JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A. No.156 of 2020
Pakistan Sugar Mills Association and others
Versus
Federation of Pakistan and others

Date of Hearing:	15.07.2020, 20.07.2020, 21.07.2020, 22.07.2020, 23.07.2020 and 24.07.2020.
Appellants by:	M/s Makhdoom Ali Khan, Salman Akram Raja and Saad M. Hashmi, Advocates. Rai Azhar Iqbal Kharal, Advocate for the applicant in C.M. No.1785/2020.
Respondents by:	Mr. Khalid Javed Khan, learned Attorney-General for Pakistan. Mr. Tariq Mehmood Khokhar, learned Additional Attorney-General. Khawaja Imtiaz Ahmed, learned Deputy Attorney-General. Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General. Mr. Saqlain Haider Awan, learned Assistant Attorney-General. Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General.

MIANGUL HASSAN AURANGZEB, J:- Through the instant intra Court appeal, the appellants impugn the judgment dated 20.06.2020 passed by the learned Judge-in-Chambers whereby writ petition No.1544/2020 filed by the appellants was disposed of with certain directions.

FACTUAL BACKGROUND:-

2. The facts essential for the disposal of the instant appeal are that the adverse effects on the common man caused by the dearth in the availability of sugar as well as a sharp increase in its price caused the Prime Minister of Pakistan to constitute a three-member Inquiry Committee on 20.02.2020. The Convener of this Committee was the Director General, Federal Investigation Agency (**"F.I.A."**), and its mandate was to probe into the *"sugar crises in the country."* The terms of reference (**"TORs"**) for the said Committee are set out in **"Schedule-A"** hereto.

3. On 09.03.2020, the Convener of the Inquiry Committee addressed a letter to the Prime Minister informing the latter that the information thus far collected by the said Committee showed that the whole information system used for decision making by the Government departments was totally dependent on the information provided by the sugar mills about the pricing of sugarcane, the amount of sugarcane crushed, recovery ratio, the sugar produced, the sugar sold, lifted, and pledged etc. It was also conveyed that the said Committee had been able to form a reasonable picture of the possible ways in which *"the malpractices in sugar sector can be used to hide the real production and possible off the record sales,"* and that as per some source reports, the supply of sugar is controlled by a few sugar mills for manipulation of the market sale price.

4. In the said letter dated 09.03.2020, it was suggested *inter alia* that the strength of the said Committee be expanded to include a Grade-21 or equivalent officers from the Securities and Exchange Commission of Pakistan (**"S.E.C.P."**), the Federal Board of Revenue (**"F.B.R."**) and the State Bank of Pakistan (**"S.B.P."**). Furthermore, it was suggested that the TORs for the said Committee should also include (a) the verification of the sales of sugar in order to find out the malpractices of hoarding and manipulation of sugar supply to the market for maximum profiteering, and (b) the physical verification of the stock to find out whether there was any excess/shortage of stock as shown in the books and verification of the genuineness of the sale records. It was also suggested that in order to carry out onsite forensic audit and to deploy technical teams to carry out this exercise, *"the legal cover"* be provided.

5. On 10.03.2020, a summary was moved by the Interior Division for the Cabinet proposing that a Commission of Inquiry be constituted under the provisions of the Pakistan Commissions of Inquiry Act, 2017 (**"the 2017 Act"**) to *"probe into the increase in sugar prices."* The composition of the Inquiry Commission and the TORs were also proposed in the said summary. In the said summary, reference was made to the suggestions that had been

made by the Convener of the Inquiry Committee constituted by the Prime Minister.

6. On 10.03.2020, the Cabinet approved the proposals made by the Interior Division in the said summary. Furthermore, the Cabinet directed that the Interior Division should immediately issue the notification for the constitution of the Inquiry Commission without waiting for the formal communication of the decision.

7. Vide notification No.F.5/14/2020-FIA, dated 16.03.2020, the Federal Government, in exercise of its powers conferred by Section 3 of the 2017 Act, constituted a six-member Inquiry Commission. This notification was issued by the Interior Division. The composition of the Inquiry Commission was as follows:-

"i.	*Mr. Wajid Zia, Director General, FIA*	*Chairman*
ii.	*Mr. Gohar Nafees, DG, Anti-Corruption Establishment Punjab*	*Member*
iii.	*Mr. Ahmad Kamal, DDG, IB*	*Member*
iv.	*Mr. Bilal Rasool, Executive Director (SECP)*	*Member*
v.	*Mr. Majid Hussain Chaudhry, Joint Director SBP*	*Member*
vi.	*Dr. Bashirullah Khan, DG, Directorate General of Intelligence and Investigation, FBR, Islamabad*	*Member"*

8. The Inquiry Commission was required to submit its report to the Prime Minister within a period of forty days after the issuance of the said notification. The TORs for the Inquiry Commission were the same as the ones framed for the Inquiry Committee. Additionally, the Inquiry Commission was also mandated to identify the role of the Competition Commission of Pakistan (**"C.C.P."**) in the sugar crises as well as to identify the *benami* transactions and profits earned during such crises.

9. On 17.03.2020, the Cabinet directed that a representative of the Inter-Services Intelligence (**"I.S.I."**) be included as a member of the Inquiry Commission.

10. On 24.03.2020, the Inquiry Committee submitted its report. This report was submitted seven days after the constitution of the Inquiry Commission through notification dated 16.03.2020. In the said inquiry report, it is explicitly mentioned that the Inquiry Committee had requested for the constitution of an Inquiry Commission under the provisions of the 2017 Act. It was also mentioned that the Inquiry Commission had started its work and

the forensic analysis of ten sugar mills was being carried out. The Inquiry Committee recommended *inter alia* that in order to keep a check on the market retail price of sugar, the Provincial Departments should be required to take measures for immediate crackdown on the *satta* players who were known well to the Provincial Special Branch and intelligence agencies, and to ensure that the sold sugar is lifted in appropriate quantity so that the supply remains adequate.

11. On 25.03.2020, another notification was issued by the Interior Division whereby a seventh member, namely Col. Muhammad Faisal Gul, a representative of I.S.I., was added to the Inquiry Commission. The said notification is stated to have been issued pursuant to the Cabinet's decision dated 17.03.2020.

12. On 21.05.2020, the Inquiry Commission submitted its 253-page report. It is not disputed that the said report has findings and recommendations adverse to the interests of appellant No.1 (Pakistan Sugar Mills Association) and its members.

13. The said report was considered by the Cabinet in its special meeting held on 21.05.2020. In the said meeting, it was decided *inter alia* to make the said report public. It was also decided that the Special Assistant to the Prime Minister on Accountability and Interior (**"Special Assistant"**) shall identify actions that are to be taken with respect to the following recommendations of the Inquiry Commission:-

> *"a. Recommendations related to improving government systems and regulatory regimes;*
> *b. Recommendations related to taking penal actions and initiating penal processes;*
> *c. Recommendations related to effecting recoveries; and*
> *d. Recommendations related to policy."*

14. The Cabinet also decided that the Special Assistant shall also assign responsibility for such actions along with timelines for implementation. Approval of the actions to be taken was required to be taken by the Special Assistant from the Prime Minister. After such approval, the Special Assistant was to follow up on the decisions so that the recommendations of the Inquiry Commission are implemented. On 07.06.2020, the Prime Minister approved the 7-point action matrix proposed by the Special Assistant.

15. On 10.06.2020, writ petition No.1544/2020 was filed by the appellants before this Court impugning (i) the notification dated 16.03.2020, (ii) the Inquiry Commission's report dated 21.05.2020, (iii) the Cabinet's decision dated 21.05.2020, and (iv) the action matrix proposed by the Special Assistant and the Prime Minister's decision dated 07.06.2020. Furthermore, the appellants sought a prohibition against Government Departments etc. from taking any adverse action against the appellants on the basis of the Inquiry Commission's report. As an interim relief, the appellants had also sought the suspension of the Inquiry Commission's report.

16. Vide ad-interim order dated 11.06.2020 passed in W.P. No.1544/2020, this Court directed status quo to be maintained. It was also ordered that no further action or proceedings be taken pursuant to the Inquiry Commission's report. The said ad-interim order was made subject to the selling price of sugar to non-commercial consumers to be at the rate of Rs.70 per *kilogram*. Furthermore, the Federal Government was directed to ensure that sugar was made available and sold to non-commercial consumers at the rate of Rs.70 per *kilogram*. The learned Judge-in-Chambers recorded his expectation that the Federal Government would advise the respective Provincial Governments to take appropriate measures so that sugar is not hoarded and is made available for sale to non-commercial consumers at the rate of Rs.70 per kilogram.

17. After a detailed inter-parte hearing, the learned Judge-in-Chambers disposed of writ petition No.1544/2020 through the short order dated 20.06.2020. The instant intra Court appeal was filed on 29.06.2020. After this Court issued notices to the respondents, the learned Additional Attorney-General informed the Court on 09.07.2020 that the Interior Division's notifications dated 16.03.2020 and 25.03.2020 had been published in the official gazette on 06.07.2020 and 07.07.2020, respectively.

18. On 13.07.2020, the learned Judge-in-Chambers issued the detailed reasons for the short order dated 20.06.2020. This caused the appellants to amend their appeal by adding additional grounds.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE APPELLANTS:-

19. Learned counsel for the appellants, after narrating the facts leading to the filing of the instant appeal, submitted that since under the provisions of the 2017 Act an Inquiry Commission has wide ranging powers, including certain powers of a Court, the decision of the Federal Government to appoint an Inquiry Commission has to be with a proper and independent application of mind; that the Federal Government had constituted the Inquiry Commission on the basis of the suggestion made by the Convener of the Inquiry Committee in his letter dated 09.03.2020 addressed to the Prime Minister; that other than the said letter, there is no document on record which forms the basis of the Federal Government's decision to constitute the Inquiry Commission; that this Court cannot go into the question whether there was sufficient material before the Federal Government necessitating the constitution of an Inquiry Commission but it can see whether there was any material on the basis of which the Federal Government could take a decision; that the Inquiry Commission could have been constituted only after the Federal Government had determined that it was expedient to conduct an inquiry into a definite matter of public importance; and that this essential pre-requisite prescribed in Section 3(1) of the 2017 Act for constituting an Inquiry Commission was lacking in the instant case.

