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In The Pakistan Information Commission, Islamabad

Application to Withdraw Order of the Commission issued in Appeal No 060-06/19

Mukhtar Ahmed Ali (Appellant)

Vs.

Supreme Court of Pakistan
Through its Registrar (Respondent)

Order
Date: November 17, 2021
Zahid Abdullah: Information Commissioner

A. The Application

1. On August 10, 2021, the learned counsel for the Registrar, Supreme Court of Pakistan, Mr. Ch. Amir Rehman filed an Application before Pakistan Information Commission to withdraw its Order announced on July 12, 21. The Applicant also filed an application to correct the title of the Application for withdrawal and that it may be amended to state Mukhtar Ahmed Ali V. Supreme Court of Pakistan through its Registrar in the interest of justice. The relevant parts of the application are as under:

"A. That under the Act, the primary function of the Commission is to decide the appeal filed under Section 17 of the Act against decision or no decision of the A designated official of the Public Body. The power to issue direction to put Bodies stems from Section 20(e), which states, "order a public body to disclose information to an applicant or to take such other reasonable measures as it may deem necessary to remedy any failure to implement the provisions of this Act Thus the jurisdictional pre-condition for the exercise of the jurisdiction by the Commission is existence of a Public Body as defined in the Act.

Section 2 (ix) (e) inter-alia defines the Public Body as "any court, tribunal, commission or board under the Federal law. It is clear as a day that the jurisdiction of the Commission under the provisions of the Act, at the most extends over courts or tribunal constituted under a Federal law "court, tribunal, commission or board are to be read conjunctively, hence the words phrase following these words will be equally applicable to all the categories mentioned therein, The learned Commission must be aware that the Supreme Court is the creation of the Constitution under its Part VII Chapter 2 titled as "The Judicature and not the Federal law. Therefore, by any stretch of imagination, the jurisdiction of the Commission does not extend to the Supreme Court. The Impugned Order, thus is patently without jurisdiction and hence nullity in the eyes of law, therefore, liable to be recalled.

B. Under section 3 of the Act, the Public Body cannot deny access to information and record held by it. Information is defined under section 2(v) to mean "information based on record", whereas record is defined under section 2 (x) to mean "public record as defined in section 6 of the Act. The access to

information or the record, which cannot be denied, therefore is the public record as defined under section 6 of the Act. The information sought by the Appellant does not fall in either of the five categories of public record mentioned in section 6 of the Act. The learned Commission, thus erred in law while allowing the appeal of the Appellant. The impugned order being in excess of jurisdiction and beyond the powers conferred upon the Commission under the Act, is null and void, therefore merits to be recalled.

C. The direction issued by the learned Commission in exercise of power under section 20 (e) of the Act for the notification of designated officer under section 9 of the Act and to take measure for publication of information and record and make them readily accessible as provided in section 5 of the Act, suffice is to say that the provision of the section 5 and 9 are applicable to Public Bodies and not to Constitutional Court. Even otherwise information with regard to clauses a, b, c, d, e, f, h, j and I of section 5 of the Act is publicly available. Only information which tends to erode the independence of judiciary is withheld, not to avoid scrutiny or to shut out transparency but in the larger interest of the public for enforcing the fundamental right to due process of law and access to justice.

PRAYER

In light of the aforementioned facts and grounds of law, we seek to have the impugned order dated 12.07.2021 passed in Appeal No. 060-06/19 countermanded/recalled for being coram non judice, without jurisdiction and ultra vires the Right of Access to Information Act, 2019 and the Constitution of Islamic Republic of Pakistan".

B. Proceedings

2. Through a notice dated August 23, 2021, the commission sought assistance from both the parties regarding the following:
   (a) Under what provisions of the Right of Access to Information Act, 2017 can this Commission review its own Order issued under Section 21 (e) of the Act?
   (b) Can this Commission review its own Order in absence of any express provision in the Act conferring powers to review its own Orders"?

