

Form No: HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT
M U L T A N B E N C H M U L T A N
JUDICIAL DEPARTMENT

Writ Petition No.4276 of 2020

Tanveer Chishti

V/S

City Police Officer and other

<i>S.No.of order / Proceedings</i>	<i>Date of order /Proceedings</i>	<i>Order with signatures of Judge, and that of parties or counsel, where necessary.</i>
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19.03.2020 Mian Tanveer Kamran, Advocate for the Petitioner.
Mr. Azhar Saleem Kamlana, AAG (on Court call).
Ch. Shahid Aleem, APG for the Respondents No.1
to 4 (on Court call).

The Petitioner has filed this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the “*Constitution*”) with a view to seek a declaration to the effect that proceedings being conducted by the Punjab Overseas Pakistani Commission (the “*Commission*”), on complaint of the Respondent No.7, are illegal and without lawful authority.

I. BACKGROUND OF THE DISPUTE

2. Succinct facts germane to the disposal of this constitutional petition are that the Respondent No.7, who holds a foreign national passport but is permanently residing in Gulgasht Colony Multan, Pakistan invoked the forum of the Commission under the Punjab Overseas Pakistanis Commission Act, 2014 (the “*Act*”) for

resolution of a dispute concerning recovery of investment/concealed amount of Rs.6.2 million from the Petitioner and one Sheikh Muhammad Rizwan. It has also been brought to the fore that the issue between the Petitioner and the Respondent No.7 had already been resolved in terms of a Settlement Deed/Agreement dated 9th of October, 2019 (the "***Settlement Agreement***"), nonetheless the Petitioner was constrained to file Writ Petition No.2522 of 2020 on account of unlawful actions on the part of the Respondents in utter departure thereof, yet such constitutional petition was disposed of by this Court vide order dated 27th of February, 2020 on the basis of a statement/undertaking recorded by the police officials to the effect that they will act strictly in accordance with law. The Petitioner has alleged that Respondents No.1 to 6 are adamant to illegally, unlawfully and forcibly recover the disputed investment/concealed amount from him despite of the fact that he has no nexus with the controversy between Respondent No.7 and one Sheikh Muhammad Rizwan.

II. ARGUMENTS OF THE PETITIONER

3. Mian Tanveer Kamran, Advocate while arguing on behalf of the Petitioner submitted that the Respondent No.7, a foreign national is living in Pakistan and residing at Gulgashat Colony, Multan, approached the Commission

under the Act for resolution of a dispute viz-a-viz recovery of investment/concealed amount, claiming himself to be an Overseas Pakistani. He urged that the issue between the Petitioner and Respondent No.7 has already been set at rest under the Settlement Agreement; yet another dispute erupted between the Respondent No.7 and one Sheikh Rizwan, which has no bearing on the Petitioner but the Respondents No.1 to 6 are surprisingly prone to recover the investment/concealed amount under dispute from him by resorting to coercion and illegal means. He asserted that previously the Petitioner moved Writ Petition No.2522 of 2020 which was disposed of by this Court in view of the statement dated 27th of February, 2020 by the police officials whereby they had reassured to act in accordance with law.

4. Learned counsel next urged that Section 2(i) of the Act *ibid* only that person can be characterized as Overseas Pakistani who has *(i)* origin of this country and is *(ii)* either permanently or *(iii)* temporarily settled outside Pakistan for the purposes of *(iv)* employment, *(v)* carrying on a business or vocation and for any other purpose with *(vi)* the intention to stay outside Pakistan for an unspecified period; therefore, the Respondent No.7, who is permanently residing in Multan, does not fall within the purview nor can he be termed as an ‘overseas Pakistani’.

He further maintained that allegiance to the Constitution as well as adherence to the law is inviolable obligation of every citizen wherever he may be and of every other person for the time being within Pakistan. He placed reliance on the case of “Tahir Mirza Versus Saleha Mehmood, DCO and others” (2019 YLR 2852) in this regard.

