

P L D 2016 Lahore 433

Before Syed Mansoor Ali Shah, J

SALIM JAVED BAIG and others---Petitioners

Versus

FEDERAL OMBUDSMAN and others---Respondents

Writ Petition No.33483 of 2015, heard on 5th April, 2016.

(a) Protection Against Harassment of Women at the Workplace Act (IV of 2010)--

---Ss. 1(1), 10, 7 & 13 [as amended by Ss.3 & 9 of Punjab Protection Against Harassment of Women at the Workplace (Amendment) Act, 2012 (III of 2013)]--- Constitution (Eighteenth Amendment) Act (X of 2010), Preamble, Ss.96 & 101(3)--- Constitution of Pakistan, Arts.270-AA(6), 97, 142, 137 & 1(2)---Scope, nature and effect of Art.270-AA(6) of the Constitution on Federal Laws with respect to any of the matters enumerated in the Concurrent Legislative List, after omission of the said list by the Constitution (Eighteenth Amendment) Act, 2010---Territorial jurisdiction of the Federal Ombudsman for Protection against Harassment of Women at the Workplace--- Petitioners impugned order of Federal Ombudsman for Protection against Harassment of Women at the Workplace ("Ombudsman"), whereby petitioners' application against assumption of jurisdiction by the Ombudsman for entertaining complaint against the petitioners, was rejected---Contention of the petitioners was, inter alia, that per Art.270-AA(6) of the Constitution, notwithstanding the omission of the Concurrent Legislative List, laws in existence prior to the Eighteenth Constitutional Amendment continued to be in force unless altered, repealed or amended by the competent legislature and in Punjab; through enactment of the Punjab Protection Against Harassment of Women at the Workplace (Amendment) Act, 2012, the (federal) Protection Against Harassment of Women at the Workplace Act, 2010 stood altered/amended into a Provincial Act and thus, under the Constitutional scheme, the (federal) Protection Against Harassment of Women at the Workplace Act, 2010 did not remain in force and stood succeeded by the Provincial enactment---Validity---Under Art.270-AA(6) of the Constitution, the (federal) Protection Against Harassment of Women at the Workplace Act, 2010 remained in force as a Provincial Act; irrespective of the omission of the Concurrent Legislative List by the Constitution (Eighteenth Amendment) Act, 2010 until such time that the said Federal Act was altered, repealed or amended by the competent authority (legislature) and such alteration or amendment in the law by the competent legislature did not affect its continuity and said law continued to be in force, albeit, as a Provincial law, not because of the alteration or amendment but because of the Constitutional declaration under the Eighteenth Constitutional Amendment and only on repeal, said law came to an end---Punjab Protection Against Harassment of Women at the Workplace (Amendment) Act, 2012 amended and altered the (federal) Protection Against Harassment of Women at the

Workplace Act , 2010 while retaining the same title; and was the Constitutional declaration of devolution, the underlying Constitutional theme of federalism and provincial autonomy under the Eighteenth Constitutional Amendment which metamorphosed the said Federal Act into a Provincial Act---Alteration and amendment by the competent Provincial legislature was a legislative exercise to align the law according to the wishes of the Provincial Legislature and had no bearing on the character of the law which already stood transformed into a Provincial law by virtue of the Constitutional declaration through the promulgation of the Punjab Protection Against Harassment of Women at the Workplace (Amendment) Act, 2012---High Court observed that if under Art.270-AA(6) of the Constitution, a federal law can only be subjected to alteration, amendment and repeal by the Provincial legislature, and then the same meant that said federal law had lost its federal character and stood transformed into a Provincial law---In such a case, if the appropriate legislature did not carry out any amendment or alteration to the said federal law, it still automatically stood converted into a Provincial law and remained in force as such---With the omission of the Concurrent Legislative List of the Constitution, the Federal Legislature loses its legislative fiat and command over the areas in the Concurrent Legislative List to the Provincial legislature and as a consequence the federal law was deprived of its federal character---With the legislative shift from federal to provincial, the executive authority under Art.97 of the Constitution also got realigned and changed hands from federal executive to the provincial executive---Punjab Protection Against Harassment of Women at the Workplace (Amendment) Act, 2012, therefore, Constitutionally trimmed the (federal) Protection Against Harassment of Women at the Workplace Act, 2010 and restricted its jurisdiction to territories of Pakistan that fell outside the Provinces in terms of Art.1(2) of the Constitution---Section 1(2) of the (federal) Protection Against Harassment of Women at the Workplace Act, 2010 stated that territorial jurisdiction of the Ombudsman under the same, extended to the whole of Pakistan and such geographical extent had to be pruned according to the Constitutional mandate under the Eighteenth Constitutional Amendment and for said purpose, the best interpretational tool to apply was that of reading down S.1(2) of the Protection Against Harassment of Women at the Workplace Act, 2010 in order to align the same with the constitutional scheme---High Court held that S.1(2) of the (federal) Protection Against Harassment of Women at the Workplace Act, 2010 had to be read down thereby limiting the extent of the Federal Act to areas which do not form part of any Province--Complaint against petitioners, in the present case, was based on a cause of action arising in Lahore (Punjab) and the alleged accused also resided there, therefore, the jurisdiction to entertain and hear said complaint was with the Provincial Ombudsperson under the Provincial Act and the Federal Ombudsman has no jurisdiction to entertain the said complaint---High Court further held that impugned order passed by the Federal Ombudsman along with all the prior orders assuming jurisdiction in the matter were therefore unconstitutional, illegal and without lawful authority and, were accordingly set aside with the observation that the complaint shall be deemed to have been returned to complainant who may file the same before the Provincial Ombudsperson, if so advised---Constitutional petition was allowed, accordingly.

A.F. Ferguson & Co. v. The Sindh Labour Court and another PLD 1985 SC 429;
Messrs Simma Fabrics Ltd, Gujranwala v. Authority under the Payment of Wages Act

and 3 others 1981 PLC 498; V. Sasidharan v. (M/s) Peter and Karunakar and others 1985 PSC 777; Dr.Shagufta Hussain and another v. Water and Power Development Authority through Chairman and 4 others 2004 CLC 293 and State of Rajasthan v. Ganeshi Lal AIR 2008 SC 690 ref.

