

**IN THE HIGH COURT OF SINDH AT KARACHI**

**CONST. PETITION NO.D-3004 OF 2020.**

**Present:**

Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Omar Sial.

Petitioners: Mirpurkhas sugar mills Limited and 19 others  
through M/s. Makhdoom Ali Khan, Abdul Sattar  
Pirzada, Ghulam Hussain Shah, Samiur Rehman,  
Komal Anwar and Fahad Khan, advocates.

Respondents/State: Through Mr. Kashif Sarwar Paracha, Additional  
Attorney General for Pakistan and Mukesh Kumar  
Khatri Assistant Attorney General for Pakistan.

Dates of hearings: 04.08.2020, 05.08.2020 and 07.08.2020

Date of Announcement: 17.08.2020.

**ORDER**

**Mohammad Karim Khan Agha, J.-** By administrative order dated 29.07.2020 this constitutional petition was assigned to this special bench by the Hon'ble Chief Justice of this court with a view to deciding the same as expeditiously as possible in line with the order of the Hon'ble Supreme Court dated 14.07.2020.

Through this constitutional petition the petitioners who are sugar mill owners have prayed for the following relief:-

- 1) Declare the Impugned Notification of March 16, 2020 and the Impugned Report of May 21, 2020 and all subsequent and consequent actions and orders of the Respondents including but not limited to the actions taken and decisions made in pursuance thereof, whether taken directly or indirectly through departments, offices, agencies, authorities, officers, officials, employees, agents and assigns in any manner whatsoever, to be without lawful authority and of no legal effect, with regard to the petitioners, and may also be pleased to quash the Impugned Report and all such actions and orders;
- 2) Prohibit the Respondents jointly and severally and all other government departments, offices, agencies, authorities, officers, officials, employees, agents and assigns both from directly as well as indirectly taking any adverse action or passing any adverse orders or placing any reliance upon or making any reference to the Impugned Report and/or actions taken or decisions made in pursuance thereof in any manner whatsoever against the Petitioners and/or prejudicial to their interest or being in any manner whatsoever influenced thereby; and interim and interlocutory relief, in the same terms, may also be

granted including but not limited to suspending the Impugned Report and all actions taken and decisions made in pursuance thereof;

- 3) Grant such other relief or mould any of the reliefs sought in such manner as may be considered appropriate;

2. The brief facts of the case are that the petitioners are owners of sugar mills in Sindh engaged, amongst other things, in the production/ manufacture and sale of sugar. On 16.03.2020, a notification was issued by the Ministry of Interior under S.3 of the Pakistan Commissions of Inquiry Act, 2017 (**"the impugned Notification"**) which constituted a Commission of Inquiry, *"to probe into the increase in sugar prices"*. The Commission culminated its work with a Report dated 21.05.2020 (**"the impugned Report"**). The impugned Report cast various aspersions against the petitioners and other sugar millers in Pakistan indicating that sugar mills throughout Pakistan had been involved in criminal activities. The impugned Report was placed before the Federal Cabinet on 21.05.2020 which approved it and numerous actions which were recommended in the impugned Report in a so called action matrix lead to several letters (enclosing the impugned Report) being sent by Mirza Shahzad Akbar (who was a Special Assistant to the Prime Minister on Interior and Accountability when the exercise started but was later made an Adviser with the status of a Minister - hereinafter referred to as **"Adviser"**) to various agencies/organizations in effect directing them to initiate proceedings against the petitioners and other Sugar Millers.

3. The terms of Reference of the Commission and Members of the Commission are set out below in the impugned Notification for ease of reference.

Government of Pakistan  
Ministry of Interior

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Islamabad, the 16th March 2020

NOTIFICATION

No.F.5/14/2020-RA: In exercise of the powers conferred by Section 3 of Pakistan Commissions of Inquiry Act, 2017, the Federal Government is pleased to constitute Inquiry Commission under Pakistan Commissions of Inquiry Act, 2017 to probe into the increase in sugar prices.

2. The Commission shall comprise the following Officers:-

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|---|----------|
| i. Mr. Wajid Zia, Director General, FIA.                        | Chairman |
| ii. Mr. Gohar Nafees, DG, Anti-Corruption Establishment, Punjab | Member.  |
| iii. Mr. Ahmad Kamal, DDG, IB                                   | Member   |
| iv. Mr. Bilal Rasool, Executive Director (SECP)                 | Member   |



- |   |        |
|---|--------|
| v. Mr. Majid Hussain Chaudhry, Joint Director, SBP  | Member |
| vi. Dr. Bashirullah Khan, DG, Directorate General of Intelligence and Investigation, FBR, Islamabad | Member |

3. The following shall be the terms of Reference (TORs) of the Commission:-

- a. Whether the production, this year, was low as compared to past years? Was low production the primary reason for increase in prices?
- b. Was the minimum support price sufficient?
- c. Did the Mills purchase sugarcane of exorbitantly higher prices than the minimum support prices? If yes, then reasons therefore;
- d. Reasons for mills not purchasing sugarcane for a limited period of a few weeks, from the farmers and its impact, if any on sugar prices;
- e. Basis for determination of Ex-Mill price? Reasons for increase in Ex-Mill price;
- f. Market manipulation/cartelization by sugar mills, if any;
- g. Impact of forward contracts on the prices of sugar and whether any malafide is involved.
- h. Whether margins between Ex-Mill and retail prices increased, compared to previous years, or otherwise. If yes, reasons thereof and potential beneficiaries;
- i. Impact of tax increase on sugar prices at Ex-Mill/Retail level;
- j. Hoarding at whole sale/retail level and within sugar mills vis-à-vis stocks of last year;
- k. Was export of sugar justified? Any subsidy given on export and its impact with potential beneficiaries;
- l. Basis for determination of retail price of sugar.
- m. Role of various stakeholders, including government institutions and private sector in increase in sugar prices, including timely/preventive/preemptive remedied measures of control sugar prices and malafide, if any, of any stakeholder;
- n. Verification of the sale of sugar to find out malpractices of hoarding & manipulation of supply to the market to maximize profiteering;
- o. Physical verification of stock to find whether there is any excess/shortage of stock as shown in the books and the verification of the genuineness of the sale record; and,
- p. The role of Competition Commission of Pakistan in this crisis;
- q. Benami transactions and profits (approx.) earned during the sugar crisis;
- r. The Commission shall submit its report to the Prime Minister within forty (40) days after issuance of this notification.
- s. Any other issue, deemed appropriate, related to the increase in recent sugar prices;

4. This Commission will also be empowered under section 10(b) of the Act *ibid* to constitute special teams consisting of officers from

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executive authorities and experts in specific fields, for the purposes of assisting the Commission in conducting an inquiry. The special teams shall have such powers as may be prescribed under this Act.

Sd/-  
(Shoukat Ali Khan)  
Section Officer (FIA) "

The Manager,  
Printing Press Corporation of Pakistan,  
Islamabad

4 The so called action matrix which was approved by the Cabinet after the submission of the impugned Report is also set out below for ease of reference.

*NAB to investigate sugar subsidy scam, PM approves action matrix on the sugar inquiry Commission report*

*Prime Minister Imran Khan approved sending a reference to NAB to investigate sugar subsidy scam while giving final nod to the 7-point action matrix on the sugar inquiry Committee report in a high level meeting held today at Islamabad.*

*Adviser on accountability and interior Barrister Shahzad Akbar presented action matrix to the meeting. He briefed the meeting that the action matrix is prepared in the light of recommendations of Cabinet on the findings of sugar inquiry Commission report taking all due legal process into consideration. PM lauded Shahzad Akbar for his effort to take investigations to logical end and hoped a new era of (self) accountability would start in the country once the action matrix is implemented in the letter and spirit.*

*The Cabinet on May 21 while approving making inquiry Commission report public asked Adviser on accountability and interior to look into four major areas-government systems and regulatory regime, what penal actions can be taken by different government agencies against the owners involved in wrongdoings, a time frame for government agencies to make recoveries from mill owners and formulation of a sugar policy.*

*Barrister Shahzad Akbar explained seven points action matrix to the meeting describing future course of action by different government agencies concerned to take the findings of inquiry Commission to the logical end to make sure that those found guilty of committing frauds and deceiving people of Pakistan would face the music. "PTI government under the leadership of PM Imran Khan is the first government ever in Pakistan that has initiated a self-accountability process in the country", he told the meeting.*

***The Action Plan includes the following seven points.***

1. The meeting approved sending a reference to NAB as recommended by action matrix to investigate total of over Rs.29 Billion subsidy allocated and disbursed to Sugar industry by Provincial and Federal

Government from last five years including subsidy given by PTI government under the timeline provided by National Accountability Ordinance. Shalazad Akbar informed the meeting that NAB would also be requested to probe the issue of subsidies given to Sugar industry from 1985 onwards and to initiate the criminal prosecution where evidence of misuse of authority related to subsidy issues are found

2. FBR asked to investigate the income and sales tax related frauds, evasions and Benami transactions. The report found several tax fraudulent practices of sugar millers during investigation such as Al-Arabia sugar mills conceal production and sale of 1.02 million sugar bags since 2017-18 to evade income and sales tax worth over one billion, FBR is asked to submit the report within 90 days from the date of registration of inquiry through Ministry of Finance.
3. The issues related to cartelization and anti-competitive collusion in sugar industry would be investigated by Competition Commission of Pakistan (CCP). The inquiry Commission found that CCP was cognized of the sugar cartel since 2009 and conducted a search of the Pakistan sugar mills Association (PSMA) office, declaring it a front-runner of the cartel but failed to take any action ever since. The action matrix provided an opportunity to CCP to establish its credibility and asked it to investigate the issues related to Cartelization and Anti-competitive collusion highlighted in the report. The government also decided to appoint new members of CCP within a week. CCP is asked to submit its report within 90 days from the date of registration of inquiry through Adviser on accountability. Commission of Pakistan will investigate the issue of Cartelization and Anti-competitive collusion. CCP will submit the report after 90 days of initiation of inquiry and report will be submitted to Federal Government through Adviser on Accountability.
4. The issues related to export proceeds, loans defaults/write-offs and sale of pledged stocks are sent to the State bank of Pakistan. The SBP is asked to submit the report within 90 days to federal Government through Ministry of Finance.
5. The inquiry Commission pointed out the corporate frauds committed by sugar mills through associated companies like JWD committed corporate fraud of Rs.3.6 billion through over-valued purchase of associated company JK Farming Systems Ltd. And booking losses through it. The action matrix referred further investigations of corporate frauds of sugar mills in the light of findings of the Commission report to both Federal Investigation Agency (FIA) and Securities and Exchange Commission of Pakistan (SECP). Both the agencies are asked to submit their findings to federal government within 90 days.

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6 Potential issues of fake export of sugar to Afghanistan and money-laundering came forward during investigations of the inquiry Commission are referred to FIA. The agency is asked to investigate the various federal laws offenses relate to potentially fake exports to Afghanistan and money laundering through bulk cash transactions within 90 days.

7 The inquiry Commission also found sugar millers involved in various offences under provincial laws such as payment to cane-growers below the support price and illegal deductions on account of weight of cane. The action matrix referred all such potential offences to Anti-Corruption Establishment (ACE) of Punjab, KP and Sindh provinces for further investigations. The ACEs of the provinces will also submit their reports within 90 days.

