Judgment Summary

Nishat Hotel and Properties Ltd. & others v. Province of Punjab & others

Court	Lahore High Court, Lahore (Division Bench)
Bench	Malik Javid Iqbal Wains, J; Abid Aziz Sheikh, J
Author	Abid Aziz Sheikh, J (for the Bench)
Lead case	Intra-Court Appeal No. 48992/2019 and 229 connected ICAs (Appendix-A)
Impugned	PLD 2019 Lahore 729 (Single Judge, W.P. 23657/2016, dated 19.07.2019)
Hearing	17 June 2026
Short orders	17 June 2026 (ICAs dismissed)
Subject	Vires of the Punjab Revenue Authority validating amendments (2016)

1. Facts

The Punjab Revenue Authority (the Authority or PRA) was created under the Punjab Revenue Authority Act, 2012 (PRA Act), which — together with the Punjab Sales Tax on Services Act, 2012 (PSTS Act) — was promulgated on 21.06.2012 and came into force on 01.07.2012. The Authority is charged with the assessment, collection and recovery of provincial sales tax on services. Under section 3(1) of the PRA Act the Authority was to be established by a Government notification, while section 3(4) required its constitution by the appointment of a Chairperson and (at the relevant time) not less than four Members.

In an earlier round of litigation, a Single Judge of the Lahore High Court, in Institute of Architects, Pakistan (Lahore Chapter) v. Province of Punjab (PLD 2016 Lahore 321, decided 25.01.2016), held that the Authority had neither been validly established under section 3(1) nor lawfully constituted, and that the appointments of the Chairperson and Members violated the PRA Act. Consequently all actions, decisions, orders and rules of the Authority — and the appointments of officers under section 39 of the PSTS Act — were declared to be without lawful authority. The Court nonetheless observed that there was no bar to the Government establishing and constituting the Authority afresh in conformity with section 3.

To cure the identified defects, the Province first promulgated the Punjab Revenue Authority (Amendment) Ordinance, 2015 (22.10.2015), which lapsed by efflux of time. It then enacted the Punjab Revenue Authority (Amendment) Act, 2016 (the First Amendment Act, in force 06.02.2016 with retrospective effect from 01.07.2012), which substituted the definition of "member" in section 2(j) to include an ex-officio member, inserted a new section 5(4), and inserted section 36 (clauses (a) and (b)). The Punjab Revenue Authority (Second Amendment) Act, 2016 (the Second Amendment Act, dated 06.09.2016) then inserted clause (c) into section 36, deeming the Authority to have been established under section 3 with effect from

01.07.2012. These enactments are together referred to as the validating amendments.

The appellants — private assessees, led by Nishat Hotel and Properties Ltd. — challenged the vires of the validating amendments. By the impugned consolidated judgment (PLD 2019 Lahore 729, dated 19.07.2019 in W.P. 23657/2016), a Single Judge dismissed the challenges but declared section 5(4) of the PRA Act ultra vires the Constitution, while holding clauses (a) and (b) of section 36 to be validly enacted. Neither the Province nor the department appealed the part of the judgment operating against them; the private assessees preferred these 230 Intra-Court Appeals (ICA No. 48992/2019 being the lead case).

2. Legal Issues

The following questions arose for determination:

- Issue I — Legislative competence: Whether the Provincial Legislature was competent to enact validating legislation curing laws and executive actions earlier declared invalid by a Court, and, if so, the limits on that competence.
- Issue II — Whether the defects were cured: Whether the validating amendments effectively cured the two foundational defects identified in Institute of Architects — non-establishment (no section 3(1) notification) and non-constitution / defective composition (Chairperson and four members not appointed; ex-officio members appointed without an enabling provision; no rules framed; "Government" meaning the Cabinet).
- Issue III — Counterfactual effect on Institute of Architects: Whether the decision in Institute of Architects would have been the same had the validating amendments been in force and the Authority been duly established and constituted — engaging section 8 of the PRA Act and the de facto doctrine.
- Issue IV — Articles 4 and 18: Whether the validating amendments, in purportedly validating unlawful appointments and actions, offend Articles 4 and 18 of the Constitution.
- Issue V — Effect of the unchallenged striking down of section 5(4): Whether the declaration of section 5(4) as ultra vires (unappealed by the Province) renders even post-constitution actions of the Authority unlawful.
- Issue VI — Scope of section 5(4): Whether section 5(4) itself presupposed that the Authority remained unconstituted until the validating amendments.
- Issue VII — Past and closed transactions / vested rights: Whether the validating amendments impermissibly reach past and closed transactions or vested rights accrued to the appellants.

