

Judgment Sheet  
**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**W.P. No.3394 of 2016**

**MUHAMMAD SHOAIB SHAHEEN, ETC.**  
Versus  
**PAKISTAN BAR COUNCIL, ETC.**

*Petitioners by:* **M/s Hamid Khan, Mr. Shoaib Shaheen, Mr. Qausain Faisal Mufti, Mr. Shaukat Rauf Siddiqui, Mr. Muhammad Umair Baloch, M. Asif Gujjar, Mr. Muhammad Owais, Mr. Ajmal Ghaffar Toor and Mr. Mujeeb-ur-Rehman Kiani, Advocates.**

*Respondents by:* **Ms. Asma Jehangir, Mr. Tariq Mehmood Jehangiri, Mr. Kamran Murtaza, Raja Shafqat Abbasi, Mr. Muhammad Fareed Ch, Raja Aleem Khan Abbasi, Mr. Azam Nazir Tarar, Mr. Attaullah Hakim Kundi and Mr. Adeel Aftab, Advocates. Mr. Afnan Karim Kundi, Additional Attorney General.**

*Dates of hearing:* **26.09.2016 & 27.09.2016,**  
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**NOOR-UL-HAQ N. QURESHI; J:** Petitioners invoked the constitutional jurisdiction of this court by way of filing instant writ petition with the following prayer:-

*“In view of the above mentioned facts and circumstances, it is humbly prayed that the instant writ petition may graciously be accepted and the impugned proceedings dated 03.09.2016, whereby the committees of the PBC have been re-constituted may kindly be declared void ab initio, illegal, unlawful and unconstitutional and the same be set aside in the interest of justice; and*

*It is further prayed that pending disposal of this writ petition, the impugned proceedings dated 03.09.2016, whereby the committees of PBC have been re-constituted, may kindly be suspended while clarifying that the committees elected and formed in January, 2016 shall continue to perform work.*

*Any other relief which this Honourable Court deems fit and proper may also be awarded to the petitioners.”*

AND presented the facts, with grounds as under;

2. That all the Petitioners are advocates of Supreme Court of Pakistan and at material times have held offices as members of Bar Councils/ Associations. That in January 2016 elections of the Pakistan Bar Council (PBC) were held and in consequence whereof Petitioners and Respondents No. 3 to 14 were elected as its members. On 25.01.2016 a meeting of the PBC took place whereby Respondent No.3 was elected as Chairman and Respondent No.15 was elected as Vice Chairman of the Executive Committee. At the same time, various committees were constituted/elected and notified. The affairs of the PBC were carried out strictly in accordance with law, without any fear, favour or nepotism.

3. That on 03.09.2016, a meeting of the PBC was requisitioned to pass certain agenda items and on 02.09.2016 an additional agenda was also circulated, but the issue of re-constitution of the Committee was neither included in the original regular agenda, nor was made part of the additional agenda. The meeting of the PBC took place on 03-09-2016 at 2:00 p.m. wherein the Vice Chairman and ten learned Members of the PBC requested the ex-officio Chairman of the PBC to defer the regular and additional agenda of the meeting in view of the terrorist attack in Mardan, in which many persons including the advocates were killed/seriously injured, therefore, meeting should be confined to the condemnation of Mardan attack by showing solidarity with the families of the martyrs at par with the action taken in the proceedings of the PBC on 13-08-2016, due to tragic Quetta

incident. However, ex-officio Chairman refused to accept the request of the Vice Chairman and the learned Members of the PBC. Due to this arbitrary act of the ex-officio Chairman, the Vice Chairman and the ten learned Members decided not to participate in further proceedings with regard to consideration of regular and additional agenda.

4. That the petitioners were surprised over the news items appeared in different newspapers of 4<sup>th</sup> September 2016 regarding the reconstitution of new Committees and having no confidence upon the previous Committees. The petitioners immediately approached the Secretary of PBC to provide minutes/ notification of reconstituted Committees, but the request so made was not acceded to without assigning any reason. Nevertheless, petitioners came to know that without giving any notice to the Members as prescribed under the PBC Rules 1976, a letter was sent to the ex-officio Chairman secretly and superstitiously for reconstitution of all Committees. The action was, however, taken on the said letter by the ex-officio Chairman in absence of the petitioners and that too, without any notice to the petitioners, without any lawful authority, without including the matter in hand in the regular or additional agenda. All the Committees have been reconstituted illegally, unlawfully, arbitrarily and in violation of fundamental rights of the petitioners guaranteed under the constitution and statutory protection provided to the petitioners by the Act.

5. That earlier the Committees constituted in pursuance of Sec. 15 of the Act, 1973 read with Rule 86 of the Rules 1976

had statutory protection under Rule 100 read with Section 4 of the Act, therefore, the intervention of the ex-officio Chairman and the action taken in the proceedings of PBC on 03-09-2016 by Respondent Nos. 3 to 14 through arbitrary act is void ab-initio, illegal, unlawful and malafide in fact and against the law. That there is no provision whatsoever for reconstitution of the Committees except in case of resignation or vacancy due to any ground as referred to under the Act 1973 and Rules made there under.

6. That it is an established principle of law that no Executive Order can override the Rules and the provisions of law cannot be substituted through any other means. Moreover, no Rule can override the law and no Rule can be framed against the parent statute, which protects security of tenure of a member of PBC and constitution of all Committees. That having left with no other alternate remedy, the petitioners challenged the respondents' action and impugned the proceedings, though instant petition.

