

**2016 PT D 1103**

**[Lahore High Court]**

**Before Syed Mansoor Ali Shah, J**

**INSTITUTE OF ARCHITECTS, PAKISTAN (LAHORE CHAPTER)**

**Versus**

**PROVINCE OF PUNJAB and others**

W.P. No.4407 of 2015, heard on 25th January, 2016.

**(a) Punjab Revenue Authority Act (XLIII of 2012)---**

---Ss.3, 5 & 8---Punjab Sales Tax on Services Act (XLII of 2012), Preamble & Ss. 6 & 39---Punjab Revenue Authority---Public sector organization---Appointments to public sector organization---Validity of proceedings---Improper or non-constitution of statutory public sector organization/authority---Effect---Contention of the petitioner was, inter alia, that the Punjab Revenue Authority ("Authority") had not been lawfully constituted under S. 3 of the Punjab Revenue Authority Act, 2012 and that the appointment of the Chairperson and Members of said Authority by the Provincial Government had not been done in accordance with provisions of the Punjab Revenue Authority Act, 2012 and therefore, all actions taken by the said Authority were illegal--Validity---Legal establishment of the Authority, as a corporate body, was to be done through a notification under S. 3(1) of Punjab Revenue Authority Act, 2012 and admittedly, no such notification had been issued to date; hence the Authority had not been legally established under law---Contention of the respondents that S. 8 of Punjab Revenue Authority Act, 2012 provided that existence of any vacancy or any defect in the constitution of the Authority did not render the acts, proceedings, decisions, orders of the Authority invalid was not tenable; since said S. 8 of Punjab Revenue Authority Act, 2012 presupposed that the Authority had been lawfully established and constituted in the first place and the same was not a protection clause that covered for the failure of the Provincial Government to establish or constitute the Authority---No Rules or Regulations had so far been framed under Punjab Revenue Authority Act, 2012 and the Provincial Government had not determined the manner for the appointment of the Chairperson or Members of the Authority and it was submitted on behalf of the Provincial Government that no such policy or decision to such effect existed---Chairperson and Members, in the present case, were appointed through various notifications issued by the Provincial Government and perusal of said notifications indubitably revealed that the Authority had never been established---Chairperson of the said Authority had held himself out as the Authority itself, and transacted business of the Authority and also framed various Rules, and the Provincial Government granted approval to the said Rules, knowing well that the Authority had yet not been established or constituted and the said Rules had been put up for approval only by an

individual---Chairperson had also appointed all the staff and the employees of the Authority singlehandedly---No open, fair and transparent process was followed by the Provincial Government in selecting members of the Authority and in absence of Rules, appointment of Members was ultra vires the Punjab Revenue Authority Act, 2012 besides being a fraud on the statute---No provision existed in the Punjab Revenue Authority Act, 2012 for appointment of ex-officio members and therefore the same done through notifications, in the present case, was without lawful authority---Appointments of both the Chairpersons, through notifications lacked transparency, openness and a deliberative and consultative process and was at best a case of pick and choose, which reeked of official arbitrariness besides being facially discriminatory---High Court that declared failure to establish the Authority under Punjab Revenue Authority Act, 2012 rendered all acts done by the Chairperson, purporting to be the Authority, as void ab initio and since Punjab Revenue Authority had never been established under S. 3(1) of the Punjab Revenue Authority Act, 2012, therefore appointments of the Chairperson and Members of the same were in violation of the provisions of Punjab Revenue Authority Act, 2012, and hence all actions, decisions, and orders passed by the said Authority, including all Rules framed thereunder, were without lawful authority and legal force, and that all appointments of officers made under S. 39 of the Punjab Sales Tax on Services Act, 2012, by the Authority also stood vitiated---High Court observed that the Provincial Government may properly establish and constitute the Punjab Revenue Authority in terms of S. 3 of the Punjab Revenue Authority Act, 2012 and principles of law---Constitutional petitions were allowed, accordingly.

Chief Secretary Punjab and others v. Abdul Raof Dasti 2006 SCMR 1876; PLD 2012 SC 132; Enayat Ali and others v. Province of West Pakistan and others PLD 1968 Kar. 552; 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 rel.

#### **(b) Public Law---**

---Autonomous Public Sector Authority / Entity---Purpose of setting up a distinct autonomous Authority as opposed to a department or attached department of the Government---Purpose, scope and extent of such autonomy, described.

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

#### **(c) Words and phrases---**

---"Ex-officio", meaning of---"Ex officio" was a Latin phrase meaning from the office, used to describe something said or done officially or by right of office or position.