*Various assignments were also given to the NAB, FBR, CCP, SBP, FIA/SECP, ACE at p.869 to 899 of the petition following the findings of the impugned Report and various letters sent to such bodies to take action against culprits.*

5 Learned counsel for the petitioners has contended that the impugned Notification and impugned Report are without lawful authority and of no legal effect because they have not been established in accordance with the Rules of Business, 1973 which was a mandatory requirement of law, that the establishment of the Commission was not published in the official Gazette as required by law, that the composition of the Commission was not in accordance with the impugned Notification as one member from the State Bank of Pakistan did not meet the required qualification and a 7<sup>th</sup> member was added to the Commission after its composition had been finalized and had already started its work which made the impugned Report illegal; that the petitioners were denied their right to be heard before the impugned Report was finalized and thus they were condemned unheard despite adverse findings/comments being made against them and the sugar industry in the impugned Report; that at least two signatories were strangers to the impugned Report, a 3 member Committee, created under doubtful legal authority, had already been in existence looking into the same issues under similar terms of reference and had asked for an expansion of the Committee as well as a legal cover for the same vide its letter dated 09/03/2020, which letter indicated potential culpability of the petitioners and those in the sugar industry, as a consequence of which the Commission came into being – hence at least 3 out of the 7 members of the Commission were biased and had already made up their minds about potential illegalities committed by the petitioners and other sugar millers in Pakistan; that bias was



also evidenced in the fact that the Committee submitted a report dated 24.03.2020 which was after the creation of the Commission and in that report the Committee has made adverse findings against the petitioners and the sugar industry and thus when the Commission was established it had already made up its mind about the culpability of the petitioners and other members of the sugar industry; that the Commission did not act fairly as in particular they did not give the petitioners the opportunity to be heard before making adverse finding against the sugar industry which included them and that the so called action matrix and the letters sent pursuant to it by the Adviser was against the scheme of law in that each institution such as NAB, SECP, FBR etc. is an independent organization acting under its own statutory framework and was not answerable to either the Prime Minister, the Cabinet or the Adviser; the Adviser had no lawful authority to issue directions to the statutory bodies conclusively indicating the culpability of the sugar millers and seeking follow up reports; that the entire process was illegal and was driven in a malafide manner to the detriment of the petitioners. In support of his contentions he placed reliance on **Muhammad Suleman v. Abdul Ghani** (PLD 1978 SC 190), **Government of Sindh v. Khan Ginners** (PLD 2011 SC 347), **Trustees of the Port of Karachi v. N.K. Enterprises** (PLD 2013 Sindh 264), **Mian Akbar Hussain v. West Punjab Government** (PLD 1954 Lahore 188), **Muhammad Osman Ghani v. M. Ahmed, C.S.P, Election Tribunal** (PLD 1967 Dacca 786), **Province of East Pakistan v. Hasan Askary** (PLD 1971 SC 82), **Muhammad Ishaq v. Chief Administrator of Auqaf, Punjab** (PLD 1977 SC 639), **Ghulam Qadir v. Municipal Committee** (1988 CLC 1647), **Sindh Engineering Limited v. Customs, Excise & Sales Tax Appellate Tribunal** (2003 PTD 2862), **Deputy Controller of Customs v. Abdul Shakoor Ismail Kaloodi** (2006 SCMR 1446), **Chief Administrator Auqaf v. Amna Bibi** (2008 SCMR 1717), **Government of Punjab v. United sugar mills Ltd.** (2008 SCMR 1148), **Tehsil Municipal Administration v. Noman Azam** (2009 SCMR 1070), **Yousuf Ali v. Muhammad Aslam Zia** (PLD 1958 SC 104 at 117 G.), **Benazir Bhutto v. President of Pakistan** (PLD 2000 SC 77), **Mian Muhammad Nawaz Sharif v. Imran Ahmed Khan Niazi** (PLD 2018 SC 1), **Federation of Pakistan v. Haji Muhammad Saifullah Khan** (PLD 1989 SC 166), **Mustafa Impex, Karachi v. The Government of Pakistan** (PLD 2016 SC 808), **Federation of Pakistan v Ms. Vadiyya S. Khalil & others at para 12** (unreported judgment of learned Division Bench of Islamabad High Court), **State of Madhya Pradesh v. Ajay Singh** (AIR 1993 SC 825) **Selling of National Assets including PIA at throwaway prices:** (in the matter of 2019 SCMR 1952), **Qurban Ali Abbasi versus Province of Sindh**



through Chief Secretary and 3 others (PLD 2009 Karachi 327), *State Bank of Pakistan v. Franklin Credit and Investment Company Ltd.* (2010 SCMR 121), *Baz Muhammad Kakar v. Federation of Pakistan* (PLD 2012 SC 923), *M.Q.M and others v. Province of Sindh and others* (2014 CLC 335), *K. Vijaya Bhaskar Reddy v. Government of Andhra Pradesh* (AIR 1996 Andhra Pradesh 62), *Peela Pothi v. State of A.P.* (2005 (4) ALD 687 (DB) (Andhra Pradesh High Court), *Dr. Arsalan Iftikhar v. Malik Riaz Hussain* (PLD 2012 SC 903), *Mitchell v. Georges* (2015 SCMR 1020), *Marvin Baryaruha v. Attorney General* [2019] UGHCCD 67), *Asif Ali Zardari v. The State* (PLD 2001 SC 568), *Government of N.W.F.P v. Hussain Ahmed Haroon* (2003 SCMR 104), *S. Parthasarathi v. State of A.P.* (AIR 1973 Supreme Court 2701), *Ranjit Thakur v. Union of India* (AIR 1987 SC 2386), *Metropolitan Properties Co. (F.G.C) Ltd. v. Lannor and Others* (1969) 1 QB 577), *Locabail (U.K) Ltd. v. Bayfield Properties Ltd.* (2000) QB 451), *N. Manoharan v. State* (AIR 1981 Madras 147), *Prafulla Chandra Ratho v. State of Orissa* (AIR 1988 Orissa 18), *State of Biha v. Lal Krishan Advani* (2003) 8 SCC 361), *Jai Prakash Associates Ltd v. State of U.P.* (2004 (3) AWC 2059), *Peter Thomas Mahon v. Air New Zealand Ltd. and others* (1984 AC 808), *Peters v. Davison* [1992] 2 NZLR 164 CA = 1998 NZLR LEXIS 70 (Court of Appeal, Wellington, New Zealand), *Ainsworth v. Criminal Justice Commission* [1992] HCA 10, *Hazel Lawlor, Applicant v. The Members of the Tribunal of Inquiry into Certain Planning Matters and Payments, Respondents* [2010 1 IR 170 (Supreme Court of Ireland), *Saleem Malik v. Pakistan Cricket Board* (PLD 2008 SC 650), *National Industrial Cooperative Credit Corporation Ltd. v. Province of Punjab* (PLD 1992 Lahore 462), *Qazi Abdul Jalil v NWFP Forest Development Corporation through Chairman* (2010 SCMR 1933), *MCB Bank Limited, Karachi v. Abdul Waheed Abro* (2016 SCMR 108), *Khushdil Khan Malik v. Secretary, Ministry of Defence Rawalpindi Cantt* (PLD 2017 SC 173), *Commissioner of Inland Revenue v. Allah Din Steel & Rolling Mills* (2018 PTD 1444), *PTCL v. Federation of Pakistan* (2016 PTD 1484), *Indus Motors v. Pakistan* (Suit No.2249 of 2016 (unreported) (SB/SHC), *Wateen Telecom Ltd. v Sindh* (2019 PTD 1030), *Central Insurance Co. V The Central Board of Revenue* (1993 SCMR 1232), *Mayzone Pak. International v. Additional Secretary, Government of Pakistan* (2002 CLC 388), *Collector of Customs v. Askari Cement Ltd.* (2016 PTD 1886), *Mirpurkhas sugar mills Ltd. V. Federation of Pakistan through Secretary, Ministry of Science and Technology, Government of Pakistan* (2013 MLD 433), *Shahtaj sugar mills Ltd. v Province of Punjab* (1998 SCMR 2492), *Federation of Pakistan through Secretary, Ministry of Foreign Affairs and 5 others v*



Jamaluddin and Others (1996 SCMR 727 at 741 (para.10), Barrister Sardar Muhammad v. Federation of Pakistan (PLD 2013 Lahore 343 at 373 (para.41), 374 (para.43), 376 (para.45), Rizwan Ashraf v. Federation of Pakistan (2020 PLC (CS) 605 at 616 A (para.10), 621 (para.13), Senator Taj Haider v. Government of Pakistan (2018 CLC 1910 at 1924 (para.28), Ahmad Nawaz Shah v. Chairman, CBR (2002 SCMR 560 at 568 (para.6), Khalid Sardar v. Secretary, Ministry of Finance, GoP (2015 PLC (CS) 460 at 466 (para.10), 467 (para.11), Federation of Pakistan v. Muhammad Akram (1995 SCMR 1647 at 1652 B), Federal Public Service Commission v. Altaf Hussain (2015 PLC (CS) 1130 at 1137 C), Pirzada Jamaluddin A. Siddiqui (2012 PLC (CS) 996 at 1003 E), Syed Hussain Haider v. Government of the Punjab (2019 PLC (CS) 1 at 9-10 (paras.8 & 9), Begum Agha Abdul Karim Shorish and Ors. V. Senior Superintendent of Police, Lahore and Ors. (1973 P Cr. L.J 482 at 506 (para.41), Tariq Azizp-ud-Din and others (2010 SCMR 1301 at 1332-1333 C (para.22), Amin Jan v. Director General T & T and others (PLD 1985 Lahore 81 at 83-84 (paras 6 & 7), Bank of Punjab v. Federation of Pakistan (2000 PTD 2159 at 2160 A), Play Pictures v. Central Board of Revenue (2000 CLC 1403 at 1405 A), Crescent Textile Mills Ltd. v. Federation of Pakistan (2001 PTD 3466 at 3470-3471), Asia Ghee Mills (Pvt) Ltd. v. Assistant Collector (Audit) (2008 PTD 1993 at 1997 A), Sir Mir Muhammad v. N.W.F.P. Government (PLD 1981 SC 176), A. Ghani Sayeed v. National Bank of Pakistan (1989 PLC (CS) 249), Ghulam Abbas v. Zohra Bibi (PLD 1972 SC 337), Nishat Mills Limited v. Superintendent of Central Excise (PLD 1989 SC 222), Chief Commissioner, Karachi v. Jamil Ahmad (PLD 1961 SC 145), Manzur-ul-Haq v. Controlling Authority (PLD 1963 SC 652), Muhammad Siddique v. The Market Committee, Tandlianwala (1983 SCMR 785), Pakistan v. Ch. Muhammad Ahsan (1991 SCMR 2180), Saghir Ahmed v. Province of Punjab (PLD 2004 SC 261), Reference No.1 of 188 (PLD 1989 SC 75), Commissioner of Income Tax v. Media Network (PTCL 2007 CL. 1), Muhammad Shahid v. Federation of Pakistan (PLD 2018 Islamabad 258), Tasleem Akhtar v. Pakistan (2010 PLC (CS)795), Warid Telecom (Private) Limited v. Federation of Pakistan (2015 SCMR 338), Sui Southern Gas Company Ltd. v. Federation of Pakistan (2018 SCMR 802), Saleemul Haq v. Pakistan (PLD 1990 Karachi 439), Allen Beery & Co. v. Vivian Bose (AIR 1960 Punjab 86), Messers Kalimullah & Co. v. The Government of West Pakistan and another (PLD 1961 (W.P.) Lahore 321), Pakistan Beverage Ltd. v. Deputy Director (food) and another (1984 CLC 2687), sugar mills v. Government of Punjab and others (2001 YLR 2275), Dilshad and 2 others v. Senior Superintendent of Police and 2 others (PLD 2007 Karachi



330), *The State of Maharashtra v. Shri R.A. Chandawarkar & other* (1999 (5) BomCR 519, 1999 BomCR Cri, (1999) 3 BOMLR 394, 1999 CriLJ 4449, 1999 (2) MhLJ 650), *The State of Maharashtra v. Laxmichand Nagaji Jain & Ors* (Criminal Appeal No.1036 of 2002), *Judgment on the application of Privacy International) (Appellant) v. Investigatory Powers Tribunal and others (Respondents* (Easter Term (2019 UKSC 22), and an unreported judgment of Islamabad High Court, Islamabad, *National Institutional Facilitation Technologies (Pvt) Ltd. v. Federal Board of Revenue and others* (W.P. No.3995 of 2019).