20. Learned counsel for the appellants further submitted that the Inquiry Commission had not been lawfully constituted; that the pre-requisites prescribed in Section 3(1) and (2) of the 2017 Act for constituting an Inquiry Commission and appointing members of the Inquiry Commission had not been satisfied; that even though Section 3(1) of the 2017 Act empowered the Federal Government to constitute an Inquiry Commission *"by notification in the official gazette"* and Section 3(2) of the said Act required the Federal Government to appoint members of the Inquiry Commission *"by notification in the official gazette,"* such notifications were not published in the official gazette until after

the Inquiry Commission had submitted its report; that between 16.03.2020 and 21.05.2020, no notification had been published in the official gazette in accordance with the requirements of Section 3(1) and (2) of the 2017 Act; that the Inquiry Commission could have been constituted only in the manner as prescribed in Section 3(1) and (2) of the 2017 Act; that upon the submission of its report on 21.05.2020, the Inquiry Commission had been rendered *functus officio*; that since the notifications constituting the Inquiry Commission were published in the official gazette after the submission of its report, the proceedings of the Inquiry Commission were *coram non-judice* and without lawful authority; that the members of the Inquiry Commission could not enter upon office without publication of a notification in the official gazette; that in the instant case, the Government had sent the notifications dated 16.03.2020 and 25.03.2020 drawn by the Interior Division for publication in the official gazette between 06.07.2020 and 07.07.2020, respectively; and that the constitution of the Inquiry Commission without a notification in the official gazette was not a procedural error that could be corrected.

21. Learned counsel for the appellants further submitted that the notification for the constitution of the Inquiry Commission could only have been issued by the Cabinet Division; that item No.81 in paragraph 2 of Schedule-II to the Rules of Business, 1973 (**"Rules of Business"**) shows that the Cabinet Division has to deal with all matters concerning and related to the 2017 Act; that strict adherence to the Rules of Business has been emphasized upon by the Superior Courts in several judgments; that the notifications dated 16.03.2020 and 25.03.2020 were drawn and issued by the Interior Division which was not authorized or competent under the Rules of Business to issue such notifications; that even the summary for the constitution of the Inquiry Commission was moved by the Interior Division and not by the Cabinet Division; that the decision of the Cabinet to constitute an Inquiry Commission on the basis of a summary moved by an unauthorized Division/Ministry would be of no legal consequence; and that it is well settled that when the foundation of a transaction is unlawful,

the entire superstructure raised on such a foundation is liable to crumble.

22. Furthermore, it was submitted that the provisions of the 2017 Act do not empower the Federal Government to reconstitute an Inquiry Commission; that the independence of the members of the Inquiry Commission would be jeopardized if the Government was to appoint additional members after it had begun to function; that the power to appoint additional members could be misused and motivated to make the report of an Inquiry Commission palatable and congenial to the Government; and that the Federal Government had added a seventh member to the Inquiry Commission after it had worked for nine days.

23. It was further submitted that the report of the Inquiry Commission is accusatory to the appellants; that although there are 82 sugar mills in Pakistan, notices were issued by the Inquiry Commission on 06.05.2020 only to 10 sugar mills; that in paragraph 100 of the inquiry report, the appellants were alleged to have committed daylight robbery; that the publication of the said report had adversely affected the appellants' reputation; that even if the Federal Government does not refer the said report to the regulatory bodies or the National Accountability Bureau, the said report would remain a stigma on the appellants' reputation; that the Inquiry Commission had performed a condemnatory function and had referred the appellants to be a part of a *mafia*; and that the said report casts a slur on the sugar mills' owners who had not been afforded an adequate opportunity to defend themselves.

24. Learned counsel for the appellants further submitted that the report of the Inquiry Commission was tainted with bias since three members of the Inquiry Commission had pre-conceived notions and were pre-disposed against the appellants; that in the Inquiry Committee's report dated 24.03.2020, and in particular paragraphs 7, 25, 27, 47, 68 and 69 thereof, remarks adverse to the interests of the appellants had been given; that the Convener of the Inquiry Committee, who was also the Chairman of the Inquiry Commission, had also disclosed his mind in his letter

dated 09.03.2020 to the Prime Minister wherein he had remarked that *"malpractices in sugar sector can be used to hide the real production and possible off the record sales"*; that the Inquiry Commission had been constituted nineteen days after the Inquiry Committee had worked for; that the Inquiry Committee's report dated 24.03.2020 had been made public on 04.04.2020; that the said report of the Inquiry Committee shows that the said Committee had formed some tentative views and some final views about the sugar industry; that in the said report, definite findings were given on cartelization and *satta*; that given the said observations of the Inquiry Committee, the Federal Government ought not to have included the members of the Inquiry Committee in the Inquiry Commission; and that the Inquiry Commission's report is liable to be quashed on the ground of bias. Learned counsel for the appellants prayed for the appeal to be allowed and for the relief sought in writ petition No.1544/2020 to be granted. In support of his submissions, learned counsel for the appellants referred to numerous judicial precedents, reference to some of which will be made at a later stage in this judgment.

CONTENTIONS OF THE LEARNED ATTORNEY-GENERAL FOR PAKISTAN:-

25. On the other hand, learned Attorney-General for Pakistan submitted that the constitution of the Inquiry Commission had been necessitated by the sharp increase in the price of sugar which is an essential commodity affecting the public at large; that the Federal Government, instead of taking cosmetic steps for media consumption decided to take robust action in order to get to the root of the problem and alleviate the plight of the public at large; that the decision to constitute an Inquiry Commission with elaborate TORs was taken by the Federal Government even though it had the potential to destabilize or even jeopardize the Federal Government; and that the members of the Inquiry Commission are public servants with unimpeachable reputations.

26. Furthermore, it was submitted that the essential purpose of requiring a notification to be published in the official gazette is to make the public aware of what is being notified; that where the

law does not provide any consequence for the non-publication of a notification in the official gazette, then such non-publication would not be fatal; that the notifications dated 16.03.2020 and 25.03.2020 did not impose any direct liability or entail any adverse consequences for any identified party; that the appellants cannot question the proceedings of the Inquiry Commission on the ground that the notifications had not been published in the official gazette since they had ample knowledge of the notifications constituting the Inquiry Commission when they were initially issued; that the appellants are simply agitating a technical objection in order to avoid the consequences of the recommendations made in the inquiry report; that the appointment of the Inquiry Commission is only one of many stages of the actions/proceedings on the subject of curbing a sharp rise in sugar prices; that keeping in view the objectives of the 2017 Act as well as the relevant facts and circumstances, it would not be equitable or in the public interest for this Court to hold that the requirement of prior publication of the notification in the official gazette to be mandatory resulting in the invalidation of the action taken pursuant to the notifications constituting the Inquiry Commission; and that since information regarding the constitution of the Inquiry Commission was available in print and electronic media as well as on social media, the appellants have no reason to question the constitution of the Inquiry Commission simply on the ground that the notification for the constitution of such Commission had not been published in the official gazette until after the Inquiry Commission had submitted its report.

27. Furthermore, it was submitted that the summary for the appointment of the Inquiry Commission had been moved by the Interior Division since the Inquiry Committee had been headed by the Director General, F.I.A., and the administrative control over F.I.A. is with the Interior Division; that the summary for the constitution of the Inquiry Commission under the provisions of the 2017 Act should have been moved by the Cabinet Division; that the moving of the summary by the Interior Division instead of the Cabinet Division was a mere irregularity and not an illegality; that

the summary moved by the Ministry of Interior merged into the final decision of the Cabinet; that in terms of Article 90 of the Constitution, the Federal Government is a complete Constitutional entity and it is only for the convenience of the conduct of business that it is divided into various Divisions in terms of the Rules of Business; that such Rules are internal Rules and confer no rights on anyone to demand action to be taken in terms of a particular Rule of the Rules of Business; that in paragraph 51 of the judgment in the case of Mustafa Impex Vs. Government of Pakistan (PLD 2016 S.C. 808), it was held *inter alia* that for compelling public interest, inadvertence, negligence or incompetence, departure from the requirements of the Rules of Business could be made; that the moving of the summary by the Interior Division was an innocent mistake which ought to be ignored; that even otherwise under Rule 58 of the Rules of Business, the Prime Minister can relax the provisions of the said Rules; that the moving of a summary by the wrong Division is simply a procedural irregularity which could be overlooked or cured; that substantial compliance with the law had been made in the process for the appointment of the Inquiry Commission; that Section 3(1) of the 2017 Act mandates that the Inquiry Commission is to be appointed by the Federal Government but does not require the summary for the appointment of an Inquiry Commission to be moved by a particular Division; and that the Cabinet could have appointed the Inquiry Commission without any summary having been moved by any Division.

28. Furthermore, it was submitted that the decision of the Cabinet to appoint one additional member to the Inquiry Commission was taken on 17.03.2020, i.e. one day after the issuance of the notification for the appointment of the Inquiry Commission; that the appointment of the additional member was conducive for a comprehensive inquiry to be carried out; that the Federal Cabinet had taken guidance from the judgment of the Hon'ble Supreme Court in the case reported as *PLD 2017 S.C. 265*, commonly known as the Panama case, in which an officer from the I.S.I. had been appointed by the Hon'ble Supreme Court

as a member of a Joint Investigation Team; that the notification for the appointment of the additional member to the Inquiry Commission should have been issued soon after the Cabinet's decision dated 17.03.2020 but it was issued on 25.03.2020; that the provisions of the 2017 Act do not prohibit the Federal Government from adding members to an Inquiry Commission; that the appointment of an additional member to the Inquiry Commission did not prejudice any party; that the said appointment had been made at a very early stage; and that the decision to appoint an additional member was not for any oblique purpose. Learned Attorney-General very fairly submitted that members cannot be added to an Inquiry Commission at a stage after the existing members had formed an opinion about the subject matter. He also submitted that a member of an Inquiry Commission cannot be dropped or removed unless he voluntarily resigns or is incapacitated.

