

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

W.P No.16217 of 2020

M/s Nishat Hotels & Properties Ltd. & another

Versus

Province of Punjab & others

J U D G M E N T

Date of Hearing.	06-06-2023
PETITIONERS BY:	M/s, Imtiaz Rasheed Siddiqui, Barrister Shehryar Kasuri, Muhammad Ajmal Khan, Khurram Shahbaz Butt, Ch. Anwar ul Haq Arif, Muhammad Nasir Khan, Azeem Hafeez, Mudassar Shuja ud Din, Waseem Ahmad Malik, Muhammad Farooq Sheikh, Irtaza Ali Naqvi, Shahid Pervez Jami, Mustafa Kamal, Mahmood Ahmad, Muhammad Asif ur Rehman, Anwar ul Haq, Raza Imtiaz Siddiqui, Muhammad Hamza Sheikh, Jamshaid Alam, Sabeel Tariq Mann, Fasih ur Rehman, Muhammad Ahsan Nawaz, Azeem Ullah Virk, Omer Wahab, Rana usman Habib Khan, Noreen Fozia, Muhammad Yasir Ibrahim, Gul-e-Shifa, Mahmood Arif, Rana Muhammad Afzal Razzaq Khan, Asmar Tariq Mayo, Faisal Anwar Minhas, Kashif Habib, Muhammad Zeeshan Sulehria, Muhammad Arslan Saleem Chaudhry, Mohsin Majeed, Asif Amin Goraya, Najmul Husnain, Ch. Sabir Ali and Hannan Maqsood, Advocates.
RESPONDENTS BY:	M/s Waqas Ahmad Mir, Ahmad Hassan, Momna Taufeeq, Sajid Ijaz Hotiana, Tanzil ur Rehman Hotiana, Dilnawaz Ahmad Cheema, Sardar Qasim Hassan Khan, Hassan Kamran Bashir, Fahad Ikram, Riaz Ahmad Kharal, Ans Ghazi, Sikandar Ali, Ch. Sultan Mahmood, Haseeb Tariq, Muhammad Amin, Samran Mushtaq Chaudhry, Ch. Ahmad Ali Gondal, Faizullah Niazi, Muhammad Baqir Hussain, Syed Tassadaq Mustafa Naqvi, Muhammad Sarfraz Nawaz, Muhammad Ali Farooq, Ghulam Mustfa, Naheed Baig, Muhammad Nauman Yahya, Malik Muhammad Awais Khalid, Ch. Nusrat Javed Bajwa, Qasim Mustafa, Asad Abbas Butt, Riaz Ahmad Khan, Ali Javed Bajwa and Muhammad Umer Riaz, Advocates.

Shahid Karim, J:-. This petition and a cluster of connected petitions (Appendix-I) raise questions of law which can be

decided together. Primarily, the challenge is to the constitution of the Authority under the Punjab Revenue Authority Act, 2012 (“**the Authority**”). Further challenges have been laid to the issuance of show cause notices by the officers of the Authority under Section 52 of the Punjab Sales Tax on Services Act, 2012 (“**Act, 2012**”). In view of the issues involved in these petitions the following order was passed on 08.03.2022:

“Arguments have been partly heard. It is evident that the primary challenge in these petitions is to the constitution of the Authority under the Punjab Revenue Authority Act, 2012 in particular sub-section (4) of section 3 which mandates that the Authority should consist of Chairperson and other members and further provides that the manner and terms & conditions of appointment of the Chairperson and members shall be as prescribed and until so prescribed may be determined by the government. The learned counsel for Authority has produced a notification before this Court today which seeks to entrust permanent charge of post of Chairperson, PRA to Mr. Zain ul Abidin Sahi. Despite two judgments having been passed by different Benches of this Court requiring the statutory rules to be followed by the Govt. of the Punjab, it is not being done. The reluctance of the government to do so works to the detriment of the functionality of PRA. This is not a conducive and beneficial state of affairs and government must be compelled to comply with the provisions of section 3(4) of the Act, 2012 so that composition of the Authority is made in accordance with the law. For the purpose, learned A.A.G shall place this order of the Court before the concerned Secretary who shall initiate steps for prescribing rules in this regard. These rules shall be placed before this Court on the next date of hearing. Until this is done, the further questions raised in these petitions shall be postponed to be decided subsequent to the first steps which are required to be followed by the Govt. of the Punjab.”