5. Mian Tanveer Kamran, Advocate reiterated that the Commission should have first determined as to whether the Respondent No.7 is an Overseas Pakistani as defined under Section 2(i) of the Act and only thereafter was supposed to proceed in the matter. He placed reliance on the recent judgment of this Court reported as “Tariq Mehmood Versus Punjab Overseas Pakistani Commission and 2 others” (PLD 2020 Lahore 49) in which this Court has delineated the functions of the Commission and directed it to enquire/examine the complaint in line with the available record and decide the matter in accordance with the law after hearing both the parties.

III. ARGUMENTS OF THE LAW OFFICER

6. Ch. Shahid Aleem learned APG for Respondents No.1 to 4 while advancing his arguments apprised to this court that the plea of harassment to the Petitioner by the Police hierarchy has already been agitated and disposed of by this

Court in earlier Writ Petition No.2522/2020, therefore, this writ petition is not maintainable.

7. Mr. Azhar Saleem Kamlana, learned AAG further objects to the locus standi of Petitioner in the instant matter and calls in question the maintainability of this petition on the premise that the Commission is competent under the Act to deal with the matters relating to the Government Agencies. He attempted to clarify that the Commission has been constituted under Section 4 of the Act while the Commissioner is appointed under Section 6 of the Act with powers to perform functions under Section 7 of the Act, which encompassed the receiving and transmission of the complaints and suggestions of the Overseas Pakistanis to concerned government agencies/offices. He adds that although this Court has also established an Overseas Pakistanis Cell to entertain the issues of Overseas Pakistanis with solemn object and with a view to efficiently adjudicate upon their cases in a bid to resolve their issues in expeditious manner yet the functions of the Commission are to deal with those issues on the administrative side and this Court can only look into the matters and adjudicate upon the instant petition only if the case of Respondent No.7 falls within the definition of Overseas Pakistani as provided in Section 2(i) of the Act. In this connection, he placed reliance on the judgment of

this Court passed in the case of Shahid Idrees versus Government of the Punjab and others(PLD 2018 Lahore 284).

8. I have heard the arguments and perused the record.

IV. DOCUMENTS TO BE EXAMINED FOR DETERMINATION

9. The Petitioner has filed the instant petition to declare the application of Respondent No. 7 before the Commission as null and void and to set aside the proceedings carried out by the Commission on the said application, with the following prayer:

“Therefore, relying upon all above narrated submission, it is most respectfully prayed that this writ petition may very kindly be accepted and the application (Annexure-B) filed by the Respondent No.7 may very kindly be declared null and void, and proceedings carried out by the Respondent upon the application may kindly be set aside by this Hon’ble Court being not maintainable in the circumstances, as in the light of affidavit submitted by the Respondent No.7, matter is of purely civil nature and Respondent No.7 has to approach the learned Civil Court and the Respondents be directed to remain within the four corners of law.

It is further prayed that proceedings upon the application of the Respondent No.7 may

very graciously be stayed and Respondent No.2 may kindly be restrained from calling the Petitioner at his office till the final decision of the instant writ petition.”

10. A careful perusal of the Settlement Agreement shows that the existing matter between the parties is that of civil nature, which is manifested from the complaint filed by the Respondent No.7 before the Commission (Annexure-B), relevant portion of which is produced below:

“As per sited subject it is submitted that, I Hafeez Ahmed Anjum S/O Muhammad Yousaf bearing CNIC No.36302-0407286-1, R/O North Gulgasht Multan and I am also British national bearing British Passport No.517266735. I have invested amount PKR 6.2 (M) with Tanveer Chisti S/O Muhammad Shafi and Mr. Sheikh Muhammad Rizwan S/O Muhammad Tayyab for the purpose of import of jewellery and cosmetics last year now both the persons mentioned above have refused to return my amount. It is humbly requested to look into the matter and provide justice.”

