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CASE LAW UPDATES

Pakistan Superior Courts — Verified Judgment Digest

Thursday, 12 November 2026

Upload Window: Judgments approved for reporting and uploaded on 9, 10, 11 and 12 November 2026, with stragglers from 7 Novembe

FCC: 3 judgments | SC: 5 judgments | LHC: 4 judgments | SHC: 3 judgments | IHC: no new entries

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Window and method. This issue covers judgments approved for reporting and uploaded by the Supreme Court, the Federal Constitutional Court, the Lahore High Court and the Sindh High Court on the working days 9 to 12 November 2026. Sunday 8 November is excluded. Stragglers that appeared after the 7 November scan closed have been swept in: four Supreme Court judgments bearing 7 November upload dates, one Lahore High Court judgment of the same date, and three Sindh High Court judgments of 10 and 11 November order dates. Every reporting endorsement was read rather than keyword-matched. A second consecutive clean sweep at the Supreme Court. All seven in-window and straggler uploads carry a positive endorsement; there is no negative endorsement to report for the second window running. Two of the seven are not digested. C.P.L.A. No. 903 and 904 of 2026 (Safdar Ali Butt v. Faisalabad Development Authority, Muhammad Ali Mazhar, J, 23 July 2026) is held over for space rather than merit: it restores two civil revisions pending since 2016, dismissed for non-prosecution when counsel, suffering from Coronavirus, could not reach the Bench through the rush in Court, and it contains a sustained passage on the advocate's professional duty, the client's own obligation of vigilance, force majeure as a ground for restoration, and the twin principles of judicial economy and multiplicity of proceedings. C.P.L.A. No. 422 of 2025 remains in the carry-forward queue from the 7 November issue. A scrambled text layer at the Supreme Court. C.P.L.A. No. 677-P of 2026 and thirty-one connected petitions (Syed Sardar Badshah v. The Chief Minister, Khyber Pakhtunkhwa), on seniority under Rule 17(b) of the Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules, 1989, extracts with its paragraphs interleaved out of reading order. The substance is clear enough - seniority of a civil servant appointed otherwise than by initial recruitment runs from the date of continuous regular

appointment and not from the date of the Public Service Commission's recommendation, and a specific allegation of mala fide administrative interference cannot be particularised for the first time before the Supreme Court - but a judgment whose text layer cannot be quoted with confidence is not digested. It is recorded here so that the holding is on your radar. Two partly corrupted portal files. The text layer of C.A. No. 1740 of 2021 is corrupted in its earlier paragraphs, with digits and Urdu artefacts intruding into the narrative; paragraphs 37 to 41, which carry the ratio on Order XXI, Rules 66(2) and 90, are clean and are the only paragraphs quoted. Crl. Appeal No. 96 of 2020 has a similarly corrupted operative paragraph and signature block, and its sentences there appear out of order; the operative order in that entry is therefore given in verified segments. In both cases the entries quote only passages read and checked against the source. Federal Constitutional Court: three for three. All three in-window uploads are marked 'Yes' in the Court's own listing and all three are digested. F.C.P.L.A. No. 2392 of 2026, marked 'No', was already recorded as excluded in the 7 November issue. The precedential question again. For the second issue running, the Federal Constitutional Court has addressed its relationship with the Supreme Court. At paragraph 10 of F.C.R.P. No. 150 of 2026 it holds that, following the Constitution (Twenty-seventh Amendment) Act, 2025, it exercises independent constitutional jurisdiction, that judgments of the Supreme Court possess persuasive value only, and that mere divergence of judicial opinion is no ground for review. Read with paragraph 14 of C.P.L.A. No. 2130 and 2136 of 2023, digested on 7 November, the Court's position on both limbs of the question is now on the record. Lahore High Court. Four judgments carry 10, 11 or 12 November upload dates, and one further item bears a 7 November date; all five are in scope and four are digested. Not taken up: 2026 LHC 8652 (Crl. Revision No. 57434 of 2026, Khalid Ibn-i-Aziz, J, uploaded 11 November), which carries no tag line and turns on its own facts. The listing is otherwise unchanged from the 7 November scan. Islamabad High Court nil for a fourth consecutive window. The listing of judgments of sitting justices stands at the same eight items recorded in the 30 October, 4 November and 7 November scans, the most recent bearing a decision date of 30 September 2026. No fresh reported judgment has appeared in four windows. Sindh High Court. Thirteen judgments bear 10 or 11 November order dates. Five carry an assigned citation, which on this portal is the marker of approval for reporting, and three of those are digested. The two not taken up are 2026 SHC MPK 2180 (Const. P. No. 230 of 2026) and 2026 SHC KHI 2167 (I.T.R.A. Nos. 63 and 64 of 2019, Commissioner Inland Revenue v. Premier Oil Pakistan Kirthar B.V.), the latter held over for space rather than merit: it maintains the deletion of a disallowance of exploration expenditure acquired by assignment from an affiliate, and remands the head office expenditure ground under sections 105 and 174 of the Income Tax Ordinance, 2001 because the Tribunal had followed its own earlier orders without examining the material of each year, reaffirming that the assessment of each year rests on the facts of that year and that an appellate order must show that the grounds urged were considered. The eight items without a citation include two Special Criminal Jail Appeals from the Sukkur Bench on safe custody and safe transmission of charas samples, and five constitutional petitions from the Mirpur Khas Circuit Court. Note on the Sindh portal. Items bearing 3, 4 and 5 November order dates have continued to accrue since the 7 November scan: the 5 November count has risen from five to thirteen, 4 November from seven to nine and 3 November from eight to thirteen. Those additions are without assigned citations and so are not approved for reporting; they are noted because the portal is evidently populated well after the order date, and a scan run on the day will not capture everything. Carry-forward queue. Three image-only Supreme Court scans remain unread for want of a text layer: C.P.L.A. 1157/2021, C.P.L.A. 788/2018 and C.A. 1468/2018. Also carried forward: C.P.L.A. 903 and 904 of 2026 and C.P.L.A. 422 of 2025 of the Supreme Court, 2026 SHC KHI 2167, and the four Lahore High Court items listed in the 7 November issue.

Federal Constitutional Court of Pakistan

3 judgments

LAND ACQUISITION - CAPITAL DEVELOPMENT AUTHORITY ORDINANCE, 1960 - FINALITY OF ACQUISITION AWARDS - DISPUTED REVIEW ORDERS - REHABILITATION BENEFITS AND ALLOTMENT OF PLOTS - LIMITS OF POLICY DIRECTIONS BY THE FEDERAL GOVERNMENT UNDER SECTION 4(2)

Khaliq Dad and others v. Capital Development Authority through its Chairman, Islamabad and another (and connected petitions)

APPROVED FOR REPORTING (LISTING MARKED 'YES'). CDA PETITIONS CONVERTED INTO APPEALS AND ALLOWED TO THE EXTENT INDICATED; PETITIONS OF AFFECTED PERSONS DISPOSED OF.

C.P.L.A. No. 5595 of 2024 and connected petitions · Bench: Amin-ud-Din Khan, Chief Justice and Ali Baqar Najafi, J · Decided: Announced in open Court on 11 November 2026 · Uploaded: 11 November 2026

FACTS

A batch of petitions arising from judgments of the Islamabad High Court dated 30 October 2024 in W.P. No. 1571 of 2011 and connected matters, and from the judgment dated 4 June 2021 in W.P. No. 244 of 2018, concerning the acquisition of land in Mouza Bheka Sayedan. Land measuring 845 acres, 7 kanals and 7 marlas was acquired by an award dated 22 February 1969, pursuant to which 316 eligibility certificates were issued under the applicable rehabilitation arrangements. Separate built-up property awards were announced on 23 July 1980, 5 September 1982 and 1 October 1985, relating to 42, 59 and 233 affected persons respectively. The affected persons also relied on alleged review orders dated 29 December 1987, 5 November 1989, 18 September 1990, 7 October 1990 and 23 October 1990, the existence and genuineness of which were seriously disputed. The High Court had, among other things, held that awards announced before 2010 had lost their efficacy and required reassessment of market values, and had issued directions to the Federal Government to formulate policies for general reassessment of compensation and enforcement of allotment claims. Separate claims by allottees in Sector E-12, Islamabad concerning development and delivery of possession were also before the Court.

LEGAL ISSUE

May a concluded acquisition award be reopened or reassessed on grounds of delay or subsequent appreciation in market value; what is required before enforceable rights are recognised on the strength of disputed review orders; and how far may the Federal Government's power to issue policy directions under section 4(2) of the Capital Development Authority Ordinance, 1960 extend?

HOLDING

An award lawfully announced determines the rights and obligations of the parties, and once final it binds both the affected persons and the acquiring authority, subject only to modification through the prescribed statutory proceedings; the finality operates reciprocally and cannot be invoked selectively. A claimant cannot seek more than the award on considerations of equity or subsequent escalation in market value, and equally the CDA cannot disregard or indefinitely defer a liability lawfully determined. Neither prolonged delay nor appreciation in value can authorise automatic reopening. The validity of the disputed review orders cannot be presumed from their production or subsequent administrative recognition; section 36 must be examined as to competence, limitation and the permissible limits of relief, and an order passed without jurisdiction cannot acquire efficacy through lapse of time, administrative acquiescence or reliance. Compensation must be distinguished from rehabilitation benefits: an entitlement to allotment must be established independently under the applicable legal framework, and neither the status of an affected person nor inclusion in an acquisition record confers an indefeasible right. The Rehabilitation Policy, 1996, subsequent regulations and the Land Sharing Policy, 2007 must be construed consistently with the Ordinance and cannot be applied retrospectively without lawful authorisation. Section 4(2) permits policy directions but not the determination of individual claims, the reopening of concluded awards or the conferment of additional proprietary rights; constitutional jurisdiction may compel performance of an existing legal duty but not create a substantive entitlement the governing law does not recognise.

LEGAL SIGNIFICANCE

The most comprehensive recent statement on CDA acquisitions and the rights of Islamabad's displaced persons, and a judgment that will govern a very large volume of outstanding claims. Its summary of principles at paragraph 22 is the operative text: lawfully announced and final awards govern; subsequent awards and review orders are enforceable only on proof of statutory validity; compensation and additional statutory amounts are payable strictly per the applicable law and awards; rehabilitation benefits including plots are available only where supported by a valid legal entitlement; and neither the CDA nor the Federal Government may enlarge or diminish those rights by administrative measures inconsistent with the Ordinance. The Court was careful to keep the CDA to its obligations - administrative delay, financial constraints and internal procedural difficulties are not lawful grounds for withholding an established entitlement, and the CDA was directed to satisfy entitlements within six months - while refusing to allow constitutional jurisdiction to substitute a new compensation or rehabilitation regime for the statutory one. Anyone advising an affected person, an allottee in Sector E-12, or the Authority itself should read paragraphs 7 to 22 closely.

LEGAL PROPOSITIONS (VERBATIM)

— The CDA, being a creature of statute, cannot exercise powers or confer benefits beyond those expressly conferred or necessarily implied by the Ordinance.

— The claimant cannot seek an entitlement beyond the award merely on considerations of equity or subsequent escalation in market value; equally, the CDA cannot disregard or indefinitely defer satisfaction of a liability lawfully determined thereunder. The finality of an award thus operates reciprocally and cannot be invoked selectively by either party.

— A claimant who failed to challenge the award before the competent forum cannot subsequently seek its substantive reopening through collateral proceedings, successive representations or administrative correspondence.

— An order passed without jurisdiction or in disregard of a mandatory statutory restriction cannot acquire legal efficacy merely through lapse of time, administrative acquiescence or subsequent reliance by the parties.

— Constitutional jurisdiction, though extensive, cannot substitute the statutory requirements governing review or confer validity upon a determination otherwise lacking lawful authority.

— Administrative delay, financial constraints or internal procedural difficulties do not constitute lawful grounds for withholding an established statutory entitlement.

— Neither prolonged delay nor subsequent appreciation in market value can, by itself, authorize automatic reopening of an award which has otherwise attained finality.

— Conversely, neither the status of an affected person nor the mere inclusion of his name in an acquisition record automatically confers an indefeasible right to allotment. Such right must be established independently under the applicable legal framework.

— An administrative policy cannot override the parent statute, enlarge the scope of a concluded acquisition award or revive an entitlement which has otherwise ceased to be enforceable under law.

— A power to issue policy directions does not, by necessary implication, authorize the Federal Government to assume functions expressly entrusted to the CDA or another competent statutory authority.

— Constitutional jurisdiction may be exercised to compel performance of an existing legal duty, but it cannot ordinarily be employed to create a substantive entitlement which the governing law does not recognize.

LEGAL PRINCIPLES EXPOUNDED

The finality of an acquisition award operates reciprocally: the claimant cannot seek more than the award on equity or market appreciation, and the acquiring authority cannot disregard or indefinitely defer a liability lawfully determined under it.

Source: *The claimant cannot seek an entitlement beyond the award merely on considerations of equity or subsequent escalation in market value; equally, the CDA cannot disregard or indefinitely defer satisfaction of a liability lawfully determined thereunder. The finality of an award thus operates reciprocally and cannot be invoked selectively by either party.*

Authority: *C.P.L.A. 5595/2024 etc., para 7; Capital Development Authority Ordinance, 1960, ss. 25 to 32*

The validity of a review order cannot be presumed from its production or from administrative recognition; an order without jurisdiction acquires no efficacy through lapse of time,

acquiescence or reliance.

Source: *An order passed without jurisdiction or in disregard of a mandatory statutory restriction cannot acquire legal efficacy merely through lapse of time, administrative acquiescence or subsequent reliance by the parties.*

Authority: *C.P.L.A. 5595/2024 etc., para 10; s. 36 of the Ordinance*

Statutory compensation and rehabilitation benefits are distinct; an entitlement to allotment must be established independently under the applicable legal framework, and affected-person status or inclusion in the acquisition record confers no indefeasible right.

Source: *Conversely, neither the status of an affected person nor the mere inclusion of his name in an acquisition record automatically confers an indefeasible right to allotment. Such right must be established independently under the applicable legal framework.*

Authority: *C.P.L.A. 5595/2024 etc., para 16*

An administrative policy cannot override the parent statute, enlarge a concluded award or revive an unenforceable entitlement, nor ordinarily be applied retrospectively to acquisitions completed under an earlier regime.

Source: *An administrative policy cannot override the parent statute, enlarge the scope of a concluded acquisition award or revive an entitlement which has otherwise ceased to be enforceable under law.*

Authority: *C.P.L.A. 5595/2024 etc., para 17; Islamabad Displaced Persons Rehabilitation Policy, 1996 and Land Sharing Policy, 2007*

The power to issue policy directions under section 4(2) does not authorise the Federal Government to determine individual compensation claims, reopen concluded awards or assume functions entrusted to the CDA; and constitutional jurisdiction compels performance of existing duties but does not create substantive entitlements.

Source: *A power to issue policy directions does not, by necessary implication, authorize the Federal Government to assume functions expressly entrusted to the CDA or another competent statutory authority.*

Authority: *C.P.L.A. 5595/2024 etc., paras 18-20; s. 4(2) of the Ordinance*

OPERATIVE ORDER

For the foregoing reasons, the petitions filed by the CDA are converted into appeals and allowed to the extent indicated herein. The impugned judgment of the Islamabad High Court dated 30.10.2024, arising from W.P. No.1571 of 2011, etc. is set aside only to the extent mentioned above. ... Moreover, CDA will make sure the satisfaction of entitlements of all claimants within 06 months from the date of this order. The remaining portions of the impugned judgments shall remain undisturbed. The civil petitions filed by the aggrieved persons are disposed of accordingly in the terms stated above. No order as to costs.

■ **View Full Judgment**

INCOME TAX - SUPER TAX UNDER SECTIONS 4B AND 4C OF THE INCOME TAX ORDINANCE, 2001 - SCOPE OF REVIEW JURISDICTION - LEGISLATIVE COMPETENCE UNDER ENTRY 47, RETROSPECTIVE OPERATION, ARTICLE 25 AND SEPARATE TAXATION REGIMES

M/s Pacific Exim (Private) Limited and others v. Federation of Pakistan and others (super tax review petitions)

APPROVED FOR REPORTING (LISTING MARKED 'YES'). REVIEW PETITIONS DISMISSED; JUDGMENT UNDER REVIEW LEFT UNDISTURBED AND OPERATIVE.

F.C.R.P. No. 150 of 2026 and connected review petitions · Bench: Amin-ud-Din Khan, Chief Justice, Syed Hasan Azhar Rizvi and Syed Arshad Hussain Shah, JJ · Decided: Heard 2 November 2026; announced in open Court on 11 November 2026 · Uploaded: 11 November 2026

FACTS

A large batch of review petitions, brought by exporters, pharmaceutical manufacturers and other taxpayers, sought reappraisal of the short order and judgment dated 27 January 2026, by which a consolidated batch of petitions, appeals and transferred cases emanating from divergent High Court pronouncements on the vires of the super tax levied under sections 4B and 4C of the Income Tax Ordinance, 2001 was conclusively adjudicated and the constitutional validity of those provisions affirmed. The grounds urged were legislative competence, the juridical character and incidence of the levies, retrospective operation from Tax Year 2022 and the revised rates for Tax Year 2023, constitutional equality and differential treatment of taxable income, computation of income and inclusion of capital gains, the application of section 4C to income governed by separate or final taxation regimes, the statutory protections for petroleum exploration and production companies under the Fifth Schedule and Petroleum Concession Agreements, exemptions for benevolent, provident, pension and gratuity funds under section 53 with the Second Schedule, and the contention that the Court was bound by judgments of the Supreme Court of Pakistan.

