

2020 C L C 1151

[Balochistan]

Before Jamal Khan Mandokhail and Rozi Khan Barrech, JJ

MAQBOOL AHMED and others----Petitioners

Versus

SECRETARY, REVENUE DEPARTMENT, GOVERNMENT OF BALOCHISTAN and others----Respondent

Constitution Petition No.599 of 2014 and Constitution Petition No.(S)149 of 2018, decided on 28th November, 2019.

(a) Constitution of Pakistan---

----Art.199---Constitutional jurisdiction of High Court---Scope---Term 'aggrieved person'---Dispensation of justice--- Scope---Dispensation of justice is not alone function of courts but public functionaries are equally responsible to act fairly, justly and in accordance in law being trustees of public power---Where public functionaries have failed to perform their duties or they act illegally or in excess of their jurisdiction relating to public duties, any concerned person can invoke Constitutional jurisdiction of High Court--- Term 'aggrieved person' under Art. 199 of the Constitution is not confined to a person having strict legal right but it may extend to any person having legitimate interest in performance of a public duty.

Messrs Al-Raham Travel and Tours Private Limited and others v. Ministry of Religious Affairs 2011 SCMR 1621; Human Right's case PLD 2010 SC 759 and Javed Ibrahim Paracha v. Federation of Pakistan PLD 2004 SC 482 rel.

(b) Balochistan Land Revenue Act (XVII of 1967)---

----S.6---Constitution of Pakistan, Art. 199--- Constitutional petition---Judicial review---Renaming of Tehsil/District---Petitioners were aggrieved of change of name of their Tehsil and District on names of political elite and their family members by government---Validity---Where executive authorities were involved in infringement of law and the Constitution, court in judicial review could unhesitatingly and without slightest qualms of conscious could cast aside technicalities of procedure in dispensing judicial review and entertain petition filed by likeminded public individuals---Individuals who moved court for judicial redressal had to be bona fide as matters concerned public interest and aimed for good of public---Petitioners had locus standi to invoke Constitutional jurisdiction of High Court to seek directions against government restraining them from doing any wrong---No law existed to change name or rename a Tehsil or District--- Government issued the notification in view of S.6 of Balochistan Land Revenue Act, 1967 which contained no provision with regard to change of name of a District or Tehsil--- Only power available for executive to take action was derived

from law but there was no such law under which executive could issue notifications in question and Government also did not follow municipal laws and did not call objections from general public through publication---High Court restored names of District/Tehsil in question as notifications passed by government were illegal, without lawful authority and void ab initio---Constitutional petition was allowed in circumstances.

Multiline Associates v. Ardeshir Cowasjee and 2 others PLD 1995 SC 423; R v. Hull University Visitor ex parte by Lord Browne Wilkinson, Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation (1948); SS Miranda Limited v. The Chief Commissioner Karachi PLD 1959 SC 134; Judicial Review of Public Actions; Government of Pakistan v. Dada Amir Haider Khan PLD 1987 SC 504; Gaddon Textile Mills v. WAPDA 1997 SCMR 641; Saleem Akhtar J. while referring 1997 SCMR 641; KBC Authority v. Hashwani S&S Limited PLD 1993 SC 210; Chamber of Commerce and Industries Quetta v. Director General Quetta Development Authority and others PLD 2012 Bal. 3 and Khan Muhammad v. Chief Secretary Government of Balochistan and others 2018 SCMR 1411 ref.

(c) Constitution of Pakistan---

----Art. 199---Constitutional jurisdiction of High Court---Scope---Government Policy, interference in---Preconditions---Ordinarily, courts do not interfere in policy matters however, if policy is in conflict with any provision of law or is violative of fundamental rights of citizens same can be called in question in Constitutional jurisdiction of High Court.

Messrs Al-Raham Travel and Tours Private Limited and others v. Ministry of Religious Affairs 2011 SCMR 1621; Messrs Shaheen Cotton Mills, Lahore and another v. Federation of Pakistan, Ministry of Commerce through Secretary and another PLD 2011 Lah. 120 and Pakistan Muslim League (N) through Khawaja Muhammad Asif, M.N.A. and others v. Federation of Pakistan through Secretary Ministry of Interior and others PLD 2007 SC 642 rel.

(d) Constitution of Pakistan---

----Art.199---Constitutional jurisdiction of High Court---Executive action, scrutiny of---Scope---Executive action was to be such having no possibility of violating fundamental right---Power of executive to take action would have to be derived from law--- Law itself would not be able to confer upon executive any power to deal with a citizen or other persons in contravention of a fundamental right--- Functionaries of State have to function strictly within sphere allotted to them in accordance with law--- No court or authority is entitled to exercise power not vested in it and all citizens have an inalienable right to be treated in accordance with law---Action of an authority admittedly to be derogatory to law and Constitution is liable to be struck down.

Messrs Al-Raham Travel and Tours Private Limited and others v. Ministry of Religious Affairs 2011 SCMR 1621; Asaf Fasihuddin Khan Vardag v. Government of Pakistan and others 2014 SCMR 676 and Salahuddin Dharaj v. Province of Sindh through Secretary, Local Government Department and 4 others PLD 2013 Sindh 236 rel.

