 321, 583 to 585/2015, 107 to 114 & 1022/2016
Chief Commissioner Inland Revenue, Zone-II, RTO Peshawar	In C.A.73/2015
Employees Union, FFC (CBA), Fauji Fertilizer Company Ltd.	In C.P.1767/2012 & CMA.8118/2015
Federation of Pakistan through Secretary M/o Finance Islamabad and another	In C.A.755/2016
ICI Pakistan Employees Union Soda Ash Khewra	In C.P.1005/2016
PKP Exploration 2 Limited	In Const.P.5/2016 & CMA 3520/2016
PKP Kandanwari Limited	In Const.P.6/2016 & CMA 3521/2016
KUFPEC Pakistan B.V.	In Const.P.7/2016 & CMA 3522/2016
PKP Kirthar B.V.	In Const.P.8/2016
	...Appellant(s)/Petitioner(s)

VERSUS

East Pakistan Chrome Tannery (Pvt.) Ltd through its GM (Finance), Lahore etc.	In C.As.1049/2011
Sunrize Bottling Company (Pvt.) Ltd. through its Chief Executive Officer etc.	In C.A.1050/2011
Haseeb Waqas Sugar mills through its G.M. Finance etc.	In C.A.1051/2011
Abdullah Sugar Mills Ltd. thr. its G.M. Finance etc.	In C.A.1052/2011
Chiniot Textile Mills through its G.M. Finance etc.	In C.A.1053/2011
East Pakistan Chrome Tannery through its G.M. Finance etc.	In C.A.1054/2011 & CMA 1841/2016
Ayesha Spinning Mills thr. its G.M. Finance etc.	In C.A.1054/2011
Soneri Bank Ltd. Karachi and another	In C.A.24/2013

Bank Al-Falah Ltd. Karachi and another	In C.A.25/2013
Standard Chartered Bank Ltd. Karachi & another	In C.A.26/2013
M/s JDW Sugar Mills Ltd. through its Company Secretary, Lahore Cantt etc.	In C.As.64, 65 & 66/2013
Federation of Pakistan through Secretary M/o Finance etc.	In C.As.918 to 944/2013
Federation of Pakistan through Secretary Law and Justice Division, Islamabad etc.	In C.A.961/2013
Federation of Pakistan through Secretary Islamabad	In C.A.1061/2013
M/s Shoaib Pipe Store	In C.A.1266/2014
M/s New Ruby Jewelers, Peshawar	In C.A.1267/2014
M/s Choice Communication, Peshawar	In C.A.1268/2014
Nasrullah Jan Inamullah Jan & Co. (Pvt.) Ltd.	In C.A.1269/2014
Gateway Gas (Pvt.) Ltd. Peshawar	In C.A.1270/2014
Chashma Sugar Mills (Pvt.) Ltd.	In C.A.1271/2014
Universal Plastic Industries (Pvt.) Ltd.	In C.A.1272/2014
Abdul Rehman & Co.	In C.A.1273/2014
Gul Construction Company Pvt. Ltd.	In C.A.1274/2014
Gul Construction Company Pvt. Ltd.	In C.A.1275/2014
Lucky Cement (Pvt.) Ltd.	In C.A.1276/2014
Jaffar shah, Government Contractor Bannu	In C.A.1277/2014
Dr. Safia Shahid Nowshera	In C.A.1278/2014
Wireless Communication, Peshawar	In C.A.1279/2014
Inayatullah Khan & Co.	In C.A.1280/2014
Spinzer Travel Pvt. Ltd.	In C.A.1281/2014
Ziaullah & Co.	In C.A.1282/2014
Nisar Ahmed & Brothers, Peshawar	In C.A.1283/2014
Worldwide Chemicals, Peshawar	In C.A.1284/2014

Imdad Khan Brothers, Peshawar	In C.A.1285/2014
Imdad Khan Brothers, Peshawar	In C.A.1286/2014
Lucky Cement (Pvt.) Ltd.	In C.A.1287/2014
Jaffar Shah, Government Contractor, Bannu	In C.A.1288/2014
Unique Technologies	In C.A.1289/2014
Unique Technologies	In C.A.1290/2014
Worldwide Chemicals, Peshawar	In C.A.1291/2014
Muhammad Saleem Marwat	In C.A.1292/2014
Inter Construct (Pvt.) Ltd.	In C.A.1293/2014
Muhammad Saleem Marwat	In C.A.1294/2014
Speed Zone (Pvt.) Ltd.	In C.A.1295/2014
Inayatullah Khan & Co.	In C.A.1296/2014
Unique Technologies	In C.A.1297/2014
Spinzer Travel Pvt. Ltd.	In C.A.1298/2014
Dr. Safia Shahid	In C.A.1299/2014
Government of Pakistan through Federal Secretary Finance and Revenue Division, Islamabad etc.	In C.As.1364, 1365, 1369 & 1371/2014
Federation of Pakistan through Secretary Cabinet Division, Islamabad etc.	In C.As.1366, 1367 & 1368/2014
Federation of Pakistan through Secretary M/o Finance & Economic Affairs, Islamabad etc.	In C.A.1370/2014
M/s M.K.B. Enterprises Pvt. Ltd.	In C.A.1372/2014
M/s Cherat Cement Pvt. Ltd.	In C.A.1373/2014
M/s Rehman Cotton Mills Ltd. etc.	In C.A.1374/2014
M/s Utman Ghee Industries Pvt. Ltd. etc.	In C.A.1375/2014
M/s Saif Textile Mills Ltd. etc.	In C.A.1376/2014
M/s Lucky Cement Ltd. etc.	In C.A.1377/2014
M/s ECOPACK Ltd. and another	In C.A.1378/2014