LEGAL ISSUE

Have the petitioners demonstrated any error apparent on the face of the record, material omission or other legally cognizable infirmity justifying the invocation of the Court's circumscribed review jurisdiction against the judgment upholding sections 4B and 4C?

HOLDING

No. Review is an exceptional and narrowly confined jurisdiction, neither synonymous with nor a surrogate for appellate adjudication; mere disagreement with the reasoning or conclusions, or the plausibility of an alternative interpretation, affords no juridical foundation for review, and the jurisdiction cannot be employed as a disguised appeal. The judgment under review had comprehensively adjudicated legislative competence, holding the super tax to fall squarely within a tax on income under Entry 47 of Part I of the Federal Legislative List and attracting the Money Bill procedure under Article 73, the supplementary character of the levy not ipso facto vitiating its validity; had delineated the permissible contours of retrospective fiscal legislation while maintaining the distinction between accrual of liability and its assessment or recovery; had subjected the income-based classifications to scrutiny under Article 25 and found a rational nexus with the legislative object; had recognised section 4C as an independent charging provision, so that a distinct mode of taxation does not ipso facto confer immunity absent express exemption or necessary exclusion; and had considered the Fifth Schedule and section 53 protections. Neither the financial implications nor the number of affected persons enlarges the limited scope of review. The contention that the Court was bound by Supreme Court judgments was repelled: following the Constitution (Twenty-seventh Amendment) Act, 2025 the Court exercises independent constitutional jurisdiction and Supreme Court judgments, though persuasive, are not binding upon it, so mere divergence of judicial opinion is no ground for review.

LEGAL SIGNIFICANCE

This disposes of the last avenue against the super tax. For taxpayers across every sector affected by sections 4B and 4C, the position for the tax years in question is now settled: the levy stands, the classifications stand, the retrospective operation stands, and section 4C applies to income under separate and final regimes absent an express exemption. The judgment is also a crisp restatement of the boundaries

of review jurisdiction, usable in any forum: the test is error apparent on the face of the record, material omission or jurisdictional infirmity, not the availability of a better argument. Paragraph 10 repays attention for a second reason: it is the Federal Constitutional Court's clearest statement to date that, after the Twenty-seventh Amendment, judgments of the Supreme Court carry persuasive value only before it, and that divergence between the two courts is not itself a ground for review - a proposition to be read alongside the Court's statement in C.P.L.A. 2130 and 2136 of 2023, digested in the 7 November issue, on the binding effect of its own judgments under Article 189(1).

LEGAL PROPOSITIONS (VERBATIM)

— It is a settled principle of jurisprudence that review, being an exceptional and narrowly confined jurisdiction, is neither synonymous with nor a surrogate for appellate adjudication.

— Mere disagreement with the reasoning or conclusions of the judgment, or the plausibility of an alternative interpretation, affords no juridical foundation for review. The jurisdiction cannot, therefore, be employed as a disguised appeal or an instrument for rehearing the matter on merits.

— The supplementary character of the levy, notwithstanding the prior subjection of the same income to taxation, does not ipso facto vitiate its constitutional validity or legislative efficacy.

— The constitutional guarantee of equality does not interdict reasonable fiscal classification but proscribes arbitrary or invidious discrimination amongst similarly situated persons. Within constitutional constraints, the legislature enjoys latitude in delineating taxable classes, prescribing thresholds and calibrating rates of taxation.

— This Court recognized section 4C as an independent charging provision, maintaining the juridical distinction between the incidence of taxation and its computational and recovery machinery. A distinct mode of taxation does not, ipso facto, confer immunity from an independent statutory levy absent an express exemption or necessary statutory exclusion.

— We find no merit in the contention that this Court was bound by the judgments of the Supreme Court of Pakistan. Following the Constitution (Twenty-seventh Amendment) Act, 2025, this Court exercises independent constitutional jurisdiction, and judgments of the Supreme Court, though possessing persuasive value, are not binding upon it. Mere divergence of judicial opinion, therefore, constitutes no ground for review.

— Neither the financial implications nor the number of affected persons enlarges the limited scope of review jurisdiction.

— In the absence of any legally recognized ground, matters already adjudicated cannot be reopened merely through reiteration of arguments or apprehension of financial consequences.

LEGAL PRINCIPLES EXPOUNDED

Review is exceptional and narrowly confined; it is neither a surrogate for appeal nor an instrument for rehearing on merits, and disagreement with the reasoning or the availability of an alternative construction is no ground for it.

Source: *It is a settled principle of jurisprudence that review, being an exceptional and narrowly confined jurisdiction, is neither synonymous with nor a surrogate for appellate adjudication.*

Authority: *F.C.R.P. 150/2026 etc., para 3*

Super tax under sections 4B and 4C falls within a tax on income under Entry 47 of Part I of the Federal Legislative List and attracts the Money Bill procedure; the supplementary character of the levy does not vitiate its validity.

Source: *The supplementary character of the levy, notwithstanding the prior subjection of the same income to taxation, does not ipso facto vitiate its constitutional validity or legislative efficacy.*

Authority: *F.C.R.P. 150/2026 etc., para 5; Entry 47, Part I, Fourth Schedule; Article 73 of the Constitution*

Article 25 does not interdict reasonable fiscal classification but proscribes arbitrary or invidious discrimination among similarly situated persons; the legislature has latitude in delineating taxable classes, thresholds and rates.

Source: *The constitutional guarantee of equality does not interdict reasonable fiscal classification but proscribes arbitrary or invidious discrimination amongst similarly situated persons. Within constitutional constraints, the legislature enjoys latitude in delineating taxable classes, prescribing thresholds and calibrating rates of taxation.*

Authority: *F.C.R.P. 150/2026 etc., para 7*

Section 4C is an independent charging provision; a distinct mode of taxation does not confer immunity from an independent statutory levy absent express exemption or necessary statutory exclusion.

Source: *This Court recognized section 4C as an independent charging provision, maintaining the juridical distinction between the incidence of taxation and its computational and recovery machinery. A distinct mode of taxation does not, ipso facto, confer immunity from an independent statutory levy absent an express exemption or necessary statutory exclusion.*

Authority: *F.C.R.P. 150/2026 etc., para 8*

After the Constitution (Twenty-seventh Amendment) Act, 2025 the Federal Constitutional Court exercises independent constitutional jurisdiction; Supreme Court judgments carry persuasive value only, and divergence of judicial opinion is no ground for review.

Source: *We find no merit in the contention that this Court was bound by the judgments of the Supreme Court of Pakistan. Following the Constitution (Twenty-seventh Amendment) Act, 2025, this Court exercises independent constitutional jurisdiction, and judgments of the Supreme Court, though possessing persuasive value, are not binding upon it. Mere divergence of judicial opinion, therefore, constitutes no ground for review.*

Authority: *F.C.R.P. 150/2026 etc., para 10*

OPERATIVE ORDER

For the foregoing reasons, no ground for review is made out. Consequently, the review petitions are dismissed, and the judgment under review, along with all directions contained therein, shall remain undisturbed and operative in accordance with law. The connected T.Case.133/2026 and C.M.A.175-K/2024 in C.P.L.A. Nil-K/2024 stand disposed of. No order as to costs.

■ **View Full Judgment**

REVENUE - SUCCESSION TO A HORSE-BREEDING TENANCY - DISCRETION OF THE COLLECTOR UNDER SECTION 10(3) OF THE COLONIZATION OF GOVERNMENT LANDS (PUNJAB) ACT, 1912 - PROCEDURAL SAFEGUARDS UNDER SECTION 24 - JUDICIAL REVIEW FOR NON-READING OF MATERIAL EVIDENCE

Iqrar Haider v. The Member (Consolidation) Board of Revenue, Punjab, Lahore and others

APPROVED FOR REPORTING. LEAVE GRANTED; PETITION CONVERTED INTO APPEAL AND ALLOWED.

F.C.P.L.A. No. 1766 of 2026 · Bench: Amin-ud-Din Khan, Chief Justice and Ali Baqar Najafi, J (judgment by Amin-ud-Din Khan, CJ) · Decided: 29 October 2026 · Uploaded: 10 November 2026

FACTS

The dispute concerns succession to a horse-breeding tenancy in Chak No. 135/9-L, District Sahiwal, following the death of the petitioner's father, Athar Ali, on 21 June 2019. The District Remount Officer, after interviewing the legal heirs, recommended the petitioner by report dated 24 February 2020, noting his practical experience, association with the deceased allottee and satisfactory management of the bound animal; the petitioner had been appointed caretaker by the Collector in 2016 and held appreciation certificates from the Remount Department, and the other legal heirs had relinquished their claims in his favour. The District Collector nonetheless allotted the tenancy to respondent No. 4 on 22 January 2021. The Commissioner reversed that order on 16 June 2021, but the Board of Revenue restored it on 16 March 2022. It was alleged against the petitioner that he had installed an electric turbine and erected two structures; he explained that these served irrigation, residential and animal-housing needs. The Lahore High Court, Multan Bench dismissed his constitutional petition on 15 June 2026.

LEGAL ISSUE

How is the Collector's discretion under section 10(3) of the Colonization of Government Lands (Punjab) Act, 1912 to be exercised on competing claims to a horse-breeding tenancy; what weight attaches to the District Remount Officer's technical recommendation; and what safeguards does section 24 attract where alleged breaches of tenancy conditions are relied upon?

HOLDING

Such a tenancy does not devolve on the heirs as an ordinary heritable estate, but Memorandum No. 868-C dated 19 February 1952 accords preference, other things being equal, to a suitable heir of a deceased lessee having a good breeding record, so that suitability is a condition precedent to the preference; failure to consider the memorandum left the determination deficient. The Remount Officer's recommendation did not bind the Collector but merited due weight as a technical assessment directly bearing upon the purpose of the tenancy, and any departure from it required cogent reasons supported by relevant material. The bare allegation of installing a turbine and erecting structures could not establish disqualification without identifying the condition breached, ascertaining the nature and use of the improvements and considering the petitioner's explanation. Reliance on section 24 must be examined within its framework: before imposing a penalty or resuming a tenancy for breach, the authority must afford the tenant an opportunity to state his objections, and where the breach is capable of rectification the proviso requires written notice allowing not less than one month for compliance - a general opportunity of hearing does not satisfy that separate requirement. Respondent No. 4's own eligibility and suitability required determination before preference could be accorded, and the Board of Revenue neither reconciled its conclusion with the official record nor disclosed a sustainable basis for reversing the Commissioner.

LEGAL SIGNIFICANCE

A compact judgment on an unusual subject that nonetheless states principles of general application in revenue and administrative practice. Three are worth noting. First, statutory discretion conferred on a Collector must be exercised on relevant considerations and in furtherance of the purposes of the grant, and remains subject to judicial scrutiny where material evidence is disregarded, the governing policy is misconstrued, or an adverse determination lacks a sustainable factual foundation. Second, a technical recommendation from the department whose purposes the grant serves is not binding but must be given due weight, and departure from it requires cogent reasons on relevant material - a proposition transferable to any case where a specialist body reports to a general administrative authority. Third, and of direct practical use, the Court separates the procedural protection in section 24 of the Act of 1912 - an opportunity to object, and where the breach is rectifiable a written notice of not less than one month - from the determination of a tenancy upon the allottee's death under clause 25 of Notification No. 2838-C dated 1 July 1942, and holds that the section 24 safeguards cannot be circumvented where the action taken amounts in substance to punitive resumption for breach. The judgment also marks the limit of intervention: the Court ensures lawful exercise of discretion without substituting its own assessment of suitability.

LEGAL PROPOSITIONS (VERBATIM)

— The discretion conferred upon the Collector under section 10(3) of the Colonization of Government Lands (Punjab) Act, 1912 ("the Act") must be exercised on relevant considerations and in furtherance of the purposes of the grant. Such discretion remains subject to judicial scrutiny where material evidence is disregarded, the governing policy is misconstrued, or an adverse determination lacks a sustainable factual foundation.

— Such tenancy does not devolve upon the heirs as an ordinary heritable estate.

— Suitability is thus a condition precedent to the application of that preference.

— Although the District Remount Officer's recommendation did not bind the Collector, it merited due weight as a technical assessment directly bearing upon the purpose of the tenancy.

— Any departure from that recommendation required cogent reasons supported by relevant material.

— Likewise, the mere allegation that the petitioner had installed an electric turbine and erected two structures could not, without more, establish his disqualification.

— Before imposing a penalty or resuming a tenancy for breach, the authority must afford the tenant an opportunity to state his objections. Where the breach is capable of rectification, the proviso further requires written notice allowing a reasonable period, not less than one month, for compliance. A general opportunity of hearing does not satisfy this separate statutory requirement.

— Its procedural safeguards cannot, however, be circumvented where the action taken amounts, in substance, to punitive resumption for breach.

— These infirmities go to the legality of the decision-making process and disclose non-reading of material evidence. Judicial intervention on these grounds ensures that statutory discretion is exercised lawfully, without substituting the Court's assessment of suitability for that of the competent authority.

LEGAL PRINCIPLES EXPOUNDED

Statutory discretion must be exercised on relevant considerations and in furtherance of the purposes of the grant, and remains subject to judicial scrutiny where material evidence is disregarded, the governing policy is misconstrued or the determination lacks a sustainable factual foundation.

Source: *The discretion conferred upon the Collector under section 10(3) of the Colonization of Government Lands (Punjab) Act, 1912 ("the Act") must be exercised on relevant considerations and in furtherance of the purposes of the grant. Such discretion remains subject to judicial scrutiny where material evidence is disregarded, the governing policy is misconstrued, or an adverse determination lacks a sustainable factual foundation.*

Authority: *F.C.P.L.A. 1766/2026, para 4*

A horse-breeding tenancy does not devolve as an ordinary heritable estate; the policy preference for a suitable heir with a good breeding record makes suitability a condition precedent to the preference.

Source: *Such tenancy does not devolve upon the heirs as an ordinary heritable estate.*

Authority: *F.C.P.L.A. 1766/2026, para 5; Memorandum No. 868-C dated 19 February 1952*

A technical recommendation by the department whose purposes the grant serves does not bind the competent authority but merits due weight, and any departure requires cogent reasons supported by relevant material.

Source: *Although the District Remount Officer's recommendation did not bind the Collector, it merited due weight as a technical assessment directly bearing upon the purpose of the tenancy.*

Authority: *F.C.P.L.A. 1766/2026, para 6*

Before imposing a penalty or resuming a tenancy for breach under section 24, the tenant must be allowed to object, and where the breach is rectifiable the proviso requires written notice of not less than one month; a general opportunity of hearing does not satisfy that separate requirement.

Source: *Before imposing a penalty or resuming a tenancy for breach, the authority must afford the tenant an opportunity to state his objections. Where the breach is capable of rectification, the proviso further requires written notice allowing a reasonable period, not less than one month, for compliance. A general opportunity of hearing does not satisfy this separate statutory requirement.*

Authority: *Colonization of Government Lands (Punjab) Act, 1912, s. 24 and proviso*

Judicial intervention for non-reading of material evidence ensures that statutory discretion is exercised lawfully, without the Court substituting its own assessment for that of the competent authority.

Source: *These infirmities go to the legality of the decision-making process and disclose non-reading of material evidence. Judicial intervention on these grounds ensures that statutory discretion is exercised lawfully, without substituting the Court's assessment of suitability for that of the competent authority.*

Authority: *F.C.P.L.A. 1766/2026, para 10*

OPERATIVE ORDER

For the foregoing reasons, leave to appeal is granted, the petition is converted into an appeal and allowed. The impugned judgment dated 15.06.2026 of the Lahore High Court, Multan ... Bench, and the order dated 16.03.2022 of the Board of Revenue, Punjab, are set aside. Consequently, the Commissioner's order dated 16.06.2021, reversing the Collector's order dated 22.01.2021 and allotting the tenancy to the petitioner, is restored. The allotment shall remain subject to the governing conditions and continued compliance with the prescribed breeding obligations. No order as to costs.

■ View Full Judgment

Supreme Court of Pakistan

5 judgments

SALES TAX - FURTHER TAX UNDER SECTION 3(1A) OF THE SALES TAX ACT, 1990 ON ZERO-RATED SUPPLIES TO UNREGISTERED PERSONS - EFFECT OF THE FINANCE ACT, 2017 AMENDMENTS TO SECTIONS 3(1A) AND 4 - LIMITS OF A SPECIAL PROCEDURE UNDER SECTION 71

M/s. Yarn Kings (Pvt.) Limited, Gujranwala and others v. The Commissioner Inland Revenue, Gujranwala and others (53 connected petitions)

APPROVED FOR REPORTING. DEPARTMENTAL PETITIONS CONVERTED INTO APPEALS AND ALLOWED; TAXPAYERS' PETITIONS DISMISSED AND LEAVE REFUSED.