29. Furthermore, it was submitted that the proceedings before the Inquiry Commission are not *quasi* judicial; that the Inquiry Commission cannot impose a penalty; that at best, the report of an Inquiry Commission is akin to a complaint with allegations or an F.I.R. or a report in the nature of preliminary inquiry; that such a report is by no means a final determination; that simply on the basis of a report of an Inquiry Commission, any person cannot be considered as guilty of any offence or malpractice; that the doors of the principles of natural justice are not completely shut in the proceedings before the Inquiry Commission; that the appellants/Associations interacted with the Inquiry Commission, and the sugarcane growers were also heard; that the Commission, however, has a duty to act fairly in that its findings should be based on material/evidence and its recommendations should follow from the findings of fact, and the actions proposed must be based on and be consistent with applicable laws; that the appellants will have the statutory remedies against any action that may be taken by the statutory bodies on the basis of the Inquiry Commission's report; that if the appellants feel that reputational damage has been caused to them, they may consider filing a suit

for defamation; that the report of the Inquiry Commission has been made public in accordance with Section 15 of the 2017 Act; that this Court cannot sit in judgment on the factual aspects in the Inquiry Commission's report; and that the Federal Government did have the executive competence to constitute the Inquiry Commission on the subjects in its legislative domain.

30. Furthermore, it was submitted that the allegation of bias against the members of the Inquiry Commission is nothing but a figment of the appellants' imagination; that when the Inquiry Commission was constituted, the report of the Inquiry Committee had not been issued; that the Inquiry Commission was constituted on 16.03.2020 whereas the inquiry report was issued on 24.03.2020 and was made public on 04.04.2020; that the contents of the letter dated 09.03.2020 from the Convener of the Inquiry Committee to the Prime Minister and the report of the Inquiry Committee are not such as to return a finding of bias against the members of the Inquiry Commission; that the Inquiry Commission did not pick or choose while giving its report; that at page 86 of the report of the Inquiry Commission, adverse observations had been given regarding the performance of the Provincial Governments; that in the said report, there is a chapter on the performance of every statutory body; that in the said report, adverse observations had also been given against the sitting Chief Minister of Punjab, a sitting Federal Minister and a sitting Advisor to the Prime Minister; and that the said report also makes reference to short term as well as long term reforms including deficiencies in different statutory provisions. Learned Attorney-General prayed for the appeal to be dismissed.

31. We have heard at considerable length the contentions of the learned counsel for the appellants as well as the learned Attorney-General and have perused the record with their able assistance.

32. The facts leading to the filing of the instant appeal have been set out in sufficient detail in paragraphs 2 to 18 above, and need not be recapitulated.

WHETHER THE INQUIRY ENTRUSTED TO THE INQUIRY COMMISSION WAS A DEFINITE MATTER OF PUBLIC IMPORTANCE:-

33. The importance of sugar in the daily life of the common man and the requirement for sugar to be sold to the non-industrial or non-commercial consumers at affordable rates has been well emphasized in the impugned judgment. The sharp increase in the price of sugar is without a doubt a definite matter of public importance warranting an inquiry into the causes for such increase. Any responsible Government would not shut its eyes to the distress caused to the common man when an essential commodity like sugar goes beyond his financial means. This was a matter of grave concern prompting the Prime Minister to constitute an Inquiry Committee headed by none other than the Director General, F.I.A., to probe into the matter. The Interior Division's summary dated 10.03.2020 and the Cabinet's decision of the same day shows that the decision to appoint an Inquiry Commission to probe into the increase in sugar price was taken with a diligent application of mind and for the public good. It would be incongruous and anomalous to say that the sharp rise in the price of sugar, which is an essential commodity for the common man, is not of vital concern to the public.

34. The appellants do not question the need for the appointment of an Inquiry Commission on the said subject but take issue with the manner in which the decision-making process for the appointment of the Inquiry Commission was conducted. Their grievance is that such process adopted by the Federal Government was replete with procedural irregularities and illegalities rendering the proceedings before the Inquiry Commission *coram non-judice* and the inquiry report liable to be quashed.

WHETHER THE PUBLICATION IN THE OFFICIAL GAZETTE OF THE NOTIFICATIONS CONSTIUTING THE INQUIRY COMMISSION AFTER ITS INQUIRY REPORT WAS SUBMITTED RENDERED THE PROCEEDINGS BEFORE THE INQUIRY COMMISSION *CORAM NON JUDICE*:-

35. The ground most vociferously agitated by the learned counsel for the appellants was that since the notifications for the

constitution of the Inquiry Commission were published in the official gazette after it had submitted its report, the proceedings before the Inquiry Commission were without lawful authority, *coram non-judice* and liable to be declared as such.

36. It is not disputed that this ground was agitated in the proceedings before the learned Judge-in-Chambers. In paragraph 11 of the impugned judgment dated 20.06.2020, it was held *inter alia* that *"assuming that the notification had not been issued or published in the official gazette, yet the validity of the proceedings of the Commission of Inquiry and the Report would have remained unaffected on the touchstone of the law laid down by the august Supreme Court in the case titled 'Nadeem Ahmed v. Federation of Pakistan' [2013 SCMR 1062]."*

37. Section 3(1) and (2) of the 2017 Act are reproduced herein below:-

> *"3. **Constitution of Commission of Inquiry**. – (1) Whenever it is expedient to conduct an inquiry into any definite matter of public importance, the Federal Government may, by Notification in the official Gazette, constitute a Commission of Inquiry in accordance with the provisions of this Act:*
> *Explanation.– -"matter of public importance" includes a matter of general interest or direct or vital concern to the public.*
> *(2) The Federal Government shall, by Notification in the official Gazette, appoint the members of the Commission and where more than one member are so appointed, the Federal Government shall designate one of the members to be the Chairman of the Commission."*
> **(Emphasis added)**

38. Section 3(1) of the 2017 Act read with the Explanation makes it clear that the intention of the Legislature is to enable the Federal Government to appoint an Inquiry Commission for the purpose of making an inquiry into any definite matter of public importance, which includes a matter of general interest or direct or vital concern to the public. The Federal Government can appoint a Commission to make an inquiry into any matter relatable to any of the Entries in the Federal Legislative List in the Constitution. It is not disputed that the Federal Government, i.e. the Prime Minister and the Cabinet, has, in exercise of the powers conferred by Section 3 of the said Act, constituted the Inquiry Commission to probe into the increase in sugar prices.

39. It is an admitted position that the notification dated 16.03.2020 (whereby a six-member Inquiry Commission was constituted) and the notification dated 25.03.2020 (whereby a seventh member was added to the Inquiry Commission) were published in the official gazette on 06.07.2020 and 07.07.2020, respectively. By the time the said notifications were published in the official gazette, the Inquiry Commission had been rendered *functus officio* having submitted its report on 21.05.2020.

40. Where a notification is issued in exercise of a power specifically conferred by statute, it has to be seen whether such statute requires the publication of the notification in the official gazette. For instance, Section 3(1) and (2) of the 2017 Act explicitly requires the notification constituting an Inquiry Commission to be published in the official gazette. It is our view that this requirement to publish a notification in the official gazette cannot be ignored or treated to be directory simply on the ground that the 2017 Act does not provide consequences for non-compliance with such requirement. If the intention of the Legislature was that the non-publication in the official gazette of a notification under Section 3(1) and (2) of the 2017 Act was to be inconsequential, it would not have explicitly required publication of the notification constituting an Inquiry Commission as well as the notification appointing members of an Inquiry Commission. It is a cardinal principle of statutory interpretation that redundancy or superfluity must not be attributed to the Legislature, and that no part or word in a statute is to be treated as surplusage.

41. The Pakistan Commissions of Inquiry Act, 1956 (**"the 1956 Act"**) was repealed by the 2017 Act. There are few provisions in both these statutes which are in *pari materia*. However, Section 3(2) of the 1956 Act did not require the appointment of the members of an Inquiry Commission to be made through a notification published in the official gazette, whereas Section 3(2) of the 2017 Act does stipulate such a requirement. We cannot treat this new requirement in the 2017 Act for the appointment of members of an Inquiry Commission to be made through a notification published in the official gazette to be superfluous or

redundant. The Legislature is assumed to have consciously introduced this new requirement in the 2017 Act and, therefore we are of the view that compliance with the same is necessary.

42. The object of requiring the publication of a notification in the official gazette is to give publicity to the notification and to provide authenticity to the contents of that notification. In the case of Sahib Textiles (Pvt.) Ltd. Vs. Federation of Pakistan (2004 PTD 1), it was held *inter alia* that publication in the official gazette is legally presumed to be information to all and sundry. Where the parent statute prescribes the mode for the publication of a notification that mode must be followed. Since the mode prescribed by Section 3(1) and (2) of the 2017 Act for constituting an Inquiry Commission and appointing its members was *"by notification in the official gazette,"* it is that very mode and no other which ought to have been adhered. According to the canon of construction *expressio unius est exclusio alterius* to express or include one thing implies the exclusion of the other or of the alternative. In the case of Nazir Ahmed Vs. King-Emperor (AIR 1936 Privy Council 253), it was held *inter alia* that where a power is given to do a thing in a certain way, the thing must be done in that way or not at all. This principle has been followed in innumerable judgments of the Superior Courts including the judgments in the cases of E.A. Evans Vs. Muhammad Ashraf (PLD 1964 536), Assistant Collector of Customs Vs. Khyber Electric Lamps (2001 SCMR 838), Khalid Saeed Vs. Shamim Rizvan (2003 SCMR 1505), and Hamayun Sarfraz Khan Vs. Noor Muhammad (2007 SCMR 307).

43. Section 20A of the General Clauses Act, 1897 provides that all rules, orders, regulations and circulars having the effect of law made or issued under any enactment shall be published in the official gazette. Although the notifications constituting the Inquiry Commission pursuant to the decisions taken by the Cabinet cannot be termed as *"having the effect of law,"* but Section 2(41) of the West Pakistan General Clauses Act, 1956 defines a *"notification"* to mean a notification published under proper authority in the official gazette. The Legislature being cognizant of

the definition of notification in the West Pakistan General Clauses Act, 1956 nevertheless required a notification constituting an Inquiry Commission under the provisions of the 2017 Act to be published in the official gazette.

44. The principles of statutory interpretation are well settled. The Court cannot recast or reframe legislation for the very reason that it has no power to legislate. The Court cannot add words to a statute or read words into it which are not there. Similarly the Court cannot ignore words in a statute by attributing redundancy to them. Where the words of the statute are clear and unambiguous, the provision should be given its plain and normal meaning, without adding or rejecting any words. Departure from the literal rule by making structural changes or substituting words in a clear statutory provision under the guise of interpretation will pose a great risk as the changes may not be what the Legislature intended or desired. Legislative wisdom cannot be replaced by a Judge's views.