3. Through a letter dated August 30, 2021, the Appellant submitted his response and its relevant parts are as under:

"1. That the Respondent has been adamantly denying / delaying the provision of requested information since 10/04/2019 on frivolous grounds; and that he has now also chosen to not implement the Commission's Order announced on 12/07/2021, which directed him to share with me the requested information within 20 working days. This, unfortunately, is a typical attitude on the part of public bodies, which are often found to be making all kind of excuses to deny citizens' their constitutional right to access information that is held by public bodies. This also exposes the mindset working against transparency In governance and administration of justice, without which we cannot promote informed public debates and more effective public participation in the democratic processes. In this case, it is deeply disheartening that this attitude is being displayed by the administrative side of the highest court of the country. which has been championing the cause of transparent governance through its judicial orders,

2. That the Application filed by the Respondent does not refer to any section of the Right of Access to formation Act 2017, which entitles him to file an application before the Commission for the withdrawal of its Order, or which empowers the Commission to entertain such an application and then reconsider/ review or withdraw its Order. Therefore, it appears that the filing of the said Application is just an attempt with

malafide motives to deny my fundamental right to information as a citizen and amounts to obstructing implementation of the Order of the Commission.

3. That, to the best of my knowledge and understanding, there does not exist any provision in the Right of Access to Information Act 2017, which entitles the Respondent to file an application before the Commission for the review or withdrawal of its Order, or which empowers the Commission to entertain such an application or reconsider/ withdraw its Order, irrespective of the merits of the arguments furnished in the Application in support of Respondent's prayer. The Application, therefore, cannot be entertained, and needs to be summarily dismissed. The Respondent, it really aggrieved by the Order of the Commission, could have approached the relevant Hon'ble High Court.

4. That, while hearing the Appeal in this case and as described in section-B of the Order dated 12/07/2021, the Commission had provided ample opportunity to the Respondent to explain his point of view. Now that the Order has been passed and announced, the Commission should only be concerned about ensuring compliance of its Order; and that, at this stage, the Respondent should not be allowed to file an application with fresh/ new arguments or grounds. If such a precedent is set, the respondents may routinely start seeking recall/ review/ withdrawal of Commission's orders, each time bringing up fresh arguments or grounds. Such attempts, with all the appearances of malafide motives, must be firmly discouraged and curbed by the Commission.

5. That, without prejudice to my contention that the Application of the Respondent should not be entertained, it is argued that the stance taken by the Respondent to the effect that the Hon'ble Supreme Court of Pakistan is not a public body in terms of section 2(ix) (e) of the Act, as it is not a creation of 'Federal law, is not tenable. It may kindly be noted that the Article 260 of the Constitution defines Federal law as "a law made by or under the authority of Majlis-e-Shoora (Parliament)." In view of this definition, it is clear that the term 'Federal law includes not just the laws passed with simple majority but also the Constitution, which too is made by the Majlis-e-Shoora (Parliament) and thus falls within the definition of the Federal law. Therefore, the purported distinction between the Constitution and the Federal law is neither reasonable, nor has any basis in the law or the Constitution of Pakistan.

6. That the Hon'ble Supreme Court of Pakistan is clearly a public body not just in terms of Section 2(x)(e) of the Act (as explained above), but also in view of Section 2(ix)(d) of the Act, which covers all bodies that receive funds from the Federal Government.

7. That the Right of Access to Information Act 2017 has been enacted for smooth implementation of Article 19-A of the Constitution, which reads: "Every citizen shall have the right to have access to Information in all matters of public importance subject to regulation and reasonable restrictions imposed by law." It may be noted that the Article 19-A makes no distinction between the public bodies created by or under the Constitution and those created under the ordinary laws. So, the information about any matter of public importance, irrespective of whether it is held by an institution created by or under the Constitution or under another law, should be provided to citizens. It may also be noted that Article 19-A only allows reasonable restrictions whereas, by no stretch of imagination, it would be reasonable to exclude Hon'ble Supreme Court of Pakistan from the purview of the fundamental right of access to information.

