JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W. P. No.3481/2016.

Farrukh Nawaz Bhatti

Versus

Federal Government through Prime Minister of Pakistan & 3 others

Petitioner by	:	Mr G. M. Chaudhry, ASC. Raja Muhammad Shafaqat Khan Abbasi, ASC. Mr Husnain Ibrahm Kazmi, ASC. Ch. Shafiq Ur Rehman, ASC.
Respondent by	:	Mr Afnan Karim Kundi, Additional Attorney General. Kh. Muhammad Imtiaz, Assistant Attorney General. Mr Kasif Ali Malik, ASC. Mr Tariq Mehmood Jehangiri, ASC. Mr Muhammad Nazir Jawad, ASC.
Date of Hearing	:	22.09.2017.

ATHAR MINALLAH, J.- Through this consolidated judgment, I shall decide the instant petition and the petitions which are listed in Annexure-A attached hereto.

2. The petitioners have challenged the notifications whereby Sheikh Ansar Aziz, Mayor of the Metropolitan Corporation, Islamabad (*hereinafter referred to as the* ***'respondent'***) has been given the additional charge of the office of Chairman of the Capital Development Authority on a part time basis after his ex officio appointment as a Member of the Board. The respondent was elected as the Mayor under the Islamabad Capital Territory Local

Government Act 2015 (*hereinafter referred to as the* ***'Act of 2015'***). The Federal Government, vide notification dated 06-09-2016, nominated the Mayor, Metropolitan Corporation Islamabad (*hereinafter referred to as the* ***'Corporation'***) as ex-officio Member of the Board of the Capital Development Authority (*hereinafter referred to as the* ***'Authority'***). On the same date, i.e. 06-09-2016, through a separate notification, the Federal Government directed that Sheikh Ansar Aziz (i.e. the respondent), in his capacity as Member of the Board of the Authority, shall discharge additional functions of the Chairman, Capital Development Authority on a part time basis. The petitioners, therefore, have sought a writ in the nature of quo warranto requiring the respondent to legally justify and show under what authority of law he claims to hold the office of the Chairman of the Authority.

3. The gist of the arguments advanced by Mr. G.M Chaudhry, Raja Mohammad Shafqat Abbasi, Husnain Ibrahim Kazmi and Ch. Shafiq-ur-Rehaman, ASCs who appeared on behalf of the petitioners are; the doctrine of separation of power enshrined in the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the* ***'Constitution'***) requires the Executive and the Legislature to exercise powers within their respective spheres; the Act of 2015 is a distinct statute and that the respondent was elected as a Mayor there under; the respondent was elected as a Mayor and the said expression is defined under section 2(z) of the Act of 2015; the appointment of the respondent as Chairman of the Authority is in violation of section 3 of the Act of 2015; under section 12 of the Act of 2015, the office of Mayor has been declared as an elected office, whereas a Member of the Board of the Authority is appointed for a fixed term; the nomination of the Mayor by designation as a Member of the Board of the Authority is alien to section 6 of the Capital Development Authority Ordinance, 1960 (*hereinafter*

referred to as the ***'Ordinance of 1960'***); there is no concept of nomination of ex-officio Member; the impugned notifications, dated 06-09-2016, are without lawful authority, *void ab initio* and illegal; the assignment of functions of the Chairman on part time basis is also alien to section 6 of the Ordinance of 1960; the respondent was Chief Executive Officer and shareholder of M/s Anser Brothers (Pvt.) Ltd. (*hereinafter referred to as the* ***'Company'***); the respondent held 90% shares of the Company; the Company had a financial interest since it had participated in auction of commercial plots and also a contract was awarded in its favour by the Authority; the appointment, therefore, on account of conflict of interest was in violation of section 8(e) of the Ordinance of 1960.

4. The learned Additional Attorney General has argued that; the remedy under Article 199 of the Constitution can only be invoked against a person who holds or purports to hold a public office; the office of the Chairman of the Authority is not a public office; reliance has been placed on the case of *'Salahuddin and 2 others v. Frontier Sugar Mills and Distillery Limited, Tokht Bhai and 10 others'* [PLD 1975 SC 244]; the petitioners are required to establish their bonafides otherwise the extra ordinary relief by way of issuing a writ of quo warranto is not warranted; reliance has been placed on the case of *'Dr. Kamal Hussain and 7 others v. Muhammad Sirajul Islam and others'* [PLD 1969 SC 42]; a clear violation of law has to be shown and in this regard the petitioners have not been able to do so; reliance has been placed on the case of *'Muhammad Akhtar v. Syed Hassan Mujtaba Jaffri and 8 others'* [2005 PLC (CS) 997]; under section 15 of the General Clauses Act, 1897, where a statue confers the power to appoint any person to fill any office then it would include the power to appoint ex-officio; reliance has been placed on the cases of *'Public Prosecutor (Andhra Pradesh)*

v. Narkidimilli Srirambhadrayya and others' [AIR 1960 AP 282], *'New India Insurance Co. Ltd. Bombay v. Smt. Molia Devi and others'* [AIR 1969 MP 190]; *'Abdul Husain Tayabali etc, v. The State of Gujrat and others'* [AIR 1968 SC 432]; *'Farhat Abbas v. Muhammad Shah and 3 others'* [1981 CLC 1855].

5. Mr Kashif Ali Malik, AHC, and Mr Muhammad Nazir Jawad, ASC, appeared on behalf of the Authority. They have argued; the Federal Government is vested with power to appoint any person as a Member and then from amongst the Members a Chairman; no provision of law has been violated on account of appointing the respondent as Member and then Chairman; there is no bar under section 8 to appoint the Mayor of the Corporation as a Member and then Chairman of the Authority; the appointment of the respondent was inevitable for smooth transition of assets and employees from the Authority to the Corporation; the conduct of the petitioners does not entitle them to the relief which has been sought in the petitions; hitherto Members and Chairman have been appointed by the Federal Government from time to time; the petitioners have placed on record copies of notifications of the persons who were appointed as Members and Chairman from time to time.

6. Mr Tariq Mehmood Jehangiri, ASC, appeared on behalf of the respondent and has vociferously argued that; the appointments of the latter is in accordance with the provision of the Ordinance of 1960; section 8 does not bar the respondent from being appointed; no financial interest of the respondent in any scheme is involved; the Company is not registered with the Authority; the respondent has transferred shares in the Company; the power to appoint a Member and from amongst them a Chairman exclusively

vests in the Federal Government; the expression 'disqualification' mentioned in section 8(e) of the Ordinance of 1960 has to be construed as relating to a declaration in this regard by a competent Court; reliance has been placed on *'Arbab Imtiaz Khan v. Assim Jamil Zubedi and another'* [2011 PLC (CS) 482], *'Makhdoom M. Niaz Inqlabi, Advocate and others v. Election Commission of Pakistan and others'* [2013 CLC 714], *'Major (Retd) Iqbal Ahmed Khan, Manager (Services), Karachi Pipe Mills v. Ghulam Akbar and others'* [1984 PLC (CS) 347].