Messrs Chenone Stores Ltd. through Executive Director (Finance Accounts) v. Federal Board of Revenue through Chairman and 2 others 2012 PTD 1815; Nadeem Asghar Nadeem and others v. Province of the Punjab and others 2015 CLC 1509 and Syed Imran Ali Shah v. Government of Pakistan and 2 others 2013 PLC 143 rel.

(b) Protection Against Harassment of Women at the Workplace Act (IV of 2010)--

---S. 1(2)---Constitution of Pakistan, Arts. 270-AA(6),1(2) & 142(d)---Constitution (Eighteenth Amendment) Act (X of 2010), Preamble, Ss.96,101(3) & 75---Territorial jurisdiction of the Federal Ombudsman for Protection Against Harassment of Women at the Workplace after the Eighteenth Constitutional Amendment---Scope---Section 1(2) of the Protection Against Harassment of Women at the Workplace Act, 2010 stated that the territorial jurisdiction of the Federal Ombudsman for Protection Against Harassment of Women at the Workplace Act, 2010 extended to the whole of Pakistan and such geographical extent had to be pruned according to the Constitutional mandate under the Eighteenth Constitutional Amendment and for said purpose, the best interpretational tool to apply was that of reading down S.1(2) of the Protection Against Harassment of Women at the Workplace Act, 2010 in order to align the same with the Constitutional scheme---High Court held that S.1(2) of the Protection Against Harassment of Women at the Workplace Act, 2010 had to be read down, thereby limiting the extent of S.1(2) of the Protection Against Harassment of Women at the Workplace Act, 2010 to areas which did not form part of any Province and continuance of the said Act in Federal Areas found support under Art.142(d) of the Constitution which provided that the Federal Legislature had the exclusive power to make laws with respect to all matters pertaining to such areas in the Federation as were not included in any Province.

Messrs Chenone Stores Ltd. through Executive Director (Finance Accounts) v. Federal Board of Revenue through Chairman and 2 others 2012 PTD 1815; Nadeem Asghar Nadeem and others v. Province of the Punjab and others 2015 CLC 1509 and Syed Imran Ali Shah v. Government of Pakistan and 2 others 2013 PLC 143 rel.

(c) Constitution of Pakistan--

---Arts. 270-AA(6), 97, 142 & 137---Constitution (Eighteenth Amendment) Act (X of 2010), Preamble, S. 96,101(3) & 75---Federal and Provincial laws---Extent of executive authority of Province(s) and Federation---Effect of Art.270-AA(6) Constitution on Federal Laws with respect to any of the matters enumerated in the Concurrent Legislative List, after omission of the said list by the Constitution (Eighteenth Amendment) Act, 2010---Scope---Under Art.270-AA(6) of the Constitution, an applicable federal law remained in force as a Provincial Act; irrespective of the omission of the Concurrent Legislative List by the Constitution (Eighteenth Amendment) Act, 2010 until such time that the said federal law was

altered, repealed or amended by the competent authority (legislature) and such alteration or amendment in the law by the competent legislature did not affect its continuity and said law continued to be in force, albeit, as a provincial law, not because of alteration or amendment but due to the Constitutional declaration under the Eighteenth Constitutional Amendment and only on repeal, said law came to an end---Federal law, falling under purview of Art.270-AA(6) of the Constitution, could only be subjected to alteration, amendment and repeal by the Provincial Legislature, and the same meant that the said federal law had lost its federal character and stood transformed into a Provincial law---If the appropriate legislature did not carry out any amendment or alteration in the said federal law, it still automatically stood converted into Provincial law and remained in force as such---With the omission of the Concurrent Legislative List, the Federal Legislature loses its legislative fiat and command over the areas in the Concurrent Legislative List to the Provincial legislature and as a consequence the said federal law is deprived of its federal character---Such legislative shift from Federal to Provincial, meant that the executive authority under Arts. 97 & 137 of the Constitution also got realigned and changed hands from federal executive to the provincial executive.

(d) Constitution of Pakistan--

---Art. 199---Federal Ombudsman Institutional Reforms Act (XIV of 2013), Ss.18 & 21---Protection Against Harassment of Women at the Workplace Act (IV of 2010) Ss.10 & 7---Constitutional jurisdiction of High Court in respect of Federal Ombudsmen---Jurisdiction of Federal Ombudsman for Protection Against Harassment of Women at the Workplace---Bar of jurisdiction under S.18 of the Federal Ombudsman Institutional Reforms Act, 2013---Nature and scope of such bar---Contention of the Federal Ombudsman for Protection against Harassment of Women at the Workplace, was that a specific bar existed by virtue of S.18 of the Federal Ombudsman Institutional Reforms Act, 2013 whereby no court or authority shall have jurisdiction to entertain a matter which fell within the jurisdiction of an Ombudsman nor any court or authority shall assume jurisdiction in respect of any matter pending with or decided by an Ombudsman---Held, that S.18 of the Federal Ombudsman Institutional Reforms Act, 2013 was a sub-Constitutional legislation and could not control or regulate the powers of the Constitutional court under the Constitution and therefore reliance on S.18 of the Federal Ombudsman Institutional Reforms Act, 2013 was hopelessly misconceived.

Arshad Mehmood v. Commissioner and others PLD 2014 Lah. 221 and Election Commission of Pakistan through Secretary v. Province of Punjab through Chief Secretary and others PLD 2014 SC 463 rel.

(e) Federal Ombudsman Institutional Reforms Act (XIV of 2013)--

---S. 5---Constitution of Pakistan, Art.209---Federal Ombudsman for Protection Against Harassment of Women at the Workplace repeatedly exhibiting disrespect and defiance to the orders of the High Court---High Court directed that copy of judgment on the present issue be placed before the Supreme Judicial Council, to be treated as a Reference against the Federal Ombudsman for Protection Against Harassment of

Women at the Workplace for her removal in terms of S.5 of Federal Ombudsman Institutional Reforms Act, 2013---Constitutional petition was allowed accordingly.

Petitioner No.1 in person along with Mian Muhammad Hussain Chotya, M. Nadeem Nasir and Mouzzam Ali Butt for Petitioners.

Nasar Ahmad, Deputy Attorney General for Pakistan.

Anwaar Hussain, Ahmad Hassan Khan, Assistant Advocates-General, Punjab assisted By Miss Rutaaba Gul and Muhammad Shahid Piracha and Muhammad Chand Khan for Respondent No.2.

Date of hearing: 5th April, 2016.