Asghar Khan Panezai for Petitioner (in Constitution Petition No.599 of 2014).

Abdul Rahim Kakar for Intervener (in Constitution Petition No.599 of 2014).

Abdul Malik Baloch for Petitioner (in Constitution Petition No.149 of 2018).

Shai Haq Baloch, A.A.G. for Respondent (in Constitution Petition No.149 of 2018).

Date of hearing: 12th September, 2019.

JUDGMENT

ROZI KHAN BARRECH, J.---The titled constitution petitions have been filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution") to call in question the vires and validity of Notification Nos. 33A 13 and 63A 13 dated 16.06.2014 and 21.05.2018 whereby Mangochar Sub-Division of District Kalat was renamed as Khaliq Abad Mangochar" and "Tehsil Phelawagh" of District Dera Bugti was renamed as "Tehsil Qadirabad" respectively.

2. This consolidated judgment shall dispose of both the petitions, as common questions of law and facts are involved therein.

3. Learned counsel for the petitioners vehemently argued that:

- A. Respondent-Government while issuing the impugned Notifications has failed to take into consideration that political figures have no mandate to get modified the historical names of Sub Division and Tehsil, when different Tribes are inhabiting in the area and the act of changing the names smell malafides and ulterior motives on the part of respondents.
- B. Respondent-Government had travelled beyond its authority, as under the law, it is not vested with any power to oblige anybody in a representative capacity, which would amount to rivalry and hatred for times to come amongst the inhabitants of the area.
- C. Prior to changing the names, the respondents have failed to seek general consensus from the masses inhabiting in the area as well as calling a prior concern of inhabitants through publication for such modification or alteration. The respondents on their own cannot take any step either intentionally or unintentionally to give preference to a family, which may have socio-economic and political dynamics related to different tribesmen, tribes and clans and may also have their own interests.
- D. Since Mangochar and Phelawagh are notified rural areas, therefore, municipal laws could not be enforced in such areas and the act done is an attempt to give fame to a political figure which obviously had multiple future repercussions on all counts.

Besides above, learned counsel for petitioner further argued that in the entire Province of Balochistan, the roads, streets, towns overhead bridges, educational institutions, hospitals public parks and universities are named after people/individuals of ruling privileged, feudal,

political class of the province without noticing role of such individuals in matter of developments, betterments and services for particular area, town, city, country or education. According to learned counsel it is evident from the conduct of Provincial Government and functionaries that the cities, towns, streets and all institutes (educational and health), relating to public in general have been treated as part of some undeclared kingdoms of local feudal and political lords of each town, city and area, therefore, naming, renaming such institutes, towns, cities, roads, streets is part of their kingdom rule.

4. Conversely the learned AAG strongly opposed the contentions put forth on behalf of the petitioners and stated that the Hon'ble Chief Minister Balochistan desired for moving summary on the request of the elected representatives as well as inhabitants of the concerned areas, and as per procedure enumerated in the Balochistan Government Rules of Business, 2012 a summary was accordingly submitted with complete background to the Chief Minister for approval and within the meaning of Section 6 of the Land Revenue Act, 1967 the Government of Balochistan approved the summary purely for the convenience of general public, better management and in the interest of the people of the area at large resulting in issuance of Notifications. In support of the parawise comments the learned AAG during course of arguments also raised objections that since the petitioners have challenged a policy matter which was endorsed by the government therefore, on this ground alone the petitions are not maintainable. The learned AAG raised the preliminary objection with regard to maintainability of these petitions on the ground that the petitioners have no locus standi to invoke the constitutional jurisdiction of this court. He further argued that the petitioners are not bonafide litigants, therefore these petitions being without substance, based on mere apprehension and resulting in abuse of the process of court, are liable to be dismissed.

5. We have heard the learned counsel for the petitioners, the learned AAG and have also gone through the entire record with their able assistance. Before dilating upon the respective contentions it may be seen that admittedly the petitioners are residents of Mangochar and Dera Bugti and are residing in the same vicinity.

6. It may be observed that dispensation of justice is not alone the function of Courts but public functionaries are equally responsible to act fairly, justly and in accordance with law being trustees of public power. It is settled law that where public functionaries have failed to perform their duties or they act illegally or in excess of their jurisdiction relating to public duties, any concerned person can invoke the constitutional jurisdiction of this Court. The term 'aggrieved person' under Article 199 of the Constitution would not be confined to a person having strict legal right but would extend to any person having legitimate interest in performance of a public duty. The Hon'ble Supreme Court in case of *M/s. Al-Raham Travel and Tours Private Limited and others v. Ministry of Religious Affairs* (2011 SCMR 1621) held that constitution is living organism and has to be interpreted to keep alive the tradition of past blended in the happening of present. The august Supreme Court further held that even the policy in conflict with provision of law or violation of fundamental rights can be challenged in constitutional jurisdiction.

