

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.73648 of 2022

The Lahore Gymkhana

Vs.

The Punjab Information Commission & another

JUDGMENT

<i>Date of hearing</i>	<i>16.12.2022.</i>
<i>Petitioner(s) by</i>	<i>Barrister Rafey Zeeshan Altaf, Advocate Supreme Court.</i>
<i>Respondents by</i>	<i>Barrister Tayeeb Jan, Assistant Advocate General. Mr. Azhar Siddique, Advocate Supreme Court. Abdullah Malik Advocate (Respondent No.2 in W.P. No.73651-2022).</i>

SULTAN TANVIR AHMAD, J:- Through this decision the present petition as well as connected petitions bearing Nos. 73651 of 2022 and 73654 of 2022 involving similar question(s) and being outcome of the same order shall be decided.

2. The facts, necessary for the decision of the present case, are that respondent No. 2 filed application dated 10.02.2021 before the petitioner to provide certain

information, however, upon failure to make the disclosure and / or to provide the requisite information, respondent No. 2 approached the Punjab Information Commission (the ‘*Commission*’), by way of appeal, which was contested by the petitioner. After hearing the arguments of both sides, the *Commission* allowed the appeal and reached to the following conclusion, vide order dated 08.11.2022: -

“...As a sequel to above discussion, we unanimously allow all three RTI Complaints with direction to Secretary LGC to forward certified copies of requisite information at the given addresses of Complainants within 3 days after receipt of this order. The names and identities of members along with children and donors etc., shall not be disclosed on the principle of privacy however total number of each group with break-up of government service members and otherwise will be disclosed along with all other requisite information requested by Complainants vide Annex-A...”

Aggrieved from the above decision, the present petition, under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has been filed.

3. Barrister Rafey Zeeshan Javed Altaf, learned counsel for the petitioner has submitted that according to section 6 of the Punjab Transparency and Right to Information Act, 2013 (*‘PTRI Act’*), the *Commission* can only pass direction for the disclosure of information against a “public body” as defined under section 2(h) of *PTRI Act*,

whereas, the petitioner being a public limited company does not fall within the scope of a “public body”. It is submitted by the learned counsel that section 2(h) of *PTRI Act* starts with the word “means” which contemplates that the definition of “public body” contained therein is exhaustive, hence the liberal construction to the expression “public body” to bring any other categories into its fold, including the petitioner, is not permissible, as per the law settled by the Honourable Sindh High Court in cases titled “Soneri Travel and Tours Ltd. through Chief Executive/Director/Secretary versus Soneri Bank Limited” (2011 CLD 193) and “Muhammad Hussain versus Messrs Adamjee Sheikh Jeevanjee and another” (2001 MLD 1183); that the *Commission* has wrongly relied upon section 2(h)(iv) of *PTRI Act* to reach the conclusion that the petitioner is a “public body” while ignoring the rule of *ejusdem generis*; that the general words used in section 2(h)(iv) of *PTRI Act* “other body” were required to be construed in the light of the specific words of same genus, which makes it amply clear that the legislature intended same limitation to the meaning of the words “or other body”. In this regard, the learned counsel has relied upon Maxwell on Interpretation of Statutes (twelfth edition) as well as Fourth Edition of the book Understanding Statutes, Canons of

Construction (by S.M. Zafar). It is further submitted by the learned counsel for the petitioner that section 2(h)(vii) of *PTRI Act* contemplates “non-government organization”, as defined in advanced law lexicon (Third Edition) Volume-3 (2005), in the sense of non-profit making organizations in private sector that provide assistance in developing Country through aid and by providing skilled personnel training or non-profit group or association etc., which has no *nexus* with the petitioner. To establish his view point that the term “non-government organization” is used in *PTRI Act* for the organizations that are usually known as ‘NGOs’ the learned counsel has relied upon cases titled “Thalappalam Service Cooperative Bank Limited and others versus State of Kerala and others” [(2013) 16 Supreme Court Cases 82] and “Aitex Pakistan versus Government of Pakistan and others” (PLD 2020 Lahore 1). Without prejudice to the stance that petitioner does not fall within the definition of “public body” as contemplated in section 2(h)(iv) of *PTRI Act*, it is submitted by the learned counsel of the petitioner that even otherwise, the grant of leasehold rights of 117 acre state (*nazul*) land does not amount to ‘substantial financing’ by the Government or Local Government as the term “substantially financed” in *PTRI Act* has been used for restricted bodies and