JUDGMENT

SYED MANSOOR ALI SHAH, J.--Respondent No.2 filed a complaint against petitioners on 14.09.2015 under section 8 of the Protection Against Harassment of Women at the Workplace Act, 2010 ("Federal Act") before respondent No.1 i.e., the Federal Ombudsman for Protection against Harassment of Women at Workplace, Islamabad ("Federal Ombudsman"). Petitioners (i.e., accused in the complaint) objected to the assumption of jurisdiction by the Federal Ombudsman in entertaining the complaint through their application dated 12.10.2015. They, inter alia, contended that as the cause of action arose in Lahore, Punjab, the Provincial Ombudsperson for Punjab under Protection Against Harassment of Women at the Workplace Act, 2010 ("Provincial Act") has the jurisdiction to entertain such a complaint. Application of the petitioners was dismissed by respondent No.1 vide impugned order dated 16-10-2015. Simultaneously, petitioners had preferred writ petition (W.P.No.31289/2015) before this Court challenging the assumption of jurisdiction by respondent No.1. This petition was dismissed in limine vide order dated 19-10-2015 on the ground that the application of the petitioners was already pending before respondent No.1, hence, the writ petition was not maintainable in the light of the alternate remedy already availed.

2. The petitioners, through the titled petition, challenged the rejection of their application, on the question of jurisdiction, by the Federal Ombudsman vide impugned order dated 16-10-2015. During the pendency of the titled petition and in gross violation of the interim relief granted by this Court, respondent No.1 decided the complaint of respondent No.2 through Judgment dated 4-1-2016, holding the petitioners guilty and imposing penalty of Rs.100,000/- on each of the petitioners, with a direction to the President (sic) of Pakistan Bar Council to issue letters of censure to the petitioners.

Arguments of the petitioners

3. Learned counsel for the petitioners argued that the Federal Act draws its legislative competence from the Concurrent List (entry/item No. 25) which has since been omitted by the Constitution (Eighteenth Amendment) Act, 2010 (Act X of 2010) ("Amendment Act"), the entries/legislative areas in the Concurrent List stood devolved

onto the Provinces. Under Article 270AA(6) of the Constitution, notwithstanding the omission of the Concurrent List, the laws in existence prior to the 18th amendment continue to be in force unless altered, repealed or amended by the competent legislature. In Punjab through The Punjab Protection Against Harassment of Women at the Workplace (Amendment) Act, 2012 (Act III 2013) the Federal Act was altered/amended into a Provincial Act. It is submitted that after the provincial enactment, under the constitutional scheme, the Federal Act does not remain in force and stands succeeded by the provincial enactment. In this background it is submitted that the complaint of respondent No.2 which states that the cause of action has arisen in Lahore and against the petitioners, who also reside in Lahore, the Federal Ombudsman has no jurisdiction to entertain the said complaint and therefore the proceedings, orders and the final Judgment passed by respondent No.1 are unconstitutional, unlawful and without jurisdiction.

4. He also argued that petitioners are lawyers working in an individual capacity, without there being any registered law firm, hence for this reason they do not fall within the definition of accused or the employer under section 2 (a) and (g) of the Federal Act. On the whole, learned counsel for the petitioners placed reliance on *A.F Ferguson & Co. v. The Sindh Labour Court* and another (PLD 1985 SC 429), *Messrs Simma Fabrics Ltd, Gujranwala v. Authority under the Payment of Wages Act* and 3 others (1981 PLC 498), *V. Sasidharan v. (M/s) Peter and Karunakar and others* (1985 PSC 777), *Dr. Shagufta Hussain and another v. Water and Power Development Authority through Chairman and 4 others* (2004 CLC 293), *State of Rajasthan v. Ganeshi Lal* (AIR 2008 SC 690).

5. Learned Deputy Attorney General (DAG) on behalf of the Federation, the office of the Federal Ombudsman and in response to notice under Order XXVII-A, C.P.C., relied on Article 270-AA(6) of the Constitution to support the contention of the learned counsel for the petitioners, to the extent that federal law automatically morphs into provincial law after the constitutional declaration under the 18th amendment and goes on to argue that the Federal Act also continues to exist but within restricted territorial jurisdiction i.e., within Islamabad Capital Territory and territories which do not form part of the Provinces. He concludes by submitting that respondent No.1 could not have entertained the complaint of respondent No.2 as the cause of action arose in Lahore, Punjab and therefore the matter fell exclusively within the domain of the Provincial Ombudsperson.

6. Learned Law Officers in response to notice under Order XXVII-A, C.P.C., representing the Provincial Government, submit that after 18th amendment, Federal Act, as well as, Provincial Act co-exist according to their territorial and geographic jurisdictions. The Provincial Act enjoys jurisdiction in the Province of Punjab, while the Federal Act is limited to the Islamabad Capital Territory and other territories which do not form part of any Province. They referred to section 7 of the Federal Act to submit that the Federal Act had recognized before the 18th amendment that Ombudsman be appointed by respective governments at the federal and provincial level. On merits they submit that in the instant case, advocates are registered under the Legal Practitioners and Bar Councils Act, 1973 therefore, they fall under the definition of an "organization" under section 2(1) of the Federal Act.

7. Learned counsel for respondent No.2 (complainant) submit that even after 18th amendment, the complainant has a choice to file a complaint either before the Federal Ombudsman or the Provincial Ombudsperson but failed to substantiate this point with any convincing material. They also submitted that lawyers fall within the definition of an organization as they are governed by Legal Practitioners and Bar Councils Act, 1973.

Opinion of the Court

8. I have considered the arguments addressed at the bar and have examined the law. The fundamental constitutional cum legal question that requires determination by this Court is the scope of Article 270AA (6) of the Constitution and the effect of the omission of the Concurrent List on the nature and character of the existing federal law. In the present facts, the Court has to determine the extent of jurisdiction enjoyed by the Federal Ombudsman under the Federal Act. In other words, whether Federal Ombudsman under The Protection Against Harassment of Women at the Workplace Act, 2010 can assume jurisdiction over a complaint in which the cause of action arose in Punjab or whether, in such like matters, the jurisdiction vests with the Provincial Ombudsperson under The Punjab Protection Against Harassment of Women at the Workplace Act, 2012 ("Provincial Act") post 18th constitutional amendment.