M/s Associated Industries Ltd. and another	In C.A.1379/2014
Gadoon Textile Mills (Pvt.) Ltd.	In C.A.72/2015
New Ahmed Roller Flour Mills (Pvt.) Ltd.	In C.A.73/2015
Ghulam Sadiq Ghulam Habib & Co. (Pvt.) Ltd.	In C.A.74/2015
Gadoon Textile mills (Pvt.) Ltd.	In C.As.178 & 179/2015
M/s Bilour Industries (Pvt.) Ltd.	In C.A.388/2015
Lucky Cement (Pvt.) Ltd.	In C.A.316/2015
M/s Sohail Vegetable Ghee Mills Pvt. Ltd.	In C.As.317 to 319/2015
M/s Faisal Company (Pvt.) Ltd.	In C.As.320 & 321/2015
M/s Ithfz Match Pvt. Ltd.	In C.A.583/2015
M/s Khan Match Pvt. Ltd.	In C.As.584 & 585/2015
Federation of Pakistan through Secretary Human Resource Development Islamabad etc.	M/o In C.P.1767/2012 & CMA 8118/2015
M/s Chashma Sugar Mills Ltd.	In C.A.107/2016
M/s Premier Sugar Mills Ltd.	In C.A.108/2016
M/s Bilour Industries Pvt. Ltd.	In C.As.109, 111 & 113/2016
M/s M. B. Dyes Chemicals & Silk Industries Swabi	In C.As.110, 112 & 114/2016
Akbar Ali Khan	In C.A.755/2016
Federation of Pakistan through Secretary Law, Islamabad etc.	In C.P.1005/2016
M/s F.C. NWFP, Security Services Pvt. Ltd.	In C.A.1022/2016
M/s Cherat Packaging Ltd. etc.	In C.A.1341/2016
Federation of Pakistan etc.	In Const.Ps.5 to 8/2016 & CMAs 3520, 3521 & 3522/2016
Lucky Cement (Pvt.) Ltd.	In C.A.1298/2016 ...Respondent(s)

For the appellant(s):

Mr. Mir Afzal Malik, ASC
Ch. Akhtar Ali, AOR
(in C.As.1049 to 1055/2011 & 64 to 66/2013)

Mr. Mir Afzal Malik, ASC
Mr. Tariq Aziz, AOR
(in C.As.1364 to 1371/2014)

Ms. Asma Jehangir, ASC
Ch. Akhtar Ali, AOR
(in C.As.24 to 26/2013)

Mr. Abid S. Zuberi, ASC
(in C.A.918/2013)

Mr. Hashmat Ali Habib, ASC
(in C.A.919/2013)

Mr. Rashid Anwar, ASC
(in C.As.923 to 930, 937 & 938/2013)

Mr. Ghulam Shoaib Jally, ASC
Mr. M. S. Khattak, AOR
(in C.As.1266 to 1299/2014, 1372 to 1379/2014, 72 to 74,
178, 179, 316 to 321, 388 & 583 to 585/2015, 1022, 1341
& 1298/2016)

Mr. Rehman Ullah, ASC
(in C.As.107 to 114 & 755/2016)

Nemo
(in C.As.920 to 922, 936, 942 to 944, 931 to 935, 939 to 941
& 961/2013)

For the petitioner(s):

Hafiz S. A. Rehman, Sr. ASC
(in C.P.1767/2012 & C.M.A.8118/2015)

Malik Jawwad Khalid, ASC
(in C.P.1005/2016)
Mr. Raheel Kamran Sheikh, ASC (in Const.P.05 to 08/2016)

For the applicant(s):

Raja Nadeem Haider, ASC
(in C.M.A.1841/2016)

For the respondent(s) -

For the respondent(s):

Mr. Isaac Ali Qazi, ASC (in CA.937/13, 1271, 1276, 1373, 1377/14,
398, 316, 584, 585/15, 107 to 109, 111/16
CA. 113, 1

Mian Yousaf Umar, ASC
(in C.As.1049 to 1055/2011)

Mr. Mehmood Abdul Ghani, ASC
Mr. M. S. Khattak, AOR
(in C.As.24 to 26/2013)

Mr. Naveed Ahmed Andrabi, ASC
(in C.As.64 to 66/2013)

Dr. Farhat Zafar, ASC
Raja Abdul Ghafoor, AOR
(in Const.Ps.5 to 8/2016 & C.M.As.3520 to 3522/2016)

Mr. Mir Afzal Malik, ASC
Mr. Tariq Aziz, AOR
(in C.As.918 to 920, 923 to 935, 938 to 941, 943, 944/2013)

Mr. Khalil-ur-Rehman, ASC
Mr. M. S. Khattak, AOR
(in C.A.1274/2014)

Mr. Muhammad Saleem Mangrio, ASC (in CA.64/13, 918 to 929/2013
CA. 931 to 936, 939 to 943/2-13)

Syed Arshad Ali, ASC
(in C.A.1365/2014)

Mian Shafaqat Jan, ASC
(in C.As.320 & 321/2015)

Mr. Shumail Butt, ASC

dm

(in C.A.1378/2014)

Mr. Arshad Zaman Kiyani, ASC
Mr. Muhammad Saleem Khan, ASC
Mr. Asif Fasih-ud-Din Vardaq, ASC
Qazi Ahmed Naeem Qureshi, ASC
Mr. Tariq Aziz, AOR
(in C.P.1767/2012)

Ms. Misbah Gulnar Sharif, ASC
(in C.A.942/2013)

Mr. Tasleem Hussain, ASC
(in C.As.1374 & 1379/2014)

Mr. Habib Ahmed Qureshi, ASC
(in C.A.1364/2014)

Mr. Sohail Mahmood, DAG
Mr. Abid Hussain Channa, S.O. (Finance)
Mr. Mudassir Khalid Abbasi, A.A.G. Punjab
Mr. Abbas Ali, Law Officer, Labour Deptt.
Punjab

Mr. Noor Ahmed Wahgra, Dy. Director
(Legal), EOBI

Mr. Faisal Tariq, Dy. Director (Legal)
Workers Welfare Fund, Islamabad

Nemo

(in C.As.1272, 1274, 1278 & 1299/2014)

Not represented

(in C.As.1061, 1266 to 1268, 1270, 1273, 1275, 1277, 1279 to 1289, 1364, 1366 to 1368, 1370 to 1372, 1375/2014, 72 to 74, 178, 179, 317 to 319, 583/2015, 110, 112, 114 & 1022/2016)

Date of hearing: 27.09.2016

...
JUDGMENT

MIAN SAQIB NISAR, J.- These matters involve common questions of law, thus are being disposed of together. The key question involved in these matters is whether the levies/contributions/payments under various laws which were amended through different Finance Acts are in the nature of a tax or not. This would in turn determine whether or not the amendments were lawfully made through Finance Acts, i.e. Money Bills, as defined in Article 73 of the Constitution of the Islamic Republic of Pakistan, 1973 (*Constitution*).

