

**JUDGMENT SHEET  
IN THE LAHORE HIGH COURT, LAHORE  
JUDICIAL DEPARTMENT**

**Writ Petition No.127600 of 2017**

**Syed Hussain Haider**

**Versus**

**Government of the Punjab through Chief Secretary, Lahore  
& others**

**J U D G M E N T**

Date of hearing: 10.05.2018.  
Petitioner by: M/s Dr. A. Basit and S.M.J. Iqbal Jafree, Advocates.  
Respondents by: M/s Khalid Waheed, Additional Advocate General, Muhammad Ejaz, Assistant Advocate General, Ata Muhammad Khan, Senior Law Officer and Mariyam Mustafa, Legal Expert.

**MUHAMMAD SAJID MEHMOOD SETHI, J.-** Through instant petition under Article 199 (i)(b)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973 (“**the Constitution**”), petitioner has challenged constitution of the Planning & Development Board (“**P&D Board**”) and sought direction from this Court requiring respondents No.4 & 5 to show under what authority of law, they are holding the posts of Chairman and Member of P&D Board, with the following prayer:-

“In view of the above, it is respectfully prayed that preliminary, permanent & perpetual Declarations and Directions be issued to the following effect:

**DECLARATIONS**

- (i) Respondent-Government has committed dereliction of statutory duty by failing to restrain the Respondent-Board from trespassing into the domain of Proforma

Respondent Planning and Development Department.

- (ii) No allocation of funds from Public Exchequer can be made in favour of the Respondent-Board for any purpose including payment of salaries and perks.

#### DIRECTIONS

- (i) Respondent-Board be disbanded forthwith and Respondent-Government be required to recover all amounts spent on it so far.
- (ii) Respondents be directed to ensure that the named petitioner is enabled to perform his functions and duties as the Project Director under the supervision of the Planning and Development without any interference from Respondent-Board. Threats have been made and adverse mala fide misconduct; and action is imminent.”

2. Learned counsel for petitioner submits that the work to be done by respondent-Government, which is called its business, can only be performed through its Departments, and that the Secretariat is the collective name of all the Departments, which are to function in accordance with the Punjab Government Rules of Business, 2011 (“**the Rules of Business, 2011**”). He submits that P&D Board is neither a Department nor an attached Department or even an autonomous body / company. He contends that no work or business of respondent-Government can be entrusted to it and no funds from Public Exchequer can be allocated to it. He further submits that P&D Board along with its office-holders is liable to be disbanded forthwith and all the funds spent by them are to be reimbursed. He adds that as per entry at Sr. No.30 of First Schedule, pertaining to P&D Department and Departments attached therewith, the relevant Department is the proforma respondent-department and no entry exists in favour of P&D Board, which appears to be a redundant body existing prior to establishment of the proper Department. He adds that the Chief Minister has the power to constitute a new Department, even

Section 3(7) inserted in the Rules of Business, 2011 on 09.05.2017, gives no legal basis for any person appointed in the respondent-board to perform any Government function. He further submits that in Second Schedule of the Rules of Business, 2011, the functions of each Department have been specified, *inter alia*, the preparation of Annual Development Program (“ADP”) assigned to the P&D Department. He adds that no budgetary allocation could be made to any new Projects / Programs unless same are part of ADP and the project in question, where the petitioner is Project Director, can only be carried out under the supervision of the P&D Department, not the P&D Board. He contends that procedure for appointment of project staff and experts having specialized skills has been provided in PC-I and necessary staff has already been recruited, thus, subsequent appointment of Chairman and Member will affect smooth functioning of the project, which is even otherwise unauthorized and has been made to advance undue benefit to the incumbent respondents. He submits that P&D Board is not a part of the Secretariat of the respondent-Government and has no lawful authority to perform any work on its behalf, rather the duty to monitor and supervise the execution of the Project vests in the proper P&D Department, which has been impleaded as proforma respondent, as no relief is sought against it. He adds that the P&D Department has established a Multi-Sectoral Nutrition Centre (“**the Centre**”), PC-I whereof has since been revised, which is to be completed during the period 2016-2020. He maintains that functions assigned to respondents No.4 & 5 have no legal sanctity / authority. He next maintains that appointment of respondent No.4 does not appeal to reason rather based on *mala fide*. In the end, he submits that writ may be issued as to under what authority of law, the private respondents No.4 & 5 purport to hold the offices of Chairman and Member of a defunct Board.

