

**P L D 2018 Lahore 284****Before Syed Mansoor Ali Shah, C J****SHAHID IDREES--Petitioner****Versus****GOVERNMENT OF THE PUNJAB and others--Respondents**

Writ Petition No.58976 of 2017, decided on 22nd January, 2018.

**Punjab Overseas Pakistanis Commission Act (XX of 2014)--**

----Ss. 7, 3 & 2(g)---Constitution of Pakistan, Arts. 175 & 199---Role and powers of Punjab Overseas Pakistanis Commission and Government Agencies under Punjab Overseas Pakistanis Commission Act, 2014---Scope---Question before the High Court related to the powers of Punjab Overseas Pakistanis Commission---Contention of the petitioners, inter alia, was that the role of the Punjab Overseas Pakistanis Commission was to merely facilitate overseas Pakistanis and neither the Punjab Overseas Pakistanis Commission nor Government Agency under the Act could exercise judicial powers and settle interparty disputes---Held, that a complainant under Punjab Overseas Pakistanis Commission Act, 2014 could not expect a Government Agency to determine third party rights in a dispute between an overseas Pakistani and another private person---Government Agency on receiving the complaint from Commissioner, instead of deciding the complaint according to the powers enjoyed by such Government Agency, could not mistakenly assume role of an executing agency and in such process could not embark upon determination of third parties rights to settle the dispute complained of---Misplaced assumption seemed to exist that if a complaint was transmitted to a Government Agency by Commissioner, such Government Agency was equipped with additional powers to deal with the complaint by interfering and intruding into third party rights of private persons---Determination of third party rights was a judicial function and can only be carried out by a court of law which was the Judicature and not by the Commission or the Government Agencies, which formed the Executive organ of the State and such foundational Constitutional principle was embedded in Art.175 of the Constitution---Constitutional petition was allowed, accordingly.

Yearbook 2013-14, Ministry of Overseas Pakistanis and Human Resoruce Development-Government of Pakistan; State Bank of Pakistan (Statistics and DWH Department)-2018; Sh. Riaz-ul-Haq and another v. Federation of Pakistan through Ministry of Law and others PLD 2013 SC 501 and Mehram Ali and others v. Federation of Pakistan and others PLD 1998 SC 1445 rel.

**Petitioners by:**

Mian Ali Haider, Aish Bahadur Rana, Iqbal Ahmad Dhuddi, Uzair Sajid, Zahid Sadiq, Syed Kazim Bukhari, Muhammad Nadeem Malik in conected matters.

**Respondents by:**

Anwaar Hussain and Ahmad Hassan Khan, Additional Advocates General Punjab.

Bashir Ahmed Mirza, Fiaz Ahmad Kaleem and Naseer-ud-Din Khan Nayyer for Respondents.

Raja Zubair, Director Legal.

Zaheer ud Din Babar, SHO P.S. Civil Line, Abdullah Jan, S.H.O. P.S. South Cantt. and Adbul Sattar, SI P.S. Sundar Lahore.

Date of hearing: 16th November, 2017.

## JUDGMENT

**SYED MANSOOR ALI SHAH, C.J.**—This consolidated judgment shall decide the instant case, as well as, the connected matters listed in Schedule-A to this judgment, as all these cases involve common questions of law and facts.

### Facts

2. Brief facts are that on the complaint of an Overseas Pakistani, received by the Punjab Overseas Pakistanis Commission (Commission"), constituted under the Punjab Overseas Pakistanis Commission Act, 2014 ("Act"), proceedings have been initiated by the Commissioner or on the behest of the Commissioner by the Police or other Government agencies to resolve private disputes between private persons (petitioners in these cases) and the complainant i.e., the Overseas Pakistanis.

### Arguments

3. Learned counsel for the petitioners submit that under the Act, the role of the Commission is merely to facilitate Overseas Pakistanis and the Commission can only coordinate with Government Agencies to redress the grievance of the complainant as per law. They submit that neither the Commissioner nor the Government Agency can exercise judicial power and settle interparty disputes by declaring legal rights of private parties. They referred to the definition of the Government Agency under section 2 (g) of the Act to submit that it does not include a non-governmental organization or a private person and therefore the complaint is confined to the obligations of the Government Agencies under the law. They further submit that in most of the cases, matters between private parties are sub judice before courts of law and, therefore, the Commission cannot interfere in the said matters. They further submit that the Commission and the Government Agencies have assumed the role of a court and are exercising judicial power by summoning private persons in order to decide their disputes. They argue that this offends Article 175 of the Constitution and the concept of the independence of judiciary.

4. Learned counsel representing the Commission submits that according to the preamble of the Act, the Commission is empowered to redress the grievance of the Overseas Pakistanis, therefore, they have the jurisdiction to decide the complaints filed by Overseas Pakistanis by reaching out to Government Agencies, as well as, third parties.