6. On the other hand learned Additional Attorney General for Pakistan has contended that although the summary for the creation of the Commission was moved by the Interior Ministry rather than the Cabinet Division this was a minor irregularity which was cured when the Cabinet approved the creation of the Commission and even otherwise under the Rules of Business the Prime Minister had the power to relax Rules and as such non compliance with the Rules of Business was not fatal to the creation of the Commission especially as failure to comply with them had not caused any prejudice to the petitioners; that it was not relevant that the Commission was belatedly notified in the official Gazette as the Commission came into force when the summary for its creation was signed; that the composition of the Commission was in accordance with law as the 7<sup>th</sup> member had been duly notified; that the Commission was not biased as it existed of well reputed Government servants who had carried out the work of the Commission in a fair and transparent manner and had produced a fair and balanced report which did not prejudice the petitioners in any way; that the petitioners had no right to be heard by the Commission; that the impugned Report had not damaged or prejudiced the petitioners and in particular had not damaged their reputations or dignity and as such the petition be dismissed. In support of his contentions he placed reliance on the cases of **Messers Mustafa Impex, Karachi and others v. The Government of Pakistan through secretary Finance, Islamabad and others** (PLD 2016 Supreme Court 808), **Syed Mir Muhammad v. N.W.F.P. Government through Chief Secretary** (PLD 1981 Supreme Court 176), **A. Ghani Sayeed v. National Bank of Pakistan** (1989 PLC (C.S.) 249), **Ghulam Abbas v. Zohra Bibi and another** (PLD 1972 Supreme Court 337), Reference No.1 of 1988 made by the President of Pakistan under Article 186 of the Constitution of the Islamic Republic of Pakistan (PLD 1989 Supreme Court 75), **Messers Nishat Mills Limited v. Superintendent of Central Excise**



Circle II and 3 others (PLD 1989 Supreme Court 222), **Syed Ali Shah v. Abdul Saghir Khan Sherwani and others** (PLD 1990 Supreme Court 504), **Muhammad Siddique v. the Market Committee, Tandlianwala** (1983 SCMR 785), **Pakistan through Secretary, Ministry of Defence and others v. Late Ch. Muhammad Ahsan through Legal Heirs and others** (1991 SCMR 2180), **Commissioner of Income Tax and others v. M/s. Media Network and others** (PTCL 2007 CL.1), **Bahadur Khan and others v. Federation of Pakistan through Secretary M/o. Finance, Islamabad and others** (2017 SCMR 2066), **Haji Muhammad Ismail Mills Limited v. Federation of Pakistan through Secretary Finance and 2 others** (PLD 2020 Sindh 85), **Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan/Member National Assembly, Prime Minister's House, Islamabad and 9 others** (PLD 2017 Supreme Court 265), **Slackness in the Progress of pending enquiries relating to fake Bank Accounts, etc: In the matter of Human rights Case No.39216-G of 2018 decided on 7<sup>th</sup> January, 2019** (2019 SCMR 332), **Khalid Qureshi and 5 others v. United Bank Limited, I.I. Chundrigar Road, Karachi** (2001 SCMR 103), **ABP Private Limited and another v. Union of India and others** (2014) 3 Supreme Court Cases 327), **M/s. Allen Bery and Co. Private Ltd. and another v. Vivian Bose and others** (AIR 1960 Punjab 86 (V 47 C 341 (At Delhi), **Tasleem Akhter v. Pakistan through Secretary Revenue, Islamabad and 3 others** (2010 PLC (C.S.) 795), **Zaibtun Textile Mills Ltd. v. Central Board of Revenue and others** (PLD 1983 Supreme Court 358), **Saleem Malik v. Pakistan Cricket Board (PCB) and 2 others** (PLD 2008 Supreme Court 650), **Justice Khurshid Anwar Binder and others v. Federation of Pakistan** (PLD 2010 Supreme Court 483), **Canara Bank v. V.K. Awasthy** (2005)6 Supreme Court Cases 321), **Saleemul Haq and another v. Pakistan through Secretary, Ministry of Interior Islamabad and 2 others** (PLD 1990 Karachi 439), **Messers Sui Southern Gas Company Ltd. and others v. Federation of Pakistan and others** (2018 SCMR 802), **Ganesh Santa Ram Sirur v. State Bank of India** (AIR 2005 Supreme Court 314) and **Warid Telecom (Pvt.) Limited and 4 others v. Pakistan Telecommunication Authority through Chairman** (2015 SCMR 338).

7. We have heard learned counsel for the parties, considered the record and the relevant law including the case law cited at the bar.

8. At the very outset we note that any form of corruption, tax evasion, money laundering, illegal cartelization needs to be stamped out with an iron hand but at the same time this must be done in accordance with law and by

following due process as mandated by Article 10(A) of the Constitution so that every suspect has a fair opportunity to clear his name and position. Only through the executive following the law, acting in accordance with the law and treating every one equally before the law and jealously guarding a suspects due process rights and dignity as mandated by Articles 4, 25, 10(A) and 14 of the Constitution will the rule of law and good governance be enhanced and peoples faith in the democratic system grow.

9. **The first issue before us is whether the impugned Notification and impugned Report have been issued/established in accordance with law.**

10. Our starting point is Article 99 of the Constitution which provides as under;

*"99. Conduct of business of Federal Government. (1) All executive actions of the Federal Government shall be expressed to be taken in the name of the President.*

*(2) The Federal Government shall by rules specify the manner in which orders and other instruments made and executed in the name of the President shall be authenticated, and the validity of any order or instrument so authenticated shall not be questioned in any Court on the ground that it was not made or executed by the President.*

*(3) The Federal Government shall also make rules for the allocation and transaction of its business".*

11. Article 99 (3) clearly provides that the Federal Government shall make rules for the allocation and transaction of its business. *These Rules which were made pursuant to Article 99 (3) are known as the Rues of Business 1973.*

12. Rule 3 provides for the allocation of business and is set out as under for ease of reference.

**3. "Allocation of Business. -** (1) The Federal Secretariat shall comprise the Ministries and Divisions shown in Schedule I.

(2) The Prime Minister may, whenever necessary, constitute a new Ministry consisting of one or more Divisions.

*(3) The business of government shall be distributed among the Divisions in the manner indicated in Schedule II.*



Provided that the distribution of business or the constitution of the Division may be modified from time to time by the Prime Minister.

(4) The Prime Minister shall allocate amongst his Ministers the business of Government by assigning several Divisions specified in Schedule I to the charge of a Minister:

Provided that a Division or a Ministry not so assigned shall be in the charge of the Prime Minister:

Provided further that more than one Division may be assigned to a Minister".

13. According to Schedule II (which deals with Rule 3(3) Distribution of Business among Divisions) it is the Cabinet Division at Para 81 which is allocated business concerning the Pakistan Commissions of Inquiry Act, 2017 under which the impugned Notification established the Commission whose report has been impugned and **not** the Ministry of Interior.

14. Likewise the summary to the Cabinet dated 10.03.2020 to establish the Commission under the Pakistan Commissions of Inquiry Act 2017 has been moved by the Ministry of the Interior and **not** the Cabinet Division.

15. Thus, it is clear that the impugned Notification which established the Commission and the impugned Report which flowed from the Commission has not been established in accordance with the Rules of Business and as such the relevant law. The Respondents were not able to place any document on record regarding the relaxation of the Rules in this respect and even otherwise good reasons for such relaxation must be given as a relaxation of a Rule cannot be relaxed in a whimsical or arbitrary manner as it concerns the exercise of a discretion which must be exercised reasonably.

16. Initially we were of the view that in the wider interest of accountability we could over look this apparently minor legal technicality in the wider interest of bringing to book those who might have committed illegalities in the sugar industry however on a deeper analysis of the Rules of Business and the consequence of their non compliance with the same we have found that in recent times the Hon'ble Supreme Court, after considering most of the case law cited by the respondents on this issue has **not** found the non compliance of the Rules of business as a minor technicality which can be over looked **but rather a**

mandatory requirement that the rules be followed and in failing to do so the act would be of no legal effect and this is the latest position of the Supreme Court on this issue. In this respect reliance is placed on the seminal case of *Mustafa Impex vs Government of Pakistan* (PLD 2016 SC 808) at P.848, 849, 871 at Para's 50, 51 and 84 which are reproduced hereunder

"50 The importance of the Rules of Business cannot be understated within a constitutional framework. Although, generally speaking, it is correct to state that all rules are binding for, and in relation to, the powers thereby conferred on the Executive, this is especially so in the case of the Rules of Business. The concept of rules, as is obvious, is subsumed in subordinate or delegated legislation. It is an integral part thereof. All legislation is binding and should be acted upon. The Federal Government does not have the prerogative to follow, or not to follow, legislation, both primary as well as secondary or delegated, in its discretion. The authority to frame rules is normally conferred by an Act of Parliament. In the case of the Rules of Business this authority flows from the Constitution itself. As noted above, Clause (3) of Article 99 makes it mandatory for the Federal Government to make rules which cover two related sub-fields, firstly, for and in relation to the allocation of the business of the Government and secondly, for transacting the said business. This clause is to be read as essentially ancillary to the overarching concept of the rule of law. The Constitution confers vast powers on the Government for the transaction of executive business. There is no reason to suppose, or believe, that the framers of the Constitution intended, in disregard of the explicit language employed, that the Federal Government could, in its discretion, either follow, or not follow, the provisions of the Rules of Business. The framer of rules is as much bound by the content thereof as anyone else is subject thereto. These are basic precepts of constitutional interpretation. To allow the Executive to depart from the language of the Rules, in its discretion, would be to permit, and legitimize, unconstitutional executive actions. Quite independently of the above, there is ample case law stressing the importance of a structured exercise of discretionary power. In this case the discretionary executive powers have already been fettered by the Constitution. The framing of rules for this purpose is inextricably linked to the guided exercise of official power. The following of the Rules of Business is a salutary exercise intended to enhance, and amplify, concepts of good governance. We have no doubt that it is mandatory and binding on the Government, and so hold. A similar view was taken by this Court in the case of *Ahmad Nawaz Shah* (supra).