7. In reply to process, issued by this court, respondents put appearance and filed the reply. The Respondents No.1 & 15 raised the following legal questions and grounds;

- a) *That whether the Pakistan Legal Practitioners and Bar Council Rules, 1976 (hereafter; "the 1976 Rules) are statutory in nature.*
- b) *If the 1976 Rules are not statutory in nature, whether the present petition is maintainable?*
- c) *Whether disputes of Bar Councils and Bar Associations are justiciable upon by courts of law?*
- d) *The 1976 Rules or its parent statute not providing for curtailment of tenure of various committees of the Pakistan Bar Council (PBC) and whether the tenure of such committees could be curtailed by a majority vote of the council?*

- e) *That in the absence of any tenure of Committees of the PBC having been explicitly provided for at the time of the initial election of the Committees in January 2016, whether the tenure of the said Committees would be for the full term as that of the Council under rule 100 of the 1976 Rules, or whether the said term/tenure could be eclipsed by a majority of vote of the Council?*
- f) *What is the true import of Rule 185 of the 1976 Rules and whether the same can be pressed into service so as to override other rules, in particular Rule 100 of the 1976 Rules?*

8. Respondent No.2, through his comments contended that he has an unblemished record of impartiality as Chairman of Punjab Bar Council twice over and attribution of any wrongdoing to him is rather unfortunate. The petitioners have made allegations which are totally unfounded and are factually incorrect and unless admitted specifically herein the contents of the petition are controverted. It is specifically denied that there was any element of secrecy, collusion, arbitrariness or impropriety. That it is a matter of fact that the written requisition for re-constitution of all committees of PBC was submitted by ten members on 02.09.2016. That the answering respondents duly recorded thereon in writing that the same be placed for consideration before the house in the next day in the already scheduled meeting as a matter of propriety. This was not only recorded in writing but on the answering respondents direction. Copy of the said requisition was also duly circulated by email among the members of Pakistan Bar Council including the petitioners on the very same day.

9. In addition to preliminary objections raised by Respondents No.1 & 5, Respondents No.3 to 14 have also raised the preliminary objection:

- i) *That the petition under reply is not maintainable under the law, interalia for the reason that no order/minutes of meeting dated 03.09.2016 of Pakistan Bar Council (impugned in the petition) have been appended with the petition under reply which renders the petition incompetent and not maintainable.*
- ii) *That the Legal Practitioners and Bar Council Rules, 1976 have been framed by the Bar Council itself for its internal use and to run day to day affairs therefore, any alleged violation cannot be enforced through constitutional petition under the jurisdiction of judicial review of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as the rules are non statutory in nature, therefore, the writ petition is not maintainable and merits dismissal on this score alone. Learned counsel further contended that the provisions contained in the PBC "Act of 1973" and Rules of 1976 have been mis-represented by the petitioners in order to secure the desired relief.*

10. Learned counsel for the Petitioners while arguing the instant writ petition, urged the following points:-

- i). *That the power to reconstitute the Committees has been purportedly exercised under Rule 185 by suspending Rule 100 which cannot be done.*
- *Rule 185 is part of Miscellaneous Chapter of the Rules and does not fall under any specific Rule making power under Section 55 of the Act.*
- *It is best meant to remove any procedural difficulty in the smooth functioning of the PBC.*
- *Rule 100 which is framed under specific power of Section 55(f) is a substantial and declaratory Rule which cannot be suspended.*
- *Rule 100 is extension and explanation of Section 15 of the Act.*
- *Section 15 read with Section 6 implies that a period of tenure / term of Committee would be the same as term of the Council itself.*
- *Rule 100 only states substantively what Section 15 read with Section 4 necessarily means and implies.*
- *Thus Rule 100 is explanatory Rule explaining what Section 15 means.*
- *Rule 100 will override Rule 185 because the former is a special rule and the latter is a general rule. Reliance is placed on (2015 SCMR 630), (2015 PLC (CS) 201 (SC), (2014 SCMR 1457) & (PLD 2011 SC 619 (633)).*

- ii). *That the Act deals with the term of office for five years for the Council and one year for Vice Chairman.*
  - *If the Act or law makers wanted to reduce the term of office of Committees to less than 5 years, it would have it so spelled as in the case of Vice Chairman under Section 12(3).*
  - *Hence the necessary presumption is that in the absence of any provision to the contrary, the necessary implication or implied intendment is that the Committees are for the full term of five years.*
  - *Rule 100 only confirms this obvious interpretation of Section 4 and 15 of the Act and thus is not subject to any suspension.*
  - *Suspension of Rule 100 would virtually mean suspension of the provisions of Section 15 of the Act.*
  - *The term / tenure allowed by law cannot be reduced or cut short. Reliance is placed on (PLD 2014 Islamabad 38(68), (2014 SCMR 834).*
- iii). *That the function of the PBC clearly spelled out in Section 13 of the Act.*
  - *There is no provision in the Section 13 empowering annulment of the Committee or reconstitution of the Committees.*
  - *Thus no such power could have been exercised by the Council.*
- iv). *That Section 15 only provides for constitution of the Committees and not for their annulment or reconstitution.*
  - *If the law intended that Committees once formed could be annulled, the same would have been specifically provided which is not there.*
  - *Thus the impugned power purportedly exercised or function purportedly performed are not covered by any provision of law.*
  - *The power to reconstitute is not covered by the power to constitute because prior to reconstitution, annulment of the constituted committees has to take place for which there is no provision.*
- v). *That under Section 55, the Rule making power does not allow annulment and reconstitution of the Committees.*
  - *Rule making can only extend to constitution of the Committee under Section 55(f).*
  - *Thus no Rules can be framed by the Council for annulment and reconstitution of committees.*

- *Therefore, attempt to reconstitute the Committee is without any basis in law.*
- vi) *That it is a settled principle that when the law requires something to be done in a certain manner, it should not be done in any other manner whatsoever. Reliance is placed on (PLC(CS) 604 (AJK), (PLD 2014 Karachi), 224 at 229, (PLD 2013 SC 255), (2016 YLR, 1279 (Peshawar).*
- vii) *That it is an age-old principle that what is not permitted to be done directly cannot be achieved through circumvention of law by indirect means. Reliance is placed on (PLD 2003 SC 979).*
- viii) *That the Act is meant for regulation of the legal profession in Pakistan which is a very serious task for which substantial period of five years have been provided.*
- *Since the PBC functions through its Committees, therefore, its stability smooth functioning and continuation in the tenure of the Committees is very essential.*
- *There is wisdom in Rule 100 read with Section 15 that full tenure of the Council be given to the Committees so that they continue to function smoothly.*
- ix) *That if the interpretation of the Act and the Rules being attempted to be placed by the Answering Respondents regarding reconstitution of the Committees it will make the working of the PBC untenable.*
- *With frequency of change in the Committees PBC will become a joke and a laughing stock.*
- *It will give rise to corrupt practices like horse trading, floor crossing and buying and selling of loyalties of the members. Reliance is placed on (PLD 2015 SC 401 (711) Para 108, (PLD 1992 SC 646 (666), (PLD 1997 Lahore 38 (91).*
- x) *That whenever the law intends to provide for removal of office bearer or committee, it is specifically provided by such law.*
- *Article 91 regarding election of the Prime Minister and Article for passing of no confidence against him.*
- *No such provision is there in the Act and thus neither a no confidence motion can be passed nor annulment of Committees can take place.*
- xi) *That since the Act does not provide for annulment and reconstitution of Committees of PBC, therefore, even Rules cannot be framed for the purpose.*