7. In the matter of Human Right's case (PLD 2010 Supreme Court 759), the apex Court on a petition filed by member of a Civil Society entertained the petition against project in

public park, thus the scope of locus standi was extended to even conscious and concerned citizens who are live to the illegality and excess of jurisdiction by Executive Authorities of the Government. In *Javed Ibrahim Paracha v. Federation of Pakistan* (PLD 2004 Supreme Court 482), the scope of public interest litigation was determined that firstly the matter should be of public interest and secondly the petitioner aims for public good and for the welfare of general public. It is well settled by now that where infringement of law and constitution by Executive Authorities is involved, Court in judicial review would unhesitatingly and without the slightest qualms of conscious cast aside the technicalities of procedure in dispensing judicial review and entertain the petition filed by like minded public individuals. However, there is no dispute that the individuals who moved the Court for judicial redressal must act bona fide. The matters indeed in our considered view concern public interest and aim for good of public. Therefore, petitioners have locus standi to invoke the constitutional jurisdiction of this Court, to seek directions against the respondents restraining them from doing any wrong.

8. The case in hand is in the nature of public interest litigation and the petitioners have filed these petitions as pro bono publico. They are seeking directions against the illegal use and unauthorized renaming of Sub-Division in the name of fathers of elected representatives of concerned areas.

9. Even otherwise being the citizens of Pakistan the petitioners have every right to invoke the jurisdiction of this Court, for taking notice of abuse of trust and misuse of authority by the public functionaries. In the instant petition, the petitioner have alleged that the act of respondents in renaming the Sub-Divisions concerned is illegal and unlawful, as being in excess of the official authority and powers. The point raised and prayer made by the petitioners comes within the ambit and scope of sub-clause (ii) of clause (a) of Sub-Article (1) of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The objection raised by learned AAG in this regard is held to be without any legal backing and thus not sustainable in the eyes of law.

10. In the case of *Multiline Associates v. Ardeshir Cowasjee and 2 others* (PLD 1995 SC 423) the august Supreme Court of Pakistan while dealing with the case of construction of high rise buildings on the question of "locus standi" of the petitioners in para. 29 of its judgment has observed as follows:

"For the facts and reasons, and case-law on the subject of locus standi as mentioned above, we find that even though some writ petitioners are shown E to be residing at distances far away from the building in dispute and one writ petitioner is shown to be residing in close proximity of the building in dispute and since the area is same, requirement of locus standi as contemplated under Article 199 of the Constitution is to have extended scope as this case has characteristics of public interest litigation and the writ petitioners are pro bono publico."

11. In these circumstances, we are of the firm view that the petitioners falls within the definition of an "aggrieved person" and they have the locus standi to file these petitions as contemplated in Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The objection as to maintainability of the instant writ petition is rejected.

12. The learned AAG also questioned the maintainability of these petitions on the ground that the Government has taken a policy decision and it is not for this court in exercise of judicial review to sit in appeal over such policy decision to substitute it with its findings.

13. No doubt ordinarily the Courts should not interfere in the policy matters, however, if the policy is in conflict with any provision of law or is violative of the fundamental right of the citizens the same can be called in question in constitutional jurisdiction of this Court. In this context the august Supreme Court in judgment reported as "Al-Raham Travels and Tours (Pvt.) Ltd. and others v. Ministry of Religious Affairs, Hajj, Zakat and Ushr through Secretary and others" (2011 SCMR 1621) held as under;-

"As regards the contention of the learned counsel that the High Court cannot interfere with the policy matters in its jurisdiction, we have some reservations, as if the policy is in conflict with any provision of law or is violative of the fundamental rights of a citizen, the same can be called in question before the High Court in its writ jurisdiction. Reference can be made to Watan Party v. Federation of Pakistan (PLD 2006 Supreme Court 697) and Shaheen Cotton Mills v. Federation of Pakistan (PLD 2011 Lahore 120)."

Reliance is also made on Messrs Shaheen Cotton Mills, Lahore and another v. Federation of Pakistan, Ministry of Commerce through Secretary and another (PLD 2011 Lahore 120).

Policies in the ultimate analysis tend to be translated into Executive action. It is equally settled law that Executive has no inherent power to pass any order or take any action, as has been repeatedly held by the Hon'ble Supreme Court of Pakistan including in the judgment reported as: Pakistan Muslim League (N) through Khawaja Muhammad Asif, M.N.A. and others v. Federation of Pakistan through Secretary Ministry of Interior and others (PLD 2007 SC 642) in the following terms:

"There is no inherent power in the Executive, except what has been vested in it by law, and that law is the source of power and duty."

Therefore, executive action should be such having no possibility of violating a Fundamental Right. The only power of the Executive to take action would have to be derived from law and the law itself would not be able to confer upon the executive any power to deal with a citizen or other persons in Pakistan in contravention of a Fundamental Right. Functionaries of State, have to function strictly within the sphere allotted to them and in accordance with law. No Court or Authority is entitled to exercise power not vested in it and all citizens have an inalienable right to be treated in accordance with law. Therefore, an action of an Authority admittedly to be derogatory to law and Constitution, is liable to be struck down."

Reliance is placed on the case titled as "Asaf Fasihuddin Khan Vardag v. Government of Pakistan and others" (2014 SCMR 676) and Salahuddin Dharaj v. Province of Sindh through Secretary, Local Government Department and 4 others PLD 2013 Sindh 236.