3. Conversely, learned Additional Advocate General, duly assistant by learned Assistant Advocate General, Senior Law Officer and Legal Expert, contends that under Article 139 of the Constitution, the Rules of Business, 2011 have been framed and promulgated for running the official business of the Government of Punjab. He adds that the rules provide that business of the Government shall *inter alia* be run through its Departments and the P&D Department as shown in Second Schedule of the Rules of Business, 2011, at item namely “Planning and Development Department”. He further submits that main functions of P&D Department are described in Second Schedule, for which P&D Board was created by Government of Pakistan, with the approval of President of Pakistan, vide Order dated 04.12.1967 and said order is protected under Article 268 of the Constitution. He adds that prescribed period of one year in the said Order is for the post of Chairman and not for the Board as a whole. In the end, he submits that petitioner himself revised PC-I of the Centre and drafted its organogram, wherein supervisory position was assigned to the Member, thus, petitioner is estopped to challenge the position of the Member.

4. Arguments heard. Available record perused.

5. Under Article 139 of the Constitution, the Rules of Business, 2011 have been framed and promulgated for running the official business of the Government of the Punjab. The rules provide that business of the Government shall *inter alia* be run through its Departments. The P&D Department is shown in Second Schedule of the Rules. The main functions of the P&D Department, as described in Second Schedule of the rules, are as under:-

- Formulation of Provincial Government vision, policies and strategies for economic planning & development in consultation with all stakeholders in the light of NEC’s guidelines.

- Annual Development Programme (ADP) / Medium Term Development Framework (MTDF)
  - (a) Preparation in co-ordination with all Departments of the Government.
  - (b) Monitoring implementation.
  - (c) Evaluation of development projects and programs.
- Economic Issue(s):-
  - (a) Conducting research / surveys.
  - (b) Reviewing / analysis of socio-economic data.
- Policy for the approval of development schemes.
- Catalyst for different departments / sectors to improve the pace and quality of economic development.
- Resource allocation, re-appropriation of development funds, appropriations from block allocations and disbursement of supplementary grants.
- Secretariat for the Provincial Development Working Party (PDWP) and clearing house for development schemes within the competence of CDWP and ECNEC.
- Policy formulation with respect to private sector development and promotion of Public Private Partnership(s) (PPP).
- Implementation, development and administration in respect of foreign assisted / funded and mega ADP projects.

6. The Governor of West Pakistan, vide Order dated 04.12.1967, with approval of the President of Pakistan, sanctioned creation of the West Pakistan P&D Board, with Chairman and two members, one for planning and the other for development. The "P&D Board" is headed by Chairman, P&D Board and supported by Members. It is the stance of respondents that the posts have been created and are duly reflected in the Annual Budget approved

by the Provincial Cabinet and Provincial Assembly; that P&D Board is not a separate entity like the other autonomous boards or entities functioning within the province; and that it is an internal specialized body of the P&D Department. The aforesaid Order is reproduced hereunder:-

**“With the approval of the President of Pakistan, the Governor of West Pakistan is pleased to sanctioned creation of the West Pakistan Planning & Development Board, with Chairman, two members, one for Planning and the other for Development. The Governor of the West Pakistan is further pleased to create the post of Chairman, West Pakistan, Planning & Development Board and the appointment thereto (sic), SQA., CSP., for a period of one year, with effect from the date, the post is filled. It will be temporary addition to the CSP Cadre and has been sanctioned in lieu of the post of Additional Chief Secretary (Development), Planning & Development Department, which will remain in abeyance for so long as the post of Chairman, Planning & Development Board exists. The Chairman, West Pakistan Planning & Development Board will be Secretary to Government, West Pakistan, in the Planning & Development Department.”**

**[emphasis supplied]**

7. The question arises whether constitution of P&D Board was for a period of one year or the said Board would continue to exist as per the stance of respondents and is protected under Article 268 of the Constitution. Undoubtedly, the highlighted portion of the above Order shows creation of P&D Board with its Chairman and two Members, one for planning and the other for Development. The italic underlined portion of the Order shows that tenure for the office of the Chairman was for a period of one year with effect from the date, the post is filled. The remaining portion of the Order shows that it was a temporary addition to the CSP Cadre and was sanctioned in lieu of the post of Additional Chief Secretary (Development), Planning & Development Department, which would remain in abeyance for so long as the post of Chairman,

