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Judgment Sheet

IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Case No: **W.P. No.4407/2015**

The Institute of
Architects, Pakistan
(Lahore Chapter)

Versus

Province of Punjab, etc.

JUDGMENT

Date of hearing:	25.01.2016
Petitioner by:	<p>Syed Reza Ali, Advocate for petitioner in Writ Petitions No.4407/2015, 27698/2014 and 18112/2014.</p> <p>M/s Imtiaz Rashid Siddiqui, Barrister Shehryar Kasuri, Muhammad Humzah and Raza Imtiaz, Advocates for the petitioners in Writ Petitions No. 18213/2013, 11627/2014, 28272/2013, 25950/2013, 16851/2015, 14764/2015, 14918/2015, 14766/2015, 14299/2015, 37683/2015 and 38187/2015.</p> <p>M/s Salman Akram Raja and Malik Ahsan Mehmood, Advocates for the petitioner in Writ Petitions No.17350/2013, 6498/2014 and 26963/2013.</p> <p>Mr. Naveed A. Andrabi, Advocate for petitioner in W.P. No.21463/2015, 5983/2015, 23273/2015, 7207/2014, 17854/2013, 11510/2014 and 40307/2015.</p> <p>Mr. Mansoor Usman Awan, Advocate for the petitioner in Writ Petitions No.24049/2013, 5028/2013 and 4725/2013.</p> <p>Mr. Waseem Ahmad Malik, Advocate for petitioner in Writ Petitions No. 578/2014, 582/2014, 580/2014, 571/2014, 1380/2014, 767/2014, 5403/2014, 5389/2014, 773/2014, 818/2014, 822/2014, 803/2014, 729/2014, 817/2014, 575/2014, 777/2014, 732/2014,</p>

<p>815/2014, 1019/2014, 5391/2014, 5398/2014, 5401/2014, 5353/2014, 5396/2014, 1028/2014, 8812/2014, 5407/2014, 5405/2014, 1009/2014, 1010/2014, 1026/2014, 1378/2014, 18674/2014, 18936/2014, 1753/2016, 727/2016, 374/2016, 32897/2015, 1887/2016 and 40156/2015.</p> <p>M/s Muhammad Masood Chishti and Waseem Ahmad Malik, Advocates in W.P. No.14508/2013</p> <p>M/s Uzair Karamat Bhandari, Mian Muhammad Kashif and Muhammad Suhail Tipu, Advocates for the petitioner in Writ Petitions No.8208/2014, 39392/2015 and 39601/2015.</p> <p>M/s Muhammad Ajmal Khan, Mian Abdul Ghaffar and Sumaira Khanum, Advocates for the petitioner in Writ Petitions No. 5803/2013, 31549/2015, 31540/2015, 31979/2015, 31547/2015, 29795/2015, 31538/2015, 28663/2015, 28664/2015, 28650/2015, 12646/2015, 4130/2015 and 39286/2015.</p> <p>Dr. Ilyas Zafar and Syed Nasir Ali Gillani, Advocates for petitioner in W.P. No.6253/2015.</p> <p>M/s Shezada Mazhar, Jawad Khan Lodhi and Asad Raza, Advocates for petitioner in Writ Petitions No.15945/2015 and 20091/2015.</p> <p>M/s Muhammad Mohsin Virk, Abu Baker Haider and Shahzad Saleem Bhatti, Advocates for the petitioner in Writ Petitions No.31403/2015, 31400/2015, 31405/2015, 20440/2015, 35011/2015.</p> <p>Mr. Abdul Waheed Habib, Advocate for petitioner in Writ Petitions No.35537/2015, 32971/2015, 32959/2015 and 34216/2015.</p> <p>Mr. Moiz Tariq, Advocate for petitioner in Writ Petitions No. 1565/2016, 1567/2016, 1572/2016, 1573/2016, 37646/2015, 35140/2015, 35187/2015, 35406/2015, 35282/2015, 35334/2015, 35255/2015, 35267/2015, 35186/2015, 37650/2015,</p>
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<p>37653/2015, 37656/2015, 37658/2015, 36098/2015, 35139/2015, 35271/2015, 35306/2015, 35360/2015, 35405/2015, 38392/2015, 38405/2015, 35834/2015, 35836/2015, 35841/2015, 35843/2015, 35844/2015, 35845/2015, 35851/2015, 35852/2015, 35853/2015, 35854/2015, 35855/2015, 35856/2015, 35280/2015, 36450/2015.</p> <p>M/s Zulfiqar Khan and Tanveer Hussain, Advocates for the petitioner in Writ Petitions No. 18809/2014, 18805/2014, 18969/2014, 18806/2014, 18804/2014, 19559/2014, 18968/2014, 18812/2014, 18808/2014, 18807/2014, 18811/2014, 30594/2015, 30577/2015, 30593/2015, 1264/2016 and 35822/2015.</p> <p>Raja Jehanzeb Akhtar, Advocate for petitioner in W.P. No. 5316/2015.</p> <p>Mr. Adnan Ahmad, Advocate for the petitioner in W.P. No.38907/2015.</p> <p>Syed Muhammad Ijaz, Advocate for the petitioner in W.P. No.40373/2015.</p> <p>Mr. Masood Ahmad Wahla, Advocate for petitioner in W.P. No.698/2016.</p> <p>Malik Sahib Khan Awan, Advocate for petitioner in W.P. No.36023/2015.</p> <p>Rana Hamad Aslam, Advocate for petitioner in W.P. No.37725/2015</p> <p>M/s Zia Haider Rizvi and Sajjad Haider Rizvi, Advocates for petitioner in Writ Petitions No.26223/2015 and 33043/2015.</p> <p>Mr. Zulfiqar Ali Khan, Advocate for petitioner in W.P. No.19739/2015.</p> <p>Mr. Sikandar Javed, Advocate for petitioner in Writ Petition No.23327/2015, 30339/2015, 24749/2015, 24885/2015 and 24750/2015.</p> <p>Mr. Khurram Shahbaz Butt, Advocate for petitioner in Writ Petitions No.11850/2013 and 21536/2015</p> <p>Mr. Sumair Saeed Ahmad, Advocate for petitioner in Writ Petitions No.29695/2015</p>

	<p>and 29696/2015</p> <p>Mr. Khubaib Ahmad, Advocate for petitioner in Writ Petitions No.31248/2015 and 31236/2015.</p> <p>Mr. Muhammad Amir Sohail, Advocate for petitioner in Writ Petitions No.8789/2015 and 19078/2015.</p> <p>Mr. Ghulam Murtaza, Advocate for petitioner in Writ Petitions No.11807/2014 and 11802/2014.</p> <p>Sirdar Ahmad Jamal, Advocate for petitioner in Writ Petitions No.8072/2014 and 8397/2014.</p> <p>Mr. Assad Ullah Jaral, Advocate for petitioner in Writ Petitions No.11034/2015 and 11027/2015.</p> <p>M/s Hamza H. Rashid and Ch. Saeed Ashraf, Advocates for petitioner in Writ Petitions No.723/2015, 27465/2015 and 23314/2015.</p> <p>Mr. Imran Anjum Alvi, Advocate for petitioner in Writ Petitions No.1375/2015, 4489/2015, 2915/2015, 2665/2015, 2081/2015, 2681/2015 and 1373/2015.</p> <p>Mr. Saqib Akram Gondal, Advocate for petitioner in Writ Petitions No.17365/2015, 17364/2015, 17366/2015 and 17367/2015.</p> <p>Ch. Riaz Ahmad Basra, Advocate for petitioner in W.P. No.12686/2014.</p> <p>Mr. Awais Ahmad Bhatti, Advocate for petitioner in W.P. No.15486/2015</p> <p>Mr. Haider Ali Khan, Advocate for the petitioner in W.P. No.4124/2015.</p> <p>Mr. Zulfiqar Ali Khan, Advocate for petitioner in W.P. No.997/2014</p> <p>M/s Jawad Hassan, Haider Zaman Qureshi and Rana Muhammad Asif, Advocates for petitioner in W.P. No.33002/2013</p> <p>Malik Muhammad Ali Awan, Advocate for petitioner in W.P. No.31877/2015.</p> <p>Barrister Ahmad Umar Saqib, Advocate for</p>
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	<p>petitioner in W.P. No.16874/2013.</p> <p>Sardar Kalim Ilyas, Advocate for petitioner in W.P. No.32573/2013.</p> <p>Mr. Hamza Khan, Advocate for petitioner in W.P. No.33876/2014.</p> <p>Syed Samar Hussain, Advocate for petitioner in W.P. No.15864/2013.</p> <p>Mr. Akhtar Javaid Malik, Advocate for petitioner in W.P. No.8845/2014.</p> <p>M/s Ali Sibtain Fazli, Hasham Ahmad, Umer Tariq Gill, Advocates for petitioner in W.P. No.7995/2014.</p> <p>Mian Muhammad Ismail Thaheem, Advocate for petitioner in W.P. No.7686/2014.</p> <p>Mian Muhammad Irfan, Advocate for petitioner in W.P. No.9130/2014.</p> <p>M/s Shahid Pervaiz Jami and Mudassar Shujaiddin, Advocates for petitioner in W.P. No.11841/2014.</p> <p>Mr. Mustafa Kamal, Advocate for petitioner in W.P. No.23521/2014.</p> <p>Rao Muhammad Faisal Iqbal, Advocate for petitioner in W.P. No.7052/2013.</p> <p>Ch. Waseem Ahmad and Aamir Ch., Advocates for petitioner in W.P. No.16565/2015.</p> <p>M/s Afzal Bashir and Rao Qasim Ali Khan, Advocates for petitioner in W.P. No.38767/2015.</p> <p>Kh. Mahmood Ayaz, Advocate for petitioner in W.P. No.18183/2015.</p> <p>Mr. Fawad Malik Awan, Advocate for petitioner in W.P. No.21516/2015.</p> <p>Mr. Khalil-ur-Rehman, Advocate for petitioner in W.P. No.174/2015.</p>
Respondents by:	<p>M/s Nasar Ahmad and Ch. Muhammad Jahangir Wahla, Deputy Attorney Generals for Pakistan.</p> <p>M/s Anwaar Hussain and Ahmad Hasan Khan, Assistant Advocate Generals, Punjab.</p>