In his complaint, the Respondent No.7 has merely mentioned that he is a British national having a British Passport and that he has invested Rs.6.2 million with the Petitioner and one other person for the purposes of import

of jewelry and cosmetics, however, both of them have now refused to return his invested amount.

V. MOOT POINTS

11. After hearing the parties at length, and out of the instant Petition, following moot points have arisen which require determination of this Court:

- A. *Whether the Commission is obliged to first decide whether the person complaining, falls under the definition of Overseas Pakistani?*
- B. *Whether the Commission can entertain complaint of a foreign passport holder who is permanently residing in Pakistan?*
- C. *Whether the Commissioner can exercise any of its powers to resolve the disputes of civil nature of an Overseas Pakistani?*
- D. *Whether an Overseas Pakistani can be given any preference over the nationals by the Government Agencies?*

VI. DETERMINATION BY THE COURT (RATIO DECIDENDI)

12. The history of mankind is replete with the examples of people from different nationalities and cultures migrating from their parental societies to others in the hope of earning a better future and following the trail of pursuit of happiness from one country to another either for permanent settlement or for a short duration to look for a better social and economic conditions. They are generally

referred to as ‘overseas’ of the country. Although this term has not been defined in the Constitution, but the word ‘emigration’ has been used in the **Federal List, Part-I, Item No.6** in respect of admission into and expulsion from Pakistan:

“Admission into, and emigration and expulsion from, Pakistan including in relation thereto the regulation of the movements in Pakistan of persons not domiciled in Pakistan, pilgrimages to places beyond Pakistan.”

It is essential to understand the difference between the ‘emigration’ and ‘immigration’ before going any further. The **Black’s Law Dictionary 11th Edition** defines the following terms as under:

Emigrant

“Someone who leaves his or her country for any reason with the intent to establish a permanent residence elsewhere.”

Emigration

“The act of leaving a country with the intent not to return and to reside elsewhere.”

“Emigration is usually defined as the voluntary removal of an individual from his home State with the intention to residing abroad. However, not all emigration is voluntary; there sometimes exists forced emigration; even mass emigration. Emigration may also be

due to flight for political reasons or expulsion. One then speaks of refugees or exiles.”

Immigrate

“To come to dwell or settle; to move into a country where one is not a native for the purpose of permanent residence.”

Immigration

“The act of entering a country with the intention of settling there permanently.”

As per **Words and Phrases Volume 14-A & 20**

Permanent Edition by Thompson, the terms are defined as follows:

Emigrant

“An “emigrant” is one who emigrates or quits one country or region to settle in another; one who quits his country for any lawful reason, with a design to settle elsewhere, and takes his family with him.”

Emigrate

“To “emigrate” is to remove from one country or state to another for the purposes of residence.”

Immigrant

“Immigrant” as used in immigration law included every alien coming to country either to reside permanently or for temporary purposes.”

In addition, the **Oxford Advanced Learner Dictionary New 8th Edition** defines “Overseas” as:

“Connected with foreign countries, especially those separated from your country by the sea or ocean.”

In view of above, ‘emigrant’ means a person who leaves his/her own country in order to settle permanently in a foreign country, while ‘immigrant’ means a person who comes to live permanently in a foreign country.

A. Overseas Pakistanis

13. The Act establishes the Punjab Overseas Pakistanis Commission with a mandate to receive and redress the grievances of Overseas Pakistanis relating to Government Agencies by referring their complaints and suggestions to the concerned offices. Section 2(g) and 2(i) of the Act defines ‘Government Agency’ and ‘Overseas Pakistani’ as follows:

*“(g) “**Government Agency**” means 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;*

*(i) “**Overseas Pakistani**” means a person of Pakistani origin who is either permanently or temporarily settled outside Pakistan:*

(i) for employment; or

(ii) for carrying on a business or vacation; of

(iii) for any other purpose with intention to stay outside Pakistan for an unspecified period;” (emphasis added)