7. The learned counsels for the parties and the learned Additional Attorney General have been heard and the record perused with their able assistance.

8. Admittedly, Sheikh Ansar Aziz (respondent) was elected as Mayor of the Metropolitan Corporation, Islamabad (hereinafter referred to as the "Corporation") under section 12 of the Act of 2015. The Federal Government, vide notification dated 06-09-2016, nominated the Mayor of the Corporation as ex-officio Member of the Authority. Through a separate notification issued on the same date i.e. 06-09-2016, the Federal Government directed that the respondent, in his capacity as Member of the Board of the Authority, shall discharge additional functions of the Chairman on a part time basis. Both the notifications have been issued, purportedly, in the exercise of powers conferred on the Federal Government under sub sections (1) and (2) of section 6 of the Ordinance of 1960. The Authority has been established under the Ordinance of 1960 and section 6 ibid prescribes the manner, qualifications and conditions for the appointment of a Member of the Board of the Authority and subsequently from amongst the Members its Chairman. A plain reading of both the impugned notifications, dated 06-

09-2016, would clearly show that neither the nomination of the Mayor as ex-officio Member of the Board nor the subsequent direction in respect of the respondent to discharge the additional functions of the Chairman are in the nature of making appointments on a permanent basis for a fixed term. It is noted that the notification issued by the Federal Government, directing that Sheikh Ansar Aziz shall 'discharge additional functions of Chairman CDA on part time basis until further order', can by no stretch of the imagination be construed as an appointment of the Chairman of the Board of the Authority as intended by the legislature in terms of section 6 of the Ordinance of 1960. As already noted, the appointments of a Member and the Chairman of the Board of the Authority are governed under the Ordinance of 1960. For adjudication of the instant petitions and examining the legality of the two impugned notifications, dated 06-09-2016, it is inevitable to survey the relevant provisions of the Ordinance of 1960. However, in order to appreciate the intent of the legislature in enacting the Ordinance of 1960, it would be beneficial to first briefly discuss the background which had led to its promulgation.

9. After the independence of Pakistan as a sovereign State, the first task was to search for the most suitable place which could be declared as the country’s Capital. Initially it was proposed that the city of Karachi be declared as such. However, the master plan prepared in the year 1952 relating to the city of Karachi could not get official approval. The then President of Pakistan constituted a special Commission for identifying a suitable location for the Capital. The Commission held its first meeting in 1959. The Commission constituted nine Sub-Committees, each consisting of experts from various fields to make recommendations. In February 1959, the President of Pakistan appointed a renowned architect and city planner of

international repute, namely Dr C. A Doxiadis, as Advisor to the Special Commission for the location of the Capital (hereinafter referred to as the "Special Commission"). A preliminary report i.e. DOX-PA 88, was submitted by the Commission. In June 1959 the Special Commission submitted its report recommending that the city of Karachi was not a suitable site and instead two locations around Rawalpindi were proposed. In June 1959 the President of Pakistan publically announced his decision regarding the selection of one of the proposed locations for establishing the Capital of the Islamic Republic of Pakistan. Dr. C. A Doxiadis was given the task of preparing the next phase. In September 1959 the President of Pakistan and the Cabinet established the Federal Capital Commission (hereinafter referred to as the "Federal Commission"). The renowned international firm for town planning, namely, M/S Doxiadis Associates, was appointed as consultant to the Federal Commission. The latter constituted several sub committees of experts to carry out surveys and investigations for preparing a Master Plan for the approved area which was to be the Capital of Pakistan. On 24-02-1960 the Cabinet gave the new Capital the name of Islamabad. In May 1960, pursuant to the surveys and studies conducted by the committees constituted by the Commission, a preliminary master programme and master plan was prepared and designed by the internationally renowned Greek architect, Dr C. A Doxiadis and his firm. On 24-05-1960 the first Cabinet meeting was held in Islamabad. On 01-06-1960 the Federal Commission was succeeded by the Capital Development Authority. In order to give effect to this succession and in order to establish the Authority, inter alia, for planning and development of the Capital of Pakistan i.e. Islamabad, the then President promulgated the Ordinance of 1960. Simultaneously, another crucial legislative instrument i.e. the Pakistan Capital Regulation

MLR-82, 1960 (hereinafter referred to as the ***"MLR-82"***) was also promulgated and enforced.

10. After extensive surveys and studies, the sub committees submitted their respective final reports. Dr. C. A Doxiadis, on the basis of the said surveys and final reports, submitted his final report titled 'Recapitulative Report DOX-PA 88'. This report consists of three parts and an introduction. The three parts are titled "Towards a new Capital", "Towards Islamabad" and "Programme and plan for Islamabad", respectively. This report is a detailed descriptive part of the Master Plan and programme for the development of the Capital. The report explicitly mentions the intent, object and purpose for establishing the Authority and for promulgating the Ordinance of 1960. This historic and internationally outstanding work was indeed a master piece of town planning. The vision of the founding planners of the Capital i.e. Islamabad, in the words of the report submitted by the Special Commission, is as follows.-

> *"The Capital of a country is not merely just another city; it is a LEADER among cities. To this city come leaders of administration and politics, commerce and trade, literature and art, religion and science. From this city flows the inspiration which pulsates life into the nation. It is a symbol of our hopes. It is a mirror of our desires. It is the heart and soul of the nation. It is, therefore, essential that the environment of the Capital should be such as to ensure continued vitality of the nation".*

11. The object and purpose for which the Authority was established and its duties and obligations have been eloquently described by Dr. C. A Doxiadis in his final report and the relevant portions are reproduced as follows.-

"1039. Capital Development Authority has now been created. The moment has come for certain thoughts on the responsibilities which Capital Development Authority will carry, to enable the realization of the development plan of the Metropolitan Area to be put on a correct basis.

1041. CDA will be responsible for coordinating all endeavours for the development of the whole of the Capital Region so that unity of purpose is ensured at all times. The extent of the region to be controlled will be defined immediately upon approval of the regional plan, which has to be prepared as soon as possible.

1042. But even before that point is reached, in fact from now on, CDA will be generally responsible for coordinating all development within the Metropolitan Area.

1043. As soon as the regional plan is completed, CDA will have to take full control of all new developments within the region, which means that no major development will be possible within the region without its special approval.