the word ‘substantial’ even if taken in literal sense means solid and massive and the degree of finance involved therein must be actual, existing and positive in monetary terms; that the *Commission* has omitted to consider that 97 acres of the total lease land comprises of golf course, which is being maintained by the petitioner at its own expenses under the terms of lease and the petitioner is maintaining the golf course for the State by incurring huge expenses; that in the financial year 2021 alone Rs.40,632,212/- has been spent by the petitioner, for which the learned counsel has relied upon annual report of the petitioner to substantiate this argument. Lastly, the learned counsel for the petitioner has submitted that the *Commission* has relied upon the case laws by the learned Courts of India without appreciating that the laws dealing with the Right to Information Act, 2005 (*RIA 2005*) is not in *pari materia* with *PTRI Act*, thus, the judgments relied by the *Commission* are not applicable.

4. On the other hand, Barrister Tayeeb Jan, learned Assistant Advocate General Punjab appearing for respondent No.1 has submitted that rule of *ejusdem generis* is not applicable to section 2(h)(iv) of *PTRI Act* as the words preceding “or other body” do not pertain to same genus or category; that even otherwise, “or other body substantially

financed by the Government”, by no stretch of imagination can be confined, keeping in view the intent of the legislature, which is very clear even by literal and plain interpretation; that the principle of *ejusdem generis* is not applicable to the case in hand in view of the law enunciated by the Honourable Supreme Court of Pakistan in case titled “Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others versus Intizar Ali and others” (2022 SCMR 472), as the intent of legislature is manifestly clear from the wording of the statute, therefore, the same requires that such law is to be interpreted by assigning ordinary English meanings and usage of the words chosen by the legislature; applying the rule of *ejusdem generis*, as claimed by the learned counsel for the petitioner, will result into absurd situation. In this regard, learned Law Officer has relied upon cases titled “Federation of Pakistan through Secretary M/o Petroleum and Natural Resources and another versus Durrani Ceramics and others” (2014 SCMR 1630) and “Syed Mukhtar Hussain Shah versus Mst. Saba Imtiaz and others” (PLD 2011 SC 260). The learned Law Officer has further argued that word “substantially” essentially means materially and it does not necessarily required to have domain of major portion or more than fifty percent; that by providing State (*nazul*) land of

117.07 acre at the rate of Rs.5,000/- per annum, the Government is “substantially financing” the petitioner, therefore, the same falls within the scope of section 2(h)(iv) of *PTRI Act*; that word “substantially” is not synonymous with dominant or majority rather it is closer to word material or important and when this word is read in context, the object of the legislature becomes very clear. Learned Law Officer has relied upon various judgments including the decision of the Karnataka High Court in case titled as “Bangalore Turf Club Limited versus State Information Commissioner” (W.P. No.18449 of 2015) and decision of the Delhi High Court in case titled “Ifci Ltd. versus Ravinder Balwani” (W.P. No.4596 of 2007) as well as the definition of ‘substantial’ given in Black’s Law dictionary and other English dictionaries.

5. Mr. Azhar Siddique, learned counsel for respondents and Mr. Abdullah Malik, learned Advocate have also opposed the petition, while relying upon cases titled “Province of Punjab versus Qaiser Iqbal and others” (PLD 2018 Lahore 198), “Watan Party and others versus Federation of Pakistan and others” (PLD 2012 Supreme Court 292) and “Dr. Shahid Masood and others versus Federation of Pakistan and others” (2010 SCMR 1849). It is contended that Article 19-A of the Constitution of Islamic

Republic of Pakistan, 1973, envisages every citizen of the Country to become independent of power center and to have access to information in all matters of public importance; that there are rights of every citizen to have access to information in all matters of public importance as guaranteed by the Article 19-A of the Constitution of Islamic Republic of Pakistan, 1973, thus, any measure which directly or indirectly could restraint on or curtails access to information, is to be avoided.