51 The argument is sometimes advanced, in order to defeat the language of subordinate legislation, that it is merely directory and not mandatory. It is necessary to emphasize the point that, in the normal course, there is no reason whatsoever why the language of rules should not be considered to be mandatory unless it is *ex facie* discretionary. The rules are framed to achieve a certain objective and to achieve this within the channels relating



to the devolution and flow of statutory authority. In the absence of compelling reasons to the contrary all rules are, and should be considered to be mandatory and binding. The burden of proof lies on anyone asserting that the rules in question are directory and not mandatory. He must establish that there is a sound and powerful reason why they should not be considered mandatory and binding. This principle applies with redoubled force, for and in relation to two sets of rules; firstly, constitutionally mandated rules i.e. the Rules of Business, and secondly, rules framed under fiscal enactments. Constitutionally mandated rules are closely intertwined with the concept of good governance for and in the public interest. Allowing a departure therefrom would be detrimental to open and transparent forms of governance. If a government department admits that although it has violated explicit provisions of the rules, its violation should be condoned by treating the breach as non-actionable merely on the ground of its supposedly being directory, then surely serious questions arise in relation to the good faith of the department. In each and every case the presumption of law would be that the rules are mandatory and should be observed and followed. If, and only if, a compelling public interest is established as a reason for non-compliance with the rules i.e. other than inadvertence, or negligence, or incompetence then, and only then, can the court consider whether or not to condone the breach in the observance of the rules.

84. We may now summarize our conclusions:-

- (i) The Rules of Business, 1973 are binding on the Government and a failure to follow them would lead to an order lacking any legal validity. (bold added)

17. In this case the Respondents have not been able to put forward or establish any compelling reason for non-compliance with the Rules which are **mandatory in nature** (especially as inadvertence or negligence or incompetence will not suffice as an excuse even when the matter is of compelling public interest) and following them complies with the concept of good and transparent governance and solidifies the rule of law. It is also settled by now that when a matter is to be done in accordance with law in a certain manner then such matter must be carried out in that manner which was not done in this case and as such the impugned Notification is struck down as having no legal effect and in turn the impugned Report which flowed from the impugned Notification is also struck down and of no legal effect and likewise the so called action matrix as mentioned earlier in this order and letters written by the Adviser to various organizations which again flowed from the impugned Report in respect of the petitioners.

In addition, we also find as follows:

**Belated publication of the establishment of the Commission in the official Gazette.**

18. It appears that the object of the notification of certain instruments in the official Gazette is to give them legal validity and give the general public and in particular those whom the instruments may effect notice of the same so that such persons may take such steps which they may deem appropriate in respect of the instrument by example challenging it in a court of law.

19 Under S.3, 3(2) and 10 of the Pakistan Commission of Inquiry Act 2017 which are set out below for ease of reference if a Commission was Constituted by the Federal Government then it was **mandatory** for that Commission to be notified in the "official Gazette" from a plain reading of those sections which requires no interpretation. In this case the constitution of the Commission was **not** published in the official Gazette until 06.07.2020 which was **after** the Commission had submitted the impugned Report on 21.05.2020 and as such the petitioners had no notice that the Commission had come into existence and therefore did not have the opportunity to challenge its creation if they so desired until **after** the Commission had submitted its report. Section 3(1)(2) and section 10(b) of the Act provide as follows:

**3. Constitution of Commission of Inquiry.- (1)**

Whenever it is expedient to conduct an inquiry into any definite matter of public importance, the Federal Government may, **by notification in the official Gazette**, constitute a Commission of Inquiry in accordance with the provisions of this Act

(2) The Federal Government shall, **by Notification in the official Gazette**, appoint the members of the Commission and where more than one member are so appointed, the Federal Government shall designate one of the members to be the Chairman of the Commission

**10. Additional powers of the Commission.-** In case the specific nature of the inquiry so requires, the Federal Government may, **by notification in the official Gazette**, confer the following additional powers on the Commission for the purposes of this Act, namely -

(a) . . . . .



- (b) power to constitute special teams, consisting of officers from the executive authorities and experts in specific fields, for the purposes of assisting the Commission in conducting an inquiry. The special teams shall have such powers as may be prescribed.

20. It is an admitted position that the requisite notification in the case of the constitution of the Commission was made after the impugned Report had been submitted whereas the notification for the special teams made by the Commission to assist it was never made. We have reviewed the case law cited by the respondents on this issue and find that in most cases where the non notification or belated notification in the official Gazette had been condoned by the court related to cases where the Government's failure to notify was benefiting itself to the detriment of others and as such are distinguishable from the present case where the non notification in the Gazette is only prejudicing the petitioners. In the case of **Government of Sindh V Messrs Khan Ginners (Private) Limited** (PLD 2011 P.347) it was held by the Supreme Court that a notification could not be termed as lawful **unless and until** notified in the official gazette at P.349 in the following terms.

*"The case of Muhammad Suleman and others v. Abdul Ghani PLD 1978 SC 190 throws sufficient light on the legal position that issuance of a Notification is not of any significance or legal importance till it is published in an official Gazette. According to section 2(41) of the General Clauses Act, 1956 a 'Notification' means a Notification published under proper authority in an official Gazette. In this view of the matter before its publication in the official Gazette the Notification relevant to the present appeals could not even be lawfully termed as a Notification".(bold added)*

21. Likewise in the case of **Muhammed Osman Ghanni V M.Ahmed** (PLD 1967 Dacca 786) it was held as under at P.787,

*"...It is, therefore, obvious that the appointment of an Election Tribunal must be made by notification in the official Gazette and in no other manner. In the present case, the aforesaid notification dated the 9<sup>th</sup> of July 1965 appointing Additional Deputy Commissioner (General), Bakarganj to be an Election Tribunal, although dated the 9<sup>th</sup> of July 1965, was published in the official Gazette for the first time on the 26<sup>th</sup> of March 1966, i.e., long after Mr. M. Ahmed, Additional Deputy Commissioner (General), Bakarganj had heard and disposed of the Election case. In view of the said notification, Mr. M. Ahmed, Additional Deputy Commissioner (General), Bakarganj was constituted an Election Tribunal only on the 26<sup>th</sup> of March 1966 and not earlier and therefore he had no jurisdiction to try the Election Case on the 15<sup>th</sup> of January 1966."*

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22. The Commission therefore only **legally** came into being when it was notified and published in the official Gazette on 06.07.2020. Thus from 16.03.2020 when the Commission was established by the impugned Notification it had no legal authority to carry out its terms of reference and submit the impugned Report which it did on 21.05.2020 **before** its publication in the official Gazette and as such **legally** the Commission never came into existence and any work which it carried out including its impugned report was without lawful authority and cannot be relied upon.

23. At the earliest, in our view, the Commission came into effect on 06.07.2020 when it was notified in the official Gazette. However, by this time the Commission had already submitted its report to the Cabinet on 21.05.2020 and according to S. 3(6) of the Pakistan Commissions of Inquiry Act 2017 the Commission had already become *functus officio* and as such the impugned Report had no legal effect on this score as well as the Commission had ceased to exist (if it had ever legally existed) even prior to its legal notification which brought it into legal existence. S.3 (6) provides as under;

“The Commission shall cease to exist on the conclusion of the Inquiry conducted by it and submission of Final Report in respect thereof to the Federal Government.”

**The composition of the Commission.**

24. The **Ministry of Interior** (not the Cabinet Division) moved a summary to the Cabinet on 10.03.20 for the Constitution of a Commission to Probe into the increase in sugar prices as set out below;

“NO.5/14/2020-FIA  
GOVERNMENT OF PAKISTAN  
**MINISTRY OF INTERIOR**  
SUMMARY FOR THE CABINET

Subject: **CONSTITUTION OF INQUIRY COMMISSION TO PROBE INTO THE INCREASE IN SUGAR PRICE.**

In order to probe into the increase of sugar price the following Committee was constituted by the Prime Minister of Pakistan (**Annex-I**).

- |      |   |          |
|------|---|----------|
| i)   | Director General, FIA                     | Convener |
| ii)  | Representative of IB not below BS-20/21   | Member   |
| iii) | Director General, Anti-Corruption, Punjab | Member   |

2. The Committee was tasked to identify and fix responsibility, if any, on any individual/officer/organization, including any purported benefit to a private party, besides suggesting a way forward for future course of action.

3. The Director General, FIA submitted a preliminary report wherein the Committee during the course of proceedings has collected information



from different Federal and Provincial Government Departments, Pakistan sugar mills Association and other stakeholders for providing answers to the questions on the TORs of the Committee (**Annex-II**)

4. The Director General FIA suggested that on the basis of information collected from the difference sources the Committee **was able to form a reasonable picture of the possible ways in which the malpractices in sugar sector can be used to hide the real production and possible ways of concealing of the record of the sales.** In order to ascertain the factors responsible for manipulation of the market price further verification is required through forensic audit and physical stock taking of few of selected mills.

5. In order to carry out this exercise as proposed by DG FIA a Commission of Inquiry may be constituted under Pakistan Commissions of Inquiry Act, 2017 (**Annex-III**) and in terms of Section 3 of Pakistan Commissions of Inquiry Act, 2017 it will consist of the following members:

i)	Director General, FIA	Chairman
ii)	Director General Anti-Corruption Establishment Punjab	Member
iii)	Representative of IB not below BS-20/21	Member
iv)	Representative of SECP BS-20/21 or equivalent officer	Member
v)	Representative of State Bank of Pakistan BS-20/21 or equivalent officer	Member
vi)	Representative of FBR BS-20/21 or equivalent officer	Member

(Members at Sr. No.iii to vi till be nominated by the head of respective departments.

6. This Commission will also be empowered under section 10(b) of the Act *ibid* to constitute special teams consisting of officers from executive authorities and experts in specific fields, for the purposes of assisting the Commission in conducting an inquiry.

7. The terms of Reference (a to p) of the Commission are at **Annex-IV**.

8. Approval of the Cabinet is solicited for the proposals contained at paras 5, 6 & 7 above.

9. Minister for Interior has seen and authorized submission of the summary to the Cabinet.

Sd/-  
(YOUSUF NASEEM KHOKHAR)  
Secretary

25. The Constitution of the Commission and its members were approved by the Cabinet by a decision dated 10.03.2020 according to learned Additional Attorney General for Pakistan which lead to the creation of the Commission.

26. As noted in the above referred summary at Para 5, 06 persons from particular organizations with particular seniority were to be members of the Commission. One of the Members was stated to be a representative of the State Bank of Pakistan (SBP) of grade BS 20/21. However, the record reveals that a Mr. Majid Hussain Chaudhry, Joint Director, SBP of grade 19 was appointed as a member of the Commission without Cabinet approval contrary to the summary.

29. At first instance it would appear that the test for bias of any member of the Commission has not been satisfied however when we **deeply considered** the documents before us **in a holistic manner** we find that the test has been satisfied at least in respect of 3 members of the Commission and strike down the Commission report on account of bias.

30. In making this finding we consider that the starting point is the establishment of an Inquiry Committee to probe the increase in sugar prices vide a letter from the Prime Ministers Office dated 20-02-2020. We are uncertain on what legal basis this inquiry Committee was created or the powers which it would have but never the less set out the Prime Ministers letter for ease of reference.