Free Dictionary by Farlex rel.

**(d) Civil service---**

---Parameters for appointments to public sector organisations---Principles of open, fair, objective, consultative, deliberative, and transparent selection/appointment process---Jurisprudence and case-law, examined.

2014 SCMR 949; 2013 SCMR 1159; PLD 2012 SC 132 and Mushtaq Ahmad Mohal and others v. The Honourable High Court, Lahore and others 1997 SCMR 1043 rel.

**(e) Public Law---**

---Public sector organisations---Institutional integrity and distinctive competence---Scope---Administrative agencies, like all other institutions, develop special capabilities and proficiencies in the performance of their tasks and to say that an institution had integrity was to suggest that it was faithful to the functions, values, and distinctive set of unifying principles that defined its special competence and character---Preservation of institutional integrity involved protecting the institution from injury, destruction or decay and also protecting institutional processes, values, and unifying principles that determined an institution's distinctive competence---Integrity, at the institutional level, implied an organization that defined, and acted within a strong code of ethical conduct and positive values, and that adopted no tolerance of attitudes, actions and activities by its employees or partners that deviate from such code---Said concept was strongly interlinked with the principle of transparency, implying openness, communication and accountability and as far as organizations and institutions were concerned, the key aspect was that an integrity-based organization performed its tasks in line with its intended purpose, and was operated in a transparent, accountable, decent, ethical, faultless and invulnerable manner---Behaviour of the individuals was consistent with the values and goals that were being followed, and the organization and their associates took all necessary steps to do their work in compliance with such values---Institutional integrity in the public sector was particularly important due to the public character of these institutions that implied public trust in the institution's practices, operations, and policies.

Leadership of Public Bureaucracies: The Administrator as Conservator. By Larry D. Terry. 2nded, Routledge; Principles and Approaches in Ethics Assessment, Institutional Integrity, Agata Gurzawska University of Twente, June 2015 and Centre for Public Interest Litigation v. Union of India AIR 2011 SC 1267 rel.

**(f) Public Functionary---**

---Functions of---Public officials to act as trustees---Public interest---Duty of loyalty--  
-Duty of trusteeship---Collective Good---Scope---Public officials do not act for their own sake but rather for the sake of the public interest---Role of the public official in a democracy, like the role of the State itself, was to serve the interest of the public and its members---Government in itself had no "private" interest of its own and existed for the sake of individuals---Representatives of the Government had no "self" interest that must be protected; and they must act to achieve the collective interest---Duty of the

loyalty sought to prevent the serious concern that representatives of the Government would develop their own interests and use the tremendous power granted them for purposes that did not reflect the collective good---Said duty of loyalty sought to guarantee that the government took care of the public and not itself---Duty of trusteeship imposed derivative duties upon the state and trusteeship required fairness, and fairness required integrity, relevance, equality, and reasonableness---List of principles derived from the position of trusteeship was not closed, and list of values derived from the duty of fairness was not fixed---Values and principles, by nature, were on the one hand stable and on the other hand evolving and were sown in the soul of the nation and were not subject to passing trends and as such were full of vitality, and they evolve to provide fitting solutions to new problems.

Aharon Barak - The Judge in a Democracy. P/220-222 rel.

Syed Reza Ali for Petitioner (in Writ Petitions Nos.4407/2015, 27698/2014 and 18112/2014).

Imtiaz Rashid Siddiqui, Barrister Shehryar Kasuri, Muhammad Humzah and Raza Imtiaz for 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)

Salman Akram Raja and Malik Ahsan Mehmood for Petitioner (in Writ Petitions Nos.17350/2013, 6498/2014 and 26963/2013).

Naveed A. Andrabi for Petitioner (in W.Ps. Nos.21463/2015, 5983/2015, 23273/2015, 7207/2014, 17854/2013, 11510/2014 and 40307/2015).

Mansoor Usman Awan for Petitioner (in Writ Petitions Nos.24049/2013, 5028/2013 and 4725/2013).

Waseem Ahmad Malik for Petitioner (in Writ Petitions Nos. 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, 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).

Muhammad Masood Chishti and Waseem Ahmad Malik, (in W.P. No.14508/2013).

Uzair Karamat Bhandari, Mian Muhammad Kashif and Muhammad Suhail Tipu for Petitioners (in Writ Petitions Nos.8208/2014, 39392/2015 and 39601/2015)

Muhammad Ajmal Khan, Mian Abdul Ghaffar and Sumaira Khanum for Petitioners (in Writ Petitions Nos. 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).