45. To bring home the point that if a notification required by law to be published in the official gazette is not so published, any proceedings taken or act done under a notification drawn but not so published is without lawful authority, the learned counsel for the appellants relied on the following case law:-

(i) In the case of Kalimullah Vs. Government of West Pakistan (PLD 1961 Lahore 321), it was held *inter alia* that since the provisions of the West Pakistan Foodstuffs (Control) Act, 1958 required an order passed under Section 3 thereof to be notified in the official gazette, it was not open to the Provincial Government or its officers to adopt any mode other than notification in the official gazette for conveying an order passed under Section 3 of the said Act.

(ii) In the case of Muhammad Suleman Vs. Abdul Ghani (PLD 1978 S.C. 190), even though Section 8(2) of the Punjab Pre-Emption Act, 2013 did not require a declaration by notification to be published in the official gazette, it was held that since a declaration by notification under the said Section curtails the right of pre-emption, it was necessary to

publish such a notification in the official gazette under Section 20 of the West Pakistan General Clauses Act, 1956. For the purposes of clarity, the relevant portion of the said report is reproduced herein below:-

> ***"The word "notification", according to section 2(41) of the West Pakistan General Clauses Acts VI of 1956 "shall mean a notification published under proper authority in the official Gazette." This negates the contention of the learned counsel that in the instant case, there was no requirement of doing the relevant thing by publication of a notification in the official Gazette. In this state of affairs the case is in no manner different from the precedents referred to by the learned Single Judge in his judgment. Section 8(2) refers to curtailing the right of pre-emption and according to the principle laid down in section 20 of the West Pakistan General Clauses Act, if the curtailment was to be by a notification to be published in the official Gazette, the withdrawal of the aforesaid curtailment was also to be done in the same manner, namely by a declaration of withdrawal which, in its own turn should also be published in the form of a notification in the official Gazette, and will obviously be effective from the date of the publication of the Gazette and not any prior date. This is clear from the above reproduced language of section 8(2) though we may mention, that even otherwise it is well settled as laid down in Sh. Fazal Ahmad v. Raja Ziaullah Khan and another (PLD 1964 SC 494) and Sh. Rehmatullah v. The Deputy Settlement Commissioner, Centre 'A', Karachi and others (PLD 1963 SC 633) that such notifications which curtail or extend rights of the citizens, cannot be retrospective and this is all the more so in such cases when a state of things is to take place by publication of a notification which means from the date of its publication in the Gazette and not from any prior date or to be more precise, not from the date of the notification itself if it is prior to the actual date of the publication in the Gazette, because then it will tantamount to giving that notification a retrospective effect not from its publication but from a date prior thereto which as explained above is not permissible according to the relevant law involved in this case."***
>
> **(Emphasis added)**

(iii) In the case of Karachi Metropolitan Corporation Vs. S.N.H. Industries (Pvt.) Ltd. (1997 SCMR 1228), the Hon'ble Supreme Court, after making reference to the provisions of the Sindh Local Government Ordinance, 1979, held as follows:-

> ***"As the word "notification" has not been defined in the Ordinance, the definition given in the West Pakistan General Clauses Act shall be applied, which requires that any direction/order which is published under proper authority in the official Gazette is called a notification. Mere issuance of an order or direction will not amount to a***

> ***notification. Even if it is published in the newspapers, affixed on the Notice Board or is published in any other manner, it shall not amount to a notification. Notification published in an official Gazette is a public document and carries certain presumptions of its legality and authority and its enforcement as well. Such attributes cannot be attached to an order or direction which is issued, notified or published without publication in the official Gazette."***

(iv) In the case of Dilshad Vs. Senior Superintendent of Police (PLD 2007 Karachi 330), the Division Bench of the Hon'ble High Court of Sindh set aside an award for the acquisition of land on the ground that the notification under Section 4 of the Land Acquisition Act, 1894 was not published in the official gazette and therefore was without lawful authority.

(v) In the case of Government of Sindh Vs. Khan Ginners (Pvt.) Ltd. (PLD 2011 S.C. 347), the Hon'ble Supreme Court relied on the law laid down in the case of Muhammad Suleman Vs. Abdul Ghani *(supra)* in upholding the judgment of the Hon'ble High Court of Sindh holding that notices issued by the Excise and Taxation Department pursuant to a notification issued under the West Pakistan Cotton Control Ordinance, 1966 to be unlawful on the ground that the notification had not been published in the official gazette. The relevant portion of the judgment of the Hon'ble Supreme Court is reproduced herein below:-

> ***"The case of Muhammad Suleman and others v. Abdul Ghani PLD 1978 SC 190 throws sufficient light on the legal position that issuance of a Notification is not of any significance or legal importance till it is published in an official Gazette. According to section 2(41) of the General Clauses Act, 1956 a 'Notification' means a Notification published under proper authority in an official Gazette. In this view of the matter before its publication in the official Gazette the Notification relevant to the present appeals could not even be lawfully termed as a Notification. In these peculiar circumstances of this case we have not been able to take any legitimate exception to the declaration made by the learned Division Bench of the High Court of Sindh, Karachi that notices of demand issued against the respondents on 2-10-1998 were without lawful authority and of no legal effect."***

(vi) In the case of Trustees of the Port of Karachi Vs. N.K. Enterprises (PLD 2013 Sindh 264), the Hon'ble High Court of Sindh held as follows:-

> ***"29. The effective dates of operation of the notifications in terms of section 43 B of KPT Act 1886, however, would be only after publication of rates/charges in the official gazette and not from the date of sanction or prior thereto. The key words used in section 43 B of KPT Act, 1886 are that "when so sanctioned and published in the official gazette shall have the force of law"; therefore, in my view unless the two mandatory requirements i.e., sanction and publication in official gazette are not fulfilled a notification can have no force of law or binding effect."***

(vii) In the case of Pakistan Beverage Limited Vs. Deputy Director (Food) (1984 CLC 2687), the petitioner had challenged a demand made by the respondent on the basis of a notification issued under Section 3(1) of the Sindh Foodstuffs (Control) Act, 1958, which required for such notification to be notified in the gazette. Since it was admitted that the notification in question had not been published in the official gazette, the Division Bench of the Hon'ble High Court of Sindh declared the demand on the basis of an un-notified order to be without lawful authority.

(viii) In the case of Sugar Mills Vs. Government of Punjab (2001 YLR 2275), the petitioners were required to deposit certain amounts calculated in accordance with the terms of a memorandum issued under the provisions of the Punjab Foodstuffs (Control) Act, 1958. Section 3 of the said Act required the issuance of a notified order. Since the said memorandum issued under Section 3 of the said Act had to be treated as a notified order, which had to be duly notified in the official gazette and since the said memorandum had not been so notified, it was declared to be of no legal validity.

(ix) Section 59(1) of the Electoral College Act, 1964 which required the Election Commissioner to appoint an officer to be an Election Tribunal through a notification in the official gazette came up for consideration in the case of Muhammad Osman Ghani Vs. M. Ahmed (PLD 1967 Dacca 786). It was held by the Hon'ble Dacca High Court that the Election Tribunal could not exercise jurisdiction prior to the publication of the notification in the official gazette. The

relevant portion of the said report is reproduced herein below:-

> ***"It is, therefore, obvious that the appointment of an Election Tribunal must be made by notification in the official Gazette and in no other manner. In the present case, the aforesaid notification dated the 9th of July 1965 appointing Additional Deputy Commissioner (General), Bakarganj to be an Election Tribunal, although dated the 9th of July 1965, was published in the official Gazette for the first time on the 26th of March 1966, i.e., long after Mr. M. Ahmed, Additional Deputy Commissioner (General), Bakarganj had heard and disposed of the Election case. In view of the said notification, Mr. M. Ahmed, Additional Deputy Commissioner (General), Bakarganj was constituted an Election Tribunal only on the 26th of March 1966 and not earlier and therefore he had no jurisdiction to try the Election Case on the 15th of January 1966."***

(x) In the case of Mian Akbar Hussain Vs. Punjab Government (PLD 1954 Lahore 188), the Excise and Taxation Commissioner had assumed his office prior to the notification for his appointment having been published in the official gazette. Section 9 of the Punjab Excise Act, 1914 provided *inter alia* that the Provincial Government may, by notification, appoint an Excise Commissioner. Even though the said Section did not require the notification to be published in the official gazette, it was held that by virtue of Section 2(36) of the West Pakistan General Clauses Act, 1956 the term notification occurring in the Section means a notification under proper authority in the gazette. Furthermore, it was held that the appointment of the Excise Commissioner was to be effective from the date of the publication of the notification of his appointment in the official gazette. For the purposes of clarity, the relevant portion of the said report is reproduced herein below:-

> ***"Section 9 of the Excise Act cannot but mean that the appointment of an Excise Commissioner is to be effective from the date of the publication of a notification in the Official Gazette in that behalf and if the order of appointment was made on a date earlier than the one on which the notification was gazetted, the appointment will be deemed to be from the date of the notification and not from that of the order."***

(xi) In the case of Muhammad Ishaq Vs. Chief Administrator Auqaf, Punjab (PLD 1977 S.C. 639), it was held by the

Hon'ble Supreme Court that a notification takes effect from the day it is made available for sale at the depot of the printing press. In holding so, the Hon'ble Supreme Court was interpreting Section 7 of the West Pakistan Waqf Properties Ordinance, 1971 which provided *inter alia* that any person claiming any interest in any *waqf* property in respect of which notification has been issued may, within thirty days of the publication of such notification, file a petition in the District Court within whose jurisdiction a part of the *waqf* property is situated for a declaration that the property is not *waqf* property. In the proceedings before the Hon'ble Supreme Court, the appellant had filed a certificate from the Manager, Government Press, Punjab to the effect that the gazette notification was received in the book depot duly printed on 23.10.1969. The Hon'ble Supreme Court held *inter alia* that the notification in question was brought to the notice of the general public when the gazette was first delivered to the book depot in the printing press. For the purposes of clarity, the relevant portion of the said report is reproduced herein below:-

> *"Apart from the decided cases, it is common sense that the clause "within 30 days of the publication of such notification" in section 7 of the Ordinance means that an application contesting the legality of the notification should be filed within 30 days of the time when the notification is brought to the notice of the general public by a normal mode. In the instant case this could not have happened till 23-10-1969 when the Gazette was first delivered to the book depot in the printing press. To hold otherwise would be contrary to justice and good conscience as it would ascribe an intent to the Legislature to deprive a citizen of valuable property rights by merely printing a notification and not giving it proper publications."*

(xii) Relying upon the law laid down by the Hon'ble Supreme Court in the case of Muhammad Ishaq Vs. Chief Administrator Auqaf, Punjab *(supra)*, the Division Bench of the Hon'ble High Court of Sindh held that *"unless a notification expressly stipulates that it will become effective from beyond date, it takes effect from the date of its actual publication in the gazette..."*

(xiii) In the case of Government of the Punjab, Food Department Vs. United Sugar Mills Ltd. (2008 SCMR 448), it was held *inter alia* that a notified order would mean a notification through publication in the official gazette and not by passing an order and keeping the same in the office of the appellants. Furthermore, the Hon'ble Supreme Court spurned the contention that non-publication of a notification in the official gazette would not invalidate the notification. It was also held that it was settled proposition of law that if the law required a particular act to be done in a particular manner, the same is to be done in that particular manner or not at all.