2. The facts pertaining to these matters are broadly divided into three categories for ease of reference. The first set of facts are that Sections 2 and 4 of the Worker Welfare Ordinance, 1971 (*Ordinance of 1971*)

were amended by Section 12 of the Finance Act of 2006 and subsequently by Section 8 of the Finance Act of 2008 which broadened the scope of the obligation on industrial establishments to contribute towards the Workers' Welfare Fund established under Section 3 of the Ordinance of 1971. The said amendments (*and notices demanding enhanced payment by virtue of the amendments*) were challenged through writ petitions before various High Courts of the country. It is pertinent to mention that there are divergent views of the learned High Courts on this question. The view of the learned Lahore High Court in the judgment dated 19.8.2011 reported as **East Pakistan Chrome Tannery (Pvt.) Ltd Vs. Federation of Pakistan and others (2011 PTD 2643)** is that the levy in question was a fee and not a tax, therefore the amendments made by the Finance Acts of 2006 and 2008 to the Ordinance of 1971 could not have been lawfully brought through a money bill, rather should have been brought through the regular legislative procedure under the Constitution. The learned Peshawar High Court, *vide* judgment dated 29.5.2014, followed suit. Subsequently the learned Peshawar High Court disposed of numerous tax references on the basis of this decision, against which the appeals are before us. We would like to point out at the very outset that as regards those cases in which the revenue authorities/collecting agencies have assailed the judgment of the learned Peshawar High Court, although no rights of the collecting agencies have been affected as their job is to merely collect contributions for the Workers' Welfare Fund, we are nevertheless deciding those cases as well keeping in view the importance of the matter and the conflicting judgments impugned before us. There is a contrary view of the Full Bench of the learned High Court of Sindh expressed in the judgment dated 1.3.2013 reported as **Shahbaz Garments (Pvt.) Ltd Vs. Pakistan**

through Secretary Ministry of Finance, Revenue Division, Islamabad and others (PLD 2013 Kar 449) (*Full Bench judgment*) to the effect that the levy in question was a tax and not a fee, therefore the amendments made by the Finance Acts of 2006 and 2008 to the Ordinance of 1971 were lawfully brought through a money bill. The aforementioned judgments have been challenged by the parties before us.

3. The second set of facts are that various provisions of the Employees Old Age Benefits Act, 1976 (*Act of 1976*) pertaining to contributions to be made thereunder were amended by Section 9 of the Finance Act of 2008 effectively widening the scope of the obligation on employers to contribute towards the Employees' Old-Age Benefits Fund established under Section 17 of the Act of 1976. These amendments were challenged through constitution petitions before the learned High Court of Sindh which, through its judgment dated 3.10.2012 reported as **Soneri Bank Limited through Jaffar Ali Khan and others Vs. Federation of Pakistan** ^{ah21} **through Secretary Law and Justice Division, Pak Secretariat, Islamabad and others (2013 PLC 134)**, held that the levy in question was a fee and not a tax, therefore the amendments made by the Finance Act of 2008 to the Act of 1976 could not have been lawfully brought through a money bill.

4. The third set of facts are that various provisions of the Workmen Compensation Act, 1923, the West Pakistan Industrial and Commercial Employees (Standing Orders) Ordinance, 1968 (*Ordinance of 1968*), the Companies' Profit Workers' Participation Act, 1968 (*Act of 1968*), the Minimum Wages for Unskilled Workers Ordinance, 1969 (*Ordinance of 1969*) and the Act of 1976 were amended through the Finance Act of 2007 which amendment(s) in effect broadened the scope of the obligation of the

employers in the respective statutes (*the obligation(s) in each statute shall be discussed during the course of the opinion*). These amendments were challenged through a constitution petition before the learned High Court of Sindh which, through its judgment dated 26.2.2011, held that the changes sought to be made by amendments through the Finance Act of 2007 did not fall within the purview of Article 73(2) of the Constitution, hence, the said amendments could not have been lawfully brought through a money bill. All the aforementioned judgments have been challenged before us.

5. The contentions of the learned counsel can be grouped into two for the sake of convenience. The first set of arguments is of those counsel who espouse the view that **the levies/contributions in question are in the nature of a tax**, hence, the amendments brought in the respective statutes were validly and lawfully made through Money Bills, i.e. different Finance Acts.

6. Ms. Asma Jehangir, learned counsel for Employees Old-Age Benefits Institution (*Institution*), sought to challenge the judgment passed in the case of **Soneri Bank** (*supra*). Her basic argument was that the levy in the Act of 1976 is a tax and not a fee, and an amendment could be validly brought in the Act of 1976 through a money bill. The Act of 1976 is the outcome of the obligation of the State to sustain the working class from falling below the poverty line. This obligation has been recognized in the Constitution (*Articles 9, 37 and 38*). Under Article 37 of the Constitution the State has become a signatory to and ratified the conventions of the International Labour Organisation to set up institutions so that the aged, disabled, pregnant women, and survivors of accidents and their families are paid benefits. The Institution is a conduit for the obligation that the State owes in terms of ensuring social benefits and economic rights.

