IN THE HIGH COURT OF SINDH AT KARACHI

CP No.D-1243 of 2018

PRESENT:
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Arshad Hussain Khan

PETITIONER: Patient Welfare Society,
Through Mr. Malik Naeem Iqbal, Advocate.

RESPONDENTS: Province of Sindh & others.
Through Mr. Shahryar Mehar, Assistant Advocate General, Sindh.

Date of Hearing 22.10.2020.

JUDGMENT

Arshad Hussain Khan-J: The petitioner through instant constitutional petition challenging the vires of amendment made in section 8 of Shahdadpur Institute of Medicals Sciences Act, 2011 [SIMS Act, 2011] via Shahdadpur Institute of Medical Sciences (Amendment) Act, 2017 [SIMS Amendment Act, 2017] has sought the following reliefs:-

a) Declare that the Shahadadpur Institute of Medical Sciences [Amendment] Act 2017 violates, inter alia, Article 10-A and 25 of the Constitution and/or is even otherwise void ab initio;

b) Restrain the Respondents and/or any of their officers from implementing the impugned Legislation and/or acting upon the same;

c) Restrain the Respondents from reconstituting the Board of Governors of Shahadadpur Institute of Medical Sciences and from removing the President of the Petitioner Society from his ex-officio post of Vice-Chairman of the Board of Governors;

d) Grant any other additional / alternate relief as this Court may deem fit and appropriate.

2. Briefly the facts as mentioned in the memo of petition are that the petitioner is a body registered under the provisions of Voluntary Social Welfare Agency Ordinance 1961 in the name and style of Patient Welfare Society Institute of Medical Sciences, Shahdadpur ,

and the objectives of the Society are to provide (i) Needed amenities to patients who cannot afford basic health care (ii) undertake various health programs such as blood bank, drug bank, tele-medicine, artificial limbs workshop (iii) to maintain preventive health programme (iv) to undertake rehabilitation services for patients and (v) to take necessary steps to supplement services rendered by the Institute. The general body of the Society is comprised of all members and executive committee. It has been further stated that the law provides that public medical institute such as SIMS should have a Patients Welfare Society attached to them and the president of such Society should hold the post of Vice-Chairman of the Board of Governors of the Institute. As such the role of patient welfare society in a medical institute is of paramount importance. It has been also stated that in pursuance of the decision of the Executive Committee dated 04.03.2012, the nomination of Dr. Abdul Majeed Chutto was sent to the Society Welfare Officer Sanghar as well as the Secretary Health and Dr. Abdul Majeed Chutto was duly notified as President Patients Welfare Society, SIMS, and respondent No.1 was pleased to constitute the Board of SIMS under Section 8 of the Act, 2011. It has been further stated that Dr. Abdul Majeed Chutto by virtue of being the president of the petitioner became Vice Chairman of the Board of Governors of SIMS. It is further stated that on 23.11.2017, an amendment bill to the Act 2011 was hastily and surreptitiously introduced before the Provincial Assembly by the Sindh Government without any prior notice, publication or circulation and without following the appropriate procedure. This amendment bill proposed an amendment in Section 8 of the 2011 Act whereby the post of Vice Chairman of SIMS was abolished and thus effectively removing the President of the Patients Welfare Society from representation in the Board of Governors of SIMS. It has been stated that the respondents, being public functionaries, are bound to follow law and exercise discretion in an organized way rather than on their whims and wishes. It is further stated that the respondents have acted in gross violation of law and set a sinister precedent, which will have disastrous consequences for the Government of Province. The petitioner having no alternate remedy has approached this Hon’ble Court for the relief sought for.