C.P.L.A. No. 10-L of 2025 and 52 connected petitions · Bench: Yahya Afridi, CJ, Muhammad Shafi Siddiqui and Miangul Hassan Aurangzeb, JJ (judgment by Muhammad Shafi Siddiqui, J) · Decided: Heard 7 October 2026; announced in open Court on 11 November 2026 · Uploaded: 11 November 2026

FACTS

Fifty-three petitions arising from judgments and orders of the Lahore High Court, Lahore and its Multan Bench in some fifty-three Sales Tax References, delivered on 2 October 2024, 28 November 2024, 18 November 2024, 21 November 2024, 23 December 2024, 23 January 2025, 12 February 2025 and 23 September 2025. The taxpayers are textile, woollen, weaving, spinning, dyeing and allied concerns in Gujranwala, Faisalabad and Multan. The common controversy concerned the tax periods from July 2017 to June 2019 and the supplies made by the five export-oriented sectors - textile, carpets, leather, sports and surgical goods - to persons who had not obtained a registration number, those supplies having been prescribed as chargeable at the rate of zero per cent under S.R.O. 1125(I)/2011 dated 31 December 2011 as amended by S.R.O. 491(I)/2016 dated 30 June 2016. The Court took up the departmental petitions (C.P.L.A. 2496-L of 2024 and C.P.L.As. 2571-L and 2587-L of 2025) as the leading cases.

LEGAL ISSUE

For tax periods commencing 1 July 2017, did the zero-rating of supplies under S.R.O. 1125(I)/2011 as amended by S.R.O. 491(I)/2016 exclude the levy of further tax under section 3(1A) of the Sales Tax Act, 1990 on supplies made to unregistered persons; and can a special procedure prescribed under section 71 of the Act prevail over the substantive charging provisions?

HOLDING

No. The Finance Act, 2017 amended section 3(1A) to include section 4 among the provisions referred to in it, and correspondingly qualified the opening words of section 4 by inserting the words 'except those of sub-section (1A)'. Read together, the amendments bring taxable supplies falling under section 4 within the provision governing further tax, subject to its statutory requirements and exceptions. Zero-rating does not remove a supply from the category of taxable supplies; it prescribes a rate of zero per cent. S.R.O. 491 amended the rate applicable under S.R.O. 1125 and its preamble refers to sections 3, 4, 8 and 71 but not to section 3(1A) or its proviso, and it does not exercise the power under that proviso to exclude the specified supplies from further tax - in contrast to S.R.O. 648(I)/2013 and S.R.O. 585(I)/2017, which were issued under that proviso. Accordingly, for tax periods commencing 1 July 2017, the zero-rating did not of itself exclude further tax, which remains chargeable where the requirements of section 3(1A) are satisfied and no valid exclusion applies. The High Court's judgments could not be sustained.

LEGAL SIGNIFICANCE

The leading authority on further tax and zero-rating under the amended statutory scheme, and of immediate consequence to the five export-oriented sectors for the tax periods July 2017 to June 2019. The judgment carefully confines three earlier decisions: MKB Spinning Mills (2018 PTD 2364) and Acro Spinning (2021 SCMR 1308) turned on the pre-amendment text, the latter having expressly noted that the 2017 amendments had no bearing on the matters before it; Hajvairy Steel Industries (2023 SCMR 681) turned on the express terms of Rule 58H of the Sales Tax Special Procedures Rules, 2007 for steel melters and did not concern a notification prescribing a zero rate under section 4; and T.U. Plastic Industry (2019 PTD 1542), which struck down the amendment to section 4(c) and S.R.O. 584(I)/2017, left untouched both the amendment to section 3(1A) and the qualification of the non-obstante clause in section 4. The Court also reiterates, following Superior Textile Mills (PLD 2001 SC 600), that a special procedure under section 71 cannot be given effect

insofar as it conflicts with the substantive provisions governing liability. Practitioners drafting or resisting demands for this period should note the decisive point: an exclusion from further tax must be traced to an exercise of the power under the proviso to section 3(1A), not inferred from the prescription of a zero rate.

LEGAL PROPOSITIONS (VERBATIM)

— Section 3(1A) of the Act provides for the levy of further tax on taxable supplies made to persons who have not obtained a registration number, whereas section 4 provides for the zero-rating of specified goods.

— Whereas the earlier wording of section 4 gave it an overriding effect over section 3 without exception, the amended wording expressly excludes sub-section (1A) from that overriding effect. Accordingly, the inclusion of section 4 in the provisions referred to in section 3(1A) brings taxable supplies falling under section 4 within the scope of the provision governing the levy of further tax, subject to its statutory requirements and exceptions.

— Zero-rating does not, in itself, remove a supply from the category of taxable supplies; rather, it prescribes a rate of zero per cent for the supplies falling within the relevant provision.

— Further tax under section 3(1A) is a distinct levy imposed, subject to the statutory conditions, on taxable supplies made to persons who have not obtained a registration number.

— This Court also observed that, to constitute a precedent, the law interpreted must be the same or similar to that in the case under consideration.

— In the absence of such an exclusion, the prescription of a zero rate under S.R.O. 491 cannot, merely by virtue of that rate, displace the operation of section 3(1A), as amended by the Finance Act, 2017.

— We are, therefore, of the view that, for the tax periods commencing on 1 July 2017, the zero-rating of supplies under S.R.O.1125, as amended by S.R.O.491, did not, in itself, exclude the levy of further tax under section 3(1A) of the Act. Such further tax would, however, be chargeable only where the requirements of section 3(1A) were satisfied and the supplies were not covered by a valid exclusion under the proviso thereto.

— In that case, Rule 6 of the Special Procedure for Ginning Industry Rules, 1996, was held to be inapplicable because it shifted the liability to pay sales tax from the person making the supply to the person receiving it, contrary to section 3(3) of the Act.

LEGAL PRINCIPLES EXPOUNDED

The significance of the Finance Act, 2017 amendments must be assessed by reading sections 3(1A) and 4 together: the inclusion of section 4 in section 3(1A), coupled with the express exception of sub-section (1A) from the non-obstante clause in section 4, brings zero-rated supplies within the further-tax provision.

Source: *Whereas the earlier wording of section 4 gave it an overriding effect over section 3 without exception, the amended wording expressly excludes sub-section (1A) from that overriding effect. Accordingly, the inclusion of section 4 in the provisions referred to in section 3(1A) brings taxable supplies falling under section 4 within the scope of the provision governing the levy of further tax, subject to its statutory requirements and exceptions.*

Authority: *C.P.L.A. 10-L/2025 etc., para 6; Sales Tax Act, 1990, ss. 3(1A) and 4, as amended by the Finance Act, 2017*

The Sales Tax Act, 1990 operates as an integrated value-added tax system; zero-rating prescribes a rate of zero per cent and does not remove a supply from the category of taxable supplies.

Source: *Zero-rating does not, in itself, remove a supply from the category of taxable supplies; rather, it prescribes a rate of zero per cent for the supplies falling within the relevant provision.*

Authority: *Commissioner Inland Revenue, Multan v. Acro Spinning and Weaving Mills Ltd., 2021 SCMR 1308, explained*

An exclusion from further tax must be traced to an exercise of the power conferred by the proviso to section 3(1A); the prescription of a zero rate under a notification issued under other provisions does not displace the levy.

Source: *In the absence of such an exclusion, the prescription of a zero rate under S.R.O. 491 cannot, merely by virtue of that rate, displace the operation of section 3(1A), as amended by the Finance Act, 2017.*

Authority: *C.P.L.A. 10-L/2025 etc., para 14; contrasting S.R.O. 648(I)/2013 and S.R.O. 585(I)/2017*

A special procedure prescribed under section 71 cannot be given effect insofar as it conflicts with the substantive provisions of the Act governing liability to pay tax.

Source: *In that case, Rule 6 of the Special Procedure for Ginning Industry Rules, 1996, was held to be inapplicable because it shifted the liability to pay sales tax from the person making the supply to the person receiving it, contrary to section 3(3) of the Act.*

Authority: *Collector of Sales Tax v. Superior Textile Mills Ltd., PLD 2001 SC 600*

To constitute a precedent, the law interpreted must be the same or similar to that in the case under consideration; a decision turning on a distinct special procedure is not to be extended beyond its proper scope.

Source: *This Court also observed that, to constitute a precedent, the law interpreted must be the same or similar to that in the case under consideration.*

Authority: *Commissioner Inland Revenue, Zone-I, RTO, Quetta v. Hajvairy Steel Industries (Pvt.) Ltd., 2023 SCMR 681, confined*

OPERATIVE ORDER

For the foregoing reasons, we are of the considered view that the judgments/orders of the High Court cannot be sustained. Therefore, Civil Petition No.2496-L of 2024 and Civil Petitions No.2571-L and 2587-L of 2025 are converted into appeals, and the same are allowed. The impugned judgments/orders dated 02.10.2024 and 23.09.2025 passed in Sales Tax Reference Nos.7, 27 and 28 of 2022 are set aside, respectively. ... In view of the reasoning assigned and conclusion drawn in the connected petitions (as enumerated in paragraph 2 of this judgment), these petitions are dismissed and leave to appeal is refused.

■ **View Full Judgment**

CRIMINAL - IMPRISONMENT FOR LIFE - THE FIFTEEN-YEAR STATUTORY FLOOR UNDER SECTION 59(5) OF THE PRISONS ACT, 1894 - PRESIDENTIAL REMISSION UNDER ARTICLE 45 OF THE CONSTITUTION AND GENERAL REMISSIONS UNDER PRISON RULES - SECTION 400, CR.P.C.

Gul Nawab v. The State and another

APPROVED FOR REPORTING. RELEASE DECLARED WITHOUT LAWFUL AUTHORITY; APPELLANT ORDERED BACK INTO CUSTODY; APPEAL RELISTED ON MERITS.

Criminal Appeal No. 281 of 2023 · Bench: Muhammad Hashim Khan Kakar, Salahuddin Panhwar and Ishtiaq Ibrahim, JJ (order by Muhammad Hashim Khan Kakar, J) · Decided: 21 October 2026 · Uploaded: 11 November 2026

FACTS

On 28 October 2003 the appellant fired at the deceased with a Kalashnikov, causing instantaneous death; he absconded for roughly twelve years and was arrested on 22 May 2015. The Sessions Judge/Zilla Qazi Shangla convicted him under section 302(b), P.P.C. and sentenced him to imprisonment for life, and the Peshawar High Court, Mingora Bench, maintained the conviction on 4 December 2018 and dismissed the complainant's revision for enhancement. When the appeal was taken up on merits, the record disclosed that the appellant had been released from Central Prison, Mardan on 10 May 2025 after actual physical incarceration of 9 years, 11 months and 16 days, having been credited with accumulated remission of 15 years, 6 months and 14 days. Those remissions comprised labour, good conduct, provincial, superintendent's, Inspector General's, blood and education remissions under the Khyber Pakhtunkhwa Prisons Rules, 2018, together with a five-year presidential special remission granted on the Golden Jubilee of Independence under Article 45. The provincial authorities disclosed that they had omitted sub-rule (ii) of rule 217 from the Rules of 2018, which had previously barred shortening a life sentence below fifteen years, and asserted that this entitled them to release the convict once the aggregate reached twenty-five years. Confronted by the Bench, they admitted in open Court that the Rules of 2018 had not been framed in conformity with the Prisons Act, 1894 and filed a written report and sworn affidavits conceding that the release was illegal and ultra vires.

LEGAL ISSUE

Can rules framed by a Provincial Government, or the omission of a sub-rule from them, circumvent the express command in section 59(5) of the Prisons Act, 1894 that a sentence of imprisonment for life is not to be shortened to less than fifteen years; and where presidential remission under Article 45 and general remissions under prison rules together reduce actual custody below that floor, which must yield?

HOLDING

A delegate cannot exceed the boundaries marked by the primary statute, and where the parent statute imposes a negative command or express limitation upon the rule-making power, the executive has no competence to bypass, dilute or omit that restriction through subordinate legislation. Section 59(5) remains valid, binding and controlling law across the Federation, and any rule framed under section 59 must be construed as incorporating the fifteen-year limit; the omission in rule 217 was an administrative fallacy and contradicts rule 140(1) of the same Rules. The President's power under Article 45 is an unfettered, direct constitutional grant which cannot be abridged by subordinate legislation, administrative notification, executive policy or prison rules, and where a presidential notification does not itself exclude convicts serving life for murder, the National Remission Policy cannot read such an exclusion into it. Presidential remission therefore remains inviolable and cannot be touched, cut or reduced; it is the general remissions granted under the prison rules which must be calculated downward to the exact extent necessary so that actual time served does not fall below fifteen years. Jail authorities have no independent competence to truncate a life sentence below that threshold, and a premature release which bypasses it is a nullity, void ab initio.

LEGAL SIGNIFICANCE

A decision of immediate and nationwide operational effect: copies were directed to the Registrars of all High Courts for circulation to the Sessions Courts and to the Inspectors General of Prisons of all provinces and the Islamabad Capital Territory. Three things make it important. First, it resolves the interaction between constitutional clemency under Article 45 and statutory remission under prison rules by holding that the constitutional grant is untouchable and the subordinate remissions must be pared back - a method of calculation that will now govern every lifer's release computation. Second, it holds a provincial omission from rule 217 of the Khyber Pakhtunkhwa Prisons Rules, 2018 to be of no effect against section 59(5) of the Prisons Act, 1894, the legislative floor inserted by Ordinance XII of 1972. Third, it revives section 400, Cr.P.C. as a live instrument of judicial oversight over the execution of sentence, directing all Superintendents of district and central jails to return the warrant of every fully executed sentence to the trial court with an endorsement of the manner of execution, and reminding courts of their own duty to enforce that requirement. Read with Nazar Hussain (PLD 2010 SC 1021), Wali Khan (PLD 2022 SC 253) and the Federal Constitutional Court's order in F.C.P.L.A. 833/2025 (Suba Khan), it is now the governing statement on remission of life sentences.

LEGAL PROPOSITIONS (VERBATIM)

— It is a well settled principle of constitutional and administrative law that a delegate cannot exceed the boundaries marked out by the primary statute. The statutory vehicle cannot outrun the engine of its parent Act.

— Where a parent statute imposes a negative command or an express limitation upon the rule-making power, the executive has no competence to bypass, dilute, or omit that restriction through subordinate legislation.

— Section 59(5) of the Prisons Act, 1894 remains valid, binding, and controlling law across Federation. Any rule framed under section 59 must be construed as incorporating the 15-year statutory limit.

— This legislative floor was inserted by the Parliament via Ordinance XII of 1972. It forms an unyielding statutory command: no system of marks or administrative sentence-shortening can ever reduce a judicial sentence of imprisonment for life to an actual custody period of less than fifteen (15) years.

— The jail authorities cannot usurp constitutional powers, and any premature release of a life convict that bypasses the 15-year actual custody threshold by means of unauthorized administrative remissions is a nullity in law, rendering such release void ab initio and legally ineffective.

— Article 45 grants the President unfettered power to remit any sentence passed by any court, tribunal, or authority. Where a presidential notification under Article 45 extending special remissions does not explicitly exclude convicts serving life imprisonment for murder, subordinate statutory laws or policies such as National Remission Policy, cannot read such an exclusion into the presidential dispensation or refuse to extend the benefit to that category of convicts.

— The presidential remission emanate directly from constitution and therefore remains inviolable and cannot be touched, cut, or reduced.

— Section 400 Cr.P.C. lays down a clear mandate. Once a sentence has been executed, a complete account of the imprisonment the convict has actually undergone must be formally returned to the Court, together with a full and itemized statement of every remission granted to him.

— In contemplation of law, a sentence cannot be treated as discharged merely because the convict has walked out of the prison gates.

— A sentence pronounced by a Court of law and not faithfully executed undermines the authority of the Court, defeats the ends of justice and erodes public confidence in the administration of criminal justice.

LEGAL PRINCIPLES EXPOUNDED

Where a parent statute imposes an express limitation on the rule-making power, the executive cannot bypass, dilute or omit that restriction through subordinate legislation; rules cannot travel beyond the Act.

Source: *Where a parent statute imposes a negative command or an express limitation upon the rule-making power, the executive has no competence to bypass, dilute, or omit that restriction through subordinate legislation.*

Authority: *Shaukat Mahmood v. Election Commission of Pakistan, PLD 2024 SC 653, applied*

Section 59(5) of the Prisons Act, 1894 is an unyielding statutory floor: no system of marks or administrative sentence-shortening can reduce a life sentence to actual custody of less than fifteen years, and any rule framed under section 59 must be read as incorporating that limit.

Source: *This legislative floor was inserted by the Parliament via Ordinance XII of 1972. It forms an unyielding statutory command: no system of marks or administrative sentence-shortening can ever reduce a judicial sentence of imprisonment for life to an actual custody period of less than fifteen (15) years.*

Authority: *Prisons Act, 1894, s. 59(5); Nazar Hussain v. State, PLD 2010 SC 1021; Government of Khyber Pakhtunkhwa v. Wali Khan, PLD 2022 SC 253*

The President's power to remit under Article 45 is a direct and unfettered constitutional grant; where a presidential notification contains no exclusion, subordinate policy cannot read one into it, and such remission is inviolable.

Source: *Article 45 grants the President unfettered power to remit any sentence passed by any court, tribunal, or authority. Where a presidential notification under Article 45 extending special remissions does not explicitly exclude convicts serving life imprisonment for murder, subordinate statutory laws or policies such as National Remission Policy, cannot read such an exclusion into the presidential dispensation or refuse to extend the benefit to that category of convicts.*

Authority: *Crl.A. 281/2023, para 8; Article 45 of the Constitution*

Where presidential and general remissions together would reduce custody below the fifteen-year floor, the general remissions granted under prison rules must be calculated downward to the extent necessary; a premature release bypassing the floor is void ab initio.