- *Rules cannot be framed in contravention with or beyond the framework of the parent statutes. Reliance is placed on (PLD 2005 Lahore 357 (368), (2001 SCMR 1806), (PLD 2011 SC 619 (633), (2015 SCMR 630 (637 and 639).*
- xii) *That the attempt to reconstitute Committees in a clandestine manner on 03-09-2016, besides being illegal and violative of Rules, was unfortunate and an effort to destabilize the smooth working of PBC.*
- xiii) *That the attempt to reconstitute the Committee was mala fide.*

*The Rules were used for a collateral purpose of unseating the members of the Committee which tantamounts to colourable exercise of powers.*

  - *The attempt was mala fide in law as well as in fact.*
  - *In unholy haste that certain results were sought to be achieved benefiting certain members and undoing composition of the Committees legally and legitimately constituted. Reliance is placed on (PLD 1960 SC 113 (120), (PLD 1965 SC 671).*
- xiv) *That it is absolutely incorrect to assert that the Rules are non-statutory and, therefore, the writ petition is not maintainable.*
  - *The Rules are statutory and framed under Section 55 of the Act.*
  - *The test of maintainability is laid down in (PLD 1975 SC 244) & (2013 SCMR 1707).*
  - *As long as Rules are framed under the Statute, they would be statutory and writ jurisdiction can be exercised there under. Reliance is placed on (PLD 2016 SC 377).*
- xv) *That the tenure once granted under the law cannot be reduced retroactively by annulment of Rules even statute.*
  - *PBC cannot now make Rules undoing the effect of Rule 100 on someone who has acquired vested rights under them.*

*Reliance is placed on (2015 SCMR 43).*
- xvi) *That it is a settled that the provision of relaxation of Rule has limited application and applies to cases of hardship and other exceptional circumstances.*
  - *By exercise of this authority, the structure of the PBC cannot be changed and vested right cannot be prejudiced or adversely affected. 2015 SCMR 456.*

*Judgment dated 26-09-2016 in Constitution Petition No. 03 of 2014 – Ch Muhammad Akram Vs. Registrar, Islamabad High Court.*

11. In reply to above assertions learned counsel for the respondents, except learned Counsel for Respondent Nos. 1 & 15, argued that;

- i) *The constitution petition under reply is not maintainable for the reasons that the constitution of committees is purely an internal affair of the Council and no exception can be taken to the same and that any “body corporate” is competent to reconstitute or reorganize its management for effective and efficacious functioning of its affairs.*
- ii) *That this being a sole prerogative of the council is not open to any exception and for that matter cannot even be subjected to judicial review under Article 199, of the Constitution, except in case where fraud is being alleged by a party or where the Council has violated any provision of the Act.*
- iii) *That it is a settled principle of the superior courts of Pakistan not to interfere in the internal affairs of the Bar Councils/ Associations. The proceedings carried out by the Council are and were, at all material times, within the domain of its powers and thus are not amenable to judicial review.*
- iv) *That Section 15 of the Act of 1973 only deals with the constitution of four statutory Committees without stipulating term/ tenure/ period of the Members of Committees.*
- v) *That it is a universal principle that in a democratic institution the will of the majority always prevails and/or upon loss of confidence/ majority in the house, no authority remains with the minority to regulate the affairs of any such democratic institution. As a matter of fact, the Council survives and operates through its Committees irrespective of the identity of its members.*
- vi) *That a plain reading of Rule 100 makes it clear that it only deals with the term of a Committee and not the tenure of its membership. This Rule only specifies the outer limit of the tenure of the committee.*
- vii) *That the Act, 1973 does not prohibit reconstitution of membership of the Committees and it is settled law now that if there is no prohibition to a particular procedure the same is deemed to be permissible.*

- viii) *That under the relevant scheme of law PBC is the apex elected body of lawyers and fully authorized to run its affairs through the rules and procedure made by itself and absolute powers have been conferred upon the council under Section 55(f) & (g) to make rules and procedure for the constitution and functioning of any Committees of the PBC including the term of office of the members as well as holding of meetings, conduct of business. A reference can also be conveniently made to Section 16 and 21 of general clauses Act in this regard.*
- ix) *That the provisions of Rule 96 of the Rules 1976 stipulate that any decision in a meeting of the PBC has to be taken by a majority of votes and the same shall be by show of hands. In the event of the votes to be equal in number, the chairman of the council has a right to cast a second vote. In the instant case, the majority of the members voted and decided to reconstitute the committees which decision was carried out accordingly, leaving the petitioners side in minority.*
- x) *That Rule 86(a) lays down that apart from the Committees mentioned therein, the Council may constitute additional Committees from time to time as deemed necessary for the efficacious functioning of the council. This fact fortifies the plea that an absolute power has been conferred in the Council for the purposes of abolishing and/ or reconstitution of the Committees. It is reiterated that the statutory Council constituted under the Act of 1973 is empowered even to suspend, modify and/or enact a fresh rule as and when deemed necessary.*
- xi) *That the Rule 86(A) of the Rules of 1976 confers absolute power in the Council to review any proceedings taken, order passed or any decision made by any of the committees of the Council. In addition, the Council is adequately empowered to withdraw any matter or proceeding pending before any of its committees and dispose of the same itself. This fact makes it abundantly clear that according to Rules 86 & 86-A, any committees can be abolished and/or created by the Council.*
- xii) *That the petitioners have attempted to mislead this Hon'ble Court by blatant and contumacious misrepresentation of the various provisions especially Rule 86 of the Rules of 1976 as the said Rule provides for the constitution of eight committees stated therein. As per Rule 86(b), the committees have to discharge their functions and perform their duties assigned to them by the Act of 1973 and the Rules of 1976 or by the PBC. This position ineluctably concludes that an absolute power vests with the Council to run its affairs and transact business unless otherwise provided for by the Act.*