	<p>M/s Sajid Ijaz Hotiana, Afzal Hussain Malik Muhammad Awais Khalid, Umer Sharif and Barrister Muhammad Ahmad Pansota Advocates for respondent PRA.</p> <p>Mr. Sarfraz Ahmed Cheema, Advocate for respondents in Writ Petitions No.5028/2013, 7052/2013, 11802/2014, 25950/2015 and 29257/2015.</p> <p>Ch. Muhammad Zafar Iqbal, Advocate for the respondent.</p> <p>Mr. Sarfraz Akhtar, Advocate for respondent P.T.A. in Writ Petitions No.32573/2013 and 14508/2013.</p> <p>Mr. Ibrar Ahmad, Advocate for respondent FBR in W.P. No.26223/2015.</p> <p>Mr. Ali Raza Kabir, Advocate for respondent No.3 in W.P. No.16874/2013.</p> <p>Mr. Ayyaz Shaukat, Advocate for respondent No.4 in W.P. No.16874/2013.</p> <p>Mr. Ghulam Subhani, Advocate for respondent No.6 in W.P. No.5316/2015.</p>
Assisted by:	M/s. Qaisar Abbas and Mohsin Mumtaz, Research Associates & Civil Judges, Lahore High Court Research Centre (LHCRC).

It is our misfortune that when we are looking for individuals to serve our own-selves, we search for the best of doctors, the best of architects, the best of lawyers, the best of engineers, the best of cooks, the best of butlers and so on but when it comes to selecting similar individuals to serve the public, we get swayed by nepotism, by petty personal interests and by other similar ulterior and extraneous considerations and settle for the ones not worthy of serving the public in the requisite manner.

-Supreme Court of Pakistan¹

Syed Mansoor Ali Shah, J:- The petitioners² are taxpayers, who, agitate, amongst other grounds, that Punjab

¹as per Khalil-ur-Rehman Ramday J. (as he then was) in *Chief Secretary Punjab and others v. Abdul Raoof Dasti* (2006 SCMR 1876).

²“Petitioners” i.e., collective term for the petitioner in the instant petition and petitioners in connected petitions listed in Schedules A.

Revenue Authority (“PRA or Authority”) has not been lawfully established or constituted under section 3 of the Punjab Revenue Authority Act, 2012 (“Act-II”). They submit that initially the Government only appointed a Chairperson of the Punjab Revenue Authority, who unlawfully held himself out as the Authority, when the law provides that the Authority shall constitute a Chairperson and at least four Members. They also agitate that the mode of appointment of the Chairperson and the Members is not in accordance with the provisions of Act-II and also offends the pronouncements of the superior courts, which hold that appointments to public sector institutions should be open, fair, transparent, consultative and deliberative.

2. It is submitted that after the filing of these petitions, the Government got wind of the illegalities in the constitution of the Authority and in their passion to rectify things, hurriedly appointed Members on *ex-officio* basis, which the law does not permit and later on promulgated the Amending Ordinance, validating the acts of the Chairperson, without curing the defect i.e., substituting and empowering the Chairperson with the Authority. It is submitted that the Government failed to rectify things and in haste, jumped out of the frying pan into the fire.

3. The petitioners submit that without the establishment of the Authority, all the orders, notifications, directions and Rules framed by the Chairperson (assuming himself to be the Authority) are unconstitutional, illegal and without lawful authority. It is also submitted that during the course of this litigation, the Governor of the Province, promulgated The Punjab Revenue Authority (Amendment) Ordinance, 2015 (“Amending Ordinance”) on 22.10.2015 in an effort to validate the acts and orders passed by the Chairperson. The taxpayers have also challenged the constitutionality and legality of the

said Ordinance, through separate writ petitions, which are also being decided through this judgment. It is argued that in terms of Article 128 of the Constitution, the Ordinance stood repealed after 90 days on 20.01.2016, hence, the proposed amendment has died its own death. It is submitted that after repeal of the Ordinance, the position prior to the Ordinance stands revived.

4. On the other hand, learned counsel for the respondent Authority has principally placed reliance on Section 8 of Act-II to submit that no act, proceedings, decisions or orders of the Authority shall be invalid for the reason only of the existence of vacancy or any defect in the constitution of the Authority. He further submits that in any case the Authority stood lawfully constituted on 15.06.2015, when remaining members were appointed on *ex-officio* basis and, therefore, all acts taken after the said date are lawful and in accordance with law.

5. Learned DAG and the learned law officers, in response to notice under Order 27-A of CPC, adopted the arguments of learned counsel for the respondent Authority and add that lapse of the Ordinance does not affect the validity of the amendment and, therefore, the validation clause is there to stay, inspite of the lapse of the Amending Ordinance and, therefore, all the actions of the Chairperson stand protected. Learned Law Officers further submitted that Ordinance has been placed before the Provincial Assembly in its 18th session which has been adjourned and in terms of Articles 79, 117 128 the bill is deemed to be pending rather than having been lapsed.

6. I have heard the arguments of the parties and have gone through the law, as well as, the compendium of notifications issued from time to time under Act-II (the compendium of notifications was supplied by the counsel representing the

Authority and has been placed on the record of this case as “*Mark-A*” (booklet).

OPINION OF THE COURT

7. At the outset it might be useful to note that in one of the initial hearings, learned Advocate General, Punjab was called and apprised of the case set out against the Government. He sought time to redress the issue. The Government, instead of establishing and constituting the Authority under the law and salvaging the situation, decided to promulgate the Amending Ordinance, attempting to validate the acts of the Chairperson. It is noted for record that even though the petitioners have challenged the imposition of tax on a number of other grounds, this judgment addresses the more fundamental question of the establishment and constitution of the Authority under Act-II. Hence, petitioners’ right to challenge the levy on other grounds, remains intact.

Legislative Design

8. In Punjab, the architecture of sales tax on services stands on two separate pieces of legislation i.e., Punjab Sales Tax on Services Act, 2012 (“Act-I”) (Act XLII of 2012)³ and Punjab Revenue Authority Act, 2012 (“Act-II”) (Act XLIII of 2012).⁴

Punjab Sales Tax on Services Act, 2012 (“Act-I”)

9. Act-I provides for levy of a tax on services provided, rendered, initiated, received, originated, executed, or consumed in the Punjab.⁵ The “Authority” provided under Act-I is *Punjab Revenue Authority* established under Act-II.⁶ The Authority has

³ Enforced on 01.07.2012

⁴ Published on 27.06.2012

⁵ Preamble.

