

Form No: HCJD/C
JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Case No: Writ Petition No.163 of 2020

Qaisar Abbas and another
Vs.
Federation of Pakistan etc.

Petitioners by: M/s. Abdul Wahid Qureshi, Iftikhar Ahmad Bashir, Muhammad Asif Chaudhary, Abuzar Salman Khan Niazi, Ms. Meraj Tareen, Advocates for the petitioners in their respective petitions.

Respondents by: Raja Khalid Mehmood Khan, Deputy Attorney-General, Malik Awais Haider, State Counsel & Raja Saad Sultan, Assistant Attorney-General, Sajid Hussain, Law Officer & Mr. Naseem Ahmed Shah, Advocate.

M/s. Sajeel Sheheryar Swati, Malik M. Siddique Awan, Rai Azhar Iqbal Kharral, Ch. Hasan Murtaza Mann, Asad Ullah Khan, Barrister Saad Butter, Tahir Hussain Anchan & Ms. Meraj Tareen Advocates.

Applicants By: M/s. Taimoor Aslam Khan, Riaz H. Rahi, Iftikhar Ahmad Bashir & Muhammad Asif Chaudhary, Advocates for the applicants in their respective applications.
Tayyab Riaz Divisional Engineer-I
Pakistan Railways.

Date of Hearing: 26.03.2021

AAMER FAROOQ, J.- This judgment shall decide
the instant petition as well as W.P. No.1881/2020, W.P.

No.311/2020, W.P. No.2479/2020, W.P. No.2001/2020
alongwith Crl. Orgl No.181/2020 in W.P. No.163/2020
as they entail common questions of law and facts.

2. The facts in brief are that Pakistan Railways entered into an agreement with M/s. T&T Employees Cooperative Housing Society (the Society) for providing public level crossing and approaching and maintenance of the same at KM 9/13-14 to KM 9/8-9 as class-II manned level crossing on GLRS-BOS Section by shifting level crossing No.7. Under the terms of the contract the administration of Pakistan Railways was to operate and maintain the Railway level crossing and the Society was to pay various charges in advance with respect to actual expenses incurred in keeping the level crossing operational; 20% pay of the gate keepers, contribution towards gratuity and leave allowance of the gate keepers; all the requisite sum were to be paid in advance which accordingly was done. The agreement was initially for a period of five years and was to come into use on the date of agreement i.e. 03.04.2015. The agreement further provided that Pakistan Railways has a right to change the classification of the Railway crossing and the Society was to keep the Railway Administration indemnified. There were other clauses

ancillary to the main subject of the agreement. The referred agreement was acted upon and pursuant thereto the Society funded the construction of the level crossing; however, after its completion and the requisite certificates issued by the Railway Authorities it was not opened. Pursuant to the then prevailing policy of the Pakistan Railways No Objection Certificate (NOC) for shifting of the Railway unmanned L-Xing No.7 to new location as manned L-Xing (Golra-Fateh Jang Section) was also obtained. It was accordingly issued by the Circle Registrar on 05.12.2014 and the District Magistrate Islamabad Capital Territory, Islamabad on 18.12.2015. On 25.10.2018 the Divisional Signal Engineer, Pakistan Railways, Rawalpindi wrote to the Divisional Engineer-I, Pakistan Railways, Rawalpindi that the essential work has been completed and the new level crossing is ready to be operational , hence the date be fixed for the same. When despite completion of all the formalities the needful was not done the Society approached the Office of Federal Ombudsman (*Wafaqi Mohtisib*) by way of a complaint against the Pakistan Railways. The said complaint was accepted on 07.11.2019 and the Pakistan Railways was recommended to open newly installed manned level

crossing at KM 9/8-9 and involve the Civil Administration for ensuring the dismantling of the existing unmanned level crossing at KM 9/13-14 to upgrade/convert the same into a manned level crossing at their own.