The Hon'ble Supreme Court of Pakistan in the case of "Messrs Al-Raham Travels and Tours (Pvt.) Ltd. and others v. Ministry of Religious Affairs", reported in 2011 SCMR 1621, in paragraph 33, has held that:

"50 If policy is in conflict with any provision of law or is violative of fundamental rights of a citizen the same can be called in question before High Court in writ jurisdiction".

A bare perusal of case law manifestly shows that even a policy can be called in question in writ jurisdiction if the same is either in conflict with any provision of law or is in violation of fundamental rights of a citizen.

15. Reverting to merits of the case, record reveals that a summary was submitted to the Chief Minister which was approved within the meaning of section 6 of the Land Revenue Act, 1967, resulting in issuance of impugned Notification of 21st May, 2014. Contents of the Notification read as under:

Dated Quetta, the 21st May, 2014 NOTIFICATION No.33 A 13. In exercise of powers conferred by Section 6 of the Balochistan Land Revenue Act, 1967 (XVII of 1967), the Government of Balochistan is pleased to constitute a new Sub-Division namely Mangochar in District Kalat with Headquarter at Mangochar. Consequent upon the formation of the Sub-Division the territorial limits of Kalat District are re-arranged as per following schedule. District Sub-Division Tehsil Sub-Tehsil Kalat Kalat Kalat Mangochar Mangochar Johan Sub-Tehsil Gazg Sub-Tehsil. Surab Surab BY THE ORDER OF GOVERNOR BALOCHISTAN

After the above notification the Board of Revenue submitted another summary to the Chief Minister for change of name of Sub-Division Mangochar to Sub-Division Khaliqabad Mangochar, which is reproduced here under:

" SUMMARY FOR CHIEF MINISTER

Subject: CHANGE OF NAME FROM SUB-DIVISION MANGOCHAR TO SUB-DIVISION KHALIQ ABAD MANGOCHAR

Placed below is a D.O. letter from Mir Khalid Khan Langove Advisor to Chief Minister for Finance Department Balochistan, received through Commissioner, Kalat Division (F/A) wherein it has been stated that during his visit to Mangochar, the people of Mangochar District Kalat made a request regarding change of name of the newly created Sub-Division from Mangochar to Khaliq Abad Mangochar.

2. Brief facts of the case are that a new Sub-Division Mangochar was created in Kalat District with the prior approval of Government of Balochistan (F/B).

Now the Commissioner, Kalat Division has come up with the proposal put forward by Mir Khalid Khan Langove, Advisor to Chief Minister for Finance Department to

change the name of newly created Sub-Division from Mangochar to Khaliq Abad Mangochar.

3. In view of the above, approval of the Hon'ble Chief Minister is solicited on the proposal of Commissioner, Kalat Division as referred to at Para-2 above.

Senior Member. Board of Revenue"

On basis of such summary the Notification Nos. 33 A 13 dated 16th June 2014 was issued about change of name of Sub-Division Mangochar as Khaliq Abad Mangochar. The Notification reads as under:

Dated Quetta, the 16th June, 2014 NOTIFICATION No.33 A 13. In partial modification of this Board Notification of even number dated 21.05.2014, the Government of Balochistan is pleased to change the name of Sub-Division Mangochar as "Khaliq Abad Mangochar" with immediate effect. BY THE ORDER OF GOVERNOR BALOCHISTAN

As far as CP No. 149 of 2018 is concerned the Principal Secretary to the Chief Minister issued a letter to Senior Member Board of Revenue with direction that the Chief Minister has desired that a summary for change of name of Tehsil Phelawagh for his kind perusal be submitted. Contents of Para No.11 of the said letter read as under:

"The Hon'ble Chief Minister has desired that a summary for change of name of Tehsil Phelawagh, District Dera Bugti as Tehsil Qadirabad be submitted for his kind perusal/orders."

Thereafter on 21st May 2018 Notification No. 63A 13 was issued which is reproduced here under:

Dated 21st May, 2018 NOTIFICATION No.63 A 13. The Government of Balochistan is pleased to change the name of Tehsil Phelawagh as "Tehsil Qadirabad" District Dera Bugti with immediate effect. BY THE ORDER OF GOVERNOR BALOCHISTAN

16. It may be seen that admittedly during the entire process of renaming, no advertisement was made in any newspaper, calling objections from the inhabitants of the area. The above change of name occasioned on the request of an elected representative of the area despite the fact that Senior Member Board of Revenue in his comments, in the summary moved by the Board of Revenue before the Chief Minister clearly wrote that Section 6 of the Land Revenue Act, 1967 is silent in this regard. The comments are reproduced here under:

" BOARD OF REVENUE BALOCHISTAN SUMMARY FOR CHIEF MINISTER BALOCHISTAN

Subject: CHANGE OF NAME OF TEHSIL PHELAWAGH AS TEHSIL QADIRABAD

The Principal Secretary to Chief Minister has conveyed the desire of Hon'ble Chief Minister (F/A) regarding renaming Tehsil Phelawagh, District Dera Bugti as Tehsil Qadirabad.