9. The Federal Act was promulgated on 11.03.2010 with jurisdiction extending to the whole of Pakistan under section 1(2) of the Federal Act. Constitution (Eighteenth Amendment) Act, 2010 was introduced on 20.04.2010. The said amendment omitted the Concurrent List from the Fourth Schedule to the Constitution, thereby enlarging and expanding the legislative domain of the provincial legislature and more importantly reinvigorating the constitutional theme of federalism and provincial autonomy. The preamble to the Amendment Act echoes the promise to establish "a Federal State wherein the Provinces have equitable share in the Federation." Admittedly, the Federal Act drew its legislative competence from entry 25 i.e., social welfare, of the erstwhile Concurrent List. Post 18th amendment, this area stands devolved onto the Provinces. Under Article 270AA(6) of the Constitution, the Federal Act remains in force (as a Provincial Act, as discussed later) irrespective of the omission of the Concurrent List until such time that the Federal Act is altered, repealed or amended by the Competent Authority (legislature). Any such alteration or amendment in the law by the competent legislature does not affect its continuity and the law continues to be in force, albeit, as a provincial law, not because of the alteration or amendment but because of the constitutional declaration under the 18th amendment. It is only on repeal that the law comes to an end.

10. The Punjab Protection Against Harassment of Women at the Workplace (Amendment) Act, 2012 (Act III 2013) has amended and altered the Federal Act (interestingly retaining the same title). It is actually the constitutional declaration of devolution, the underlying constitutional theme of federalism and provincial autonomy under the 18th Amendment which has metamorphosed the Federal Act into a Provincial Act. Alteration and amendment by the competent provincial legislature is a legislative exercise to align the law according to the wishes of the provincial

legislature and has no bearing on the character of the law which already stands transformed into provincial law by the constitutional declaration on the promulgation of the Amendment Act.

11. Considering it from another angle, if the federal law under Article 270AA (6) can only be subjected to alteration, amendment and repeal by the provincial legislature, it means that the Federal law has lost its federal character and stands transformed into a Provincial law. What if the appropriate legislature does not carry out any amendment or alteration in the federal law, it still automatically stands converted into provincial law and remains in force as such. This is also because with the omission of the Concurrent List, the federal legislature loses its legislative fiat and command over the areas in the Concurrent List to the provincial legislature and as a consequence the federal law is deprived of its federal character. It is important to underline, that with the legislative shift from federal to provincial, the executive authority under Article 973 also gets realigned and changes hands from federal executive to the provincial executive.

12. The Amendment Act, as well as, The Punjab Protection Against Harassment of Women at the Workplace (Amendment) Act, 2012 constitutionally trims the Federal Act and restricts its jurisdiction to territories of Pakistan that fall outside the Provinces in terms of Article 1(2) of the Constitution. The continuance of the Federal Act in federal areas finds support under Article 142(d) of the Constitution that provides that the Federal Legislature has the exclusive power to make laws with respect to all matters pertaining to such areas in the Federation as are not included in any Province. The territorial jurisdiction of the Federal Act under section 1(2) extends to the whole of Pakistan. This geographical extent has to be pruned according to the constitutional mandate under the 18th amendment. The best interpretational tool to apply is that of reading down. Reliance is placed on Messrs Chenone Stores Ltd. Through Executive Director (Finance Accounts) v. Federal Board of Revenue through Chairman and 2 others (2012 PTD 1815) and Nadeem Asghar Nadeem and others v. Province of the Punjab and others (2015 CLC 1509). Therefore, in order to align the Federal Act with the constitutional scheme, section 1(2) of the Federal Act is read down thereby limiting the extent of the Federal Act to areas which do not form part of any province. Reliance is also placed on Syed Imran Ali Shah v. Government of Pakistan and 2 others (2013 PLC 143)

13. The complaint filed by respondent No.2 on 14-9-2015 is based on cause of action arising in Lahore, the alleged accused also reside in Lahore, therefore, the jurisdiction to entertain and hear the complaint of respondent No.2 is with the Provincial Ombudsperson under the Provincial Act and the Federal Ombudsman has no jurisdiction to entertain the said complaint. The impugned Judgment dated 04.01.2016 passed by the Federal Ombudsman along with all the prior orders assuming jurisdiction in the matter are hereby declared to be unconstitutional, illegal and without lawful authority and, therefore, set aside. The complaint shall be deemed to have been returned to respondent No.2, who may file the same before the Provincial Ombudsperson, if so advised. Considering that the Federal Ombudsman had no jurisdiction to entertain the complaint, other grounds agitated by the petitioners need not be gone into.

Conduct of the Federal Ombudsman

14. The petitioners challenged Order dated 16-10-2015 passed by the Federal Ombudsman before this Court. On 3-11-2015 this Court stayed the proceedings before respondent No.1 in the following manner:-

"Notice for the above date. Till the next date of hearing, proceedings before the Federal Ombudsman for Protection against Harassment of Women at the Workplace, Islamabad shall remain stayed."

The petitioners moved an application before respondent No.1 on the basis of the above stay order, but respondent No.1 in total disregard of the interim relief granted by the constitutional Court proceeded in the matter and rejected the application of the petitioners vide order dated 06-11-2015 in the following manner:-

"An application has been moved by opponents that with reference to complaint filed before this forum, they have filed a writ petition having No.33483/2015 before Lahore High Court and on 03-11-2015 stay order has been granted therein. Neither copy of petition nor order passed there on has been annexed along with this application. Even otherwise on basis any stay order granted by any court, proceeding of case before this forum cannot be stayed as there is specific bar by virtue of section 18 of Federal Ombudsman Institutional Reform Act 2013 which very clearly says that no court or authority shall have jurisdiction to entertain any matter which falls within the jurisdiction of Ombudsman nor no court or authority shall assume jurisdiction in respect of any matter pending with or decided by Ombudsman. This proviso gives an autonomous position to the Federal Ombudsman and purpose of this forum is a quick disposal of cases rather than to linger on and keep the matter pending on basis of stay order granted by any authority or court. In view of above this application for adjournment on basis of stay order cannot be entertain and is thereby rejected."