⁶ Section 2 (6)

been entrusted with the powers⁷ of registration, assessment, administration and collection of taxes, etc. Hence, the Authority is at the heart of the taxing statute and pumps its body to life. Operationalization of the taxing statute (Act-I) presupposes the establishment and constitution of the Authority under Act-II. So while sales tax on services is levied under Act-I, it gets administered through the Authority, once the Authority has been established and functionalized (duly constituted) under Act-II.

The Punjab Revenue Authority Act, 2012 (“Act-II”)

10. Act-II provides for establishment of *Punjab Revenue Authority* so as to reform and modernize the system of taxation, provide assistance to taxpayers, promote compliance with fiscal laws, establish a progressive and professionally efficient tax management organization.⁸ Under Section 3(1) of Act-II, the Authority is to be established by the Government of the Punjab through a notification and after establishment the Authority shall be a body corporate⁹ having perpetual succession and a common seal, with power to enter into agreements, acquire, hold, manage and dispose of property and to sue and be sued in its name. As to the constitution of the Authority, Section 3 (4) provides that it shall consist of a Chairperson and not less than four members to be appointed by the Government. It also provides that the manner and terms and conditions of appointment of the Chairperson and the Members shall be as prescribed and until so prescribed may be determined by the Government. Section 3 (5) provides that no person shall be appointed as Chairperson unless he possesses:

⁷Sections 3 (4), 7 (7) (8), 8 (2), 10 (2), (3) & (4), 11 (3), 12, 14, 18 (3), 19 (2), 24 (1), 25 (2), 26 (2), 27, 28 (1), 30, 31, 34, 35, 39, 41, 62, 63, 70, 76, 82 and 84.

⁸ Preamble.

⁹ Section 3(2)

- (a) a master's degree from a recognized University;
- (b) ample knowledge of tax systems in Pakistan; and
- (c) twenty years work experience, including five years' experience in tax administration or financial management.

Sub-section (6) provides that qualification and experience and other requirements for appointment of Members shall be as prescribed.

Punjab Revenue Authority – an autonomous body

11. Act-II establishes a Revenue Authority, which is a separate corporate body, with an independent human resource management and the power to employ its own staff.¹⁰ It maintains its own Data Bank¹¹ containing information to increase the taxpayers' base, etc. It enjoys the powers to impose fee or charge for any additional facilities extended to the taxpayers.¹² It has its own Fund¹³ and maintains a separate budget.¹⁴ Its accounts are audited by the Auditor General of Pakistan.¹⁵ Under the Punjab Government Rules of Business, 2011 (**"Rules of Business"**), PRA has been listed as an *autonomous body*.¹⁶ "Autonomous Organization" under the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974¹⁷ means an organization set up under a law by the Government, as a unit separate from the formal departmental organization. *Punjab Revenue Authority* is, therefore, not a

¹⁰sections 6 and 21 of Act-II

¹¹section 9

¹²section 11

¹³section 15

¹⁴section 16

¹⁵section 17

¹⁶ Serial no. 11 of the First Schedule

¹⁷ Rule 2(c)

department¹⁸ or an attached department¹⁹ of the Government, it is an autonomous body.

What is the purpose of setting up a distinct autonomous Revenue Authority as opposed to a department or an attached department of the Government? What is the purpose, scope and extent of this *autonomy*? According to the International Monetary Fund (“IMF”),²⁰ the reform and modernization of government institutions have been a constant theme over the last three decades in both developed and developing economies. Governments have faced a series of pressures that include: (i) The need to deliver services more effectively and at a lower cost to citizens, as expenditure budgets decline. (ii) The need to address deficiencies in traditional procedures and structures that have come to be seen as too rigid to respond to the rapidly changing needs of the public and the challenges confronted by government in modern society. (iii) The pressure to adapt current business or private sector management practice to public sector institutions. As a result, there has been a tendency for governments to increase the *autonomy* of its departments and agencies. The basic principle is that such autonomy can lead to better performance by removing impediments to effective and efficient management while maintaining appropriate accountability and transparency. The autonomy is to help Government to establish a distinct entity with specialized competence; a “progressive and professionally

¹⁸ Rule 2(j) of the Rules of Business defines it as: “a self contained administrative unit in the Secretariat responsible for the conduct of business of the Government in a distinct and specified sphere, and declared or constituted as such under the rules.”

¹⁹ Rule 2(b) of the Rules of Business define it as: “a department mentioned in column 3 of the First Schedule.” Column 3 contains departments created by a separate statute.

²⁰ Revenue Administration: Autonomy in Tax Administration and the Revenue Authority Model by William Crandall. Fiscal Affairs Department, International Monetary Fund. June, 2010

efficient tax management organization.” One facet of this autonomy is to select the right person for the job. Therefore, the Government enjoys the flexibility, space and the authority to pick the best persons to man this specialized Revenue Authority. Therefore, autonomy of the Revenue Authority does not imply that it is beyond the control of the Government, but quite to the contrary, it allows the Government to be able to set up an Authority with distinctive competence and specialization for efficient, progressive and effective tax management system, which is not possible to structure under the garb of a department or an attached department of the Government. The host of service laws, rules and bureaucratic instructions that regulate departments and the attached departments, do not stand in the way of structuring autonomous bodies.

Establishment of the Authority

12. How does the Government establish this autonomous Authority? Legal establishment of the Authority, as a corporate body, is through a notification under section 3(1) of Act-II. Admittedly, no such notification has been issued to date; hence the Authority has not been legally established under the law. Section 8 of Act-II (discussed later in detail) cannot come to the rescue of the respondents, as it pre-supposes an Authority that has been established in accordance with the law. Section 8 must always be read, subject to this fundamental precondition. Failure to establish the Authority under Act-II, renders all acts done by the Chairperson, purporting to be the Authority, are void *ab initio*.

Constitution of the Authority

13. Without prejudice to the fact that the Authority has not been established. The constitution of the Authority under Act-II

requires the appointment of a Chairperson and at least four Members.

Appointment of the Chairperson

14. The qualification and experience of the Chairperson is provided in Section 3 (5) of Act-II. "Prescribe" under section 2(1) means prescribed by Rules or Regulations under the Act. Considering that Regulations can only be framed once the Authority has been established and constituted, the word *prescribed* in section 3(4) and (6) of Act-II refers only to the Rules prescribed by the Government. It cannot be otherwise, firstly, because Authority cannot through Regulations prescribe the manner, terms and conditions, qualifications and experience of its own Chairperson and Members. Second, the appointment of the Chairperson and the Members is by the Government under the Act, hence the manner, terms and conditions, qualifications and experience of the Chairperson and Members must necessarily be provided for by the Government under the Rules.

15. Under section 3(4), the Authority is to consist of a Chairperson and not less than four Members. The qualification and experience of a Chairperson is given in section 3(5) of Act-II and provides that no person shall be appointed as Chairperson unless he possesses:

- (a) a master's degree from a recognized University;
- (b) ample knowledge of tax systems in Pakistan; and
- (c) twenty years work experience, including five years' experience in tax administration or financial management.

Learned Law Officers, as well as, learned counsel for respondent Authority categorically submitted that no Rules or Regulations have so far been framed under Act-II. They were

repeatedly asked whether Government of Punjab has *determined* the manner for the appointment of the Chairperson or the Members, the learned Law Officers categorically submitted that there is no policy or decision or document to this effect.

The Chairperson and Members were appointed by the Government through the following notifications.