(xiv) In the case of Chief Administrator Auqaf Vs. Mst. Amna Bibi (2008 SCMR 1717), the Hon'ble Supreme Court held *inter alia* that a notification curtailing or extending rights of the citizens will take effect from the date of its publication in the official gazette and not from any prior date. In paragraph 8 of the said report, it was held as follows:-

> *"8. From minute scrutiny of the above referred law, it reveals that under section 7 of the Ordinance, 1961 and section 11 of the Ordinance, 1979, thirty days period has been provided to file a petition against the acquisition of the property by the Auqaf Department. The time of thirty days will commence within thirty days of the "publication" of notification. Mere issuance of a "notification" is not sufficient nor mere printing of notification in Gazette is sufficient to constitute "publication". "Publication" takes effect only when notification (Gazette containing) is made available to general public. It has been laid down by the superior Courts that a notification which curtails or extends rights of citizens will take effect from date of its publication in Gazette and not from any prior date."*

(xv) In the case of Tehsil Municipal Administration Vs. Noman Azam (2009 SCMR 1070), the Hon'ble Supreme Court upheld the judgment of the Hon'ble Lahore High Court that the revision of taxes would take effect from the date of the publication of the notification in the official gazette. In the said report, it was held as follows:-

> *"5. Now the question arises, as to whether the notification dated 5-8-2003 will take effect from the date of its issuance by the Local Council or from the date, when it was published in the official gazette. The learned High*

Court upon perusing instructions issued by the Local Government and Rural Development Department, Government of Punjab, ... revision of taxes and fees would take effect from the date of publication of notifications in the official gazette ... directed the Municipal Authorities to refund the revised amount of fee if collected during the interregnum period of date of notification and its publication in the official gazette."

(xvi) In the case of Deputy Controller of Customs (Valuation) Vs. Abdul Shakoor Ismail Khaloodi (2016 SCMR 1664), a notification under the provisions of the Customs Act, 1969 was published in the official gazette three weeks after it was drawn. The Hon'ble Supreme Court held that enhanced duties on the basis of the said notification could be claimed with effect from the date when the notification was published in the official gazette.

46. To canvas the same proposition, learned counsel for the appellants placed reliance on the law laid down in the cases of Mahendra Lal Vs. State of U.P. (AIR 1963 S.C. 1019), Collector of Central Excise Vs. New Tobacco Co. (AIR 1998 S.C. 668), M/s Garware Nylons Ltd. Vs. Collector of Customs & Central Excise, Pune (AIR 1999 S.C. 844), Union of India Vs. M/s Ganesh Das Bhojraj (AIR 2000 S.C. 1102), Rajendra Agriculture University Vs. Ashok Kumar Prasad (AIR 2010 S.C. 259), and many others.

47. The principles of law deduced from the above referred case law are as follows:-

i. Where a statute requires a notification to be published in the official gazette, the notification takes effect from the date when it is so published.

ii. Where a statute explicitly requires a notification to be published in the official gazette, mere drawing up of a notification without its publication in the official gazette falls short of compliance with the statute.

iii. Where an appointment to a certain office is required by a statute to be made through a notification in the official gazette, the assumption of office and the exercise of powers related to that office after the drawing up of a notification but prior to its publication in the official gazette is without lawful authority.

iv. Even where a particular statute does not expressly require a notification to be published in the official gazette, it has to be so published since Section 2(41) of the West Pakistan General Clauses Act, 1956 provides that in the said Act and all the Federal Acts unless there is anything repugnant in the subject or context the word *"notification"* shall mean a notification published under proper authority in the official gazette.

v. The requirement for a publication in the official gazette is all the more essential where the notification operates to curtail the rights of citizens or imposes a burden on them.

vi. The provision in statutes requiring publication of a notification in the official gazette can be treated to be mandatory in nature where the rights or liabilities of other persons are involved.

vii. Publication of a notification is complete when the gazette containing the notification is made available to the public.

48. The learned Attorney-General also cited several authorities emanating from the Superior Courts in Pakistan in support of his contention that the requirement in a statute for a notification to be published in the official gazette is directory in nature, and that the proceedings before the Inquiry Commission would not stand vitiated on the sole ground that the notifications constituting the Inquiry Commission were drawn by the Interior Division prior to the assumption of responsibilities by the Inquiry Commission but were published in the official gazette after the Inquiry Commission had submitted its report. The case law relied upon by him are referred to herein below:-

(i) In the case of Manzur-ul-Haq Vs. Controlling Authority, Local Councils, Montgomery (PLD 1963 S.C. 652), the appellant was first elected as a Member of the Union Committee, Montgomery, and subsequently as a Chairman of the Union Committee. By virtue of Article 12(5)(b) of the Basic

Democracies Order, 1959, he became an ex-officio Member of the Municipal Committee, Montgomery. Thereafter, he was elected as a Vice Chairman of the Municipal Committee, Montgomery. By virtue of Article 15(2) of the Basic Democracies Order, 1959, every Vice Chairman of the Municipal Committee became an ex-officio Member of the District Council. Since the Government did not issue notifications regarding his election as Vice Chairman of the Municipal Committee and as a Member of the District Council, he was not allowed to act as a Vice Chairman of the Municipal Committee or a Member of the District Council. The Hon'ble Supreme Court held that there was no provision in the Basic Democracies Order, 1959 or the Municipal Administration Ordinance, 1960 requiring the election of the Vice Chairman or the appointment of an official Member of the District Council to be notified in the gazette. Consequently, it was held that issuance of a notification was not a condition precedent for the appellant holding the office. For the purposes of clarity, the relevant portion of the said judgment is reproduced herein below:-

> ***"... It has to be pointed out at the same time that the mere existence of a provision for notification is a wholly insufficient basis for saying that the absence of a notification will stand in the way of the person whose office is to be notified. There are some provisions which simply cast a duty on the executive Government to notify the holder of an office and have no further effect. Section 17 of the Municipal Administration Ordinance and Article 26 of the Basic Democracies Order are provisions of this character. Unless there be something in the language of a statute which shows that the person concerned will not commence to hold an office till there is a notification in the Gazette, a provision for a notification should not be interpreted as a condition precedent to the holding of an office."***

(ii) In the case of <u>Muhammad Siddique Vs. Market Committee, Tandlianwala (1983 SCMR 785)</u>, the Provincial Government issued a notification dated 30.07.1975 prohibiting the establishment of any market within the market area of any Market Committee unless the site for the same had been approved by the Provincial Government. The said

notification was signed by the Secretary to the Government in the Agriculture Department on 30.07.1975 but was actually published in the official gazette on 20.11.1975. The argument that the said notification could not operate retrospectively i.e. from the date when it was signed was spurned by the Hon'ble Supreme Court on the ground that Section 222 of the Punjab Local Government Act, 1975 made the condition of previous publication of a notification in the official gazette confined to bye-laws only and not to rules or notifications issued thereunder. Furthermore, it was held that the mere fact that the publication of the notification was delayed until 20.11.1975 will not invalidate or otherwise make its operation retrospective from any date prior to 30.07.1975 when it was actually signed though not published in the official gazette.

(iii) In the case of Pakistan through Secretary, Ministry of Defence Vs. Muhammad Ahsan (1991 SCMR 2180), the respondents were occupancy tenants of land in District Sargodha which was said to have been acquired in the year 1946. The notification for the acquisition of the land had not been published in the official gazette. The respondents had filed a suit seeking a declaration to the effect that the acquisition of their land was without lawful authority. It was held by the Hon'ble Supreme Court that the land having been acquired in 1946, the notification for the acquisition of the land could be gazetted now, and that the gazette would complete a formality of a consequential nature not going to the basic substantial act of acquisition which had taken place in 1946. The relevant portions of the said report are reproduced herein below:-

> *"Although this closes the discussion of the main vital question of fact in this case, yet we deem it necessary to remark that in the facts and circumstances of this case the issuance of notice and the decision about acquisition having been admittedly established, rather admitted, even if it would have been held by us that the acquisition took place between 1-10-1946 and 4-11-1946, much difference would not have been made insofar as the result, vis-a-vis, the effectiveness of the acquisition in law is concerned. We*

would have then in that eventuality permitted the said notice of acquisition actually made, completed and signed in 1946 to be gazetted now. If it would have been gazetted now the objection that it could not have been given retrospective effect would not have been valid in such a case. The question of retrospectively does not arise and the Gazette would have only completed a formality of consequential nature not going to the basic substantial act of acquisition which admittedly did take place in 1946.