2. A report in this regard was asked from Commissioner, Sibi Division and copy among others endorsed to Deputy Commissioner, Dera Bugti for similar necessary action (F/B). The Deputy Commissioner Dera Butgti vide his report (F/C) has submitted that District Dera Bugti is comprising of three Tehsils i.e. Dera Bugti, Sui and Phelawagh have estimated population of 350000 souls as per Census, 2017.

3. The Deputy commissioner in his report has further submitted that the new proposed name of Tehsil Phelawagyh as Qadirabad, is after the name of late Mir Ghulam Qadir Bugti a renowned tribal Chief, politician (former member of Mahlis-e-Shoora), philanshtopist, educationalist and social personality who contributed in various fields especially in the field of social welfare.

4. Keeping in view the above mentioned contributions of late Ghulam Qadir Bugti in various fields of life, the Deputy Commissioner, Dera Bugti has recommended the change of name of Tehsil Phelawagh District Dera Bugti as Tehsil Qadirabad.

5. It is pertinent to mention here that Section 6 of Land Revenue Act, 1967, is silent about change of name of District, Sub-Division, Tehsil, Sub-Tehsil, Mouza, Circle and village etc. However, many instances exist regarding renaming places/cities etc by the Government of Balochistan.

6. Submitted for kind perusal of the Hon 'ble Chief Minister Balochistan.

Sd. Senior Member

Board of Revenue

Revenue Minister: (on tour)

Chief Secretary: P1 examine the legal effect of such cha...Is there something in the General Clauses.

Chief Minister:

Foregoing paras:

8. The Deputy Commissioner in his report annexed with the Summary has mentioned that the person on whose name the name of Tehsil Phelawagh is proposed to be changed i.e. Tehsil Qadirabad, was a renowned Tribal Politician (former member of Majlis-e-Shoora), Philanthropist, educationalist and social personality who contributed in various fields especially in the field of Social Welfare. However, it is not known as to whether the objections and suggestions of the people of the area have been invited by the District Administration in this respect or otherwise. If the answer is in negative then it is likely to give rise to an uncalled for litigation and unrest amongst the people of the area. The proposed change of the name of a Sub-division as it existed since long/right from its creation till date, may necessitate the change in the

Revenue entries and may be contrary to the proviso of the Wajib-ul-Arz, (if any) prepared at the time of settlement since there might have been some reasons or customs prevailing in the area for giving the name of "Phelawagh" to the sub-division.

9. It would have been better had the Administrative Department in the first place examined the aftermath repercussions of such change and then come up with some specific proposal. Anyway, like the Land Revenue Act, 1964 the General Clauses Act have also no such provision where under the name given to a place could be changed.

Submitted please.

Sd.

Secretary Law

CHIEF SECRETARY:

10. What is the name Phelawagh associated with.

Paras 8, 9 & 10 refer:

As per report of Deputy Commissioner Dera Bugti, Phelawagh is the name of an area of District Dera Bugti, where the Masoori Section of Bugti tribe are settled since centuries. Phelawagh literally means "upper highlands" in Balochi. This office suggests that such demands should not be entertained otherwise amendment/tempering in revenue record would hurt the common man. The proposal of Deputy Commissioner, Dera Bugti is not supported at this stage. "

But despite that the then Chief Minister on 20.04.2018 directed as under:

"Tehsil Phelawagh is renamed as Tehsil Qadirabad."

17. The creation and variation of limits of a District is basically a type of territorial division usually made for administrative or electoral purposes. The creation and variation of limits of District or Sub-Division was governed by Sections 5, 6 of the West Pakistan Land Revenue Act, 1967. In the matter in hand the Act, 1967 is in force. The relevant provision contained in section 6 thereof is reproduced as under:

"6. Division to be divided in to Districts and Districts into Sub-Divisions etc (1) Each Division shall be divided into such Districts, and each District may be divided into such Sub-Divisions or Tehsils (which also include Talukas), as Government may, by notification, specify; and each Sub-Division may, consist of such Tehsils, and having such limits, as Government may, by notification, direct.

(2) Government may, by notification, vary the number and limit of Divisions, Districts, Sub-Divisions or Tehsils in the Province."

18. The above Section particularly deals with division of Districts, Sub-Divisions and Tehsils whereas subsection (1) of Section 6 thereof empowers the Government to divide each

Division and District into Sub-Divisions or Tehsils. Subsection (2) thereof empowers the Government to issue a notification for the purpose. The question therefore is as to whether the partial modification or change of the names of Tehsil Mangochar and Phelawagh brought in the manner by the official respondents through impugned notifications were permissible under the law when there is no such provision under the Land Revenue Act, 1967.

19. It is pertinent to mention here that the Local Government Act, 2010 (the Act, 2010) repealed the Balochistan Local Government Ordinance, 2001 (Ordinance, 2001) while the Ordinance, 2001 had repealed the Balochistan Local Government Ordinance, 1980. In terms of Section 196(3) of the Ordinance, 2001, rules, regulations and bye-laws made under the repealed Ordinance of 1980 in so far as they were not inconsistent with the provisions of Ordinance, 2001 were protected. It appears that no bye-laws, rules or regulations were made under the Ordinance, 1980 to deal the question of naming a District, Tehsil etc.