3. Upon notice of the present petition, parawise comments on behalf of the respondents were filed refuting the contents of the memo of petition. It has been stated that respondents No.1 and 2 are law abiding and under obligation to follow the laws and rules of the government. It has been stated that the SIMS Act 2011 was amended in the year 2018 and the amendment Act was passed by the Provincial Assembly of Sindh as proposed by the Health Department keeping in view certain lacunas / flaws in the composition of previous Board on the grounds that there exists no post of Nazim in the system of district administration, which has been replaced by including the Divisional Commissioner. In earlier, composition under the Act-2011 Chairman District Counsel was not included, which has been included having vital role in the district and enough beneficial for the Institute. A professional having substantial contribution to the field of medical science and recognized nationally and internationally has been included in the Board through amendment which will also help for the betterment of the Institute. It is further stated that the Board has been constituted as per amended legislation and composition of the Board of Governor. The Institution is running smoothly and rendering the medical services to the general public of Sanghar and its adjacent areas and it is the domain / purview of the legislators to pass legislation as proposed by the department in the light of rules of business of the provincial assembly. The interest of patients is prime responsibility of the director of the institute and then the Governing Body, which both are in place and doing at their best. It has also been stated that the Amendments in the Act of 2011 in the year 2018 is lawful, duly passed by the Provincial Assembly of Sindh after due consideration under the rules of business. It has been stated that after promulgation of an Act or amendment in the Act, respondents are legally bound to act upon the law as permissible under the prevailing rules of business. Since the composition of Board of Governors have been amended in accordance with Shahdadpur Institute of Medical Sciences Act, 2011 [Amendment], 2018, duly passed by the Provincial Assembly of Sindh, as such the petition merits no consideration, and the same may be dismissed.

4. During the course of arguments, learned counsel for the petitioner while reiterating the contents of the petition has contended that the petitioner is a voluntary social welfare society, which works day and night to fulfill its objectives and is helping needy people to get basic healthcare and facilities. It is argued that keeping in view the deteriorating condition of the public health care facilities in the province, Government of Sindh decided to bring a material change in the structure and governance of public health facilities by creating statutory authorities in various districts and talukas of the province, and in order to bring them out of direct government control through its hierarchy of officers, handed it over to independent Board comprising of members within and outside the government. In this regard, first in sequence was Gambat Institute of Medical Sciences Act, 2005 (GIMS Act, 2005), second was Shahdadpur Institute of Medical Sciences Act, 2011 (SIMS Act, 2011) and the third was Syed Abdullah Shah Institute of Medical Sciences Act, 2012 (ASIMS Act, 2012). It is also urged that a bare perusal of all the above mentioned three Acts would reflect that except few provisions, all are identical in all respect. One feature, which is common in all the legislations is that general direction and administration of the institute and its affairs shall vest in the Board. It has been argued that the intention of the legislature is to establish a sort of public private partnership for better delivery of health care facilities to grass root level rather than wasting resources in directly controlled health facilities. Further argued that the role and importance of Patient Welfare Societies and the Legislation has been made under the command of Article 9 of the Constitution of Pakistan, which has made right to life including right to have access to healthcare facilities as a fundamental right of every citizen. It has further been argued that the petitioner seeks indulgence of this Court to declare SIMS [Amendment] Act, 2017, to the extent of its section 8, ultra vires as it has altogether removed representation of the petitioner in the Board of SIMS and removing the president of Patient Welfare Society and two nominees of the petitioner have also been removed and in their place Chief Minister’s nominated person were made members completely demolishing the independent character of the Board for the purpose of which the institute was created. The re-placement of the nominees of the Patient Welfare Society with Chief Minister’s nominated persons in

the Board of SMIS would seriously compromise the independence and autonomous status of the Institute. It has been argued that the impugned amendment bill to the SIMS Act 2011 was hastily introduced before the provincial assembly by respondent No. 1, without any prior notice / publication or circulation, thereby ignoring the appropriate procedure and without even listing it on the list of business, in sheer violation of Sindh Assembly rules of business. It is also argued that the manner of preparation and presentation of the bill clearly reflects mala fide, hence, the entire superstructure falls. The aforesaid bill proposed an amendment in Section 8 of the SIMS Act, whereby the post of Vice Chairman of SIMS BOG was abolished and its nominees no more required to be on Board, thus effectively removing the president of welfare society from representation in the BOG, whereas, other similar medical institutes still have the post of Vice Chairman or Member of BOG held by the president of their welfare society. It is further argued that the impugned SIMS [Amendment] Act, 2017, is person specific as it has been promulgated only to remove the petitioner's representation from the Board of SIMS, whilst no such change has been brought in the Boards of other institutes. Lastly, learned counsel has prayed that the petition may be allowed as prayed. In support of his arguments he has relied upon the cases *Baz Muhammad Kakar and others v. Federation of Pakistan through Ministry of Law and Justice, Islamabad and others* [PLD 2012 SC 870], *Contempt Proceedings Against Chief Secretary Sindh and others* [2013 SCMR 1752], *Messrs Sui Southern Gas Company Ltd., v. Federation of Pakistan and others* [2018 SCMR 802] and *Messrs Mustafa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance , Islamabad, and others* [PLD 2016 SC 808].