3. Feeling aggrieved the Pakistan Railways filed a review petition against the said order which was dismissed vide order dated 14.01.2020 and the earlier recommendations/findings were modified by observing that the Pakistan Railways may also seek support of the complainant, if needed, as offered by it and/ or to upgrade the existing unmanned level crossing at its own. Against the said recommendations representation was filed before the President of Pakistan which also was rejected. In the referred back drop W.P. No.163/2020 was filed by the members of the Society against primarily Pakistan Railways seeking declaration that the petitioners are entitled to opening up of Class-I, manned level crossing at KM 9/13-14 to KM 9/8-9 and the failure on part of the respondents Pakistan Railways be declared as without lawful authority. Similar petition was filed by one Mian Muhammad Hafeez, the petitioner in W.P. No.311/2020 as owner of the property in the Society seeking the implementation of

the letter of the Divisional Signal Engineer, Pakistan Railways, Rawalpindi dated 25.10.2018 whereby it was intimated to the Divisional Engineer-I, Pakistan Railways, Rawalpindi that all the signal portion work is complete and the level crossing is ready to open. The referred petitioner also sought implementation of the findings of Federal Ombudsman dated 07.11.2019; yet another petition was filed by members of the Society (W.P. No.1881/2020) against primarily Pakistan Railways seeking almost the same relief by way of direction to open the new level crossing and implementation of the recommendations of the Federal Ombudsman and also seeking a declaration that the reliance by Pakistan Railways with respect to the policy dated 23.02.2019 is ineffective. Pakistan Railways also instituted writ petition (W.P. No.2001/2020) for seeking a direction against respondent No.1 for implementation of the agreement dated 03.04.2015 and obtaining requisite NOC/approval after which the new level crossing could be opened with the assistance of the local administration. The local people of the area i.e. Moza Nagazi also instituted a writ petition challenging the agreement between Pakistan Railways and the Society (W.P. No.2479/2020). During the

course of proceedings a number of applications were filed in the above writ petitions by people of the locality seeking impleadment.

4. Mr. Abuzar Salman Khan Niazi, learned counsel for the petitioners in W.P. No.1881/2020, *inter alia*, contended that the closure/non-opening of the new level crossing is in violation of Article 9 of Constitution of the Islamic Republic of Pakistan, 1973 (the Constitution) inasmuch as it is the fundamental right of the members of the Society, in particular, and people of the area, in general, to have safe passage which is being denied by Pakistan Railways. In support of his contentions learned counsel has placed reliance on the case titled *Naimatullah Khan Advocate and others v. Federation of Pakistan and others* (2020 SCMR 622), *Mirza Muhamamd Nazakat Baig v. Federation of Pakistan and others* (2020 SCMR 631), *Ms. Shehla Zia and others v. WAPDA* (PLD 1994 Supreme Court 693), *Malik Ashiq Hussain v. Secretary, Pakistan Railways and others* (2011 YLR 1228), *Muhammad Tahir Jamal Advocate v. Government of the Punjab and others* (PLD 2020 Lahore 407), *Messrs Shaheen Cotton Molls Lahore and another v. Federation of Pakistan and others* (PLD 2011 Lahore 120), *Messrs*

Al Raham Travels and Tours Pvt. Ltd. and others v. M/o Religious Affairs and others (2011 SCMR 1621), *Maqbool Ahmed and others v. Secretary Revenue Department and others* (2020 CLC 1151), *Azra Jamali and others v. Federation of Pakistan and others* (2017 PLC (C.S.) 533), *Muhammad Shoaib Razzaq v. Federation of Pakistan and others* (PLD 2019 Islamabad 339), *Govt. of Sindh and others v. Mst. Najma* (2001 SCMR 8), *Dr. Shamsheer Ali Khan and others v. Govt. of KPK and others* (2019 MLD 87), *Province of Punjab and others v. Malik Shah Nawaz and others* (2012 MLD 1045), *Makhdoom Muhammad Mukhtar MPA, Punjab v. Province of Punjab and others* (PLD 2007 Lahore 61), *Abdul Wahid v. The State and another* (PLD 2007 Lahore 65), *Muhammad Nawaz Malik and others v. Govt. of the Punjab and others* (PLD 2001 Lahore 160), *Ahmed Kamal Nasir v. Cantonment Board Rawalpindi* (PLD 2011 Lahore 165), *National Bank of Pakistan v. Iftikhar Rasool Anjum and others* (2017 PLC (C.S.) 453), *Zahir Hussain Qureshi v. Govt. of Sindh and others* (2019 CLC 1568), *Muhammad Ashraf v. United Bank Limited and others* (2009 CLC 1250), *Messrs Airport Support Services v. The Airport*