20. The Ordinance of 1980 had repealed the Balochistan People Local Government Ordinance, 1972 ("Act, 1972"). The Act, 1972 had repealed the Municipal Administration Ordinance, 1960 ("MAO, 1960"). In exercise of powers conferred by sections 81 and 121 of the MAO, 1960, the competent authority made and enforced West Pakistan Municipal Committee (Streets) Rules, 1962, ("Rules, 1962"). Under Rule 9, the criterion for naming a street has been provided. The criteria is as follows:

- "a. Inviting objections/suggestions from general public by through publishing the same.
- b. No street to be named after a person unless, he is a well known character of history or has rendered distinguished service in the cause of nation or the municipality.
- c. Street or Road shall not be named after a person if he is a sitting member of the Municipal Committee, Provincial Assembly, National Assembly, or holds any office under the Central Government, provincial government or any other public."

21. No rules, regulations or bye laws have been made under the above laws specifically for the manner in which the names of a District or Tehsil could be named. The only provision regarding naming are in the context of a street or building. It is apparent from the Rules of 1962 that the criterion laid down therein addresses the general principles i.e. transparency, avoiding names of living persons, making holder of public offices ineligible for the purposes of naming street or road.

Admittedly municipal laws are not enforced in Sub-Division Mangochar now named Khaliqabad Mangochar and Phelawagh now Qadirabad being notified Rural areas.

22. There is no law in Balochistan to change the name or rename a Tehsil or District. According to both the impugned notifications the Government issued the same in view of Section 6 of the Land Revenue Act, 1967 and in the said section as stated earlier there is no provision with regard to change of name of a District or Tehsil. The only power available for the executive to take action could have been derived from law but there is no such law under which the executive could issue the impugned notifications. Even otherwise the government also did not follow the municipal laws and did not call any objections from the general

public through publication.

23. Ultra vires is recognized substantial ground for judicial review. Ultra vires referred to actions which are outside or in excess of powers of decision making bodies. In the case of *R v. Hull University Visitor ex-parte*, Lord Browne-Wilkinson, while referring to the concept of ultra vires observed as follows:

"If the decision maker exercises his powers outside the jurisdiction conferred, in a manner which is procedurally irregular or is *Wednesbury* unreasonable, he is acting ultra vires his powers and therefore unlawfully"

24. The concept of ultra vires may be divided into three categories, namely illegality, irrationality and procedural impropriety. Legality for the purposes of ultra vires includes using powers for the wrong purposes, taking irrelevant factors into account, onerous conditions, or acting in bad faith. Irrationality is based on *Wednesbury* unreasonableness. As shall be discussed later, the Hon'ble Supreme Court of Pakistan has acknowledged, recognized, and applied with approval the doctrine of *Wednesbury* unreasonableness as substantial ground for determining the vires of actions taken by persons holding public office.

25. Using powers for the wrong purpose in the context of approval, grants and expenditure, out of the public funds will essentially include any action which, directly or indirectly, gives an advantage to persons holding public offices. Such actions and decisions are beyond the powers conferred under law. Such powers must be used solely for the purposes for which they were granted. Furthermore, acting in *mala fides* includes within its fold, a failure to decide a case in the manner required by law.

26. The classic case of more recent times is that of *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* (1948). Lord Green MR. alluded to the many grounds of attack which could be made against a decision, citing unreasonableness, bad faith, dishonesty, paying attention to irrelevant circumstances, disregard of the proper decision making procedure and held that each of these could be encompassed within the umbrella term 'unreasonableness'. The test propounded in that case was whether any authority had acted, or reached a decision, in a manner 'so unreasonable that no reasonable authority could ever have come to it'

27. A person entrusted with a discretion, must so to speak, direct himself properly in law. He must call his own attention to the matter which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.

28. The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account, the matters which they ought not to take into account, or, conversely, have refused to take into account and once that question is answered in favour of the local authority, it may still be possible to say that, although the local

authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, we think the court can interfere.

The Hon'ble Supreme Court of Pakistan in the case of *SS Miranda Limited v. The Chief Commissioner Karachi* (PLD 1959 SC 134), accepted and applied the test known as the *Wednesbury unreasonableness* (pages 144 to 145).

Justice (R) Fazal Karim in his book, titled *Judicial Review of Public Actions*, has dealt with the concept of unreasonableness in the context of *ultra vires* (pages 1372 to 1374). In the cases of *Government of Pakistan v. Dada Amir Haider Khan* (PLD 1987 SC 504), *Gaddon Textile Mills v. WAPDA* (1997 SCMR 641) has struck down subordinate legislation on the grounds of unreasonableness. The Hon'ble Saleem Akhtar J. while referring (1997 SCMR 641) to the test of reasonable exercise of discretion observed as follows:--

'The rule of reasonableness is so embedded in the jurisprudence that even where statute confers arbitrary powers on any authority, it is to be read in such statutes that the authority while exercising its discretion shall act reasonably.'

