

TERENCE J SIGAMONY

SC seeks details of collection, utilization of GIDC

SLAMABAD: The Supreme Court has directed the federal government to submit details of collection and utilization of Gas Infrastructure Development Cess under the GIDC Act 2011 and the GIDC Act 2015.

A three-member special bench, headed by Justice Mushir Alam, on Monday heard 107 petitions/appeals of various textile mills, cotton mills, sugar mills, ceramics companies, chemicals, CNG filling stations, match factories, cement companies and aluminum industries regarding the GIDC levy.

Justice Mushir noted that under Section 4(2) of GIDC Act 2011, it was required that annual report in respect of the utilization of the cess shall be laid before the Parliament after three months of the end of the each fiscal year. He directed Additional Attorney General Amir Rehman to get instructions from the government about the matter and file a report before the bench within seven days.

The GIDC Act was approved by the National Assembly in December 2011, imposing cess on gas consumers other than the domestic sector, to develop infrastructure for a number of projects including Iran-Pakistan Pipeline project, Turkmenistan-Afghanistan-Pakistan-India (TAPI) Gas Pipeline project, Liquefied Natural Gas (LNG) project, and for price equalization of imported alternative fuels including LPG (liquefied petroleum gas). After the apex court's ruling on GIDC Act 2011, the then federal government passed the GIDC Act 2015.

During the proceeding, Justice Mushir said the federal government had been collecting the amount (GIDC) since 2011 despite this fact the service has to be provided. He questioned whether the cess could be collected under GIDC Act 2011 or Act 2015.

Makhdoom Ali Khan Advocate, through video link from SC Branch Registry Karachi, argued that in Durrani Ceramics case, the apex court had struck down GIDC Act 2011. Therefore there is no question to collect the cess under Act 2011. The federal government in 2015 passed the Act 2015 but continued to collect the cess since 2011, he added.

Makhdoom contended that GIDC is neither the fee nor the tax as no structure for providing service is in place yet, adding the government should be penalized for that and fine be imposed on it for doing this.

Justice Mansoor Ali Shah said despite the court order, the federal government instead of submitting the annual report filed bullet points, which shows its seriousness. He questioned what the status of the projects is and when those will be completed. He said the government is of the stance that the amount was for TAPI project. The government has to submit the annual report before the parliament. Justice Mansoor noted that it was the contention of the federal government in Durrani Ceramics case that it (GIDC) was tax and not fee. He asked what the status of the project is for that the government has been collecting amount. "You

(government) can't charge the amount for the project, which is in the air. The government had been charging the fee of the project which has not been started yet.”

AAG Amir Rehman said the continuity of gas supply is service. Justice Faisal said that the government should have spent the amount on the project which it has collected so far. Justice Mushir Alam said a person who is paying fee has the right to know where it is spent.

Amir Rehman informed that due to controversy and dispute, the projects could not be started yet. The government is considering the international sanctions on Iran. Justice Faisal Arab remarked he doesn't know whether the dispute be resolved in 20 or 40 years but the government is collecting the fee.

The Peshawar High Court (PHC) on May 31, 2017 had rejected a set of petitions challenging the validity of the GIDC Act 2015 on the grounds that the transgression of legislative authority by the federation does not qualify as a breach of fundamental rights of citizens and therefore the petitioners before the high court were not aggrieved persons within the meaning of Article 199 of the Constitution and thus have no locus standi to challenge the validity of the act.

The PHC in its judgement had also held when Article 142 (a) read with Article 154 of the Constitution, it became evident that the Parliament had the exclusive authority to legislate on Entries in Part-II of the Federal Legislative List of the Constitution.

In April 15, 2015, the apex court rejected the federal government's petition seeking review of its August 22, 2014 verdict and clarify that the collection of then over Rs100 billion under GIDC Act was not liable to be refunded to the industrial consumers of gas from whom it was recovered. The then GIDC law had legalized the cess recovery from the non-domestic consumers, mainly industries.