Notification- 1

<p>GOVERNMENT OF THE PUNJAB <i>FINANCE DEPARTMENT</i> Dated Lahore, the 30th June, 2012</p> <p><u>NOTIFICATION</u></p> <p>No. SO (TAX) 1-9/2011. In exercise of the powers conferred under subsection (3) of Section 1 of the Punjab Revenue Authority Act 2012, Governor of the Punjab is pleased to direct that the Punjab Revenue Authority Act, 2012 shall come into force on and from 1st July, 2012.</p> <p style="text-align: center;">(FINANCE SECRETARY) GOVERNMENT OF THE PUNJAB</p>

Notification- 2

<p>GOVERNMENT OF THE PUNJAB <i>FINANCE DEPARTMENT</i> Dated Lahore, the 30th June, 2012</p> <p><u>NOTIFICATION</u></p> <p>No. SO (TAX) 1-2/97. In exercise of the powers conferred under subsection (3) of Section 1 of the Punjab Sales Tax on Services Act 2012, Governor of the Punjab is pleased to direct that the Punjab Sales Tax on Services Act, 2012 shall come into force on and from 1st July, 2012.</p> <p style="text-align: center;">(FINANCE SECRETARY) GOVERNMENT OF THE PUNJAB</p>

Notification- 3**GOVERNMENT OF THE PUNJAB
FINANCE DEPARTMENT**Dated Lahore, the 16th July, 2012**NOTIFICATION**

No. SO (TAX) 1-9/2011. In pursuance of Government of the Punjab, S&GAD's Notification No.SOEI-2-1/2012, dated 16.07.2012, Mr. Iftikhar Qutab (officer of In-land Revenue/BS-20) is hereby posted as Chairperson, Punjab Revenue Authority, on deputation basis, with immediate effect.

2. The terms and conditions of his posting/deputation will be settled separately.

(FINANCE SECRETARY)
GOVERNMENT OF THE PUNJAB

Notification- 4**GOVERNMENT OF THE PUNJAB
FINANCE DEPARTMENT**Dated Lahore, 23rd July, 2012**NOTIFICATION**

No. SO (TAX) 1-9/2011. It is notified for information of taxpayers and general public that the headquarter of Punjab Revenue Authority (PRA) has been established in Finance Department, Civil Secretariat, Lahore till further orders.

2. Contact numbers of the relevant officers of Punjab Revenue Authority/Finance Department, Government of the Punjab are as under:

- | | | |
|----|---|--------------|
| 1. | Mr. Iftikhar Qutab
Chairperson, PRA | 0334-3231740 |
| 2. | Mr. Farid Ahmad Tarar
Additional Finance Secretary
Finance Department | 042-99211076 |
| 3. | Mr. Faisal Rashid
Deputy Secretary
Finance Department | 042-99211078 |

(TARIQ BAJWA)
FINANCE SECRETARY

Notification- 5

PUNJAB REVENUE AUTHORITY
GOVERNMENT OF THE PUNJAB
FINANCE DEPARTMENT

CHARGE ASSUMPTION REPORT

Certified that I, IFTIKHAR QUTAB (BS-20/Inland Revenue Service), have assumed the charge of the post of Chairperson, Punjab Revenue Authority, Government of the Punjab, Finance Department, on 24.07.2012 with reference to the Punjab Government, S&GAD's Notification No.SOEI-2-1/2012 dated 16th July, 2012 and Finance Department's Notification No.SO(TAX) 1-9/2011, dated 16th July, 2012.

(IFTIKHAR QUTAB)
CHAIRPERSON, PRA

Dated: 24.7.2012

Notification- 6

No.PRA/HR.12/12
PUNJAB REVENUE AUTHORITY
FINANCE DEPARTMENT
GOVERNMENT OF THE PUNJAB
5-B, Danepur Road, GOR-I,
Lahore

Dated: 12th March, 2013

CHARGE ASSUMPTION REPORT

Certified that I, **Iftikhar Qutab**, have assumed the charge of the post of Chairperson, Punjab Revenue Authority, Government of the Punjab, (BS-21), with effect from 11.03.2013, in pursuance and compliance with Federal Board of Revenue (Revenue Division), Government of Pakistan's Notification No.0566-IR-I/2013, dated 11.03.2013.

2. This charge assumption report is signed and issued in terms of paragraph 2 of the aforesaid notification.

(IFTIKHAR QUTAB)
CHAIRPERSON, PRA

Notification- 7

No.PRA/HR.12/2014
 PUNJAB REVENUE AUTHORITY
 FINANCE DEPARTMENT
 GOVERNMENT OF THE PUNJAB
 5-B, Danepur Road, GOR-I,
 Lahore
 Dated: 12th February, 2014

CHARGE ASSUMPTION REPORT

Certified that I, **Iftikhar Qutab** (BS-21/Inland Revenue Service), have assumed the charge of the post of Chairperson, Punjab Revenue Authority, Government of the Punjab, (BS-21), with effect from 12.02.2014 in pursuance to the Government of Pakistan, Establishment Division's Notification No.1/100/2012 E-4. Dated 4.2.2014 read with Federal Board of Revenue's Notification No.0292-IR-I/2014, dated 11.02.2014, Government of the Punjab, S&GAD's Notification NO. SOE1-2-1/2012, dated 12.02.2014 and Government of the Punjab, Finance Department's Notification No. SO(TAX)1-9/2011 (Pt.II), dated 12.02.2014

(IFTIKHAR QUTAB)
 CHAIRPERSON, PRA

Notification- 8

No.PRA/HR-12/2012 (Vol-IV)
 PUNJAB REVENUE AUTHORITY
 FINANCE DEPARTMENT
 GOVERNMENT OF THE PUNJAB
 5-B, Danepur Road, GOR-I,
 Lahore
 Dated: 31st March, 2015

CHARGE RELINQUISH REPORT

Certified that I, **Iftikhar Qutab** (Inland Revenue Service), have relinquished the charge of the post of Chairperson, Punjab Revenue Authority, Government of the Punjab, (BS-21), with effect from 31.03.2015 (AN) in pursuance to the Government of Punjab, S&GAD's Notification No.SI.2-2/2015, dated 31.3.2015 and subsequent Finance Department Notification No.SO (TAX)4-3/2015 dated 31.03.2015 to report to my parent department i.e. Government of Pakistan (Revenue Division), Federal Board of Revenue, Islamabad.

(IFTIKHAR QUTAB)
 CHAIRPERSON, PRA

Notification- 9

No. PRA/HR-12/2012 (Vol-IV)
 PUNJAB REVENUE AUTHORITY
 FINANCE DEPARTMENT
 GOVERNMENT OF THE PUNJAB
 5-B, DANEPUR ROAD, GOR-I,
 LAHORE
 Dated: 31st March, 2015

CHARGE ASSUMPTION REPORT

Certified that I, Raheal Ahmad Siddiqui (PAS/BS-20), have assumed the charge of the post of Chairperson, Punjab Revenue Authority, Government of the Punjab (BS-20), with effect from 31-03-2015 (AN), in pursuance to the Government of Punjab, S&GAD's Notification No.SI.2-2/2015, dated 31-03-2015 and subsequent Finance Department Notification No. SO (TAX)4-3/2015 dated 31-03-2015. The charge assumption report is signed and issued in terms of para 2 of S&GAD's Notification No.SI.2-2/2015 dated 31-03-2015.

(RAHEAL AHMAD SIDDIQUI)
 CHAIRPERSON, PRA

Notification- 10

PUNJAB REVENUE AUTHORITY
 FINANCE DEPARTMENT
 GOVERNMENT OF THE PUNJAB
 5-B, DANEPUR ROAD, LAHORE
 Dated: 2nd April, 2015

NOTIFICATION

No. PRA-PF-20/2015. In pursuance of Notification issued by the Services Wing of Services and General Administration Department No.S1.2-2/2015(B) dated 1st April, 2015, MR. AFTAB AHMAD ASIF (Military Land & Cantonment Group/BS-20) is hereby posted as Member (Support Services/BS-20), Punjab Revenue Authority w.e.f. 02.04.2015 (afternoon).

(RAHEEL AHMAD SIDDIQUI)
 CHAIRPERSON

Notification- 11

GOVERNMENT OF THE PUNJAB
FINANCE DEPARTMENT

Dated Lahore, June 15, 2015

NOTIFICATION

No. SO (TAX) 1-9/2011(Audit). In exercise of the powers conferred under subsection (4) of Section 3 of the Punjab Revenue Authority Act 2012 (XLIII of 2012) read with section 14 of the General Clauses Act 1956, Governor of the Punjab is pleased to appoint the following officers as ex-officio Members of the Punjab Revenue Authority, as a stop gap arrangement:

- (i) Dr. Ijaz Munir, Secretary, Services
- (ii) Mr. Ali Tahir, Secretary, Excise & Taxation
- (iii) Syed Ali Murtaza, Secretary, Public Prosecution

2. Dr. Ijaz Munir, Secretary Services, PAS/BS-20, is also designated as Senior Member under sub-section (7) of Section 3 of Punjab Revenue Authority Act, 2012 to look after the function of the Chairperson, PRA, In case of Chairperson's casual absence.