3. Litigation History

- Institute of Architects, Pakistan (Lahore Chapter) v. Province of Punjab, PLD 2016 Lahore 321 (25.01.2016) — Single Judge declared the Authority neither validly established nor lawfully constituted; all its actions, appointments and rules struck down.
- ICA No. 92 of 2016 (Province of Punjab v. Educational Services (Private) Limited) — the Province's appeal against Institute of Architects was dismissed by a Division Bench on 20.12.2016.
- Civil Petition No. 423-L of 2017 — the matter was carried to the Supreme Court of Pakistan, where the petition was also dismissed; Institute of Architects thereby attained finality.

• Validating amendments — enacted during the pendency of the above ICA: the Ordinance of 22.10.2015 (lapsed), the First Amendment Act (06.02.2016, retrospective from 01.07.2012) and the Second Amendment Act (06.09.2016).

• Impugned judgment, PLD 2019 Lahore 729 (19.07.2019, W.P. 23657/2016 and connected) — a Single Judge dismissed the challenges to the validating amendments, holding: (i) clause (c) of section 36 cured the non-issuance of the section 3(1) notification, so the Authority stood established from 01.07.2012; (ii) clauses (a) and (b) of section 36 were competently enacted and validated the levy, collection and the Chairperson's actions (including rule-making) from 01.07.2012 onwards; and (iii) section 5(4), inserted by the First Amendment Act, was ultra vires as "susceptible to misuse."

• Present Intra-Court Appeals — 230 ICAs (Appendix-A) filed by the private assessees against the impugned judgment; heard together and dismissed by short orders dated 17.06.2026, of which this is the detailed judgment.

4. What the Court Held

The Division Bench (Abid Aziz Sheikh, J, for the Bench) dismissed all 230 Intra-Court Appeals, finding no illegality in the impugned judgment. Its conclusions were:

• (i) The Provincial Legislature was competent to enact the validating amendments. The power to validate laws and executive actions is ancillary and incidental to the plenary power to legislate on the subject; sales tax on services falls within the provincial domain.

• (ii) The establishment defect was cured by section 36(c), which deemed the Authority established under section 3 with effect from 01.07.2012; no separate section 3(1) notification was needed (that requirement being impliedly repealed).

• (iii) The constitution / composition defect was cured: the amended definition in section 2(j) validated the ex-officio members with retrospective effect, so that from 15.06.2015 the Authority comprised one Chairperson and four members, satisfying section 3(4).

• (iv) The Mustafa Impex argument (that "Government" means the Cabinet) did not invalidate the 15.06.2015 appointments, since that ruling (18.08.2016) cannot apply retrospectively; nor was non-specification of the ex-officio offices a defect.

• (v) Had the validating amendments been in force and the Authority duly established and constituted, the outcome in Institute of Architects would not necessarily have been the same — section 8 of the PRA Act would have been attracted and the de facto doctrine available.

• (vi) The validating amendments do not offend Articles 4 and 18: they validate the acts and recoveries of the Authority (not, as such, the impugned appointments), which are in any event protected by the de facto doctrine.

• (vii) The unchallenged striking down of section 5(4) is immaterial: that provision was transitional and became otiose once the Authority was constituted on 15.06.2015; its invalidation does not impair the remaining validating provisions.

• (viii) The validating amendments neither reopen past and closed transactions nor impair vested rights; no concluded contracts of the Al-Samrez type are involved, and no vested right can arise from a statutory defect.

Accordingly, all the ICAs enumerated in Appendix-A were held meritless and dismissed.

5. Reasoning

Issue I — Legislative competence to enact validating legislation

The Court began from the presumption of constitutionality and the principle that legislative entries are to be given the widest and most liberal construction; the entries do not themselves confer power but demarcate fields of legislation, and each general expression extends to all ancillary, subsidiary and incidental matters. The power to enact validating statutes and to validate executive actions is itself ancillary and incidental to the plenary power to legislate on the subject. This doctrine, first enunciated by the Federal Court of India in United Provinces v. Mst. Atiqa Begum (1940 FCR 110) and reaffirmed in Rai Ramkrishna v. State of Bihar (1963 1 SCR 897), has repeatedly been followed in Pakistan, most recently in M/s Sui Southern Gas Company Ltd. v. Federation of Pakistan (2018 SCMR 802). Since sales tax on services lies within the provincial domain, the Provincial Legislature was competent to enact validating statutes in relation to it.