- xiii) *That the Council is even authorized, under the law, to take away the powers/ mandate of any of the committee it deems fit. Learned counsel lastly contended that according to the Act of 1973, the PBC is the paramount body which functions through its various committees under a procedural arrangement introduced by the Rules framed under the parent Act. The Council itself being a paramount entity and a body corporate as defined in Section 3(2) of the Act of 1973, is not subservient to its committees rather it enjoys a controlling affect upon its Committees, including but not limited to, reconstitution of the same. In this view of the matter, it becomes clear that the members of the Committees formed under the Council are not sacrosanct entities enjoying perpetuity of term against will of the majority in the Council.*

12. Learned Counsel for Respondent Nos. 1 & 15 submitted that if anything is not provided in the statute, nothing can be imported from any other law. Learned Counsel supported the case of Petitioners.

13. Learned counsel for Petitioners Mr. Hamid Khan rebutted the arguments of the learned counsel for respondents Ms. Asma Jehangir as under:-

- i) *That Rule 98 has been invoked to show that a resolution passed cannot be touched for three months except by 2/3<sup>rd</sup> majority.*
- *Rule 98 has no application upon the matter of constitution or reconstitution of the Committees.*
  - *It relates to day to day working of the council and resolution passed in that behalf.*
- ii) *Rule 99 has been referred to show that Chairman of Executive Committee can be elected for one year that is less than full five years term.*
- *Rule 99 does advance the case of the respondents because it envisages the elections of the Chairman of the Committee except where Supreme Court Judge is the Chairman.*
  - *It means that Chairman of every Committee is elected for the whole term of the Committees.*
  - *Except the Chairman of the Executive Committee shall be elected from year to year.*

- *But the Committee would remain the same composed of those very members for a term of five years.*
- *Only Chairman will be elected every year from amongst its Members.*
- iii) *That under Rule 100, it is submitted that term of the Committees will be same unless PBC provides otherwise at the time of constituting the Committee.*
  - *So PBC could have reached the term of a Committee.*
  - *Yes, but PBC while constituting Committees did not provide for any term less than that of five years while constituting Committees on 25.01.2016.*
  - *From this it is established that since no shorter term was provided for any of the Committees, therefore, PBC constituted Committees for full term of five years.*
- iv) *That the main argument appears to be that the term of the Committee means term of the corporate body of the Committee.*
  - *So the Committee will continue for five years but its membership can keep changing from time to time during the term of five years.*
  - *This very premise is negated by the Rule making power in this behalf under section 55 (f).*
  - *It provides for making Rules for term of office of the members of any such Committee.*
  - *So the Rule making power is directed towards prescribing term of office of the members of the Committee and not Committee.*
  - *Rule 100 will have to be read, understood and construed in the light of Section 55(f). Thus due to Section 55(f).*
  - *Thus due to Section 55(f) the entire edifice of the argument collapses.*
- v) *That the provisions of the Act that do not guarantee a member elected has to remain as such for five years.*
  - *On the contrary, five years term is guaranteed subject to just exception like.*
    - (a) *Somebody dies or resigns earlier.*
    - (b). *Somebody become disqualified u/s 11B.*
    - (c). *Somebody ceases to be member u/s 11C.*

- vi) *That it is said that majority of the PBC will not allow the Committees to function.*
  - *Why do we expect majority of PBC to be unreasonable.*
  - *If the Committees are working properly and in accordance with the law and the Rules then why should their minutes not be confirmed.*
  - *An argument cannot be premised on supposed unreasonableness.*
- vii) *That “PBC is a political body and subject to majority”.*
  - *No it is a statutory and legal body.*
  - *It is bound by the law under which it is constituted and cannot travel beyond it.*
  - *Being creature of a statute is bound by the provisions of the statute. Reliance is placed on (PLD 1973 SC 49(51)).*
  - *A majority cannot act in any manner not permitted by the law and has to remain within the four corners of that law.*
  - *Bar Associations and Bar Councils are different.*
  - *Bar Associations are voluntary bodies and enjoy more political freedom.*
  - *Bar Councils are statutory bodies and are bound by the provisions thereof.*
  - *Similar is the case of Parliament and Provincial Assemblies.*
  - *They have to remain within bounds of the constitution.*
  -
- viii) *That it has been acknowledged during the course of arguments that members of the PBC are elected individually without any affiliation of any group.*
- ix)
  - *Yes if so then there is no concept of majority or minority in the PBC.*
  - *There is no question of any party or group discipline or penalty for its breach.*
  - *Thus there is no majority or minority within the council itself.*
  - *Only on a given matter there can be majority or minority and not on a permanent basis.*
  - *Thus by emphasizing on a majority the learned counsel has contradicted her own arguments.*
- x) *That practice of respecting fixed tenure has been followed by the PBC.*
  - *Now it cannot take contradictory stance.*
  - *Example is judicial members / representative under Article 175A is nominated / elected by the Council.*
  - *Even if such person ceases to be member of PBC, he is allowed to complete his tenure of 2 years.*