2. On subsequent dates of hearing time was given to the Province of Punjab to enact the rules regarding constitution of the Authority. At later stage while the arguments of the counsel for the parties were continuing, it became expedient to defer the determination of question as to constitution of the Authority owing to the fact that the question was already pending determination before a Division Bench of this Court and, therefore, on 30.05.2023 an order was passed to the following effect:

“This order will apply to all petitions in this bundle. Learned counsel for the respondent-PRA has produced a notification dated 01.04.2022 by which the constitution of

the authority has been made. Learned counsel for the petitioners submit that the question is regarding the gap between the holding of the learned Single Judge and reported as “Nishat Hotles and Properties Limited, etc., v. The Province of Punjab, etc.” (PLD 2019 Lahore 729) and the promulgation of this notification constituting the authority and so the question would still be whether the authority was validly constituted and performing its functions, as admittedly during this period there was no authority in place. This question is linked with the broader question regarding the determination made by the learned Single Judge on the issue of sub-section (4) of section 5 of the Punjab Revenue Authority Act, 2012 and that question is before a Division Bench of this Court and any determination by this Court in these petitions would be duplication and an encroachment of the jurisdiction of the Division Bench to determine the issue before it. Therefore, the learned counsel for the petitioners agree that this question should be determined by the Division Bench.

2. *Learned counsel for the petitioners however submits that there are related issues which challenged the jurisdiction of the officers, who have issued individual notices to the petitioners as also other issues, which can be taken up by this Court. One of the issues in some of these petitions is relating to the applicability of the law and the imposition of the levy on petitioners. That issue is also a separate issue and may be dealt with independent of the broader question relating to vires, which was agitated in these petitions. On the rest of the issues, the petitioners are permitted to address arguments so that the issues are narrowed down and must focus on individual issues brought by the petitioners. For the purpose, the petitions are listed for hearing on 05.06.2023.*

3. As is evident from paragraph 2 of the order set out above that these petitions are to be decided on narrower grounds relating to jurisdiction of the officers who have issued the show cause notices to the petitioners. Thus, these petitions can be disposed of on the short question whether the enforcement officers who have issued the show cause notices to the petitioners were competent to do so under the law. For the purpose, section 39 of the Act, 2012 would be engaged which provides that:

“39. Appointment of authorities.— (1) *For purposes of this Act and the rules, the Authority may, in the prescribed manner and by notification in the official Gazette, appoint in relation to any area or cases specified in the notification, any person to be a—*

(a) *Commissioner;*

- (b) *Commissioner (Appeals);*
 - (c) *Additional Commissioner;*
 - (d) *Deputy Commissioner;*
 - (e) *Assistant Commissioner;*
 - (f) *Audit Officer;*
 - [(ff) Audit-cum-Risk Compliance Officer;]*
 - [(fff) Enforcement Officer ;]*
 - (g) *Inspector ; or*
 - (h) *An officer of the Authority with any other designation.*
- (2) *The Commissioner (Appeals) and the Commissioner shall be subordinate to the Authority.*
- (3) *The Additional Commissioners, Deputy Commissioners and the Assistant Commissioners shall be subordinate to the Commissioner and unless otherwise directed by the Authority or the Commissioner, both the Deputy Commissioner and the Assistant Commissioner shall also be subordinate to the Additional Commissioner.*
- (4) *Risk Compliance Officers, Enforcement Officers, Audit Officers, Inspectors and other officers of equal or lower designations, if any, shall be subordinate to the Deputy Commissioner or, as the case may be, to the Assistant Commissioner or as the Authority may, from time to time, specify.*
- (5) *The Authority may designate any Deputy Commissioner supervisory incharge of any Assistant Commissioner either by name or by designation in any of its subordinate offices or formations.*
- (6) *The Authority may distribute the work and related functions amongst the above designations in a manner it deems appropriate and make changes in such work distribution as and when deemed proper.*
- (7) *The Authority may, by notification in the official Gazette, prescribe uniform including shoulder strips and badges for different classes of the officers or officials of the Authority.*
- (8) *All jurisdictional and competency issues arising under this Act or the rules shall be decided by the Authority in such manner as it thinks fit.*

4. For the purpose of resolution of this dispute, the words “in the prescribed manner” used in Sub-section (1) of Section 39 would assume critical importance. It is the contention of the counsel for the petitioners that the term ‘prescribed manner’ is a term of art and has been defined in section 2(31) of the Act, 2012 to mean:

“2(31) “prescribed” means prescribed by the rules.”