The Court emphasised the crucial limit on that power: a validating statute cannot merely declare an invalid act to be valid — it must first remove, cure or neutralise the defect or legal basis on which the earlier law or action was struck down, and only then validate. Applying Sri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality (1969 (2) SCC 283), the legislature must possess the power over the subject-matter and must, in making the validation, remove the defect the Court had found and make adequate provision for valid imposition; merely directing that a judicial decision shall not bind would be an impermissible exercise of judicial power. The same principle was reaffirmed in Molasses Trading v. Federation of Pakistan (1993 SCMR 1905) and Fecto Belarus v. Government of Pakistan (PLD 2005 SC 605): a validating enactment is objectionable only where it overrides a judgment while leaving the underlying statutory defect untouched; where the legal basis of the judgment is removed and the statute retrospectively amended, the earlier decision becomes ineffective not because it was overruled but because the law itself has fundamentally changed.

Issue II — Whether the defects identified in Institute of Architects were cured

The Court classified the findings in Institute of Architects under discrete heads: (a) the Authority was never established, no section 3(1) notification having issued; (b) it was never constituted under section 3(4), only a Chairperson (and not the required Chairperson-plus-four-members) having been appointed; (c) all the Chairperson's actions, including rule-making, were therefore without authority; (d) the appointments were made in disregard of due process; (e) ex-officio members had been appointed with no enabling provision; and (f) section 8 was held inapplicable.

The Court found each defect cured:

- Establishment. Section 36(c), inserted by the Second Amendment Act, deemed the Authority to have been established under section 3 with retrospective effect from 01.07.2012. The section 3(1) notification was a one-time administrative act; once the Legislature itself deemed the Authority established, a separate notification became unnecessary and stood impliedly repealed. Crucially, a retrospective legal fiction of this kind lies exclusively within the legislative domain and could not have been achieved by an executive notification issued retrospectively.

- Composition. On a chart placed on record by the Member (Legal), PRA, Mr. Iftikhar Qutub served as Chairperson from 16.07.2012; on 31.03.2015 Mr. Raheel Ahmed Siddiqui became Chairperson, a Member (Support Services) was appointed from 01.04.2015, and on 15.06.2015 three ex-officio members (the Secretaries of Services, Excise & Taxation, and Public Prosecution) were appointed — so that from 15.06.2015 the Authority comprised

one Chairperson and four members. The absence of an enabling provision for ex-officio members (the Institute of Architects defect) was cured by the amended section 2(j), which retrospectively (from 01.07.2012) defined "member" to include an ex-officio member. The section 3(4) requirement was thereby satisfied as of 15.06.2015.

• Absence of rules. Section 3(4) itself permitted the Government to determine the manner and terms of appointment until rules were prescribed. The ex-officio members were appointed by the Governor on the advice of the Chief Minister. The Mustafa Impex ruling (PLD 2016 SC 808) — that "Government" means the Cabinet — was decided on 18.08.2016 and, following PMDC v. Muhammad Fahad Malik (2018 SCMR 1956), cannot be applied retrospectively to invalidate appointments made on 15.06.2015.

• Non-specification of ex-officio offices. Neither the Constitution nor the PRA Act requires the offices of ex-officio members to be named in the parent statute, and Institute of Architects had identified no such deficiency. The comparison with statutes such as the LDA Act did not assist the appellants.

The Court concluded that the Authority stood duly constituted with effect from 15.06.2015.

Issue III — Whether Institute of Architects would have been decided the same way

In Institute of Architects, the non-establishment and non-constitution of the Authority was the foundational and fatal defect; it was for that reason that the Court there held section 8 inapplicable and declined to apply the de facto doctrine. Had the Authority been duly established and constituted at the relevant time, section 8 (which preserves the validity of acts notwithstanding a vacancy or defect in constitution) would have been attracted, and the de facto doctrine would also have been available. That doctrine validates acts of persons holding office under colour of lawful authority despite a later-discovered defect in title, operating as a shield against collateral attack in order to preserve continuity and stability in public administration and to protect third parties who acted in reliance. The Court invoked Mahmood Khan Achakzai v. Federation of Pakistan (PLD 1997 SC 426), together with Malik Asad Ali (PLD 1998 SC 161), Pir Sabir Shah (PLD 1994 SC 738) and Qazi Hussain Ahmad (PLD 2002 SC 853). It therefore could not be said that, with the validating amendments in force, the outcome in Institute of Architects would necessarily have remained unchanged.