"PRIME MINISTER'S OFFICE  
ISLAMABAD

Subject: **INQUIRY COMMITTEE TO PROBE THE INCREASE IN SUGAR PRICE.**

The Prime Minister has been pleased to constitute the following Committee to probe the recent increase in sugar prices:

- |      |   |          |
|------|---|----------|
| i)   | Director General, FIA                     | Convener |
| ii)  | Representative of IB not below BS-20/21   | Member   |
| iii) | Director General, Anti Corruption, Punjab | Member   |

The Convener may co-opt any other member

2. The inquiry report shall, inter alia, include:
- Whether the production, this year, was low as compared to past years? Was low production the primary reason for increase in prices?
  - Was the minimum support price sufficient?
  - Did the Mills purchase sugarcane at exorbitantly higher prices than the minimum support price? If yes, then reasons thereof;
  - Reasons for mills not purchasing sugarcane, for a limited period of a few weeks, from the farmers and its impact, if any, on sugar prices;
  - Basis for determination of Ex-Mill price? Reasons for increase in Ex-Mill price;
  - Market manipulation / cartelization by sugar mills, if any;
  - Impact of forward contracts on the prices of sugar and any malafide is involved;
  - Whether margins between Ex-Mill and retail prices increased, compared to previous years, or otherwise. If yes, thereof and potential beneficiaries;
  - Impact of tax increase on sugar prices at Ex-Mill / Retail level;
  - Hoarding at whole sale/ Retail level and within sugar mills vis-à-vis stock of last year;



k) Was export of sugar justified? Any subsidy given on export and its impact, with potential beneficiaries,

l) Basis for determination of retail price of sugar

m) Role of various stakeholders, including government institutions and private sector in increase in sugar prices, including timely / preventive / pre-emptive remedial measures to control sugar prices and malafide, if any, of any stakeholder, and,

n) Any other issue, deemed appropriate, related to the increase in recent sugar prices,

3 The Committee shall also identify and fix responsibility, if any, on any individual / officer / organization / including any purported benefit to a private party, besides suggesting a way forward for future course of action.

4 The above inquiry shall be completed and report shall be submitted to the Prime Minister within a fortnight (5<sup>th</sup> March, 2020) positively.

Sd/-

(Muhammad Azam Khan)

Secretary to the Prime Minister"

31 It can be seen from the above that the Committee was to consist of 3 members by designation (i) DG FIA (Mr Wajid Zia) as convener (ii) Representative of IB not below BS 20/21 (Mr Mr Ahmed Kamal) and DG ACE Punjab (Mr Mr.Gohar Natees) with specific terms of reference

32 The Committee set about its task and on 09 03 2020 its convener Mr Wajid Zia wrote to the Secretary to the Prime Minister as is set out below;

OFFICE OF THE DIRECTOR GENERAL  
FEDERAL INVESTIGATION AGENCY  
ISLAMABAD

No PS/DG/FIA/2020/417

Dated.09.03.2020

To,

The Secretary to Prime Minister,  
Prime Minister's Office,  
Islamabad

Subject INQUIRY COMMITTEE TO PROBE THE INCREASE IN SUGAR PRICES.

Reference Prime Minister's office Islamabad vide Letter No 755/A/M/SPM/2020 dated 20 02.2020 and Letter No.930/M/SPM/2020 dated 05.03.2020 on above noted subject

2 The inquiry Committee during the course of proceedings has collected information from different Federal and Provincial Government Departments, Pakistan sugar mills Association and other stakeholder for providing answers to the questions in the TORs.

3 The information collected thus far reveals that the whole information system used for decision making by the Government Department is totally dependent on the information provided by the sugar mills. This includes

information about the pricing of Sugarcane, the amount of sugarcane crushed, recovery ratio, the sugar produced, sugar sold, lifted and pledged etc.

4. **The inquiry Committee has been able to form a reasonable picture of the possible ways in which the malpractices in sugar sector can be used to hide the real production and possible off the record sales. According to some source reports, the supply of sugar is controlled by few sugar mills for manipulation of the market sale price.**

5. Further verification of these reports can only be made through Forensic Audit and physical stocktaking of a few selected mills by a team of experts from SECP, FBR, State Bank of Pakistan and others conducted on site to analyze and prepare reports on the following matters:

- a) Verify the sales of sugar to find out malpractices of hoarding & manipulation of supply to the market to maximize profiteering.
- b) Physical verification of stock to find whether there is any excess / shortage of stock as shown in the books and the verification of the genuineness of the sale record.

6. The Forensic Audit teams would be assisted by the FBR, State Bank of Pakistan, FIA, ACE Punjab officers. It is estimated that at least 6 such teams would be required to carry out the detailed forensic audit of largest players in the sugar mills Industry. **Although this exercise would take considerable manpower & time, it would be able to provide credible evidence to establish any wrong doings/manipulation.**

7. It is suggested that the existing inquiry Committee may be further expanded to include a Grade 21 or equivalent officers of SECP, FBR and State Bank of Pakistan with the additional TORs at para 5(a) and (b) also assigned to it.

8. The inquiry Committee feels that in order to carry out on site forensic audit and deploy technical teams to carry out this exercise, **the legal cover would also be required to be provided.**

Submitted for favor of consideration, please.

(Wajid Zia), PSP  
Director General FIA"

33. Pursuant to this letter a summary was moved by the Ministry of Interior which lead to the creation of the Commission on 16.03.2020 in Mr. Zia's own words, **to give legal cover to the actions of the Committee**, and thus the **Committee** members were in effect made a part of the Commission.

34. From Mr.Zia's letter it appears to us that the **Committee** had already through there investigations made up its mind that there was malpractice in the sugar sector and that he wanted to further expose this. He does not appear to be interested in seeking any exculpatory material which may exonerate the sugar Mills which also brings the fairness of the Commission into question. Namely, did they wish to pursue a fair investigation or were they out to fix sugar mill owners?

7



35. The **Commission** comprised the following 6 members;

- (i) Mr.Wajid Zia DG FIA as Chairman-----**already a member of the Committee**
- (ii) Mr.Gohar Nafees DG ACE Punjab-----**already a member of the Committee**
- (iii) Mr.Ahmed Kamal DDG IB-----**already a member of the Committee**
- (iv) Mr. Bilal Rasool ED (SECP)-----correctly appointed as per approved summary
- (v) Mr.Majid Hussain Chaudhry Joint Director SBP----- **not appointed in accordance with the approved summary and already found by us to be a stranger to the Commission whose contribution is to be ignored.**
- (vi) Mr.Bashirullah Khan DG, Directorate General of Intelligence and Investigation FBR Islamabad---- correctly appointed as per approved summary
- (vii) Later as discussed above a 7<sup>th</sup> member Col. Muhammed Faisal Gul was illegally appointed to the **Commission who has already found by us to be a stranger to the Commission whose contribution is to be ignored.**

36. The terms of reference of the Commission were set out in S.3 of the Notification of the Commission as under;

THE GAZETTE OF PAKISTAN, EXTRA, JULY 6, 2020 [PART II]

3. The following shall be the Terms of Reference (ToRs) of the Commission:-

- a. Whether the production, this year, was low as compared to past years? Was low production the primary reason for increase in prices?
- b) Was the minimum support price sufficient?
- c) Did the Mills purchase sugarcane at exorbitantly higher prices than the minimum support price? If yes, then reasons thereof;
- d) Reasons for mills not purchasing sugarcane, for a limited period of a few weeks, from the farmers and its impact, if any, on sugar prices;
- e) Basis for determination of Ex-Mill price? Reasons for increase in Ex-Mill price;
- f) Market manipulation /cartelization by sugar mills, if any;
- g) Impact of forward contracts on the prices of sugar and any malafide is involved;
- h) Whether margins between Ex-Mill and retail prices increased, compared to previous years, or otherwise. If yes, thereof and potential beneficiaries;
- i) Impact of tax increase on sugar prices at Ex-Mill / Retail level;

- j) Hoarding at whole sale/Retail level and within sugar mills vis-à-vis stock of last year;
- k) Was export of sugar justified? Any subsidy given on export and its impact, with potential beneficiaries;
- l) Basis for determination of retail price of sugar.
- m) Role of various stakeholders, including government institutions and private sector in increase in sugar prices, including timely / preventive / pre-emptive remedial measures to control sugar prices and malafide, if any, of any stakeholder;
- n) Verification of the sale of sugar to find out malpractices of hoarding & manipulation of supply to the market to maximize profiteering.
- o) Physical verification of stock to find whether there is any excess / shortage of stock as shown in the books and the verification of the genuineness of the sale record; and
- p) The role of Competition Commission of Pakistan in this crises;
- q) Benami transactions and profits (approx) earned during the sugar crisis;
- r) The Commission shall submit its report to the Prime Minister within forty (40) days after issuance of this notification.
- s) Any other issue, deemed appropriate, related to the increase in recent sugar prices;

37. **Importantly and significantly**, on the establishment of the Commission the Committee did **not** cease to exist but continued its work and on 24.03.2020 submitted a report to the Prime Minister which once again caste aspersions on the petitioners and indicated that the 3 **Committee** members (**now also Commission members**) had already made up their minds that the petitioners and other Sugar Mill Owners had committed illegalities and the only issue was to what extent.

38. For instance, in its report the Committee accused the sugar mills, *inter alia*, for purchasing sugarcane off the books and for selling sugar off the books [Report, page, 95, para. 2]. It accused them of price manipulation [Report, page, 105, para. 22, page 109, para. 25]. "*major tax evasion*" [Report, page, 113, para. 27], market manipulation and cartelisation [Report, page. 111, para 25 (iii), page. 117, para. 31, page. 119, para. 37], "*Satta*" [Report, page. 121, para. 41, page. 123 para. 42 Iii), "*hoarding*" [Report, page. 129, para. 49] and subsidy manipulation [Report, pages. 135, para. 57]. It recommended a '*crackdown*' on the sugar mills [Report, page. 141, para.69].

39. As such out of the 6 Members of the Commission in our view three of them (the existing **Committee** members Mr.Wajid Zia DG FIA, Mr. Gohar Nafees DG ACE Punjab and Mr. Ahmed Kamal DDG IB) had through Mr.Zia's



above referred letter and the **Committee report** already made up their minds that the petitioners and other sugar mill owners had committed illegalities and find that when the above context is considered a reasonable man when faced with the above context and facts would have an apprehension that the above three members of the Commission had a real likely hood of bias against the petitioners and other sugar mill owners. Thus we find that that 50% of the Commission was biased and two out of the remaining four members of the Commission were strangers to the Commission having been illegally appointed and as such only 2 members out of the 7 members of the Commission remain who can be safely relied upon as being unbiased and legally appointed.

40. It is important to stress here that the 3 members may not be actually biased but the test is as to what *we consider a reasonable man would apprehend based on the above test when all the above facts were placed before him*. The fact that some persons closely associated with the Government were also included in the report would not reduce such apprehension in the minds of a reasonable man especially as some of those associates appear now to be out of favour with the Government and left Pakistan shortly after the Commission's report was published without hindrance by the Government.

41. In terms of bias the way in which the Commission report was handled also in our view **raises serious questions about the bona fides of the Government** keeping in view the generally slow and bureaucratic manner in which Governments tend to operate in that the Commission's report of around 350 pages was presented to the Government on 21.05.2020, all around 350 pages were considered and digested on the same day by the Adviser, a Cabinet meeting was called on the same day, a detailed presentation by the Adviser on accountability was made to the Cabinet on the impugned Report the same day and the Cabinet approved both the impugned Report and the drafting of the action plan on the same day which leads us to **the only reasonable inference** that the Adviser was in contact with the Commission throughout its proceedings, may have influenced them and their findings and may have even received an advance copy of the impugned Report as the above pace of events on the same day does not seem possible whilst also keeping in view that this whole Commission was established by virtue of summaries by the Ministry of Interior, ostensibly headed by the Adviser and under which Ministry the FIA also falls under and the DG FIA lead both the Committee **and the Commission** bypassing the Cabinet Division. The *impression/perception* is thus created in our minds that



the master mind behind the impugned Report which was aimed to disparage certain organizations including the petitioners was the Adviser which *impression/perception* is further fortified by the action plan which he drew up and the letters which he sent to the heads of various organizations with a copy of the report which we will come to later in this order.

42. Again, importantly and significantly the terms of reference of the Committee when compared with the terms of reference of the Commission are almost identical with only 4 extra terms of reference being added for the Commission and as such the Committee, 50% of whom made up the Commission had in effect already made up their minds that the petitioners and other sugar mill owners had committed illegalities and their sole concern was to dig up further material against them for their report.