6. I have heard the arguments of learned counsel of the parties and perused the documents, available on the file, with their able assistance.

7. It is appropriate to start with the contention of Barrister Rafey that grant by the Government of the State (*nazul*) land comprising of 117.07 Acres on lease to the petitioner does not amount to “*substantially financed*” and such facility neither qualify to be ‘*finance*’ nor is it ‘*substantial*’ in nature within the meaning of section 2(h) of *PTRI Act*. The relevant part of this definition section is as follows:

2(h) "public body" means-

(i) a department, attached department, autonomous or semiautonomous body of the Government, a company of the Government or a special institution;

(ii) a local government constituted under the Punjab Local Government Act 2013 (XVIII of 2013) or any other law for the time being in force;

(iii) Secretariat of Governor of the Punjab;

*(iv) any court, tribunal, office, Board, Commission, Council, **or other body substantially financed by the Government,***

(v) Provincial Assembly of the Punjab

(vi) statutory body established under a provincial law, and

*(vii) a non-government organization **substantially financed by the Government or a local government,***

(Emphasis supplied)

8. Perusal of lease deed dated 12.06.1996 reflects that land measuring one thousand thirty kanal, one marla, eighty feet situated in mauza Mian Mir at Upper Shahrah-e-Quaid-e-Azam (Upper Mall), Lahore has been granted to the petitioner on lease for fifty years from 01.04.2000 to 31.03.2050 merely against token rent of Rs. 5,000/- (rupees five thousand only), per annum. This land exists in one of the most premium and expensive area of Lahore. The *Commission* has roughly assessed the value of the lease land as more than fifteen (15) billion rupees, which is not denied by the petitioner before this Court. The sports grounds including golf course and other facilities being provided by the petitioner to its members exist on the land that is granted by Government of the Punjab to the petitioner almost free of cost. The argument from the petitioner side that massive

amount is being spent by the petitioner to maintain the golf course for the Province of Punjab has no substance as these facilities on the leased land are the reason for the people to have membership of the petitioner-club from where these expenses are being incurred or these maintenance charges are being paid. The leased land forms part of the resources of the State. The grant of leasehold rights of the land which is worth billions of rupees for almost free of cost by Government of the Punjab is an enormous benefit to the recipient / the petitioner. This accommodation, by the Government of providing one thousand thirty kanal one marla eighty feet land situated at Upper Mall, Lahore to the petitioner at the rate of Rs.5,000/- per annum which cannot be even termed as any rate whatsoever and the land is question that otherwise has rental value having no comparison with what is being fetched from the petitioner, clearly amounts to financial assistance by the Government.

9. The word “financed” used in section 2(h)(iv) and (vii) *ibid* is qualified by the word “substantially”. Not every financial support or accommodation falls within the above definition unless it satisfies that the same amounts to ‘substantial’. The words ‘substantial’ or ‘substantially’ are not defined in *PTRI Act*. When a particular word is not

defined in a statute then in order to interpret the same or to understand the intention of legislature, the elementary principle recognized by the Honourable Supreme Court of Pakistan is to give such words plain dictionary meanings, unless it results into some absurdity or the same renders the word(s) or part of the statute as superfluous. Reference can be made to the cases titled “Muhammad Ijaz-ul-Haq Versus Executive District Officer and Others”(2006 SCMR 989), “Federation of Pakistan through Secretary M/o Petroleum and Natural Resources and another” (*supra*) and “Syed Mukhtar Hussain Shah” (*supra*). The word ‘substantially’ in Concise Oxford English Dictionary (twelfth edition) is defined as ‘*to a great significant extent or for most part; essentially*’. The word ‘substantial’ in the Chambers Dictionary (twelfth Edition) is defined as having “*substance; being a substance; essential; actually existing; real; corporeal, material; solid; stable; solidly based; durable; enduring; firm, stout, strong; considerable in amount; bulky; well-to-do, wealthy, influential*”. As per Concise Oxford English Dictionary (twelfth edition), the word “substantial” means “*considerable important, size or worth; strongly built or made; important in material or social terms; wealthy; concerning the essentials of something or real tangible rather*

