

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR, &
MR. JUSTICE ADNAN-UL-KARIM MEMON

CP NO.D-1995/2016

Petitioners. : M/s. Dairy Land (Pvt) Limited,
Respondents : Federation of Pakistan and others,

CP NO.D-2084/2016

Petitioners. : Agility Logistics Pvt Ltd,
Respondents : Federation of Pakistan and others,

CP NO.D-2085/2016

Petitioners. : Employees Federation of Pakistan and others,
Respondents : Federation of Pakistan and others,

CP NO.D-2120/2016

Petitioners. : U & I Garment (Units 1-3) and another,
Respondents : Federation of Pakistan and others,

CP NO.D-2121/2016

Petitioners. : K & N Poultry Farms,
Respondents : Federation of Pakistan and others,

CP NO.D-2122/2016

Petitioners. : M/s. Artistic MillionnersPvt Ltd,
Respondents : Federation of Pakistan and others,

CP NO.D-2345/2016

Petitioners. : M/s. HasnainTanweer Associates,
Respondents : Federation of Pakistan and others,

CP NO.D-2146/2016

Petitioners. : M/s. Karachi Club,

Respondents : Federation of Pakistan and others,

CP NO.D-2148/2016

Petitioners. : M/s. OMI Pvt Ltd,

Respondents : Federation of Pakistan and others,

CP NO.D-2157/2016

Petitioners. : M/s. Mehran Brothers and others,

Respondents : Federation of Pakistan and others,

CP NO.D-2269/2016

Petitioners. : M/s. Gadoon Textile Mills,

Respondents : Federation of Pakistan and others,

CP NO.D-2270/2016

Petitioners. : M/s. ICI Pakistan Limited and others,

Respondents : Federation of Pakistan and others,

CP NO.D-2302/2016

Petitioners. : M/s. A & U Garments and others,

Respondents : Federation of Pakistan and others,

CP NO.D-2316/2016

Petitioners. : M/s. Proline (Pvt) Ltd and others,

Respondents : Federation of Pakistan and others,

CP NO.D-2355/2016

Petitioners. : M/s. S. Abdullah and others,
Respondents : Federation of Pakistan and others,

CP NO.D-2440/2016

Petitioners. : M/s. Pakistan Refinery Ltd,
Respondents : Federation of Pakistan and others,

CP NO.D-2606/2016

Petitioners. : M/s. Din Leather Pvt Ltd and others,
Respondents : Federation of Pakistan and others,

CP NO.D-2690/2016

Petitioners. : M/s. Popular Food Ind.
Respondents : Federation of Pakistan and others,

CP NO.D-2729/2016

Petitioners. : Patel Foundation and others,
Respondents : Federation of Pakistan and others,

CP NO.D-2774/2016

Petitioners. : M/s. Colgate Palmolive (Pakistan) Limited &
others,
Respondents : Federation of Pakistan and others,

CP NO.D-2803/2016

Petitioners. : M/s. International Automotive Engineering,
Respondents : Federation of Pakistan and others,

CP NO.D-2834/2016

Petitioners. : M/s. Y.B. Holdings Pvt Ltd,

Respondents : Federation of Pakistan and others,

CP NO.D-2835/2016

Petitioners. : M/s. Lucky Knits Pvt Ltd,

Respondents : Federation of Pakistan and others,

CP NO.D-2836/2016

Petitioners. : M/s. Lucky Energy Pvt Ltd,

Respondents : Federation of Pakistan and others,

CP NO.D-2837/2016

Petitioners. : M/s. Tabba Heat Institute and others,

Respondents : Federation of Pakistan and others,

CP NO.D-2853/2016

Petitioners. : M/s. B.P. Ind. Pvt Ltd,

Respondents : Federation of Pakistan and others,

CP NO.D-2909/2016

Petitioners. : M/s. Universal Cables Ind.