Therefore these payments are not a privilege or a service rendered, rather they are tantamount to a right. Additionally, a vested right had been created in favour of the beneficiaries. Further, the employers are contributors to the welfare of the State [on behalf of the general public including the employees] and therefore it has become a common burden. Moreover, the State can contribute as per Section 9 of the Act of 1976 hence the levy/contribution is a tax and not a fee. She relied upon the judgments reported as Federation of Pakistan through Secretary Ministry of Petroleum and Natural Resources and another Vs. Durrani Ceramics and others (PLD 2015 SC 354), Federation of Pakistan through Secretary M/o Petroleum and Natural Resources and another Vs. Durrani Ceramics and others (2014 SCMR 1630), Mir Muhammad Idris and others Vs. Federation of Pakistan through Secretary Ministry of Finance and others (PLD 2011 SC 213), Sindh High Court Bar Association through its Secretary and another Vs. Federation of Pakistan through Secretary, Ministry of Law and Justice, Islamabad and others (PLD 2009 SC 879), Collector of Customs and others Vs. Sheikh Spinning Mills (1999 SCMR 1402), Messrs Elahi Cotton Mills Ltd and others Vs. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others (PLD 1997 SC 582), Sheikh Muhammad Ismail & Co. Ltd, Lahore Vs. The Chief Cotton Inspector, Multan Division, Multan and others (PLD 1966 SC 388), Flying Cement Company Vs. Federation of Pakistan and others (2015 PTD Lah 1945), Tata Textile Mills Ltd through Authorized Attorney/Representative, Karachi and 57 others Vs. Federation of Pakistan through Secretary, Revenue Division/FBR, Islamabad and another (2013 PTD Kar 1459), Shahbaz Garments (*supra*), Messrs

Mutual Funds Association of Pakistan (MUFAP) Vs. Federation of Pakistan through Secretary, Ministry of Finances, Government of Pakistan and another [2010 PLC (Lab) Kar 306], Syed Nasir Ali and 33 others Vs. Pakistan through Secretary Ministry of Law, Islamabad and 3 others (2010 PTD 1924), Messrs Fatima Enterprises Ltd Vs. The Federation of Pakistan through Secretary, Education, Ministry of Education, Islamabad and others (1999 MLD 2889), Messrs Saif Textile Mills Limited Vs. Pakistan through Secretary, Finance (Finance Division), Islamabad and 3 others (PLD 1998 Pesh 15), Sind Glass Industries Limited Vs. Chief Controller of Import and Export, Islamabad (1990 CLC 638) and Trustees of the Port of Karachi Vs. Gujranwala Steel Industries and another (1990 CLC 197). From the Indian jurisdiction, learned counsel relied upon the judgments reported as Calcutta Municipal Corporation and others Vs. Shrey Mercantile Pvt. Ltd and others (AIR 2005 SC 1879), City Corporation of Calicut Vs. Thachambalath Sadasivan and others (AIR 1985 SC 756), The Chief Commissioner, Delhi and another Vs. The Delhi Cloth and General Mills Co. Ltd and others (AIR 1978 SC 1181), The State of Maharashtra and others Vs. The Salvation Army, Western India Territory (AIR 1975 SC 846), The Secretary, Government of Madras, Home Department and another Vs. Zenith Lamp and Electrical Ltd. (AIR 1973 SC 724), The Delhi Cloth and General Mills Co. Ltd Vs. The Chief Commissioner, Delhi and others (AIR 1971 SC 344) and The Comissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sir Shirur Mutt. (AIR 1954 SC 282).

7. Mr. Mir Afzal Malik, learned counsel for the Workers' Welfare Fund submitted that the levy/contribution in the Ordinance of 1971 is

also in the nature of a tax and not a fee, therefore the amendments have been validly brought about by Money Bills. He argued that although both tax and fee are compulsory extractions, tax is not related to a particular service but is intended to meet the expenses of the State, whereas a fee is meant to compensate the Government for expenses incurred in rendering services to the person from whom the fee is collected. Further, the money received in the Workers' Welfare Fund is for the benefit of the workers and not for the payers, i.e. industrial establishments, therefore such levy/contribution does not fall within the definition of fee. He referred to various constitutional provisions including Articles 70(4), 73, 77, 142(b) and (c), 143, 165A and 260(1) and Entry No.52 of Part I of the Fourth Schedule of the Constitution. He relied upon the judgments reported as Shahbaz Garments (*supra*), Mutual Funds Association (*supra*), Collector of Customs (*supra*), Abdul Majid and another Vs. Province of East Pakistan and others (PLD 1960 Dacca 502), The Commissioner, Hindu Religious Endowments, Madras (*supra*), Pakistan Burmah Shell Limited and another Vs. Federation of Pakistan through the Secretary, Ministry of Finance, Government of Pakistan, Islamabad and 3 others (1998 PTD 1804), Muhammad Ismail (*supra*), Messrs Khyber Electric Lamps Manufacturing Limited and others Vs. Chairman, District Council, Peshawar and another (1986 CLC 533), Rahimullah Khan and 65 others Vs. Government of N.W.F.P. through Secretary Agricultural Forest and Co-operation Department, Peshawar and 5 others (1990 CLC 550), PLD 1997 Kar 604, 1990 CLC 638, Calcutta Municipal Corporation (*supra*), The Hingir-rampur Coal Co. Ltd and others Vs. The State of Orissa and others (AIR 1961 SC 459), Mahboob Yar Khan and

another Vs. Municipal Committee, Mian Channu and 2 others (PLD 1975 Lah 748) and **Elahi Cotton** (*supra*).

8. Mr. Rehman Ullah, learned counsel for the appellants in Civil Appeals No.107 to 114 and 755/2016 submitted that the subject levies/contributions were in the nature of tax, not fee. Mr. Hafiz S. A. Rehman, learned counsel for the appellant in Civil Petition for Leave to Appeal No.1767/2012, submitted that the amendments made in several labour laws through the Finance Act of 2007 were lawful for the reasons enumerated in the Full Bench judgment of the High Court of Sindh which (*judgment*) he fully supported. Mr. Malik Jawwad Malik, learned counsel for the appellant in Civil Petition for Leave to Appeal No.1005/2016 adopted the arguments of Mr. Hafiz S. A. Rehman, learned ASC.

9. The second set of arguments is of those counsel who oppose the view that **the levies/contributions in question** are in the nature of a tax, rather it is their stance that they **are in the nature of a fee**, hence, the amendments brought in the respective statutes through Money Bills, i.e. different Finance Acts, were made without lawful authority.