.... In a recent judgment of this Court in Muhammad Siddique v. Market Committee, Tandlianwala (1983 S C M R 785) it was held that depending upon the circumstance of each case the mere fact that publication in the Gazette was delayed, could neither invalidate the notification nor make its operation retrospective as such vis-a-vis date of actually signing it. In the said case the notification concerned was prepared on 30th July, 1975 but was published in the Official Gazette on 20th November, 1975--- 4 months later. The signing of the notification on 30th of July 1975 was treated as having curative effect even if the publication in the Gazette was delayed by 4 months. Although this rule may not be applicable to all situations where publication in the Gazette is necessary but in the facts and circumstances of this case we would have certainly applied the rule laid down in the case of Muhammad Siddique. If a need would have arisen it would have advanced the cause of justice; namely, that factual acquisition of land in this case not having been denied and the same having been acted upon for nearly 50 years and that there is an air field in the land for such a long time, we would not have annulled all that on the ground of technicality namely that although the notification had been signed and issued to, all concerned, which had not been gazetted. In other words the purpose of the publication in the ordinary sense was practically served in this case almost contemporaneously when the acquisition took place. In fact it was more substantial publication in so far as the owners were concerned than if it would have been in the official Gazette. This is so, vis-a-vis, the practical side of the matter."

(iv) In the case of Sagheer Ahmed Vs. Province of Punjab (PLD 2004 S.C. 261), the petitioner's case was that since the notification dated 28.05.1976 for the approval of a housing scheme by the Government of Punjab had not been published in the official gazette as required by the provisions of Section 3 of the Punjab Acquisition of Land (Housing) Act, 1973, the subsequent notification dated 07.06.1976 (published in the official gazette) under Section 4 of the said Act and all subsequent proceedings of the petitioner's land were void *ab-initio* and nullity in the eye of law. The said argument was spurned by the Hon'ble

Supreme Court by holding that mere non-publication of a notification under Section 3 of the said Act in the official gazette would not affect its validity since the manner or mode of notifying the same was a matter of procedural formality and no consequences had been provided for failure to show strict compliance with it. Furthermore, it was held that Section 3 of the said Act did not clearly indicate as to the manner in which the approval of a housing scheme by the Government was to be notified whereas the publication of notification under Section 4 of the said Act in the official gazette had been made necessary as the rights and interests of the land owners were likely to be adversely affected by the acquisition proceedings. In paragraphs 10 and 11 of the said report, it was *inter alia* held as follows:-

> ***"10. Even otherwise, the provisions of a statute for the publication or a notification in official Gazette are generally regarded by the Courts as directory and where their strict non-compliance does not provide any consequences. The legal certainty also requires that ordinarily a statutory instrument should not be treated as invalid because of a failure on the part of public functionaries to publish it in the official Gazette. There may be many things done on the basis of such an instrument. It would seem unfortunate were these things held to be invalid if it were at some stage discovered that there had been a failure by a public authority to go meticulously by the manner and mode of publication of an instrument or notification in the Official Gazette....***
>
> ***11. However, no hard and fast rule of universal application can be laid down on the legal effect of non-publication of a notification in the official Gazette. In certain cases, keeping in view the nature and object of a particular statute and to carry out the legislative intent, the provisions for the publication of a notification in the official Gazette can be treated to be mandatory in nature where rights or liabilities of other persons are involved...."***

(v) **In the case of <u>Commissioner of Income Tax Vs. M/s Media Network (PTCL 2007 CL. 1)</u>, the Hon'ble Supreme Court, after making reference to several judicial precedents including the case of <u>Sagheer Ahmed Vs. Province of Punjab *(supra)*</u>, held that the mere fact that publication of a notification in the gazette was delayed could not invalidate the notification.**

(vi) In the most recent case of Bahadur Khan Vs. Federation of Pakistan (2017 SCMR 2066), the Hon'ble Supreme Court, while agreeing with the dictum in the case of Sagheer Ahmed Vs. Province of Punjab *(supra)*, held that the failure to have a notification published in the official gazette would not shear it of its statutory status.

(vii) In the case of Printek (Pvt.) Ltd. Vs. Shahid Nadeem Malik (2011 YLR 2941), it was held *inter alia* that since the petitioner had not been able to satisfy the Court as to the manner in which they had been prejudiced by the non-publication of amended regulations in the official gazette, the amendments in the regulations could not be struck down due to such non-publication. It was also held that the onus on the petitioner to show that prejudice was caused to him or any of his legal rights were affected due to such non-publication in the official gazette.

(viii) In the case of National Bank of Pakistan Vs. Eftikhar Rasool Anjum (2017 PLC (C.S.) 453), the Division Bench of the Hon'ble Lahore High Court, after referring to the law laid down in the case of Sagheer Ahmed Vs. Province of Punjab *(supra)*, held that a notification issued by the Federal Government in 1977 could not be set-aside or not implemented merely on the ground of its non-publication in the official gazette. The said judgment was upheld by the Hon'ble Supreme Court in the case of Bahadur Khan Vs. Federation of Pakistan *(supra)*.

(ix) In the case of Muhammad Shahid Vs. Federation of Pakistan (PLD 2018 Islamabad 258), it was held *inter alia* that the appointment of an Enquiry Magistrate three days prior to the issuance of a notification under Section 4 of the Extradition Act, 1972 would not render the entire proceedings before the Enquiry Magistrate *coram non-judice* or unlawful. Furthermore, it was held that an order appointing an Enquiry Magistrate a few days prior to the notification under Section 4 of the said Act was an irregularity which stood cured when the said notification was issued.

(x) In the case of Mohammad Ismail Mills Ltd. Vs. Federation of Pakistan (PLD 2020 Sindh 85), the Hon'ble High Court of Sindh held as follows:-

> *"6. Even otherwise, the provisions of a statute for the publication or a notification in official Gazette are generally regarded by the Courts as directory and where their strict non-compliance does not provide any consequences. The legal certainty also requires that ordinarily a statutory instrument should not be treated as invalid because of a failure on the part of public functionaries to publish it in the official Gazette. There may be many things done on the basis of such an instrument. It would seem unfortunate were these things held to be invalid if it were at some stage discovered that there had been a failure by a public authority to go meticulously by the manner and mode of publication of an instrument or notification in the Official Gazette. In the case of Multiline Associates v. Ardeshir Cowasjee and 2 others (PLD 1995 SC 423) this Court took the view that even if Karachi Building and Town Planning Regulations, 1979 were not published in the official Gazette under section 21-A(3) of the Sindh Buildings Control Ordinance, 1979, they could be construed and acted upon as regulations for the purpose of the said Ordinance."*

49. The principles that can be deduced from the case law relied upon by the learned Attorney-General are as follows:-

i. Provisions in a statute requiring the publication of a notification in the official gazette are generally regarded by the Courts as directory, especially where no consequences are provided for non-compliance with such requirement.

ii. A notification should not be treated as invalid due to the failure on the part of public functionaries to publish it in the official gazette.

iii. Where things have been done on the basis of a notification which is not published in the official gazette, it would be unfortunate if such things were to be declared as invalid if the failure on the part of public functionaries to publish the notification in the official gazette is discovered at a later stage.

iv. The mere fact that the publication of the notification in the official gazette is delayed would not invalidate the notification.

v. No hard and fast rule of universal application could be laid down on the legal effect of non-publication of a notification in the official gazette.

vi. In certain cases, keeping in view the nature and object of a particular statute and to carry out the legislative intent, the provisions for the publication of a notification in the official gazette can be treated to be mandatory in nature where the rights or liabilities of other persons are involved.

50. As mentioned above, the most recent judicial precedent on the subject from the Hon'ble Supreme Court is in the judgment in the case of Bahadur Khan Vs. Federation of Pakistan *(supra)*. A careful read of the said judgment shows that what was referred to as a *"notification"* was in fact a letter dated 30.11.1977 from the Finance Division (Government of Pakistan) to the Chairman, Pakistan Banking Council, providing for enhanced pension and retirement benefits for the officers and executives of banks and financial institutions. The said notification does not make reference to any statute under which it was issued. However, in paragraph 9 of the said report, the Hon'ble Supreme Court has observed that although in the said notification it has not been stated that it had been issued under Section 20 of the Banks (Nationalization) Act, 1974 but there was no other provision of the said Act that could enable the Federal Government to issue a notification dealing with the matters envisaged by Section 20 of the said Act. Furthermore, it was observed that the words used in the said notification *"leave no doubt that it was issued under Section 20 of the Act."* Now, Section 20 of the Banks (Nationalization) Act, 1974 provides that the Federal Government may, by notification in the official gazette, make rules to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the said Act. In the said case, even though a notification made pursuant to Section 20 of the Banks (Nationalization) Act, 1974 had not been published in the official gazette, it was nevertheless enforced by the Hon'ble Lahore High Court in exercise of its Constitutional jurisdiction,

and the judgment of the Hon'ble Lahore High Court was upheld by the Hon'ble Supreme Court.

51. Where there are judgments of the Hon'ble Supreme Court at variance, the judgment of the Larger Bench is to be followed. However, where judgments of Benches of the same number are at variance, then the judgment latest in time is to be followed. In the case of Khurshid Bibi Vs. Ch. M. Nazir Cheema (PLD 2009 Lahore 415), it was held as follows:-

> *"... On the matter of precedent laid down by the Honourable Supreme Court this Court is governed the terms of Article 189 of the Constitution of the Islamic Republic of Pakistan 1973. Every judgment delivered by the Honourable Supreme Court irrespective of the size of the author Bench deserves and receives the highest respect from other courts including the High Court. However, in a case where the Honourable Supreme Court itself notes that its earlier conflicting view omits to consider important point about the legal position decided, then it is appropriate for the High Court to follow the more recent view expressed by the Honourable Supreme Court..."*

52. The judgments in the cases of Government of Sindh Vs. Khan Ginners (Pvt.) Ltd. *(supra)*, Muhammad Ishaq Vs. Chief Administrator Auqaf, Punjab *(supra)*, and Deputy Controller of Customs Vs. Abdul Shakoor Ismail Khaloodi *(supra)*, cited by the learned counsel for the appellants, were judgments by Benches of three Hon'ble Judges of the Supreme Court whereas the latest judgment on the subject i.e. Bahadur Khan Vs. Federation of Pakistan *(supra)*, which takes a different view from the one expressed in the judgments relied upon by the learned counsel for the appellants, is also by a three-member Bench. We refrain from going into the question of judgments *per incuriam* but consider ourselves bound in terms of Article 189 of the Constitution to follow the latest judgment from the Hon'ble Supreme Court on the subject.

53. Bearing in mind the said dictum, we consider ourselves bound to follow the law laid down by the Hon'ble Supreme Court in the case of Bahadur Khan Vs. Federation of Pakistan *(supra)*, which is a judgment by a three-member Bench deciding an appeal on 25.09.2017. In this view of the matter, we cannot bring ourselves to agree with the contention of the learned counsel for the appellants that on account of the non-publication in the official

gazette of the notifications constituting the Inquiry Commission until after the said Commission had submitted its report, the proceedings before the Inquiry Commission prior to such publication were *coram non-judice* or without lawful authority.