- *If the line of respondent argument is followed then the majority can recall that members before expiry of 2 years and elect / nominate another member.*
- *The judgment in Quetta case in regard to opposition leader gives finding that entire period of tenure should be allowed. Reliance is placed on (2014 CLC 1778).*
- xi) *That it has been stressed that there was some emergency for holding requisitioned meetings.*
  - *It is not understandable as to what was the emergency.*
  - *Whether there was apprehension for member who had been won over would have escaped or run away after few days.*
- xii) *That it is a matter of internal working of PBC and should not be subjected to justiceability.*
  - *which is incorrect because the management of the PBC is based upon statutory provisions and Rules framed there under.*
  - *It is a public body dealing with public matters.*
- xiii) *That it has been argued that there is precedent to the reconstitution of the committee.*
  - *Minutes of the meetings dated 23.08.2008, 25.05.2012 and 31.01.2013 have been placed with written statement. And*
  - *In reply it is submitted that admittedly no such violation took place from 1976 to 2008. Violation has taken place from 2008.*
  - *A period of 32 years would be a true precedent or a period of 8 years. Violation of law is no precedent.*
  - *Violation has taken place from 2008 onwards for only 08 years.*
  - *Violation of law is not precedent.*
  - *Every time such violation was object to as the minutes show.*
  - *Hence that constitutes no precedent.*

- xiii) *That the matters concerning the Bar should not be brought before the Courts.*

*True and that is why so much restraint has been shown despite violation of law on three occasions.*

- *After all enough is enough and how long such a conduct and violations could be countenanced.*
- *The present petitioners have thus been forced into seeking adjudication over the violation of the law repeatedly being done.*
- *So an authoritative pronouncement is needed over the matter.*

- xiv) *At the end it is submitted that the main argument on behalf of the Petitioners have not been responded by the counsel for Respondents.*

*They have not been able to show under what provision of law PBC could exercise the authority to annul Committees already constituted and to reconstitute them.*

- *The only answer has been relied upon Section 14,15 and 16 of the General Clauses Act.*

*But these are subject to exception of locus poenitentiae.*

- *The Committees constituted had taken effect.*
- *Vested rights have been created.*

13. We have heard learned counsel for the parties and have gone through the relevant record available on file.

14. In our estimation, controversy brought before us revolves around the following issues:-

- I) *Whether Legal Practitioners & Bar Councils Act, 1973, hereinafter referred to as Statute, and Pakistan Legal Practitioners & Bar Council Rules, 1976, hereinafter referred to as Rules, provide any mechanism of no confidence against the elected members of the committees;***
- II) *Whether any substantive provision of the Statute can be subservient to rules made thereunder;***
- III) *Whether applicable Statute and Rules recognize annulment of committees and their re-constitution.***



**IV) Whether shuffle in the majority can by itself annul the committees constituted through election in its first meeting in requirement of Statute and the Rules.**

12. Before dilating upon the above issues we deem it appropriate to reproduce relevant provisions from the Statute and applicable Rules.

**13. RELEVANT PROVISION FROM LEGAL PRACTITIONERS & BAR COUNCILS ACT, 1973 (THE STATUTE):**

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,--

- (f) “Pakistan Bar Council” means the Bar Council, constituted for Pakistan, under Section 11;
- (g) “prescribed” means prescribed by rules made under this Act;

**3. Constitution and incorporation of Bar Councils.--(1)** There shall be constituted in accordance with the provisions of this Act.-

- (i) a Bar Council for Pakistan to be known as the Pakistan Bar Council;

**4. Term of Bar Council.—** The term of every Bar Council shall be five years beginning on the first day of January following the general elections to the Provincial Bar Councils and Islamabad Bar Council; and at the end of each term the members of the Bar Council shall cease to hold office:

Provided that the next elections of the Provincial Bar Councils and Islamabad Bar Council shall be held between the 1st October, 2009 and the 31st of December, 2009 and the term of the next Provincial Bar Council and Islamabad Bar Council shall commence from the 1st January, 2010.

**11. Composition of Pakistan Bar Council.--(1)** The Pakistan Bar Council shall consist of the Attorney General for Pakistan, *ex-officio*, and twenty-three members, who shall be elected on the basis of a single transferable vote by the members of the Provincial Bar Councils and Islamabad Bar Council as hereinafter specified:-

Baluchistan..... 1  
 The North-West Frontier Province (KP) ....4  
 The Punjab.....11  
 Sindh .....6  
 Islamabad Capital Territory.....1 ;and

(1A) The members of Pakistan Bar Council shall be elected by single transferable vote from each province and Islamabad Capital Territory by the members of their respective Provincial Bar Council and Islamabad Bar Council

(2) A member of a Provincial Bar Council and Islamabad Bar Council who is elected to be a member of the Pakistan Bar Council shall cease to be a member of the Provincial Bar Council and Islamabad Bar Council.

(3) No election of a member to the Pakistan Bar Council shall be called in question on the ground merely that due notice thereof has not been given to any person entitled to vote thereat, if the notice of the date has, not less than thirty days before that date, been published in the official Gazette.

(4) A member may resign his office by writing under his hand addressed to the Chairman of the Council.

**11A. Qualifications for membership of Pakistan Bar Council.--**A person shall be qualified to be elected as a member of the Pakistan Bar Council if he--

- (a) is on the roll of Advocates of the Supreme Court maintained by the Pakistan Bar Council;
- (b) has, on the day of the filling of the nomination paper, been an Advocate for not less than fifteen years; and
- (c) has cleared all the dues payable by him to the Pakistan Bar Council.

**11B. Disqualifications for membership of Pakistan Bar Council.--**A person shall be disqualified to be elected as a member of the Pakistan Bar council if he--

- (a) was dismissed or removed from the service of Government or of a public statutory corporation; or
- (b) has been convicted for an offence involving moral turpitude; or
- (c) has been found guilty of professional misconduct; or
- (d) has been declared a tout; or
- (e) is an undischarged insolvent.

**11C. Cessation of membership of Pakistan Bar Council.--**A member of the Pakistan Bar Council shall cease to be such member if he--

- (a) is appointed to an office of profit in the service of Pakistan; or
- (b) is suspended or removed from practice under the provisions of Chapter VII; or

- (c) incurs any of the disqualifications specified in Section 11B.

**12. Chairman and Vice-Chairman of the Pakistan Bar Council.--**(1) The Attorney-General for Pakistan shall be the Chairman, *ex-officio*, of the Pakistan Bar Council.

(1A) If a member of the Pakistan Bar Council is appointed as the Attorney-General for Pakistan or as the Advocate-General for a Province or Islamabad Capital Territory, his seat in the Council shall become vacant.