10. Mr. Rashid Anwar, learned counsel for the appellants in Civil Appeals No.923 to 930, 937 and 938/2013, identified two main issues:- firstly, with respect to the scope of Article 73 of the Constitution pertaining to Money Bills, and secondly, whether the Ordinance of 1971 levies a tax or a fee. He briefly discussed the history and origins of the concept of Money Bills and how it became a part of our constitutional structure. He made reference to the Parliament Act, 1911 according to which in case there is a conflict between the House of Commons and the House of Lords regarding a Money Bill, when the Speaker of Parliament certifies a bill as a Money Bill, the word of the House of Commons will

prevail: according to him this principle is reflected in our Constitution too. Generally, all bills should be passed by both houses of Parliament, i.e. the National Assembly and the Senate. The Senate can be bypassed only to the extent permitted by the Constitution, that is, in respect of matters which fall strictly within the definition of a Money Bill, as provided in Article 73 *supra*. He submitted that the amendments made by the Finance Act of 2006 and 2008 did not fall within the definition of a Money Bill and hence such amendments were invalid. He then moved on to the question of whether the levy/contribution in the Ordinance of 1971 was a tax or a fee. In this regard he referred to the **Durrani Ceramic's** case (*supra*) and submitted that there are two tests to answer such a question, first, we ought to examine whether any benefit is being provided to any class, particular individuals, community or a specific area and if/where the benefit cannot be measured in exactitude, so long as the levy is to the advantage of the payers, consequential benefit to the community at large would not render the levy a tax. Further, where there is ambiguity, reference can be made to the stance of the Government itself, because the budget documents are prepared by the Government and if it classifies the levy/contribution as non-tax revenue then that is conclusive proof that it is not a tax. In this respect he referred to certain documents according to which the Accountant General Pakistan Revenues has taken a categorical position that the Workers' Welfare Fund receipts are accounted for under the heads of account of 'non-tax receipts'. Learned counsel by referring to the Preamble and Section 6 of the Ordinance of 1971 stated that this law is meant to provide facilities to workers, and according to judgments of the Supreme Court, a fee should confer some benefit on the contributor directly or indirectly. When an employer makes contributions to the

Workers' Welfare Fund it directly benefits the worker but also indirectly benefits the employer in that the worker is enabled to be more productive. He further submitted that as a general rule, tax revenues go to the national exchequer and are disbursed by it to meet the Government's budgetary requirements and the same cannot be done by statutory bodies which are not the Government.

11. Mr. Hashmat Ali Habib, learned counsel for the appellant in Civil Appeal No.919/2013 argued that the levy/contribution is in the nature of a fee and not a tax. The same argument(s) were put forward by Mr. Ishaq Ali Qazi, learned ASC and Mr. Mehmood Abdul Ghani, learned ASC (*while responding to Ms. Asma Jehangir's arguments*), the latter of whom relied upon the judgments reported as **Kohinoor Chemical Co. Ltd and another Vs. Sind Employees' Social Security Institution and another** (PLD 1977 SC 197), (NLR 2004 Labour 10), **Government of North-West Frontier Province through Secretary Agriculture and others Vs. Rahimullah and others** (1992 SCMR 750), **Muhammad Ashraf Tiwana and others Vs. Pakistan and others** (2013 SCMR 836), **Mir Muhammad Idris** (*supra*), **Messrs Azgard Nine Ltd Vs. Pakistan through Secretary and others** (PLD 2013 Lah 282), **Messrs Quetta Textile Mills Limited through Chief Executive Vs. Province of Sindh through Secretary Excise and Taxation, Karachi and another** (PLD 2005 Kar 55) and **Niaz Ahmed Khan Vs. Province of Sind and others** (PLD 1977 Kar 604).

12. Mr. Raheel Kamran, learned counsel for the petitioners in Constitutional Petitions No.5 to 8/2016 submitted that after the 18th Constitutional Amendment the concurrent legislative lists were abolished and the subjects devolved upon the Provinces. He argued that there is an order dated 14.1.2016 passed by the learned Single Judge of the High

Court of Sindh stating that the Full Bench (*of the High Court of Sindh*) has declared such a levy to be a tax, and the outcome of this is that as a tax, it would fall within Entry 47 of the Federal Legislative List which is tax on income, therefore the Provinces can neither legislate on this subject nor collect the levy.

13. Heard. The Constitution has provided the legislative procedure for the introduction and passing of Bills by Parliament. Generally, all Bills (*pertaining to matters in the Federal Legislative List*) though they may originate in either house, i.e. National Assembly or Senate, must be passed by both houses after which the Bill receives the Presidential Assent. However there is an exception provided by the Constitution. According to Article 73 of the Constitution, Money Bills are to originate in the National Assembly and can be passed by the Assembly whilst bypassing the Senate. What constitutes a Money Bill has been set out in Article 73(2) of the Constitution, and Article 73(3) specifically sets out what shall **not** constitute a Money Bill. The relevant portions of Article 73 are reproduced below for ease of reference:-

73. Procedure with respect to Money Bills.—(1)
Notwithstanding anything contained in Article 70, a Money Bill shall originate in the National Assembly:

Provided.....

(1A)

(2) For the purposes of this Chapter, a Bill or amendment shall be deemed to be a Money Bill if it contains provisions dealing with all or any of the following matters, namely:—

(a) the imposition, abolition, remission, alteration or regulation of any tax;

- (b) *the borrowing of money, or the giving of any guarantee, by the Federal Government, or the amendment of the law relating to the financial obligations of that Government;*
- (c) *the custody of the Federal Consolidated Fund, the payment of moneys into, or the issue of moneys from, that Fund;*
- (d) *the imposition of a charge upon the Federal Consolidated Fund, or the abolition or alteration of any such charge;*
- (e) *the receipt of moneys on account of the Public Account of the Federation, the custody or issue of such moneys;*
- (f) *the audit of the accounts of the Federal Government or a Provincial Government; and*
- (g) *any matter incidental to any of the matters specified in the preceding paragraphs.*

(3) *A Bill shall not be deemed to be a Money Bill by reason only that it provides—*

- (a) *for the imposition or alteration of any fine or other pecuniary penalty, or for the demand or payment of a licence fee or a fee or charge for any service rendered; or*
- (b) *for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.*

(4)

(5)

Therefore any Bill which does not fall within the purview of Article 73(2) of the Constitution would not constitute a Money Bill and cannot be passed under the legislative procedure (*mandate*) provided by Article 73, by bypassing the Senate, rather the regular legislative procedure under Article 70 would be required to be followed. In the instant matters, the relevant sub-article is (2)(a) of Article 73, which pertains to the imposition, abolition, remission, alteration or regulation of any tax, read with sub-article (2)(g) which relates to any matter incidental to any of the matters specified in sub-articles (2)(a) to (f). Thus we must consider whether the levies/contributions in question under the various laws are in the nature of a tax: which would render the amendments thereto through the Finance Acts valid and lawful.

