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Only a fraction of GIDC money spent on projects, SC told

ISLAMABAD: The apex court was informed that though the federal government has collected Rs295 billion in respect of Gas Infrastructure Development Cess (GIDC) in the last 11 years, but only a fraction of the collected amount has been spent on projects.

The GIDC Act, 2015 was enacted on 21st May, 2015.

Section 4 of the GIDC Act, 2015 provides; "The cess shall be utilised by the federal government for or in connection with infrastructure development of Iran-Pakistan (IP) Pipeline Project, Turkmenistan-Afghanistan-Pakistan-India (TAPI) Pipeline, LNG or other ancillary projects."

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 filing stations, match factories, cement companies and aluminum industries regarding the GIDC levy.

Senior lawyer Makhdoom Ali Khan, citing the government report on GIDC, said that the financial close and appointment of EPC contractor could not be achieved due to sanctions.

In 2014 Pakistan issued force majeure and excusing event notice.

Iran did not accept Pakistan's claim of force majeure and excusing event vide its letter in June 2018.

The meeting with Iranian authorities was held in November 2018 to discuss the way forward and decided that the legal teams of both sides will work together to obtain clarity on sanction as a way forward.

Iran proposes an addendum to the Gas Sale Purchase Agreement (GSPA) for extending the limitation period of any claims under the GSPA for another term of five years.

Subsequently, Iran served the "Seller Termination Event" notice to ISGS on 28th February 2019 alleging material breach of buyer's warranties under the GSPA.

The matter of material breach notice has been amicably resolved thereby avoiding potential arbitration on the issue.

Justice Alam, who presided over a three-judge bench, observed that though the countries (Pakistan-Iran) have spent huge amount on the project but because of the USA sanctions the Iran-Pakistan Pipeline project could not be completed.

Makhdoom Ali Khan informed the court that despite that the government had collected Rs295 billion, but a fraction of it had been spent.

He said the amount was now part of consolidated fund and thus part of the annual budget.

Out of GIDC collection, an amount of Rs279,575,000 was released on May 3, 2016, and Rs207,665,001 on April 23, 2019, which was utilised by M/s Inter-State Gas System (ISGS) Limited for equity injection in TAPI project implementation company i.e. TAPI Pipelines Company Limited (TPCL).

Makhdoom said insofar as TAPI project is concerned, Pakistan had fulfilled its commitment and it would be completed by 2023-2024.

Under the agreement the Consortium Leader of TPCL will inject 85 percent of equity part into TPCL, while the rest of the TAPI members share five percent each of the equity.

According to Section 4(1) of the GIDC Act, 2015 read with the Rules 2, 3 and 4 of GIDC Utilization Rules, 2015, the cess shall be utilized by the federal government for or in connection with infrastructure development if IP, TAPI, LNG or other ancillary projects.

A high-powered project review board, headed by the finance minister, including Minister for Petroleum and Natural Resources, Deputy Chairman Planning Commission, Secretary Finance and Secretary Petroleum and Natural Resources, shall review the project proposed by the Ministry of Petroleum and Natural Resources qualified for funding from the GIDC and accord its approval for the utilisation.

The IP and TAPI pipeline projects, infrastructure development of system enhancement or augmentation of gas utility company for RLNG or other gas transportation requirement of funds as approved in the financing plan of projects by the competent forum, shall be transferred to the ISGS and respective Gas Utility Company on demand raised by the company through M/O Petroleum to the Finance Division.

The fund released to the respective companies shall be utilised in a prudent manner, while following all applicable rules and regulations.

Makhdoom Ali Khan argued that the Supreme Court has declared in the Durrani Ceramics case that GIDC was not a tax.

He said even if it was a fee the government cannot collect it. He said the court would have to examine whether the GIDC was a tax or a fee.

He contended that the GIDC Act cannot be upheld as a fee.

No amount has been earmarked for the service.

The court observed that the benefit could be that more gas will be available to the consumers including the appellants.

The case was adjourned until Tuesday (today).