5. Learned Assistant Advocate General, Sindh, during his arguments while reiterating the contents of para-wise comments filed on behalf of Secretary Health Sindh contended that it is the domain / purview of the legislators to pass legislation as proposed by the department in the light of rules of business of the Assembly. The impugned amendment Act is a lawful enactment duly passed by the Provincial Assembly of Sindh after due consideration under the rules of business. Further contended that the present structure of Board of

Governors of SIMS is comprising appropriate personnel to run the institute and after promulgation of amendment Act, respondents are legally bound to act upon the law as permissible under the prevailing rules of business. It is also urged that the Board has been constituted as per amended legislation and composition of Board of Governor. The Institution is running smoothly and rendering the medical services to the general public of District Sanghar and its adjacent areas. The interest of patients is prime responsibility of the Director of the Institute and then the Governing Body, which both are in place and doing at their best. The Patient Welfare Society has not been stopped to work for the welfare of the patients and as such, such presumption merits no consideration. It is further urged that Patient Welfare Society can work for the welfare of poor and ailing humanity in the Institute without being member of the Governing Body. It is also argued that no mala fide could be attributed to the legislature. Learned AAG lastly urged that the petition may be dismissed with the cost. In support of his arguments he has relied upon the case of *Moula Bux alias Nouman and another v. Governor of Sindh/Chancellor University of Sindh and others* [2014 PLC (CS) 1217].

6. We have heard learned counsel for the petitioner and learned Assistant Advocate General for the respondents, perused the documents available on the record and have examined the relevant laws as well as the case law cited at the Bar.

7. From perusal of the record, it transpires that in order to provide health facilities in various districts and talukas of the Province, Government of Sindh established statutory authorities i.e., Gambat Institute of Medical Sciences Act, 2005 (GIMS Act, 2005), Shahdadpur Institute of Medical Sciences Act, 2011 (SIMS Act, 2011) and Syed Abdullah Shah Institute of Medical Sciences Act, 2012 (ASIMS Act, 2012) Sehwan, and handed it over to the respective independent Boards of the Institutes comprising of members within and outside the Government. Record further transpires that on 23.11.2017 a Government Bill No.31 of 2017-The Shahdadpur Institute of Medical Science (Amendment) Bill 2017, proposing amendments in sections 7, 8 and 15 (1) of Sindh Act No. XI of 2011 (Shahdadpur Institute of

Medical Sciences Act, 2011) was passed by the Provincial Assembly of Sindh. Subsequently, on 26.12.2017 the said bill was assented by the Governor of Sindh and thereafter it was published in the Gazette on 02.01.2018.

8. In the instant petition, the petitioner, a patient welfare society registered under voluntary Social Welfare Agency (Registration and Control) Ordinance 1961, inter alia, engaged in providing needed amenities and assistance to the patient, particularly *Mustahiq* patient and also undertake projects like blood bank, drug bank, tele-medicine, etc. has challenged the vires of amendment made in section 8 of Shahdadpur Institute of Medicals Sciences Act, 2011 [SIMS Act, 2011] through Shahdadpur Institute of Medical Sciences (Amendment) Act, 2017, whereby under section 3 the composition of Board of Governor of SIMS has been changed. The precise plea of the petitioner is that the impugned enactment is a person specific and has been promulgated malafidely with prime object to remove representation of the petitioner-society and in their place Chief Minister's nominated persons were made members, which demolishes the independence and autonomous status of the SIMS.

9. Before going into any further discussion, it would be appropriate to reproduce the composition of Board of Governors under SIMS Act 2011 and SIMS Amendment Act, 2017 (impugned herein) as follows:

BOG of SIMS under SIMS Act 2011

Board

"8.(1) the general direction and administration of the institute and its affairs shall vest in the Board consisting of the following:-

i.	Minister Health or in his absence the Person nominated by Government	Chairman
ii.	President of the Patients Welfare Society of Shadadpur Institute of Medical Sciences	Vice Chairman
iii	Secretary Health or his Nominee	Member
iv	District Nazim	Member
v	Two nominees of the Patient Welfare Society of Shadadpur Institute of Medical Sciences	Member

vi	One Nominee of the Academic Council	Member
vii	One person of eminence in the field of medical science nominated by Government	Member
viii	Director	Member/secretary"