14. Whether the various levies/contributions in the instant matter constitute a tax as opposed to a fee depends on whether they possess the characteristics of a tax or not. The key characteristics of a 'tax' and a 'fee' have been the subject of much debate in our jurisprudence. In the judgment reported as **Government of North-West Frontier Province through Secretary Agriculture and others Vs. Rahimullah and others (1992 SCMR 750)** it was held that:-

“The distinction between "tax" and "fee" lies primarily in the fact that a tax is levied as a part of common burden while a fee is paid for a special benefit or privilege.”

This Court in the more recent judgment reported as **Federation of Pakistan through Secretary M/o Petroleum and Natural Resources and another Vs. Durrani Ceramics and others (2014 SCMR 1630)**, after

taking into account considerable case law from our jurisdiction and abroad, came to the following definitive conclusion:-

19. Upon examining the case-law from our own and other jurisdictions it emerges that the 'Cess' is levied for a particular purpose. It can either be 'tax' or 'fee' depending upon the nature of the levy. **Both are compulsory exaction of money by public authorities. Whereas 'tax' is a common burden for raising revenue and upon collection becomes part of public revenue of the State, 'fee' is exacted for a specific purpose and for rendering services or providing privilege to particular individuals or a class or a community or a specific area. However, the benefit so accrued may not be measurable in exactitude.** So long as the levy is to the advantage of the payers, consequential benefit to the community at large would not render the levy a 'tax'. In the light of this statement of law it is to be examined whether the GIDC is a 'tax' or a 'fee'.

[Emphasis supplied]

There are no two opinions about the fact that a tax is basically a compulsory exaction of monies by public authorities, to be utilized for public purposes. However its distinguishing feature is that it imposes a common burden for raising revenue for a general as opposed to a specific purpose, the latter being one of the key characteristics of a fee. Now let us examine each of the subject levies/contributions in light of the above touchstone.

15. According to the Preamble of the Ordinance of 1971, it was passed to provide for the establishment of a Workers' Welfare Fund, in order to provide residential accommodation and other facilities for workers and for matters connected therewith or incidental thereto. The Workers' Welfare Fund is constituted under Section 3 of the Ordinance of 1971

which, amongst other things, consists of contributions by industrial establishments. 'Industrial establishments', as defined in Section 2(f) of the Ordinance of 1971, are liable to pay to the Workers' Welfare Fund a sum equal to two percent of their total income per year, provided that the total income of which [in any year of account commencing on or after the date specified by the Federal Government in the official gazette in this behalf] is not less than five lakh rupees. Section 7 pertains to the creation of the Governing Body of the Workers' Welfare Fund to whom the management and administration whereof shall be entrusted. According to Section 10, amongst other things, the function of the Governing Body shall be:-

(a) **to allocate funds**, in accordance with the principles laid down under section 9, to the Provincial Governments, any agency of the Federal Government and any body corporate **for any of the purposes mentioned in clauses (a) and (b) of section 6;**

[Emphasis added]

Section 6 provides for the purposes to which monies in the Workers' Welfare Fund may be applied. It reads as follows:-

"6. Purposes to which moneys in the Fund may be applied.—Moneys in the Fund shall be applied to –

- (a) *the financing of projects connected with the establishment of housing estates or construction of houses for the workers;*
- (b) *the financing of other welfare measures including education training, re-skilling and apprenticeship for the welfare of the workers;*

- (c) *the meeting of expenditure in respect of the cost of management and administration of the Fund;*
- (d) *the repayment of loans raised by the Governing Body; and*
- (e) *investment in government, government guarantees, non-government securities and Real Estate.”*

Going further, Section 10A provides that:-

10A. Vesting of money allocated from the fund.—Any money allocated under clause (a) of section 10 shall be a grant-in-aid and shall vest in the Government, agency or body corporate, to whom it is allocated under that clause, but it shall not be applied to any purpose other than that for which it is allocated, or permitted, by the Governing Body.

[Emphasis added]

From the above it is clear that the Governing Body of the Workers' Welfare Fund, established to manage and administer the said fund, is supposed to do so in light of the exhaustive purposes enumerated in Section 6 *ibid*. Further, the Governing Body can only allocate funds to the Provincial Government, or any agency of the Federal Government and any Body Corporate for the purposes mentioned in Section 6(a) and (b) and for no other purpose, and any funds so allocated to any such body cannot be used for any purpose other than that for which they are allocated or as permitted by the Governing Body. This clearly establishes two things: that the Government has no control over the Workers' Welfare Fund, **and** that the funds can only be used for very specific purposes as stated exhaustively in the Ordinance of 1971 itself, and not for general or undefined purposes. This particular feature of the

contribution(s) made in terms of the Ordinance of 1971 automatically preclude them from being classified as a tax.

16. Besides there are certain other features of the contributions made to the Workers' Welfare Fund that suggest they are not in the nature of a tax. In this regard, Section 4(7) of the Ordinance of 1971 is important which reads as follows:-

“4(7) The payment made by an industrial establishment to the Fund under sub-section (1) shall be treated as an expenditure for purposes of assessment of income-tax.

Section 4(7) basically states that the payments made by industrial establishments to the Workers' Welfare Fund under the Ordinance of 1971 are to be considered as expenditure while assessing income tax. It is a necessary corollary that the contributions to the Workers' Welfare Fund cannot be a tax if they are to be considered as an expenditure while assessing income tax. This argument is bolstered by Section 60A in Part IX of Chapter III of the Income Tax Ordinance, 2001 (*Ordinance of 2001*) which reads as follows:-

“60A. Workers' Welfare Fund.—A person shall be entitled to a deductible allowance for the amount of any Workers' Welfare Fund paid by the person in tax year under Workers' Welfare Fund Ordinance, 1971.”