1044. CDA may authorize other authorities to prepare plans or carry them out within the region without being itself in charge of all these projects. For example, a new resort may be created, of which CDA might in principle approve the location, size and importance, while at the same time leaving the designs in the hands of another authority for organization although necessarily retaining the right to approve these designs.

1045. Within the Metropolitan Area, however, the responsibilities of CDA will be much larger. It is within the Metropolitan Area that CDA should have not only full control, but full responsibility for every development. Here CDA will

itself issue the permits for every kind of building, even the smallest one.

1046. It will not be permitted to add houses to existing villages, or even demolish houses within villages, without the special permission of CDA. This is because CDA may well think that some villages will have to be demolished later and that no investment should be encouraged or allowed in them, or that some villages must be preserved as elements of the National Park and that thus no addition to them should be allowed.

1047. The same is true of all other types of development within the Metropolitan Area and not only of buildings and construction. For example, change of cultivation, or cultivation of new areas, will also have to be approved by CDA, as likewise will the opening of new roads, even of minor importance, or the creation of new Cantonments.

1048. Within the area of Islamabad Capital Development Authority will not only be the coordinating and planning authority, but also the executive authority. The same should be the case for the whole area of the National Park, so far as national institutions are concerned. No authority should be allowed to institute any work without referring to Capital Development Authority, which must itself have the opportunity of carrying it out should the project be considered important for the National Capital. On the other hand, Capital Development Authority may in exceptional cases authorize the interested authority to go ahead, though always within the framework of its own instructions.

1049. An exception can be made for the area of Rawalpindi. Here Capital Development Authority should prepare the Master Programme and Master Plan, as well as designing everything that has to be built by the Government, but may authorize the Municipal Authority or any special body

within Rawalpindi to look after the implementation of these special plans.

1050. Similar arrangements will have to be worked out between Capital Development Authority and the authorities responsible for the Cantonment, in order to ensure that all proposed developments are agreed in principle by Capital Development Authority, although they will finally be designed and carried out by the Cantonment Authorities themselves. However, buildings of exceptional heights, for example store-houses or other military buildings, will not be permitted in places where they would spoil the landscape as conceived by Capital Development Authority for the whole Metropolitan Area.

1051. In conclusion we may say that the authority, as exercised by Capital Development Authority, will start in the broad framework of the whole region, for which a general control will exist. It will become more specific within the Metropolitan Area in order to control everything within it, and will finally turn into actual operating authority for Islamabad and the National Park areas.

1065. The ultimate responsibility for the setting up of an Ekistic Administration must of course rest with the Capital Development Authority itself, under whose aegis this new administrative organ must in due time be properly constituted and endowed with appropriate powers and overall mandate.

1075. It is imperative to create the master builder, the people who are going to be in charge of the overall city, from its conception to the implementation of every detail. There is a necessity for a conductor of the whole orchestra which is to create the symphony. He must be a strong conductor, for he will be responsible for everything within Islamabad.

1076. This leadership is provided by the Capital Development Authority. It should be made the strong Authority which is going to have full control of everything related to the conception and growth in the life of Islamabad and the Metropolitan Area.

1077. This Authority is in a position to have its own technical services and its own group of consultants who are to be in charge of all aspects of the development of Islamabad.

1078. The Capital Development Authority should also have one more task and one more authority assigned to it – to prepare the master builders who are going to take over as soon as possible the full leadership for the realization of the dream of an ideal city. These master builders can be the engineers, architects, planners, economists, social scientists and geographers who are going to acquire the knowledge of Ekistics, the science which will lead to a unified approach towards building a city and a human habitat.

12. The above is an explicit expression of the vision of the founder planners of the Capital of Pakistan and the intent, object and purpose for promulgating the Ordinance of 1960 in the words of the person who had the privilege of conceiving, planning and laying the foundations of building the new city of Islamabad. This historical background has a direct nexus with and is necessary to appreciate the intent of the legislature in enacting the Ordinance of 1960. I will, therefore, now advert to examining the relevant provisions of the Ordinance of 1960 in order to determine the legality of the impugned notifications, dated 06-09-2016. As already noted, the Ordinance of 1960 was promulgated and notified in the Official Gazette on 27-06-1960. The purpose and object mentioned in the preamble is to establish the Authority for making all arrangements for the planning and development of Islamabad within the frame work of a regional development plan. Section 2

defines various expressions. 'Authority', 'Board', 'Capital Site' and 'Chairman' are defined in clauses (b), (c), (e) and (f) respectively of section 2. Section 4 provides for the constitution of the Authority and has declared the latter to be a body corporate having perpetual succession and a common seal with power, subject to the provisions of the Ordinance, to acquire and hold property, both moveable and immovable, and to sue and be sued in its own name. Sub section (1) of section 5 provides that the general direction and administration of the Authority and its affairs shall vest in the Board which may exercise all powers and do all acts and things which may be exercised or done by the Authority. Sub section (2) provides that the Board, in discharging its functions, shall act on sound principles of development, town planning and housing, and shall be guided in questions of policy by such directions as the Federal Government may from time to time give. Likewise, sub section (3) of section 5 declares that if any question arises as to whether any matter is a matter of policy or not, the decision of the Federal Government shall be final. The constitution of the Board is provided in section 6. Sub section (1) provides that the Board shall consist of not less than three members, to be appointed by the Federal Government. Sub section (2) empowers the Federal Government to appoint a Chairman, Vice-Chairman and a financial advisor from amongst the Members. Sub section (3) of section 6 explicitly provides that the Chairman and other Members shall hold office during the pleasure of the Federal Government and, unless sooner removed, the Chairman and Financial Advisor shall hold office for a period of five years, while in the case of the other Members, they shall hold office for a period of four years. Sub section (4) of section 6 envisages that a person who ceases to be the Chairman, Vice-Chairman, or Member of the Board by reason of the expiry of the term of his office, shall be eligible for reappointment for another term or for such shorter term as the Federal

Government may decide. Sub section (5) provides that no act or proceeding of the Board shall be invalid merely on the ground of the existence of any vacancy or any defect in the constitution of the Board. The Chairman or any other Member may at any time resign. Section 7 provides that the Chairman and each Member shall receive such salary and allowances and shall be subject to such conditions of service as may be determined by the Federal Government. Section 8 prescribes the eventualities which disqualify a person from being appointed or who may continue as a member of the Board. For the purposes of adjudication of the instant petitions, clauses (e) and (f) of section 8 are relevant and the same are reproduced as follows.-