8. That the very scheme and structure of the Right of Access to Information Act 2017 makes it amply clear that it does not exclude whole institutions / organizations from

the purview of the Act but, instead, it lists down categories of information whose disclosure may be denied for being harmful to specific public interests like public order, defence of Pakistan, privacy of persons and safety of persons. The requested information does not fall in any of the categories of information whose disclosure may be considered harmful, even remotely, to any of the protected public interests including, for example, independence of judiciary.

9. That the independence of judiciary does not mean that the internal administration of judiciary must remains shrouded in secrecy, and that there should be no transparency in matters relating to perks and privileges, recruitments, promotions, procurements and other matters not directly connected with administration of Justice such as open hearings of petitions/ appeals and judgments thereof. In fact, secrecy or even perception of secrecy in the administration of courts can be detrimental for the independence of judiciary, as it may entice/ enable individuals in putting their personal interests or personal likes/ dislikes and biases above the considerations of merit, fairness, value for money and competence. Therefore, the Hon'ble Supreme Court of Pakistan, being the highest court of the country, must be a leader and a role model in setting examples of maximum transparency and full compliance with citizens' right to information not just in judicial proceedings but also in its internal administration involving a range of non-judicial functions and operations.

10. That the contention of the Respondent that the requested information does not fall within the ambit of Section 6 of the Act and, therefore, is not liable to be disclosed is fallacious and not based on a comprehensive understanding of the Act, which must be read in the light of the letter and spirit of Article 19-A of the Constitution. Even within the Act, Section 6 must be read in conjunction with Section 3(2) and Section 5, which provide guidance, respectively, about how the Act should be interpreted and which categories of information must be proactively disclosed. It is argued that information that is liable to be proactively disclosed under Section 5 cannot be denied to a requester by stating that it is not covered by Section 8. It is further argued that the requested information clearly falls within the purview of Section 5 (Publication and availability of records), especially section 5(1)(a) that requires proactive disclosure of, among others, a directory of officers and employees of each public body. Moreover, the requested information is based on, connected with or ancillary to several categories of information, which are covered by Section 5 or Section 6 of the Act.

11. That the Respondent is not fully correct in claiming that the information with regards to clauses a, b, c, d, e, f, h, and 1 of Section 5 of the Act is publically available, and the same can be verified by visiting the website of the Hon'ble Supreme Court of Pakistan. In fact, the website provides minimal information in relation to internal administration Hon'ble Supreme Court of Pakistan. especially regarding clauses a. d, f, g, h & i; although it is acknowledged that it hosts significant information about judicial functions including, inter alia, about case management, judgments and roster of sittings.

12. That the Hon'ble Supreme Court of Pakistan is a premier public body that uses public funds for the performance of its functions and exercises authority and powers that are vested in its administrative and judicial offices by the people of Pakistan through the Constitution and laws made by their chosen representatives. Therefore, nothing can be more unjust, unfair and unreasonable than the registrar of the highest court of justice claiming, expressly or by implication of his actions regarding citizens' requests for information, that his office is above and beyond the scrutiny of the people, who pay for its functions and who have created the institutions like the one he serves for their collective good, greater transparency in its internal administration will help in judicial independence and integrity in the relevant processes. as it is the secrecy and exclusion which are known to pave the way for weakening of institutions and compromising of independence, not the other way around. It is strange though that, in this instance, the Respondent believes that sharing of information about staff

members of the Hon'ble Supreme Court (e.g. sanctioned strength, vacancies, number of daily wage/ female staff, etc.) will compromise judicial independence, without submitting any arguments about how exactly it may happen.

In view of the above submissions, it is requested that the Application filed by the Respondent is dismissed forthwith, and appropriate directions are passed for prompt supply of requested information and to deter delaying tactics on the part of public bodies".

4. First hearing was held on September 16, 2021 in which Mr. Aftab Alam and Mr. Raza Ali attended the hearing and presented oral arguments.