3. This notification shall come into force at once.

SECRETARY
GOVERNMENT OF THE PUNJAB
FINANCE DEPARTMENT

Notification- 12

PUNJAB REVENUE AUTHORITY
FINANCE DEPARTMENT
GOVERNMENT OF THE PUNJAB
5-B, DANEPUR ROAD, LAHORE

NOTIFICATION

No. PRA/HR.12/2012 (PF-154/2015). Mr. Mohy-Ud-Din Ahmad Wani (PAS/BS-20) is hereby posted as Member (Support Services/BS-20) vice Mr. Aftab Ahmad Asif (MLCG/BS-20), who is posted as Member (Policy & Legal), Punjab Revenue Authority.

(DR. RAHEAL AHMAD SIDDIQUI)
CHAIRPERSON

Dated:
14th July, 2015

Notification- 13

PUNJAB REVENUE AUTHORITY
FINANCE DEPARTMENT
GOVERNMENT OF THE PUNJAB
Dated: August 17, 2015

NOTIFICATION

No. PRA-PF 2-01/2013. Mr. Javed Ahmed, Commissioner (Enforcement) Punjab Revenue Authority (HQs) is hereby given additional charge of Member (Operations) Punjab Revenue Authority for 89 days or till his date of actualization of promotion whichever is earlier.

(Dr. Raheal Ahmad Siddiqui)
Chairperson

Notification- 14

No.PRA/HR-12/2012 (Vol-IV)
PUNJAB REVENUE AUTHORITY
FINANCE DEPARTMENT
GOVERNMENT OF THE PUNJAB
5-B, Danapur Road, GOR-I,
Lahore
Dated: 29th September, 2015

CHARGE ASSUMPTION REPORT

Certified that I, Raza Munawar (BS-20/IRS), have assumed the charge of the post of Member (Taxpayer's Audit), Punjab Revenue Authority, Government of the Punjab, (BS-20), with effect from 10.09.2015, in pursuance of the Government of Punjab, S&GAD's Notification No.SOEI-1-20/2015 dated 28-09-2015 and subsequent PRA's order Notification No.PRA-1-3/2015 (PF)dated 29-09-2015.

(RAZA MUNAWAR)
Member (Taxpayer's Audit), PRA

The above notifications indubitably reveal that the Authority has never been established. Only Act-I and Act-II were made enforceable vide Notifications No. 1 and 2 (above) w.e.f., 01.07.2012. While Notification No. 4 dated 23.07.2102 simply designates the headquarters of the Authority.

16. Under Notification No.3 (above) one Mr. Iftikhar Qutub was appointed as *Chairperson* of the Authority on deputation basis on 16.07.2012 and finally relinquished this post on 31.03.2015. It may be added that during this period Mr. Iftikhar Qutub, also relinquished the post and later on rejoined, hence the post of Chairperson stood vacant for sometime. In the absence of any Rules framed under section 33 of Act-II, the Government failed to place on record any policy or process *determined* by the Government for the appointment to the post of Chairperson.

17. Were M/s Iftikhar Qutub or Raheal Ahmed Siddiqui (appointed on 31.03.2015) ever selected and nominated through an open, fair, transparent, consultative and deliberative process ? Was the post advertised? How many candidates applied? What was the objective criteria for appointment? Was there a Selection Board or Committee? Was a summary in terms of Rule 14(2) of the Rules of Business put up before the Competent Authority for approval? These questions remained unanswered. Other than the lack of proper process and procedure in appointing the aforementioned Chairperson, it is disturbing to note that the Chairperson held himself out as the Authority and transacted the business of the Authority. The Chairperson (as opposed to the Authority) framed the following Rules under section 76 of Act-I, on 01.08.2012, within a week of his assumption of the office on 24.07.2012.

Rules framed by the Chairperson rather than the Authority

1. Punjab Sales Tax on Services (Registration and De-Registration) Rules 2012. (dated 1-8-2012)
2. Punjab Sales Tax on Services (Filing of Returns) Rules 2012.
3. Punjab Sales Tax on Services (Adjustment of Tax) Rules 2012.
4. Punjab Sales Tax on Services (Specific Provisions) Rules 2012.
5. Punjab Sales Tax on Services (Computerized System) Rules 2012.
6. Punjab Sales Tax on Services (Authorized Representatives) Rules 2012.
7. Punjab Sales Tax on Services (Audit) Rules 2012.
8. Punjab Sales Tax on Services (Adjudication and Appeals) Rules 2012.
9. Punjab Sales Tax on Services (Alternative Dispute Resolution) Rules 2012.
10. Punjab Sales Tax on Services (Recovery) Rules 2012.
11. Punjab Sales Tax on Services (Withholding) Rules 2012.
12. Punjab Sales Tax on Services (Definitions) Rules 2012.

It is equally disturbing to note that the Government granted approval to the said Rules, knowing well that the Authority had yet not been established or constituted and the Rules have been put up for approval by an individual. In addition, the Chairperson, also appointed all the staff and the employees of the Authority singlehandedly.

Appointment of Members

18. The qualifications, experience and other requirements for the appointment of a Member have to be *prescribed* under Act-II. While the Government has the flexibility of determining a policy for the appointment of the Chairperson, the Members can only be appointed once the qualifications, experience and

other requirements are duly *prescribed* under the Rules. In the absence of any Rules, the appointment of Members is offensive and *ultra vires* Act-II besides being a fraud on the statute. Without prejudice to the above, no process was followed to select these Members (as discussed in the case of a Chairperson, above). The abovementioned notifications reveal that no open, fair and transparent process was followed by the Government in selecting the Members. On 15.06.2015 three persons were appointed as *ex-officio* Members. *Ex officio* is a Latin phrase meaning “from the office, used to describe something said or done officially or by right of office or position.”²¹ A statute must specially provide for such appointment. In the present case, there is no provision under Act-II for the appointment of *ex-officio* Members. Notification dated 15-6-2015 is, therefore, without lawful authority.

19. Our public law jurisprudence has laid down parameters for appointments to public sector organizations.

In *Syed Mubashir Raza Jaffri vs. Employees Old Age benefits Institutions (EOBI)*²², Anwar Zaheer Jamali J (as he then was) speaking for the august Supreme Court of Pakistan held:

“...appointments made in a statutory body or Corporation under the control of Provincial or Federal Government in an arbitrary and capricious manner cannot be allowed to hold the field...**the integral link between good governance and a strong and honest bureaucracy...could only come about if appointments made were based on a clear merit criterion, in accordance with the relevant laws and rules as opposed to favouritism and nepotism... Thus, it is essential that**

²¹ Free Dictionary by Farlex.

²² 2014 SCMR 949

all appointments to public institutions must be based on a process that is palpably and tangibly fair and within the parameters of its applicable rules, regulations and bye-laws... (emphasis supplied)

In **Muhammed Ashraf Tiwana and others v. Pakistan and others**²³, Jawwad S Khawaja J. eloquently speaking for the apex Court held:

“It has by now become well settled that Courts will look into the process of appointments to public office. It is the process which can be judicially reviewed to ensure that the requirements of law have been met...The element of subjectivity and discretion of the Government has been severely limited by the legal requirement that an appointee must be a person having integrity, ex-pertise, eminence etc. **This requirement imposes a duty on the Federal Government to put in place a process which ensures that the requirements of the law are met. ...there has to be a process which ensures that the widest possible pool of qualified candidates is available** to the Federal Government. From this pool, through a transparent selection process, appointments can be made. In our judgment in the case of Muhammad Yasin supra,²⁴ we had set out a three pronged test for appointments to public office: **“(a) whether an objective selection procedure was prescribed; (b) if such a selection procedure was made, did it have a reasonable nexus with the object of the whole exercise, i.e., selection of the sort of candidate envisaged in [the law]; (c) if such a reasonable selection procedure was indeed prescribed, was it adopted and followed with rigour, objectivity, transparency and due diligence to ensure**