A deductible allowance has been defined in Section 2(16) of the Ordinance of 2001 as “*an allowance that is deductible from total income under Part IX of Chapter III*”, meaning thereby that any contributions made by a person under the Ordinance of 1971 will be deducted from the total income of that person.

This also suggests that the contributions are not a tax, as they are being deducted from the total income, as opposed to being considered as a tax credit, in which case the contributions would be subtracted from the total tax to be paid. In the light of the foregoing, we are of the view that the contributions made to the Workers' Welfare Fund are not in the nature of a tax.

17. We now advert to the levies/contributions made under the Act of 1976. According to the Preamble of the Act of 1976, it is a law relating to old-age benefits for the persons employed in industrial, commercial and other organisations and matters connected therewith. The Employees' Old-Age Benefits Institution was set up under Section 4 of the Act of 1976; the Institution is to be generally directed and superintended by the Board (*see Section 6*). The Employees' Old-Age Benefits Fund was set up under Section 17 of the Act of 1976 into which all contributions made under the said Act are to be paid. The employer [*defined in Section 2(c)*] is required to make monthly payments or contributions to the Institution in respect of insured employees at the rate of five per cent of his wages (*see Section 9*). Section 3 provides that all employees in an industry or establishment [*both of which terms have been defined in Section 2(g) and (e) of the Act of 1976 respectively*] shall be insured in the manner prescribed by or under the Act of 1976. Under the said Act, the insured person is also required to make monthly contributions under Section 9B thereof at the rate of one per cent of his wages, from 1.7.2001. Section 17(4) of the Act of 1976 is important, it provides that "*the assets of the Institution shall be utilized solely for the purposes of this Act*". The various benefits available under the Act of 1976 are old-age pension (*Section 22*), old-age grant (*Section 22A*), survivors' pension (*Section 22B*) and invalidity pension (*Section 23*). Thus the scheme of the Act of 1976 clearly suggests that the contributions are to be used for specific purposes

pertaining to employees' old-age benefits, as opposed to general purposes. Again this feature of the subject contribution removes it from the ambit of a tax.

18. Coming to the five different labour laws amended by the Finance Act of 2007; one of them was the Act of 1976 which we have discussed in the preceding paragraph hence is not required to be addressed again. The Preamble to the Workmen's Compensation Act, 1923 states that it was passed to provide for the payment of compensation for injury by accident by certain classes of employees to their workmen. According to Section 3 of the Act of 1923, an employer shall be liable to pay compensation in accordance with the provisions of Chapter II of the said Act if personal injury is caused to a workman by accident arising out of and in the course of his employment. The Act of 1923 contains very comprehensive details of the amount of compensation to be paid (*Section 4*), the method of calculation of wages (*Section 5*) and the distribution of compensation (*Section 8*), etc. The scheme under the Act of 1923 is a form of insurance, providing compensation to workers (*or their dependents in case of a fatal accident if the Commissioner thinks fit*) injured in the course of employment in exchange for relinquishment of the employee's right to take legal action against the employer (*see Section 3(5) of the Act of 1923*). In the light of the above it is manifest that the compensation payments made under the Act of 1923 are not a common burden exacted to meet the general expenses of the State, rather they are particular payments made for a very specific purpose, i.e. to compensate workmen injured in the course of employment, therefore they cannot be said to be in the nature of a tax.

19. The same is the case with the payments made under the Ordinance of 1968 which provides for the regulation of the conditions of

the employment of workmen and other incidental matters in industrial or commercial establishments in accordance with the Standing Orders in the Schedule to the said Ordinance (*See section 3*). The Ordinance of 1968 is quite extensive, however we are only concerned with the contributions which have been amended by the Finance Act of 2007, as it is the said Act which has been called into question as being unlawful. The provision which was amended by the Finance Act of 2007 is Clause (6) of Standing Order 12 which broadly provides for payment of gratuity by the employer in case a workman resigns from service or his services are terminated by the employer for any reason other than misconduct. The proviso that was added by the Finance Act of 2007 reads as follows:-

“Provided further that if through collective bargaining the employer offers and contributes to an “Approved Pension Fund” as defined in the Income Tax Ordinance, 2001 (XLIX of 2001), and where the contribution of the employer is not less than fifty per cent of the limit prescribed in the aforesaid Ordinance, and to which the workman is also a contributor for the remaining fifty per cent or less, no gratuity shall be payable for the period during which such contribution has been made.”

The subject contribution is gratuity payments. What is gratuity? Basically it is a lump sum payment made by the employer to an employee at the end of his service (*either by retirement or termination for reasons other than misconduct*) as a mark of recognition for the latter's service. In other words it is a defined benefit plan. These payments made by employers are very specific as opposed to having a generic purpose to meet the State's expenses and can therefore by no stretch of imagination be referred to as a tax.

20. The Act of 1968 provides for companies *[defined in Section 2(b)]* to which the Act applies to establish a Workers' Participation Fund and to make annual payments of five per cent of its profits during that year to the said Fund *(see Section 3)* to provide benefits that accrue from it to the eligible workers of the company. Employees may voluntarily choose to contribute to the Workers' Participation Fund as per Clause 7 of the Schedule of the Act of 1968. The Workers' Participation Fund is to be managed and administered by a Board of Trustees in accordance with the provisions of the Act of 1968, the scheme and any rules made in this behalf *[see Section 4(5)]*. The Workers' Participation Fund is basically a profit-sharing plan that gives employees a share in the profits of a company, with the primary aim to give the employees a sense of ownership and greater participation in the company. These contributions too, are for a specific purpose, i.e. a plan for the benefit of employees, much like other investment plans, and therefore do not qualify as a tax.