Source: *The jail authorities cannot usurp constitutional powers, and any premature release of a life convict that bypasses the 15-year actual custody threshold by means of unauthorized administrative remissions is a nullity in law, rendering such release void ab initio and legally ineffective.*

Authority: *Crl.A. 281/2023, paras 3 and 9; F.C.P.L.A. 833/2025, Suba Khan v. Superintendent Central Prison Mach, cited*

Section 400, Cr.P.C. requires that upon execution of a sentence the warrant be returned to the court with a complete and itemised account of custody undergone and remissions granted; the courts are equally obliged to enforce that requirement.

Source: *Section 400 Cr.P.C. lays down a clear mandate. Once a sentence has been executed, a complete account of the imprisonment the convict has actually undergone must be formally returned to the Court, together with a full and itemized statement of every remission granted to him.*

Authority: *Crl.A. 281/2023, paras 10-11; Cr.P.C., s. 400*

OPERATIVE ORDER

The appellant's release from jail after about nine years is declared to be without lawful authority. A convict sentenced to imprisonment for life shall remain in actual custody for at least fifteen years, including the period counted under section 382-B Cr.P.C.; ... The appellant shall be taken into custody forthwith and committed to jail to serve the remainder of his sentence. ... The Trial Court shall issue a fresh warrant for this purpose, and the District Police Officer shall ensure its compliance; ... All Superintendents of districts and central jails/prisons shall return the warrant

of every convict's fully executed sentence to the Trial Court under section 400 Cr.P.C. with an endorsement stating the manner of execution as set out in paragraph-9 above;

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INCOME TAX - ALTERNATE DISPUTE RESOLUTION UNDER SECTION 134A OF THE INCOME TAX ORDINANCE, 2001 - CONSTRUCTION OF 'WHOLLY OWNED, DIRECTLY OR INDIRECTLY, BY THE FEDERAL GOVERNMENT' IN SUB-SECTIONS (12) AND (13) AFTER THE INCOME TAX (AMENDMENT) ACT, 2026

M/s Zarai Taraqiati Bank Ltd. v. Federation of Pakistan through Secretary Revenue Division, Islamabad and others

APPROVED FOR REPORTING. PRELIMINARY OBJECTION DISMISSED; APPEALS HELD MAINTAINABLE.

C.A. Nos. 431 to 435 of 2026 · Bench: Munib Akhtar, Jamal Khan Mandokhail and Irfan Saadat Khan, JJ (order by Munib Akhtar, J) · Decided: 19 June 2026 · Uploaded: 10 November 2026

FACTS

The appeals were brought under the proviso to sub-section (13) of section 134A of the Income Tax Ordinance, 2001 against a decision of the Alternate Dispute Resolution Committee constituted by letter dated 18 April 2025. Following the Income Tax (Amendment) Act, 2026, sub-section (12) abates petitions by state-owned enterprises wholly owned, directly or indirectly, by the Federal Government, while sub-section (13) abates petitions by SOEs not wholly so owned but allows them to appeal to the Federal Constitutional Court or the Supreme Court within sixty days. It was common ground that the appellant is an SOE within the State-Owned Enterprises (Governance and Operations) Act, 2023. The appellant was incorporated in 2002 under the Companies Ordinance, 1984 and is a company limited by shares with a single class of shares. Of 5,267,843,241 shares outstanding, 1,251,189,067 stood in the name of the Federal Government, 4,015,599,174 in the name of the State Bank of Pakistan and 527,500 in the name of the erstwhile Government of East Pakistan, leaving a minute balance held by the four Provincial Governments, which the department said had been transferred to them by the Federal Government to give the Provinces a sense of participation in an institution serving the agricultural sector.

LEGAL ISSUE

What does 'wholly owned', directly or indirectly, by the Federal Government mean in sub-sections (12) and (13) of section 134A of the Income Tax Ordinance, 2001; and do shares held in the names of the Provincial Governments, however small, take a company outside that description?

HOLDING

In this specific statutory context the phrase must be given a strict and literal meaning: 'wholly' means in its entirety, completely, to the fullest extent, leaving nothing outside its scope however minor, so that the maxim de minimis non curat lex has no application. The reason is that the contextual scope of the phrase determines whether the appellant may continue to have recourse to a judicial remedy, and whenever possible the better interpretation is to allow for the preservation of recourse to courts. The word 'indirectly' is likewise not to be given too expansive an effect and must be contained within the natural limits of its meaning. Applying that approach, the shares held by the State Bank count as indirectly owned by the Federal Government, because section 4(3) of the State Bank of Pakistan Act, 1956 provides that the capital shall be held exclusively by the Federal Government and shall not be transferable; so 99.98 per cent is held directly or indirectly by the Federation. The balance, held in the names of the Provincial Governments, is decisive: the Federal and Provincial Governments are constitutionally and legally distinct, the fact that the shares were transferred by the Federation is of no moment, and section 121 of the Companies Act, 2017 precludes notice of any trust being entered on the register of members. The appellant is therefore not a company one hundred per cent of whose shareholding is owned, directly or indirectly, by the Federal Government, and the appeals are maintainable.

LEGAL SIGNIFICANCE

A short order of considerable practical reach. It is the first construction of the SOE appeal provisions inserted into section 134A by the Income Tax (Amendment) Act, 2026, and it settles the test by which an SOE determines whether its pending High Court petition abated outright under sub-section (12) or abated with a sixty-day right of appeal under sub-section (13). Three features repay attention: the Court's express confinement of the meaning to this narrow statutory locus, warning that in other contexts the same phrase may be answered differently and even diametrically oppositely; the interpretive presumption in favour of preserving recourse to the courts where a change in law would otherwise extinguish an availed remedy; and the reliance on section 121 of the Companies Act, 2017 to treat the register of members as conclusive, so that a beneficial or trust claim behind a provincial shareholding cannot be asserted to aggregate it with the Federation's. Any SOE with even a token provincial or third-party shareholding now has a direct authority on maintainability.

LEGAL PROPOSITIONS (VERBATIM)

— It is to be emphasized that the question arises here in a specific statutory context, which is enfolded in a fiscal statute. The context is limited and particular: whether there is a right of appeal to this Court against the decision of the ADR Committee. A determination of the issue must therefore move within a tight and narrow locus.

— In our view, in the context in which the issue arises here, the phrase "wholly owned" has to be given a strict and literal meaning. "Wholly" means precisely that: in its entirety, completely, to the fullest extent, leaving nothing behind or outside its scope

— It is well settled that whenever and wherever possible the better interpretation is to allow for the preservation of recourse to Courts and for judicial remedies to continue.

— More precisely, the word "indirectly", which seeks to enlarge the scope of "wholly" beyond what is "directly" owned, cannot be given too expansive or broad an effect. It must be contained to what would be the natural limits of its meaning.

— Since shares are property, the Federal Government would own the whole of the share capital and thus wholly "own" the company.

— In view of this categorical statutory statement, for present purposes the shares held in the appellant by the State Bank can, indirectly, be regarded as being owned by the Federal Government.

— Constitutionally, and as a matter of law, the Federal and Provincial Governments are distinct, and separate each from the other. The fact that the shares held by them may have been transferred to them by the Federal Government is of no moment.

— For present purposes, the shareholdings of the Provincial Governments, vanishingly small though they may otherwise be, are decisive. The appellant cannot be regarded as a company 100% of whose shareholding is, directly or indirectly, owned by the Federal Government.

LEGAL PRINCIPLES EXPOUNDED

The meaning of a statutory phrase is determined by its particular context; a construction reached for the purposes of one provision in a fiscal statute does not govern the same words used elsewhere for other purposes.

Source: *It is to be emphasized that the question arises here in a specific statutory context, which is enfolded in a fiscal statute. The context is limited and particular: whether there is a right of appeal to this Court against the decision of the ADR Committee. A determination of the issue must therefore move within a tight and narrow locus.*

Authority: *C.A. 431 to 435 of 2026, para 5*

Where a change in the law would extinguish a judicial remedy already availed, the better interpretation is the one that preserves recourse to the courts; hence 'wholly owned' is read strictly and literally and the de minimis maxim does not apply.

Source: *It is well settled that whenever and wherever possible the better interpretation is to allow for the preservation of recourse to Courts and for judicial remedies to continue.*

Authority: *C.A. 431 to 435 of 2026, para 6; Income Tax Ordinance, 2001, s. 134A(12) and (13)*

Shares held by the State Bank of Pakistan are, for this purpose, indirectly owned by the Federal Government, because section 4(3) of the State Bank of Pakistan Act, 1956 provides that its capital

is held exclusively by the Federal Government and is not transferable.

Source: *In view of this categorical statutory statement, for present purposes the shares held in the appellant by the State Bank can, indirectly, be regarded as being owned by the Federal Government.*

Authority: *State Bank of Pakistan Act, 1956, s. 4(3), as substituted in 2022*

The Federal and Provincial Governments are constitutionally and legally distinct; shares standing in a Province's name on the register of members cannot be aggregated with the Federation's, and section 121 of the Companies Act, 2017 bars notice of any trust on that register.

Source: *Constitutionally, and as a matter of law, the Federal and Provincial Governments are distinct, and separate each from the other. The fact that the shares held by them may have been transferred to them by the Federal Government is of no moment.*

Authority: *Companies Act, 2017, s. 121 (formerly s. 148 of the Companies Ordinance, 1984)*

OPERATIVE ORDER

From the foregoing analysis it follows that the preliminary objection fails and must be dismissed. It was accordingly so held, at the conclusion of the hearing on 19.06.2026.

■ **View Full Judgment**

CRIMINAL - SECTION 295-C, P.P.C. - DEFENCE OF UNSOUNDNESS OF MIND UNDER SECTION 84, P.P.C. - DISTINCTION BETWEEN MEDICAL AND LEGAL INSANITY - EVIDENTIARY VALUE OF A MEDICAL BOARD OPINION THAT A POSSIBILITY 'CANNOT BE RULED OUT'

Umar Draz and another v. The State etc.

APPROVED FOR REPORTING. APPEAL ALLOWED; DEATH SENTENCES SET ASIDE AND APPELLANTS ACQUITTED.

Crl. Appeal No. 96 of 2020 · Bench: Yahya Afridi, CJ, Shakeel Ahmad and Ishtiaq Ibrahim, JJ (judgment by Ishtiaq Ibrahim, J; additional note by Shakeel Ahmad, J) · Decided: Heard 6 July 2026 · Uploaded: 7 November 2026 (straggler)

FACTS

The appellants, real brothers, were tried in F.I.R. No. 166/2006 dated 21 March 2006 under section 295-C, P.P.C. at Police Station Sadar Jhang. The complaint arose after the appellant Umar Draz was said to have begun uttering blasphemous statements, leading to a marital dispute and divorce on 13 March 2006, in which he affirmed in writing his conversion from Islam within the Talaqnama; during the return of dowry articles a written document authored by the co-appellant was recovered containing blasphemous assertions, and when confronted on 18 March 2006 both acknowledged the contents and declared their readiness to repeat them before any forum. The Sessions Judge, Jhang convicted both on 27 March 2009, sentencing each to death with a fine of Rs. 500,000, and the Lahore High Court dismissed the appeal on 17 September 2015. Their mental condition was assessed on three occasions: a Medical Board at DHQ Hospital, Faisalabad reported on 7 March 2007 that both were mentally sound; after leave was granted an eight-member Board of Certification at the Punjab Institute of Mental Health reported on 31 August 2023 that both suffered from Bipolar Affective Disorder with Psychotic Symptoms; and a nine-member Board, headed by the Director General Health Services, Punjab, reported on 18 September 2025 that both were suffering from Bipolar Disorder, current episode manic. The appellants had spent around twenty years in custody.

LEGAL ISSUE

Where Medical Boards find an accused presently suffering from bipolar disorder and opine that the possibility of the same disorder having existed at the time of the offence cannot be ruled out, is the protection of section 84, P.P.C. available; and what is the relationship between a psychiatric diagnosis and the statutory test of legal incapacity at the time of the act?

HOLDING

The provision does not make the mere existence of a psychiatric disorder determinative: the crucial inquiry is whether, at the time of the offence, the accused was by reason of unsoundness of mind incapable of knowing the nature of the act, or that what he was doing was wrong or contrary to law. That draws a fundamental distinction between medical insanity and legal insanity. An opinion which merely leaves open the possibility of

the relevant condition, without connecting it to the specific incapacity contemplated by the provision at the time of the act, cannot standing alone satisfy the statutory test. But the medical evidence need not establish the accused's condition with absolute certainty: although the accused bears the burden of bringing his case within section 84, that burden is not as onerous as the prosecution's burden of proving guilt beyond reasonable doubt, and where the material as a whole creates a reasonable doubt as to mental capacity at the relevant time, the doubt may enure to his benefit. Here the expert opinion established that bipolar disorder is inherently episodic, rendering it highly probable that the appellants were in an active manic episode at the time, fortified by the undisputed strong genetic component and the fact that two real brothers were independently diagnosed with the identical condition - a shared predisposition providing scientific corroboration of a pre-existing inherited illness. The benefit of doubt could not be withheld.

LEGAL SIGNIFICANCE

The leading recent statement on the defence of unsoundness of mind, delivered in the gravest class of case and resulting in the setting aside of two death sentences under section 295-C after some twenty years in custody. Two features give it lasting value. First, the sustained separation of medical from legal insanity, and the careful treatment of the expression 'cannot be ruled out': the Court holds that such an opinion is not a categorical finding and cannot by itself discharge the burden, while equally refusing to treat the absence of a categorical finding as conclusive against the accused. Second, the catalogue at paragraph 5 of the concurring note - previous psychiatric history, hospitalisation or treatment around the relevant time, testimony of relatives and treating psychiatrists, evidence of acute symptoms, planning, motive, concealment, flight, destruction of evidence, rational statements after arrest, and the significance (or insignificance) of subsequent repentance - amounts to a practical checklist for leading and testing an insanity defence. The judgment also grounds the statutory test in Islamic jurisprudence through the concepts of taklif, ahliyyah and 'aql, drawing on Surah Al-Baqarah 2:286, Surah An-Nisa 4:5 and the Hadith that the pen has been lifted from three, and canvasses the relationship between justice and mercy. A note of caution for practitioners: the portal file has a partly corrupted text layer in the operative paragraph and the signature block.

LEGAL PROPOSITIONS (VERBATIM)

— The provision does not make the mere existence of a psychiatric disorder determinative. Rather, the crucial inquiry is whether, at the time of the commission of the alleged offence, the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act, or that what he was doing was either wrong or contrary to law.

— This statutory test draws a fundamental distinction between medical insanity and legal insanity.

— Accordingly, a psychiatric diagnosis, by itself, does not bring a case within the protection of Section 84 PPC.

— Thus, an opinion which merely leaves open the possibility of the relevant mental condition, without establishing or sufficiently connecting it to the specific incapacity contemplated by Section 84 PPC at the time of the alleged act, cannot, standing alone, be regarded as sufficient to satisfy the statutory test.

— Although the accused bears the burden of bringing his case within the ambit of Section 84 PPC, that burden is not as onerous as the burden resting upon the prosecution to establish guilt beyond reasonable doubt.

— The Court must, therefore, consider not merely an isolated sentence in a Medical Board's report, but the medical opinion as a whole, together with the surrounding circumstances bearing upon the accused's mental condition at the relevant time.

— Similarly, the fact that an accused subsequently expresses repentance is not, by itself, conclusive of either criminal responsibility or its absence.

— Where the evidence demonstrates that the accused appreciated the nature and consequences of his conduct, the protection of Section 84 PPC may not be available notwithstanding the existence of a psychiatric diagnosis.

— The prosecution, notwithstanding the accused's reliance upon Section 84 PPC, remains under the fundamental obligation to establish guilt beyond reasonable doubt.

— In Islamic law, the imposition of legal responsibility (taklif) presupposes the existence of the requisite legal capacity (ahliyyah) and the ability to understand and comprehend the nature of one's conduct.

LEGAL PRINCIPLES EXPOUNDED

Section 84, P.P.C. distinguishes medical insanity, the existence of a psychiatric illness, from legal insanity, the incapacity at the time of the act to know its nature or that it was wrong or contrary to law; a diagnosis alone does not attract the protection.

Source: *This statutory test draws a fundamental distinction between medical insanity and legal insanity.*

Authority: *Crl.A. 96/2020, concurring note of Shakeel Ahmad, J, para 2; Pakistan Penal Code, s. 84*

A Medical Board opinion that the possibility of a disorder at the relevant time cannot be ruled out is not a categorical finding of incapacity and cannot, standing alone, satisfy the statutory test.

Source: *Thus, an opinion which merely leaves open the possibility of the relevant mental condition, without establishing or sufficiently connecting it to the specific incapacity contemplated by Section 84 PPC at the time of the alleged act, cannot, standing alone, be regarded as sufficient to satisfy the statutory test.*

Authority: *Crl.A. 96/2020, concurring note, para 4*

The burden on an accused invoking section 84 is not as onerous as the prosecution's burden of proof beyond reasonable doubt; where the material as a whole creates a reasonable doubt as to capacity at the relevant time, the doubt enures to his benefit.

Source: *Although the accused bears the burden of bringing his case within the ambit of Section 84 PPC, that burden is not as onerous as the burden resting upon the prosecution to establish guilt beyond reasonable doubt.*

Authority: *Crl.A. 96/2020, concurring note, para 4*

The inquiry is cumulative: the medical opinion must be read as a whole with the surrounding circumstances, and no single circumstance - including subsequent repentance or post-incident conduct - is conclusive either way.