²³ 2013 SCMR 1159

²⁴ P L D 2012 Supreme Court 132

obedience to the law....The object of having at least five Commissioners and the requirement that such Commissioners be appointed by the Federal Government is meant to ensure that each Commissioner is appointed independently so that he can perform his functions in accordance with law without being beholden to the Chairman for his appointment. **...Furthermore, in view of the requirements of section 5, there is a need to devise a proper mechanism for targeting and attracting a pool of qualified potential appointees. Randomly entertaining CVs, with or without the backing of political patrons, or seeking nominations from arbitrarily selected consultees do not meet this requirement. The requirement can be achieved through a number of different means, be it by open advertisement, or through the auspices of talent scouts who have the needed expertise and who ensure confidentiality to applicants or through any other sufficiently transparent and inclusive process. ...we have been unable to find any exercise or effort whatsoever for determining if indeed respondent No. 4 was a person known for his integrity or if he had the requisite expertise, experience or eminence. It may well be that he may have these qualifications; equally, it may be that he does not possess these attributes. What is missing is due diligence or a fair and demonstrably transparent selection process.**” (*emphasis supplied*)

Again in another case, reported in *Mushtaq Ahmad Mohal and others v. The Honourable High Court, Lahore and others* (1997 SCMR 1043), a Bench of five learned Judges reiterated this view after quoting in extenso the order passed in the aforementioned case titled as *Human Rights Case titled Abdul Jabbar Memon and others* (1996 SCMR 1349) stated as under:--

"17. We reiterate that the appointments to various posts by the Federal Government, Provincial Governments, Statutory Bodies and other Public Authorities, either initial or ad hoc or regular, without inviting applications from the public through the press, is violative of Article 18 read with Article 2A of the Constitution, which has incorporated the Preamble to the Constitution as part of the same and which inter alia enjoins equality of opportunity and guarantees for certain of an egalitarian society through a new order, which objective cannot be achieved unless, every citizen equally placed or situated is treated alike and is provided equal opportunity to compete inter alia for the posts in aforesaid government set-ups/institutions."

Reliance with advantage is also placed on Munawar Khan v. Niaz Muhammad and 7 others (1993 SCMR 1287), Mushtaq Ahmad Mohal and others v. The Honourable High Court, Lahore and others (1997 SCMR 1043), Human Rights Case titled Abdul Jabbar Memon and others (1996 SCMR 1349) Supporting reliance is also placed on Ghulam Rasool v. Government of Pakistan through Secretary, Establishment Division Islamabad and others (PLD 2015 SC 6), Syed Mahmood Akhtar Naqvi and others v. Federation of Pakistan and others (PLD 2013 SC 195), Chief Secretary Punjab and others v. Abdul Raoof Dasti (2006 SCMR 1876), Obaidullah and another v. Habibullah and others (PLD 1997 SC 835) and Abdur Rashid v. Riazuddin and others (1995 SCMR 999).

20. The backstage process of appointment of Chairperson and Members of the Authority is provided in the Rules of Business. The appointment of a Chairperson and Members of a Corporation in the control of the Government, culminates in the shape of a summary placed before the competent authority i.e.,

Chief Minister, for approval under Rule 23 of the Rules of Business, which provides that approval of the Chief Minister is required to be obtained before issue of orders relating to appointments, promotions, postings and transfers to posts mentioned in the Fourth Schedule. Item 14 of the Fourth Schedule provides for appointment to the posts of Chairperson and Members of a corporation under the control of the Government. Rule 14(2) of the Rules of Business provides that a case submitted before the Chief Minister for his orders shall include a self contained, concise and objective summary stating the relevant facts and the points for discussion and the specific recommendations of the Minister in Charge. Preparation of such a summary requires that a deliberative, fair and an open process has been set in motion where the candidates are evaluated, examined and recommended on the basis of an objective criteria. The final summary and recommendations are then put up for approval to the competent authority. Respondents have failed to show, whether any such process was ever followed and such a summary ever put up before the Chief Minister for the appointment of the Chairperson or the Members.

21. Our jurisprudence underlines the importance of an open, fair, objective, consultative, deliberative and transparent selection/appointment process. This resonates in the recent Baluchistan Revenue Authority Act, 2015 promulgated on 03.07.2015 (subsequent to Act-II). Section 3(4) of the said Act, which deals with the appointment of the Chairperson/Members is reproduced hereunder for guidance:

3(4) The Authority shall consist of the Chairperson and not less than four members, including a Tax Operations Member, an Audit Member, an Information Technology Member, and a Human

Resource Member. **The Chairperson and members shall be appointed by a Government Committee.** The Committee shall comprise of the Chief Secretary, Secretary Finance, Secretary Services and General Administration Department, for the Chairperson and include the Chairperson for appointment of the members. **These vacancies shall be filled through vacancy announcement and based on open competition. The appointments shall be made in such manner and on such terms and conditions as may be prescribed, including performance based market salaries.** The Members shall be appointed for a period of three years and shall be eligible for re-appointment for a similar term: Provided that there shall be no further re-appointment of such person on expiry of second term. (*emphasis supplied*)

22. In **Muhammad Yasin's case,**²⁵ Jawwad S Khawaja J. speaking for the Supreme Court of Pakistan, eloquently proposed three-pronged test for appointments to public office. The second test provided that the selection procedure must have a reasonable nexus with the object of the law. In other words, the institutional values, competence, and objective of the law (which embodies its autonomy) are required to be preserved. The unique and specialized character of the Authority is its institutional integrity and its distinctive competence. One way to preserve the institutional character is to appoint the best person for the job, with the right qualifications and experience, so that the values and competence of the institution are reinforced.

Institutional integrity and distinctive competence

23. “Administrative agencies, like all other institutions, develop special capabilities and proficiencies in the performance of their tasks. To say that an institution has integrity is to suggest that it is faithful to the functions, values,

²⁵ PLD 2012 SC 132

and distinctive set of unifying principles that define its special competence and character. The preservation of institutional integrity involves protecting the institution from injury, destruction or decay. It also involves protecting institutional processes, values, and unifying principles that determine an institution's distinctive competence.²⁶ At the institutional level, integrity implies an organization that 'defines, and acts within, a strong code of ethical conduct and positive values, and that adopts no tolerance of attitudes, actions and activities by its employees or partners that deviate from that code. This concept is strongly interlinked with the principle of transparency, implying openness, communication and accountability. As far as organizations and institutions are concerned, the key aspect is that an integrity-based organization performs its tasks in line with its intended purpose, and is operated in a transparent, accountable, decent, ethical, faultless and invulnerable manner. The behaviour of the individuals is consistent with the values and goals that are being followed, and the organization and their associates take all necessary steps to do their work in compliance with those values. Institutional integrity in the public sector is particularly important due to the public character of these institutions that implies public trust in the institution's practices, operations, and policies.²⁷ On the issue of institutional integrity reliance is also placed on *Centre for Public Interest Litigation v. Union of India* (AIR 2011 SC 1267).

²⁶ Leadership of Public Bureaucracies: The Administrator as Conservator. By Larry D. Terry. 2nded, Routledge.

²⁷ Principles and Approaches in Ethics Assessment, Institutional Integrity, Agata Gurzawska University of Twente, June 2015

24. The executive is under an obligation as a trustee to honour the institutional integrity and distinctive competence of the Authority. In the present case, the law envisages a progressive and professionally efficient tax management system. It provides qualifications and experience of the Chairperson. The Government was required to evolve an equally robust appointment process, which would realize this statutory vision and preserve the institutional integrity. Admitted failure by the Government to come up with an open, strategic and transparent process for appointment, compromises on institutional integrity and blunts the distinctive competence of the institution. Institutional integrity also demands that the process provided in the statute must be strictly adhered to.

25. Such poor tax governance by the Government, impairs public confidence in the institution, as objectivity and impartiality of the institution stands punctured. The instant case is a prime example of this. Institutional integrity has been seriously eroded in this case as appointments have been made in blatant disregard of it. It is mandatory for the Government to align with and promote the wisdom and spirit of the legislation. Government should have formulated a process for the selection and appointment of the Chairperson. Nothing has been brought on the record by the respondents to establish that such a process was put in place.