> ***"8. Disqualification of the member:-*** *No person shall be or shall continue to be a member who-*
>
> *(a) ….*
> *(b) ….*
> *(c) ….*
> *(d) ….*
>
> *(e) has a financial interest in any scheme or a conflicting interest directly or indirectly between his interests as a member and his private interests and has failed to disclose such interest in writing to the Federal Government:*
>
> *(f) If he is for the time being disqualified for membership of any body established by or under any law for the time being in force of which the constituent members are wholly or partly chosen by means of election."*

13. The duties and functions of the Chairman and other Members are described in section 9. The powers of the Authority are enumerated in section 15. Section 22 mandates that all land within the Specified Area shall be liable to acquisition while sections 23 to 36 prescribes a self contained and complete mechanism in this regard. Section 37 empowers the Authority to appoint officers, servants, experts or consultants for performance of its

functions on such terms and conditions as it may deem fit. Section 38 further empowers the Authority to lay down the procedure for appointment of officers etc. Section 42 envisages establishing a fund to be known as the 'Capital Development Authority Fund'. Sections 43 and 44 are provisions relating to Budget and Audit and Accounts. Section 46 provides that a person who contravenes any provision of the Ordinance of 1960, rules or regulations made or scheme sanctioned there under shall be liable to imprisonment specified ibid. Section 48 requires the Authority to submit reports and returns to the Federal Government while the latter may seek information specified under subsection 2.

14. A plain reading of the Ordinance of 1960 as a whole, particularly the aforementioned provisions, leaves no ambiguity that the legislature had intended to establish the Authority as an independent and autonomous entity with the object and purpose of making all arrangements for the planning and development of Islamabad within the framework of a regional development plan. The Ordinance of 1960 is a comprehensive, self contained special statute dealing with all matters relating to planning, development and regulating the establishment of Islamabad as the Capital of Pakistan. It is explicit from the provisions of the Ordinance of 1960 that the Federal Government and Authority are intended to be distinct and independent of each other. The role of the Federal Government has been expressly described i.e. to guide the Authority on questions of policy through directions and its accountability in the manner prescribed under sections 43 and 48. The appointment of Members, Chairman, Vice Chairman and Financial Adviser are also made by the Federal Government. The supervision or extent of interference by the Federal Government has been circumscribed and can only be exercised in the manner provided under sections 5, 43 and 48 of the

Ordinance of 1960. The Authority is independent in its affairs and administration, which exclusively vests in the Board, constituted under section 6. The intent of the legislature to make the Authority financially independent and autonomous is obvious from Chapter VI of the Ordinance of 1960. The independence and autonomy of the Authority has been guaranteed by the legislature itself, which is evident from the entire scheme of the Ordinance of 1960. The Authority has been established as one of the most important regulators and as an independent professional body for achieving the onerous task of planning and developing the Capital of Pakistan and protecting the Master Plan and the phased master programme conceived by the founding planners. In terms of its regulatory autonomy, it is one of those authorities which would definitely fall within the category of statutory bodies referred to by the august Supreme Court in the judgment titled *'Muhammad Yasin Vs. Federation of Pakistan through Secretary, Establishment Division'* [PLD 2012 SC 132] and consequently the law and principles enunciated by the apex Court regarding the exercise of discretion by the Federal Government in making appointments to key positions e.g. Members or Chairman of the Board shall be attracted even in the case of constituting the Board under section 6 of the Ordinance of 1960. This will be discussed in more detail later. It is also relevant to point out at this stage that the Board constituted under section 6 is distinct from the officers etc appointed under section 37. The officers etc appointed under section 37 have been referred to as the Establishment and the latter does not include the Board. The Board is, therefore, distinct from the Federal Government or the 'Establishment' envisaged under Chapter V of the Ordinance of 1960. The autonomy of the Authority is manifest from the unambiguous language of the Ordinance of 1960 and the entire scheme thereof.

15. The Members and the Chairman of the Board are appointed under section 6 of the Ordinance of 1960. The appointment is made by the Federal Government. Section 6 explicitly provides that the Board shall consist of not less than three members. Though the number of Members can be more than three, but from amongst the Members, the Federal Government appoints the Chairman, Vice Chairman and a Financial Advisor. The tenure of the Chairman and the Financial Advisor has been fixed for a period of five years while Members are appointed for a term of four years. The Chairman and other Members hold their respective offices during the pleasure of the Federal Government and it is contemplated in sub section (3) of section 6 that they may be removed before completion of their respective terms of five years or four, as the case may be. The eventualities giving rise to a person being disqualified from being appointed or from continuing to hold the office as Member of the Board have been specified in section 8. The relevant clauses for adjudication of the instant petitions have been reproduced above.

16. Before, proceeding further it would be pertinent to advert to the arguments raised by the learned counsels appearing on behalf of the respondents to the effect that the appointment of a Member or the Chairman of the Board is 'subject to the pleasure of the Federal Government', therefore, the fixed terms specified in sub section (3) of section 6 of the Ordinance of 1960 are not relevant nor selection is required to be made for the said prescribed fixed tenure. They have argued that this power vested in the Federal Government is unfettered and can be exercised at any time. A similar expression was considered by the august Supreme Court in the case titled *'Muhammad Yasin v. Federation of Pakistan through Secretary Establishment Division Islamabad and others'* [PLD 2012 SC 132] wherein

the scope of powers conferred on the basis of doctrine of pleasure was succinctly interpreted and the relevant portion is reproduced as below.-

> *"That was a time when almost all important State functionaries including not just the Prime Minister and the Cabinet but also judges and civil servants, were appointed and removed by the British monarch in this absolute unfettered discretion. It is for this reason they were said to* ***"hold office during the King's pleasure"****. While this vestige of an absolute monarchy receded in Britain on account of emerging democratic conventions, in the colonies it survived. Even after several years of independence, this practice continued, as was manifested by the imperious dissolution of the Constituent Assembly in 1954, by the representative of the British Crown.*
>
> *29. Much has changed since then. Pakistan now has a democratic Constitution which provides for the government of laws and not of men. It is for this reason that in our* ***Constitution there remain few positions where the incumbents "hold office during the pleasure"*** *of someone else based on broad discretion. In its undiluted form this convention exists only in Article 100(2), Article 101(3) and Article 140(3) which relate to the appointments of a Governor, the Attorney General and the Advocates General respectively. Similarly, such discretionary powers do not exist in those statutes which relate to autonomous regulatory bodies like OGRA."*

17. The august Supreme Court, therefore, has held that even where appointments are to be made in exercise of discretionary powers, it has become well settled that such powers are to be employed in a reasonable manner. The expression 'shall hold office during the pleasure of the Federal Government' used in sub section 3 of section 6 has to be interpreted

accordingly. Thus the selection and appointment of a Member is required to be made for a fixed period of four years while that of the Chairman for a period of five years. The removal during the fixed tenure cannot be made in an arbitrary manner nor is such power unfettered. The Federal Government will have to justify by recording reasons and giving a reasonable opportunity to the Member who is being removed before the completion of the fixed term. A Member may be removed before the completion of his term if the appointment was hit by one of the disqualifications enumerated in section 8 or if continuing in the office was not in the interest of the Authority e.g. he or she is alleged to have committed misconduct or is otherwise inefficient. Nevertheless, the selection and appointment of a person as Member or Chairman, as the case may be, has to be made for a fixed term as specified in section 6(3) of the Ordinance of 1960. The appointment for a fixed term is of significance and it highlights the legislative intent in this regard.