Manager and others (1998 SCMR 2268), *Zaver Petroleum Corporation Limited v. Federation of Pakistan and others* (2018 CLC 1542), *Federation of Pakistan etc. v. Shaukat Ali Mian and others* (PLD 1999 Supreme Court 1026), *Govt. of KPK and others v. Khalid Mehmood* (2012 SCMR 619), *Pakistan through M/o Finance and others v. Facto Belarus Tractors Limited* (PLD 2002 Supreme Court 208), *Messrs M.Y. Electronic and others v. Govt. of Pakistan and others* (1998 SCMR 1404), *Federation of Pakistan and others v. Muhammad Tariq Pirzada and others* (1999 SCMR 2744), *Federation of Pakistan and others v. Muhammad Tariq Pirzada and others* (1999 SCMR 2189), *Messrs Sharif Khan Brothers v. Chief Controller and others* (2001 YLR 2211) & *Shahid Nabi Malik v. Chief Election Commission* (PLD 1997 SC 32).

5. It was contended that the assertion on part of the Pakistan Railways that as per the policy of 2019 NOC is required from the District Management of Punjab/ Rawalpindi for opening of the new level crossing is not tenable inasmuch as it is the fundamental right of the petitioners to have unrestricted access which is being denied by policy consideration. It was added that the

fundamental rights can be reasonably regulated but cannot be eradicated or eliminated by way of policy. Reliance was placed on the case titled *Messrs Shaheen Cotton Molls Lahore and another v. Federation of Pakistan and others* (PLD 2011 Lahore 120), *Messrs Al Raham Travels and Tours Pvt. Ltd. and others v. M/o Religious Affairs and others* (2011 SCMR 1621), *Maqbool Ahmed and others v. Secretary Revenue Department and others* (2020 CLC 1151), *Azra Jamali and others v. Federation of Pakistan and others* (2017 PLC (C.S.) 533), *Muhammad Shoaib Razzaq v. Federation of Pakistan and others* (PLD 2019 Islamabad 339). It was contended that it was legitimate expectations of the petitioners as well as other members of the Society and local people that upon completion of the work at new level crossing the same shall be opened which is being denied, hence not tenable. Reliance was placed on the case titled *Dr. Shamsheer Ali Khan and others v. Govt. of KPK and others* (2019 MLD 87), *Province of Punjab and others v. Malik Shah Nawaz and others* (2012 MLD 1045), *Makhdoom Muhammad Mukhtar MPA, Punjab v. Province of Punjab and others* (PLD 2007 Lahore 61), *Abdul Wahid v. The State and another* (PLD

2007 Lahore 65), Muhammad Nawaz Malik and others v. Govt. of the Punjab and others (PLD 2001 Lahore 160). Learned counsel further submitted that the petitioners are protected by the doctrine of sovereign guarantee. Reliance was placed on the case titled National Bank of Pakistan v. Iftikhar Rasool Anjum and others (2017 PLC (C.S) 453). It was further contended that the agreements with the State Institutions are enforceable under Article 199 of the Constitution. Reliance was placed on the case titled Zahir Hussain Qureshi v. Govt. of Sindh and others (2019 CLC 1568), Muhammad Ashraf v. United Bank Limited and others (2009 CLC 1250), Messrs Airport Support Services v. The Airport Manager and others (1998 SCMR 2268). It was further submitted that Pakistan Railways is seeking to apply 2019 policy which is not applicable in the case of the petitioners inasmuch as the agreement between the parties was executed in the year 2015 and essentially completed in 2018 and it is due to unlawful act of Pakistan Railways by not opening of the same that the matter is lingering on, hence at this stage retrospective application of the policy on obtaining NOC is not tenable. Reliance was placed on the case titled Zaver Petroleum Corporation

Limited v. Federation of Pakistan and others (2018 CLC 1542), Federation of Pakistan etc. v. Shaukat Ali Mian and others (PLD 1999 Supreme Court 1026), Govt. of KPK and others v. Khalid Mehmood (2012 SCMR 619). It was contended that the Pakistan Railways is estopped now from wriggling out of the binding agreement. It was added that the order of the Federal Ombudsman is binding and conclusive finding was handed down not only by Federal Ombudsman but also the President of Pakistan and the matter stands finally decided. Reliance was placed on the case titled **Pakistan through M/o Finance and others v. Facto Belarus Tractors Limited (PLD 2002 Supreme Court 208), Messrs M.Y. Electronic and others v. Govt. of Pakistan and others (1998 SCMR 1404).** Finally, it was contended that lower rights have to yield in favour of higher rights. Reliance was placed on the case titled **Shahid Nabi Malik v. Chief Election Commission (PLD 1997 SC 32).**