54. Having said that, we must express our dismay over the scant regard that the public functionaries in the Interior Division as well as the Cabinet Division have for their responsibilities under the Rules of Business and the 2017 Act, and for not having published the notifications constituting the Inquiry Commission in the official gazette soon after the decisions were taken by the Cabinet to constitute the Inquiry Commission. The mere fact that these notifications were, after all, published in the official gazette, *albeit* at a belated stage when the Inquiry Commission had submitted its report, goes to show that the publication of such notifications in the official gazette was considered necessary. Where a special statute explicitly requires a certain decision (as in the instant case, the decision of the Federal Government to appoint an Inquiry Commission) to be published in the official gazette, the public functionaries, after drawing a notification in that regard, cannot send it for publication as and when it takes their fancy. An unexplained delay by public functionaries in showing strict and timely compliance with the requirements of the statute calls for appropriate measures to be taken against them. Therefore, it is expected that in addition to appropriate measures, the delinquent public functionaries, due to whose inaction the publication of the notifications were delayed by over three and a half months, would be adequately made aware of their responsibilities under the law. The Superior Courts have held time and again that public duties are in the nature of a trust and are to be exercised reasonably, honestly, fairly, efficiently, and justly.

WHETHER THE SUBMISSION OF THE SUMMARY DATED 10.03.2020 BY THE INTERIOR DIVISION IN WHOSE DOMAIN THE SUBJECT OF COMMISSIONS OF INQUIRY ACT, 2017 DID NOT LAY, RENDERED THE CABINET'S DECISION 10.03.2020 UNLAWFUL:-

55. Learned counsel for the appellants with equal vehemence argued that the respondents had flouted the requirements of the

Rules of Business in that the summary for the constitution of the Inquiry Commission was moved and that notifications for the constitution of the Inquiry Commission were drawn by the Interior Division in whose domain the subject of the 2017 Act did not lay.

56. Article 99(1) of the Constitution provides that all executive actions of the Federal Government shall be expressed in the name of the President whereas Article 99(2) provides *inter alia* that the Federal Government shall by rules, specify the manner in which orders and other instruments made and executed in the name of the President shall be authenticated. Article 99(3) provides that the Federal Government shall also make rules for the allocation and transaction of its business.

57. Rules of Business were made by the Federal Government in exercise of the powers conferred by Article 99(3) of the Constitution. Rule 3 of the Rules of Business pertains to the allocation of business to the Ministries and the Divisions. It provides that the business of the Government shall be distributed amongst the Divisions in the manner indicated in Schedule-II. Item No.81 in paragraph 2 of Schedule-II to the Rules of Business shows that the Cabinet Division has to deal with all matters concerning and related to the 2017 Act. Accordingly, the summary for the constitution of an Inquiry Commission had to be moved for the Cabinet by the Cabinet Division, and after the Cabinet decides to constitute an Inquiry Commission, the notification in that regard also has to be issued by the Cabinet Division. In this regard, Rule 18(1) of the Rules of Business provides as follows:-

> *"**18. Manner of submission of Cabinet cases**.--(1) In respect of all cases to be submitted to the Cabinet, the Secretary of the Division concerned shall transmit to the Cabinet Secretary a concise, lucid and printed memorandum of the case (hereinafter referred to as the "summary"), giving the background and relevant facts, the points for decision and the recommendations of the Minister-in-Charge. In the event of views of the Division being different from the views of the Minister, both the views shall be included in the summary."*

58. The Superior Courts have time and again emphasized on the importance and binding nature of the Rules of Business and have

stressed on the need for strict adherence therewith. Reference in this regard may be made to the following case law:-

(i) In the case of Mustafa Impex Vs. Government of Pakistan *(supra)*, it was held as follows:-

> ***"50. The importance of the Rules of Business cannot be understated within a constitutional framework. Although, generally speaking, it is correct to state that all rules are binding for, and in relation to, the powers thereby conferred on the Executive, this is especially so in the case of the Rules of Business. The concept of rules, as is obvious, is subsumed in subordinate or delegated legislation. It is an integral part thereof. All legislation is binding and should be acted upon. The Federal Government does not have the prerogative to follow, or not to follow, legislation, both primary as well as secondary or delegated, in its discretion. The authority to frame rules is normally conferred by an Act of Parliament. In the case of the Rules of Business this authority flows from the Constitution itself. As noted above, Clause (3) of Article 99 makes it mandatory for the Federal Government to make rules which cover two related sub-fields; firstly, for and in relation to the allocation of the business of the Government and secondly, for transacting the said business. This clause is to be read as essentially ancillary to the overarching concept of the rule of law. The Constitution confers vast powers on the Government for the transaction of executive business. There is no reason to suppose, or believe, that the framers of the Constitution intended, in disregard of the explicit language employed, that the Federal Government could, in its discretion, either follow, or not follow, the provisions of the Rules of Business. The framer of rules is as much bound by the content thereof as anyone else is subject thereto. These are basic precepts of constitutional interpretation. To allow the Executive to depart from the language of the Rules, in its discretion, would be to permit, and legitimize, unconstitutional executive actions. Quite independently of the above, there is ample case law stressing the importance of a structured exercise of discretionary power. In this case the discretionary executive powers have already been fettered by the Constitution. The framing of rules for this purpose is inextricably linked to the guided exercise of official power. The following of the Rules of Business is a salutary exercise intended to enhance, and amplify, concepts of good governance. We have no doubt that it is mandatory and binding on the Government, and so hold. A similar view was taken by this Court in the case of Ahmad Nawaz Shah (supra)."***

(ii) In the case of Tariq Aziz-ud-Din's case (2010 SCMR 1301), the Hon'ble Supreme Court of Pakistan emphasized that due weight was required to be given to the Rules of Business, which had a Constitutional sanction.

(iii) In the case of Senator Taj Haider Vs. Government of Pakistan (2018 CLC 1910), this Court held as follows:-

> *"28. ... the Rules of Business, 1973 made by the Federal Government in exercise of powers conferred by Articles 90 and 99 of the Constitution have been held to be based on public policy and designed to effectively safeguard the State's interest to act in consonance with these Rules is clearly a duty cast on all the Divisions and Ministries of the Federal Government ... due weight was required to be given to those Rules..."*

(iv) In the case of Sardar Muhammad Vs. Federation of Pakistan (PLD 2013 Lahore 343), it has been held by the Hon'ble Lahore High Court at Paragraph 43 of the report as follows:-

> *"43. Adherence to the rule of law, in general, and to the Rules of Business, in particular, in conducting its business determines the quality of governance of the government in power. Rules of Business flow out of the Constitution, and are the sinews of a workable government. Besides providing a departmental organogram of a workable democracy, these Rules are a fine weave of democratic principles including: participatory engagement, written and reasoned dialogue, divergence of opinion, open and transparent deliberations, etc. These Rules of Business besides providing a procedural manual for the Federal Government to conduct its business also act as constraints on governmental power."*

(v) In the case of Amin Jan Vs. Director-General, T&T (PLD 1985 Lahore 81), it has been held that the Rules of Business are based on public policy and designed to effectively safeguard State interests. To act in consonance with these Rules is a clear duty cast on all Divisions and Ministries of the Federal Government.

59. In the case at hand, neither was the summary for the constitution of an Inquiry Commission moved by the Cabinet Division nor were the notifications for the constitution of the Inquiry Commission issued by the Cabinet Division. The learned Attorney-General very fairly submitted that this was a mistake. He tried to justify this mistake by submitting that since the Convener of the Inquiry Committee constituted by the Prime Minister was the Director General, F.I.A., and since under the Rules of Business the administrative control over F.I.A. lies with the Interior Division, that is why the summary was moved by the Interior Division. He also submitted that the summary dated 10.03.2020 for the constitution of the Inquiry Commission, although moved by the

Interior Division, was routed through the Cabinet Secretary in accordance with Rule 18(1) of the Rules of Business. The learned Attorney-General also referred to the judgment in the case of Mustafa Impex Vs. Government of Pakistan *(supra)* and submitted that in paragraph 51 of the said judgment, it was held *inter alia* that for compelling public interest, inadvertence, negligence, or incompetence, departure from the requirements of the Rules of Business could be made.

60. To appreciate the contention of the learned Attorney-General, it is apposite to reproduce herein below paragraph 51 of the said judgment:-

> **"*51. The argument is sometimes advanced, in order to defeat the language of subordinate legislation, that it is merely directory and not mandatory. It is necessary to emphasize the point that, in the normal course, there is no reason whatsoever why the language of rules should not be considered to be mandatory unless it is ex facie discretionary. The rules are framed to achieve a certain objective and to achieve this within the channels relating to the devolution and flow of statutory authority. In the absence of compelling reasons to the contrary all rules are, and should be considered to be mandatory and binding. The burden of proof lies on anyone asserting that the rules in question are directory and not mandatory. He must establish that there is a sound and powerful reason why they should not be considered mandatory and binding. This principle applies with redoubled force, for and in relation to two sets of rules; firstly, constitutionally mandated rules i.e. the Rules of Business, and secondly, rules framed under fiscal enactments. Constitutionally mandated rules are closely intertwined with the concept of good governance for and in the public interest. Allowing a departure therefrom would be detrimental to open and transparent forms of governance. If a government department admits that although it has violated explicit provisions of the rules, its violation should be condoned by treating the breach as non-actionable merely on the ground of its supposedly being directory, then surely serious questions arise in relation to the good faith of the department. In each and every case the presumption of law would be that the rules are mandatory and should be observed and followed. If, and only if, a compelling public interest is established as a reason for non-compliance with the rules i.e. other than inadvertence, or negligence, or incompetence then, and only then, can the court consider whether or not to condone the breach in the observance of the rules. These considerations are fortified and amplified for, and in relation to, fiscal enactments. The reason is twofold; firstly Article 77 of the Constitution only enables the levy of tax under law and, secondly, the levy of a tax inevitably implies a restriction of a citizen's right to property. Payments of tax amount to a corresponding deprivation of property and, since the right to property is a fundamental right, this can only be done by means of strict compliance with the law. It follows that the breach of Rule 16 is fatal to the case of the Government. Although this is***

sufficient to dispose of the case it is necessary that we should also clarify the constitutional position, for which it is necessary to revert to the concept of Federal Government."
(Emphasis added)

61. We cannot bring ourselves to agree with the contention of the learned Attorney-General that the judgment in the case of Mustafa Impex Vs. Government of Pakistan *(supra)* treats inadvertence, or negligence, or incompetence as a ground for condoning a breach in the observance of the Rules of Business. Our understanding of the said judgment is in total contrast with that of the learned Attorney-General's. The words adopted in the said judgment are plain enough. After stressing that the presumption of law would be that the Rules of Business have to be mandatorily observed and followed, the Hon'ble Supreme Court has held that it is only in cases where a compelling public interest is established would a breach in the observance with the said Rules be condoned. The said judgment has clarified that inadvertence, negligence or incompetence would not be treated as a compelling public interest so as to condone the breach in the observance of the said Rules. The words *"other than"* preceding the words *"inadvertence, or negligence, or incompetence"* in paragraph 51 of the said judgment adequately clarifies that these three factors would not condone a breach in the observance with the requirements of the said Rules. The learned Attorney-General was candid enough to state that there was no compelling reason for the mistake (i.e. the moving of the summary and the issuance of the notifications by the Interior Division) to have been committed.