5. The learned counsel for the Respondent Mr. Ch. Amir Rehman presented oral arguments in the hearings held on September 30, 2021 and also on November 03, 2021, which were also attended by representative of the Appellant, Mr. Raza Ali. The commission asked the Appellant to submit their written counter arguments, if any, within 10 working days whereas the relevant portions of the response submitted by the learned counsel for the Respondent are as under:

1. *"That the Pakistan Information Commission, in the titled Appeal, has raised the following questions:*

(a) Under what provision of the Right of Access to Information Act, 2017 can this commission review its own Order issued under section 20 (1) (e) of the Act?

(b) (b) Can this commission review its own Order in the absence of the any express provision in the Act conferring powers to review its own Orders?"

WRITTEN SUBMISSIONS:

A. The Pakistan Information Commission (hereinafter referred to as "PIC") is neither a judicial or quasi judicial forum rather it is an administrative authority with powers to issue orders to the public bodies for granting access to information as provided under the Access to Information Act, 2017 (hereinafter called the "Act"). The powers of the PIC are delineated in section 20, which inter alia provides that the PIC shall have all the powers, direct or incidental, as are necessary to perform its functions as provided for in this Act and the power to acquire, hold and dispose of property. Thus, where an order has been passed without Jurisdiction or in violation of principles of natural justice or where an error apparent on the face of the record has crept in owing to inadvertence, the PIC has all the powers to remind, rectify or recall that order.

B. The provisions of The General Clauses Act, 1897 are applicable to interpret all Federal laws. Section 21 of the said Act provides as under:

"21. Power to make, to include power to add to, amend, vary or rescind, orders, rules or bye-laws. Where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any 8[notifications], orders, rules or bye laws so issued."

The section 21 of the General Clauses Act is unequivocal that all authorities empowered under a central statute to issue order has the power to vary, amend, or rescind the said order. The very purpose of the section is the avoid provide a chance to the authority to

rectify its mistake and to avoid multiplicity of litigation The order dated 12.07.2021 having been passed without jurisdiction, the PIC possess ample power to rectify the mistake and recall the order.

The Lahore High Court in judgment reported as 2020 CLCN48 held that:-

"section 21 of General Clauses Act, 1897, confers an Inbuilt jurisdiction to an authority which earlier passed the order, to undo the erroneous or illegal order passed by it.

Supreme Court of Pakistan while dealing with section 21 of the General Clauses Act, in the judgment reported as PLD 1992 SC 207 held:-

…. Under section 21 of the General Clauses Act, the authority which can pass on order, is entitles to vary, amend, add to or to rescind that order. The order under which the payment was made to the respondent had no sanction of law. Locus Paenitentiae is the power of receding till a decisive step is taken. But it is not a principle of law that a order once passed becomes irrevocable and it is past and closed transaction. If the order is illegal then perpetual rights can not be gained on the basis of an illegal order. The appellants when came to know that on the basis of incorrect letter, respondent was granted Grade-11, they withdrew the said letter"

In the case reported as 2019 SCMR 643 the Apex Court of the country held that:

"10. Keeping in view the above deliberation, it is noted that there is a judicial consensus on the issue in hand in terms that;

I. The authority which can pass order is entitled to vary, amend, add to or to rescind the same under section 21 of the General Clauses Act, 1897.

II. The jurisdiction to recall an earlier order is based on the principle of locus paenitentiae.

III. There is an exception to the principle of locus paenitentioe vesting power in an authority to recall its earlier order: if in pursuance of the order passed by the authority, an aggrieved person takes decisive steps, and changes his position.

IV. None can retain the benefits of a withdrawn order, claiming the protection of having taken a decisive step, when the very order passed by the authority is illegal, void or without lawful authority. In such circumstances, it would not matter, even if decisive steps have been taken by the person in pursuance of an illegal order passed by the competent authority cannot be recovered from him unless the benefiting order was obtained by the person through fraud, misrepresentation or concealment of material facts."

C. Where the order has been passed in oblivion of the statute, the authority has ample power to rectify the mistake to bring it in line with the provisions of the law. The order under challenge in the titled appeal is admittedly without jurisdiction hence the court has ample power to rectify the wrong.