The Hon'ble Supreme Court in the case of *KBC Authority v. Hashwani S&S Limited* (PLD 1993 SC 210) held regulations as unreasonable and hence *ultra vires*. It has been aptly stated by Justice (R) Fazal Karim in his book, *Judicial Review of Public Actions*, that the law in established judicial enunciation of unreasonableness as a ground for judicial review has received legislative confirmation through assertion of section 24-A of the General Clauses Act, 1897. Reliance is placed on *Chamber of Commerce and Industries Quetta v. Director General Quetta Development Authority and others* (PLD 2012 Balochistan 3).

It appears that no rules, regulations or bye-laws have been made which provide a criterion or procedure for naming District and Tehsil in particular. Nevertheless, in the light of the above discussion, particularly the standards prescribed for financial propriety, a high duty of care which persons in public offices owe to the people, the same being in the nature of fiduciary duty, the doctrine of *ultra vires* and particularly on the touchstone of the test of reasonableness, the inevitable conclusion would be to answer the proposition in the negative.

Naming a District, Tehsil, road, street, building or project, planned, developed and managed from public funds, after persons holding public offices is *ultra vires*, illegal, without lawful authority, unreasonable and for wrong purposes. Not only that public funds should be used in the most transparent manner by observing the prescribed standards of financial propriety, but it should be seen that no advantage or benefit, directly or indirectly, has accrued or taken by or for any person.

29. It is a surprising fact that in all over the province of Balochistan names of Districts, Tehsils, Streets, Overhead bridges, parks, schools, hospitals, public properties project buildings, roads and towns are named/renamed after people /individuals related to ruling privileged, feudal, political class of the province without noticing role of such individuals in matter of developments, betterments and services for particular area, town, city or education. If there is a personality, qualifying entitlement of naming/renaming, then only he deserves

such honour and not the feudal or a political office bearer of ruling party. Thus, naming/renaming, prima-facie, in such like manner appears to be nothing but to show a bend of inclination and identification towards influential people in such like area, although every town/city etc shall always be of all inhabitants without any discrimination. Such is a favour and not a recognition of any achievement of life therefore, cause for renaming arises because of change in status of ruling party though heroes of a nation remain heroes for the nation forever. The Heroes of a nation carry history as well as are representatives of the nation therefore, such honour, all over the world, is priceless and such recognition is given to those, whose life describe a motivational story for generations.

30. Here it is worth appreciating that during hearing learned counsel for the petitioners with permission of the court referred a Notification dated 17th July, 2017 which show that how political influence works in Balochistan in such like issues so as to please others for political benefits or either of two, we shall emphasize, that it is not worth appreciating rather shows a miserable situation. The same is reproduced below:

<p>Dated Quetta, the 17th July, 2017 NOTIFICATION No.103 A 13. In exercise of powers conferred under Section 6 of the Balochistan Land Revenue Act, 1967 (XVII of 1967), the Government of Balochistan is pleased to create a new District namely Shaheed Sikandar Abad in Kalat Division by dividing the existing "District Kalat" with the following territorial limits, with effect from 1st August, 2017. Name of the District Territorial limit Shaheed Sikandar Abad District with Headquarter at Surab Territorial Limits of existing Sub-Division Surab. BY THE ORDER OF GOVERNOR BALOCHISTAN</p>

The then Chief Minister created new District from Sub-Division Surab at Surab District and also changed the name of the said District on his son's name. Learned counsel for the petitioners also pointed out that the Ghous Bakhsh Raisani Memorial Hospital was constructed out of public exchequer and the then Chief Minister named the same after his father i.e. Ghous Bakhsh Raisani Memorial Hospital. They further pointed out the Overhead bridge of Koyla Phatak was also named as Shohaday Khuzdar (Zehri) by the then Chief Minister and further mentioned that there are many streets, overhead bridges, roads hospitals and universities which have been named/renamed by the ruling party after their father, sons and living persons.

31. There came many public properties/projects, street, roads, hospitals, educational institutions found to have been named after one political person and his relative (s) who had done nothing and even had never come up as a political figure nor there is anything on their credit except that of being related to a political person. Without going into any further details of legality or compliance of said action, it can, however, safely be concluded that naming

public properties/projects after political figures can never be a good idea therefore, it must have been and must always be after that person only who qualifies as a real hero. The ruling class has started a practice of naming the public places after their names and those of their family members. Sudden changes in the name of district, tehsils, roads, streets and other places also deprive the people of the sense of history.

32. It is stated earlier that there was no rule, regulation or bye-laws ever made under the Rules, 1962 and under the Land Revenue Act, 1967 to change the name of District and Tehsils. The Punjab Government framed rules which are called the Punjab Local Councils, Roads and Streets Rules, 1981 and therein formulated the requirement for changing of the name of streets under Section 9 of the said Rules, which is reproduced below:

"9. Naming of roads and streets.---(1) No road or street shall be named after a person unless he is,---

- (a) the founder of the nation and person who was in the forefront of the freedom movement and took part in the creation of Pakistan;
- (b) a national personality (no longer alive) with unblemished record of service to the nation;
- (c) a hero who laid his life in the defence of the country;
- (d) a living or deceased head of a foreign state friendly towards Pakistan;
- (e) a foreign national in respect of whom permission has been granted by the Federal Government.
- (f) a famous Muslims character of history; and
- (g) a person who has rendered distinguished service to the urban local council.