In view of this definition, any person of Pakistani origin, has to fulfill these conditions, in order to acquire the status of Overseas Pakistani and have recourse to the mechanism provided under the Act. For this purpose, the Commission, has to firstly, ensure that the person preferring a complaint to it, falls under the definition of Overseas Pakistani, before taking any step, under the Act or proceeding, with his Complaint. For a complainant, this is the necessary foundational touchstone, which he is required to meet, for putting in place the extraordinary forum, to seek redress of his grievance, against a Government Agency, and it is the very quintessential part, which is required to be determined, in the first instance by the Commission, before proceeding with the complaint, and adopting the mechanism of transmitting the same to the Government Agency, while recommending initiation of disciplinary actions against the delinquent; but there appears abdication to discharge obligation under the Act. Thus, before proceeding further with his complaint in any manner, it enjoined upon the Commission to first examine and determine the status of Respondent No. 7 as Overseas Pakistani under the definition as provided by the Act?

14. It is not far-fetched to point out that definition of the term “Overseas Pakistani” provided by the Act and reproduced here-in-above, contemplates that a person of Pakistani origin or national, who is not residing outside Pakistan, temporarily or permanently, for employment, business, vocation, or for any other purpose for an unspecified period, cannot be regarded as an Overseas Pakistani. So, a person merely having nationality of another country but living in Pakistan permanently cannot be termed as an Overseas Pakistani. The Act provides such mechanism for redressal of grievance and protection for Overseas Pakistani only and not for every dual national. Nothing has yet been brought on record to divulge that Respondent No. 7 was residing outside Pakistan on a permanent basis for any of the purposes listed above.

B. Powers of the Commission(er)

15. On the other hand, the functions of the Commission are provided in Section 4 of the Act, under which the Commission has powers to review annual reports and performance of the Commissioner, to resolve conflicts between the Commissioner and a Government Agency, to develop criteria for constitution of Advisory Council and to nominate members of the Advisory Council and the District Overseas Pakistanis Committees. The Overseas Pakistanis Commissioner is appointed under Section 6 of

the Act, and its power and functions have been provided in Section 7 of the Act. Section 7(1) of the Act authorizes the Commissioner, among others, to transmit a complaint received from an Overseas Pakistani to a Government Agency for redressal thereof, or to refer any complaint of an Overseas Pakistani to the Ombudsman for further necessary action in accordance with law. Under Section 7(2) of the Act, such Government Agency is also legally required to send its response to the Commission within thirty (30) days. In case of failure of such Government Agency to send reply to the Commissioner within the prescribed period, the Commissioner is authorized to recommend disciplinary action against such public servants (Section 7(1)(d)). The Commissioner can also recommend initiation of anti-corruption proceedings against the public servant on the basis of preliminary findings, if a case for initiating criminal proceedings under the relevant law is *prima facie* made out, with a view to safeguard the rights of an Overseas Pakistani (Section 7(1)(e)). The Act does not authorize the Commissioner or the Government Agencies to either register a case or file a suit against a private person either on the complaint so filed; or on behalf of an Overseas Pakistani in any manner

16. The above-mentioned powers of the Commission and the Commissioner have also been highlighted by this Court

in Shahid Idrees v. Government of the Punjab and others (PLD 2018 Lahore 284), in which it has been held that the Commission is more of a facilitation Centre in Pakistan for the Overseas Pakistanis, who cannot attend to their affairs by themselves. The Commissioner simply forwards the complaint of an Overseas Pakistani to the concerned Government Agency. This judgment further provides that

“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 correlate 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.”

17. The Commissioner, accordingly, is empowered to only transmit a complaint received from an Overseas Pakistani to a Government Agency for redressal, or to refer any complaint of an Overseas Pakistani to the Ombudsman for further necessary action in accordance with law. It is incumbent upon such Government Agency to respond to the Commission within thirty (30) days. In the event of failure of such Government Agency within prescribed days, the Commissioner is vested with the authority to recommend disciplinary action against such public servants.