26. Transfer or deputation of a civil servant to the Authority does not override the selection process. The procedural mechanism of appointment through transfer or deputation would be given effect to once the candidate has been selected through an informed decision based on a rigorous, open and transparent process. In the present case, the appointments of both the Chairpersons, through notifications referred to above,

lack transparency, openness and a deliberative and a consultative process. It is at best a case of pick and choose, which reeks of official arbitrariness besides being facially discriminatory.

27. It is relevant to mention that even within the government, appointments through transfer or deputation require a process that passes through the Selection Committee or Board as the case may be under the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974. The standard in the case of an autonomous organization is much higher. Recourse could also have been made to Punjab Public Service Commission constituted under the Punjab Public Service Commission Ordinance, 1978, where section 7(a)(ii) specifically provides for recruitments to posts in or under a corporation or body set up by the Government under any law. Absence of a deliberative process offends Act-II and weakens the institutional integrity and distinctive competence of the Authority.

Public officers to act as trustees

28. All the public officials associated with the appointment to the post of Chairperson and Members of the Authority, including the appointed Chairperson and Members, enjoy the status of trustees of the public. “Public officials do not act for their own sake but rather for the sake of the public interest. In this view, the role of the public official in a democracy, like the role of the state itself, is to serve the interest of the public and its members... The government in itself has no “private” interest of its own. The government exists for the sake of individuals. The government does not exist for its “own” sake. Those who represent the government have no “self” interest

that must be protected. They must act to achieve the collective interest. Indeed, there is a serious concern—a concern that history has repeatedly validated—that representatives of the government will develop their own interests and use the tremendous power granted them for purposes that do not reflect the collective good. The duty of the loyalty seeks to prevent that. The duty of loyalty seeks to guarantee that the government takes care of the public and not itself; the general duty of loyalty seeks to guarantee that the government takes care of the public and not itself.²⁸”

29. It is most disturbing that Government and the concerned public official did not care for the letter of law and allowed one person i.e., the Chairperson to hold himself out as the Authority and also approved the Rules made by the said individual. No one, not even the Auditor General of Pakistan noticed that the Authority was never established or constituted since 2012. Public servants are reminded that “The duty of trusteeship imposes derivative duties upon the state: Trusteeship requires fairness, and fairness requires integrity, relevance, equality, and reasonableness. This list of principles derived from the position of trusteeship is not closed, and the list of values derived from the duty of fairness is not fixed. Values and principles, by nature, are on the one hand stable and on the other hand evolving. They are sown in the soul of the nation and are not subject to passing trends. They are full of vitality, and they evolve to provide fitting solutions to new problems.”²⁹ Public Officers have failed to follow the letter of law without any justification.

²⁸Aharon Barak - *The Judge in a Democracy*. p/220-222

²⁹ ibid

Vacancy or any defect in the constitution of the Authority

30. Respondents relied on section 8 of Act-II to argue that the existence of any vacancy or any defect in the constitution of the Authority does not render the acts, proceedings, decisions, orders of the Authority invalid. Section 8 of Act-II presupposes that the Authority has been lawfully established and constituted. It is not a protection clause that covers for the failure of the Government to establish or constitute the Authority in the first place. Infact it is a functional clause which overcomes procedural and temporary defects of the constitution and saves the decisions or proceedings of the Authority against minor hiccups provided the Authority is otherwise substantially in existence and functional. In the present case, the Authority has not been established or validly constituted in the first place, so Section 8 has no application to this case. Reliance is placed on Enayat Ali and others v. Province of West Pakistan and others (PLD 1968 Kar 552)

31. For the above reasons, its declared that the Authority has never been established under section 3(1) of Act-II. It is also declared that the Authority has not been lawfully constituted and the appointments of Chairperson and Members are in violation of Act-II. Hence, all the actions, decisions and orders passed by the so-called Authority, including the Rules mentioned hereunder, are hereby declared to be without lawful authority and of no legal force.

1. Punjab Sales Tax on Services (Registration and De-Registration) Rules, 2012.
2. Punjab Sales Tax on Services (Filing of Returns) Rules, 2012.
3. Punjab Sales Tax on Services (Adjustment of Tax) Rules, 2012.

4. Punjab Sales Tax on Services (Specific Provisions) Rules, 2012.
5. Punjab Sales Tax on Services (Computerized System) Rules, 2012.
6. Punjab Sales Tax on Services (Authorized Representatives) Rules, 2012.
7. Punjab Sales Tax on Services (Audit) Rules, 2012.
8. Punjab Sales Tax on Services (Adjudication and Appeals) Rules, 2012.
9. Punjab Sales Tax on Services (Alternative Dispute Resolution) Rules, 2012.
10. Punjab Sales Tax on Services (Recovery) Rules, 2012.
11. Punjab Sales Tax on Services (Withholding) Rules, 2012.
12. Punjab Sales Tax on Services (Definitions) Rules, 2012.

All the appointments of the officers of the Authority made under Section 39 of the Act-I by the Authority also stand vitiated. There is no stopping the Government to establish and constitute the Authority in terms of section 3 of Act-II and the principles discussed in this judgment.

Validation Ordinance.

32. The Government promulgated, The Punjab Revenue Authority (Amendment) Ordinance, 2015 (XXXI of 2015) on 22-10-2015. The said Ordinance inserted section 36 into the Act-I in the following manner:

“**36. Validation.-** Notwithstanding any omission, discrepancy or defect in the establishment or composition of the Authority or anything to the contrary contained in this Act or the Punjab Sales Tax on Services Act 2012 (XLII of 2012) or the rules made thereunder:

- (a) Any action of the Chairperson on behalf of the Authority, or anything to the contrary contained in any decree, judgment or order of any court, the sales tax or any other amount levied, charged, collected or realized by the functionaries of the Authority from any person shall be deemed to have been validly taken, levied, charged, collected or realized under the Act; and
- (b) Any action taken by the Chairperson till the establishment of the Authority under section 3 of the Act shall be deemed to be the action taken by the Authority.”

The actions of the Chairperson were already under challenge before the Court on the ground that the Authority had not been established or constituted in accordance with law and the Chairperson alone had no legal recognition. The Amending Ordinance was also challenged in separate petitions on the ground that the *validation clause* does not cure the defect and is, therefore, invalid. No rights or obligations have crystallized, no irreversible or irrevocable steps or actions have been taken during the life of the Amending Ordinance. After the lapse of the Ordinance, Act-II as it was prior to the Ordinance, stood revived. The argument of the learned law officers that the amendment remains in the Act, irrespective of the repeal of the Amending Ordinance, is hopelessly misconceived. As to the pendency of the bill before the Provincial Assembly is concerned, after the lapse of the Ordinance, it loses its legislative force and at best is a piece of proposed Provincial legislation which has no legal force. Reliance is placed on *The Sargodha Bhera Bus Service Limited and others v. The Province of West Pakistan (PLD 1959 SC 127)*, *Muhammad Arif and another v. The State and another (1993 SCMR 1589)*, *Syed Wajid Ali and 4 others v. Globe Automobiles Ltd. And*

another (1993 SCMR 819) and *Krishna Kumar Singh and another v. State of Bihar* (1998) 5 SCC 643).

33. For the above reasons, it is declared that Punjab Revenue Authority has not been established or constituted in accordance with the law. As a consequence, all notices, orders, proceedings, appointments, etc. initiated, issued or made by the Chairperson, acting as an Authority, are declared to be illegal and without lawful authority and are therefore, set aside. The Government of Punjab may seek guidance from this judgment to proceed for the establishment and constitution of the Authority in terms of Section 3 of Act-II.

No irreversible or irrevocable steps have been taken under the Amending Ordinance and there have been no past or closed transactions under the Validation Clause of the Amending Ordinance, therefore, lapse of the Amending Ordinance, simply revives Act-II as it was prior to the Amending Ordinance without any legal consequence, therefore, the petitions challenging the Validation Clause have become infructuous.

Public Accountability

34. Copy of this judgment be dispatched to the Chief Secretary, Punjab with the direction to place the same before the Chief Minister of the Province to take stock of the blatant mal-governance and poor trusteeship exhibited by the public official in failing to establish and constitute the Punjab Revenue Authority.

35. Petitions in **Schedule "A"** challenging the establishment and constitution of the Authority are hereby allowed. Petitions

challenging the Amending Ordinance are disposed of as having become infructuous.