Respondents : Federation of Pakistan and others,

CP NO.D-3327/2016

Petitioners. : Marine Stopes Society,

Respondents : Federation of Pakistan and others,

CP NO.D-3521/2016

Petitioners. : ENI Pakistan Ltd,

Respondents : Federation of Pakistan and others,

CP NO.D-3527/2016

Petitioners. : M/s. Al-Muqet Textile Pvt Ltd,

Respondents : Federation of Pakistan and others,

CP NO.D-3791/2016

Petitioners. : M/s. Shezan International Ltd,

Respondents : Federation of Pakistan and others,

CP NO.D-3825/2016

Petitioners. : M/s. Umer Textile and others,

Respondents : Federation of Pakistan and others,

CP NO.D-3870/2016

Petitioners. : M/s. Karachi Grain Pvt Ltd,

Respondents : Federation of Pakistan and others,

CP NO.D-4060/2016

Petitioners. : M/s. Hub Leather (Pvt) Ltd and others,

Respondents : Federation of Pakistan and others,

CP NO.D-4219/2016

Petitioners. : M/s. Mehran Industries,

Respondents : Federation of Pakistan and others,

CP NO.D-5096/2016

Petitioners. : M/s. Ahmed Enterprises,

Respondents : Federation of Pakistan and others,

CP NO.D-5121/2016

Petitioners. : M/s. CSM Pakistan (Guarantee) Ltd,
Respondents : Federation of Pakistan and others,

CP NO.D-5637/2016

Petitioners. : M/s. Bosch Pharmaceutical Pvt Ltd,
Respondents : Federation of Pakistan and others,

CP NO.D-6680/2016

Petitioners. : Business & Communication Pvt Ltd,
Respondents : Federation of Pakistan and others,

CP NO.D-6681/2016

Petitioners. : Pakistan Mobile Communication Ltd,
Respondents : Federation of Pakistan and others,

CP NO.D-6996/2016

Petitioners. : M/s. Marjan Feeds and others,
Respondents : Federation of Pakistan and others,

CP NO.D-803/2017

Petitioners. : M/s. Metatex (Pvt) Limited and others,
Respondents : Federation of Pakistan and others,

CP NO.D-2329/2016

Petitioners. : M/s. Gigi Industries Pvt Ltd and others,
Respondents : Federation of Pakistan and others,

CP NO.D-2337/2016

Petitioners. : M/s. Regal Textile Industries Pvt Ltd and others,

Respondents : Federation of Pakistan and others,

CP NO.D-2649/2016

Petitioners. : M/s.Daniyal Enterprices,

Respondents : Federation of Pakistan and others,

CP NO.D-2792/2016

Petitioners. : M/s. Afroze Textile IndPvt Ltd and others,

Respondents : Federation of Pakistan and others,

CP NO.D-4311/2016

Petitioners. : M/s. Hassan Textiles,

Respondents : Federation of Pakistan and others,

CP NO.D-4369/2016

Petitioners. : M/s. Fine Tower and others,

Respondents : Federation of Pakistan and others,

CP NO.D-4587/2016

Petitioners. : M/s. Adil Textile Ind and others,

Respondents : Federation of Pakistan and others,

CP NO.D-5636/2021

Petitioners. : M/s. Asad Apparel,

Respondents : Federation of Pakistan and others,

CP NO.D-7212/2016

Petitioners. : M/s. Union Textile Industries,

Respondents : Federation of Pakistan and others,

CP NO.D-994/2017

Petitioners. : M/s. Haji Rafiullah Waliuddin and others,

Respondents : Federation of Pakistan and others,

APPEARANCE:

Mr. Naeem Suleman, advocate for the petitioners in C.P. Nos. D-1995/2016, 2122/2016, 2157/2016, 2316/2016, 2355/2016, 2606/2016, 2774/2016, 3825/2016, 4219/2016, 5096/2016, 6996/2016, 803/2017

Mr. Zaheer-ul-Hassan Minhas, advocate for the petitioners in C.P. Nos. D-2084/2016, 2085/2016, 2302/2016, 2355/2016, 2440/2016, 2729/2016, 3791/2016, 4060/2016, 5121/2016, 5637/2016

Mr. Muhammad Asadullah Shaikh, advocate for the petitioners in C.P. Nos. D-2355/2016, 2120/2016, 2121/2016, 2145/2016 and 2146/2016

Syed Mohsin Ali, advocate for the petitioners in C.P. Nos. D-2355/2016, 2909/2016, 3870/2016,

Mr. Muhammad Humayun and Mr. Ahsan Mahmood, advocates for the petitioner in C.P. No. D-2355//2016

Ms. Sofia Saeed, advocate and Mr. Usman Sikandar, advocate for the petitioners in C.P. Nos. D-2329/2016, 2337/2016, 2649/2016, 2792/2016, 4311/2016, 4369/2016, 4587/2016, 5636/2016, 7212/2016, 994/2017 and 2355/2016.