6. Mr. Adul Wahid Qureshi, learned counsel for the petitioners in W.P. No.163/2020 and W.P. No.311/2020 adopted the arguments by learned counsel for the petitioners in W.P. No.1881/2020 but added that the policy cannot be applied retrospectively in this case

inasmuch as the agreement between the Pakistan Railways and the Society stands acted upon and the matter has become a past and closed transaction. Reliance was placed on the case titled *Mian Rafi ud Din and others v. The Settlement & Rehabilitation Commissioner etc.* (PLD 1997 SC 252), *Hashwani Hotels Ltd. v. Federation of Pakistan etc.* (PLD 1997 SC 315), *Secretary to Govt. of Pakitan v. Muhamamd Hussain Shah etc.* (2005 SCMR 675), *Manzoor Ali etc. v. UBL through President* (2005 SCMR 1785), *Imtiaz Ahmed etc. v. PPSC etc* (PLD 2006 SC 472), *Badshah Gul Wazir v. Govt. of KPK* (2015 SCMR 43), *Zever Petroleum Corporation v. Federation of Pakistan etc.* (2018 CLC 1542), *Shafqat Hussain v. President of Islamic Republic of Pakistan* (PLD 2016 Islamabad 1), *Dewan Suleman Fiber v. Federation of Pakistan etc.* (2015 PTD 2304 Islamabad), *Irfan Khan Banghash v. Government* (2015 YLR 719), *Muhammad Ali v. LDA etc.* (2017 YLR 1087) and *Muhammad Ibrahim v. Province of Sindh* (2017 PLC (C.S.) 7).

7. Learned counsel for Pakistan Railways argued somewhat different from what was pleaded in W.P. No.2001/2020. He argued that the agreement between

Pakistan Railways and the Society cannot be implemented as the requisite precondition of obtaining NOC prior to conclusion of the level crossing was not done. It was submitted that the Pakistan Railways is ready and willing to refund the amount in question i.e. the sum incurred by the Society for construction of the new level crossing. It was submitted that in the referred back drop in accordance with the policy of 2019 NOC was essential; since the same has not been done the matter cannot proceed further.

8. Learned counsel for the residents of the locality Moza Nagazi submitted that the agreement between the Pakistan Railways and the Society is in violation of their rights as the path has been used by the residents of the locality since long, hence they cannot be deprived of the said right.

9. Mr. Riaz Hanif Rahi, Advocate for the Society in some of the petitions, *inter alia*, contended that Pakistan Railways is denying the opening of level crossing due to extraneous reasons which is not tenable and they are bound to implement the agreement.

10. Mr. Sajeel Sheryar Swati, Advocate for the Society, *inter alia*, contended that the policy dated

23.02.2019 is being sought to be implemented at this juncture when the matter between the Society and Pakistan Railways has become past and closed transaction. It was contended that it is trite law that retrospective operation of the policy cannot be made. It was further contended that at the relevant time the Railway policy applicable was of 17.12.2009 and under the same only to dismantle an unmanned level crossing NOC was required which accordingly has been done and the assertion that has been made by Pakistan Railways that it does not fall within the domain of District Administration Islamabad Capital Territory is without any justification or basis. It was further pointed out that in the proceedings before the august Apex Court Pakistan Railways has tendered a report categorically submitting that in future all unmanned level crossing shall be up-graded to manned level crossing.

11. During the course of hearing a number of applications were filed. C.M. No.2357/2020 and others on behalf of the residents of the locality seeking implementation however, no formal order was passed therein but the applicants were asked to make submissions which they accordingly did.

12. Mr. Taimoor Aslam Khan, Advocate in C.M. No.2476/2020 submitted that the residents of the locality have *locus standi* in the matter inasmuch their long standing right of passage is being adversely affected by closure of unmanned level crossing and opening of new manned level crossing. It was contended that the agreement was entered into by the Society with the Pakistan Railways without keeping in view the rights of the locality which is not tenable.

13. Mr. Iftikhar Ahmad Bashir, Advocate & Mr. Muhammad Asif Chaudhary, Advocate Supreme Court in C.M. No.2357/2020 adopted the arguments by learned counsel in the other applications.

14. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

15. The factual background leading to filing of all the petitions has been mentioned with brevity hereinabove, therefore, need not be reproduced. It is an admitted position that in the complaint filed by the Society recommendations were made by the Federal Ombudsman in favour of the Society; in review findings were slightly modified; however, the matter attained finality by way of findings/ recommendations

of the President of Pakistan in the representation filed by Pakistan Railways. Since the entire matter hinges upon the rights of the parties i.e. Pakistan Railways and the Society in opening or non-opening of the railway crossing it is worthwhile to reproduce the final recommendations of the President of Pakistan in representation of Pakistan Railways dated 15.06.2020 which are as follows:

“The perusal of the Agreement dated 03.04.2015 reveals that shifting, operation and maintenance of the manned level crossing No.7 from KM 9/13-14 Golra-Basal Section was primarily the responsibility of the Agency. Clause 3 of the Agreement categorically envisages that “level crossing.. will be deemed to have come into use on and from the date of agreement signed... and all charges ... shall be paid by T&T ECHS from the date onwards.” Admittedly, the complainant has procured/ provided the requisite NOC of the local administration and has deposited a sum of Rs.21,540,777/- on account of the charges prescribed under the Agreement. The Agency, on its part has completed the civil/signal work on the manned level crossing at KM 9/8-9 and is now responsible for its maintenance/ operationalization

which obviously entails/ includes all measures/ steps required to be taken for peaceful/uninterrupted use of the passage. The conditions of the agreement indeed stand fulfilled by either of the parties except its operationalization. There is no denial of the fact that agreement dated 03.04.2015 is intact and binds the parties. Therefore, the Agency cannot avoid its official/ contractual obligations and blame the complainant who neither have the authority nor the capacity in that regard. Similarly, it cannot burden the complainant with additional/ extra expenditure for maintaining / up gradation of unmanned level crossing at KM 9/13-14 or for any other alternative which is not envisaged/ provided under the Agreement dated 03.04.2015. It is, however, also relevant to note that the complainant vide his application dated 04.02.2014, seeking shifting of the unmanned level crossing No.7 from KM 9/13-14 to KM 9/8-9, had statedly mentioned that the proposed site was less than 500 meters away from the existing site and that this will not only benefit the Society but also provide safe and secure crossing to the people of the adjoining areas as well. Furthermore with the presence of society's full time security guards, the crossing will be monitored effectively and efficiently. According, he does carry an obligation to assuage the concerns of the locals of the

adjoining. Abadis and take all steps , necessary to facilitate them with the use of the alternate level crossing without any reservation or restriction. Therefore, in view of the respective positions of the parties under the agreement dated 03.04.2015 and the categoric undertaking of the complainant vide application dated 04.02.2014, the revised decision of the Wafaqi Mohtasib is well justified and is unexceptionable.

8. The Honourable President of Pakistan has been pleased to reject the instant representation of the Agency in the above terms with the caveat that the complainant shall not create any hindrance for the people of the adjoining areas from using the manned level crossing No.7 at KM 9/8-9 in any manner. Complinance/ implementation now to be reported to the Wafaqi Mohtasib's Secretariat within 30-days of the receipt of this Order."

16. In essence the revised decision of the Federal Ombudsman has been maintained by the Office of President of Pakistan in representation of the Pakistan Railways. The main stance of the Pakistan Railways is that in light of the policy of Pakistan Railways dated 23.02.2019 and under clause-6 of the same the shifting

of unmanned level crossing can be done into a manned level crossing provided an NOC is required to be obtained from the District Authorities and approval of Chief Executive Officer/ Senior Manager before doing the needful. The date of the policy is 23.02.2019 which of course came into existence after the agreement between the Pakistan Railways and the Society i.e. 05.04.2015. In 2018 all the formalities with respect to the construction of signal work were completed hence at this stage referring to the policy of 2019 by Pakistan Railways is not tenable. The case law relied upon by the learned counsel for the petitioners that a policy does not operate retrospectively and cannot undo past and closed transaction are instructive. Reliance is placed on the case titled **Zaver Petroleum Corporation Limited v. Federation of Pakistan and others** (2018 CLC 1542), **Federation of Pakistan etc. v. Shaukat Ali Mian and others** (PLD 1999 Supreme Court 1026), **Govt. of KPK and others v. Khalid Mehmood** (2012 SCMR 619). In **Syed Muhammad Ali v. LDA etc.** (2017 YLR 1087) the Hon'ble Lahore High Court while citing previous case law on the subject observed that policy decisions by Executive unless beneficial cannot be applied retrospectively.