15. After procuring the copy of the interim order passed by this Court on 03.11.2015, the petitioners once again moved an application before respondent No.1 on 13.11.2015 to stay the proceedings but the same was also rejected vide order dated 18-11-2015 in the following manner:-

"On 13.11.2015 an application was moved by opponents representative Mian Muhammad Hussain Chotiya, Advocate Supreme Court with a request that in view of order passed by Lahore High Court on 03.11.2015 in Writ Petition No.33483/2015 further proceedings before this forum be stopped otherwise he has no option but to file contempt petition. Along with this application he has also filed copy of writ petition filed by him before Lahore High Court and the order passed thereon on 03.11.2015. The point raised in application under disposal as to the jurisdiction of this forum has time and again discussed and decided by this forum in this complaint, which were never challenged by opponent before Competent Authority i.e. President of Pakistan. However by virtue of legislation, office of Federal Ombudsman has an autonomous position which has further been strengthening by an Act of parliament and assented by President of Pakistan on 20.03.2013. The purpose of establishment of Federal

Ombudsman Office is to provide speedy and cheaper justice to aggrieved parties and it is with this object a specific provision of section 18 was made a part of Federal Ombudsman Institutional Reforms Act 2013 which specifically bars any court or authority to assume jurisdiction of matter pending before Federal Ombudsman or decided by this forum. The only authority which under the law is empowered to examine the decisions and orders passed by Ombudsman is the President of Pakistan by virtue of section 14 of Federal Ombudsman Institutional Reforms Act 2013 and section 9 of Protection Against Harassment of Women at Workplace Act, 2010. In view of above discussion, request made by opponents representative in application dated 13.11.2015 is hereby rejected. Adjourned to 01-12-2015 for final arguments and for disposal of rest of interlocutory application moved by opponents."

16. As the order of this Court was being blatantly flouted, petitioners filed contempt petition (Crl. Org. No.2797-W/2015) on 17.11.2015. The orders passed in the contempt petition are discussed hereunder. In the main petition it was submitted that the Federal Ombudsman is bent upon passing the final order in total disregard of the stay order granted by this Court. In this background the Court directed the Registrar of the Federal Ombudsman to appear before the Court with the original file of the complaint vide order dated 07.12.2015:-

"In a connected Crl. Org. No.2797-W/2015 it has been alleged that order of this Court dated 03.11.2015 has not been complied and respondent No.1 is proceeding further and has passed orders dated 06.11.2015 and 18.11.2015 in Complaint No.1(204)/2015-FOS of 2015, which are in blatant violation of the order of this Court. Respondent No.1 has been summoned in person in the connected contempt petition wherein show-cause notice of contempt has also been issued.

2. It is submitted that respondent No.1 is bent upon passing the final order in the matter. In this view of the matter as earlier orders of this Court are being flouted, office is directed to summon the original file of the aforesaid complaint from the Registrar, Federal Ombudsman for Protection against Harassment of Women at the Workplace, Islamabad and place the same before the Court on the next date of hearing. The Registrar, Federal Ombudsman for Protection against Harassment of Women at the Workplace shall appear in person on the next date of hearing."

Instead of producing the record, learned DAG submitted Letter dated 4.12.2015 issued by the Registrar of the Federal Ombudsman, wherein the Registrar has refused to accede to the direction of this Court. Finding the contents of the letter to be contemptuous, show cause notice of contempt was issued to the Registrar in the following manner vide order dated 16.12.2015:-

"In the absence of any report from the office, it is not certain whether order dated 07.12.2015 has been communicated to the respondent Federal Ombudsman for Protection against Harassment of Women at the Workplace.

2. Mr. Nasar Ahmad, Deputy Attorney General for Pakistan has placed on the record letter dated 04.12.2015 issued by Consultant, who according to the learned Deputy Attorney General for Pakistan also holds the post of Registrar

of the Federal Ombudsman Secretariat for Protection against Harassment of Women at the Workplace 11-A Main Agha Khan Road, F-6/3, Islamabad and the relevant extract of the said letter is reproduced hereunder:-

"In this regard it is hereby mentioned that this Secretariat of Federal Ombudsman is an independent and autonomous body and cannot accede any request which is not in accordance with law. Judgments and orders of this Secretariat are only challengeable before President of Pakistan under Section-9 of Protection against Harassment of Women at Workplace Act, 2010 and under Section-14 of Federal Ombudsman Institutional Reform Act 2013 and not otherwise. Undersigned has been instructed by Federal Ombudsman to request to kindly quote relevant law under which High Court bench can ask for comment in any matter, so as to enable this Secretariat to ensure compliance under sub-Article 2 of Article 175 of Constitution of Islamic Republic of Pakistan, 1973."

3. Reading of the above reveals that the language employed by the Consultant/Registrar of the Federal Ombudsman for Protection against Harassment of Women at the Workplace is contumacious and contemptuous, therefore, a show cause notice of contempt is issued to Lt. Col. (R) Khamis Khan Panni, Consultant/Registrar of the Federal Ombudsman Secretariat for Protection against Harassment of Women at the Workplace, 11-A Main Agha Khan Road, F-6/3, Islamabad under section 17 of Contempt of Court Ordinance, 2003.

4. Office will allot a fresh number to these contempt proceedings and put up a separate file along with this petition on the next date of hearing."

Separate contempt proceedings were initiated against the Registrar under Crl. Org. No.3631/W/2015. During this period the final judgment dated 4.1.2016 was announced by the Federal Ombudsman and was suspended by this Court vide order date 11-1-2016 in the titled case.

Contempt proceedings against the Federal Ombudsman and the Registrar.

17. As the Federal Ombudsman refused to comply with order of this Court dated 3-11-2015, the petitioners filed a contempt petition (Crl. Org. No.2797-W/2015) in parallel to these proceedings on 17.11.2015. On the first hearing, this Court vide order dated 17.11.2015 simply handed a copy of the contempt petition to the DAG to seek instructions from the respondent. On the next date, learned DAG had no instructions from respondent No. 1 and by this time, respondent No.1 had passed two orders dated 06.11.2015 and 18.11.2015 defying the interim relief granted by this Court on 03.11.2015 and had also failed to submit any reply to the titled petition inspite of repeated orders, therefore vide order dated 20.11.2015 respondent No.1 was directed to appear in person and once again was directed not to proceed further in the matter of the complaint filed by respondent No.2 till the next date of hearing.

18. On the next date of hearing respondent No.1 in spite of being informed by the learned DAG, did not appear before the Court. The following order was passed on 02.12.2015:-

"Learned DAG submits that in spite of informing respondent No.1, she is not present before this Court today. I was minded to issue warrant of arrest of respondent No.1, however, exercising judicial restraint I grant one more opportunity for appearance of respondent No.1.