Ms. Lubna Pervez, advocate for the petitioner C.P. No. D-2853/2016

Mr. Muhammad Amin, advocate for the petitioner in C.P. No. D-2148/2016.

Mr. Salman Yousuf, advocate for the petitioner in C.P. No. D-2690/2016.

Mr. Shahzad Afzal, advocate for the petitioner in C.P. No. D-2909/2016 and 3870/2016

M/s Faiz Durrani, Samia Durrani and Ghulam Muhammad, advocates for the petitioners in C.P. Nos. D-2269/2016, 2270/2016, 2834/2016, 2835/2016, 2836/2016, 2837/2016.

Mr. Muhammad Nishat Warsi, DAG.

Mr. Ali Safdar Depar, AAG.

M/s. Manzoor Hameed Arain and Sajid Bashir advocates for EOBI.

Mr. Abraiz Muzaffar Shaikh, Law Officer, EOBI along with Mr. Qadeer Ahmed Chaudhry, Director (Law) EOBI.

Date of hearing : 14.10.2021.

Date of announcement : 03.12.2021.

J U D G M E N T

SALAHUDDIN PANHWAR, J. Through instant petition, petitioners have prayed that :-

- i. To declare that since Employees Old Age Benefit Act, 2014 is a valid piece of legislation which has the Constitutional mandate and it holds the field in respect of every industry and commercial establishment situated in the Province of Sindh.
- ii. To declare and hold that Employees Old Age Benefit Act, 1976 has been repealed to the extent of Province of Sindh therefore, it has lost its validity being a legal institution and cannot demand the contribution from the Petitioner.
- iii. To hold and declare that Notification dated 17.02.2016 bearing No.F.9(32)/2015-Legis being Act No.VII of 2016 is applicable to Islamabad Capital Territory and not to the Province of Sindh or to the petitioner.
- iv. That it may also be held that Notification dated 17-02-2016 bearing No.F.9(32)/2015-Legis being Act No.VII of 2016 cannot be imposed with retrospective affect for charging of contribution for fixing the minimum wages for unskilled workers.
- v. That the demand notice made to the Petitioner by Respondent No.2 and 3 by virtue of Act of 1976 and by virtue of Notification dated 17.02.2016 No.F.9(32)/2015-Legis being Act No.VII of 2016 is illegal and void and beyond the domain and / or jurisdiction of Respondent No.2 and 3.
- vi. Cost of the petition may be granted.
- vii. Any other, better, consequential, adequate and/ alternative relief which this Honourable Court may deem fit under the circumstances to grant.

2. **Princely**, relevant facts are that the petitioners are **employers** and they have **challenged** the notification issued by the Federation whereby the amendment was made in the schedule to **Ordinance No.XX of 1969**. According to the learned counsel for the petitioners they are not *disputing* the **claim** of **EOBI** in terms of **order** dated **07.09.2021** passed in C.P No.D-4668/2015 and other

connected petitions, *thus para-7* being relevant is reproduced herewith:-

“Under these circumstances, until the issue is resolved, without commenting on the *ultra vires* of enactment of the federal law we deem it fit that **priority must be given to the employees as the Old Age Benefit law is a beneficial law, aimed for the benefit of the employees therefore in case contribution amount is not received by the EOBI ultimately it is the employees who will suffer.** Hence these petitions are disposed of in terms that petitioners shall deposit the contributions and other dues according to EOBI Act 1976; all amount deposited with the Nazir shall be returned in favour of the EOBI established under the EOBI Act 1976. Petitioner shall continue old practice while depositing contribution with the Federal EOBI until issue is resolved between the Federation and the Province and legislation is being implemented and departments are functional, however, Provincial EOBI will not claim that amount from the employer (petitioners). It is pertinent to mention that if Province feel that they have any claim with regard to contribution deposited with the federal EOBI, they would be at liberty to sue that remedy against the Federal EOBI and will not drag the employer for that controversy”.