than imaginary". The Delhi High Court in case titled "Ifci Ltd. vs Ravinder Balwani" (W.P. (C) 4596/2007) while defining the words "substantially financed" concluded as follows:

"....Therefore the word substantial is not synonymous with dominant or majority. It is closer to "material" or "important" or "of considerable value." "Substantially" is closer to "essentially". Both words can signify varying degrees depending on the context. In the context of the RTI Act it would be sufficient to demonstrate that the financing of the body by the appropriate government is not insubstantial.

24. In *Indian Olympic Association v. Veeresh Malik* [judgment dated 7th January 2010 in W.P. (C) No. 876 of 2007] the learned Single Judge of this Court was examining whether the Indian Olympic Association, the Sanskriti School and the Organising Committee Commonwealth Games 2010, Delhi were public authorities under the RTI Act. While answering that question in the affirmative, it was held as under (para 58):

"This court therefore, concludes that what amounts to "substantial financing cannot be straight-jacketed into rigid formulae, of universal application. Of necessity, each case would have to be examined on its own facts. That the percentage of funding is no "majority" financing, or that the body is an impermanent one, are not material. Equally, that the institution or organization is not controlled, and is autonomous is irrelevant; indeed, the concept of non-government organization means that it is independent of any manner of government control in its establishment, or management. That the organization does not perform - or predominantly perform--"public" duties too, may not be material, as long as the object for funding is achieving a felt need of a section of the public, or to secure larger societal goals. To the extent of such funding, indeed, the organization may be a tool, or vehicle for the executive government's policy fulfillment plan."

(Emphasis Supplied)

10. The Karnataka High Court, while deciding case titled “Bangalore Turf Club Limited versus State Information Commissioner” (W.P.No.18449 of 2015) as well as Writ petitions No. 38347 of 2013, 58192 of 2013, 8053 of 2015 and 22774 of 2015, has observed that the word substantial does not necessarily have to mean a major portion or more than fifty percent. It has also been observed that if a land in a city is given free of cost or on heavy discount the same falls within the meaning of substantial. Barrister Tayeeb Jan, learned Law Officer has also relied upon the decision of the Delhi High Court in case titled “Mother Dairy Fruit & Vegetable Private Limited vs Hatim Ali & Anr.” (W.P. (C) 3110/2011 & CM 6577/2011, wherein the following has been observed:-

36. *The Supreme Court in Thalappalam (supra) observed as under:-*

“The word ‘substantially’ has been defined to mean ‘in substance; as a substantially thing or being; essentially, intrinsically’. Therefore the word ‘substantial’ is not synonymous with ‘dominant’ or ‘majority’. It is closer to ‘material’ or ‘important’ or ‘of considerable value’. ‘Substantially’ is closer to ‘essentially’. Both words can signify varying degrees depending on the context.

38. Merely providing subsidiaries, grants, exemptions, privileges etc., as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist.”

37. *Applying the aforesaid principles to the facts of the present case, it would be seen that the undertakings of the petitioner had been funded, to a significant extent,*

by the Central Government... ”.