43. In this respect reliance is placed on a decision of the Judicial Committee of the Privy counsel in the case of **Mitchell V Georges** (2015 SCMR 1020) which is quite similar to this case whereby it was held that in effect where a one man Commission of Inquiry had already disclosed his mind through an interim report he would not be in a position to impartially continue with the inquiry which held as under at Para 33 and 34.

*"33--The Board has reached the conclusion that, contrary to the conclusions of the courts below, the Interim Report was expressed in such terms that the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the respondent was biased such that he would not approach the remainder of the Inquiry with an open mind or, put another way, that he would not conduct an impartial Inquiry, so far as the conduct of the appellant is concerned. In reaching that conclusion the Board has considered the relevant context. It appreciates that the respondent is not presiding over adversarial proceedings but over an Inquiry. However, the Inquiry involves a detailed examination of the conduct of the appellant (among others) over a considerable period and both the Salmon letter and the Interim Report make it clear that the appellant faces serious allegations of impropriety."*

*"34.....  
.....  
..... The question is not whether the respondent was in fact prejudiced against the appellant; that would amount to actual bias. As already stated, the question is ( and is only) whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the*

5



*respondent was biased such that he would not approach the remainder of the Inquiry with an open mind."* (bold added)

44. Thus, based on the above discussion the impugned Report is of no legal effect based on our finding that there was a real likelihood that the Commission was biased against the petitioners and others. Justice must not only be done but it must also be seen to be done.

#### Denial of the Opportunity to be heard.

45. The Commission in its report has made damaging and disparaging findings against the petitioners and other sugar Millers. For example, at typed P.37 Para's 100, 123, 138 and 143 of the report it is written as under;

"100. As discussed earlier, that the sugar mills have been charging margins after adding the sales tax which resulted in extra charging of Rs.1.02 per kg. This is a daylight robbery, from the pockets of the general public, to the tune of Rs.5.2 billion every year. The Government may direct the FBR to recover this hefty amount by ascertaining the additional profits thus made by each sugar mill in the past.

123. "Satta" is the speculative sale and has become common practice in sugar market throughout Pakistan. No actual investment or sale or lifting of sugar is involved in SATTA. It is simply a form of gambling."

"138. Apart from genuine sale to registered corporate users, sugar brokers are abusing forward contracts to cover the speculative "Satta" sales. The sugar mills are not only facilitating such speculative sales by providing storage spaces for longer durations and increasing ex-mill prices without any justification but they are also major beneficiaries of "Satta" through advance payments, forfeiture of advance against such forward contracts in cases of non-lifting and through artificially increased sugar prices.

"143. Till the time new legislation is brought, the Provincial Government should take strict action according to the existing laws to control "Satta". The information about the place and persons involved in this speculation business is available with the Special Branch and Intelligence Agencies.

Other such instances of disparaging comments are found in the report at S.2 pages 483 to 601 of the Report of the Commission of Inquiry. It found input tax credit "availed by the mills" as ab initio "inadmissible" and recoverable" [Report para.533, page 463]. Income tax assessments already made were declared to be "erroneous" and "prejudicial to the interests of the revenue" and



recommended "complete audit of Tax affairs" [Report, pages 521, 537, 575 and 599]; "audit of withholding taxes" [Report, page. 537].

46. Interestingly, the report castigates the involvement of the sugar industry and the petitioners in Satta which is a form of forward trading which is commonly and globally used for international commercial business transactions but concedes that there is no law against it in Pakistan yet the suggestion is at Para 143 as set out above is that the sugar industry should be taken to task for this otherwise legal transaction in Pakistan under no apparent law.

47. We disagree with the respondent's contention that the petitioners had no right to be heard by the Commission before the report was finalized in which such highly damaging comments, observations, findings, recommendations against the petitioners and other sugar Mill owners were made. In our view it was incumbent for the Commission to give each and every petitioner and Sugar Miller the opportunity of being heard including the petitioners before making such highly damaging comments, observations, findings, recommendations against the petitioners and other sugar Mill owners in its report.

48. It is also an admitted fact that so far as the petitioners were concerned none of their officers were given the opportunity to be heard by the Commission or confronted with any document or given any chance to put forward their position through documents or otherwise in respect to the Commission in order to disprove any allegation made against them or the industry. As such they were condemned unheard by adverse comments being made against the entire sugar industry (which included them) which is contrary to the well settled principle of **audi alteram partem** which is a due process right guaranteed under Article 10(A) of the Constitution and is so settled by now that it hardly needs any further elaboration. In fact so important is this right that even if a statute does not expressly provide the right to be heard it is implied in the statute and equally applies to Commissions of Inquiry. In this respect reliance is placed on **Saleem Malik V PCB** (PLD 2008 SC 650) at P.659 in the following terms;

*".....The principle of natural justice is read in every statute as a mandatory rule in the command of the Constitution, which is also recognized in Islam and a law or an action which is in conflict to this golden principle may have no legal effect or consequence. This principle will also be applicable to the proceedings before the Commission of Inquiry referred above which has all ancillary and*

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*incidental powers for the purpose of holding inquiry under  
Pakistan Commission of Inquiry Act, 1956... .."*

49. Even otherwise we also cannot agree with the view of the respondent that no right to be heard can be given to the petitioners on the basis of the **Saleem Malik case** (Supra) as it involved an individual because to the contrary just like the impugned report of the Commission the Commission in the **Saleem Malik case** (Supra) was a fact finding inquiry into a group of individuals namely the Pakistan Cricket team and not a single person (Saleem Malik) or organization as in the instant case.

50. Even otherwise a plain reading of the impugned report reveals not only that it is disparaging and accusatory of the petitioners and the sugar industry in violating various laws but it has caused huge damage to the reputation and dignity of the petitioners and other sugar Millers without even hearing their point of view. In the case of **Ainsworth V Criminal Justice system** dated 09.04 1992 passed by the High court of Australia it was held as under at Para 27, 37, 46 and 65.

*"27. It has long been accepted that reputation is an interest attracting the protection of the rules of natural justice. Thus, over a century ago, Jessel M.R. said in Fisher v. Keane (15); (1879) 11 Ch D 353.*

*"according to the ordinary rules by which justice should be administered by committees of clubs, or by any other body of persons who decide upon the conduct of others, (they ought not) to blast a man's reputation for ever- perhaps to ruin his prospects for life, without giving him an opportunity of either defending or palliating his conduct."*

*"37. It does not follow that, because mandamus and certiorari are inapplicable, the appellants must leave this Court without remedy. The law with respect to procedural fairness has developed in spite of the technical aspects of the prerogative writs. Moreover, had the appellants had advance notice of the Commission's intention to report adversely, its failure to observe the requirements of procedural fairness would have entitled them to relief by way of prohibition (23) Reg. v. Liverpool Corporation, Ex parte Liverpool Taxi Fleet Operators' Association (1972) 2 QB 309-310; Re Royal Commission on Thomas Case (1980) 1 NZLR 602, at p 615; see also Reg. v. Marks; Ex parte Australian Building Construction Employees and Builders Labourers' Federation MANU/AUSH/0027/1981 : [1981] HCA 33; (1981) 147 CLR 471, per Mason J. at p 484; Reg. v Commonwealth Conciliation and Arbitration Commission; Ex parte Angliss Group (1969) 122 CLR 546. preventing it from reporting adversely without first giving them an opportunity to answer the matters put against them and to*

*put submissions as to findings or recommendations that might be made* (24) See Mahon (1984) AC 829; Annetts (1990) 170 CLR, per Mason C.] Deane and McHugh JJ. At pp 603-604; per Brennan J. at p 612. Instead, the report has been made and delivered in accordance with s 2.18 of the Act. And, although it had no legal effect or consequence, it had the practical effect of blackening the appellants' reputations. Prima facie, at least, these matters suggest that the appellants are entitled to declaratory relief of the kind granted in *Chief Constable v. Evans* (25). [1982] UKHL 10; (1982) 1 WLR 1155; (1982) 3 All ER 141."

"39. The present case involves no mere hypothetical question. At all stages there has been a controversy as to the Commission's duty of fairness. A report has been made and delivered under s.2.18 of the Act. That report has already had practical consequences for the appellants' reputations. For all that is known, those consequences may extend well into the future. It is appropriate that a declaration be made in terms indicating that the appellants were denied natural justice. That may redress some of the harm done.

"46. It is especially appropriate that judicial review should be available when the function conferred by statute is to inquire into and report on a matter involving reputation, even though the report can have no effect on legal rights or liabilities, for no remedy may otherwise be available to vindicate the damaged reputation."

"56...Reputation in this context is not restricted to reputation which is valuable in business: natural justice is required to be observed whenever a statutory authority contemplates a publication which would affect reputation by diminishing the estimation in which the bearer of the reputation stands in the opinion of others. The bearer of the reputation has an interest which is subject to adverse affection if the statutory authority publishes the contemplated report and that is sufficient both to attract the requirement of natural justice and to give locus standi to seek judicial review if natural justice is denied. *Kio v. West* (1985) 159 CLR.

"65...Where an official entity, purportedly exercising a statutory power or performing a statutory function which requires it to observe the rules of natural justice, publishes a report damaging to a person's reputation without having given that person an opportunity to be heard on the matter, prima facie that person is entitled to a declaration that the report, so far as it damages his or her reputation, has been produced in breach of the entity's duty to observe the rules of natural justice... The Commission did not accord fair treatment to the Petitioners and it is right so to declare."

51. It is high time that we in Pakistan move with the times and protect such important rights to reputation etc by allowing persons a fair chance to put over their point of view before disparaging them and humiliating them in the eyes of



the public. In our view such disparaging comments made against the petitioners and the Sugar industry in the impugned report without giving them the right to be heard has not only damaged the reputation of the petitioners **but has also violated their Constitutional right to dignity as provided in Article 14 of the Constitution.**

52 As such we find that since the petitioners were denied their right to be heard the impugned Report has no legal value in respect of the petitioners and cannot be used against them and can be regarded as a one sided report where the petitioners were denied the right to be heard and a fair hearing as envisaged under Article 10(A) of the Constitution

53 It is notable that none of the members of the Commission had any expertise and experience in the sugar industry in Pakistan despite the Commission having the power to appoint such experts. In our view considering the TOR's of the Commission it was absolutely essential that an expert in the sugar industry was a member of the Commission as this was a specialized and technical field which required an expert in the sugar industry to ensure that the report was balanced and in line with industry practice and the relevant laws relating to the sugar industry. Although we do not find this a reason to hold the impugned report to be without lawful authority (which we have already done on account of other grounds mentioned in this Order) in any event in our view it greatly undermines the findings in the report even if we had not already set it aside and found it to be without lawful authority

54 It is also doubtful whether the Commission stuck to its mandate of being purely a fact finding Commission when some of its comments are seen in context. For example, para 100 which once again we reproduce for ease of reference

**"100. As discussed earlier, that the sugar mills have been charging margins after adding the sales tax which resulted in extra charging of Rs.1.02 per kg. This is a daylight robbery, from the pockets of the general public, to the tune of Rs.5.2 billion every year. The Government may direct the FBR to recover this hefty amount by ascertaining the additional profits thus made by each sugar mill in the past.**

55. In our view para 100 in effect is a finding that the petitioners and other sugar millers have robbed Rs 52 Billion from the general public and that this

money should be recovered from the respective millers including the petitioners which in our view exceeds both the scope of a fact finding inquiry and goes beyond the reason for establishing the Commission and its terms of reference.