5. Learned law officers on the other hand submit that the purpose of the Act is to redress grievance of the Overseas Pakistanis, in relation to the working of the Government Agencies, and interference by the Commissioner, in third parties rights is not warranted.

### OPINION OF THE COURT

6. I have heard the parties and have gone through the record. In order to appreciate the grievance of the petitioners, the scope and extent of the Act needs to be reviewed.

7. As a matter of background, there are 7.6 million Overseas Pakistanis, in different countries of the World, having family, relatives, property, business and other interests in their motherland. They also remit a staggering amount of USD 1612.62 million to Pakistan as foreign exchange which forms a sizeable part of our GDP. The overall contributions and the ambassadorial role played by the Overseas Pakistanis around the world cannot be overemphasized. It is, therefore, highly commendable that the Provincial Government has set up a Commission under the Act, to attend to the affairs of the Overseas Pakistanis in Punjab through a statutory complaint management system, driven by the Commissioner and expedited through District Committees, with a singular focus on redressing grievance of Overseas Pakistanis relating to Government Agencies. This judgment discusses the scope and extent of the powers enjoyed by the Commission, the Commissioner and the Government Agencies in dealing with complaints of the Overseas Pakistanis.

8. It would not be out of place to mention that the Lahore High Court exercising its powers under Article 203 of the Constitution has designated special courts to deal with the cases of Overseas Pakistanis vide notification

dated 23.06.2017 in the following manner:-

<b>1. AT HEADQUARTERS</b>		
<b>Sr. No.</b>	<b>Name of the Court</b>	<b>Nature of Cases</b>
1.	Senior Civil Judge (Judicial)	All civil cases including rent case.
2.	Senior Civil Judge (Guardian)	All family and guardian cases.
3.	Additional District and Sessions Judge-I	All civil, family, guardian and rent appeals/revisions etc.
<b>2. AT SUB-DIVISIONS</b>		
<b>Sr. No.</b>	<b>Name of the Court</b>	<b>Nature of Cases</b>
1.	Civil Judge-I	All civil and family cases including rent and guardian cases.
2.	Additional District and Sessions Judge-I	All civil, family, guardian and rent appeals/revisions etc.

And vide notifications dated 25.07.2017, 09.09.2017 and 29.09.2017 instructions were issued to all the District and Sessions Judges in Punjab to decide the cases of overseas Pakistanis within six months from the date of institution. Additionally for the expeditious disposal of cases of the Overseas Pakistanis the following instructions were issued by the Lahore High Court on 30.10.2017:-

- "i) The District and Sessions Judge shall include an item of the cases of Overseas Pakistanis in the agenda of District Criminal Coordination Committee for sensitizing all the stakeholders to ensure expeditious disposal of said cases.
- ii) The District and Sessions Judge shall report to Directorate of District Judiciary weekly about the institution of cases where any of the parties is, or claims to be, an Overseas Pakistani.
- iii) The courts, shall not adjourn the cases of Overseas Pakistanis for more than 15 days.
- iv) The courts shall dispose of applications for grant of temporary injunction in the cases of Overseas Pakistanis expeditiously without any delay."

### **Framework of the law**

9. Punjab Overseas Pakistanis Commission Act, 2014 was promulgated on 10th November, 2014. Its preamble states that the Punjab Overseas Pakistanis Commission is to receive and redress the grievance of the Overseas Pakistanis relating to Government Agencies besides referring complaints and suggestions of Overseas Pakistanis to concerned offices to deal with ancillary matters. The constitution of the Commission as provided under section 3 of the Act is as under:-

### **Section 3 Commission.-**

- (1) There shall be a Commission to be known as the Punjab Overseas Pakistanis Commission.
- (2) The Commission shall consist of the Chief Minister Punjab who shall be its Chairperson and an Overseas Pakistani of noted repute and experience nominated by the Chief Minister as Vice Chairperson, and the following members:

(a)	not less than three and not more	Members
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	than six members of the Provincial Assembly of the Punjab including at least one woman member of the Assembly to be nominated by the Chief Minister preferably from those districts as have a large number of Overseas Pakistanis;	
(b)	not more than five members including not less than two women members, to be nominated by the Chief Minister for a term of three years, having experience in issues relating to Overseas Pakistanis;	Members
(c)	Chief Secretary of the Government;	Member
(d)	Senior Member, Board of Revenue of the Government;	Member
(e)	Chairman, Planning and Development Board of the Government;	Member
(f)	Secretary to the Government, Home Department;	Member
(g)	Provincial Police Officer, Punjab;	Member
(h)	Chairman, Punjab Board of Investment and Trade;	Member
(i)	Chairman, Punjab Information Technology Board;	Member
(j)	Advocate General Punjab;	Member
(k)	Prosecutor General Punjab; and	Member
(l)	Commissioner	Member/ Secretary

10. The functions of the Commission are as follows:-

**Section 4 Functions of the Commission.**- (1) Subject to the provisions of this Act and rules, the Commission may exercise such powers and perform such functions as may be necessary for carrying out purposes of the Act.