C. Powers of the Government Agencies

18. The Government Agencies in general and the Police or the Local Government in particular, on the behest and directive of the Commissioner, in the instant case, have initiated proceedings against private persons by issuing them summons/notices in order to resolve a civil dispute. In the instant case, it has been noticed that the Government Agency on receiving the complaint from the Commissioner, instead of deciding the complaint within the ambit of law, mistakenly assumed the role of an executing agency and in this process embarked upon the determination of third party rights to settle the dispute complained about. This is certainly an overreach transgression of the powers by the Commissioner under

the Act and by the Government Agencies under their respective laws.

19. Ostensibly, there appears an erroneous and perverted outlook as if a complaint so transmitted to a Government Agency by the Commissioner obligated such Government Agency to deal with the complaint by interfering and intruding into third party rights of private persons, but I am afraid that those Agencies are bereft of unbridled powers. The determination of third-party rights is unequivocally 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 form executive organs of the State. This foundational constitutional principle is embedded in Article 175 of the Constitution. It is to be clarified that the Government Agency is free to proceed against a person complained against provided such power so articulated within the preview of relevant law. This necessarily leads us to the irresistible conclusion that Government Agency has no authority to summon a private person in excess of its powers particularly when the law it operates under, does not expressly or by necessary implication finds mention of such powers. 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. When the Government Agency begins to

exercise judicial power in order to determine private rights, the proceedings become unconstitutional and illegal. The Commission or the Government Agencies are not the Courts and, therefore, any assumption of judicial power by the Commission or the Government Agencies on the behest of the Commission is also 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).

20. In the instant case, Government Agencies have summoned Petitioner, who is a private person, without there being any criminal case registered against him, in order to determine a civil dispute between the parties. Such actions on behalf of the Government Agencies are patently in excess of their powers.

D. Same Protection of Laws for Overseas Pakistanis

21. It is an established principle of law that the Overseas Pakistanis, no matter wherever they may be, are subject to the same protection of law as of every other Pakistani

without any discrimination. It contemplates that equal is not preferential and thus the Overseas Pakistanis are not given any preference for resolutions of disputes by the Government Agencies. This principle has been laid down in detail by this Court in Tahir Mirza Vs Saleha Mehmood, DCO and others (2019 YLR 2852), which observes as follows:

“no one, on the basis that he/she is an overseas Pakistani, can take law in his/her own hand and is above the law because Article 4 of the [Constitution] makes it very clear that it is the inalienable right of every citizen, WHEREVER HE MAY BE, AND OF EVERY OTHER PERSON FOR THE TIME BEING WITHIN PAKISTAN, shall enjoy the protection of law and to be treated in accordance with law (under the Act) and no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. This Article clearly protects the citizens of Pakistan defined under Article 260 of the Constitution whether inside or outside Pakistan (wherever they may be). The Hon'ble Apex Court of the Country in National Commission on Status of Women through Chairperson and others v. Government of Pakistan through Secretary Law and Justice and others (PLD 2019 SC 218) expounded the scope of Article 4 of the Constitution by holding that adverting

to international law on the subject, it is pertinent to note that Pakistan is a signatory to the Universal Declaration of Human Rights (UDHR) since 1948, Articles 7 and 8 whereof are relevant which provide as under:-

“7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law.”

Article 4(1) of the Constitution goes further than Article 2 of the ICCPR by extending the right to enjoy the protection of law to every citizen regardless of where he is. Moreover, persons, who are not citizens, are also given this right while they are in Pakistan. The value placed by the Constitution on the inalienability of this right to protection of the law for all can be gauged from the fact that this right is further extended to every other person for the time being within Pakistan. Article

4(2)(a) to (c) of the Constitution provides for the specific right to protection from any detrimental action with regards to life, liberty, body, reputation or property and ensures that no person is compelled to do anything or forbidden from any action unless the law specifically provides for the same.