2. Learned DAG will ensure the presence of respondent No.1 before this Court on the next date of hearing.

3. Let a copy of this order be faxed to respondent No.1, as well as, Secretary, Ministry of Law, Justice and H.R., Government of Pakistan, Islamabad for compliance of this order.

4. To come up on 07.12.2015."

19. Respondent No.1 did not appear on the next date, henceailable warrants were issued to procure her presence vide order dated 07.12.2015 in the following manner: -

"In spite of orders dated 20.11.2015 and 02.12.2015 respondent No.1 has not tendered appearance before this Court. It is pointed out that order of this Court dated 03.11.2015 passed in W.P. No.33483/2015 has been blatantly flouted in writing by the said respondent by passing orders dated 06.11.2015 and 18.11.2015 passed in Complaint No.1(204)/2015-FOS of 2015. The relevant portion of the orders are as follows:-

"06.11.2015: Even otherwise on basis of any stay order granted by any court, proceeding of case before this forum cannot be stayed as there is specific bar by virtue of section 18 of Federal Ombudsman Institutional Reforms Act 2013 which very clearly says that no court or authority shall have jurisdiction to entertain any matter which falls within the jurisdiction of Ombudsman nor no court or authority shall assume jurisdiction in respect of any matter pending with or decided by Ombudsman. This proviso gives an autonomous position to the Federal Ombudsman and purpose of this forum is a quick disposal of cases rather than to linger on and keep the matter pending on basis of stay order granted by any authority or court. In view of above this application for adjournment on basis of stay order cannot be entertain and is thereby rejected."

18.11.2015: On 13.11.2015 an application was moved by opponents representative Mian Muhammad Hussain Chotiya, Advocate Supreme Court with a request that in view of order passed by Lahore High Court on 03.11.2015 in Writ Petition No.33483/2015 further proceedings before this forum be stopped otherwise he has no option but to file contempt petition. Along with this application he has also filed copy of writ petition filed by him before Lahore High Court and the order passed thereon on 03.11.2015. The point raised in application under disposal as to the jurisdiction of this forum has time and again discussed and decided by this forum in this complaint, which were never challenged by opponent before Competent Authority i.e. President of Pakistan. However by virtue of legislation, office of Federal Ombudsman has an autonomous position which has further been strengthening by an Act of parliament and assented by President of Pakistan on 20.03.2013. The purpose of establishment of Federal Ombudsman Office is to provide speedy and cheaper justice to aggrieved parties and it is with this object a specific provision of section 18 was made a part of Federal Ombudsman Institutional Reform Act 2013 which specifically bars any court or authority to assume jurisdiction of matter pending before Federal Ombudsman or decided by this

forum. The only authority which under the law is empowered to examine the decisions and orders passed by Ombudsman is the President of Pakistan by virtue of section 14 of Federal Ombudsman Institutional Reform Act 2013 and section 9 of Protection Against Harassment of Women at Workplace Act 2010. In view of above discussion, request made by opponents representative in application dated 13.11.2015 is hereby rejected".

2. As respondent No.1 has failed to tender appearance in spite of two earlier orders of this Court dated 20.11.2015 and 02.12.2015 and learned Deputy Attorney General for Pakistan has also expressed helplessness in reaching out to respondent No.1 and there has been no response from Secretary, Ministry of Law Justice and H.R. Government of Pakistan, Islamabad, therefore, let bailable warrants of arrest in the sum of Rs.10,000/-, returnable to the learned Sessions Judge, Islamabad, to be executed through SHO concerned, be issued against respondent No.1 to procure her attendance for the next date of hearing. Show-cause notice of contempt is also issued to respondent No.1 under Section 17 of the Contempt of Court Ordinance, 2003."

20. As bailable warrants could not be executed the following order was passed by this Court on 14.01.2016:-

"Learned DAG submits that bailable warrant of arrest of respondent No.1 could not be executed because respondent No.1 (Mrs. Yasmeen Abbasey, Federal Ombudsman for Protection Against Harassment of Women at the Workplace, Islamabad) refused to meet the police officer (Muhammad Saqib, Constable).

2. Vide order dated 16.12.2015 bailable warrants of arrest were issued for appearance of respondent No.1 before this Court for today and direction was issued to the Senior Superintendent of Police (Operations), Islamabad (SSP) to execute the said bailable warrant. It is noticed with regret that the said bailable warrant was not executed by the SSP.

3. Senior Superintendent of Police (Operations), Islamabad is directed to execute the bailable warrant of arrest of respondent No.1 strictly in terms of order dated 16.12.2015 and ensure the presence of respondent No.1 before this Court on the next date of hearing. SSP, Islamabad shall also appear in person before this Court on the next date of hearing.

4. Non appearance of respondent No.1 before this Court is most unfortunate and is causing institutional embarrassment for the Federal Government. Earlier, Ministry of Law, Justice and Human Rights, Government of Pakistan was asked to look into the matter but there has been no progress in this regard. In the light of the contumacious position taken by respondent No.1, I would like Secretary, Ministry of Law, Justice and Human Rights, Government of Pakistan to appear before this Court in person to apprise the position of the Federal Government in this regard.

5. Let Secretary, Ministry of Law, Justice and Human Rights, Government of Pakistan appear in person before this Court on the next date of hearing.

6. The Registrar/Consultant (Legal) of the Federal Ombudsman, Islamabad has tendered appearance and submitted his reply to Show Cause Notice which has been placed on the record and will be considered on the next date of hearing in the connected matter.

7. M/s Ali Zafar, Advocate/President, Supreme Court Bar Association, Azam Nazir Tarar, Vice Chairman, Pakistan Bar Council and Pir Muhammad Masood Chishti, President, Lahore High Court Bar Association have voluntarily tendered appearance and submitted that non-appearance of respondent No.1 before this Court is not only contumacious and contemptuous but offends the independence of judiciary and lowers the prestige of this constitutional Court. Mr. Ali Zafar Advocate/President, Supreme Court Bar Association submitted that Supreme Court Bar Association will also take up this matter on its own and assured the Court that matter will be resolved by the next date of hearing."

Respondent No.1 still did not appear. However, the bar requested to grant an opportunity to the Federal Ombudsman to appear voluntarily on the next date. The Court passed order dated 20.01.2016 to this effect:-

"In spite ofailable warrant of arrest issued for attendance of respondent No.1 (Mrs. Yasmeen Abbasey, Federal Ombudsman for Protection against Harassment of Women at the Workplace, Islamabad), she has not tendered appearance.