The Calcutta High Court in judgment reported as 200 PTD 1001 held that; "it is a case where the Tribunal sought to rectify the order so as to bring it in conformity with the law and the circular of the Department, which was not considered properly. This power of rectification of mistake is executed for the ends of Justice.

The provisions of section 254(2) of the said Act could not be construed in a manner which would produce an anomaly or otherwise produce an irrational or illogical result.

The primary aim of legal policy is to do justice. It must be assumed that Parliament does not intend to do injustice or to allow a wrong thing to continue contrary to law or public policy.
Accordingly, applying the above principles, it cannot be said that the Tribunal, in the instant case, wanted to exercise its power of review. No fresh material was sought to be considered and the Tribunal did not intend to change its view earlier taken, It is a case where the Tribunal was of the view that a particular statutory rule and the circular of Department, which is binding on the Tribunal, had not been considered while disallowing a claim invoking the provisions of section 40A(3) of the said Act.

In other words, the Tribunal has recalled the earlier order which the Tribunal was of the view was passed in contravention and/or in ignorance of statutory provisions.

It is one of the basic principles and a legal policy that when there is a provision for rectification of a mistake on the record, that power should be allowed to be exercised for correcting mistakes and/or error on the record and if the Tribunal feels that the Tribunal has committed an error of law, in that event, it would be against the concept of justice and fair play and also against the principle of legal policy not to allow the Tribunal to exercise such power."

D. Orders obtained by fraud or order passed in violation of principles of natural justice are orders without jurisdiction hence the superior courts have held that in such eventuality the court, tribunal or authority has inherent jurisdiction to recall the said order.

The High Court of Sindh in the case reported as 2001 CLC 1363 declined to interfere in the order of the banking tribunal whereby it recalled an order passed by it in absence of the opposite party although no power of review was available and observed that:

"7. In view of the above discussion, we are of the considered opinion that there is a clear distinction between review of an earlier order and recalling one passed on account of non-appearance of a party. In the former the merits of an earlier order are considered but in the latter only the cause of non-appearance is to be taken into consideration. In the former case the power must be conferred by statute but in the latter it stems from the principles of natural justice required to be read into every law. The former is excluded by section 27 but the latter continues to remain available.

8.... We are clearly of the view that the power to recall an ex-parte order is an altogether different power than one of review and emanates from a different source, therefore, nothing turns on section 27 in the present context."

The Sindh High Court in the case reported as SBLR 2001 Karachi 165 observed that:

"…. It was submitted on behalf of the petitioner that the order, which has been challenged in this Constitutional Petition was an absolutely legal and void order in as much as the Provincial Mohtasib Establishment Ordinance did not confer power on the Provincial Ombudsman to review his orders and in the circumstances a Constitutional Petition was maintainable as it amounted to challenging an illegal unlawful and void order. This contention is without any force and requires no consideration. The order dated 28.07.1998 is not in the nature of a review order but an order recalling an illegal/unlawful order passed earlier on the basis of wrong information and concealment of facts the

earlier order had become illegal, unlawful and void and the learned Ombudsman by his order dated 28.07.19998 had merely be a review of the earlier order."

The Lahore High Court in the case reported as 2011 CLC 1610 held:-

"4..... It is also well recognized principle of law that every court or tribunal has inherent jurisdiction to rescind or recall a void order passed by itself. The order of eviction passed in the instant case was a void order as the same was procured fraudulently and by making misrepresentation. It would also be according to the spirit of law which provided that every court or tribunal has the power to even Sup motu recall or review an order obtained from the court by fraud on the general principle that fraud vitiates the most solemn proceedings, and no party should be allowed to take advantage of his own fraud. In holding this view, I am supported by a judgment of the Apex Court recorded in the case reported as PLD 1991 SC 997, Following the dictum of the apex Court this court declares the order passed by both the courts as ineffective and void, as such, are set aside."