(2) The Commission shall:

- (a) review annual reports about the working of the Commissioner and give necessary directions;
- (b) review performance of the Commissioner and pass appropriate orders;
- (c) ensure smooth functioning of the office of Commissioner;
- (d) resolve matters relating to conflict, if any, between the Commissioner and a Government Agency;
- (e) develop criteria for constitution of Advisory Council before its constitution;
- (f) nominate members of the Advisory Council; and
- (g) nominate members of the District Overseas Pakistanis Committees

(emphasis supplied)

Overseas Pakistani Commissioner is to be appointed by the Government on such terms and conditions as may be prescribed and, until so prescribed, as may be determined by the Government (section 6). The functions of the Commissioner are as under:-

**Section 7 Functions of the Commissioner.-**

- (1) The Commissioner shall:
- (a) transmit a complaint received from an Overseas Pakistani to a Government Agency for redressal;
  - (b) make recommendations for policy changes, improvements in the system to the Government or Federal Government on the basis of feedback received from Advisory Council or the overseas Pakistanis;
  - (c) be authorized to refer any complaint of an Overseas Pakistani to the Ombudsman for further necessary action in accordance with law;
  - (d) recommend disciplinary action against public servants who do not send reply to the Commissioner within thirty days of the receipt of reference from the Commission;
  - (e) recommend initiation of anti-corruption proceedings against a public servant where, on the basis of preliminary findings, a prima facie case for criminal action under the relevant law is made out in relation to protection of rights of an Overseas Pakistani;
  - (f) refer the proposals of Overseas Pakistanis relating to investment to the Punjab Board of Investment and Trade and ensure their early processing;
  - (g) prepare an annual report about the performance of the Commissioner for consideration and appropriate action by the Commission;
  - (h) hold consultative conventions or workshops involving Overseas Pakistanis;
  - (i) deal with references received from an Advisory Council on priority basis; and
  - (j) perform any other function ancillary to any of the above functions or as may be prescribed.
- (2) If the Commissioner has referred any complaint under subsection (1) to a Government Agency, the Government Agency shall, within a period not exceeding thirty days, send its response to the Commissioner.

(emphasis supplied)

The Act also provides for District Committees and their functions under sections 9 and 10 of the Act, which are as follows:-

**Section 9 District Committees.-**

- (1) There shall be a District Overseas Pakistanis Committee in each district consisting of the Chairperson to be nominated by the Commission for a period of three years, the District Coordination Officer as Vice Chairperson and the following members:

(a)	two persons to be nominated by the Commission for a term of three years	Members
(b)	District Police Officer or Head of District Police; and	Member
(c)	Additional District Collector	Secretary/ Member

(2) A District Committee may co-opt any other officer of the Government posted in the district as a member of the Committee.

(3) Four members including Chairperson or Vice-Chairperson shall constitute the quorum for a meeting of the Committee.

(4) The Committee shall meet at such time and place and shall observe such procedure in regard to transaction of business at its meetings as may be prescribed and until so prescribed as may be directed by the Commission.

**Section 10. Functions of the District Committees.**- A District Committee shall:

(a) review complaints of overseas Pakistanis pending with different offices in the district and expedite their disposal; and (emphasis supplied)

(b) send progress reports and suggestions for improvement in the system to the Commissioner.

**Scope of the Act**

11. The preamble to the Act primarily provides that the Commission is to receive and redress the grievance of the Overseas Pakistanis relating to Government Agencies. Overseas Pakistani means a person of Pakistani origin who is either permanently or temporarily settled outside Pakistan; for employment; or for carrying on a business or vocation; or for any other purpose with the intention to stay outside Pakistan for an unspecified period (see section 2 (i) of the Act). Government Agency is defined in section 2 (g) to mean a department, attached department or special institution of the Government, a local government, or a body corporate owned or controlled by the Government or a local government. Government Agency does not include a non-government organization or a private person.

12. The functions of the Commissioner appointed under section 6 of the Act are primarily to transmit a complaint received from an Overseas Pakistani to a Government Agency for redressal or refer any complaint of Overseas Pakistani to the Ombudsman constituted under the Punjab Office of the Ombudsman Act, 1997. The Commission is more of a facilitation Centre in Pakistan for the Overseas Pakistanis, who cannot attend to their affairs themselves. The Commissioner simply forwards the complaint of an Overseas Pakistani to the concerned Government Agency. Under section 7 (2), the Government Agency is to respond to the Commissioner within a period of 30 days. The District Committees also review complaints of overseas Pakistanis pending with different offices in the district and expedite their disposal.