*4 Further, the Article 5(2) of the Constitution states that Obedience to the Constitution and law is the inviolable obligation of every citizen **WHEREVER HE MAY BE AND OF EVERY OTHER PERSON FOR THE TIME BEING WITHIN PAKISTAN.** The Honorable Full Bench of the Supreme Court of Pakistan in the judgment cited as *Watan Party and another v. Federation of Pakistan and others (PLD 2011 SC 997)* has held that Article 4 thereof remained fully operative, which laid down that to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan and in particular no action detrimental to the life, liberty, body, reputation or property of any person would be taken except in accordance with law. The august Supreme Court in the case reported as *President Balochistan High Court Bar Association and others v.**

Federation of Pakistan and others (2012 SCMR 1784) has further held that To be loyal to the State is the basic duty of all citizens and they have to be obedient to the Constitution and the law, wherever they may be. Similarly, it is also inviolable obligation of every person for the time being within Pakistan. Thus, adherence to the Constitution and the Law by the citizens, who are officials or otherwise, is mandatory. Non-compliance of the Constitution and the Law makes a citizen liable for action, in accordance with law.

5. *In view of the judgments mentioned above and the provisions contained in Articles 4 and 5 of the Constitution, it is observed that both the citizens IN AND OUTSIDE THE PAKISTAN are protected under the Constitution without any discrimination as provided under Article 25 of the Constitution. Article 25 of the Constitution also states in unequivocal terms that all citizens are equal before law and are entitled to equal protection of law No one is above the law and everyone has to follow the law in its true spirit.”*

E. Remedy for the Respondent No.7

22. If there is any dispute between the parties over transaction of money, they may avail remedy under the

Civil Procedure Code, 1908 (the “CPC”) before the Civil Court which is court of ultimate jurisdiction and is empowered to deal with such like matters. This court cannot lose sight of the principles of natural justice for the advancement of the rule of law, in that, these principle do not militate against rather facilitate the access to justice. Since the instant matter relates to civil dispute, the Respondent No.7 may put into operation the jurisdiction of the Court of competent Civil jurisdiction for the redressal of his grievance by filing a suit with all relevant material/documents and producing evidence in support of his assertion so as to substantiate his claim.

VII. ANALYSIS

23. It is manifestly clear that in order to invoke jurisdiction of the Commission, a person has to show that he is an Overseas Pakistani with Pakistani origin and he/she either permanently or temporarily resides outside Pakistan for employment, business or any other purpose as defined in the Act with intention to stay there for an unspecified period but the Respondent No.7 has only stated in his complaint that he is a British national having a British Passport without uttering anything about his permanent or temporary residence for a definite period in United Kingdom, which is *sine qua non* for attracting the jurisdiction for an ‘Overseas Pakistani’. Further, the

function of the Commission is only to transmit the complaint to a Government Agency/department, defined in Section 2(g) of the Act, which has to exercise its powers within the parameters of the law applicable in the matter, without assuming any extended role and no such self-augmented power, which has not been given to it by the law, can be illegally assumed by any Government Agency. Even otherwise, since the dispute between the Respondent No. 7 and the Petitioner, if any, is that of civil nature, the Respondent No. 7 has remedy to approach the Civil Court

VIII. Objection regarding maintainability of writ petition

24. As far as objection of learned law officer regarding maintainability of this writ petition is concerned, under article 4 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has an inalienable right to enjoy the protection of law and to be treated in accordance with law and has every right to knock the door of this court if this inalienable right is denied to him. Every executive organ is obliged to perform his duties and to exercise only those powers which law has conferred upon it; otherwise same will be subject to the judicial review of Superior Courts. Judicial review means a court's power to judicially review the legislative and executive actions in order to maintain and sustain the rule of law. Superior