17. Since the rights and obligations and the relevant law applicable in the case of the Society and the Pakistan Railways would be what existed in 2015 hence the requirement on part of the Pakistan Railways to have a fresh NOC is uncalled for and without lawful authority. In W.P. No.2001/2020 it is surprising to observe that Pakistan Railways instead of assailing the decision of the President of Pakistan has asserted that the Society be directed to obtain fresh NOC pursuant to policy dated 23.02.2019. The referred prayer on part of the petitioner is not tenable inasmuch as the Society is a registered Society incorporated under the relevant law; however, is not a person within the meaning of word as provided in Article 199 of the Constitution inasmuch as it does not carry out the affairs of the Federation, Provincial Government or Local Authorities as such. Hence, the petition on that account is also not maintainable, in addition to the observations made with respect to enforcement of the policy dated 23.02.2019. Moreover, in C.M.A. No.58/2020 in Human Rights Case No.13316-P/2018 (In the matter of colossal losses incurred by Pakistan Railways) the Pakistan Railways submitted the following report:

**“Measures to Control/ Minimize Accidents
on Leave Crossings:**

- i) *That in compliance of the orders of the Honourable Supreme Court of Pakistan, Pakistan Railways is taking all possible measures to control/ Minimize the illegal crossings over Railway lines to safeguard the precious life of general public within its available resources. Railway administration has conducted a joint survey with Railway Police for identifying the locations, having high tendency of illegal trespassing over the entire system and on the basis of the survey data, all possible measures have been taken or being taken in order to minimize such illegal paths.*
- ii) *During this exercise more than two thousand (2000) unauthorized crossings have been closed. In addition to that, height gauges are also being fixed at un-manned level crossings to control the movement of heavy traffic which more often get stuck inside the railway track and eventually lead to serious accidents, carrying an irreparable loss to the human lives and substantive damage to rolling stock. Moreover, track guards have also been deployed at*

most vulnerable un-manned level crossings as an added safety measures. It is also imperative that all the un-manned level crossings will be eliminated by constructing flyovers/ under passes and the entire track will be fenced on both sides during execution of ML-I on Karachi Peshawar, railway line.

- iii) The joint inspection of territorial sectional Assistant Engineers have been conducted with Railway Police to identify the locations where there are high tendency of illegal tress passing and accordingly, measures have been adopted to curb these tress passing through fixing of rail fencings, constructing RCC walls and excavating trenches.*
- iv) Warning boards written in bold letters with luminous paint have been provided, clearly visible to the road traffic at eye-catching locations on either side of the road as per approved plan.*
- v) The train drivers have been instructed to be more vigilant, cautious and keep on whistling frequently while approaching the level crossings, on sighting the whistles boards, especially during thick foggy weather.*
- vi) The road surfacing at the approaches*

*of the track and inside the track are
being carried out.*

18. Despite the above report the resistance on part of Pakistan Railways to shift the level crossing is beyond comprehension and the excuses are being made which are not tenable under the law.

19. The petitioners in W.P. No.2479 of 2020, as noted above, have assailed the agreement between the Society and Pakistan Railways and also the NOC obtained as well as the act of creation of new level crossing. The petitioners do not have *locus standi* to question the construction of new level crossing or shifting of the same. During the course of arguments it was highlighted that the residents of Moza Nagazi shall not have any problem in crossing from the site of new level crossing and the Society shall be bound to provide them access. Moreover, the declaration sought vis-à-vis the agreement between Pakistan Railways and the Society NOC cannot be done in a Constitutional petition. The matter between the Pakistan Railways and the Society has attained finality inasmuch as it is a past and closed transaction and each party has performed its obligation as required under the agreement except for opening of the level crossing. Even otherwise, the

findings of the Federal Ombudsman have attained finality and cannot be reopened as no party as such has challenged the same. The petitioners in W.P. No.2479/2020 as well as applicants in C.M. No.2335/2020 never made any application to become a party before Federal Ombudsman and the decision of the Federal Ombudsman has a binding effect and cannot be reopened by this Court as no one has challenged. This Court does not have any *suo moto* jurisdiction to set aside any order or grant relief to anyone which is not claimed.