18. The factors which disqualify a person from being considered or appointed as a Member have been described in section 8. The two relevant clauses have been reproduced above. It is an admitted position that the disqualifications mentioned in clauses (a) to (d) of section 8 are not relevant for the purposes of adjudication of the instant petitions. However, the two clauses pleaded and argued in the case of the respondent are clauses (e) and (f). Clause (e) provides that a person is disqualified from being appointed as a Member or from continuing as such if he or she has a financial interest in any claim or conflicting interest directly or indirectly between his interests as a member and his private interests and has failed to disclose such interest in writing to the Federal Government. The expression conflict of interest is not defined in the Ordinance of 1960.

19. The expression 'conflict of interest' has been defined in the Black's Law Dictionary, Eighth Edition as follows.-

> ***"Conflict of interest. 1.*** *A real or seeming incompatibility between one's private interests and one's public or fiduciary duties.* ***2.*** *A real or seeming incompatibility between the interests of two of a lawyer's clients, such that the lawyer is disqualified from representing both clients if the dual representation adversely affects either client or if the clients do not consent. See Model Rules of Prof'1 Conduct 1.7(a). [Cases: Attorney and Client – 20.1.]"*

20. It would also be instructive to quote from the book 'Conflict of Interest in the Professions', edited by Michael Davis and Andrew Stark (New York: Oxford University Press, 2001). The relevant portions are as follows.-

> *"A conflict of interest is a situation in which some person P (whether an individual or corporate body) stands in a certain relation to one or more decisions. On the standard view, P has a conflict of interest if, and only if, (1) P is in a relationship with another requiring P to exercise judgment in the other's behalf and (2) P has a (special) interest tending to interfere with the proper exercise of judgment in that relationship. The crucial terms in the standard view are "relationship," "judgment," "Interest," and proper exercise."..... ....."The relationship required must, however, be fiduciary; that is, it must involve one person trusting (or,*

at least, being entitled to trust) another to do something for her – exercise judgment in her service."

"On the standard view, an interest is any influence, loyalty, concern, emotion, or other feature of a situation tending to make P's judgment (in that situation) less reliable than it would normally be, without tendering P incompetent."

21. It is obvious from the definition of the expression 'conflict of interest' that the existence of actual pecuniary gain or pecuniary loss is not essential, nor actual proof in this regard would be required. It refers to a principle envisaging the prevention of a future or potential situation which may lead to extending a benefit or loss to another person. An impression, whether real or not, would be sufficient to trigger the disqualification contemplated under section 8(e) of the Ordinance of 1960 if it has not been disclosed in writing to the Federal Government. In the instant case the respondent had held majority shares in the Company. It is not denied that the Company had participated in tendering and was also awarded a contract by the Authority. Though, according to the respondent, the Company did not have a subsisting relationship or contract with the Authority at the time of his appointment as Chairman, this is not going to help him wriggle out of the disqualification prescribed in section 8(e) of the Ordinance of 1960. The nature of the business of the Company and its dealings with the Authority indeed attracted the disqualification prescribed under section 8(e) and, therefore, it was mandatory for the respondent to have disclosed this fact to the Federal Government in writing at the time of his appointment. Nothing has been placed on record to show that the respondent had made such a disclosure in writing before his appointment. The respondent was indeed even disqualified from having been given the additional charge on a part

time basis. It is noted that it is settled law that what cannot be done directly can also not be done indirectly. The direction to the effect of giving the additional charge to the Chairman CDA on a part time basis for an indefinite period also attracts the disqualification under section 8(e) because a person falling within its mischief cannot legally exercise powers vested in the Chairman indirectly.

22. The next relevant eventuality giving rise to disqualification is described in clause (f) of section 8. It provides that a person is disqualified from being appointed as a Member if he or she is for the time being disqualified from membership of anybody established by or under any law for the time being in force, of which the constituent members are wholly or partly chosen by means of election. Section 27(1) of the Act of 2015 explicitly bars, inter alia, the Mayor from contesting elections for any other political office unless he or she has resigned from the office. It is, therefore, obvious that in the case of the Mayor of the Corporation, disqualification under clause (f) of section 8 will definitely be attracted as long as he remains in office. Likewise, a civil servant is also disqualified under section 8(f) of the Ordinance of 1960 because of being barred to seek membership of a body established by or under any law of which the constituent members are wholly or partly chosen by means of elections. As an illustration, the Mayor elected under the Act of 2015 or a person appointed under the Civil Servant Act, 1973 and having the status of a civil servant, as the case may be, are disqualified from contesting elections for the membership of the Majlis e Shura (Parliament) or any other body established under the law and, therefore, they would stand disqualified under section 8(f) of the Ordinance of 1960 from being appointed as Members of the Board of the Authority. I am afraid that the argument advanced by the learned counsel for the respondent that section 8(f) will

only be attracted if there is a declaration from a competent court is misconceived. In order to accept this argument one will have to read in section 8(f) something not provided therein. The language of section 8(f) is unambiguous and, therefore, this Court can neither add anything nor read into it something not provided therein. There is also no force in the argument of the learned counsels appearing on behalf of the Authority that in the past the Federal Government has exercised exclusive power to appoint Members and Chairmen, most of whom were civil servants and, therefore, the appointment of the respondent could also not be questioned. The appointment of a civil servant as Member was definitely in violation of clause (f) of section 8, and an illegality committed for a long time in the past, particularly when it is in flagrant violation of express provisions of the Ordinance of 1960, can neither be pleaded as a ground to perpetuate the same nor will it vest power in the Federal Government to continue therewith. Moreover, as it will be explained in the following paragraph, the appointment of a Member cannot be made in violation of the principles and law enunciated in the case of statutory regulatory entities, intended by the legislature to be independent and autonomous.