5. The term ‘prescribed’ means prescribed by the rules. The power to make rules has been conferred by section 76 of the Act, 2012 and the power vests in the Authority which may enact rules with the approval of the government and by notification in the official gazette. Sub-section (2) of section 76 further provides that all rules made under Sub-section (1) during a financial year shall be laid in Provincial Assembly of the Punjab at the time of presentation of the Annual Budget for the next financial year. Thus, appointment of the officers and authorities for the purposes of the Act, 2012 has to be done by the Authority by firstly enacting rules as this is the only prescribed manner in which the appointment can be made. The power vesting in the Authority under Section 39 relates to appointment of officers in relation to any area or cases specified in the notification. It indubitably follows that unless there are rules which have been enacted for the specific purpose of appointment of officers mentioned in section 39 to exercise jurisdiction in relation to certain areas or cases, those officers cannot assume the jurisdiction to exercise powers in terms of section 52 of the Act, 2012 and to issue show cause notice.

6. Learned counsel for PRA admits to the position regarding absence of the rules in this regard. He, however, invited this Court to hold that the words “in the prescribed manner” is a drafting error on the part of Provincial Assembly and must be ignored. This is a fantastic argument to say the least and cuts across the fundamental rule of interpretation to the effect that redundancy cannot be attributed to the legislature. In my opinion, if the legislature intended the Authority to appoint officers by firstly enacting rules in this regard, then the ineluctable conclusion is that no officer can either be appointed nor can he exercise jurisdiction unless the Authority acts under the rules which have been formulated for the purpose. Since none exists, the act of the Authority in conferring jurisdiction upon the officers to issue show cause notices in respect of cases and areas is *ultra vires* the powers of the Authority. It is not clear as to how the jurisdiction was conferred on the officers who issued show cause notices to petitioners. Not only that there are no rules in place which lay down the decision-making process but also that, admittedly, the constitution of the Authority took place vide notification dated 01.04.2022 (produced in Court today) and thus no decision could have been made by a truncated Authority with no legal pedigree.

7. Consequently, it is declared that the show cause notices have been issued incompetently and are without lawful authority and of no legal effect. They are struck down. The judgments relied upon by learned counsel for the respondents-PRA are not relevant for the controversy in hand and need not be discussed in details. It is made clear that the

Authority may proceed in accordance with law if the allegations against the petitioners are sought to be pursued.

Petitions allowed.

(SHAHID KARIM)
JUDGE

Approved for reporting.

JUDGE

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Rqfaqat Ali

Appendix-I

Sr. No.	W.P. Nos.	Title
1.	14470 of 2021	Oil Trade (Pvt.) Ltd. Vs. Province of Punjab & others
2.	13347 of 2021	M/s. Khyber Manpower Services Vs. Province of Punjab & others
3.	12513 of 2021	Moiz Textile Mills Ltd. Vs. Province of Punjab & others
4.	10585 of 2021	Shahzor Feeds (Pvt.) Ltd. Vs. Province of Punjab & others
5.	10581 of 2021	Omar Jibran Engineering Industries Ltd. Vs. Province of Punjab & others
6.	10470 of 2021	M/s. Samsol International (Pvt.) Ltd. Vs. Province of Punjab & others
7.	26 of 2021	M/s. Panther Tyres Limited Vs. Province of Punjab & others
8.	23 of 2021	M/s. Gas & Oil Pakistan Ltd. vs. Province of Punjab & others
9.	61734 of 2020	Lahore Feeds Limited Vs. Province of Punjab & others
10.	60939 of 2020	M/s. Salva Oil and General Industries (Pvt.) Ltd. Vs. Province of Punjab & others
11.	57717 of 2020	Siemens (Pakistan) Engineering Co. Ltd. Vs. Province of Punjab & others
12.	54928 of 2020	M/s. First Step Education System (Pvt.) Ltd. Vs. Province of Punjab & others
13.	54922 of 2020	M/s. Rafi Gardens vs. Province of Punjab & others
14.	54198 of 2020	M/s. Omeeta International (Pvt.) Ltd. vs. Province of Punjab & others
15.	54032 of 2020	M/s. Sitara Peroxide Limited vs. Province of Punjab & others
16.	52714 of 2020	M/s. Unique Engineering Works (Pvt.) Ltd. vs. Province of Punjab & others
17.	50377 of 2020	M/s. San Developers (Pvt.) Ltd. Vs. Province of Punjab & others
18.	48427 of 2020	M/s. M.A Aleem Khan & Sons vs. Province of Punjab & others
19.	45229 of 2020	Sialkot International Airport Ltd. vs. Province of Punjab & others
20.	44573 of 2020	M/s. Professional Employers (Pvt.) Ltd. vs. Province of Punjab & others
21.	37830 of 2020	M/s. Packages Real Estate (Pvt.) Ltd. vs. Province of Punjab & others
22.	37545 of 2020	M/s. Tahir Builders (Pvt.) Ltd. vs.