3. **However**, the petitioners have *challenged* the **notification** on the plea that the same is **applicable** in Islamabad *only* hence the **rates** specified with *retrospective* effect cannot be *applied* in whole Pakistan, *except* Islamabad. It is therefore, subject notification being relevant *published* in official **gazette** with regard to amendment is *reproduced* hereunder: -

“ACT NO. VII OF 2016

An Act further to amend the Minimum Wages for Unskilled Workers Ordinance, 1969 in its application to the Islamabad Capital Territory

WHEREAS it is expedient **further to amend the Minimum Wages for Unskilled Workers Ordinance, 1969** (W.P. Ordinance XX 1969) for the purposes hereinafter appearing;

It is hereby enacted as follows: --

1. Short title and commencement .- (1) This Act may be called the Minimum Wages for Unskilled Workers (Amendment) Act, 2016.

(2) It shall come into force at once and shall be deemed to have taken effect from the **dates specified in the Schedule to the Minimum Wages for Unskilled Workers Ordinance, 1969 (W.P. Ordinance XX 1969)**.

2. **Amendment of Schedule to the Ordinance XX of 1969** In the Minimum Wages for Unskilled Workers Ordinance, 1969 (W.P. Ordinance XX of 1969) in the Schedule, for the entries in column (2), the following corresponding entries shall be substituted, namely:-

"8000 pm (w.e.f. 1st July, 2012 till 30th June, 2013)
10000 pm (w.e.f. 1st July, 2013 till 30th June, 2014)
12000 pm (w.e.f. 1st July, 2014 till 30th June, 2015)
13000 pm (w.e.f. 1st July, 2015)"

4. Learned DAG while referring **clause 2** of section **1**, contends that this **amendment** is *common* and it is for Unskilled Workers Ordinance 1969 and same is applicable all over the Pakistan. However, he contended that the **rates** have been *defined* in the **Act** itself, therefore, the petitioners cannot challenge the issue in question.

5. Learned counsel for **EOBI** contends that more than **200** petitions were filed by the various organizations/ establishments/ companies after the *insertion* of the **18thAmendment** in the Constitution of the Islamic Republic of Pakistan 1973. And all these CP's are based more or less on three common points i.e **(1)** Fate of the EOBI Act 1976 after the 18th Amendment, **(2)** Status of the Sindh EOBI Act 2014 and **(3)** Applicable **Rate** of contribution in the light of the Minimum Wages Amount; that the petitioners have failed to exhaust the remedies available under section **33, 3** and **25** of the **EOBI** Act 1976 to approach the **Adjudicating** and **Appellate Authorities** of EOBI, and the petitioners are avoiding from the payment of the **EOBI** contributions, which is payable by the **employer** to the **employees** on the basis of the wages and rate of the wages as **declared** under the Minimum Wages for Unskilled Workers

Ordinance **1969**; in such background EOBI issued **circular No.01/2015-2016** dated **01.03.2016** revising the rates of contributions, issued *consequent* to the amendment in the Schedule of the **Ordinance** of **1969**; that the Ordinance of **1969** which was originally a provincial **statute** is now a federal statute applicable to the Federal Capital and areas under the administrative control of the Federal Government and the Federal Government has **declared** rates of minimum wages for the unskilled workers **at par** with the provinces through Act of **2016** with *retrospective* effect; that if contention of the petitioners is accepted the rate of minimum wages will always remain static at Rs.**6,000/-** for calculation of contribution which will not only be *disastrous* for the *scheme*, but also for the employees. **Since** the minimum pension has already been increased to **Rs.8,500/-** per month which amount of pension cannot be paid by receiving contributions much less the rate of pension itself; that the Hon'ble Supreme Court by judgment reported as **2017 PLD 28** held that the amendments in the employees' old age benefits Act, **1976** by way of Finance Act of 2007 did not fall within the parameters of Art. 73(2) of the Constitution, *therefore*, they were **declared** to be unlawful and ultra vires the Constitution, and the EOBI has impugned said judgment in Review Application which is pending for adjudication. However, going for the same analogy the *amendment* in the **EOBI Act, 1976** was also made through a **Finance Act, 2005** in the year 2005 where the definition of '**wages**' was referred to the Minimum Wages for **Unskilled Workers Ordinance, 1969**. Prior to this amendment, the definition of '**wages**' had reference to the **Minimum Wages Ordinance, 1961**. It was further *contended* that share of *contributions* as required to be **paid** by the employers has direct *correlation* with the amount of benefit to be disbursed to a