21. Finally, according to the Preamble of the Ordinance of 1969, it was enacted to fix the minimum rates of wages for unskilled workers employed in certain commercial and industrial establishments *[defined in Section 2(b) and (f) respectively]*. Such responsibility was pinned on commercial and industrial establishments under Section 4 of the Ordinance of 1969. Not only was this statute enacted for the aforementioned specific purpose, we fail to understand as to how the requirement of payment of minimum wages to unskilled workers can be construed as a tax, thereby permitting any amendments made to the Ordinance of 1969 to be effected through a Money Bill.

22. As we have established from the discussion above that none of the subject contributions/payments made under the Ordinance of

1971, the Act of 1976, the Act of 1923, the Ordinance of 1968, the Act of 1968 and the Ordinance of 1969 possess the distinguishing feature of a tax, i.e. a common burden to generate revenue for the State for general purposes, instead they all have some specific purpose, as made apparent by their respective statutes, which removes them from the ambit of a tax. Consequently, the amendments sought to be made by the various Finance Acts of 2006, 2007 and 2008 pertaining to the subject contributions/payments do not relate to the imposition, abolition, remission, alteration or regulation of any **tax**, or any matter incidental thereto (*tax*). We would like to point out at this juncture that the word 'finance' used in Finance Act undoubtedly is a term having a wide connotation, encompassing tax. However not everything that pertains to finance would necessarily be related to tax. Therefore merely inserting amendments, albeit relating to finance but which have no nexus to tax, in a Finance Act does not mean that such Act is a Money Bill as defined in Article 73(2) of the Constitution. The tendency to tag all matters pertaining to finance with tax matters (*in the true sense of the word*) in Finance Acts must be discouraged, for it allows the legislature to pass laws as Money Bills by bypassing the regular legislative procedure under Article 70 of the Constitution by resorting to Article 73 thereof which must only be done in exceptional circumstances as and when permitted by the Constitution. The special legislative procedure is an exception and should be construed strictly and its operation restricted. Therefore, we are of the candid view that since the amendments relating to the subject contributions/payments do not fall within the parameters of Article 73(2) of the Constitution, the impugned amendments in the respective Finance Acts are declared to be unlawful and *ultra vires* the Constitution.

23. There is another aspect of the matter which requires due attention. No doubt the feature of having a specific purpose is a characteristic of a fee, which the subject contributions/payments possess as discussed in the preceding portion of this opinion. However, there are certain other characteristics of a fee, such as *quid pro quo*, which must be present for a contribution or payment to qualify as a fee. This was the main argument of the learned counsel who categorized the subject contributions in the nature of a tax, that they (*the contributions*) lacked the element of *quid pro quo* or in other words the benefit of the contribution did not go to the payers. The industrial establishments or employers etc. were liable to pay the contribution but they were not the beneficiaries of the purpose for which such contributions were being made; the beneficiaries were their employees or workers etc. Mr. Rashid Anwar attempted to argue that the benefit need not be direct and can be indirect, therefore although the employees were directly benefited by contributions made to the Employees' Old-Age Benefit Fund as they received the disbursements, the employers received an indirect benefit in that this results in happier employees which ultimately leads to greater productivity. Whilst this may be true, albeit a strained argument, the attempt of the learned counsel challenging the legality of the amendments in the Finance Acts has all along been to categorize the contributions/payments as a fee, which would mean that they were not a tax. While a fee is obviously not a tax, there was absolutely no need to try and squeeze the contributions/payments into the definition of a fee, when all that is required is to take them out of the ambit of a tax. We may develop this point further; although Article 73(3)(a) of the Constitution states that a Bill shall not be a Money Bill if it provides for the imposition

or alteration of a fee or charge for any service rendered, this does not mean that if a particular levy/contribution does not fall within Article 73(2) it must necessarily fall within Article 73(3). Sub-articles (2) and (3) are not mutually exclusive. There may very well be certain levies/contributions that do not fall within the purview of Article 73(3) but still do not qualify the test of Article 73(2) and therefore cannot be introduced by way of a Money Bill, and instead have to follow the regular legislative procedure. The discussion above that the subject contributions/payments do not constitute a tax is sufficient to hold that any amendments to the provisions of the Ordinance of 1971, the Act of 1976, the Act of 1923, the Ordinance of 1968, the Act of 1968 and the Ordinance of 1969 could not have been lawfully made through a Money Bill, i.e. the Finance Acts of 2006 and 2008, as the amendments did not fall within the purview of the provisions of Article 73(2) of the Constitution.

24. In light of the foregoing, the instant matters are disposed of in the following manner:-


- (a) Civil Appeals No. 1049 to 1055/2011, 24 to 26/2013, 64 to 66/2013, 1266 to 1299/2014, 1364 to 1379/2014, 72 to 74/2015, 316 to 321/2015, 388/2015, 583 to 585/2015, 107 to 114/2016, 755/2016, 1022/2016, 1341/2016, and Civil Petition for Leave to Appeal No.1005/2016 are dismissed;
- (b) Civil Petition for Leave to Appeal No.1767/2012 is dismissed. Besides, the noted CPLA is barred by 586 days and no sufficient cause for condonation of delay

has been propounded, therefore it is dismissed on account of limitation as well.

- (c) Civil Appeals No.918/2013, 919-thK/2013, 920 to 941/2013, 942-thK to 944-thK/2013, 961/2013 and 1061/2013 are allowed and the impugned judgment(s) and order(s) are hereby set aside;
- (d) As regards Constitutional Petitions No.5 to 8/2016, we would like to point out that the effect of the Eighteenth Constitutional Amendment is not in issue before us in the instant matters. Moreover, the petitioners have neither challenged the impugned order dated 14.1.2016 passed by the High Court of Sindh nor the Full Bench judgment of the High Court of Sindh which they claim to have affected their rights, therefore we are afraid they cannot be permitted to challenge the said order and/or judgment indirectly by way of the instant constitutional petitions which are hereby held to be incompetent and are dismissed accordingly.

Sd/- Mian Saqib Nisar, J
Sd/- Mushir Alam, J
Sd/- Tariq Parvez, J

ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad
Altur

Announced in open Court

Om on 10/11/2016 at Islamabad

Approved For Reporting

Chulam Raza/*

Sd/- Mian Saqib Nisar, J
10.11.2016