2. Superintendent of Police, Islamabad has tendered appearance in compliance of last order and submitted report dated 19.01.2016 which states that he along with SHO and Sub-Inspector visited the office of respondent No.1 for execution of herailable warrant of arrest. Upon inquiry it transpired that respondent No.1 was not present and Syed Zafar-ul-Hassan Bukhari, Senior Private Secretary to respondent No.1 informed him that respondent No.1 due to her personal engagement will not be attending office on 19.01.2016 and 20.01.2016 and as whereabouts of respondent No.1 other than office address were not known to him, therefore, theailable warrants of arrest of respondent No.1 could not be executed.

3. Mr. Raza Khan, Secretary, Ministry of Law, Justice and Human Rights, Government of Pakistan has tendered appearance in pursuance to last order passed by this Court and submitted that respondent No.1 should submit to the jurisdiction of this Court, however, expressed his inability to ensure the presence of the said Ombudsman as she is Head of an autonomous statutory body. He, however, expresses his regret that affairs should not have come to this pass as no one is above the law and respondent No.1 is bound to comply with the orders of this Court.

4. Additional Attorney General for Pakistan submitted that the conduct and non appearance of respondent No.1 is not defensible, he submitted that by not submitting to the jurisdiction of the court, respondent No.1 has offended the honour and dignity of this Court.

5. M/s Ali Zafar, Advocate/President, Supreme Court Bar Association, Azam Nazir Tarar, Vice Chairman, Pakistan Bar Council, Pir Muhammad Masood Chishti, President, Lahore High Court Bar Association and Muhammad Ahmad Qayyum, Secretary, Lahore High Court Bar Association have tendered appearance and submitted that non attendance of respondent No.1 before this court is highly contemptuous and the entire leadership of the Bar unanimously deprecates the conduct of respondent No.1. They requested the Court that if one more opportunity is granted to them, they would like to mediate and make efforts to amicably resolve the current situation by ensuring the presence of

respondent No.1 before this Court on the next date of hearing. They reiterated that the conduct of respondent No.1 is embarrassing the institutions besides lowering the dignity and prestige of this Court and the Bar will go to any limit to protect and guard the image and majesty of this Court. They submitted that respondent No.1 has to submit before the Court as no one is above the law.

6. In the end M/s Ali Zafar, Advocate/President, Supreme Court Bar Association, Azam Nazir Tarar, Vice Chairman, Pakistan Bar Council, Pir Muhammad Masood Chishti, President, Lahore High Court Bar Association, Muhammad Ahmad Qayyum, Secretary, Lahore High Court Bar Association, Mr. Raza Khan, Secretary, Ministry of Law, Justice and Human Rights, Government of Pakistan and Additional Attorney General for Pakistan unanimously submitted that in case respondent No.1 does not voluntarily appear before this Court on the next date of hearing, the law must take its own course.

7. Considering the obstinate and contemptuous conduct of respondent No.1, I was minded to issue non-bailable warrant of arrest of respondent No.1 to be executed through Inspector General of Police, Islamabad. However, in view of the submissions made, especially by the Bar leadership, I exercise judicial restraint by allowing respondent No.1, one last opportunity, to voluntarily appear and submit herself to the jurisdiction of this Court on the next date of hearing and in order to facilitate this, SSP, Islamabad is directed not to execute the bailable warrant of arrest of respondent No.1 till the next date of hearing.

8. It is also noted for completion of record that connected contempt petition against the Registrar/ Consultant (Legal), Federal Ombudsman Secretariat, Islamabad, has been disposed of after he tendered unconditional apology."

In spite of this respondent No.1 did not appear, therefore once again bailable warrants were issued vide order dated 12.02.2016 in the following manner:-

"Through the last order dated 20.01.2016 on the request of the President, Supreme Court Bar Association, Vice Chairman, Pakistan Bar Council and President, Lahore High Court Bar Association along with request of the Secretary, Ministry of Law, Justice and Human Rights, Government of Pakistan, a concession was granted to the Federal Ombudsman to voluntarily appear before this Court today and the SSP, Islamabad was directed not to execute the bailable warrant of arrest of respondent No.1.

2. Mr. Ali Zafar, Advocate/President, Supreme Court Bar Association and Pir Muhammad Masood Chishti, President, Lahore High Court Bar Association submitted that they have been informed by the Ministry of Law, Government of Pakistan that Federal Ombudsman for Protection against Harassment of Women at the Workplace, Islamabad namely Mrs. Yasmeen Abbasey applied for NOC for travel outside Pakistan but the same was declined by the Prime Minister (Competent Authority) as the contempt proceedings were pending against the said officer before this Court. It is submitted that Federal Ombudsman has allegedly left the country without obtaining NOC. This factual position has also been confirmed by the learned DAG.

3. In spite of repeated concessions and the judicial restraints exercised by this Court, the Federal Ombudsman has failed to appear before this Court and now she has reportedly left the country without obtaining an NOC from the

competent authority. The members of the bar are also unanimous in submitting that the Court has shown judicial restraint but now the Court must proceed in order to safeguard and protect the dignity of the Court. I have no choice but to proceed further in accordance with law. Therefore, non-bailable warrant of arrest of respondent No.1 is issued to be executed through I.G. of Police, Islamabad to procure the attendance of respondent No.1 before this Court on the next date of hearing.