(2) There shall be a Vice-Chairman of the Pakistan Bar Council who shall be elected in the prescribed manner by the members of that Council from amongst themselves.

(3) Subject to the provisions of sub-section (7), the election of the Vice-Chairman shall be held as soon as may be after the commencement of every year and in any case not later than thirty-first day of January.

(4) Subject to the provisions of sub-sections (5) and (6), the Vice-Chairman shall hold office until his successor enters upon his office.

(5) A Vice-Chairman may resign his office by writing under his hand addressed to the Chairman.

(6) A Vice-Chairman shall vacate his office if he is appointed to an office of profit in the service of Pakistan or is suspended or removed from practice under the provisions of Chapter VII.

(7) Where the office of a Vice-Chairman becomes vacant, an election to the vacant office shall be held in the manner prescribed under sub-section (2), within thirty days of the office becoming vacant.

(8) The Chairman and the Vice-Chairman shall have such powers and functions as may be prescribed.

**13. Functions of the Pakistan Bar Council.--**(1) Subject to the provisions of this Act and the rules made thereunder, the functions of the Pakistan Bar Council shall be.—

- (a) to prepare and maintain a common roll of advocates;
- (b) to admit persons as advocates entitled to practise before the Supreme Court and to prepare and maintain a roll of such advocates and to remove advocates from such roll;
- (c) to entertain and determine cases of misconduct against advocates of the Supreme Court and to award punishment in such cases;
- (d) to lay down standard of professional conduct and etiquette for advocates;
- (e) to lay down the procedure to be followed by its Committees;

- (f) to safeguard the rights, privileges and interests of advocates including initiation of measures for fair and inexpensive dispensation of justice by the subordinate Courts and tribunals;
  - (g) to promote and suggest law reform;
  - (h) to deal with and dispose of, and to tender advice in relation to any matter arising under this Act which may be referred to it by a Provincial Bar Council and Islamabad Bar Council;
  - (i) to exercise general control and supervision over the Provincial Bar Councils and Islamabad Bar Council and to issue directions to them from time to time.
  - (j) to promote legal education and prescribe standards of such education in consultation with the universities in Pakistan and the Provincial Bar Councils and Islamabad Bar Council;
  - (k) to recognize universities whose degree in law shall be a qualification for enrolment as an advocate;
  - (l) to manage and administer the property and funds of the Pakistan Bar Council, and to invest any of its funds;
  - (la) to provide free legal aid;
  - (lb) to hold conferences, seminars, moots, lectures, jurist conferences and other meetings for promoting legal knowledge and learning in the legal profession;
  - (lc) to prescribe conditions for the recognition and functioning of, and to recognize and de-recognize, the Supreme Court Bar Association or any Bar Association at the national level;
  - (ld) to give directions in accordance with the provisions of this Act to the Provincial Bar Councils and Islamabad Bar Council in respect of the recognition, de-recognition and functioning of Bar Association;
  - (m) to perform all other functions conferred on it by or under this Act;
  - (n) to do all other things necessary for discharging the aforesaid functions.
- (2) Any person aggrieved by an order or decision of a Provincial Bar Council, Islamabad Bar Council, the Supreme Court Bar Association or a Bar Association at the national level may, within thirty days of such order or decision, prefer an appeal to the Pakistan Bar Council, whose decision in such appeal shall be final.
- (3) The provisions of sections 5 and 12 of the Limitation Act, 1908 (IX of 1908), shall apply to appeals under sub-section (2).

**15. Committees of the Pakistan Bar Council.--**(1) The Pakistan Bar Council shall constitute the following Committees, namely:--

- (a) a disciplinary Committee consisting of a Judge of the Supreme Court nominated by the Chief Justice of Pakistan, who shall be its Chairman, and four other members elected by the Council from amongst its members:

Provided that the Attorney-General for Pakistan shall not be a member of the disciplinary Committee;

- (b) an executive Committee consisting of seven members elected by the Council from amongst its members; and
- (c) an enrolment Committee consisting of a Judge of the Supreme Court nominated by the Chief Justice of Pakistan, who shall be its Chairman, and two other members elected by the Council from amongst its members.

(2) The Pakistan Bar Council may constitute from amongst its members such other Committees, including a legal education Committee, as it may deem necessary for the performance of its functions under this Act, and may authorize any such Committee to co-opt as its members any other persons, not exceeding such number as the Council may determine.

(3) The Chairman of every Committee shall be entitled to vote and, in case of equality of votes among the members of the Committee, shall have a second vote.

**55. Power of Pakistan Bar Council to make rules.--**The Pakistan Bar Council may, by notification in the official Gazette, make rules to provide for--

- (a) the manner in which the election of members of a Bar Council shall be held and the manner in which results of election shall be published;
- (b) the manner in which the election of the Vice-Chairman of a Bar Council shall be held;
- (c) the manner in which and the authority by which doubts and disputes as to the validity of an election to a Bar Council or to the office of the Vice-Chairman of a Bar Council shall be finally decided;
- (d) the powers and duties of the Chairman and Vice-Chairman of the Bar Councils;
- (e) the summoning and holding of meetings of the Pakistan Bar Council, the times and places where such meetings

are to be held, the conduct of business thereat and the number of members necessary to constitute a quorum;

- (f) the constitution and functions of any Committee of the Pakistan Bar Council and the term of office of the members of any such Committee;
- (g) the summoning and holding of meetings of such Committee, the conduct of business thereat and the number of members necessary to constitute a quorum;
- (h) the qualifications and terms and conditions of service of staff to be employed by the Pakistan Bar Council;
- (i) matters pertaining to management, administration, utilization and investment of the fund of the Pakistan Bar Council;
- (j) the constitution of separate funds for special purposes by the Pakistan Bar Council;
- (k) the maintenance of books of accounts and other books by the Pakistan Bar Council;
- (l) the appointment of auditors and the audit of the accounts of the Pakistan Bar Council;
- (m) the form and manner in which applications for admission as an advocate of the Supreme Court are to be made and the manner in which such applications are to be disposed of;
- (n) the fee payable for enrolment or in respect of any other matter under this Act, and the installments, if any, in which such fee may be paid;
- (o) the forms in which a certificate of enrolment shall be given to a person enrolled as an advocate or an advocate of the High Court or an advocate of the Supreme Court;
- (p) the standards of professional conduct and etiquette to be observed by advocates;
- (q) the standards of legal education to be observed by universities in Pakistan and the inspection of universities for that purpose;
- (r) the circumstances in which and the conditions subject to which nationals of any foreign country may be admitted as advocates and foreign qualifications may be recognised for purposes of their admission;
- (s) the procedure to be followed by Tribunals constituted by the Pakistan Bar Council in inquiries relating to the conduct of an advocate;
- (t) the general principles for guidance of the Provincial Bar Councils and Islamabad Bar Council;