In the case reported as 2102 YLR 2471, the Lahore High Court held:-

"10.... Hon'ble Supreme Court of Pakistan has held that every authority, tribunal or court has power even Suo motu to recall or review the order obtained by fraud. On the general principle of law, no party should be allowed to take benefit of his own fraud and it is principle of law which could safely be held that there can be no distinction between the powers available in this behalf to the court of general jurisdiction or to a court or tribunal constituted under special law having limited jurisdiction. It is the bounden duty of court, tribunal or authority to undo the effect of fraudulent order and as such the equitable principle of C.P.C. can be invoked by the Rent Controller."

In a celebrated judgment reported as PLD 1975 SC 331 the Supreme Court of Pakistan held that:-

"It seems to us that while there are cases in which the power of a Court or tribunal of special or limited jurisdiction to Suo motu recall or review an order obtained from it by fraud has been doubted, yet the preponderance of judicial authority is in favor of conceding such a power to every authority, tribunal or Court on the general principle that fraud vitiates the most solemn proceedings, and no party should be allowed to take advantage of his fraud. There can be no rational basis for discriminating between the powers available in this behalf to a Court of general jurisdiction and a Court or tribunal of special or limited jurisdiction, for in either case the effect of fraud is the same, and the duty to undo that effect must lie on the authority on which fraud is practised. We are, therefore, of the view that even a tribunal of limited or special jurisdiction has the power to Suo mote recall or review an order obtained from it by fraud."

C. Issues

6. The application has brought to the fore following questions for the consideration of the commission:

(a) Under what provisions of the Right of Access to Information Act, 2017, henceforth referred to as the "Act", can this Commission review its own Order issued under Section 20 (e) of the Act?
(b) Can this Commission review its own Order in absence of any express provision in the Act conferring powers to review its own Orders"?

D. Discussion and Commission's View on Relevant Issues:

7. This Commission, having been established pursuant to the 2017 Act, can only function within the confines/parameters laid down in the Act itself. That vide order issued by this Commission on July 12, 2021, the Respondent was directed to share with the Appellant the requested information no later than 20 working days of receipt of the Order. That the order was issued by the Commission under Section 20(e) of the Act, under which a public body can be ordered to disclose information in accordance with the provisions of the Act. Even where the superior judiciary is concerned, only such power is granted to it as provided for in the Constitution and other relevant laws. In ***2021 SCMR 201 (FGEHF & others v. Malik Ghulam Mustafa & others)***, the Honourable Supreme Court has held, at paragraph 133: "We have noted that unlike Indian Constitution, Article 186A of the Constitution, 1973 does not confer any jurisdiction in this Court to call any case, appeal or other proceedings pending before any High Court for the purposes of hearing and deciding the same itself, though such record and proceedings may be called for perusal and examination… It is settled position in law that jurisdiction on court cannot be conferred even by consent; unless it is so conferred by or under Constitution and/or law". Bearing in mind that even the Apex Court cannot even infer jurisdiction in excess of what is granted to it under the Constitution and/or other relevant laws only confirms the position that this Commission cannot confer jurisdiction upon itself to review its own Order issued under Section 20(e) of the Act in the absence of an explicit/unequivocal provision authorizing such review.

8. Throughout the text of the Act, no power/authority has been provided to this Commission to rescind or recall its orders. The powers of the Commission are clearly delineated in Section 20 of the Act and the same does not provide for recalling/rescinding orders. In fact, provision is made to monitor and report on compliance (under Section 20(1)(a) of the Act) and to impose fines on officials for willful obstruction in the working of the Commission (Under Section 20(1)(f) of the Act) but no provision has been cited to ascertain or establish the any authority/power held by the Commission to rescind/recall orders.