Dr. Ilyas Zafar and Syed Nasir Ali Gillani for Petitioners (in W.P. No.6253/2015).

Shezada Mazhar, Jawad Khan Lodhi and Asad Raza for Petitioners (in Writ Petitions Nos.15945/2015 and 20091/2015).

Muhammad Mohsin Virk, Abu Baker Haider and Shahzad Saleem Bhatti, for Petitioner (in Writ Petitions Nos.31403/2015, 31400/2015, 31405/2015, 20440/2015, 35011/2015).

Abdul Waheed Habib for Petitioner (in Writ Petitions Nos.35537/2015, 32971/2015, 32959/2015 and 34216/2015).

Moiz Tariq for Petitioners (in Writ Petitions Nos. 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, 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 and 36450/2015).

Zulfiqar Khan and Tanveer Hussain for Petitioners (in Writ Petitions Nos. 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).

Raja Jehanzeb Akhtar for Petitioner (in W.P. No. 5316/2015).

Adnan Ahmad for Petitioner (in W.P. No.38907/2015).

Syed Muhammad Ijaz for Petitioner (in W.P. No.40373/2015).

Masood Ahmad Wahla for Petitioner (in W.P. No.698/2016).

Malik Sahib Khan Awan for Petitioner (in W.P. No.36023/2015).

Rana Hamad Aslam for Petitioner (in W.P. No.37725/2015).

Zia Haider Rizvi and Sajjad Haider Rizvi for Petitioners (in Writ Petitions Nos.26223/2015 and 33043/2015).

Zulfiqar Ali Khan for Petitioner (in W.P. No.19739/2015).

Sikandar Javed for Petitioner (in Writ Petitions Nos.23327/2015, 30339/2015, 24749/2015, 24885/2015 and 24750/2015).

Khurram Shahbaz Butt for Petitioner (in Writ Petitions Nos.11850/2013 and 21536/2015).

Sumair Saeed Ahmad for Petitioner (in Writ Petitions Nos.29695/2015 and 29696/2015)

Khubaib Ahmad for Petitioner (in Writ Petitions Nos.31248/2015 and 31236/2015).

Muhammad Amir Sohail for Petitioner (in Writ Petitions Nos.8789/2015 and 19078/2015).

Ghulam Murtaza for Petitioner (in Writ Petitions Nos.11807/2014 and 11802/2014).

Sirdar Ahmad Jamal for Petitioner (in Writ Petitions Nos.8072/2014 and 8397/2014).

Assad Ullah Jaral for Petitioner (in Writ Petitions Nos.11034/2015 and 11027/2015).

Hamza H. Rashid and Ch. Saeed Ashraf for Petitioners (in Writ Petitions Nos.723/2015, 27465/2015 and 23314/2015).

Imran Anjum Alvi for Petitioners (in Writ Petitions Nos.1375/2015, 4489/2015, 2915/2015, 2665/2015, 2081/2015, 2681/2015 and 1373/2015).

Saqib Akram Gondal for Petitioner (in Writ Petitions Nos.17365/2015, 17364/2015, 17366/2015 and 17367/2015).

Ch. Riaz Ahmad Basra for Petitioner (in W.P. No.12686/2014).

Awais Ahmad Bhatti for Petitioner (in W.P. No.15486/2015).

Hyder Ali Khan for Petitioner (in W.P. No.4124/2015).

Zulfiqar Ali Khan for Petitioner (in W.P. No.997/2014).

Jawad Hassan, Haider Zaman Qureshi and Rana Muhammad Asif for Petitioner (in W.P. No.33002/2013).

Malik Muhammad Ali Awan for Petitioner (in W.P. No.31877/2015).

Barrister Ahmad Umar Saqib for Petitioner (in W.P. No.16874/2013).

Sardar Kalim Ilyas for Petitioner (in W.P. No.32573/2013).

Hamza Khan for Petitioner (in W.P. No.33876/2014).

Syed Samar Hussain for Petitioner (in W.P. No.15864/2013).

Akhtar Javaid Malik for Petitioner (in W.P. No.8845/2014).

Ali Sibtain Fazli, Hasham Ahmad and Umer Tariq Gill for Petitioners (in W.P. No.7995/2014).

Mian Muhammad Ismail Thaheem for Petitioner (in W.P. No.7686/2014).

Mian Muhammad Irfan for Petitioner (in W.P. No.9130/2014).