(2) No road or street shall be named after a person,---

- (a) if he is sitting member of the urban local council; or
- (b) if he holds any office under any local council, the Federal Government, Provincial Government or any public Authority or is a public representative.

(3) Every proposal for the assignment of a name to a new road or street or for change in the name of an existing road or street shall be published for inviting objections and suggestions in such manner as an urban local council may determine and the final proposal shall be made after taking such objections and suggestions, if any, into consideration.

(4) The urban local council shall forward its final proposal to Government for approval and no proposal shall be implemented without the express approval of Government."

In different parts of the world following are the preferred categories of individuals to be honored by having a street named, renamed or honorarily named after them:

"a. A person who demonstrates excellence, courage or exceptional dedication to service

in way that bring special credit to the particular, town, city, street, road, institute and area or the province or country.

- b. A person who volunteers and give extraordinary help or care to individuals, families, or groups, or supports community services or humanitarian causes;
- c. A person who fosters equality and reduced discrimination.
- d. A person who risks his or her life to save or protect others.
- e. A person who has achieved a noteworthy accomplishment or has otherwise acted in an outstanding professional manner or met an uncommonly high standard that brings great benefit or honour to the particular, town, city or area or province or country.
- f. Any early pioneer or group or settlers who have contributed to the development of said area, town, city.
- g. Individuals who reflect the cultural and ethnic diversity of the city, town, province and country.
- h. Individuals who have made significant contributions to their field of endeavour, including the arts, entertainment, business, profession, athletics, public service etc."

These guidelines (criterion) speak for themselves that such an honour is not cheap but require life to qualify in any of the categories. The above guidelines however leave no room for naming the public properties, buildings, roads, hospitals and educational institutions in or after the name of a political figure.

33. Be that as it may, if a political figure is enjoying an unblemished record he may qualify (demanding judicial discretion) to earn such honour but how his family members could qualify for such honour, it is hard to understand, particularly when such naming / renaming could only be done by officials under some notification / order with an objective to make the local or national / international people about our real heroes in their personalities. Here, one, in authority, must insist upon unblemished record and service for nation even while considering a political figure for such purpose.

34. However, what we witness and rightly pointed out by learned counsel for the petitioners, prima facie, show that it is always easy to have a public property / building or project in or after one's name thereby attempting to make the people believe that such honour is not an honour requiring life but can well be achieved only being one side of a political power. Such impression, undeniably, frustrate the very purpose of guidelines, which are meant to encourage people to serve the nation; work in defined fields or serving people by wealth hence misuse of such like authority would not only violate the provisions but also result in disappointment among those, who really give their lives for such causes. The binding law itself allows us to say such practice is not only in negation to above provisions but also negates the purpose and object of naming / renaming public properties / building or projects. An illegality or even continuity thereof for a considerable period, legally, never converts illegality into legality. We do not want to make any comments for such glaring violation of law itself but since this Court is always competent to order for enforcement /

compliance of law from one in authority as well to refrain from violation of commandment of law.

The government did not place the suggestions for changing the name of the District/Tehsil before the provincial Assembly and without taking permission from the cabinet or Provincial Assembly directly changed the names of District/Tehsil Mangochar and Phelawagh without any provision of law.

The Sindh Government amended the Section 6 of Land Revenue Act, 1967 and introduced Section 6-A, which is reproduced here under:

"6-A Renaming of a District or a Taluka. Notwithstanding the provisions' contained in sections 5 and 6, if the Provincial Assembly has passed or passes a resolution to the effect that District or a Taluka may be re-named the Government shall by a notification, re-name such District or Taluka, as the case may be. "

35. Without going into the significance of glaring violation in the matter of naming/renaming such like public properties, in view of what has been discussed above the instant petitions are allowed. The impugned notification dated 21.05.2014 changing the name of Sub-Division Mangochar as 'Khaliq Abad Mangochar' and the Notification dated 21.05.2018 issued by respondent No.1 with regard to changing the name of Tehsil 'Phelawagh' as 'Qadirabad' are hereby declared to be illegal, without lawful authority and void ab-initio. Consequently, the old names of Sub-Division Mangochar and Tehsil Phelawagh are hereby restored.

36. Besides the names of District Shaheed Sikandar Abad, Shohadaye Zehri Bridge and Ghous Bakhsh Raisani Memorial Hospital are also hereby declared illegal, without lawful authority and void ab-initio. In view of the dictum laid down by the Hon'ble Supreme Court in the case of Khan Muhammad v. Chief Secretary Government of Balochistan and others (2018 SCMR 1411) to the effect that if there are similar Notifications, whereby the Streets, Towns, Hospitals, Educational Institutions are named/renamed after the name of relative or living person of political figures without merit/contribution on their part, same would also be of no legal effect.

Before parting with the judgment in hand we may observe that naming or renaming of a District/Tehsil is an important subject in itself, therefore the Provincial Government may consider for framing of rules or laying down a policy in respect of same as has been done by the sister provinces as such acts cannot be performed in absence of laid down procedure and criteria merely at the whims and wishes of political figures or elected representatives.

Copy of this judgment be sent to the Chief Secretary Government of Balochistan for information and necessary action.

MH/1/Bal.

Petitions allowed.