(Underlining is added)

11. The plain dictionary meaning of the words ‘substantial’ and ‘substantially’ as well as reading of word ‘substantially’ in the context of the relevant provision leave hardly any doubt that it is not necessary to measure the financing in percentage and the contribution of Government is not required to be more than fifty percent or having major portion or dominant and majority part but it is sufficient if the financial assistance is **material** and **important** or when such contribution is **fairly large** and it is having **essential role in existence** of an entity / body. The financial assistance, in shape of leasehold rights of massive land in the most premium locality of Lahore for negligible amount, is not just fairly large but at the same time the petitioner has failed to bring anything on record against the finding of the *Commission* that the contribution of the Government in shape of leased land is so substantial for the petitioner that without such accommodation by the Government the petitioner practically would struggle to exist, which is envisaged by *PTRI Act* as ‘substantially financed’.

12. Taking up the next stance of the petitioner that the *Commission* fell to an error while failing to construe the words “or other body” in violation of rules of *ejusdem generis*

and by giving the same wider meanings than intended by the legislature. The general word if followed by specific words of the same nature is presumed to be restricted to the same genus as those in the specific words, however, if the statute shows that wider sense is intended or there are provisions in the statute which reflect that certain other categories are included out of the suggested genus, the rule of *ejusdem generis* does not apply. In case titled “Don Basco High School versus The Assistant Director, E.O.B.I. and others” (PLD 1989 SC 128), the Honourable Supreme Court of Pakistan while dealing with the rule of *ejusdem generis* has clearly observed that the said rule of construction is applicable, to construe the general word followed by specific words, only when the intention to contrary is not reflected. It will be advantageous to reproduce the following extract from the Don Basco High School case (*supra*):-

“According to ‘Maxwell on the Interpretation of Statutes, 12th Edition, page 297, it is a well-established rule in the construction of statutes that “general terms following particular ones apply only to such persons or things as are *ejusdem generis* with those comprehended in the language of the Legislature; R. V. Cleworth (1864) 4 B. & S. 927, per Cockburn C.J. at 932. In other words, **the general expression is to be read as comprehending only things of the same kind as that designated by the preceding particular expressions, unless there is something to show that a wider sense was intended**”. Reference is made by the author to R.

v. *Edwardson* (1859) 28 L.J.M.C. 213).

According to *Corpus Juris Secundum*, Volume 82, page 658, **the rule or doctrine of ‘ejusdem generis’ will apply unless intention to the contrary is clearly shown.** The relevant passage may be quoted here. It reads:

“Where general words follow the enumeration of particular classes of persons or things, the general words, under the rule or maxim of construction known as ‘ejusdem generis.’ will be construed as applicable only to persons or things of the same general nature or class as those enumerated, unless an intention to the contrary is clearly shown.”
(underlining is ours)

J.G. Sutherland, in his book ‘Statutes and Statutory Construction’, (Third Edition) in section 4910, at page 400 has stated that the doctrine applies when the following five conditions exist:

- (1) the statute contains an enumeration by specific words;
- (2) the members of the enumeration constitute a class;
- (3) the class is not exhausted by the enumeration;
- (4) a general term follows the enumeration; and
- (5) **there is not clearly manifested an intent that the general term be given a broader meaning than the doctrine requires.”**

(Emphasis supplied)

13. The ratio of the above case was further followed by the Honourable Supreme Court of Pakistan in case titled “Jamat-i-Islami Pakistan through Syed Munawar Hassan Secretary General versus Federation of Pakistan through Secreatry, Law Justice and Parliamentary Affairs”

(PLD 2000 Supreme Court 111). In cases titled “Amar Chandra Chakraborty versus Collector of Excise Government of Tripura and others” (1972 AIR 1863) and “Grasim Industries Ltd. versus Collector of Customs, Bombay” (Appeal (Civil) 1951 of 1998), the Supreme Court of India has observed that the rule of *ejusdem generis* is applicable to reconcile incompatibility between the specific and general words in view of other rules of interpretation that all words in a statute are given effect if possible and that a statute is to be construed as a whole and no word in statute should be presumed superfluous; that the rule is applicable only when there is no indication of a different legislative intent. The following part of the judgment of “Grasim Industries Ltd. (supra) is relevant:-