4. To come up on 30.03.2016. Copy of this order shall also be dispatched to the IG of Police, Islamabad for compliance.

Respondent No.1 still did not appear and the Court was constrained to issue non-bailable warrants vide order dated 30.03.2016 in the following manner:-

"The contemnor could not be produced before the Court in spite of issuance of non-bailable warrant of arrest issued on the last date of hearing which was to be executed by the Inspector General of Police, Islamabad. Relevant portion of the report filed by the I.G. of Police, Islamabad states as follows:

"On 28.03.2016, the SHO Police Station Kohsar, Islamabad again visited the office of Mrs. Yasmin Abbasi for execution of Non-Bailable Warrant of arrest issued by this Honourable Court but she was not present in the office. The SHO, Police Station Kohsar, Islamabad enquired from Mr. Zafar Bukhari Personal Assistant to Mrs. Yasmeen Abbasi regarding the location of resident of Mrs. Yasmin Abbasi but he replied that he is not aware regarding the location of resident of Mrs. Yasmin Abbasi. However, he provide a copy of order of August Supreme Court of Pakistan passed in C.M.A. Nos.864 and 865 of 2016 titled as Federal Ombudsman for Protection against Harassment of Women at workplace v. Salim Javed Baig and others and verbally informed the SHO, Police Station Kohsar, Islamabad that Mrs. Yasmin Abbasi has filed the instant petition before the August Supreme Court of Pakistan for setting [sic] aside the orders of Honourable Lahore High Court, Lahore and the same has been admitted Pakistan [sic] (copy of daily diary along with the copy of order is attached as annexure-A). On 29-03-2016, again SHO, Police Station Kohsar, Islamabad along with other officials visited the office of Federal Ombudsman for protection against Harassment of Women at the Workplace for execution of non-bailable warrant of arrest and obtaining of attested copy of order of Honourable Supreme Court of Pakistan but she was not found present in the office (copy of the daily diary is attached as annexure-B).

To verify the information of Mr. Zafar Bukhari Personal Assistant to Federal Ombudsman for Protection Against Harassment of Women at Workplace efforts were made to obtain the copy of this order from the concerned branch of Honourable Supreme Court of Pakistan but due to Stage Demonstration of Sunni Tehreek (Dharna) near the building of Supreme Court of Pakistan the area was sealed by the Pakistan Army and Police and most of the employees of Islamabad Secretariat and other office could not reached at their duty points. Resultantly, the matter could not be verified from the concerned branch of August Supreme Court of Pakistan."

Perusal of the above paragraphs generates an impression that the police concerned is not taking this matter seriously. Police has repeatedly failed to

procure the presence of the contemnor before this Court for one reason or the other.

2. One last opportunity is granted to the Inspector General of Police, Islamabad to execute the warrant issued on the last date of hearing vide order dated 12.02.2016 and ensure the presence of respondent No.1 i.e., Mrs. Yasmeen Abbasey, Federal Ombudsman for Protection Against Harassment of Women at the Workplace, Islamabad before this Court on the next date of hearing. In case I.G. of Police, Islamabad fails to do so, he will appear in person before this Court on the next date of hearing to render his explanation."

Contempt Proceedings against the Registrar.

On 16.12.2015 in response to order dated 07.12.2015 passed in the titled case, whereby this Court had summoned the file of the complaint from the Registrar of the Federal Ombudsman, learned DAG placed on record letter dated 04.12.2015 issued by the Registrar of the Federal Ombudsman. The Letter read as follows:

"In this regard it is hereby mentioned that this Secretariat of Federal Ombudsman is an independent and autonomous body and cannot accede any request which is not in accordance with law. Judgments and orders of this Secretariat are only challengeable before President of Pakistan under Section-9 of Protection Against Harassment of Women at Workplace Act, 2010 and under Section-14 of Federal Ombudsman Institutional Reform Act 2013 and not otherwise. Undersigned has been instructed by Federal Ombudsman to request to kindly quote relevant law under which High Court bench can ask for comment in any matter, so as to enable this Secretariat to ensure compliance under sub-Article 2 of Article 175 of Constitution of Islamic Republic of Pakistan, 1973."

21. Finding the language employed by the Registrar to be contemptuous, this Court vide order dated 16-12-2015 issued show cause notice of contempt to the Registrar and the file of the complaint before respondent No.1 was once again summoned. Registrar appeared in person and submitted that the above letter was written on the behest of the Federal Ombudsman. The contempt proceedings against the Registrar were discharged through order dated 20.01.2016 in the following manner:-

"Lt. Col. (R) Khamis Khan Panni Registrar/ Consultant (Legal) of the Federal Ombudsman for Protection Against Harassment of Women at the Workplace, Islamabad has tendered appearance. In his written reply to Show Cause Notice he has tendered unconditional apology. It is submitted that the letter in question was written by him on the instructions of the Federal Ombudsman, Islamabad. He now has thrown himself at the mercy of the Court.

2. Having gone through the reply submitted by the said Registrar, it is clear that he acted under the direction of the Federal Ombudsman, therefore, I accept the unconditional apology of the Registrar/Consultant (Legal) of the Federal Ombudsman for Protection Against Harassment of Women at the Workplace, Islamabad and discharge these proceedings."

22. The facts narrated above cut a sorry figure of the Federal Ombudsman who has repeatedly exhibited disrespect and defiance to the orders of a constitutional court in the course of these proceedings. The interim relief granted by this Court vide order

dated 03.11.2015 was flouted with impunity. The Federal Ombudsman has stubbornly placed reliance on section 18 of the Federal Ombudsman Institutional Reforms Act, 2013 ("Act, 2013"), to show disobedience to the Orders of this Court. Section 18 of Act, 2013 is reproduced below for reference:-

"18. Bar of Jurisdiction: No Court or authority shall have jurisdiction to entertain a matter which falls within the jurisdiction of an Ombudsman nor any court or authority shall assume jurisdiction in respect of any matter pending with or decided by an Ombudsman."

Section 18 is a sub-constitutional legislation and cannot control or regulate the powers of the constitutional court under the Constitution. Reliance is placed on a full bench judgment of this Court in Arshad Mehmood v. Commissioner etc. (PLD 2014 Lahore 221), which has been upheld by the august Supreme Court of Pakistan in Election Commission of Pakistan through Secretary v. Province of Punjab through Chief Secretary and others (PLD 2014 SC 463). Therefore, reliance of the Federal Ombudsman on section 18 is hopelessly misconceived. The insubordinate and recalcitrant conduct of the Federal Ombudsman is unbecoming and offends the honour and prestige of the constitutional court. Her disobedient conduct, prima facie, attracts section 5 of the Act, 2013 which provides for removal of Ombudsman in the following manner:-

"5. Removal of Ombudsman: An Ombudsman may be removed from office through Supreme Judicial Council on the grounds of being incapable of properly performing duties of his office by reason of physical or mental incapacity or found to have been guilty of misconduct."

23. Office is directed to place a copy of this Judgment before the Hon'ble Supreme Judicial Council, so that it may be treated as a reference against the Federal Ombudsman for her removal in terms of Section 5 of the Act, 2013.

24. This petition is allowed in the above terms.

KMZ/S-44/L Petition allowed.