Source: *Similarly, the fact that an accused subsequently expresses repentance is not, by itself, conclusive of either criminal responsibility or its absence.*

Authority: *Crl.A. 96/2020, concurring note, paras 4-6*

The statutory test corresponds with the principles of Islamic jurisprudence, under which legal responsibility (taklif) presupposes legal capacity (ahliyyah) and soundness of intellect ('aql).

Source: *In Islamic law, the imposition of legal responsibility (taklif) presupposes the existence of the requisite legal capacity (ahliyyah) and the ability to understand and comprehend the nature of one's conduct.*

Authority: *Crl.A. 96/2020, concurring note, paras 7-9; Surah Al-Baqarah, 2:286; Surah An-Nisa, 4:5; Sunan Abi Dawud, Hadith No. 4403*

OPERATIVE ORDER

For the reasons discussed above, the instant appeal is allowed ... hereby set aside, and the appellants are acquitted of the charge. ... however, it is expected that the Executive Director, Punjab Institute of Mental Health (PIMH), Lahore, shall ensure that the requisite medical treatment of the appellants is not discontinued.

■ **View Full Judgment**

EXECUTION - SALE BY PUBLIC AUCTION OF MORTGAGED PROPERTY - NOTICE BEFORE DRAWING UP THE PROCLAMATION UNDER ORDER XXI, RULE 66(2), C.P.C. - SETTING ASIDE A SALE UNDER ORDER XXI, RULE 90 AND THE REQUIREMENT OF SUBSTANTIAL INJURY

Liberty Mills Limited, Karachi v. Muslim Cotton Mills (Pvt.) Limited, Karachi and others

APPROVED FOR REPORTING. CIVIL APPEAL ALLOWED IN PART; THE CONNECTED PETITION DISMISSED.

C.A. No. 1740 of 2021 and C.P.L.A. No. 917-K of 2021 · Bench: Miangul Hassan Aurangzeb, J and bench · Decided: Heard 23 September 2026 · Uploaded: 7 November 2026 (straggler)

FACTS

Allied Bank Limited instituted Suit No. B-89/2009 before the High Court of Sindh against Muslim Cotton Mills (Pvt.) Ltd. and its directors under the Financial Institutions (Recovery of Finances) Ordinance, 2001, seeking recovery of Rs. 166,630,737. In execution, notices were issued to the judgment-debtors on 4 March 2011 and 25 March 2011 and their attendance was also sought by publication in the newspapers, although the executing court was under no statutory obligation to issue notice of execution proceedings. The judgment-debtors stayed away from the first auction scheduled for 10 October 2013 and from the second held on 22 April 2014. Liberty bid Rs. 125,000,000 and deposited 25 per cent; the sale was confirmed on 8 August 2014 and a sale certificate issued on 12 September 2014. The judgment-debtors' application of 23 August 2014 challenging confirmation was dismissed on 4 October 2016. On appeal the appellate court, by judgment dated 4 February 2021, set that order aside, declared the confirmation illegal for want of notice under Order XXI, Rule 66(2) and because confirmation below the reserve price was in derogation of mandatory requirements, but gave Liberty the option to purchase at the reserve price of Rs. 227,500,000; Liberty took the option and deposited a further Rs. 102,500,000 by pay order dated 6 February 2021. The judgment-debtors' review was dismissed on 25 June 2021.

LEGAL ISSUE

Does the failure to issue notice under Order XXI, Rule 66(2), C.P.C. before drawing up the proclamation of sale render the auction a nullity; or is it an irregularity whose consequences fall to be assessed under Order XXI, Rule 90 on proof of substantial injury?

HOLDING

The rule makes it essential for the decree-holder and the judgment-debtor to have notice but does not require the notice to be given through the process of the court, and a judgment-debtor well aware of the execution proceedings who participates in them as and when it suits him cannot complain of being unaware. The mere failure to issue the notice does not, in the circumstances, by itself render the sale a nullity; it is an irregularity whose consequence must be assessed in the context of Rule 90, under which no sale is to be set aside for irregularity or fraud unless, upon the facts proved, the court is satisfied that the applicant sustained substantial injury. The judgment-debtors had not taken the Rule 66(2) ground in their application of 23 August 2014 and so had acquiesced in the process; an order of the court cannot be based on a ground not raised in the pleadings, and they were estopped from agitating it for the first time in appeal. The description of the property in the proclamation was not deficient, no other defect was identified, neither the judgment-debtors nor any other bidder made a higher offer, and it was not their case that the auction was inadequately advertised; substantial injury was therefore not established. As to review, review proceedings are not an opportunity to re-argue the matter as though it were an appeal, and no error apparent on the face of the record was shown in the decision to give Liberty the option at the reserve price.

LEGAL SIGNIFICANCE

A useful and practical judgment on execution sales, likely to be cited whenever a judgment-debtor who stayed away from the auction seeks to upset a confirmed sale on the footing of a missing notice. The Court separates three things that are frequently run together: the requirement of notice under Rule 66(2), the pleading requirements of Order VI, Rules 2 and 4, and the substantial-injury threshold under the proviso to Rule 90. Its observation that the rule does not require notice through the process of the court, and that actual

awareness coupled with selective participation is fatal to the complaint, narrows the scope for setting aside sales on this ground; and the estoppel point - that a ground not taken in the application under Rule 90 cannot be raised for the first time in appeal - is of general application. The treatment of the appellate court's device of offering the auction purchaser the reserve price, upheld as no error apparent on the face of the record, will also assist where a sale has been confirmed below the valuation. Practitioners should note that the portal file has a partly corrupted text layer in the earlier paragraphs; paragraphs 37 to 41 are clean and carry the ratio.

LEGAL PROPOSITIONS (VERBATIM)

— The said rule makes it essential for the decree-holder and the judgment-debtor to have notice but does not require the notice to be necessarily through the process of the court.

— Vague, ambiguous and generalized pleas do not satisfy the requirements of Order VI, Rules 2 and 4 C.P.C.

— It is well settled that the order of the court cannot be based on a ground not raised in the pleadings.

— The mere failure to issue notice under Order XXI, Rule 66(2) C.P.C. does not, in the circumstances of this case, by itself render the sale a nullity; it is an irregularity the consequence whereof must be assessed in the context of Rule 90.

— On the record before us, the judgment-debtors identified no defect in the proclamation that affected the property's identification or the fairness of the auction, nor did they establish that the omission to issue notice caused the property to be sold at an inadequate price.

— Since the judgment-debtors had knowledge of the auction proceedings and had an opportunity to participate in the auction proceedings, the failure to issue notice under Order XXI, Rule 66(2) C.P.C. without proof of the substantial injury as required by Rule 90 C.P.C., is not sufficient in the circumstances of the case to render the sale, a nullity.

— Review proceedings are not an opportunity to re-argue the matter as though it were an appeal.

— The purpose of this requirement is to ensure that both the decree-holder and the judgment-debtor are afforded notice of the proposed proclamation.

LEGAL PRINCIPLES EXPOUNDED

Order XXI, Rule 66(2), C.P.C. requires that the decree-holder and the judgment-debtor have notice before the proclamation is drawn up, but does not require that notice be given through the process of the court.

Source: *The said rule makes it essential for the decree-holder and the judgment-debtor to have notice but does not require the notice to be necessarily through the process of the court.*

Authority: *C.A. 1740/2021, para 37; C.P.C., Order XXI, Rule 66(2)*

Failure to issue the Rule 66(2) notice is an irregularity, not a nullity; its consequences must be assessed under Order XXI, Rule 90, whose proviso bars setting aside a sale absent proof of substantial injury.

Source: *The mere failure to issue notice under Order XXI, Rule 66(2) C.P.C. does not, in the circumstances of this case, by itself render the sale a nullity; it is an irregularity the consequence whereof must be assessed in the context of Rule 90.*

Authority: *C.A. 1740/2021, para 41; C.P.C., Order XXI, Rule 90*

An order of the court cannot rest on a ground not raised in the pleadings; a judgment-debtor who omitted the ground from his application under Rule 90 is estopped from agitating it for the first time in appeal.

Source: *It is well settled that the order of the court cannot be based on a ground not raised in the pleadings.*

Authority: *C.A. 1740/2021, para 38*

Vague, ambiguous and generalised pleas do not satisfy Order VI, Rules 2 and 4, C.P.C. and are not worthy of consideration.

Source: *Vague, ambiguous and generalized pleas do not satisfy the requirements of Order VI, Rules 2 and 4 C.P.C.*

Authority: *C.A. 1740/2021, para 32*

Review is not an occasion to re-argue the matter as though on appeal; the applicant must demonstrate an error apparent on the face of the record.

Source: *Review proceedings are not an opportunity to re-argue the matter as though it were an appeal.*

Authority: *C.A. 1740/2021, para 34*

OPERATIVE ORDER

In view of the above, civil appeal No.1740/2021 is allowed in that the appellate court's judgment dated 04.02.2021 to the extent of declaring the confirmation of sale of the Mortgaged Property in favour of Liberty to be illegal due to the non-issuance of notice under Order XXI, Rule 66(2) C.P.C. ... is dismissed as time-barred, whereas the said C.P.L.A. to the extent of challenging the Review Order dated 25.06.2021 is dismissed. The judgment-debtors shall bear Liberty's costs.

■ View Full Judgment

Lahore High Court

4 judgments

CRIMINAL - RIGHT TO A FAIR TRIAL UNDER ARTICLE 10-A - DENIAL OF AN EFFECTIVE OPPORTUNITY OF CROSS-EXAMINATION - ABSENCE OF A CONSCIOUS, VOLUNTARY AND UNEQUIVOCAL WAIVER - DUTY OF THE COURT UNDER SECTION 14 OF THE PUNJAB LEGAL AID ACT, 2018

Irfan alias Kala v. The State and others

APPROVED FOR REPORTING. REVISION ALLOWED; CONVICTIONS SET ASIDE AND CASE REMANDED FOR RETRIAL FROM THE STAGE OF PROSECUTION EVIDENCE.

2026 LHC 8667 (Crl. Revision No. 323 of 2025) · Bench: Ghulam Sarwar Nihung, J · Decided: Announced, dictated, prepared and signed on 28 October 2026 · Uploaded: 12 November 2026

FACTS

The petitioner was convicted by the Senior Civil Judge (Criminal Division), Khanewal under sections 324, 337-A(iv) and 337-D, P.P.C. and sentenced to seven years' rigorous imprisonment on each count with fines, Arsh of Rs. 1,439,508 and compensation of Rs. 600,000 under section 544-A, Cr.P.C., all sentences to run concurrently with the benefit of section 382-B. The Additional Sessions Judge, Khanewal dismissed his appeal on 25 June 2024. The prosecution case was that on 17 June 2020 the petitioner inflicted a Toka blow to the head of the complainant's 60-year-old father while two co-accused held him. The record showed that PW-1 to PW-3 were examined on 15 February 2021, PW-4 on 11 November 2021, PW-5 on 7 December 2021, PW-6 on 4 January 2022 and PW-7 on 4 October 2023, and that every prosecution witness was examined-in-chief without being cross-examined. The petitioner was then in custody and unrepresented; the order of 15 February 2021 records that he was reluctant to produce counsel, did not wish to engage one, asked that the case be decided on merits, and neither produced counsel nor conducted cross-examination himself. A defence counsel appeared at the stage of the section 342 statement on 28 February 2024, but the order sheets do not disclose when he entered appearance or when his vakalatnama was filed or accepted. In answer to question 9 of his section 342 statement the petitioner complained that he had not been granted an opportunity to cross-examine.

LEGAL ISSUE

Can an accused's refusal to engage private counsel, coupled with a recorded opportunity to cross-examine, be construed as a conscious, voluntary and unequivocal waiver of the right of cross-examination; and what is the trial court's duty where an unrepresented accused in custody may be an indigent person within the Punjab Legal Aid Act, 2018?

HOLDING

Refusal to engage private counsel and voluntary relinquishment of the right of cross-examination are two distinct matters which cannot be equated. The order of 15 February 2021 recorded the petitioner's unwillingness to engage a lawyer but not that he was asked whether he wished to cross-examine personally, that he understood the evidentiary consequences of not doing so, or that his ability to arrange counsel was ascertained; the mere recording that an opportunity was given cannot in these circumstances be treated as conclusive proof of an informed waiver. The constitutional guarantee of a fair trial under Article 10-A is substantive and encompasses a fair, meaningful and effective opportunity to defend and to challenge the

prosecution evidence, and is to be read with the right under Article 10(1) to consult and be defended by a legal practitioner. Section 14 of the Punjab Legal Aid Act, 2018 employs the expression 'a court' without restriction, so the obligation to inform an undefended indigent person of his right to apply for legal aid extends to every court within section 2(c), and section 9(7) preserves a court's independent power to secure representation including at State expense. Section 342 is not a substitute for cross-examination. The appellate court treated the unchallenged statements as correct without examining whether the right had been waived or a fair opportunity afforded. The failure to cross-examine does not by itself furnish a ground for acquittal, but the convictions cannot safely be maintained without first curing a defect that goes to the very root of a fair trial.

LEGAL SIGNIFICANCE

A carefully bounded judgment that will be cited in every case where a prosecution witness has gone unchallenged. Its value lies as much in what it declines to hold as in what it decides: the Court expressly disclaims any rule that every omission in an order sheet vitiates a trial, that every accused who declines private counsel must be granted repeated adjournments, or that the absence of a recorded vakalatnama renders a later appearance unauthorised, and it records that the law does not permit an accused to obstruct proceedings by deliberate non-cooperation. What it does establish is that an informed waiver must appear on the judicial record - the accused asked whether he wishes to cross-examine personally, apprised of the evidentiary consequences, and electing to forgo the right with that understanding. The treatment of section 14 of the Punjab Legal Aid Act, 2018 is significant in its own right: the duty to inform an undefended indigent person of the legal-aid mechanism binds every court, not merely the superior courts. The directions at paragraphs 18 and 19 give trial courts a practical template, including the recording of a voluntary declinature and the proper documentation of every defence counsel's appearance and vakalatnama.

LEGAL PROPOSITIONS (VERBATIM)

— It is pertinent to observe that refusal to engage a private counsel and voluntary relinquishment of the right to cross-examination are two distinct matters, which cannot be equated with each other.

— The constitutional guarantee of a fair trial is not merely procedural in nature but is a substantive right, which necessarily encompasses a fair, meaningful and effective opportunity for an accused to defend himself against the charge and to challenge the evidence adduced by the prosecution.

— These constitutional safeguards, when read together, underscore the obligation of the trial Court to ensure that an accused is afforded a genuine and effective opportunity to defend himself

— Whenever such court comes to know that an indigent person remains undefended by an Advocate, it is under a mandatory obligation to inform him of his right to apply to the Agency for legal aid. The provision, thus, manifests the legislative intent to ensure that indigence does not, by itself, deprive a person of meaningful access to legal representation.

— Cross-examination enables the adverse party to test the truthfulness, accuracy and reliability of testimony given in examination-in-chief.

— And "The right to cross-examine is the right of the adverse party which right he/she may forego but one which he/she cannot be deprived of." ... Whether the right was voluntarily abandoned must be determined from the circumstances appearing on the judicial record.

— The mere recording that an opportunity was given cannot, in these circumstances, be treated as conclusive proof of an informed waiver.

— The object of section 342, Cr.P.C. is to enable the accused to explain the circumstances appearing against him.

— A clear order sheet should record the filing and acceptance of a vakalatnama or, where counsel is appointed through legal aid or under another lawful mechanism, the basis of that appointment.

— The finding in the present case rests on the particular combination of circumstances and, above all, the absence of a clear record showing that the petitioner knowingly and voluntarily abandoned cross examination.

LEGAL PRINCIPLES EXPOUNDED

Refusal to engage private counsel is not the same as relinquishment of the right of cross-examination; the two cannot be equated, and a recorded opportunity is not conclusive proof of an informed waiver.

Source: *It is pertinent to observe that refusal to engage a private counsel and voluntary relinquishment of the right to cross-examination are two distinct matters, which cannot be equated with each other.*

Authority: *2026 LHC 8667, paras 7 and 12*

The fair trial guarantee under Article 10-A is substantive, encompassing a fair, meaningful and effective opportunity to defend and to challenge the prosecution evidence, read with the right under Article 10(1) to consult and be defended by a legal practitioner.

Source: *The constitutional guarantee of a fair trial is not merely procedural in nature but is a substantive right, which necessarily encompasses a fair, meaningful and effective opportunity for an accused to defend himself against the charge and to challenge the evidence adduced by the prosecution.*

Authority: *2026 LHC 8667, para 8; Articles 10(1) and 10-A of the Constitution*

An accused may voluntarily forgo cross-examination, but the court cannot deprive him of the opportunity; whether the right was abandoned must be determined from the circumstances appearing on the judicial record.

Source: *And "The right to cross-examine is the right of the adverse party which right he/she may forego but one which he/she cannot be deprived of."*

Authority: *Muhammad Bashir v. Rukhsar, PLD 2020 SC 334; Sher Hassan v. Gul Hassan Khan, 2022 SCMR 1360*

Section 14 of the Punjab Legal Aid Act, 2018 uses the expression 'a court' without restriction, so every court within section 2(c) is under a mandatory obligation to inform an undefended indigent person of his right to apply for legal aid; section 9(7) preserves the court's independent power to secure representation.