20. This Court fails to understand why the matter is being agitated before it inasmuch as the decision of Federal Ombudsman in favour of the Society has attained finality and all it had to do was to seek its implementation before Federal Ombudsman. The referred Office has the jurisdiction even to initiate contempt proceedings and to punish for contempt as provided in the Contempt of Court Ordinance, 2003 under Section 12 of the Federal Ombudsmen Institutional Reforms Act, 2013 as well as Section 16 of Establishment of the Office of Fafaqi Mohtasib (Ombudsman) Order, 1983. Moreover, under Section 12 of 1983 Order defiance of recommendations can

lead to appropriate action against the delinquent public servant of the Agency i.e. Pakistan Railways. The members of the Society in the garb of having fundamental rights do not have *locus standi* to enforce the agreement which has already attained finality.

21. It is reiterated that decision of the Federal Ombudsman in its revised form has attained finality as no one has challenged the same; hence it has binding effect. The parties have to seek its implementation through Federal Ombudsman in case Pakistan Railways does not do the needful by way of opening the new level crossing. The Hon'ble Supreme Court of Pakistan in **Federation of Pakistan v. Muhammad Tariq Pirzada and others** (1999 SCMR 2189) observed as follows with respect to implementation of the recommendations of Wafaqi Mohtasib:

"These directives have been quoted in the Mohtasib (Ombudsman)'s Annual Report, 1998 as follows:--

"Directives of the President and Prime Minister of Pakistan"

The President as well as the Prime Minister of Pakistan have emphatically directed the agencies to implement the Findings/Recommendations of the Wafaqi Mohtasib (Ombudsman) and desist from

making unnecessary representations. The following directives may be specifically quoted in this respect.

1.Directive No.1 of 1990 vide Letter No.178/1 President of 20 September, 1990.

IMPLENTATION OF FINDINGS/RECOMMENDATION OF WAFAQI MOHTASIB OMJBUDSMAN.

It is a matter of grave concern for me to note that the Findings/Recommendations made by the Wafaqi Mohtasib (Ombudsman) are, at times, not implemented promptly by some of the Ministries/Divisions.

The Ombudsman's institution has been established under President's Order No. 1 of 1983 basically to render inexpensive and speedy justice to the poor and downtrodden citizens, aggrieved to affected by the act of mala administration of the Federal Agencies. However, the very purpose of this highly useful institution is lost when its recommendations are either not implemented or are delayed.

Article 16 of P.O. 1 of 1983 confers the same powers on the Ombudsman as are enjoyed by the Supreme Court of Pakistan for the purposes of taking action for non-compliance of his Orders under Article 14. The Ombudsman, however, has not so far invoked this Article in order to allow time to the Executive Authorities for adjustment with the concept of 'accountability'.

In order, therefore, to ensure that relief is provided to the common man against the excesses and acts of maladministration of the Federal Government functionaries, the following instructions may be taken note of:-

i. Recommendations/Findings of the Wafaqi Mohtasib (Ombudsman) should be implemented within the stipulated time. Representations by the Federal agencies under Article 32 of P.O. 1 of 1983 should only be made if there is a strong case in their favour. These should not be made on frivolous grounds or merely to gain time. It has to be noted that Article 3(3) of P.O. 1 of 1983 specifically enjoins upon all executive authorities, throughout Pakistan, to act in aid of the Mohtasib.

ii. The tendency of defying or delaying the implementation of the Ombudsman's recommendations should be avoided. Unjustifiable defiance of the Mohtasib's recommendations shall be recorded in the personal file/character roll of the public servant primarily responsible for the defiance, as provided by Article 12(2) of P.O. 1 of 1983`.

Finally, all Federal Agencies are, once again, urged to extend full cooperation to the Ombudsman for carrying out his functions smoothly in accordance with the requirements of P.O. 1 of 1983.

2. The President's Secretariat (Public)

directed, vide Letter No. 8(5) PS/Legal/91, dated 20 February, 1992, that time-barred representations may not be processed.

3. Further directions were issued by the Secretary, Law, Justice and Parliamentary Affairs Division vide Letter No.2784/93-Law, dated 6th December, 1993, to all the Federal Secretaries, as follows:--

' The President has been pleased to direct that the Ministries/Divisions/ Departments may refrain from making unnecessary representations under Article 32 of Presidential Order No. 1 of 1983. The Orders of the President may also please be brought to the notice of the attached departments, subordinate offices, corporations, autonomous and semi autonomous organizations under the control of your Division for strict compliance.'