Courts by means of writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto control the administrative actions. Under the dominion of Judicial review, the Superior Courts review the lawfulness of a decision or action made by a public body. In fact this is a process under which executive or legislative actions may be subject to review by the judiciary. Judicial review can be sought on the grounds that a decision-maker misdirected itself in law, exercises a power wrongly, or improperly purports to exercise a power that it does not have, which is known as acting ultra vires. The court's function, in exercising such power, is to ensure that the public functionaries do not act unjustly by overstepping their proper sphere. Thus when an administrative authority takes an action under a law, the question can be whether he has exceeded or abused the power conferred by the law and has therefore acted ultra vires; In the field of Judicial Review, the word "lawful" has acquired a technical meaning; when it is said that a person has acted unlawfully, it means that he has acted outside the powers conferred on him by law; and when the question is of the validity of an administrative action, the only question the court asks is: Has the decision maker exceeded his statutory powers, thus acting ultra vires and therefore unlawfully. It is further to be noted that power of

"Judicial Review" as compared to "Jurisdiction" is available to the superior courts enshrined by the Constitution which by no stretch of imagination either can be curtailed or abridged. In **Bank of Punjab's case (P L D 2014 Lahore 92)**, a division bench of this Court after exhaustively discussing the material available on the subject, has laid down following three conditions to interfere in action falling within the executive domain, which are as follows

"(1) "Illegality" which means that the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(2) "Irrationality" was referred to as "Wednesbury unreason-ableness" (Associated provincial picture Houses Ltd. v. Wednesbury Corporation (1948) 1 KB 223). It applies to a decision which is so outrageous in its defiance or logic or of accepted moral standards that no sensible person who had applied his mind to the question to be settled could have arrived at it.

(3) "Procedural Impropriety" is another ground which means and includes failure of authority to observe basis rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision"

25. By now, the parameters of the Superior Court's power of judicial review of administrative or executive action or decision and the grounds on which the Superior Courts can interfere with the same are well settled. In exercise of powers of judicial review of administrative action this Court has always the jurisdiction to examine whether any order passed by any executive or administrative authority is with or without jurisdiction. Since every order passed without jurisdiction is always *void ab initio* and nullity in law, therefore, this Court shall always have jurisdiction to consider such point. Furthermore, if the action or decision is perverse or is such that no reasonable body of persons, properly informed; could come to or has been arrived at by the authority misdirecting itself by adopting a wrong approach or has been influenced by irrelevant or extraneous matters the Court would be justified in interfering with the same as was held by august Supreme Court in **Corruption in Hajj Arrangements in 2010 case (P L D 2011 Supreme Court 963)**

29. ...The exercise of constitutional powers by the High Court and the Supreme Court is categorised as power of judicial review. Every executive or administrative action of the State or other statutory or public bodies is open to judicial scrutiny and the High

Court or the Supreme Court can, in exercise of the power of judicial review under the Constitution, quash the executive action or decision which is contrary to law or is violative of Fundamental Rights guaranteed by the Constitution. With the expanding horizon of Articles dealing with Fundamental Rights, every executive action of the Government or other public bodies, if arbitrary, unreasonable or contrary to law, is now amenable to the writ jurisdiction of the Superior Courts and can be validly scrutinised on the touchstone of the Constitutional mandates.

26. In view of above backdrop and in the light of DOCTRINE OF LIMINE CONTROL elaborated in *Chairman BoG University Of Lahore and others Vs Asif Saleem (PLD 2019 Lahore 407)*, this writ petition is **disposed of** with a direction that the complaint of the Respondent No.7 will be decided by the Commission, after hearing all concerned including the Petitioner, strictly in accordance with law/Act, keeping in view the above observations of this Court, including discussion on law points, through a speaking order, within four weeks from the receipt of certified copy of this order. The Commission shall also determine whether the Respondent No.7 is an Overseas Pakistani and whether the dispute in hand is a

third party dispute or dispute relating to Government Agencies. In the meanwhile, no adverse action shall be taken against the Petitioner, till decision of the matter by the Commission

**(JAWAD HASSAN)
JUDGE**

Approve for Reporting

JUDGE

*Usman**