Issue IV — Articles 4 and 18 of the Constitution

The Court rejected the contention that the validating amendments offend Articles 4 and 18 by validating unlawful appointments. On a plain reading, the amendments do not specifically validate the appointments of the Chairperson and members that had been declared unlawful; rather, through the non obstante clause, and notwithstanding any defect in establishment or composition, they validate the actions of the Chairperson on behalf of the Authority and the taxes levied, charged, collected or recovered by its functionaries. The Court declined to examine the merits of the appointment process (which would amount to revisiting Institute of Architects), holding that even if the appointments were not strictly lawful, the acts performed and recoveries effected are protected both by the de facto doctrine and now by legislative sanction. So long as the Legislature has competence and removes the basis on which the earlier actions were impugned, it may validate past acts and recoveries — and the amendments cannot be defeated merely because the appointments themselves were not expressly validated.

Issue V — Effect of the unchallenged striking down of section 5(4)

The appellants argued that because section 5(4) was declared ultra vires and that finding went unchallenged, all subsequent actions of the Authority were unlawful. The Court held this misconceived. Section 5(4) merely provided that, until the Authority was constituted, the Chairperson would perform its functions. Since the Authority stood duly constituted on 15.06.2015, section 5(4) ceased to operate thereafter, and its invalidation has no bearing on the validity of the Authority's post-constitution actions — the more so as those actions were independently protected by the validating amendments. The invalidation of a transitional provision that had become otiose does not render the remaining validating provisions unconstitutional.

Issue VI — Scope of section 5(4)

The related argument that section 5(4) presupposed the Authority remained unconstituted until the validating amendments was also rejected. Section 5(4) had been inserted retrospectively from 01.07.2012 to give legal cover to the Authority's functions until its formal constitution on 15.06.2015. Although later declared ultra vires, the Authority already stood constituted on that date, and thereafter the non obstante clause in section 36 validated (from 01.07.2012) all actions of the Chairperson on behalf of the Authority notwithstanding any defect in establishment, constitution or composition. The unchallenged striking down of section 5(4) therefore did not impair the efficacy of the validating amendments.

Issue VII — Past and closed transactions and vested rights

The appellants invoked Molasses Trading v. Federation of Pakistan (1993 SCMR 1905) to argue that the validating amendments could not reach past and closed transactions or vested rights. The Court explained the lineage of that authority: in Al-Samrez Enterprise v. Federation of Pakistan (1986 SCMR 1917), importers who had concluded contracts and opened letters of credit on the strength of an exemption notification were held protected, a later executive notification being unable to operate retrospectively on concluded transactions. Section 31-A of the Customs Act, 1969 was then inserted to neutralise Al-Samrez; in Molasses Trading, the Supreme Court gave effect to the altered legal position but found that the language of section 31-A did not, expressly or by necessary implication, disturb past and closed transactions, i.e. concluded contracts.

The present cases, the Court held, stand on an entirely different footing: no concluded contracts, past and closed transactions or accrued rights of that nature are involved. The appellants sought instead to derive an advantage from a defect or omission in the statutory framework which the Legislature had since removed. Following Ujagar Prints v. Union of India (AIR 1989 SC 516), no person can claim a vested right arising out of a defect in a statute, nor retain an unintended benefit flowing from a legislative omission, and retroactive curative legislation for taxing statutes is a well-recognised and settled principle. No vested rights had accrued to the appellants, and the validating amendments neither reopen nor impair any past and closed transaction.

Disposition. Finding no illegality or infirmity in the impugned judgment, the Division Bench dismissed all 230 Intra-Court Appeals listed in Appendix-A as meritless, by short orders dated 17.06.2026, of which the judgment supplies the detailed reasons.

Prepared by Mandviwalla & Zafar, Advocates. This summary is a working note on the judgment and does not substitute for the operative text. Statutory references are to the Punjab Revenue Authority Act, 2012 as amended.