pensioner in his old age when he infirm, physically and mentally not capable enough to further strive for meeting his economic needs. Moreover, the amount of pension or old age grant he is getting during his lifetime or after his death *received* by his **survivors** is directly dependent upon the amount of *contributions* share the employers are paying to the EOBI. Thusly *propriety* demands to **raise** the contribution shares on the basis of the minimum **wages** as declared from time to time. Nonetheless, in order to *demonstrate* the impact of the amount of wages on calculation of pension, it is *imperative* to refer the pension formula as laid down in the Schedule of the **EOBI Act, 1976**; that at the time of the superannuation when an insured person approaches to **EOBI** for due benefit, it is incumbent upon the respondent **EOBI** to check the amount of wages against which the **employer** has paid the contributions as per Section **9 & 9 B** of the **EOBI Act, 1976**. Whereas during last several years, many employers have disputed the amount of wages and thus seriously harmed the insured persons / pensioners with their due amount of pension as per law. In 2021 most of the employers are **paying** contributions shares on the basis of wages rate of **Rs.13,000/** and accordingly, and the rate of the pension at the maximum verified service of **44** years would be **13000 x 44/50 = 11,440/-** whereas if the contribution is paid on prevailing rate of wages, the pension amount calculated as maximum verified service of **44** years would be **25000 x 44/50 = 22,000/-**. He has relied upon 2018 PLC Note 31, 2021 SCMR 1088 and judgment dated 15.10.2021 passed in CP No.D-4596/2021 and others and prayed for dismissal of captioned petitions.

6. In almost identical issue, divisional bench of this court decided bunch of petitions with leading **C.P No.D-7077/2016**; being relevant paragraphs No.**15, 16, 17** and **18** are that :-

“15. The minimum wage for unskilled workers in Pakistan during the last years is given as under:

YEAR	WAGE IN RUPEES
1998	1950
2001	2500
2005	4000
2007	4600
2008	6000

Provincial minimum wages for unskilled workers is a under:-

YEAR	WAGE IN RUPEES
2010	8000
2012	9000
2013	10000
2014	12000
2015	13000
2016	14000
2017	15000

The contribution of the minimum wage, in our view, has to be made in accordance with the amount as fixed in the notification, which subsequently is published in the official gazette, and the establishment is under the statutory legal obligation to pay its contribution accordingly. It has already been held by the decision given by the Hon'ble Supreme Court of Pakistan in the case of Shamas Textile Mills Ltd. and others (1999 SCMR 1477) that payment on account of Social Security contribution should not, in any case, be less than the amount payable as remuneration under the Minimum Wages Ordinance 1961. Now in order to fix the minimum wage of an employee same criteria has to be fulfilled as given in the Minimum Wages Ordinance 1961 and minimum wage of an employee has to be the minimum wage as determined under the Minimum Wages Ordinance 1961 with regard to the minimum wage fixed for the unskilled employees a tabulation of which has already been reproduced hereinabove.

16. The decision relied upon by the learned counsel for the petitioners, in our view, is on different footings, since in that judgment the Hon'ble Supreme Court has categorically observed that no tax could be levied beyond the scope of charging section. However, in the instant case the learned counsel himself has not attacked the charging section, which is section 20, but has simply asserted that in absence of any minimum wage provided by the Governing Body or the notification the establishments are obliged to pay contribution at the rate of Rs.10,000/- per month per employee. We are afraid we cannot endorse the submissions made by the learned counsel for the petitioner as, in our view, the establishments are under legal obligation to pay their contribution as per the minimum wage prescribed for that year in the above referred tabulation form whatever is falling in the respective year i.e. for 2016 it would be Rs. 14,000/- and for 2017 it would be Rs.15,000/- per month and the establishments are under the legal obligations to pay their contribution accordingly.

17. We also do not agree with the learned counsel for the petitioners that after repeal of Ordinance 1965 the notifications issued from time to time under the Ordinance 1965 have not been saved, whereas, in our view, bare reading

of Section 86(2), reproduced above, would clearly reveal that not only rules and regulations framed under the repealed Ordinance but notifications and orders also issued under the repealed Ordinance have been saved. Hence all the rules, regulations, notifications and orders under the provisions of Ordinance 1965, by virtue of section 86(2), are saved and whatever minimum wages have been prescribed by virtue of notification /orders issued under the Ordinance of 1965 would apply with full force on the Act 2016 until and unless the same are altered, repealed or amended by the competent authority, which is not the present case.