#### **Prejudice to the Petitioners.**

56. The respondents have contended that the impugned Report has caused no prejudice to the petitioners, like wise the action plan and the requested follow up actions by the Government. We however disagree with this contention and find that the impugned report of the Commission and subsequent actions taken under it has greatly prejudiced the petitioners.

57. This is amply illustrated by just one letter written by Barrister Shahzad Akbar Adviser to the Prime Minister on Accountability and Interior to the Chairman FBR Islamabad dated 27.07.2020 which reads as under;

**"Barrister Mirza Shahzad Akbar  
Adviser to the Prime Minister on  
Accountability & Interior**

Islamabad, July 27, 2020

To

The Director General,  
Federal Investigation Agency,  
Islamabad  
The Chairman,  
Securities & Exchange Commission of Pakistan, Islamabad.

Sub: **INVESTIGATION OF CORPORATE FRAUD BY FIA / SECP  
PURSUANT TO FINDINGS OF THE SUGAR INQUIRY  
COMMISSION.**

The Inquiry Commission to probe the increase in sugar price, which was constituted by the Federal Government under the Commissions of Inquiry Act 2017, vide Notification NO.F-5/14/2020 FIA dated 16<sup>th</sup> March 2020, has submitted its final report to Government on 21<sup>st</sup> May 2020 (enclosed f/A).

2. The final report of the Inquiry Commission was presented to the Cabinet on 21<sup>st</sup> May 2020. The report was reviewed by the Cabinet and an Action Plan was approved on 21<sup>st</sup> May 2020 in light of findings and recommendations of the Inquiry Commission, comprising actions that are to be undertaken by various departments / agencies for penal action, recoveries and fixing the regulatory framework. Later on 23<sup>rd</sup> June 2020, the Federal Cabinet approved revised Action Plan Matrix (enclosed f/B) for penal action, recoveries and identifies the criminal investigations to be carried out by various institutions, as per their legal provisions, in light of the Islamabad High Court Judgment.

3. In its final report to the Government, the Inquiry Commission, after having conducted forensic audit of nine (9) sugar mills, has pointed out specific instances of corporate fraud through associated companies through accounting



fraud and inexplicable money-transfers leading to money-laundering by these companies.

4. It was observed by the Cabinet and the Prime Minister that as highlighted by the inquiry Commission, the aforementioned acts, inter-alia, are culpable under Companies Act 2017, Anti-money Laundering Act 2010 and offences falling under Schedule of offences falling under Federal Investigating Agency, and hence fall within the mandate of SECP and FIA.

5. In view of the aforementioned, you are requested to undertake a comprehensive investigation of these instances of corporate fraud. Additionally, SECP may also in light of findings of the Sugar Commission Inquire, fix responsibilities and take cognizance of the failure of the external auditors / firms and also its own regulatory oversight mechanisms, as per applicable laws.

6. It will be highly appreciated if a comprehensive report covering the outcomes of actions taken in this regard is submitted by the FIA/SECP for review by the Cabinet within ninety (90) days or initiation of actions or as per timeframe prescribed by the relevant laws.

7. The Government is committed to its vision of fair-play and transparency and assures of any assistances that may be required in the free, fair and transparent conduct of investigations in this regard.

Sd/-

(Mirza Shahzad Akbar)  
Advisor to the Prime Minister  
(Accountability and Interior)

58. In our view this letter and other similar letters sent to other bodies which enclosed the report and with the approval of the Federal Government through its language clearly indicates that crimes have been committed under the Companies Act 2017, Anti Money Laundering Act 2010 and other offenses under the FIA Act by the petitioners and other sugar Millers. In this respect Para 3 and 4 of the above mentioned letter are again reproduced as under:

"3. In its final report to the Government, the Inquiry Commission, after having conducted forensic audit of nine (9) sugar mills, *has pointed out specific instances of corporate fraud through associated companies through accounting fraud and inexplicable money-transfers leading to money-laundering by these companies.*

4. It was observed by the Cabinet and the Prime Minister that as highlighted by the inquiry Commission, the aforementioned acts, inter-alia, are *culpable* under Companies Act 2017, Anti-money Laundering Act 2010 and offences falling under Schedule of offences falling under Federal Investigating Agency, and hence fall within the mandate of SECP and FIA".

59. The question therefore arises as to how a junior officer in such organizations can possibly carry out a fair and independent inquiry when the Federal Government has in effect already found "culpability" and more so when he is required as per para 6 of the letter which is reproduced above required to



report his findings to the Federal Government through Adviser on accountability and Interior Mr. Shahzad Akbar?

60. Apart from raising the question as to what legal authority the Federal Government has to monitor an investigation and inquiry which even the courts have for long held is out of their domain it raises a more fundamental question keeping in view the prevailing ground realities. **Namely, how could a junior officer in such institution dare to defy the finding of culpability which has already been made by the Federal Government based on the Commission's report?** In our view the issuance of such letters along with the report has severely undermined the prospect of any fair and independent inquiry and severely prejudiced the petitioners and other sugar mills in Pakistan and as such all such letters are struck down as being of no legal authority and as such are to be ignored by the recipients along with the Commissions Report.

#### **Violation of the scheme of the Law.**

61. As laid down by Article 5 of the Constitution every citizen is obliged to abide by the Constitution and the law no matter what their status is in life whether they be a poor person or a rich person or a Prime Minister or the Federal Cabinet.

62. Our Constitution is based on Parliamentary democracy and the trichotomy of powers where by each institution (Executive, legislature and judiciary) keeps a check and balance on the other.

63. One task of the legislature is to pass laws which laws are also binding on the legislature and the executive as no man is above the law. Laws in issue in this case include, amongst others, the Income Tax Ordinance 2001, the Anti Money Laundering Act 2010 and the National Accountability Ordinance 1999. Such pieces of legislation are stand alone and self contained and prescribe the manner in which people who fall within their purview are to be dealt with in accordance with that relevant law which will usually safe guard the due process rights of any suspect/accused and allow him a fair hearing before an independent body to answer any allegations against him and an accused may also rely on any safe guards as to his rights as provided in the Constitution.



64 In our view the sending of such letters by the Adviser as reproduced above or the executive authority to statutory authorities in essence directing them to proceed against certain individuals or bodies based on an enclosed report of the Commission stating that such persons and bodies **have already been found culpable** and provide the Commission report to such body and expect it to report back to the Federal Government within a given time period on what steps it had taken against the individuals or bodies is **not** in line or in accordance with with the scheme of law as envisaged by the relevant statute or the Constitution and that the executive has no legal authority to send such letters which violate the due process rights of the petitioners under Article 10(A) of the Constitution

65. To allow such actions would not only defeat the intent and spirit of each piece of legislation but would also create a dangerous precedent whereby Governments could use their executive authority to attempt to victimize, witch hunt or otherwise attack their political opponents through such Statutory bodies which would be contrary to the rule of law and good governance especially in respect of fiscal and accountability legislation which can be used to pressurize and aim twist political opponents. Such bodies are governed by their own Statutes and the executive has no power to interfere with such bodies which must carry out their work independently in accordance with their statutes as passed by the legislature and even junior officers in a statute cannot be directed to do certain things by their superiors unless it is in accordance with powers conferred on them by the concerned Statute and that at all times officers acting under a statutory authority are limited to the authority given to them under such statute

66 In this respect reliance is placed on the Supreme Court case of **Wateen Telecom Ltd V Sindh through Secretary Ministry of Finance** (2019 PTD 1030) where it was held as under at Para 7.

*"7" Perusal of Section 28 ibid, reflects that this empowers an Officer of Sindh Revenue Board not below the rank of Assistant Commissioner, who may on the basis of the Return submitted by a registered person, or the records obtained under Sub-section (2) of Section 27 conduct an audit of such taxpayer once in a year. This sub-section has two parts. One is that an audit can be conducted on the basis of the Tax Return submitted by the Taxpayer. The second it, that an audit could also be conducted on the basis of records obtained under Subsection (2) of Section 27. Insofar as the*

present notice is concerned, it does not disclose that any record was obtained under Section 27 (ibid), therefore, this matter is only confined to the first part i.e. conduct of audit on the basis of Return submitted by the Plaintiff. Insofar as the Proviso to Subsection (1) is concerned that is not relevant for the present purposes. Coming to Subsection (2), it reflects that when the Officer of Sindh Revenue Board has decided to conduct an audit under Subsection (1), he shall issue a notice of audit to the person informing him of the audit proceedings and direct him to produce any records or documents, which such officer may require for conducting the audit. When the aforesaid provisions are read together with the impugned notice, it appears that the Deputy Commissioner has issued the same under Subsection (2) of Section 28 (ibid). This resultantly means that the Deputy Commissioner has decided to conduct an audit under subsection (1) of Section 28 and through impugned notice, he has asked for relevant record to be made available. Therefore, firstly it is to be examined that his decision for deciding to conduct audit is in line with the provisions of Subsection (1) of Section 28 or not. And as noted earlier, it is only on (and must be based on) the basis of the Return furnished by the Taxpayer, as admittedly no documents have been obtained under Section 27(2) ibid. Now the pivotal question is, that whether without assigning any reasons, the Deputy Commissioner on mere examination of the Return, can make a decision for such audit".

67. Likewise in the Supreme Court case of **Commissioner of Inland Revenue Sialkot V Messrs Allah Din Steel and Rolling Mills** (2018 PTD 1444) where it was held as under at Para 16,

16. A perusal of the statutory landscape makes it clear that the provisions of sections 177 and 214 of the Ordinance; section 25 of the Act, 1990 and section 46 of the Act, 2005 provide a mechanism and roadmap which is required to be followed by the Taxation Officer/Auditor. In terms of section 177 of the Ordinance, the Commissioner can call for the record or documents for conducting the audit of the tax affairs of a person, provided he furnishes reasons to do so. Such reasons must be communicated to the Taxpayer. He can also seek explanations from the Taxpayer on issues raised during the audit in terms of section 177 of the Ordinance. It is only if he is convinced that the explanation furnished by the Taxpayer is not satisfactory, he may proceed to amend the assessment under section 122 of the Ordinance, after giving the Taxpayer an opportunity to defend him. We are therefore, of the view that the statutory framework together with the overarching umbrella of constitutional guarantees furnish adequate and sufficient safeguards to the Taxpayer where there is a possibility of overstepping by the Tax authorities.