BOG of SIMS under SIMS Act 2017

Amendment of Section 8 of Sindh Act No. XI of 2011

"3. In the said Act, in section 8, for subsection (1), the following shall be substituted:-

i.	Minister Health or if there is no Minister Health, Member of Cabinet nominated by the Chief Minister	Chairman
ii.	Member of Provincial Assembly from the Constituency where the Institute is located	Member
iii.	Secretary Health	Member
iv.	Commissioner of the Division	Member
v.	A Professional having substantial contribution to the field of Medical Science recognized nationally and internationally (nominated by the Chief Minister).	Member
vi.	One reputed citizen from adjacent area of Sanghar involved in philanthropy activities (nominated by Chief Minster)	Member
vii.	Chairman, District Council Sanghar	Member
viii.	One nominee of Academic Council	Member
ix.	Director of the Institute	Member/Secretary

10. It is now well established that the Courts while considering the vires of a legislative enactment under its powers of judicial review can consider not only the substance of the law but also the competence of the legislature. Further, though it is an accepted principle that no mala fide can be attributed to the legislature, however, the bona fides of the legislature as also the purpose and object of a Statute may also be considered in determination of the vires of a Statute. The vires of a Statute can also be determined on the ground if the legislation is colourable. In this regard, it may be observed that there is always a presumption in favour of the constitutionality of a legislative enactment unless ex facie it appears to be violative of any of the Constitutional provisions and in a case where two opinions with regard to the

constitutionality of an enactment are possible, the one in favour of the validity of the enactment is to be adopted. Meaning thereby that when a law is enacted by the Parliament, the presumption lies that Parliament has competently enacted it, and if the vires of the said law are challenged, the burden always lies upon the person making such challenge to show that the same is violative of any of the fundamental rights or the provisions of the Constitution. It is also a cardinal principle of interpretation that law should be interpreted in such a manner that it should be saved rather than destroyed. The Courts should lean in favour of upholding the constitutionality of a legislation and it is thus incumbent upon the Courts to be extremely reluctant to strike down laws as unconstitutional. This power should be exercised only when absolutely necessary for injudicious exercise of this power might well result in grave and serious consequences. Reliance in this regard can be placed on the case of *Messrs Sui Southern Gas Company Ltd., and others v. Federation of Pakistan and others* [2018 SCMR 802].

11. The Division Bench of this Court, wherein one of us [Muhammad Ali Mazhar, J.] was member, in its very recent judgment in constitutional petitions [CP. No.D-4953, 5036, 5158 and 5237 of 2020] challenging the vires of Pakistan Medical Commission Act, 2020, while dilating upon in detail the doctrine of *ultra vires*, inter alia, has held as under:

> "17. The doctrine of ultra vires is the basic doctrine in administrative law. The doctrine envisages that an authority can exercise only so much power as is conferred on it by law. An action of the authority is intra vires when it falls within the limits of the power conferred on it but ultra vires if it goes outside this limit. To a large extent the courts have developed the subject by extending and refining this principle, which has many ramifications and which in some of its aspects attains a high degree of artificiality. In the case of Mir Shabbir Ali Khan Bijarini and others VS. Federation of Pakistan and others). (PLD 2018 Sindh 603) (Authored by one of us Muhammad Ali Mazhar-J.), the doctrine of ultra vires was discussed which expression means "beyond the powers". If an act entails legal authority and it is done with such authority, it is symbolized as intra vires (within the precincts of powers) but if it is carried out shorn of authority, it is ultra vires. Acts that are intra vires may unvaryingly be acknowledged legal and those that are ultra vires illegal. It is well settled that constitutionality of any law can be scrutinized and surveyed. The law can be struck down if it is found to be offending against the Constitution for absenteeism of lawmaking and jurisdictive competence or found in violation of fundamental rights. At the same time it is also well-known through plethora of dictums laid down by the superior courts that the law should be saved rather than be destroyed and the court must lean in favour of upholding the