23. The law relating to making appointments to key positions in case of independent and autonomous regulatory entities such as the Authority, is by now well settled. The question was considered and the principles and law in this regard have been elucidated by the august Supreme Court in *'Muhammad Yasin Vs. Federation of Pakistan through Secretary, Establishment Division'*, [PLD 2012 SC 132] and '*Muhammad Ashraf Tiwana and others vs. Pakistan and others'*, [2013 SCMR 1159]. In the case of Muhammad Yasin supra the august Supreme Court laid down the test for

examining the validity of the appointment process. The three-pronged test elucidated in the said judgments is as follows:-

> *"(a) whether an objective selection procedure was prescribed;*
>
> *(b) if such a selection procedure was made, did it have a reasonable nexus with the object of the whole exercise, i.e. selection of the sort of candidate envisaged in the relevant provision of the statute. ;*
>
> *(c) if such a reasonable selection procedure was indeed prescribed, was it adopted and followed with rigour, objectivity, transparency and due diligence to ensure obedience to the law."*

24. The above test has explicitly laid down that the selection procedure ought to have a reasonable nexus with the object of the whole exercise for the purposes of selecting the most suitable person possessing the prescribed qualifications, and that the selection procedure is adopted and followed with rigour, objectivity, transparency and due diligence. Though the facts in the case of Muhammad Yasin supra related to the appointment of the Chairman under the Oil and Gas Regulatory Authority Ordinance, 2002, nevertheless, the Authority has all the attributes mentioned in the provisions of the Ordinance of 1960 to be treated at par with the statutory entities mentioned in paragraph 3 of the said judgment. Emphasizing the obligation to maintain the autonomy of the statutory regulatory authorities, the august Supreme Court has held that 'Such autonomy is only possible when appointments in key positions in these regulators are made in a demonstrably transparent manner; that is, by ensuring compliance with the checks which the Ordinance lays down for

such appointments". It has been further observed that "there is an obligation thus imposed on the Executive to make appointments based on a process which is manifestly and demonstrably fair, even though the law may not expressly impose such a duty." The law was affirmed in the later case of Muhammad Ashraf Tiwana supra. It is, therefore, settled law that the discretion of the Executive is circumscribed by the merit based criteria prescribed in the respective statutes to be achieved through a demonstrably open and transparent process. In order to achieve the criteria there ought to be sufficient publicity, so as to ensure that eligible and interested candidates may have the opportunity to apply, compete and be considered for the appointment in the light of the objective selection procedure. The transparency and integrity of the process is of utmost importance. In the words of the august Supreme Court, it is inevitable for the validity of the appointments made to key positions in various regulatory authorities, established under respective statutes, that there be due diligence, rigour and transparency in the selection process. This principle was also unambiguously reiterated and referred to by the august Supreme Court in its order dated 15-01-2013, passed in C.P.No.105/2012 and 104/2012, by holding that the appointment to the post of the Chairman Pakistan Electronic Media Regulatory Authority ought to be made through a transparent and open process.

25. It is obvious from the above discussion that the Authority, established under the Ordinance of 1960, was intended by the legislature to be an independent and autonomous regulatory authority to plan, develop and regulate all matters in connection with establishing the Capital of Pakistan. Every citizen of Pakistan definitely has a stake in this onerous task. It is an obvious legislative intent and implicit in the scheme of the Ordinance

of 1960 that qualified and competent persons of integrity, having expertise in the relevant fields, are to appointed as Members of the Board of the Authority. The appointments ought to have a nexus with the object and onerous obligations contemplated under the Ordinance of 1960. The Board, in discharging its functions, is mandated to 'act on sound principles of development, town planning and housing'. The appointment of a Financial Adviser would require expertise in the field of finance. The objective selection procedure for the appointment of a Member ought have a nexus with the object, purpose and functions of the Board of the Authority. The internationally acclaimed town planner who laid the foundations of Islamabad as the Capital of Pakistan had the vision of creating the Authority as a master builder, 'a conductor of the whole orchestra which was to create the symphony'. The vision of this legendary town planner of international repute, namely Dr. C. A Doxiadis, in establishing the Authority has been reproduced above and the same was given statutory force by promulgating the Ordinance of 1960.

26. It was not the legislative intent to relegate the Authority to a subordinate department of the Federal Government and thus erode and undermine its independence and autonomy. The Federal Government has been making appointments in the past in violation of the express provisions of the Ordinance of 1960, particularly in disregard to the scheme of the Ordinance of 1960 and the disqualification expressly provided in clause (f) of section 8. The Federal Government also appears to have ignored its restricted role contemplated under the Ordinance of 1960. It is probably for this reason that the Master Plan has been massively violated and a weak Authority appears to be unable to implement the provisions of the Ordinance of 1960 and the rules and regulations made thereunder. The provisions of

the Ordinance of 1960, the rules and regulations are not being implemented and it appears that the Authority has abdicated it's obligations expressly mandated under the Ordinance of 1960. Instead of making Islamabad, the Capital of Pakistan, a symbol of hope for the people and the heart and soul of the nation, as envisaged by its founding planners, unchecked illegal and unregulated construction is gradually making it difficult to achieve the object and purpose for which the Ordinance of 1960 was promulgated. The failure to enforce the Ordinance of 1960, and the rules and regulations made there under, has become too obvious to be ignored. The Authority appears to have become an example of regulatory capture. This state of affairs is only because the Federal Government has failed in its obligation to respect the autonomy of the Authority envisaged by the legislature and expressly provided for under the Ordinance of 1960. The key to ensuring the autonomy of the Authority is the appointment of Members of the Board strictly in accordance with the intent of the legislature mandated under section 6 of the Ordinance of 1960 and the law enunciated by the august Supreme Court, which has been discussed above. It is mandatory to appoint each Member for a fixed term, which has been expressly specified in section 6(3) of the Ordinance of 1960 and having regard to the principles and law enunciated by the august Supreme Court, inter alia, in the aforementioned cases. Section 6 explicitly prescribes the criteria and conditions, and when read with section 8 leaves no ambiguity that neither can an ex officio Member be appointed nor can a person be directed to discharge the functions of the Chairman of the Board on a part time basis in the absence of exceptional circumstances. The impugned notifications, dated 06-09-2016 were, therefore, issued in violation of the express provisions of the Ordinance of 1960 and the law enunciated by the apex Court.

27. It would now be pertinent to address the legal questions relating to maintainability of the petitions raised by the learned Additional Attorney General and the learned counsel appearing on behalf of the respondent. They have questioned the *bonafides* of the petitioners in filing the petitions and challenging the appointment of the respondent by way of seeking a writ in the nature of *quo-warranto*.