“...In such a case the general words are construed as limited to things of the same kind as those specified. **The rule reflects an attempt to reconcile incompatibility between the specific and general words in view of the other rules of interpretation that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous. The rule applies only when (1) the statute enumerates the specific words, (2) the subjects of enumeration constitute a class or category, (3) that class or category is not exhausted by the enumeration, (4) the general terms follow the enumeration and (5) there is no indication of a different legislative intent. If the subjects of enumeration belong to a broad based genus, as also to a narrower genus there is no principle that the general words should be confined to the narrower genus.....**”

(Emphasis supplied)

14. *PTRI Act* has been promulgated by the legislature in order to confirm transparency and to provide freedom of information to ensure that the citizens have improved access to public information; to enforce fundamental right of the citizens to have access to information in all matters of public importance and to provide assistance for ancillary matters. One of the main purposes of *PTRI Act* is to make Government of the Punjab more accountable to the citizens.

15. Furthermore, section 22 of *PTRI Act* reads as follows:-

“22. Interpretation: - This Act, the rules and regulations shall be interpreted so as to advance the purposes of this Act and to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information and effective implementation of right to information.”

(Emphasis supplied)

Reading of above section, preamble of the statute and referring to its object make it amply clear that the legislature envisioned the interpretation of the provisions of *PTRI Act* to advance its purpose of making the Government more accountable to the citizens as well as to facilitate and encourage the disclosure of information for effective implementation of right to information in all matters of public importance. The legislature has already created the

exceptions, in section 13 of *PTRI Act*, for the circumstances or incidences or for the bodies where undue disclosure of information is likely to cause any harm or when in the wisdom of legislature such disclosure is not required. The words ‘*or other body*’ are followed by the words “*substantially financed by the Government*”, which also shows the clear object of legislation to include all the bodies, which are precisely mentioned in section 2(h)(iv) of *PTRI Act* or those other bodies which are not specifically mentioned but *substantially financed by the Government*, enabling the citizens to do accountability of the Government for the utilization of its resources, subject to exceptions given in *PTRI Act* as well as subject to regulation and reasonable restrictions imposed by other laws as contemplated in Article 19-A of the Constitution. In “*Government of Khyber Pakhtunkhwa through Chief Secretary*” case (*supra*), the Honourable Supreme Court of Pakistan has observed that when the meaning of statute is clear and plain language requires no other interpretation then intention of legislature conveyed through such language has to be given full effect and the intention of law maker when manifestly clear from the enactment itself, rule of interpretation requires that such law is to be interpreted in ordinary meanings unless it causes grave

injustice or it leads to absurdity, which is always presumed to be not intended by the legislature. In view of the above discussed clear intent of the legislature, the argument of Barrister Rafey Zeeshan Altaf, learned counsel for the petitioner that rule of *ejusdem generis* limits meaning of words “or other body” to the category preceding the same in section 2(h)(iv) of *PTRI Act* and it excludes the petitioner from the scope of Act, is not acceptable, thus, rejected.

16. The learned counsel for the petitioner has next argued that section 2(h) of *PTRI Act*, wherein “public body” is defined, starts with the word “means”, which reflects that the list contained therein is exhaustive in nature. However, there is no denial by the respondents of the fact that the list of the public bodies contained in section 2(h) of *PTRI Act* is exhaustive list but the imperative question remained that a body or institution that is ‘substantially financed by the Government’ is part of the list contained in the said definition clause and since the petitioner squarely falls within one of the category given therein (i.e. section 2(h)(vii)), thus, the argument as to whether this list is exhaustive or not, is of no help to the petitioner.

17. For what has been discussed above, I am of the considered view that the order dated 08.11.2022 passed by the

Commission does not suffer from any illegality. Consequently, the present petition as well as the connected petitions are dismissed. No order as to costs.

(SULTAN TANVIR AHMAD)
JUDGE

Approved for reporting

JUDGE

Announced in the open Court on _____

JUDGE

J.A Hashmi