> constitutionality of legislation unless ex facie violative of a Constitutional provision. The apex court in the case of Federation of Pakistan and others vs. Shaukat Ali Mian and others (PLD 1999 Supreme Court 1026), held that a colourable legislation is that which is enacted by a Legislature which lacks the legislative power or is subject to Constitutional prohibition but it is framed in such a way that it may appear to be within the legislative power or to be free from Constitutional prohibition or where the object of the law is not what is contemplated under the Constitutional provision pursuant whereof it is framed. Whereas in the case of Benazir Bhutto vs. Federation of Pakistan and another, (PLD 1988 Supreme Court 416) the apex court held that vires of an Act can be challenged if its provisions are ex facie discriminatory in which case actual proof of discriminatory treatment is not required to be shown. Where the Act is not ex facie discriminatory but is capable of being administered discriminately then the party challenging it has to show that it has actually been administered in a partial, unjust and oppressive manner. The apex court in the case of Sui Southern Gas Company Ltd. and others vs. Federation of Pakistan and others, (2018 SCMR 802) held that when a law was enacted by the Parliament, the presumption was that Parliament had competently enacted it and if the vires of the same are challenged, the burden is always laid upon the person making such challenge to show that the same was violative of any of the fundamental rights or the provisions of the Constitution. Where two opinions with regard to the constitutionality of an enactment were possible, the one in favour of the validity of the enactment was to be adopted. Court should lean in favour of upholding the constitutionality of a legislation and it was thus incumbent upon the Court to be extremely reluctant to strike down laws as unconstitutional. Such power should be exercised only when absolutely necessary as injudicious exercise of such power might well result in grave and serious consequences. In the case of M.Q.M. and others vs. Province of Sindh and others). (2014 CLC 335) (Authored by one of us Muhammad Ali Mazhar-J), it was held that courts generally leaned towards upholding the constitutionality of a Statute rather than destroying it, however if a Statute was ex facie discriminatory or capable of discriminatory application or violated any provision of the Constitution, it may be declared void ab initio since its inception. Doctrine of severability permitted a court to sever the unconstitutional portion of a partially unconstitutional Statute in order to preserve the operation of any uncontested or valid remainder but if the valid portion was so closely mixed up with the invalid portion that it could not be separated without leaving an incomplete or more or less mixed remainder, the court would declare the entire act void.

12. Moreover, the Honourable Supreme Court of Pakistan in case of *Lahore Development Authority through DG and others v. Ms. Imrana Tiwana and others* [2015 SCMR 1739] while setting the guidelines and principles to declare laws unconstitutional laid down, inter alia, has held as under :-

> "64. The power to strike down or declare a legislative enactment void, however, has to be exercised with a great deal of care and caution. The Courts are one of the three coordinate institutions of the State and can only perform this solemn obligation in the exercise of their duty to uphold the Constitution. This power is exercised not

because the judiciary is an institution superior to the legislature or the executive but because it is bound by its oath to uphold, preserve and protect the Constitution. It must enforce the Constitution as the Supreme Law but this duty must be performed with due care and caution and only when there is no other alternative.

65. Cooley in his "Treatise on Constitutional Limitations", Pages 159 to 186, H.M. Seervai in "Constitutional Law of India", Volume I, Pages 260 to 262, the late Mr. A.K. Brohi in "Fundamental Law of Pakistan", Pages 562 to 592, Mr. Justice Fazal Karim in "Judicial Review of Public Actions" Volume I, Pages 488 to 492 state the rules which must be applied in discharging this solemn duty to declare laws unconstitutional. These can be summarized as follows:--

I. There is a presumption in favour of constitutionality and a law must not be declared unconstitutional unless the Statute is placed next to the Constitution and no way can be found in reconciling the two;

II. Where more than one interpretation is possible, one of which would make the law valid and the other void, the Court must prefer the interpretation which favours validity;

III. A Statute must never be declared unconstitutional unless its invalidity is beyond reasonable doubt. A reasonable doubt must be resolved in favour of the Statute being valid;

IV. If a case can be decided on other or narrower grounds, the Court will abstain from deciding the constitutional question;

V. The Court will not decide a larger constitutional question than is necessary for the determination of the case;

VI. The Court will not declare a Statute unconstitutional on the ground that it violates the spirit of the Constitution unless it also violates the letter of the Constitution;

VII. The Court is not concerned with the wisdom or prudence of the legislation but only with its constitutionality;

VIII. The Court will not strike down Statutes on principles of republican or democratic government unless those principles are placed beyond legislative encroachment by the Constitution;

IX. Mala fides will not be attributed to the Legislature."

13. Furthermore, the Honourable Supreme Court in the case of *Shahid Pervaiz v. Ejaz Ahmad and others* [2017 SCMR 206], inter alia, has held as under:

"112. Undoubtedly, the legislature enjoys much leeway and competence in matters of legislation, but every law enacted may not necessarily be tenable on the touchstone of the Constitution. It is the sole jurisdiction of this Court, under the law and the constitution to look into the fairness and constitutionality of an enactment and even declare it non est, if it is found to be in conflict with the provisions of the Constitution. Thus, legislative competence is not enough to make

> a valid law; a law must also pass the test at the touchstone of constitutionality to be enforceable, failing which it becomes invalid and unenforceable."