Source: *Whenever such court comes to know that an indigent person remains undefended by an Advocate, it is under a mandatory obligation to inform him of his right to apply to the Agency for legal aid. The provision, thus, manifests the legislative intent to ensure that indigence does not, by itself, deprive a person of meaningful access to legal representation.*

Authority: *Punjab Legal Aid Act, 2018, ss. 2(c), 2(g), 9 and 14; Naubahar alias Baharu v. The State, 2020 YLR 159*

A statement under section 342, Cr.P.C. enables the accused to explain circumstances appearing against him and is not a substitute for cross-examination, which serves the separate purpose of testing the prosecution evidence.

Source: *The object of section 342, Cr.P.C. is to enable the accused to explain the circumstances appearing against him.*

Authority: *2026 LHC 8667, para 14; Cr.P.C., s. 342(1)*

OPERATIVE ORDER

For the reasons recorded above, the instant revision petition is allowed. The judgment of conviction and sentence dated 20.04.2024 passed by the learned Senior Civil Judge (Criminal Division), Khanewal, and the judgment dated 25.06.2024 passed by the learned Additional Sessions Judge, Khanewal, are set aside. The case is remanded to the learned trial Court for retrial from the stage of prosecution evidence, in accordance with the directions contained in this judgment. No opinion is expressed on the merits of the prosecution case.

■ **View Full Judgment**

CONSTITUTIONAL - MANDAMUS AGAINST THE FEDERAL INVESTIGATION AGENCY - TORTURE AND CUSTODIAL DEATH (PREVENTION AND PUNISHMENT) ACT, 2022 - EXCLUSIVE JURISDICTION UNDER SECTION 5(1) - SCOPE OF COMPLIANCE PROCEEDINGS BEFORE AN EX-OFFICIO JUSTICE OF THE PEACE

Nadeem Masih v. Additional Director General, FIA and others

APPROVED FOR REPORTING. PETITION DISMISSED, WITH LIBERTY TO FILE A PRIVATE COMPLAINT.

2026 LHC 8659 (W.P. No. 8238 of 2026) · Bench: Muhammad Jawad Zafar, J · Decided: Heard 30 October 2026 · Uploaded: 11 November 2026

FACTS

The petitioner moved the Ex-Officio Justice of the Peace, Faisalabad under sections 22-A and 22-B, Cr.P.C. for a direction to register a criminal case, alleging that on 8 May 2024 his brother was abducted from the main road near the Women College, Madina Town, Faisalabad by officials of CIA City, Faisalabad acting under the command of the then In-charge, CIA, was illegally confined at various places including torture cells said to be maintained by the police, and was subjected to severe torture; he was medically examined on the direction of the Area Magistrate and relied on Medico Legal Examination Certificate No. 140/2025. The FIA reported that the petitioner had appeared on 9 October 2025 and produced his evidence and that the matter stood registered as Inquiry No. 1642/2025. By order dated 11 October 2025 the petition was disposed of with a direction to the FIA to conclude the inquiry on merits within thirty days; that order was never assailed. When the petitioner sought compliance, the FIA reported that the inquiry had been dropped by the Director, FIA, Faisalabad, and the Ex-Officio Justice of the Peace disposed of the compliance petition on 4 February 2026.

LEGAL ISSUE

Can a writ of mandamus issue directing the FIA to register a criminal case on a complaint of custodial torture; and what is the permissible scope of proceedings brought to enforce compliance with an earlier, unchallenged order of an Ex-Officio Justice of the Peace?

HOLDING

No, on both counts. Mandamus presupposes a legal duty owed to the petitioner and a corresponding legal right vested in him; where the law vests discretion, the Court may require the discretion to be exercised but will not dictate the manner of its exercise or the conclusion to be reached. Under section 5(1) of the Act of 2022 the FIA has exclusive jurisdiction to investigate complaints against public officials, under the supervision of the National Commission for Human Rights, and by force of section 5(3) the Federal Investigation Agency (Inquiries and Investigations) Rules, 2002 stand incorporated; Rule 5(2) requires the prior permission of a designated authority before a case is registered against a public servant and Rule 5(4) obliges that authority to record reasons if it declines. A complaint of custodial torture is therefore not dealt with under section 154, Cr.P.C. by an officer in charge of a police station, and the law imposes no unconditional duty to register a case. Compliance proceedings are by their nature confined to the four corners of the order sought to be complied with; the order of 11 October 2025 required only that an inquiry be concluded on merits, and once the FIA reported the inquiry concluded and dropped, that order stood complied with. A Medico Legal Examination Certificate may establish the existence of injuries but not who caused them or in what circumstances; those are disputed questions of fact for the Court of Sessions, which under section 6 of the Act of 2022 has exclusive jurisdiction to try offences under it and can entertain a private complaint.

LEGAL SIGNIFICANCE

The clearest statement yet of how a complaint of custodial torture travels through the system after the Torture and Custodial Death (Prevention and Punishment) Act, 2022, a law the Court traces to Pakistan's obligations under the United Nations Convention against Torture and to the dignity of man guaranteed by Article 14. Four points of practical importance emerge. First, the legislative choice is deliberate: allegations of torture against the police go to an agency other than the police, overseen by an independent commission. Second, the registration of a case follows the decision of a designated authority under Rule 5(2) of the Rules of 2002, which must rest on recorded reasons and is amenable to judicial review - but the proper challenge is to that decision, framed as such, and not a prayer for mandamus to register. Third, compliance proceedings cannot

become a second round of litigation on the merits; a party who accepts an order directing an inquiry, participates in it and lets the order attain finality cannot later contend that the course it prescribed was impermissible. Fourth, where a want of reasons is established, the ordinary consequence is a direction to reconsider in accordance with law, not a writ directing registration. The judgment also restates, following Younas Abbas (PLD 2016 SC 581) and Khizer Hayat (PLD 2005 Lahore 470), that the Ex-Officio Justice of the Peace acts quasi-judicially and is neither an automated conduit nor a post office, while cautioning that a report called for by him cannot become a vehicle for a roving inquiry into the truth of the allegations.

LEGAL PROPOSITIONS (VERBATIM)

— The writ presupposes a legal duty owed to the petitioner and a corresponding legal right vested in him, and where either is absent the writ cannot be issued.

— it will not dictate the manner of its exercise or the conclusion to be reached, for that would be to substitute the judgment of the Court for that of the authority chosen by the legislature.

— The legislative choice is deliberate. Allegations of torture against the police are entrusted to an agency other than the police, and its work is overseen by an independent commission, so that the inquiry into the conduct of public officials is not left to their own department.

— A complaint of custodial torture is not dealt with under Section 154 Cr.P.C. by an officer in charge of a police station. It is taken up by the FIA, and the registration of a case follows the decision of the designated authority under the Rules.

— The scheme thus strikes a careful balance between two competing concerns. On the one hand, it protects the complainant against an arbitrary refusal to register a case; on the other, it shields public officials from the registration of a case against them without prior scrutiny by a responsible authority.

— The Ex-Officio Justice of the Peace is, therefore, neither an automated conduit nor a post office, bound to direct registration of a case upon the mere presentation of an application alleging a cognizable offence.

— It cannot, however, be permitted to become a vehicle for a roving inquiry into the truth or falsity of the allegations, which remains the exclusive preserve of the investigating agency and, ultimately, of the trial court.

— The impugned order was passed in proceedings for compliance with the order dated 11.10.2025, and such proceedings are, by their very nature, confined to the four corners of the order sought to be complied with. Their purpose is to secure compliance of an order, not to reopen it.

— Even where a want of reasons is established, the appropriate consequence is ordinarily a direction to reconsider the matter in accordance with law, not a writ directing the registration of a case.

— A Medico Legal Examination Certificate, particularly one founded on an examination conducted after some delay, may establish the existence of injuries. It does not, by itself, establish who caused them, the circumstances in which they were caused, or the involvement of the police officials named.

LEGAL PRINCIPLES EXPOUNDED

Mandamus enforces a duty imposed by law in imperative terms; where the law vests discretion, the Court may require its exercise but will not dictate the manner of exercise or the conclusion.

Source: *it will not dictate the manner of its exercise or the conclusion to be reached, for that would be to substitute the judgment of the Court for that of the authority chosen by the legislature.*

Authority: *Secretary Finance v. Ghulam Safdar, 2005 SCMR 534; Islamic Republic of Pakistan v. Muhammad Saeed, PLD 1961 SC 192*

Under the Act of 2022 complaints of custodial torture against public officials fall within the exclusive investigative jurisdiction of the FIA under the supervision of the National Commission for Human Rights, and are not dealt with under section 154, Cr.P.C.

Source: *A complaint of custodial torture is not dealt with under Section 154 Cr.P.C. by an officer in charge of a police station. It is taken up by the FIA, and the registration of a case follows the decision of the designated authority under the Rules.*

Authority: *Torture and Custodial Death (Prevention and Punishment) Act, 2022, ss. 5(1), 5(3) and 16; FIA (Inquiries and Investigations) Rules, 2002, Rules 5(2) and 5(4)*

The statutory scheme balances two concerns: protecting the complainant against arbitrary refusal to register a case, and shielding public officials from registration without prior scrutiny by a

responsible authority whose decision must rest on recorded reasons and is amenable to judicial review.

Source: *The scheme thus strikes a careful balance between two competing concerns. On the one hand, it protects the complainant against an arbitrary refusal to register a case; on the other, it shields public officials from the registration of a case against them without prior scrutiny by a responsible authority.*

Authority: *2026 LHC 8659, para 8; Zubaida Qureshi v. Ex-Officio Justice of Peace, 2024 LHC 3636*

An Ex-Officio Justice of the Peace under section 22-A(6) acts quasi-judicially and is not bound to direct registration on the mere presentation of an application; where he calls for a report it must be considered, but it cannot become a vehicle for a roving inquiry into the truth of the allegations.

Source: *The Ex-Officio Justice of the Peace is, therefore, neither an automated conduit nor a post office, bound to direct registration of a case upon the mere presentation of an application alleging a cognizable offence.*

Authority: *Younas Abbas v. Additional Sessions Judge, Chakwal, PLD 2016 SC 581; Khizer Hayat v. Inspector-General of Police (Punjab), PLD 2005 Lahore 470*

Compliance proceedings are confined to the four corners of the order sought to be enforced; their purpose is to secure compliance, not to reopen the order, and a party who accepted and acted upon it cannot later impugn the course it prescribed.

Source: *The impugned order was passed in proceedings for compliance with the order dated 11.10.2025, and such proceedings are, by their very nature, confined to the four corners of the order sought to be complied with. Their purpose is to secure compliance of an order, not to reopen it.*

Authority: *2026 LHC 8659, para 10*

OPERATIVE ORDER

The upshot of the above discussion is that the impugned order dated 04.02.2026 suffers from no illegality, perversity or jurisdictional defect warranting interference in the exercise of constitutional jurisdiction, and no case is made out for a writ of mandamus against the FIA. The instant petition, being devoid of merit, is accordingly dismissed. The petitioner shall, however, be at liberty to file a private complaint before the court of competent jurisdiction, which, if filed, shall be decided on its own merits strictly in accordance with law, uninfluenced by any observation made herein or by the closure of the FIA inquiry.

■ **View Full Judgment**

CONSTITUTIONAL - REGULATION OF TUITION FEE OF PRIVATE MEDICAL AND DENTAL INSTITUTIONS - STATUTORY COMPETENCE OF THE PM&DC UNDER THE PREAMBLE AND SECTIONS 6, 9 AND 20(7) AND (8) - ARTICLE 18 PROPORTIONALITY AND ARTICLE 25 - SCOPE OF A POWER TO 'REGULATE'

The University of Faisalabad and another v. Federation of Pakistan and others (with connected petitions by institutions and students)

APPROVED FOR REPORTING. INSTITUTIONS' PETITIONS DISMISSED; STUDENTS' PETITIONS ALLOWED WITH DIRECTIONS TO IMPLEMENT THE NOTIFICATIONS.

2026 LHC 8618 (W.P. No. 43022 of 2026 and connected petitions) · Bench: Khalid Ishaq, J · Decided: Announced and dictated 30 October 2026; signed 6 November 2026 · Uploaded: 7 November 2026 (straggler)

FACTS

Private medical and dental institutions challenged notifications of the Pakistan Medical and Dental Council capping annual tuition fee, while students sought their implementation. The regulatory background included a joint statement of the PM&DC and the Pakistan Association of Medical Institutions, recorded in an order of the Islamabad High Court dated 4 February 2026, by which the DPM Committee reaffirmed capping of annual tuition fee for MBBS and BDS at PKR 1.81 million, allowed a maximum annual increase of 5 per cent for the academic session 2025-26 with future adjustments linked to the Consumer Price Index, fixed the maximum permissible profit for private institutions at 20 per cent of revenue, and permitted application for conditional enhancement up to PKR 2.5 million strictly on audited financial accounts, disputes to be resolved by a designated Fee Committee including three PAMI members. The impugned notification of 11 March 2026 followed scrutiny of audited accounts by a specially constituted Fee Justification Committee. On the audited accounts before the Council, University Medical and Dental College, Faisalabad showed income of Rs. 5.099 billion and profit of Rs. 378.659 million for financial year 2025 and was found liable to refund Rs. 841,317 per

student; FMH College of Medicine and Dentistry, Lahore showed income of Rs. 1.867 billion and profit of Rs. 111.941 million and was found liable to refund Rs. 741,802 per student.

LEGAL ISSUE

Does the PM&DC possess statutory competence to scrutinise, regulate and determine tuition fee, including by imposing permissible limits; and do such limits infringe Article 18 on proportionality grounds or Article 25 by treating medical and dental institutions differently from other professional institutions?

HOLDING

A conjoint reading of the Preamble, sections 6 and 9 and sub-sections (7) and (8) of section 20 establishes that the PM&DC has authority and jurisdiction to scrutinise, regulate and determine tuition fee, including imposition of permissible limits within that statutory framework; the 'proposed fee' and its 'justification' have regulatory consequences, and the contrary construction would leave the Council with a duty to receive the proposal but without the authority to evaluate it effectively. Generalia specialibus non derogant and expressio unius est exclusio alterius do not assist, because no conflict is established merely because the specific provision requires a proposal and its justification without enumerating every consequential step, and because section 9(2) expressly preserves generality; sections 9 and 20 must operate harmoniously. A power to regulate has no fixed meaning and takes its colour from the object and context; in the absence of restrictive words it is plenary over the subject and may in some circumstances extend to prohibition, while the narrower line of authority concerns who may decide individual disputes rather than the content of the general rules that may be made. On Article 18, proportionality requires consideration whether the measure pursues a compelling public interest, is rationally connected to it, goes no further than reasonably necessary and strikes a fair balance; the relevant interest is protection of students against unjustified financial demands together with the standards and continuity of medical education, and the framework - preceded by scrutiny of audited accounts, distinguishing institutions by the material submitted, and providing for conditional enhancement and CPI-linked adjustment - was not shown to impose a burden plainly excessive. On Article 25, medical and dental institutions fall within a distinct legislative and regulatory scheme and the comparison with other professional education does not establish discrimination.

LEGAL SIGNIFICANCE

The leading authority on fee regulation of private medical and dental institutions under the PM&DC Act, and of direct consequence to the refund liabilities fixed per student. Three strands deserve attention. First, the Court locates the Council's competence in the statute itself rather than in a general appeal to public interest, meeting the requirement of a identified legal source; and it holds that delegated legislation must remain ancillary and cannot create substantive rights, obligations or disabilities not contemplated by the legislature. Second, the survey of what a statutory power to 'regulate' includes - plenary over the subject absent restrictive words, capable of extending to prohibition where suppression is the only efficacious regulation, but confined when the question is who may adjudicate individual disputes - is a genuinely useful piece of reasoning for any regulated sector, and reconciles two apparently divergent lines of authority. Third, the Article 18 analysis applies a structured four-stage proportionality test and shows how audited financial material bears on the balancing exercise: positive profits do not establish that every fee limit meets legitimate future costs, but they provide no support for a contention of commercial unviability. The Court also observed that institutions imparting medical education cannot assume the character of purely commercial enterprises divorced from their responsibility to society, and warned against retaliatory treatment of students who sought enforcement of their rights, noting the availability of contempt proceedings under Article 204.

LEGAL PROPOSITIONS (VERBATIM)

> *— However, the exercise of such power must remain ancillary to the statute and cannot enlarge its scope or create substantive rights, obligations or disabilities not contemplated by the legislature.*
>
> *— establishes that the PM&DC possesses the authority and jurisdiction to scrutinize, regulate and determine tuition fee*

— The "proposed fee" and its "justification" have regulatory consequences; the contrary construction would leave the Council with a duty to receive the proposal but without the authority necessary to evaluate it effectively.

— A ceiling is not outside the Council's competence merely because it applies generally. Its formulation must, nevertheless, retain a rational connection with the relevant financial considerations and must not defeat the statutory opportunity to justify a proposed structure.

— The word 'regulate' has no fixed meaning and Courts read it according to the object and context of the statute.

— carries with it full power over the things subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject. The power to regulate implies the power to check and may imply the power to prohibit under certain circumstances as where the best or only efficacious regulation consists of suppression.

— Neither a presumption in favour of validity nor a liberal construction authorizes a subordinate instrument to enlarge the parent enactment.

— The inquiry, however, is not concluded merely by identifying an interference with economic freedom. It requires consideration whether the measure pursues a compelling public interest, is rationally connected to that interest, goes no further than reasonably necessary to achieve it and maintains a fair balance between the burden imposed upon the institutions and the public benefit sought.