P&D Board exists. Subsequently, the post of Chairman continued to exist till to date, whereas same was for a period of one year and Chairman is being appointed through notifications issued from time to time by the authority. As per the Order reproduced supra, the post of Additional Chief Secretary (Development), P&D Department, had to remain in abeyance, whereas P&D Department is headed by a Secretary. It is well settled principle of interpretation that an Order or any other instrument having the status of law has to be interpreted according to the words used therein. No provision of instrument is to be considered meaningless. Whole instrument is to be read in its context. No part or word thereof can be omitted from consideration. Intention behind the instrument has to be taken into consideration, which can be gathered from looking into the instrument / statute / Order as a whole, not in bits and pieces, or by picking and choosing a particular portion thereof. The latter part of the Order becomes redundant if the upper part is given effect to. Redundancy cannot be attributed to any part of the instrument. Reference is made to Allied Bank of Pakistan Ltd. v. Khalid Farooq (1991 SCMR 599), Anwarul Haq v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and 13 others (1995 SCMR 1505), Ibrar Hussain and other v. Government of N.-W.F.P. through Secretary, Board of Revenue and others (2001 SCMR 914) and Saudi-Pak Industrial and Agricultural Investment Company (Pvt.) Ltd., Islamabad v. Messrs Allied Bank of Pakistan and another (2003 CLD 596), Baz Muhammad Kakar and others v. Federation of Pakistan through Ministry of Law and Justice, Islamabad and others (PLD 2012 Supreme Court 870), National Bank of Pakistan and 117 others v. Saf Textile Mills Ltd. and another (PLD 2014 Supreme Court 283), Salahuddin Dharaj v. Province of Sindh through Secretary, Local Government Department and 4 others (PLD 2013 Sindh 236) and Muhammad

*Ismail v. District Coordination Officer and 3 others* (2018 PLC (C.S.) Note 49).

8. Even otherwise, the Rules of Business, 2011 have been promulgated by the Provincial Government in pursuance of the above mandate conferred upon it by the Constitution itself. After enactment of the Constitution and framing of the Rules of Business, the Board could not undertake projects which fall within the domain of P&D Department of the Government. The Rules of Business, 2011 have not designated any business to P&D Board, which is merely a board in name or an empty shell, nonetheless it has embarked upon undertaking a number of projects and schemes for which it has absolutely no mandate, in fact, which are outside its domain. By such methodology, the long standing and established Government departments, which are designated under the Rules of Business of the Provincial Government to undertake such projects / schemes, were bypassed. When the regular department has no hand in either formulating or executing the said projects / schemes, then how it would assume the entire responsibility for ensuring that it is operating properly and being periodically maintained. The Chief Secretary is responsible to go by the Rules of Business. Any order or instrument is non-existent, if it is passed by an authority, lacking jurisdiction or is made in complete disregard of mandatory provisions of law. Reference is made to *Suo Moto Case No.19 of 2016* (2017 SCMR 683) and *Dr. Shehla Waqar and another v. Azad Government of the State of Jammu and Kashmir through Chief Secretary and others* [2010 PLC (C.S.) 416].

9. Further, as per the mandate of the Constitution, all executive actions of the Provincial Government shall be expressed to be taken in the name of the Governor; the Provincial Government by rules specify the manner in which orders and other instruments made and executed in the name of Governor, shall be

authenticated; and the Provincial Government shall also make rules of the allocation and transaction of its business. In view of Article 138 of the Constitution, on the recommendation of the Provincial Government, the Provincial Assembly may, by law, confer functions upon officers or authorities subordinate to the Provincial Government. The Provincial Government does not have the discretion to bypass the provisions of the Rules of Business, 2011. Following the Rules of Business, 2011 is mandatory and binding on the Government and a failure to follow them will lead to an order lacking any legal validity. Framers of rules was as much bound by the contents thereof as anyone else was subject thereto. Constitutionally mandated rules such as the Rules of Business, 2011 are closely intertwined with the concept of good governance for and in the public interest. Allowing a departure therefrom would be detrimental to open and transparent forms of governance. To allow the Executive to depart from the language of the Rules of Business, 2011 in its discretion, would amount to permit and legitimize unconstitutional executive actions. The executive authority of the Province, as exercised by the Provincial Government, is subordinated to the constitutional schema in relation to conferment of constitutional powers and responsibility on the three organs of the State. The Cabinet is a composite concept and its components are the Chief Minister and the Provincial Ministers, and in case of Federation, Prime Minister and the Federal Ministers. Any decision taken by the authority bypassing the Cabinet is *ultra vires* the Constitution. Even ordinance making power can only be exercised after a prior consideration by the Cabinet. Ordinance or order issued without the prior approval of the Cabinet is not valid after enactment of the Constitution. Reliance is placed upon Messrs Mustafa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance, Islamabad and others (PLD 2016 Supreme Court 808).