"4 Once again the Secretary Law, Justice and Parliamentary Affairs Division, vide his Letter F. No. 10(4)/89-Law, dated 19th November, 1995, addressed to all the Federal Secretaries as follows:--

"Please refer to our D.O. Letter No.2784 of 1993-Law, dated the 6th December, 1993, whereby the directions of the President of Pakistan were conveyed that the Ministries/Divisions/Departments may refrain from making unnecessary representations under Article 32 of Presidential Order 1 of 1983.

"In spite of the instructions, it has been observed by the Prime Minister's Secretariat that Ministries/Divisions/Departments still continue to make unnecessary representations ostensibly to delay the implementation of the Wafaqi Mohtasib's Order. I shall be grateful if the instructions are complied with in letter and spirit."

5. The Prime Minister of Pakistan addressed all Federal Ministries, Ministers of State, Federal Secretaries, vide Letter No.JS9PUBOMisc/14156/25035, dated 14-11-1995, directing as follows:--

"The Prime Minister, with a view to eliminating the unnecessary delays in the implementation of Wafaqi Mohtasib's findings/recommendations/orders by submitting representations to the President as a matter of routine, has been pleased to direct as under: --

(i) All Federal agencies should strictly follow, both in letter and spirit, the directions of the President circulated vide No. 178/1/President, dated 20th September, 1990 and Letter No.2784/93-Law, dated 6th December, 1993.

(ii) Before making a representation to the President recourse must be had to Article 11(2) of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (P.O.No.1 of 1983) which provides for review of his findings etc. by the Wafaqi Mohtasib.

(iii) In future, compliance shall be made promptly. In respect of the cases involving pensions, gratuities or other benefits arising on retirement; for giving preference in employment to the widow or children of deceased/retired employees in Grade 1 to 11 as per relevant recruitment rules for appointment of women against their reserved quota; medical expenses; insurance claims; utility bills; lowed to widows, orphans, invalids or incapacitated persons where the amount is not more than Rs.5 lac in an individual case and is permissible under the law."

"6. On the 5th July, 1997, the Prime Minister Secretariat issued another directive No.389/DS-Law/97. The contents of the same are reproduced below:

"As recommended by the Wafaqi Mohtasib, the head of each agency is required to study the recommendations made in the Annual Reports for the last 3 years and determine the status of their implementation. For this purpose, it would be appropriate to constitute a group of three officers under the concerned agency for an in depth examination of the relevant recommendations and check the progress in each case. On completion of this exercise, the head of each agency may; study the progress and send a report to the Wafaqi Mohtasib, within three months. It may

please be noted that where implementation of some recommendations is not 'possible, further action is required to be initiated for obtaining orders of the competent authority.

"The Prime Minister has been pleased to direct that all Secretaries/Additional Secretaries Incharge of the Ministries/Divisions should initiate timely action on the recommendations in respect of the Ministries/Divisions and the Organisations under their respective administrative control."

"All Ministries/Divisions are accordingly advised to initiate requisite action and send a report to the Wafaqi Mohtasib and this Secretariat immediately. "

It would thus appear that it has been the departmental interpretation of the Federal Government itself that recommendations of the Mohtasib ought to be implemented promptly. It is unfortunate that the agencies/public functionaries unnecessarily resort to representations under Article 32 of the Order instead of expeditious implementation of the recommendations of the Ombudsman and thereby thwart the ends of justice, aggravating the suffering of the complainants."

22. In view of the foregoing, W.P. No.2001/2020 and W.P. No.2479/2020 are dismissed and W.P.

No.163/2020, W.P. No.1881/2020 and W.P. No.311/2020 are disposed of with observation that the petitioners being the members of the Society can approach the Society for doing the needful in implementation of the findings/recommendations of Federal Ombudsman pursuant to its afore-noted orders if the same has not yet been done. Since the writ petitions stand decided, hence all the pending applications except C.M. No.2448/2020 are accordingly disposed of.

23. During the course of proceedings CrI. Orgl No.181-W/2020 was filed by one Qaisar Abbas in W.P. No.163/2020 alleging violation of order of this Court dated 12.08.2020. Since the writ petition out of which the Criminal Original arose stands disposed of there is no need of interference in the matter, hence the said Criminal Original is accordingly disposed of.

(AAMER FAROOQ)
JUDGE

Announced in open Court on the 24th day of June 2021

JUDGE

Approved for reporting