(Syed Mansoor Ali Shah)
Judge

*M. Tahir**

APPROVED FOR REPORTING

SCHEDULE "A"

<u>Sr. No.</u>	<u>Writ Petition</u>
1.	W.P. No.17350/2013
2.	W.P. No.6498/2014
3.	W.P. No.26963/2013
4.	W.P. No.4725/2013
5.	W.P. No.5028/2013
6.	W.P. No.24049/2013
7.	W.P. No.18213/2013
8.	W.P. No.11627/2014
9.	W.P. No.28272/2013
10.	W.P. No.25950/2013
11.	W.P. No.29257/2013
12.	W.P. No.16851/2015
13.	W.P. No.14764/2015
14.	W.P. No.14918/2015
15.	W.P. No.14766/2015
16.	W.P. No.14299/2015
17.	W.P. No.5316/2015
18.	W.P. No.8208/2014
19.	W.P. No.6253/2015
20.	W.P. No.15945/2015
21.	W.P. No.23273/2015
22.	W.P. No.7207/2014
23.	W.P. No.17854/2013
24.	W.P. No.11510/2014
25.	W.P. No.20091/2015
26.	W.P. No.19739/2015
27.	W.P. No.20440/2015
28.	W.P. No.30339/2015
29.	W.P. No.24749/2015
30.	W.P. No.24885/2015
31.	W.P. No.24750/2015
32.	W.P. No.21536/2015
33.	W.P. No.29696/2015
34.	W.P. No.31248/2015
35.	W.P. No.31236/2015
36.	W.P. No.578/2014
37.	W.P. No.582/2014
38.	W.P. No.580/2014
39.	W.P. No.571/2014
40.	W.P. No.1380/2014
41.	W.P. No.767/2014

42.	W.P. No.5403/2014
43.	W.P. No.5389/2014
44.	W.P. No.773/2014
45.	W.P. No.818/2014
46.	W.P. No.822/2014
47.	W.P. No.803/2014
48.	W.P. No.729/2014
49.	W.P. No.817/2014
50.	W.P. No.575/2014
51.	W.P. No.777/2014
52.	W.P. No.732/2014
53.	W.P. No.815/2014
54.	W.P. No.1019/2014
55.	W.P. No.5391/2014
56.	W.P. No.5398/2014
57.	W.P. No.5401/2014
58.	W.P. No.5353/2014
59.	W.P. No.5396/2014
60.	W.P. No.1028/2014
61.	W.P. No.8812/2014
62.	W.P. No.5407/2014
63.	W.P. No.5405/2014
64.	W.P. No.1009/2014
65.	W.P. No.1010/2014
66.	W.P. No.1026/2014
67.	W.P. No.1378/2014
68.	W.P. No.18674/2014
69.	W.P. No.18936/2013
70.	W.P. No.14508/2013
71.	W.P. No.18809/2014
72.	W.P. No.18805/2014
73.	W.P. No.18969/2014
74.	W.P. No.18806/2014
75.	W.P. No.18804/2014
76.	W.P. No.19559/2014
77.	W.P. No.18968/2014
78.	W.P. No.18812/2014
79.	W.P. No.18808/2014
80.	W.P. No.18807/2014
81.	W.P. No.18811/2014
82.	W.P. No.30594/2015
83.	W.P. No.30577/2015
84.	W.P. No.30593/2015
85.	W.P. No.5803/2013
86.	W.P. No.31549/2015

87.	W.P. No.31540/2015
88.	W.P. No.31979/2015
89.	W.P. No.31547/2015
90.	W.P. No.29795/2015
91.	W.P. No.31538/2015
92.	W.P. No.28663/2014
93.	W.P. No.28664/2014
94.	W.P. No.28750/2015
95.	W.P. No.12646/2015
96.	W.P. No.4130/2015
97.	W.P. No.8789/2015
98.	W.P. No.19078/2015
99.	W.P. No.11807/2014
100.	W.P. No.11802/2014
101.	W.P. No.8072/2014
102.	W.P. No.8397/2014
103.	W.P. No.21463/2015
104.	W.P. No.5983/2015
105.	W.P. No.11034/2015
106.	W.P. No.11027/2015
107.	W.P. No.27698/2014
108.	W.P. No.18112/2014
109.	W.P. No.31403/2015
110.	W.P. No.31400/2015
111.	W.P. No.31405/2015
112.	W.P. No.723/2015
113.	W.P. No.27465/2015
114.	W.P. No.23314/2015
115.	W.P. No.1375/2015
116.	W.P. No.4489/2015
117.	W.P. No.2915/2015
118.	W.P. No.2665/2015
119.	W.P. No.2081/2015
120.	W.P. No.2681/2015
121.	W.P. No.1373/2015
122.	W.P. No.17365/2015
123.	W.P. No.17364/2015
124.	W.P. No.17366/2015
125.	W.P. No.17367/2015
126.	W.P. No.12686/2014
127.	W.P. No.15486/2015
128.	W.P. No.4124/2015
129.	W.P. No.997/2014
130.	W.P. No.33002/2013
131.	W.P. No.31877/2015

132.	W.P. No.26223/2015
133.	W.P. No.16874/2013
134.	W.P. No.32573/2013
135.	W.P. No.33876/2014
136.	W.P. No.11850/2013
137.	W.P. No.15864/2013
138.	W.P. No.8845/2014
139.	W.P. No.7995/2014
140.	W.P. No.7686/2014
141.	W.P. No.9130/2014
142.	W.P. No.11841/2014
143.	W.P. No.23521/2014
144.	W.P. No.7052/2013
145.	W.P. No.16565/2015
146.	W.P. No.23327/2015
147.	W.P. No.38767/2015
148.	W.P. No.18183/2015
149.	W.P. No.21516/2015
150.	W.P. No.29695/2015
151.	W.P. No.174/2015
152.	W.P. No.37683/2015
153.	W.P. No.38187/2015
154.	W.P. No.40307/2015
155.	W.P. No.1753/2016
156.	W.P. No.727/2016
157.	W.P. No.374/2016
158.	W.P. No.1887/2016
159.	W.P. No.32897/2015
160.	W.P. No.40156/2015
161.	W.P. No.35537/2015
162.	W.P. No.32971/2015
163.	W.P. No.32959/2015
164.	W.P. No.34216/2015
165.	W.P. No.1264/2016
166.	W.P. No.35822/2015
167.	W.P. No.39392/2015
168.	W.P. No.39601/2015
169.	W.P. No.38907/2015
170.	W.P. No.35011/2015
171.	W.P. No.40373/2015
172.	W.P. No.39286/2015
173.	W.P. No.698/2016
174.	W.P. No.36023/2015
175.	W.P. No.37725/2015
176.	W.P. No.33043/2015

177.	W.P. No.1565/2016
178.	W.P. No.1567/2016
179.	W.P. No.1572/2016
180.	W.P. No.1573/2016
181.	W.P. No.37646/2015
182.	W.P. No.35140/2015
183.	W.P. No.35187/2015
184.	W.P. No.35406/2015
185.	W.P. No.35282/2015
186.	W.P. No.35334/2015
187.	W.P. No.35255/2015
188.	W.P. No.35267/2015
189.	W.P. No.35186/2015
190.	W.P. No.37650/2015
191.	W.P. No.37653/2015
192.	W.P. No.37656/2015
193.	W.P. No.37658/2015
194.	W.P. No.36098/2015
195.	W.P. No.35139/2015
196.	W.P. No.35271/2015
197.	W.P. No.35306/2015
198.	W.P. No.35360/2015
199.	W.P. No.35405/2015
200.	W.P. No.38392/2015
201.	W.P. No.38405/2015
202.	W.P. No.35834/2015
203.	W.P. No.35836/2015
204.	W.P. No.35841/2015
205.	W.P. No.35843/2015
206.	W.P. No.35844/2015
207.	W.P. No.35845/2015
208.	W.P. No.35851/2015
209.	W.P. No.35852/2015
210.	W.P. No.35853/2015
211.	W.P. No.35854/2015
212.	W.P. No.35855/2015
213.	W.P. No.35856/2015
214.	W.P. No.35280/2015
215.	W.P. No.36450/2015

(Syed Mansoor Ali Shah)
Judge

*M. Tahir**