Shahid Pervaiz Jami and Mudassar Shujauddin for Petitioners (in W.P. No.11841/2014).

Mustafa Kamal for Petitioner (in W.P. No.23521/2014).

Rao Muhammad Faisal Iqbal for Petitioner (in W.P. No.7052/2013).

Ch. Waseem Ahmad and Aamir Ch. for Petitioners (in W.P. No.16565/2015).

Afzal Bashir and Rao Qasim Ali Khan for Petitioners (in W.P. No.38767/2015).

Kh. Mahmood Ayaz for Petitioner (in W.P. No.18183/2015).

Fawad Malik Awan for Petitioner (in W.P. No.21516/2015).

Khalil-ur-Rehman for Petitioner (in W.P. No.174/2015).

Nasar Ahmad and Ch. Muhammad Jahangir Wahla, Deputy Attorney Generals for Respondents.

Anwaar Hussain and Ahmad Hasan Khan, Assistant Advocate Generals, Punjab.

Sajid Ijaz Hotiana, Afzal Hussain Malik, Muhammad Awais Khalid, Umer Sharif and Barrister Muhammad Ahmad Pansota for Respondent PRA.

Sarfraz Ahmed Cheema for Respondents (in Writ Petitions Nos.5028/2013, 7052/2013, 11802/2014, 25950/2015 and 29257/2015).

Ch. Muhammad Zafar Iqbal for Respondent.

Sarfraz Akhtar for Respondent P.T.A. (in Writ Petitions Nos.32573/2013 and 14508/2013).

Ibrar Ahmad for Respondent FBR (in W.P. No.26223/2015).

Ali Raza Kabir for Respondent No.3 (in W.P. No.16874/2013).

Ayyaz Shaukat for Respondent No.4 (in W.P. No.16874/2013).

Ghulam Subhani for Respondent No.6 (in W.P. No.5316/2015).

Qaisar Abbas and Mohsin Mumtaz, Research Associates and 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 Pakistan

Date of hearing: 25th January, 2016.

## **JUDGMENT**

**SYED MANSOOR ALI SHAH, J.**---The petitioners are taxpayers, who, agitate, amongst other grounds, that Punjab 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 C.P.C., 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) and Punjab Revenue Authority Act, 2012 ("Act-II") (Act XLIII of 2012).

### **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. The "Authority" provided under Act-I is Punjab Revenue Authority established under Act-II. The Authority has been entrusted with the powers 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. 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 corporate 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:--

- (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.

Subsection (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. It maintains its own Data Bank 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. It has its own Fund and maintains a separate budget. Its accounts are audited by the Auditor General of Pakistan. Under the Punjab Government Rules of Business, 2011 ("Rules of Business"), PRA has been listed as an autonomous body. "Autonomous Organization" under the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 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 department or an attached department 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"), 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 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 presupposes 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 equires 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**

GOVERNMENT OF THE PUNJAB FINANCE DEPARTMENT Dated Lahore, the 30th June, 2012 <u>NOTIFICATION</u> 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. <b>(FINANCE SECRETARY) GOVERNMENT OF THE PUNJAB</b>
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**Notification-2**

GOVERNMENT OF THE PUNJAB FINANCE DEPARTMENT Dated Lahore, the 30th June, 2012 <u>NOTIFICATION</u> No. SO (TAX) 1-2/97. In exercise of the powers conferred under sub-section (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. <b>(FINANCE SECRETARY) GOVERNMENT OF THE PUNJAB</b>
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### **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.SI.2-2/2015(B) dated 1st April, 2015, MR. AFTAB AHMAD ASIF (Military Land and 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 and Taxation (iii) Syed Ali Murtaza, Secretary, Public Prosecution 2. Dr. Ijaz Munir, Secretary Services, PAS/BS-20, is also designated as Senior Member under subsection (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 and 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, Danepur 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 Nos. 1 and 2 (above) w.e.f., 01.07.2012. While Notification No. 4 dated 23.07.2012 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 Messrs 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." 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),** 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 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,** 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, expertise, 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, 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 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 Mt 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 Raof 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 Balochistan 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, 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, 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. 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. On the issue of institutional integrity reliance is also placed on Centre for Public Interest Litigation v. Union of India (AIR 2011 SC 1267).

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."

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." Public Officers have failed to follow the letter of law without any justification.

**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, it is 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.

### **SCHEDULE "A"**

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 and 215. W.P. No.36450/2015

KMZ/I-10/L Order accordingly.