10. The P&D Department under the Rules of Business, 2011, is required to execute the works of development being undertaken by P&D Board, and budgetary allocation amounting to Rs.500 Million approximately, has been made to P&D Board. Running a parallel Board to perform the functions of P&D Department leads to bad governance and lack of responsibility and accountability. Under the constitutional scheme, administrative changes or allocation and reallocation of the business of the Province can be made under the Rules of Business, which is not the case here. It is settled that fundamental rights of citizens are adversely affected when scarce resources are wasted, when there is unnecessary duplication of work, when responsibility is shirked by those executing public works, and when it would be very difficult to hold anyone accountable as a result of implementing and executing projects / schemes through an entity or body / Board, which the law did not sanction. Under Article 9 of the Constitution, it is a fundamental right of the citizens that the national wealth / resources must remain fully protected whether they are under the control of a board or autonomous and semi-autonomous bodies. It is also noticeable that illegal / unconstitutional act cannot become constitutional by lapse of time nor can it vest anyone with any kind of legal right to benefit from such an unconstitutional act. Reference is placed upon Muhammad Mubeen-us-Salam and others v. Federation of Pakistan through Secretary, Ministry of Defence and others (PLD 2006 Supreme Court 602) and Khawaja Muhammad Asif v. Federation of Pakistan and others (2013 SCMR 1205), Muhammad Bachal Memon and others v. Syed Tanveer Hussain Shah and others [2015 PLC (C.S.) 767], Suo Moto Case No.19 of 2016's case supra and Shahab Usto v. Government of Sindh through Chief Secretary and others (2017 SCMR 732).

11. Learned Law Officer has argued that the aforesaid Order is protected under Article 268 of the Constitution. No doubt Article 268 of the Constitution protects all existing laws, subject to the Constitution, so far as applicable and with the necessary adaptations, until altered, repealed or amended by an appropriate legislation. As submitted above, the Constitution was enforced in 1973, and as per Article 139 of the Constitution, the Rules of Business have been framed under the afore-referred provisions of the Constitution, which have been validly enacted and are binding on all. Hence, no protection is available to the said Order; firstly, for the reason that it was a temporary legislation as clear intention is present on the part of authority while promulgating the Order, which is obvious from the latter part of the Order reproduced supra; secondly, temporary legislation cannot be given permanency in the absence of any sound legal principle or backing; and thirdly, after enactment of the Constitution, the Rules of Business have been framed under the afore-referred provisions of the Constitution, wherein jurisdiction, scope and functions of the P&D Department have been defined.

12. Learned Law Officer, while referring to Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others (2012 SCMR 455), argued that creation of P&D Board, in the garb of writ of *quo warranto*, has been challenged, whereas the petitioner himself acted as Project Director of the Board, therefore, writ petition being outcome of resentment of petitioner, is not maintainable. Suffice it to say that as per Article 199 of the Constitution, any aggrieved person can approach the Court alleging violation of the Constitution or law. In the instant case, violation of the Constitution and law is floating, questions of public interest are being raised, there is unnecessary duplication of work / duty and actions against law and the Constitution have been brought to the notice of the Court, therefore, as per law, the Court

can interfere and adjudicate upon the matter questioning creation of the Board whether same was constituted in accordance with the Constitution and law.

13. Needless to say that if any legislative instrument / Order is found to be in derogation of any provision of the Constitution, it would not be allowed to hold the field because of the mandate of the Constitution, which is supreme to all intents and purposes. Considering the vires of a legislative instrument / Order under its powers of judicial review, this Court can consider not only the substance of the law but also the competence of the authority. Article 8 of the Constitution provides that any law inconsistent with the fundamental rights shall be void “to the extent of such inconsistency” and, therefore, the same becomes ineffective or inoperative to the extent of such inconsistency with fundamental rights. When Act or Order is unconstitutional or violative of the fundamental / constitutional rights, then having taken oath to preserve and defend the Constitution, it is the bounded duty of this Court to enforce the Constitution with its full might and majesty. Reliance is placed upon Muhammad Mubeen-us-Salam’s case supra, Baz Muhammad Kakar and others v. Federation of Pakistan through Ministry of Law and Justice and others (PLD 2012 Supreme Court 923), Messrs Sui Southern Gas Company Ltd. and others v. Federation of Pakistan and others (2018 SCMR 802), Muhammad Idrees and 6 others v. Federation of Pakistan through Secretary, Ministry of Defence and 4 others [2015 PLC (C.S.) 183], The Federal Board of Revenue and others v. Messrs Chenone Stores Ltd. (2018 PTD 208) and Moazzam Habib and others v. Federation of Pakistan and others (2018 YLR 222).

14. In view of the above discussion, it is declared that formation of P&D Board is not in conformity with the provisions of Article 139 (3) of the Constitution and the Rules of Business, 2011 framed thereunder. Consequently, the said Board shall stand dissolved

after lapse of three months and its business shall be transferred to P&D Department unless necessary legislative measures are introduced so as to bring it in accordance with the command of the Constitution and the said Rules. Resultantly, instant petition is allowed in the above terms.

(Muhammad Sajid Mehmood Sethi)  
Judge

Announced in open Court on 29.06.2018.

Judge

Approved for reporting.

Judge

\*A.H.S.\*