28. The petitioners are essentially seeking a writ as contemplated under Article 199(1)(b)(ii) of the Constitution. It empowers a High Court to issue a writ in the nature of *quo warranto* on an application by any person. The High Court may require a person on such an application, within the territorial jurisdiction of this Court, holding or purporting to hold a public office, to show under what authority of law he claims to hold that office. The pre-conditions for the issuance of a writ of *quo warranto* are, firstly, making of an application by 'any' person who need not be aggrieved, secondly, the person against whom a writ is being sought must be within the territorial jurisdiction of the High Court before which the petition has been filed, thirdly, the application must be in respect of a person holding or purporting to hold a public office and, lastly, the petition is in respect of requiring such a person to show that under what authority of law he claims to hold that office. A writ in the nature of *quo warranto*, therefore, would be issued if the above conditions are fulfilled. Territorial jurisdiction and holding or purporting to hold a public office are the two most important conditions to be satisfied. The expression public office has not been defined in the Constitution.

29. The august Supreme Court in the case of *'Salahuddin and 2 others v. Frontier Sugar Mills & Distillery Ltd., Tokht Bai and 10 others'* [PLD

1975 SC 244] has quoted with approval the test laid down regarding a public office by Ferris (Extraordinary Legal Remedies, 1926 Edition, p. 145) and the same is as follows.-

> *"a public office is the right, authority and duty created and conferred by law, by which an individual is vested with some portion of the sovereign functions of the Government to be exercised by him for the benefit of the public, for the term and by the tenure prescribed by law. It implies a delegation of a portion of the sovereign power. It is a trust conferred by a public authority for a public purpose, embracing the ideas of tenure, duration, emolument and duties. A public officer is thus to be distinguished from a mere employment or agency resting on contract, to which such powers and functions are not attracted….. The determining factor, the test, is whether the office involves a delegation of some of the sovereign functions of Government, either executive, legislative or juridical, to be exercised by the holder of the public benefit. Unless his powers are of this nature, he is not a public officer."*

30. In the case of *'Dr. Kamal Hussain and 7 others v. Muhammad Sirajul Islam and others'* [PLD 1969 SC 42] the august Supreme Court has observed and held that in the context of Article 199(1)(b)(ii) of the Constitution, a petitioner need not be an aggrieved person and that the Court is competent to test the *bonafide* of a relator to see if he or she has approached the Court with clean hands, because the constitutional powers vested in the High Court under the Constitution are of discretionary nature. It has been further held that a writ of *quo warranto* cannot be issued as a matter of course on sheer technicalities or on the basis of a doctrinaire approach.

31. In the case of *'Lt. Col. Farzand Ali and others v. Province of West Pakistan through the Secretary, Department of Agriculture, Government of West Pakistan, Lahore'* [PLD 1970 SC 98] the august Supreme Court has succinctly held that if a writ in the nature of *quo warranto* is allowed then it would take effect from the date of the pronouncement of the judgment by the High Court and not from any date anterior thereto on the ground that the acts or orders done or passed are protected under the doctrine of *defacto.*

32. In the case of *'N-W.F.P. Public Service Commission through Chairman and another v. Dr. Samiullah Khan and 2 others'* [1999 SCMR 2786] the scope of the writ of *quo warranto* has been delineated and it has been observed that a writ of *quo warranto* can be issued against a person who is holding a public office without fulfilling the necessary qualifications prescribed by law to hold such a post.

33. In the case of *'Hafiz Hamdullah v. Saif Ullah Khan and others'* [PLD 2007 SC 52] the august Supreme Court has enunciated the principles and law and has held that the object of writ of *quo warranto* is to determine the legality of the holder of a statutory or constitutional office and to decide whether he is holding such an office in accordance with law or was unauthorizedly occupying a public office.

34. The august Supreme Court has observed and held in the case of *'Pakistan Tobacco Board and another v. Tahir Raza and others'* [2007 SCMR 97] that the powers vested in a High Court are primarily inquisitorial and not adversarial. It has further been held that a person holding an office without any legal warrant is taxing the public exchequer, besides causing injury to others who may be entitled to that office. It has also been observed that

such powers can be exercised by the Court *suo motu* even if the attention of the High Court is not drawn by the parties concerned.

35. The principles and law laid down in the case of *'Capt. (R) Muhammad Naseem Hijazi v. Province of Punjab through Secretary Housing and Physical Planning and 2 others'* [2000 PLC (CS) 1310] are.-

i) the duty of the petitioner is to lay an information before the High Court and that he acts as an informer. The latter is not required to establish his or her *locus standi;*

ii) the validity or invalidity of an appointment may arise not only from one of the qualifications but also from violation of legal provision for appointment;

iii) it is not necessary that the office should be one created by the State character or by statute and that the duty entrusted to the person holding a post be of public nature, and lastly

iv) the Court is not only to see that the incumbent is holding the office under the order of a competent authority but it has to go beyond that and see as to whether he is legally qualified to hold the office. Invalidity of appointment may arise not only from one of qualifications but also from violation of legal provision for appointment.

36. The principles and law laid down and enunciated in the case of *'Ghulam Shabbir v. Muhammad Munir Abbasi and others'* [2011 PLC (CS) 763] are to the effect that no precise rules can be laid down for exercise of discretion in the context of Article 199(1)(b)(ii) of the Constitution. The Court can and will enquire into the conduct and motive of the petitioner. It is not necessary that a petitioner should be an aggrieved person and that the relief can be declined if the Court is satisfied that the petitioner has approached the Court with ulterior motives, malafide intention, etc.

37. In the case of *'Muhammad Rafiq and 2 others v. Muhammad Pervaiz others'* [2007 PLC (CS) 853] two Hon'ble Judges of the august Supreme Court have rendered the judgment and have held that minor irregularities in the appointment are not sufficient for issuance of a writ of *quo warranto* and that *laches* can also be relevant consideration for entertaining a petition.

38. In the case of *'Qazi Hussain Ahmed, Ameer Jamaat-e-Islami Pakistan and others v. General Pervaiz Musharraf, Chief Executive and others'* [PLD 2002 SC 853] the august Supreme Court observed and held that a writ of *quo warranto* cannot be brought through collateral attack and that the principles of *laches* does not apply to the writ of *quo warranto*. It has further been held that the Court cannot ignore the conduct of a petitioner which militates against his or her *bonafides*.