18. Moreover, section 6(c) of the General Clauses Act also stipulates the saving of a repealed law and any act done and action taken or purported to have been done or taken under or in pursuance of repealed Act, if it is not inconsistent with the provisions of the new Act, is always considered to be done or taken under the corresponding provisions of the new Act. Reference in this regard may be made to the decision given in the case of SHAHIDA BIBI VS. HABIB BANK LIMITED AND OTHERS (2016 PLD SC 995).

19. We, therefore, in view of what has been observed above, are of the view that the establishments are under legal obligations to make their contributions as per the respective notifications prevailing in the said year in accordance with law. The answer to the question thus raised in the instant petitions is, therefore, answered that even if there is no Governing Body to fix the minimum wage, the minimum wage as already notified for the respective year would be considered to be the minimum wage for making contributions by the establishments in accordance with law. Since we have decided the petitions on the above aspect, therefore, we do not deem it expedient to dilate upon the other objections with regard to the maintainability of these petitions raised by the learned counsel for the respondents. It, however, is clarified that if there is some factual or calculation error in the demand notices issued 'by the respondents, the same could be taken care of under the provisions of section 61 of the Act respectively."

7. **Needless** to mention that, after 18th amendment subject matter with regard to the legislation on wages **rests** with the Provinces, *however*, in terms of above refereed order it is quite evident that yet EOBI has not devolved to the Provinces which aspect is not disputed by anyone. We may add that it is not the passing of the **ACT**, but enforcement thereof which matters, particularly in such like **beneficial legislation (s)** where the object of both the law (s) were / are to **secure** the workers / **labourers**. Till the time, the provisional enactment is made functional, the rights of certain class of the people can not allowed to be *frustrated* in name of passing of

the **provincial** enactment *alone*, particularly where the petitioner (s) have not *challenged* depositing of contribution (s) under federal Law which, *too*, because of an **admitted** position of non-implementation of the provincial law in its *letter & spirit*.

8. Without prejudice to above, we may add that perusal of above language of two **clauses** as amended, *reflects* that minimum wages Ordinance was amended, hence they cannot take plea that this is applicable only for Federal Capital Territory of Islamabad when it shows that such amendments are in the Act itself. Here referral to the legal position, so enunciated in the case of **Federal Government Employees Housing Foundation v. Ghulam Mustafa** (2021 SCMR 201), which reads as:-

“47. Where legislative instruments in competition, one promulgated by the Federal and the other by the Provincial legislature, or any provisions contained therein, are pitched against each other, the test to determine the legislative supremacy or dominance is comparatively is simple and provided by **Article 141** and **Article 142** of the Constitution, 1973 which clearly demarcates the legislative edges, competence and supremacy test. In case of conflict between Federal and Provincial enactments, privilege of overriding supremacy is conceded to the Parliament /Federal legislature under **Article 141**. Where one or more Provincial Assemblies, through resolution, authorizes the Parliament to pass law in respect of a *residuary subject*, in such event, power to repeal and amend such law is exclusively retained by such Provincial legislature (s)”.

Though the question of applicability of said Article (s) are not at issue but principle to give edge, in our view, shall rest with Federal law where the provincial law is not fully enforced / functional.

9. It is evident that only the **‘rate schedule’** has been challenged without *first* exhausting the **remedies**, so provided for any dispute i.e under **EOBI** Act, 1976. In the case of **Khalilullah Kakar v. Provincial Police Officer** (2021 SCMR 1168) it is observed as:-

“11. ... The jurisdiction conferred on the High Courts under Article 199 of the Constitution is an extraordinary relief and the same has to be exercised in aid of justice and not to

interfere in jurisdictions of other statutory forums. When the law has provided an adequate remedy, constitutional jurisdiction under Article 199 of the Constitution cannot be exercised as the same has to be exercised in exceptional circumstances, which could justify invoking the said jurisdiction. It has time and again been said by this Court that tendency to bypass remedy provided under relevant statute by resorting to constitutional jurisdiction is to be discouraged so that legislative intent is not defeated. The same is meant to be exercised in extraordinary circumstances and not in run of the mill cases..”

10. Further, it is also, *prima facie*, evident that *vires* of the Act 2016 has not been challenged, but the **notification**, so issued under such **Act**, impugned. A challenge to application of notification *only* without assailing the *vires* of the **Act** under which the notification has been issued, legally, can't be made, particularly where things **notified** are with reference to the Act itself. On this count, *too*, the instant petition (s) are not **tenable** in law. Accordingly, the petitions are **dismissed** with no order as to cost.

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