13. In case there is no response from the Government Agency to the complaint transmitted by the Commissioner, the Commissioner has the power to recommend disciplinary action against the public servant. The Commissioner can also recommend initiation of anti-corruption proceedings against the public servant on the basis of preliminary findings, if a prima facie case for criminal action under the relevant law is made out in relation to protection of rights of an Overseas Pakistani as provided under section 7 (1) (d) and (e) of the Act.

14. The main purpose of the Commission is to help/redress the grievance of Overseas Pakistanis relating to Government Agencies. The grievance is, therefore, limited to the obligations and duties of the Government Agencies under the law. In other words, the scope of the complaint must co-relate to the functions of the Government Agencies under the law. The complainant cannot expect the Government Agency to determine third party rights in a dispute between an Overseas Pakistani and another private person. No such power is vested in the Government Agency under the law. The complaint of an Overseas Pakistani or the redressal of his grievance is limited and confined to the jurisdiction enjoyed by the Government Agency under the law.

15. In the instant cases it has been noticed that the Government Agency on receiving the complaint from the Commissioner, instead of deciding the complaint according to the powers enjoyed by the Government Agency,

mistakenly assumes the role of an executing agency and in this process embarks upon determination of third parties rights to settle the dispute complained of. This is certainly an overreach and transgression of the powers of the Commissioner under the Act and of the Government Agencies under their respective laws. There seems to be a misplaced assumption that if a complaint is transmitted to a Government Agency by the Commissioner, the Government Agency is equipped with additional powers to deal with the complaint by interfering and intruding into third party rights of private persons. Determination of third party rights is a judicial function and can only be carried out by a court of law i.e., the Judicature and not by the Commission or the Government Agencies, which forms the Executive organ of the State. This foundational constitutional principle is embedded in Article 175 of the Constitution. The Commission or the Government Agencies are not Courts and, therefore, any assumption of judicial power by the Commission or the Government Agencies on the behest of the Commission is unconstitutional and illegal. Reliance is placed on Sh. Riaz-ul-Haq and another v. Federation of Pakistan through Ministry of Law and others (PLD 2013 SC 501) Mehram Ali and others v. Federation of Pakistan and others (PLD 1998 SC 1445) and Sh. Liaquat Hussain and others v. Federation of Pakistan through Ministry of Law, Justice and Parliamentary Affairs Islamabad and others (PLD 1999 SC 504).

16. The Government Agencies, in particular the Police or the Local Government, on the behest and directive of the Commissioner, in the instant cases, have initiated proceedings against private persons by issuing them summons or notices in order to resolve private disputes. These Government Agencies have no authority to summon a private person in a matter relating to a private dispute with an Overseas Pakistani, unless provided under the law e.g., where a case is registered against the petitioners. It is, however, clarified that the Government Agency is free to proceed against the person complained against, if the Government Agency is empowered under the respective law to do so, but no law can authorize an executive Government Agency to determine rights of private parties, as it is the sole prerogative of the courts of law. The moment, Government Agency begins to exercise judicial power in order to determine private rights, the proceedings become unconstitutional and illegal. The Act also does not authorize the Commissioner or the Government Agencies to either register a case or file a suit against a private person on the complaint or on behalf of an Overseas Pakistani.

17. In the instant case, as well as, connected matters, Government Agencies, in particular the Police Department has summoned private persons (petitioners) without there being any criminal case registered against them to determine the private dispute between the parties. Such action is ultra vires the Act and without jurisdiction, besides being unconstitutional and patently illegal.

18. For the above reasons, instant petition, as well as, connected matters are allowed and the proceedings initiated by the Commission or the Government Agencies to determine third party rights are declared as illegal and unconstitutional, hence set aside. The Government Agencies are only liable to respond to the Commissioner to the extent of their functions and obligations under the law and cannot interfere or pry into private disputes unless and until it is in accordance with law i.e., in case of Police, if there is a criminal case registered against a person or if the court so directs the Government Agency to proceed in this regard. It is clarified that Government Agencies may summon or issue notice to a person, if the person has violated any law pertaining to the Government Agencies, but these proceedings cannot determine interparty rights.

19. The instant case, as well as, cases mentioned in Schedule-A to this judgment are allowed and the proceedings initiated in the cases by the Government Agencies, as discussed above, are set aside in the above terms with no orders as to costs.

#### **SCHEDULE A**

Sr. No.	Case No.
1.	Writ Petition No.6602/2017
2.	Writ Petition No.29680/2016
3.	Writ Petition No.49669/2017
4.	Writ Petition No.52803/2017
5.	Writ Petition No.58474/2017
6.	Writ Petition No.54172/2017

7.	Writ Petition No.14892/2017
8.	Writ Petition No.57847/2017
9.	Writ Petition No.22612/2017

KMZ/S-9/L Petitions allowed.

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