- (u) the forming, recognition, derecognition and functioning of a Supreme Court Bar Association or any Bar Association at the national level:

Provided that no rules made with reference to clause (r) shall have effect unless they have been approved by the Federal Government:

Provided further that, for holding the first elections to the Bar Councils to be constituted under this Act, rules with reference to clauses (a), (b) and (c) shall be made by the Federal Government and notified in the official Gazette.

14. **RELEVANT PROVISIONS FROM LEGAL PRACTITIONERS & BAR COUNCILS RULES, 1976 (THE RULES):**

**84. Powers and duties of Chairman:**

- (a) The Chairman of a Bar Council shall be responsible for ensuring due compliance with the provisions of the Act and the Rules.
- (b) He shall convene and preside over the meetings of a Bar Council.
- (c) He shall exercise the powers and perform the functions assigned to him by the Act, the Rules and a Bar Council from time to time.

- 85.** (a) The Pakistan Bar Council shall constitute the following Committees and such other Committees as it may decide to do from time to time:-

(1) Executive Committee	7 Members
(2) Enrolment Committee	3 Members including a Judge of the Supreme Court of Pakistan.
(3) Disciplinary Committee	5 Members including a Judge of the Supreme Court of Pakistan.
(4) Legal Education Committee	Such number of Members as may be determined from time to time.
(5) Finance Committee	-do-
(6) Law Reforms Committee	-do-
(7) Rules Committee	-do-
(8) Privileges Committee	-do-

- (b) The Committees shall exercise such powers and perform such functions as assigned to them by the Act, the Rules or the Pakistan Bar Council.

Provided that no Committee shall undertake the business normally performed by another Committee.

- 86A.**(i) The Minutes, proceedings, decisions and resolutions adopted by a Committee shall be laid before the Pakistan Bar Council in its next meeting following the meeting of such Committee.
  - (ii) Subject to the provisions of the Act, the Pakistan Bar Council may of its own motion or otherwise revise or issue directions to a Committee, to review any proceedings taken, order passed or any decision made by such Committee of the Pakistan Bar Council.
  - (iii) The Pakistan Bar Council may withdraw any matter or proceedings pending before a Committee and dispose of the same.
- 87.** (a) The first meeting of the Bar Council shall be held within a month of the declaration of the result of election of the Pakistan Bar Council.
- (b) Ordinary meeting of a Bar Council may be convened by the Chairman or in case he is for some reason unable to act, by the Vice-Chairman.
  - (c) The Chairman and in his absence the Vice-Chairman shall convene a meeting of the Bar Council on the receipt of a requisition signed by not less than five members of Bar Council, within a week of the requisition but in emergency it may be called within any shorter period so as to suit the emergency. In case the Chairman or the Vice-Chairman do not call on requisition a meeting, the same may be convened by the requisitionists and all expenses in this behalf shall be borne by the Bar Council and the proceedings conducted at the meeting shall be deemed to be the proceedings of the Pakistan Bar Council.
- 88.** Meetings of a Committee of the Bar Council may be convened by the Chairman of the Committee.
- 89.** Notice required for a meeting of the Bar Council shall be 8 days:
- Provided that in case of emergency notice for a shorter period shall be sufficient. The agenda for the meeting shall be served 8 days before the meeting in case of the meeting of the Bar Council and 3 days in the case of the meeting of a Committee.
- 94.** Business shall be transacted at a meeting in accordance with the Agenda issued:



Provided that any other business may, with the permission of the Chairman of the meeting, be transacted if the majority of the members present who at the same time constitute a majority of the total number of the members of the Bar Council or the Committee as the case may be, agree.

**95.** The order in which the business is to be discussed in a meeting may be changed by the Chairman or the person presiding over the meeting.

**96.** Decisions at the meeting shall be by a majority vote. Voting shall be by show of hands. In case of equality of votes, the Chairman of the meeting shall be entitled to a second vote.

**98.** Any matter determined by a resolution of the Bar Council shall not be re-opened within 3 months of the date of the resolution unless 2/3<sup>rd</sup> of the total number of the members make a requisition to that effect.

**99.** (a) The Chairman of every committee other than Enrolment Committee and the Disciplinary Committee shall be elected by the members of the Committee concerned:

Provided that the Chairman of the Executive Committee shall be elected from amongst its members every year.

(b) The Chairman of the Enrolment Committee and the Disciplinary Committee shall respectively be a judge of the Supreme Court of Pakistan nominated by the Chief Justice of Pakistan.

**100.** The term of every committee shall be the same as that of the Council itself unless the Bar Council when constituting the committee provides otherwise.

**185.** The Pakistan Bar Council, may by a resolution, passed by it in its meeting, suspend wholly or partly, any Rule for such period and subject to such conditions, as it may deem fit and expedient.