— Positive profits do not, by themselves, determine whether every fee limit meets an institution's legitimate future costs; they do, however, provide no support for the contention that the regulatory framework is shown on this record to render these institutions commercially unviable.

— Institutions imparting such education cannot, therefore, be permitted to assume the character of purely commercial enterprises, divorced from their overriding responsibility towards society.

LEGAL PRINCIPLES EXPOUNDED

The PM&DC's authority to scrutinise, regulate and determine tuition fee, including by imposing permissible limits, flows from a conjoint reading of the Preamble, sections 6 and 9 and sub-sections (7) and (8) of section 20 of the PM&DC Act, and not from a general invocation of public interest.

Source: *The "proposed fee" and its "justification" have regulatory consequences; the contrary construction would leave the Council with a duty to receive the proposal but without the authority necessary to evaluate it effectively.*

Authority: *2026 LHC 8618, paras 21-22; Abwa Knowledge Village (Pvt.) Ltd. v. Federation of Pakistan, 2021 MLD 1455*

Delegated power must remain ancillary to the parent statute and cannot enlarge its scope or create substantive rights, obligations or disabilities not contemplated by the legislature; neither a presumption of validity nor a liberal construction can cure that defect.

Source: *However, the exercise of such power must remain ancillary to the statute and cannot enlarge its scope or create substantive rights, obligations or disabilities not contemplated by the legislature.*

Authority: *2026 LHC 8618, paras 21 and 26*

A statutory power to 'regulate' has no fixed meaning and takes its colour from the object and context; absent restrictive words it is plenary over the subject and may extend to prohibition where suppression is the only efficacious regulation.

Source: *carries with it full power over the things subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject. The power to regulate implies the power to check and may imply the power to prohibit under certain circumstances as where the best or only efficacious regulation consists of suppression.*

Authority: *K. Ramanathan v. State of Tamil Nadu, AIR 1985 SC 660; Karachi Electric Supply Corporation Ltd. v. NIRC, PLD 1982 SC 125*

Proportionality under Article 18 requires a compelling public interest, a rational connection to it, a measure going no further than reasonably necessary, and a fair balance between the burden imposed and the public benefit sought.

Source: *The inquiry, however, is not concluded merely by identifying an interference with economic freedom. It requires consideration whether the measure pursues a compelling public interest, is rationally connected to that*

interest, goes no further than reasonably necessary to achieve it and maintains a fair balance between the burden imposed upon the institutions and the public benefit sought.

Authority: *2026 LHC 8618, para 30; Peshawar High Court Bar Association, applied*

Article 25 permits reasonable classification based on intelligible differentia with a rational nexus to the statutory object, and is attracted only on an apple-to-apple comparison; medical and dental institutions fall within a distinct regulatory scheme.

Source: *Medical and dental institutions fall within a distinct legislative and regulatory scheme, involving prescribed clinical training, institutional recognition and professional qualifications.*

Authority: *Hadayat Ullah v. Federation of Pakistan, 2022 SCMR 1691; Government of the Punjab v. Ch. Abdul Sattar Hans, 2015 SCMR 915*

OPERATIVE ORDER

For the foregoing reasons, the instant Constitutional Petition alongwith the two connected petitions challenging the Impugned Notifications are dismissed. The Constitutional Petitions filed by the Petitioner Students, seeking implementation of the Impugned Notifications are allowed with a direction to the PM&DC and the Institutions concerned to implement the Impugned Notifications in accordance with their terms, to the extent applicable to the respective Petitioner Students.

■ **View Full Judgment**

CONSTITUTIONAL - INTRA COURT APPEAL UNDER SECTION 3(2) OF THE LAW REFORMS ORDINANCE, 1972 - STATE LAND - CONVERSION OF A TEMPORARY CULTIVATION LEASE SCHEME TO A LAMBARDARI GRANT - EFFECT OF TENTATIVE OBSERVATIONS IN AN EARLIER ORDER - LOCUS STANDI OF AN UNAUTHORISED OCCUPANT

Masood Ahmad v. Member (Colonies), Board of Revenue and others

APPROVED FOR REPORTING. APPEAL DISMISSED.

2026 LHC 8646 (I.C.A. No. 663 of 2017) · Bench: Ch. Muhammad Iqbal and Muzamil Akhtar Shabir, JJ · Decided: 10 November 2026 · Uploaded: 10 November 2026

FACTS

The appellant's application for grant of proprietary rights over land measuring 76 kanals 13 marlas in Chak No. 76/EB, Tehsil Arif Wala, District Pakpattan was dismissed by the Member (Colonies), Board of Revenue on 28 August 2014, which also directed the District Collector, Pakpattan to resume 71 kanals 18 marlas illegally occupied by the appellant and to recover Tawan. His writ petition was dismissed on 4 March 2015 as not maintainable and frivolous, but paragraph 8 of that order observed that the land stood reserved under the Temporary Cultivation Lease Scheme and would be disposed of in accordance with the Government Policy dated 26 November 2013. Meanwhile respondent No. 3 had applied on 24 January 2013 for conversion of the land to the Lambardari Scheme, and the Court directed the Member (Colonies) on 28 January 2015 to decide that application. During those proceedings the appellant made an oral request to be impleaded, which was regretted, and the land was included in the Lambardari Scheme by order dated 18 May 2015. His challenge to that order was dismissed by a learned Single Judge on 25 April 2017, giving rise to the Intra Court Appeal.

LEGAL ISSUE

Can a person in unauthorised occupation of state land claim enforcement of tentative observations recorded in an earlier judicial order, and resist the Government's conversion of the purpose for which its own land is to be used; and is such a person an aggrieved person for the purposes of constitutional jurisdiction?

HOLDING

No. The land was owned by the Provincial Government and not by the appellant, who was an illegal occupant throughout. The Government, being owner, was fully authorised to define the purpose for which the land was to be used and could convert its use from one purpose to another of its own free will, which could not be made subject to the whims of an illegal occupant, such a person having no right to occupy the land absent a right created in his favour under some provision of law. The observations in paragraph 8 of the order dated 4 March 2015 were purely tentative, did not affect the merits, caused no prejudice and created no vested right

capable of enforcement through the process of law; the revenue authorities, exercising jurisdiction on behalf of the Provincial Government, were well within their jurisdiction to decide the purpose for which government land would be used. Relief through extraordinary constitutional jurisdiction is available to an aggrieved person, and an unauthorised occupant is not an aggrieved person where the property is allotted by the competent authority to a person held entitled to it. No illegality, jurisdictional defect or misreading or non-reading of the record was shown.

LEGAL SIGNIFICANCE

A concise but well-fortified statement of two propositions that recur constantly in revenue and constitutional litigation over state land. The first is that observations recorded by a court on a tentative assessment do not affect the merits of the main case and create no vested right - a point supported here by an unusually long line of authority running from Dr. Maqbool Ahmed (2001 SCMR 737) and Sardar (2002 SCMR 1298) through SHEHRI-CBE (2006 SCMR 1202), Haji Amin (2008 SCMR 133), Ahmad Ali (PLD 2009 SC 453) and Anjum Aqeel Khan (2015 SCMR 1348) to Mian Muhammad Nawaz Sharif (PLD 2018 SC 1) and the recent Abdullah v. Waryam (2026 SCMR 1042). Practitioners should be slow to build a case on favourable observations in an order that dismissed the petition. The second is that an unauthorised occupant of state land lacks the standing to complain of the owner's decision about how its land is used or to whom it is allotted, following Muhammad Aslam (1999 SCMR 1331) and the principle that discretionary and equitable relief is not available to one shown in the revenue record as an illegal occupant.

LEGAL PROPOSITIONS (VERBATIM)

— The government being owner was fully authorized to define the purpose for which the land was to be used and it could convert its use from one purpose to another on its own free will, which could not be made subject to the whims of an illegal occupant for the reason that such a person has no right to occupy the land without there being a right created in his favour under some provision of law.

— The High Court observed that since in the Khasra Girdawari the petitioner had been shown as an illegal occupant of the land in dispute, he was, therefore, not entitled to any relief in the equitable and discretionary jurisdiction of the Court.

— those observations were purely tentative in nature and did neither effect the merits of the case nor caused prejudice to any party or create a vested right in favour of the said party for enforcement of the same through the process of law

— wherein it is mentioned that observations of the Court based on tentative assessment do not affect the merits of the main case.

— Relief through extraordinary constitutional jurisdiction was to be granted to an aggrieved person and not to a person who was not aggrieved of impugned order or proceedings.

— In the instant case, the appellant being an unauthorized occupant was not an aggrieved person in case the said property was allotted by the competent authority to a person held entitled to the same.

LEGAL PRINCIPLES EXPOUNDED

Observations recorded by a court on a tentative assessment do not affect the merits of the main case, cause no prejudice and create no vested right enforceable through the process of law.

Source: *wherein it is mentioned that observations of the Court based on tentative assessment do not affect the merits of the main case.*

Authority: *Dr. Maqbool Ahmed v. Province of the Punjab, 2001 SCMR 737; Ahmad Ali alias Ali Ahmad v. Nasar-ud-Din, PLD 2009 SC 453; Mian Muhammad Nawaz Sharif v. Imran Ahmed Khan Niazi, PLD 2018 SC 1; Abdullah v. Waryam, 2026 SCMR 1042*

The Government, as owner of state land, may define and convert the purpose for which its land is to be used, and that decision cannot be made subject to the claims of a person in unauthorised occupation.

Source: *The government being owner was fully authorized to define the purpose for which the land was to be used and it could convert its use from one purpose to another on its own free will, which could not be made subject to the whims of an illegal occupant for the reason that such a person has no right to occupy the land without there being a right created in his favour under some provision of law.*

Authority: *2026 LHC 8646, para 6; Colonization of Government Lands Act, 1912*

A person shown in the revenue record as an illegal occupant is not entitled to relief in the equitable and discretionary jurisdiction of the Court.

Source: *The High Court observed that since in the Khasra Girdawari the petitioner had been shown as an illegal occupant of the land in dispute, he was, therefore, not entitled to any relief in the equitable and discretionary jurisdiction of the Court.*

Authority: *Muhammad Aslam v. Muhammad Ismail, 1999 SCMR 1331*

Relief in constitutional jurisdiction is for an aggrieved person; an unauthorised occupant is not aggrieved where the property is allotted by the competent authority to a person found entitled to it.

Source: *In the instant case, the appellant being an unauthorized occupant was not an aggrieved person in case the said property was allotted by the competent authority to a person held entitled to the same.*

Authority: *Gulistan Textile Mills Ltd. v. Member (Consolidation), Board of Revenue, 1997 MLD 449 Lahore; Abdul Sattar v. Assistant Commissioner, Gujranwala, 1988 MLD 1321 Lahore*

OPERATIVE ORDER

On the basis of aforementioned reasons, there is no ground for us to warrant interference in the impugned order passed by the learned Single Judge of this Court, whereby the constitution petition, filed by the appellant, has been dismissed. ... For what has been discussed above, this appeal being devoid of merits is dismissed.

■ **View Full Judgment**

Sindh High Court

3 judgments

SINDH SALES TAX ON SERVICES - WHETHER PUBLIC SERVICE MESSAGES TELECAST FOR A FEE ARE THE TAXABLE SERVICE OF ADVERTISEMENT ON TELEVISION - WHETHER THE WITHHOLDING RULES SHIFT LIABILITY FROM THE PROVIDER TO THE RECIPIENT

M/s. Apna TV Channel (Pvt.) Ltd. v. The Commissioner (Appeals), SRB and others

APPROVED FOR REPORTING. REFERENCE ANSWERED AGAINST THE APPLICANT AND DISMISSED.

2026 SHC KHI 2173 (Spl. Sales Tax Reference Application No. 180 of 2018) · Bench: Agha Faisal and Dr. Shah Nawaz Memon, JJ (judgment by Dr. Shah Nawaz Memon, J) · Decided: Heard 5 November 2026; judgment 11 November 2026 · Uploaded: 11 November 2026

FACTS

The applicant operates a television channel from Karachi, is registered with the Sindh Revenue Board and provides advertisement services under tariff heading 9802.1000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011. On a desk audit the Assistant Commissioner, by Order-in-Original No. 75 of 2013 dated 8 May 2013, assessed tax of Rs. 4,248,876 with default surcharge and a penalty of Rs. 212,444, under three heads: Rs. 1,452,341 on services where the applicant had shown the tax as withheld by clients declared against a dummy registration number (9999997-8) who were not withholding agents; Rs. 532,493 and Rs. 2,157,375 on services the applicant had itself declared exempt; and Rs. 106,607 charged but not paid. The Commissioner (Appeals) dismissed the first appeal on 12 February 2014. The Tribunal, by order dated 21 May 2018, maintained the assessment save for amounts reconciled before it, including Rs. 328,372 paid against services provided to the Federal Board of Revenue, and held that public service messages telecast for consideration are advertisements on television, that taxability does not depend on the contents of the advertisement, that the exemption for advertisements financed under grants-in-aid was not substantiated, and that liability rested with the applicant as provider.

LEGAL ISSUE

Does a television channel which telecasts public service messages for a fee provide the taxable service of advertisement on television; and in the tax periods in question, was the tax on that service payable by the channel or by those who bought its airtime under the Sindh Sales Tax Special Procedure (Withholding) Rules, 2011?

HOLDING

On the first question, the exemption notified for advertisements financed out of grant-in-aid funds is narrowly drawn and its existence indicates that, without such a provision, advertisements of a public or social character remain within the entry; the corresponding Punjab statute excludes certain public service messages in express words whereas the Act of 2011 contained no such exclusion. That some clients were departments of Government does not matter: a Federal or Provincial Government is a person under the Act, and the Withholding Rules themselves list offices and departments of Government among withholding agents, which presupposes that taxable services provided to Government attract the tax. The tax is on the provision of the service; liability does not depend on whether the provider chose to pass it on, and an omission to charge it does not reduce what is due. On the second question, section 9(1) placed liability on the registered person providing the service and section 9(3) enabled it to be placed by notification on the recipient. The Rules do not do so: they specify persons as withholding agents for the purposes of deduction and deposit, operate only where the recipient falls within the specified class, and work by deduction at source and deposit with Government. They do not declare that the provider ceases to be liable; the provider is discharged to the extent the tax is in fact deducted and deposited, but tax neither deducted nor deposited remains his liability. That reading is borne out by the later history: personal liability of a defaulting withholding agent was introduced only in 2019 by section 13(3).

LEGAL SIGNIFICANCE

Two determinations of wide application to the Sindh services tax. First, the taxability of a service does not turn on the content or social purpose of what is telecast: a public service message aired for consideration is an advertisement on television, and the existence of a narrow exemption for grant-in-aid funded advertisements confirms rather than displaces that conclusion. The contrast drawn with the Punjab statute, which excludes certain public service messages expressly, is a useful illustration of how comparative provincial drafting can inform construction. Second, and of broader consequence, the judgment settles that a withholding regime is a machinery for collection and not a transfer of the charge: the Rules operate only where the recipient falls within the specified class, and even then the provider remains liable save to the extent tax was in fact deducted and deposited. The Court's reliance on the subsequent insertion of section 13(3) by the Sindh Finance Act, 2019 - which for the first time made a defaulting withholding agent personally liable - as confirming that no such liability existed earlier is a model of construction by reference to legislative history. Taxpayers who have shown tax as withheld by clients who were not withholding agents, or against dummy registration numbers, should expect the demand to stand.

LEGAL PROPOSITIONS (VERBATIM)

— narrowly drawn exemption for one class of donor-funded advertisements indicates that, without such a provision, advertisements of a public or social character remain within the entry.

— The Tribunal also noticed that the corresponding Punjab statute excludes certain public service messages in express words, whereas the Act, 2011 contained no such exclusion.

— Learned counsel for the respondents is right, too, that the tax is on the provision of the service. The liability does not depend on whether the provider chose to pass it on to its client, and an omission to charge it does not reduce what is due.

— The Tribunal was justified in holding that the public service messages aired by the applicant for consideration were provided in the course of an economic activity, and constituted the taxable service of advertisement on television under section 3(1) read with tariff heading 9802.1000.

— First, the Rules operate only where the recipient falls within the class specified; where it does not, section 9(1) applies unaltered. Second, where the Rules do apply, they work by deduction at source from the consideration due to the provider and its deposit with the Government. They do not declare that the provider ceases to be liable.

— The provider is discharged to the extent that the tax is in fact deducted and deposited, since the same tax cannot be recovered twice; but tax that has been neither deducted nor deposited remains the provider's liability under section 9(1).

— In the tax periods in question, the Act, 2011 contained no provision making a withholding agent who failed to deduct or deposit the tax personally liable for it; that liability was introduced only in 2019, by section 13(3).

— The Tribunal's determination that the liability rested with the applicant as provider of the service is in accordance with section 9 of the Act, 2011 and the Withholding Rules, 2011.

LEGAL PRINCIPLES EXPOUNDED

Taxability of advertisement on television does not depend on the content or social character of what is telecast; a narrowly drawn exemption for one class of donor-funded advertisements indicates that such advertisements otherwise remain within the tariff entry.

Source: *narrowly drawn exemption for one class of donor-funded advertisements indicates that, without such a provision, advertisements of a public or social character remain within the entry.*

Authority: *2026 SHC KHI 2173, para 18; Notification No. SRB.Leg(1)/2011 dated 1 July 2011, serial No. 2*

The tax is on the provision of the service; liability does not depend on whether the provider passed it on, and an omission to charge it does not reduce what is due. A Federal or Provincial Government is a person under the Act and services provided to Government attract the tax.