9. If the assertion is that the Commission's order is illegal and without jurisdiction, a remedy is available in the form of a Constitutional Petition before the higher judicial forums, but the Commission is not authorized to create remedies that are not explicitly provided for within its constituent Act. Reference is made to ***2019 PCRLJ 318 (Muhammad Lehrasif v. The State and another)***, in which the Honourable Peshawar High Court (Abbottabad Bench) clearly held, at paragraph 7: "Like an appeal or revision, the power to review judgment or order is a creation of statute. Unless this power has been specifically conferred upon a Court through an explicit provision of law, the court can't review its order/judgment. The Court has no inherent power to review its judgment or order even if the same is based on incorrect appreciation of evidence qua law". When such power is not granted even to the higher judicial forums, this Commission cannot overstep its bounds as laid out in the 2017 Act. In fact, in ***PLD 1970 Supreme Court 1 (Hussain Bakhsh v. Settlement Commissioner, Rawalpindi and others)***, the Honourbale Supreme Court held: "The right to claim review of any decision of a Court of law, like the right to appeal, is a substantive right and not a mere matter of procedure". When the Commission has not been authorized to even review its own orders, recalling/rescinding the same would be blatantly *ultra vires* the 2017 Act.

10. Only one provision for "Appeal" is provided for in Section 17 of the Act and the demand to withdraw an already issued order cannot be remedied by the Commission in the absence of an explicit and unequivocal conferral of such authority on the Commission under its constituent instrument. The purpose of the 2017 Act is to ensure citizens of Pakistan have "improved access to records held by public authorities". Accordingly, reference is made to ***2021 PLC (C.S.) 848***, in which the Honourable Supreme Court of Pakistan held: "It is settled law that provisions of the Statutes and Rules have to be read in their context and unless otherwise provided or there are compelling and lawful reasons to do otherwise the Rule of ejusdem generis has to be followed". Further, in ***2021 SCMR 1617 (JS Bank Limited, Karachi & others v. Province of Punjab and others)***, the Honourable Supreme Court observed, at paragraph 13: "…the legal text must be

interpreted in the context of its purpose. This Court has consistently ruled that a purposive rather than a literal approach to interpretation is to be adopted while interpreting Statutes. An interpretation which advances the purpose of the Act is to be preferred rather than an interpretation which defeats its objects".

11. In any event, this Commission cannot act in excess of the powers granted to it under the Act. Where a Statute expressly provides for a particular course of action, without any ambiguity, then there is no question of the Commission attempting to interpret or infer the provisions of the Act in such a way so as to confer jurisdiction on itself to carry out an action the legislature did not authorize it in the first place to perform. In ***PLD 2020 Sindh 158 (Junaid Rehman Ansari and others v. The State and others)***, the Honourable Sindh High Court held, at paragraph 21: "Within the trichotomy of powers it is the role of the legislature to make laws and the role of the judiciary to interpret those laws if such interpretation is necessary. It is well settled law that if a statute has expressly provided for something without any ambiguity then there is no question of the courts interpreting the same as the legislative intent is clear and the Act/Ordinance must be given effect unless it is deemed to be contrary to the Constitution. The judiciary's role of interpretation of the statute only arises when the statute is to a certain extent either unclear or ambiguous or is *prima facie* in violation of the Constitution and in such cases it is for the judiciary to interpret that piece of legislation by trying to ascertain the intent of Parliament in passing that legislation. The Courts have absolutely no authority or power to substitute their views for those intended by the legislature simply because they may disapprove of a particular law and the way in which that law is being applied". Bearing this in mind, the suggestion that the commission may confer such power on itself based on the General Clauses Act or infer such power through any other existing law is legally untenable.

12. The overriding clause contained in Section 25 of the Act provides for effect of the provisions of the Act notwithstanding anything inconsistent contained in any other law for the time being in force. Whereas the Respondent's counsel has made reference to the General Clauses Act, the power to recall/rescind an order has not been provided for by the legislature in the 2017 Act. Therefore, to infer such power from the General Clauses Act for itself would amount to the Commission exceeding the confines of its authority, in clear violation of the intention of the legislature.

E. Order

13. This application is disposed off as the request contained therein falls outside the scope of powers vested in this Commission under the Right of Access to Information Act 2017.

14. Copies of this order be sent to the Respondent and the Appellant for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:
November 17, 2021
This order consists of 10 (ten) pages, each page has been read and signed