14. We would like to discuss every such question, which has been formulated to estimate controversy brought before us.

15. With regard to question No.1, we have observed that regarding 'No Confidence Vote' against elected Members of the Committee, neither any mechanism is provided in Pakistan Bar Council Act, 1973 nor in the Rules framed there-under known as 'Bar Councils Rules, 1976'. Though such mechanism has not been

provided either by the Statute or by the Rules, but Rule 96 of Bar Councils Rules, 1973 depicts that decisions at the meeting shall be by a majority vote. Voting shall be by show of hands. In case of equality of votes, the Chairman of the meeting shall be entitled to a second vote. Likewise, Rule 99(a) of said Rules further depicts that the Chairman of every committee other than Enrollment Committee and the Disciplinary Committee shall be elected by the members of the Committee concerned. In the absence of such mechanism in case of 'No Confidence' not provided by the Rules, the decision of majority has to prevail. It is further observed that if 'No Confidence' is not mentioned specifically, it does not mean that the Chairman or Member/Members of the Committee against whom 'No Confidence' has been moved, remains stranded till completion of the tenure as guaranteed by Rule 100 of said Rules, which specifies the term of every Committee and the Council itself. It further requires clarification that while constituting the Committee, if Bar Council provides otherwise, that too, will indicate the term of the Committee and not the Member. However, Rule 86-A(ii) of said Rules provides specific power of the Pakistan Bar Council, on its own motion or otherwise, to revise or issue directions to a Committee, to review any proceedings taken, order passed or any decision made by such Committee of the Pakistan Bar Council. In other words, it means that Pakistan Bar Council has the overall control over Committees even with regard to its decisions and proceedings initiated.

16. Principally, no one can be prevented to act, which is not prohibited under the law. Therefore, it appears that neither any

specific mechanism is provided by law nor debars any authority, having controlling power, to review or revise such decision earlier initiated. In this regard, guidance has been sought from the decision initiated by one of us (Mr. Justice Shaukat Aziz Siddiqui J.) reported in 2014 PLC (CS) 853.

17. With regard to issue in hand, we observe that it is in fact not the case of vote of no confidence rather it is the case of reconstitution of the Committee before completion of its tenure as provided under Rule 100 of said Rules.

18. Question No.3 relates to such proposition, hence it is required to be answered first before answering questions No.2.

19. Of course, no specific provision is provided for annulment or reconstitution of the Committee already constituted under section 15 of Bar Councils Act, 1973, term whereof is guaranteed by the Statute under Rules 85(a) & 100 of Bar Councils Rules, 1976, which is not for a person/member therefore Pakistan Bar Council governing all supervisory powers may revise its decision. In this respect, guideline is being sought from the judgment reported as PLD 1992 SC 207, which is based upon the principle laid down under section 21 of the General Clauses Act. It was held therein that Authority, which can pass an order, is entitled to vary, amend, add or rescind that order. Moreover, Rule 99 (a) of said Rules provides election of the Chairman of every Committee by the members of the Committee concerned except the Chairman of Enrolment Committee and the Disciplinary Committee. It was further provided therein that the Chairman of the Executive Committee shall be elected from amongst its

members every year. Moreover, the head of Disciplinary Committee and Enrolment Committee shall be the Judge of the Hon'ble Supreme Court of Pakistan nominated by the Hon'ble Chief Justice of Pakistan. Likewise, the tenure of Chairman of every Committee is guaranteed but again, there is no guidance provided either by the Rules or the Act about the members of the Committee. Analogically, numbers of members are required to constitute each Committee as specified under Rule 85(a) of said Rules. We observe that Rule 98 of said Rules further elaborates that any matter determined by a resolution of the Bar Council shall not be reopened within 3-months of the date of resolution unless 2/3<sup>rd</sup> of the total number of the members make a requisition to that effect. This Rule also indicates that democratic system, in the Body corporate having perpetual succession and common seal, shall run with prevailing policies of democratic system and not on the basis once it is decided.

20. The question raised with regard to Section 4 of Bar Councils Act, 1973 providing term of Bar Council has no nexus with the principle referred above because the term is guaranteed for election of Members of Bar Council. Section 4 includes each term of Members of the Bar Council, whereas Rules do not define term of Member of any Committee hence this question is decided accordingly.

21. With regard to question No.2, we are clear in our minds that any substituted provision of the statute cannot be subservient to the Rules made there-under. All the Rules framed under the Act are explicitly clear, where power of the Bar Council

is specified in Rule 185 of said Rules, which being special in nature, can be used for running functions of Bar Councils smoothly, but same cannot be exercised arbitrarily. It is not in conflict with the Act directly.

22. As regards question No.4, where the majority can, by itself, annul the Committee constituted in its first meeting as required by the Statute and Rules. To answer this question, we would like to refer our discussion made upon question Nos.1 & 3 in view whereof we hold that this question has been replied adequately.

23. The only controversy left regarding notice which is required for meeting of Bar Council as provided under Rules 89, 90 & 91 of said Rules. In this regard, law mandates 8-days' notice, but in case of emergency, same can be for a shorter period. It is further provided that agenda for the meeting shall be served 8-days before the meeting in case of meeting of the Bar Council and 3-days in the case of the meeting of a Committee.

24. In the instant case, notice was served by making an application in the ongoing meeting of the Bar Council. One of the Members of Pakistan Bar Council was served with the notice therefore some of the Members boycotted the said meeting. It is nowhere stated in the notice that what was the emergency on the basis whereof, such issue was raised before the Pakistan Bar Council in a haphazard manner. We observe that Pakistan Bar Council, being the Apex Body, should have followed the mandate of law. Though the agenda of meeting was circulated along with additional agenda, but it did not include the disputed matter which

was placed before Pakistan Bar Council in its ongoing meeting, hence we are of the view that dispute for reconstitution of the Committees, tenure whereof is guaranteed by law, could have been settled in a gentle way by including the same in the agenda after circulating copies whereof to all the Members and by adopting due course as provided by law itself.

25. In view of above discussion, we prefer to remand this case back to Pakistan Bar Council for deciding this issue after observing all legal formalities provided under Rules 89 & 90 of said Rules, as in our view, no emergency has impressively been placed before us for taking such matter in the ongoing meeting of Pakistan Bar Council. Resultantly, we painfully annul the decision with regard to subject issue and remand this case back to the Pakistan Bar Council.

26. The above numbered writ petition stands disposed of in the above terms along with enlisted CMs.

**(SHAUKAT AZIZ SIDDIQUI)**  
**Judge**

**(NOOR-UL-HAQ N. QURESHI)**  
**Judge**

Announced in Open Court on **13.10.2016**

**Judge**

**Judge**

Zawar

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