		Federation of Pakistan & others
23.	37507 of 2020	M/s. Jhang Educational Trust Jhang vs. Province of Punjab & others
24.	78923 of 2022	Defence Housing Authority & another Vs. Province of Punjab & others
25.	1544 of 2023	A-Zee Housing vs. Province of Punjab & others
26.	27906 of 2023	M/s. Gharibwal Cement Ltd. vs. Province of Punjab & others
27.	20753 of 2023	M/s. Nishat Hotel & Properties Ltd. vs. Province of Punjab & others
28.	11182 of 2021	M/s. First Jamia Services Ltd. vs. Province of Punjab & others
29.	7147 of 2022	ICC (Pvt.) Ltd. vs. Province of Punjab & others
30.	53370 of 2020	Redtone Telecommunications Pakistan Ltd. Vs. Province of Punjab & others
31.	36445 of 2020	China State Construction Engineering Corporation Vs. Province of Punjab & others
32.	14845 of 2021	Mian Etisham ul Haq Vs. Province of Punjab & others
33.	17312 of 2021	M/s. Al Mussaddiq Construction Engineers (Pvt.) Ltd. Vs. Province of Punjab & others
34.	20459 of 2021	M/s. SN Developments Vs. Province of Punjab & others
35.	24444 of 2021	M/s. Waves Singer Pakistan Vs. Province of Punjab & others
36.	26446 of 2021	M/s. New Look Beauty Parlour Vs. Province of Punjab & others
37.	33818 of 2021	Sabirs' Vegetable Oils (Pvt.) Ltd. Vs. Province of Punjab & others
38.	33838 of 2021	Hi Tech Feeds (Pvt.) Ltd. Vs. Province of Punjab & others
39.	35231 of 2021	National Flour & General Mills Ltd. Vs. Province of Punjab & others
40.	36398 of 2021	Kausar Ghee Mills (Pvt.) Ltd. Vs. Province of Punjab & others
41.	37091 of 2021	Ramzan Sugar Mills Ltd. Vs. Province of Punjab & others
42.	37095 of 2021	Sharif Feed Mills (Pvt.) Ltd. Vs. Province of Punjab & others
43.	45166 of 2021	M/s. Textile Connect & others. Vs. Province of Punjab & others
44.	52625 of 2021	M/s. Ihsan Cotton Products (Pvt.) Ltd. Vs. Province of Punjab & others
45.	59656 of 2021	M/s. Ranyal Synthetic (Pvt.) Ltd. Vs.

		Province of Punjab & others
46.	60432 of 2021	M/s. Areaa Insaat Gida Tekstil. Vs. Province of Punjab & others
47.	72523 of 2021	M/s. Sarena Textile Industries. Vs. Province of Punjab & others
48.	75547 of 2021	M/s. Pacific Industries (Pvt.) Ltd. Vs. Province of Punjab & others
49.	79632 of 2021	Potential Engineers (Pvt.) Ltd. Vs. Province of Punjab & others
50.	2423 of 2022	M/s. Ibadat Educational Trust Vs. Province of Punjab & others
51.	5060 of 2022	M/s. Gharibwal Cement Ltd. Vs. Province of Punjab & others
52.	10537 of 2022	M/s. Bushra Mohsin Signature Salon Vs. Province of Punjab & others
53.	64060 of 2022	M/s. Kalma Garden Housing Scheme Vs. Province of Punjab & others
54.	15289 of 2023	M/s. CEEC Tianjin (Pakistan) Electric Power Construction (Pvt.) Ltd. Vs. Province of Punjab & others
55.	18855 of 2023	Ali Garden Vs. Province of Punjab & others

(SHAHID KARIM)
JUDGE

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Rqfaqat Ali