39. The august Supreme Court in the case of *'Malik Nawab Sher v. Ch. Muneer Ahmed and others'* [2013 SCMR 1035] has held and observed that if a person does not hold a public office then a writ of *quo warranto* will not be issued. Moreover, it has been observed that the jurisdiction of a High Court in a writ of *quo warranto* is primarily inquisitorial and not adversarial

and that the Court can undertake such inquiries as it may deem necessary in the facts and circumstances of each case, including examination of the entire record and such exercise can even be done *suo motu.*

40. In the light of the above discussed precedent law, it is obvious that the object of a writ in the nature of quo warranto is to determine whether a person is holding a 'public office' legally. The High Court having regard to the test quoted with approval by the august Supreme Court in the case of Salahuddin and 2 others versus Frontier Sugar Mills supra at the first instance has to ascertain whether or not the person against whom a writ has been sought holds a 'public office'. It is not necessary for the petitioner to show that he/she is an 'aggrieved person'. The bonafides of the petitioner may be relevant but not a determinant factor for the purposes of exercising discretion under Article 199(1)(b)(ii) of the Constitution. The jurisdiction vested in a High Court in respect of a writ of quo warranto is inquisitorial in nature. The High Court has to consider whether the person who holds a public office fulfils the necessary qualifications prescribed under the relevant law and that the legal provisions relating to appointment have not been violated. The jurisdiction vested in this Court being discretionary in nature may, therefore, be exercised in an appropriate case despite being satisfied that the person who has brought the matter may be having a personal interest, or his bonafides may appear to be suspect. Technicalities or minor irregularities would not render an appointment to a public office as invalid. As already discussed in detail, the appointment of the respondent, namely Sheikh Anser Aziz, Mayor of the Corporation was made in violation of section 6 read with section 8 and the law enunciated by the august Supreme Court. The positions of Member and Chairman of the Board of the Authority definitely fall within the ambit of the expression 'public office'. Both the

impugned notifications, dated 06-09-2016 were issued in violation of the provisions of the Ordinance of 1960 and are, therefore, declared as ultra vires, illegal and without lawful authority and jurisdiction. The petitions were, therefore, maintainable.

41. For the above reasons, the petitions are allowed and both the impugned notifications, dated 06-09-2016, are hereby set aside. However, the acts done or orders passed between 06-09-2016 till the rendering of this judgment shall be protected under the de facto doctrine. Reference in this regard may be made to the cases of *"Mehram Ali and others versus FOP and others" [PLD 1998 SC 1445], "Malik Asad Ali and others versus FOP, through Secretary Law & Justice & Parliamentary Affairs, Islamabad and others" [PLD 1998 SC 161], "Manzoor Hussain versus The State" [PLD 1998 Lah 239] and "Abdus Sattar versus The State" [PLD 1997 Lah 683].*

42. The Federal Government is directed to forthwith initiate the process for selection of an eligible person to be appointed as Member of the Board of the Authority for the fixed term which has been specified under section 6(3) of the Ordinance of 1960, inter alia, having regard to the principles and law laid down by the august Supreme Court in the judgments reported as *'Muhammad Ashraf Tiwana and others v. Pakistan and others'* [2013 SCMR 1159] and *Muhammad Yasin Vs. Federation of Pakistan through Secretary, Establishment Division'*, [PLD 2012 SC 132] The Federal Government is further directed to complete the selection process and appoint a Chairman for a fixed period of five years from amongst the Members who have been appointed in accordance with the principles and law highlighted in this judgment, The Federal Government shall complete the

process within forty five days (45 days) from the date of announcement of this judgment. In case the current Members of the Board are hit by the disqualification enumerated under clause (f) of section 8 of the Ordinance of 1960 or were appointed in violation of the settled law then in order to ensure continuity they may continue to serve till appointments have been notified in accordance with section 6 and the principles and law enunciated by the august Supreme Court. The acts, actions, proceedings or orders passed during this period shall be protected under sub section 5 of section 6 of the Ordinance of 1960 and the de facto doctrine.

43. Before parting, it is emphasized that the object and purpose of promulgating the Ordinance of 1960 is of utmost public importance. Planning, developing and regulating all matters relating to establishing the Capital of Pakistan is an onerous task, which the legislature has exclusively appropriated to the Capital Development Authority. The vision of the founding planners of the Capital, which had led to the promulgation of the Ordinance of 1960, has been reproduced above. As already noted, the legislature has clearly intended that the Authority shall be independent and autonomous. Likewise, the autonomy of the Board, its Members and Chairman has also been ensured, inter alia, by prescribing a guaranteed term under section 6(3). It is, therefore, the statutory duty of the Federal Government to ensure that the intent of the legislature is respected. An independent and autonomous Authority is the key to realizing the vision of the founding planners and giving effect to the Master Plan in letter and spirit. The role of the Federal Government has been expressly circumscribed by the legislature and its duty to strictly abide by it and to extend its support to an Authority in enforcing and implementing the provisions of the Ordinance of 1960 and the rules and regulations made there under. The impression that

the Authority has become an example of regulatory capture will only be dispelled if it is demonstrably seen performing its functions as an independent and autonomous planner, developer and regulator by enforcing the provisions of the Ordinance of 1960 and the rules and regulations made there under in letter and spirit. The Authority sans its guaranteed autonomy and a lack of will to enforce the laws within the Islamabad Capital Territory will lead to the creation of slums and cause irreparable damage and frustrate the vision of the founding planners of the Capital of Pakistan. The Rule of law and not rule of men can free the Authority from the perception of its regulatory capture. The allegations of mismanagement and corruption erode public confidence. The integrity of the Authority can only be ensured by, inter alia, making it accountable in the manner prescribed under the Ordinance of 1960. It has become inevitable to give effect to the legislative intent and ensure the autonomy of the Board through appointing Members of the Board on merit and according to the provisions of the Ordinance of 1960 so as to meet the challenge of the looming environmental crisis on account of unregulated urbanization and construction, which is in flagrant violation of the Ordinance of 1960 and the regulations made there under. This Court has been consistently observing and it is reiterated that if urgent steps are not taken, posterity will never forgive those who are in the position to enforce and implement the spirit and essence of the laws which have been blatantly violated for the past decades. It is, therefore, the duty of the Federal Government, the Parliament and every other organ of the State to ensure that the people of Pakistan have a Capital, which is an example of rule of law and a reflection of the vision of the founding planners. The first step in this direction is to

ensure the autonomy of the Authority and to appoint the best of the best on merit and according to the intent of the legislature as Members of the Board.

(ATHAR MINALLAH)
JUDGE

Announced in the open Court on 29.12.2017.

JUDGE

*Asad K/**

ANNEXURE-A

Sr. No.	W.P. No.	Title of the case.
1.	3539/2016	Ch. Tanweer Aakhtar versus Federal Government throu Minister of Pakistan, etc.
2.	3497/2016	Raja Ahsaan Satti, etc versus Government of Pakistan, etc.
3.	4073/2016	Faisal Mehmood, etc versus Capital Development Authority, etc.