14. On the touchstone of the above legal precedents, it is clear that while examining a law, through legislative process provided under the Constitution, power of the Court is limited to examine whether the provision of law is repugnant, inconsistent or in conflict with the provisions of the Constitution, whether legislature had legislative competence as envisaged in the Constitution, and whether the legislation violated or abridged fundamental rights guaranteed by the Constitution. A statute must be interpreted to advance the cause of statute and not to defeat it. Courts cannot sit in judgment over the wisdom of the legislature, except on two grounds on which the law laid down by the legislature can be struck down by the Courts, namely, lack of legislative competence and violation of any of the fundamental rights guaranteed in the Constitution or of any other Constitutional provision.

15. In the instant case, the petitioner has not raised any question in respect of the legislative competence, however, it challenges the constitutionality of the impugned legislation on the ground that the same is person specific meant to exclude the president of the petitioner society from the Board of Governor of SMIS and by doing so the Government of Sindh has classified the patient of Shahdadpur and the petitioner society in separate classes as compare to the other medical institutes of the province, which is *ex facie* discriminatory and sheer violation of fundamental rights guaranteed in the Constitution.

16. From perusal of the constitution of the petitioner society, it appears that the society was registered on 08.07.2008 much prior to the establishment of SMIS, which came into being on 21.04.2011 through Sindh Act No. XI of 2011, and further the aims and objectives of the society do not disclose that it will perform only after becoming part of any government established medical institute. Similarly, the SIMS Act 2011 also does not show that SIMS will have to have either the president of the petitioner-society as vice chairman or nominees of the petitioner-society as members of the Board of Governors of the Institute. Although in section 8 of the SIMS Act 2011, initially

president of the petitioner society as vice chairman and its two nominees were shown as members of the Board, yet it does not show that they are and will be permanent members of the Board. Furthermore section 5 of the said Act, states that 'unless a member cease to hold office, the term of office of a member, other than ex-officio member, shall be for a period of three years'. The terms of office of a member of the Board in the present case appears to have been expired and as such the respondents within their right to issue notification for new members, which has been done by the respondents through the enactment, impugned in the present proceedings.

17. From perusal of the impugned amendment, it reflects that since there exist no post of *Nazim* in the district administrative system as such it has been replaced by Divisional Commissioner. Further Chairman District Council, having important role in the District, has been added. Besides, a professional having substantial contribution in the field of medical science and recognized nationally and internationally has also been included in the Board of the SIMS. It is the mandate of Article 30(2) of the Constitution of Pakistan that validity of law cannot be called into question on the principle of policy. The petitioner has also challenged the impugned enactment being violative of Article 25 of the Constitution as exclusion of the president and other nominees of the petitioner society would amount to removal of representation of patients of Shahdadpur and its adjoining areas from the Board of SIMS, which is violative of fundamental right guaranteed by the Constitution, as such, the impugned enactment is ultra vires to the provision of the Constitution. The contention so raised by learned counsel for the petitioner is untenable as in presence of Divisional Commissioner and Chairman District Council of the area the newly added members of the Board, it cannot be said that either the people or the patient of the Shahdadpur will be unrepresented in the Board of SIMS.

18. Perusal of the amendment does not show any discrimination or violation of any fundamental rights of the petitioner's association. There is always presumption in favour of constitutionality of an enactment and the burden is upon him, who challenged it to show that there has been clear transgression of the constitutional principle.

Learned counsel for the petitioner could not point out that the impugned enactment takes away or abridge any of the fundamental right enumerated under Article 25 of the Constitution of the petitioner's association. Case law relied upon the by learned counsel for the petitioner are also distinguishable from the facts of the present case as such the same are not applicable to the present case.

19. In view of the foregoing discussion the petition is dismissed.

Judge

Judge

Karachi
Dated :

*Jamil****