Source: *Learned counsel for the respondents is right, too, that the tax is on the provision of the service. The liability does not depend on whether the provider chose to pass it on to its client, and an omission to charge it does not reduce what is due.*

Authority: *2026 SHC KHI 2173, para 19; Sindh Sales Tax on Services Act, 2011, s. 2(27)*

A withholding regime is machinery for collection, not a transfer of the charge: the Rules operate only where the recipient falls within the specified class, work by deduction at source and deposit, and do not declare that the provider ceases to be liable.

Source: *First, the Rules operate only where the recipient falls within the class specified; where it does not, section 9(1) applies unaltered. Second, where the Rules do apply, they work by deduction at source from the consideration due to the provider and its deposit with the Government. They do not declare that the provider ceases to be liable.*

Authority: *Sindh Sales Tax Special Procedure (Withholding) Rules, 2011, Rules 1(2)(f) and 3; OGDCL, 2021 PTD 1124*

The provider is discharged only to the extent the tax was in fact deducted and deposited; tax neither deducted nor deposited remains his liability under section 9(1).

Source: *The provider is discharged to the extent that the tax is in fact deducted and deposited, since the same tax cannot be recovered twice; but tax that has been neither deducted nor deposited remains the provider's liability under section 9(1).*

Authority: *2026 SHC KHI 2173, para 22; PTCL, 2025 PTD 1838*

The subsequent insertion of personal liability for a defaulting withholding agent confirms that no such liability existed in the earlier tax periods.

Source: *In the tax periods in question, the Act, 2011 contained no provision making a withholding agent who failed to deduct or deposit the tax personally liable for it; that liability was introduced only in 2019, by section 13(3).*

Authority: *Sindh Sales Tax on Services Act, 2011, s. 13(3), added by the Sindh Finance Act, 2019*

OPERATIVE ORDER

The reference application is answered in the above terms and is dismissed. ... A copy of this judgment under the seal of this Court and the signature of the Registrar shall be sent to the learned Appellate Tribunal, Sindh Revenue Board, in terms of section 63(5) of the Act, 2011.

■ View Full Judgment

INCOME TAX - TAX CREDIT UNDER SECTION 65E OF THE INCOME TAX ORDINANCE, 2001 - MEASUREMENT OF 'TOTAL EQUITY INCLUDING NEW EQUITY' FOR AN INDUSTRIAL UNDERTAKING ESTABLISHED BEFORE 1 JULY 2011 - RULES OF CONSTRUCTION IN FISCAL STATUTES

Commissioner Inland Revenue, Legal Zone, Medium Taxpayers Office, Karachi v. M/s. Mapak Edible Oils (Pvt.) Limited

APPROVED FOR REPORTING. REFERENCE DISPOSED OF; TRIBUNAL'S ORDER MODIFIED TO THE EXTENT OF THE ANSWER ON TOTAL EQUITY.

2026 SHC KHI 2168 (I.T.R.A. No. 90 of 2021) · Bench: Mohammad Abdur Rahman and Dr. Shah Nawaz Memon, JJ (judgment by Dr. Shah Nawaz Memon, J) · Decided: Heard 21 September 2026; judgment 10 November 2026 · Uploaded: 10 November 2026

FACTS

The respondent, a private limited company refining and marketing edible oils, declared income of Rs. 775,177,854 for tax year 2016. Its return was selected for audit and the deemed assessment was amended on 1 March 2018. It had issued fresh shares for cash of Rs. 373,000,000 to finance investment in plant and machinery and claimed the credit under section 65E at 35.93 per cent of the tax payable, arrived at by setting the new equity against paid up capital alone - Rs. 665,200,000 plus Rs. 373,000,000, that is Rs. 1,038,200,000. The assessing officer, following the determination for tax year 2015 confirmed by the Commissioner (Appeals) in appeal order No. 07 dated 12 April 2017, included unappropriated profit of Rs. 1,520,639,000 in the denominator, so that total equity came to Rs. 2,558,839,000 and the credit was restricted to 14.58 per cent. The assessing officer also charged Workers' Welfare Fund at 2 per cent, amounting to Rs. 15,976,641, under the federal Ordinance of 1971. The Appellate Tribunal Inland Revenue, Karachi decided in the respondent's favour by order dated 12 February 2021.

LEGAL ISSUE

In computing the tax credit under section 65E(3) of the Income Tax Ordinance, 2001 for an industrial undertaking established before 1 July 2011, do retained earnings and accumulated or unappropriated profits form part of 'the total equity including new equity'?

HOLDING

Yes. For the purposes of section 65E(3), retained earnings and accumulated or unappropriated profits form part of the total equity of the company, so that the proportion of 14.58 per cent determined in the amended assessment accords with the provision and the proportion of 35.93 per cent, which leaves those profits out of account, does not. Sub-section (3A), inserted by the Finance Act, 2016, is directed to equity raised through issuance of new shares measured against the total amount invested in plant and machinery, and not to equity at all in the relevant sense; the assessment for tax year 2016, both appellate orders and the parties' own computations all proceeded under sub-section (3) as it then stood, so sub-section (3A) does not inform the meaning of 'total equity' for the year in question. As to the competing canons of construction - resolution of a genuine ambiguity in a taxing provision in favour of the subject, and the opposite principle applicable to exemptions - both come into play only where a real doubt remains after the ordinary tools of construction have been applied; no such doubt arises, the meaning of 'total equity' following from the words of the provision read in their commercial sense and in the setting of the section. The question framed on the Workers' Welfare Fund did not arise out of the Tribunal's order and was declined.

LEGAL SIGNIFICANCE

A direct and practical answer to a question that has produced persistent disputes in section 65E claims, and one that materially reduces the credit available where a company has substantial retained earnings. The reasoning is instructive beyond the provision itself in two respects. First, the Court reads 'total equity' in its commercial sense and in the setting of the section, declining to confine it to paid up capital; and it refuses to let a later-inserted sub-section, directed to a different measure, colour the meaning of the provision that actually governed the year. Second, the treatment of the rival presumptions is a clean statement of orthodox method: the canon favouring the subject in cases of genuine ambiguity, and the stricter approach to exemptions, are both residual and come into play only after the ordinary tools of construction have been

exhausted - a point supported by Cape Brandy Syndicate [1921] 1 KB 64 and Dilip Kumar & Co. [(2018) 9 SCC 1]. The Court also declined to answer a question which, though framed on section 60A, did not arise out of the order under reference, and expressly left untouched the point the Tribunal had actually decided on the continued application of the federal Workers' Welfare Fund Ordinance, 1971 in Sindh after the provincial Act of 2014.

LEGAL PROPOSITIONS (VERBATIM)

— It follows that, for the purposes of section 65E(3), retained earnings and accumulated or unappropriated profits form part of the total equity of the company.

— Sub-section (3A) does not, therefore, inform the meaning of "total equity" for the year before us.

— Both rules come into play only where, after the ordinary tools of construction have been applied, a real doubt remains.

— For the reasons given above, no such doubt arises here: the meaning of "total equity" follows from the words of the provision, read in their commercial sense and in the setting of the section.

— As the answer to Question A rests on that construction and not on either presumption, Question B does not call for a separate answer.

— The question so framed does not, therefore, arise out of the order of the learned Tribunal, and we decline to answer it. No question has been proposed on the point the learned Tribunal actually decided, and we express no view upon it.

LEGAL PRINCIPLES EXPOUNDED

For the purposes of section 65E(3) of the Income Tax Ordinance, 2001, retained earnings and accumulated or unappropriated profits form part of the total equity of the company, and are not to be excluded in favour of paid up capital alone.

Source: *It follows that, for the purposes of section 65E(3), retained earnings and accumulated or unappropriated profits form part of the total equity of the company.*

Authority: *2026 SHC KHI 2168, para 15; Income Tax Ordinance, 2001, s. 65E(3)*

A sub-section inserted later and directed to a different measure does not inform the meaning of the provision which governed the tax year under assessment.

Source: *Sub-section (3A) does not, therefore, inform the meaning of "total equity" for the year before us.*

Authority: *2026 SHC KHI 2168, para 14; s. 65E(3A), inserted by the Finance Act, 2016*

The canon resolving a genuine ambiguity in a taxing provision in favour of the subject, and the stricter approach to exemptions, are residual: both come into play only where a real doubt remains after the ordinary tools of construction have been applied.

Source: *Both rules come into play only where, after the ordinary tools of construction have been applied, a real doubt remains.*

Authority: *Cape Brandy Syndicate [1921] 1 KB 64; Dilip Kumar & Co. [(2018) 9 SCC 1]*

A statutory expression is to be read in its commercial sense and in the setting of the section in which it appears.

Source: *For the reasons given above, no such doubt arises here: the meaning of "total equity" follows from the words of the provision, read in their commercial sense and in the setting of the section.*

Authority: *2026 SHC KHI 2168, para 16*

A question which does not arise out of the order of the Tribunal will not be answered in a reference, and no view is expressed on the point the Tribunal actually decided where no question has been proposed upon it.

Source: *The question so framed does not, therefore, arise out of the order of the learned Tribunal, and we decline to answer it. No question has been proposed on the point the learned Tribunal actually decided, and we express no view upon it.*

Authority: *2026 SHC KHI 2168, para 18*

OPERATIVE ORDER

The reference application is disposed of in the above terms. The order of the learned Tribunal dated 12.02.2021 in ITA No. 435/KB/2019 shall stand modified to the extent of the answer to Question A, and the credit under section 65E for tax year 2016 shall be computed accordingly. There shall be no order as to costs.

■ View Full Judgment

INCOME TAX - SELECTION FOR AUDIT UNDER SECTION 177 OF THE INCOME TAX ORDINANCE, 2001 - WHICH TEXT OF THE PROVISION GOVERNS A TAX YEAR - EFFECT OF CITING AN INAPPLICABLE AMENDED PROVISION WHERE THE POWER EXISTED INDEPENDENTLY

M/s. Mackinnon Mackenzie & Co. of Pakistan (Pvt.) Ltd. v. The Commissioner Inland Revenue, Zone-III, Large Taxpayers Unit, Karachi

APPROVED FOR REPORTING. REFERENCE DISMISSED; THE TRIBUNAL'S FINDING ON SELECTION FOR AUDIT MAINTAINED.

2026 SHC KHI 2169 (Income Tax Reference Application No. 111 of 2018) · Bench: Mohammad Abdur Rahman and Dr. Shah Nawaz Memon, JJ (judgment by Dr. Shah Nawaz Memon, J) · Decided: Heard 25 September 2026; decided 10 November 2026 · Uploaded: 10 November 2026

FACTS

The applicant is a private limited company engaged in ships' crew manning, overseas manpower recruitment, air travel and shipping agency, and general and insurance surveys, and also earns dividend income from its investment in Qasim International Container Terminal and rental income from its building on I.I. Chundrigar Road, Karachi. It follows a special tax year ending 31 December, so that tax year 2009 corresponds to 1 January 2008 to 31 December 2008, and its return for that year was treated as an assessment order under section 120. By letter dated 31 May 2010 the Commissioner Inland Revenue, Audit Division-II, acting under section 210, delegated to the Deputy Commissioner the power to call for the record for audit of tax year 2009 'within the meaning of sub-sections (1), (2), (6) and (10) of Section 177 of the Income Tax Ordinance, 2001 as amended by the Finance (Amendment) Ordinance, 2009'. A notice under section 176(1)(a) issued on 11 June 2010 and the applicant responded on 18 June 2010 while objecting to its selection. A notice under section 122(9) followed on 22 November 2010 setting out five proposed adjustments, to which the applicant replied in detail twice, and on 29 December 2010 the Additional Commissioner passed an order under section 122(1) and (5), principally apportioning general and administrative expenses to dividend, property and commission income under section 67 read with rule 13 of the Income Tax Rules, 2002. The Commissioner (Appeals) maintained the selection on 18 February 2013 while vacating the principal additions on merits, and the Tribunal decided on 26 December 2017.

LEGAL ISSUE

Could the applicant be selected for audit of tax year 2009 where the selection was made with reference to section 177 of the Income Tax Ordinance, 2001 as it stood after substitution by the Finance (Amendment) Ordinance, 2009?

HOLDING

The amendments made to section 177 by the Finance (Amendment) Ordinance, 2009 and the Finance Act, 2010 did not govern tax year 2009 and could not of themselves furnish or enlarge the power to select a taxpayer for audit of that year; for that year section 177 applies as it stood on the last day of the tax year, which for the applicant was 31 December 2008. That answer, however, does not avail the applicant. The power actually exercised - the selection of a single person by the Commissioner for audit of its income tax affairs, the conduct of that audit, and the amendment of its assessment under section 122 after obtaining its explanation - lies wholly within the words common to both texts. What the amendment added, namely the power to proceed without the Board's criteria or the matters in sub-section (4), the extension to 'any other person', and the best judgment consequence under sub-section (10), was neither needed for nor used in the applicant's case, save for the citation of the amended text in the letter. No prejudice was shown: the notices identified what was required, the applicant answered each proposed adjustment in detail twice, and its objection has throughout been to the label and not to anything done under it. The Court expressly declined to

rest its conclusion on the broader contention that the amendment, being procedural, operates retrospectively.

LEGAL SIGNIFICANCE

A disciplined judgment on a point of recurring importance in audit challenges. Its first limb confirms, following Power Line, that for the Income Tax Ordinance, 2001 the question which text of a provision governs is answered by asking how the statute stood at the end of the tax year, and that an amendment to section 177 is not to be treated as procedural merely because it sits in the Part headed 'Procedure' - a proposition supported by HNR Company (2022 SCMR 1240). Its second limb is the more useful in practice: the citation of an inapplicable amended provision does not vitiate the exercise of a power that existed independently under the applicable text, where the power actually used lies within the words common to both and no prejudice is shown. The Court sets out the two texts side by side to demonstrate the point, and identifies precisely what the amendment added and that none of it was used. The closing observation disposes neatly of the fruit-of-the-poisonous-tree argument: the principle that an unlawful foundation brings down the superstructure presupposes an unlawful foundation, and the selection being lawful, there is no poisoned tree and nothing that grew from it falls on that account.

LEGAL PROPOSITIONS (VERBATIM)

— The power actually exercised against the applicant, namely the selection of a single person by the Commissioner for audit of its income tax affairs, the conduct of that audit, and the amendment of its assessment under section 122 after obtaining its explanation, lies wholly within the words common to both texts.

— At no stage has the applicant said that it was misled, or hampered in its defence, by the reference to the amended text; its objection has throughout been to the label and not to anything done under it.

— Our conclusion rests on the narrower ground that the power exercised against the applicant was one that the law governing tax year 2009 conferred.

— The principle is well settled, but it presupposes an unlawful foundation, which, for the reasons given, is not the case here. The selection being lawful, there is no poisoned tree, and nothing that grew from it falls on that account.

— The amendments made to section 177 by the Finance (Amendment) Ordinance, 2009 and the Finance Act, 2010 did not govern tax year 2009 and could not, of themselves, furnish or enlarge the power to select a taxpayer for audit of that year; for that year section 177 applies as it stood on the last day of the tax year, which for the applicant was 31.12.2008.

— Its selection was an individual selection by the Commissioner, which section 177 as it stood on 31.12.2008 permitted, and it is not vitiated by the reference to the amended provision

LEGAL PRINCIPLES EXPOUNDED

For the Income Tax Ordinance, 2001, which text of a provision governs a tax year is determined by how the statute stood at the end of that tax year; an amendment to section 177 is not procedural merely because it appears in the Part headed 'Procedure'.

Source: *The amendments made to section 177 by the Finance (Amendment) Ordinance, 2009 and the Finance Act, 2010 did not govern tax year 2009 and could not, of themselves, furnish or enlarge the power to select a taxpayer for audit of that year; for that year section 177 applies as it stood on the last day of the tax year, which for the applicant was 31.12.2008.*

Authority: *2026 SHC KHI 2169, para 36; HNR Company, 2022 SCMR 1240; Power Line, applied*

Citation of an inapplicable amended provision does not vitiate the exercise of a power that existed independently under the applicable text, where the power actually exercised lies within the words common to both texts.

Source: *The power actually exercised against the applicant, namely the selection of a single person by the Commissioner for audit of its income tax affairs, the conduct of that audit, and the amendment of its assessment under section 122 after obtaining its explanation, lies wholly within the words common to both texts.*

Authority: *2026 SHC KHI 2169, para 31*

An objection founded on the label attached to a power, unaccompanied by any demonstrated prejudice to the taxpayer's defence, does not invalidate the proceedings.

Source: *At no stage has the applicant said that it was misled, or hampered in its defence, by the reference to the amended text; its objection has throughout been to the label and not to anything done under it.*

Authority: *2026 SHC KHI 2169, para 32*

The principle that an unlawful foundation brings down the superstructure raised upon it presupposes an unlawful foundation; where the selection is lawful, nothing that followed it falls on that account.

Source: *The principle is well settled, but it presupposes an unlawful foundation, which, for the reasons given, is not the case here. The selection being lawful, there is no poisoned tree, and nothing that grew from it falls on that account.*

Authority: *2026 SHC KHI 2169, para 35*

OPERATIVE ORDER

The Reference Application is dismissed. Nothing in this judgment shall affect the remand directed by the learned Tribunal on the apportionment of expenses, which shall proceed in accordance with law. There shall be no order as to costs.

View Full Judgment