68. Likewise in the Supreme Court case of **Khawaja Salman Rafique and Another V NAB** dated 17-03-2020 in Civil Petitions No.2243L and 2986L where it



was held as under at the following para's (although it is related to bail we consider its findings relevant to the instant case );

91 Discretion has been granted to the constitutional courts in order to widen the scope of their power and competence, albeit within the prescribed parameters. *The constitutional courts are the guardian of the constitution, and thus required to ensure that the executive refrain from violating the constitutional mandate, and to stop such violation when it occurs. The Court has to review the executive actions and the conduct of the public authorities on the touchstone of fairness, reasonableness and proportionality. They should not hesitate in performing their constitutional duty objectively, particularly when it comes to the matter of rights that have been guaranteed by the constitution, we should remain mindful of the sensitivity of such issues, as unless the constitutionally guaranteed rights protections and privileges are respected and safeguarded the situation shall inevitably degenerate into chaos and anarchy. People wielding power should not lose sight of the fact that the constitutionally guaranteed rights have been obtained and secured by the people of this country through a social contract in the shape of the constitution.*

38 Through its Article 4 the Constitution declared that to enjoy the protection of law, and to be treated in accordance with law is the inalienable right of every citizen, and that no action detrimental to the life, liberty, body, **reputation** or property and any person shall be taken except in accordance with law. **And in terms of Article 5 declared obedience to the Constitution and law to be inviolable obligation of every citizen.** Article 9 of the Constitution guarantees that no person shall be deprived of life or liberty save in accordance with law. **The dignity of man has been protected as an inviolable right. Equality of all citizens before the law, and their entitlement to equal protection of law has been guaranteed through article 25.**

39. The Courts in Pakistan have jealously protected the fundamental rights conferred by the constitution. In the case of Pakistan Broadcasters Association **PLD 2016 SC 692**, the Court reiterated the oft repeated constitutional principle as follows:-

*Undoubtedly no one can be deprived of his fundamental rights. Such rights being incapable of being divested or abridged. The legislative powers conferred on the State functionaries can be exercised only to regulate these right through reasonable restrictions and that too as may be mandated by law and not otherwise. **The authority wielding statutory powers conferred on it must act reasonably (emphasis supplied) and within the scope of the powers so conferred.***

40 In the case of District Bar Association, reported as **PLD 2015 SC 401**, a bench consisting of the Full Court pronounced that

Prominent characteristics, which defined the Constitution and were its Salient Features included Democracy, Federalism, Parliamentary Form of Government blended with the Islamic Provisions, Independence of Judiciary, Fundamental rights, Equality, Justice and Fair Play, Protection and preservation of the rights of minorities, both as equal citizens of Pakistan and as minorities etc.

In Watan Party Case, reported as PLD 2011 SC 997 this Court cited with approval, its earlier pronouncement in the case of Eli Lilly Pakistan 2009 SCMR 127 which reads:-

*"It is the duty and obligation of the State on account of the various provisions of the Constitution to provide the atmosphere based on honesty by providing equal protection of law. Every citizen must be treated equally, dignity of human being life should be maintained, and liberty of life and honour must be guaranteed as envisaged in the Articles 9, 14 and 25 of the "Constitution."*

47. Unfortunately, however, even after 72 years since the creation of the country, and despite 47 years since the adoption of the Constitution, we have not been able to realize the spirit and essence of the ideals set out therein. To the contrary, we have even failed to adhere to some of its most basic commands and prescriptions. *The people of this country are frequently denied their constitutionally guaranteed rights. Principles of equality, fairness, tolerance and respect for democratic norms are flouted with impunity. Dogmatism, intolerance, nepotism, cronyism, incompetence, regression, deception, false pretence, self-projection, misplaced sense of superiority, different biases, and prejudices, and corruption have seeped into our society and have now inundated it. Efforts, whenever made for the supremacy of the constitution, and the rule of law have been thwarted with full force. The principle of trichotomy of power and the concept of devolution have been trampled with contempt. Arrogance, self-righteousness and apathy are ruling the roost".*

69. We would also like to make it clear that although it was not referred to by either of the parties in oral arguments we have considered the Judgment of a single bench of the Islamabad High Court dated 20.06.2020 in the case of **Pakistan sugar mills Association V Federation of Pakistan** in WP No.1544/2020 (currently subject to an Intra Court Appeal before that Court) and with great deference and respect to the learned judgment of that court find that we are not persuaded to agree with its finding for the reasons set out in this order.



70. As mentioned earlier in this order this court is of the view that corruption, tax evasion, money laundering, cartelization are abhorrent and are cancers which are eating away at the very fabric of our society and its economic development and in cases where accused have been convicted of such offenses they should be dealt with by an iron hand. That said persons or bodies **suspected** of such criminal activities **must be pursued strictly in accordance with the law and the Constitution and afforded the due process rights of all accused as guaranteed by the Constitution which must be upheld at all times so that the rule of law is upheld along with principles of good governance.**

71. However laudable the objectives of the Government might be (as in this case setting up a Commission to Probe the rise in sugar prices) it must fulfill those objectives strictly in accordance with the law and the Constitution and in no other manner.

72. We would also like to express our deep concern as to certain issues which have arisen whilst hearing this petition. In particular whether the Government is being carried out in accordance with the intent and spirit of the Constitution. This is because our Constitution envisages a Parliamentary democratic form of Government where the Government is run by the elected members of Parliament who have received a mandate by virtue of the will of the people to whom they are accountable to and yet it appears that a large number of persons who consistently attend Cabinet meetings are unelected persons especially SAPM's who in some cases would **not** even qualify to be elected under the Constitution as either an MNA or Senator and have no accountability to the people as they are unelected which prima facie appears to be contrary to, amongst others, Articles 91 (9), 92 (1) and (3) and the scheme of the Constitution. The framers of the Constitution themselves by virtue of Article 93 of the Constitution very wisely recognized that there may be portfolio's which require particular expertise and has allowed the President on the Advice of the Prime Minister to appoint 5 unelected advisers in order to assist the Prime Minister in perhaps filling positions which require specialized input which is not available amongst the elected representatives of Parliament, for instance the Ministry of Finance. The concept of so many unelected SAPM's who **consistently and regularly attend and participate** in meetings of the Cabinet (which in effect is the body which makes executive decisions) and are unelected and unaccountable to the people however is alien to the Constitution and the concept of the our Parliamentary system of



Government as envisaged by the Constitution and is more in accordance with the Presidential system of Government (which was a part of the abrogated Constitution of 1962) but is **not** envisaged by the Constitution of 1973 and in our view a time may come when the superior courts might need to examine this issue especially as it must cause much heartburning to the elected representatives. In the same vein the longstanding practice of Governments ruling through a large number of Presidential Ordinances promulgated under Article 89 of the Constitution, as opposed to duly passed Acts of Parliament, when in many cases the criteria governing Article 89 have not been met in that under Article 89 a Presidential Ordinance can only be promulgated if Parliament is **not** in session and "if circumstances exist which render it **necessary** to take **immediate action**". Such practice once again militates against the system of Parliamentary democracy whereby laws are promulgated by Act of Parliament whilst following the procedure laid down in the Constitution. By governing in this manner it begs the question whether successive Governments, including the present Government, may in effect rather than abiding by and following the Constitution as per the command of Article 5 of the Constitution are by design deliberating by passing or circumventing the relevant Articles of the Constitution without good reason and for reasons not contemplated by the Constitution.

73. In addition, the presence of an adviser on accountability, in our view, only serves to undermine the independence and the credibility of the NAB as this leads to the perception that the Government is working hand in glove with the NAB against its opponents especially when the perception arises that it is mainly the opponents of the Government who NAB is proceeding against as observed recently, and earlier referred to in this order, by the Honorable Supreme Court in the case of **Khawaja Salman Rafique and Another V NAB** dated 17.03.2020 in Civil Petitions No.2243L and 2986L and where the Adviser regularly lambasts the opponents of the Government for corruption via the media but keeps mum on any such acts allegedly committed by the Government (quite naturally as he is a part of the Government) and as such this undermines the perception of even handed accountability across the board in Pakistan in the eyes of the public at large.

74. It is also difficult to understand the need for an adviser on interior when there is already a Federal Minister of Interior and how they can co-exist within the frame work of the Rules of Business in terms of allocation of business to the Ministry of Interior and which rules make the Minister of Interior head of that Ministry. In our view this does not lend itself to either good governance or clarity in Governance.

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75. Ultimately, however, in the end we must **not** lose sight of the fact that both our legislature and executive are the creation of the Constitution which is the Supreme law of the land and under Article 5 of the Constitution every citizen owes obedience to the Constitution and the law in both letter and spirit which also applies to the legislature and the executive.

#### **Conclusion.**

76. Thus, for the reasons mentioned above when taken together and considered in a holistic manner namely;

- (a) The failure to follow the mandatory rules of business and
- (b) The failure to Gazette the Notification of the Commission within due time and
- (c) The incomplete composition of the Commission and
- (d) The bias of the Commission and
- (e) The denial of the opportunity of being heard to the petitioners and
- (f) Prejudice caused to the petitioners by the report, the Action plan and letters which were sent by the Adviser on accountability and Interior to various statutory bodies and
- (g) Violation and interference in the relevant schemes of law and the Constitution by the executive to the prejudice of the petitioners and
- (h) The violation , amongst others, of Articles 4, 10(A), 14 and 25 of the Constitution by the respondents;

#### **We hereby:**

- (a) **declare** the Impugned Notification of March 16, 2020 and the Impugned Report of May 21, 2020 and all subsequent and consequent actions and orders of the Respondents including but not limited to the actions taken and decisions made in pursuance thereof, whether taken directly or indirectly through departments, offices, agencies, authorities, officers, officials, employees, agents and assigns in any manner whatsoever, to be without lawful authority and of no legal effect, with regard to the petitioners, and quash the Impugned Report and all such actions and orders;

(b) **Prohibit** the Respondents jointly and severally and all other government departments, offices, agencies, authorities, officers, officials, employees, agents and assigns both from directly as well as indirectly taking any adverse action or passing any adverse orders or placing any reliance upon or making any reference to the Impugned Report and/or actions taken or decisions made in pursuance thereof including the action plan and letters sent by the Adviser on accountability and Interior to various organizations pursuant to the Commission's report in any manner whatsoever against the petitioners and/or prejudicial to their interest or being in any manner whatsoever influenced thereby;

(c) **Direct:**

(i) the Chairman of the National Accountability Bureau (NAB) to open an independent inquiry(ies) to be carried out in accordance with the National Accountability Ordinance 1999 (NAO) to determine whether any acts of corruption as fall within the purview of the NAO have been committed by any of the petitioners or any other person **without reference** to the Report of the Commission and without reference to any letters related thereto including without limitation whether unjustified subsidies have been granted to any sugar Miller by any misuse of authority by any Government official which unduly benefited or favored that sugar Miller which inquiry shall ensure the full due process rights of the petitioners which inquiry shall **not** associate any person involved in the preparation of the Commission's report and which shall include an independent expert with full knowledge of the Sugar industry in Pakistan which inquiry(ies) shall be taken to their logical conclusion under the NAO and

(ii) the Chairman FBR to open an independent inquiry(ies) to be carried out in accordance with the relevant taxation laws to determine whether any illegality under the relevant taxation legislation have been committed by any of the petitioners **without reference** to the Report of the Commission and without reference to any letters related thereto which inquiry shall ensure the full due process rights of the petitioners which inquiry shall **not** associate any person involved in the preparation of the Commission's report and which shall include an independent expert with



full knowledge of the Sugar industry in Pakistan which inquiry(ies) shall be taken to its logical conclusion under the relevant taxation legislation and

(iii) The Director General FIA to open an independent inquiry(ies) to be carried out in accordance with the Anti Money Laundering Act 2010 (AMLA) to determine whether any acts of money laundering as fall within the purview of the AMLA have been committed by any of the petitioners **without reference** to the Report of the Commission and without reference to any letters related thereto which inquiry(ies) shall ensure the full due process rights of the petitioners which inquiry shall **not** associate any person involved in the preparation of the Commissions report and which shall include an independent expert with full knowledge of the sugar industry in Pakistan.

(iv) The CCP, SECP and SBP to fulfill their respective mandates in accordance with law with respect to the petitioners and the Sugar Industry without reference to the impugned report or any letters sent to them in connection with the impugned report.

77. A copy of this order shall be sent to the Chairman NAB, Chairman FBR, Director General FIA, Chairman of Competition Commission of Pakistan, Chairman of Securities and Exchange Commission of Pakistan the Governor State Bank of Pakistan and the Chief Secretary of Sindh for compliance.

78. The above petition is disposed of in the above terms.

Announced in open Court on 17/03/2020