62. The mere fact that the summary dated 10.03.2020 for the constitution of the Inquiry Commission had been routed through the Secretary, Cabinet Division in compliance with Rule 18(1) of the Rules of Business cannot be equated with the summary having been moved by the Cabinet Division. If indeed the said summary had been routed through the Secretary, Cabinet Division, he should have had the good sense to have realized that the subject in entry No.81 (i.e., the 2017 Act) of paragraph 2 in Schedule-II to the Rules of Business did not lay within the administrative domain

of the Interior Division but the Cabinet Division. The 'mistake' in the moving of the said summary by the Interior Division ought to have been corrected by the Secretary, Cabinet Division at a stage prior to its placement before the Cabinet. This apathy ought not to be overlooked. We have, consequently, no hesitation in holding that the requirements in the Rules of Business, especially Rule 18(1) thereof, had not been adhered to in the process of placing the summary for the constitution of the Inquiry Commission before the Cabinet.

63. We also do not see eye to eye with the stance taken by the learned Attorney-General that the summary moved by the Ministry of Interior merged into the Cabinet's decision dated 10.03.2020, whereby the Inquiry Commission was constituted. If this argument was to be accepted, it would not just go against the mandatory requirements in Rule 3(3) and Rule 18 of the Rules of Business but would pave the way for a Division in whose administrative domain a certain subject does not lie to move a summary on such subject before the Cabinet. This would encourage usurpation by one Division of the subjects in the administrative domain of another, which would not just be a departure from the requirements of the Rules of Business but would also violate the dicta emanating from the Superior Courts requiring strict adherence to the said Rules. Such departure would, if we may adopt the language used by the Hon'ble Supreme Court, be detrimental to open and transparent governance and would raise serious questions of good faith of a Government Department. It ought to be emphasized that a Division cannot conduct business not specifically allocated to it and allocated to another Division under the Rules of Business.

64. The learned Attorney-General had contended that under Rule 57 of the Rules of Business, the Prime Minister has the power to relax the provisions of the said Rules in individual cases. This we find to be an *argumentum ad absurdum* though urged by the learned Attorney-General with hopeful ingenuity. Suffice it to say that there was nothing on the record to show that in the instant case, the Prime Minister had in fact relaxed compliance with the requirements of Rule 3(3) read with Rule 18 of the Rules of

Business. Furthermore, we are of the view that relaxation with any of the Rules pursuant to Rule 57 *ibid* has to be for compelling public interest and for reasons which ought to be recorded in writing as mandated in Section 24A of the General Clauses Act, 1897. We say this because since compliance with the requirements in the Rules of Business has been held by the Hon'ble Supreme Court in the cases referred to herein above to be mandatory, if the Prime Minister is to relax compliance with such mandatory Rules, the reasons recorded for doing so have to be for compelling public interest and in exceptional circumstances.

65. Having said that, the question that now needs to be determined is whether the said lapse in the observance of the Rules of Business would be sufficient to declare the decision of the Cabinet and the notifications issued pursuant thereto to be invalid and without lawful authority. While determining this question, this Court cannot shut its eyes to the happenings subsequent to the said decision of the Cabinet. Indeed, the Inquiry Commission constituted pursuant to the notifications drawn on 16.03.2020 and 25.03.2020 worked for the mandated period of forty days and submitted a detailed report to the Federal Government. The appellants, or at least appellant No.1, had interacted and deliberated with the Inquiry Commission during its proceedings. There is nothing on the record to show that any of the appellants had raised any objection regarding any procedural irregularity or illegality in the process culminating in the constitution of the Inquiry Commission until much after it had submitted its report. Now that the Inquiry Commission's report has been considered by the Cabinet in its special meeting held on 21.05.2020 and directions have been given on the basis of the recommendations in the said report, we are not inclined to exercise our discretion to undo the entire process from the stage of the moving of the summary and bring it to absolute naught. Such a course would be an irrational exercise of discretion and would most definitely not subserve the interests of justice. In the case of Multan Electric Power Co. Ltd. Vs. Muhammad Ashiq (PLD

2006 S.C. 328), it was held *inter alia* that there could not possibly be two opinions that exercise of Constitutional jurisdiction is discretionary and the Court, while exercising such jurisdiction, can refuse a relief against an order passed by a functionary without jurisdiction if interference in the Constitutional jurisdiction will bring about an unjust consequence. Additionally, in the case of Muhammad Kamran Asghar Vs. Board of Intermediate and Secondary Education (1999 YLR 1019), it was held *inter alia* by the Hon'ble Lahore High Court that while exercising discretion, the High Court may refuse to interfere in a matter on consideration of the larger questions of justice, equity and good conscience. Furthermore, it was held as follows:-

> *"Thus, it must be clearly understood that in the exercise of its Constitutional jurisdiction under Article 199 of the Constitution this Court has a discretion to issue or not to issue a writ where a case is otherwise made out for issuance of a writ on the merits of the case but this Court has no jurisdiction to issue a writ in its discretion where otherwise no case is made out on merits for issuance of a writ."*

66. This Court will not issue a writ if equitable considerations do not permit it. The jurisdiction of this Court under Article 199 of the Constitution is extraordinary, discretionary and equitable in nature and is to be exercised in the larger interest of justice. While exercising this jurisdiction, the facts and circumstances of the case should be seen in their entirety to find out if there is miscarriage of justice. It can be exercised *ex debito justitiae,* i.e. to meet the ends of justice. While exercising writ jurisdiction, the High Court not only acts as a Court of law but also as a Court of equity. It is, therefore, the duty of this Court to ensure that it exercises jurisdiction to advance the ends of justice and uproot injustice. In exercise of this jurisdiction, this Court will intervene where justice, equity and good conscience require such intervention. It is with these principles in mind that we have refrained from invalidating the decision of the Cabinet to constitute an Inquiry Commission on the ground that the summary for the Cabinet was moved by the Ministry in whose domain the subject of the 2017 Act did not lay.

WHETHER THE FEDERAL GOVERNMENT COULD ADD MEMBERS TO THE INQUIRY COMMISSION AFTER IT HAS BEEN CONSTITUTED:-

67. We now propose to deal with the contention of the learned counsel for the appellants that the numerical strength of the Inquiry Commission could not have been enhanced by adding one more member nine days after the said Commission had been constituted. The notification for the constitution of the Inquiry Commission was drawn by the Interior Division on 16.03.2020 whereas the notification for including one additional member in the said Commission was drawn by the said Division on 25.03.2020. We have been given no reason to doubt the authenticity of the documents submitted by the learned Attorney-General showing that the decision of the Cabinet to include an additional member in the Inquiry Commission was made on 17.03.2020 i.e. one day after the notification constituting the Inquiry Commission had been drawn by the Interior Division.

68. We have also noticed that the Cabinet, while deciding to constitute the Inquiry Commission, had also given a direction to the Interior Division to *"immediately issue notification for constitution of the Commission without waiting for the formal communication of the decision."* Despite these directions, it took six days for the Interior Division to draw the notification for the constitution of the Inquiry Commission. The notification for including an additional member in the Inquiry Commission was made seven days after the decision of the Cabinet in that regard.

69. The question that crops up in the mind is whether lethargy or inertia on the part of the public functionaries in showing prompt compliance with the directions of the Cabinet could be a valid ground to set-aside the very decision to constitute the Inquiry Commission or to scrap the report of the Inquiry Commission? We would say, certainly not. This, however, does not mean that appropriate measures should not be taken against the delinquent public functionaries for not showing prompt compliance with the directions of the Cabinet.

70. The notification for including an additional member in the Inquiry Commission was drawn by the Interior Division nine days

after the notification for constituting the Inquiry Commission. It is not for us to determine the progress that the Inquiry Commission had made in the matter when the notification for adding a seventh member was drawn by the Interior Division. Even otherwise, the provisions of the 2017 Act do not empower the Federal Government to add members to an already constituted Inquiry Commission up until the point when its working had reached a certain stage. It may be mentioned that there is no document on the record setting out the reasons necessitating the Federal Government to add a member to the Inquiry Commission. It is an admitted position that no summary was moved either by the Interior or Cabinet Division proposing for the seventh member to be added to the Inquiry Commission. The Federal Government took this decision on its own on 17.03.2020. The learned Attorney-General submitted that the rationale for adding an additional member was the wisdom that the Cabinet drew from the judgment of the Hon'ble Supreme Court in the case of ***PLD 2017 S.C. 265***, where an officer from the I.S.I. was made a member of the Joint Investigation Team. This judgment was already in the public domain when the Cabinet, on 10.03.2020, decided to constitute an Inquiry Commission but chose not to include an officer from the I.S.I. in the Inquiry Commission.

71. Be that as it may, Section 14(3) of the 2017 Act provides that the Inquiry Commission shall act notwithstanding the temporary absence of any member or the existence of a vacancy amongst its members. There is, however, no provision in the 2017 Act authorizing the Federal Government either to remove or to include new members in the Inquiry Commission. There is also no inherent power vested in the Federal Government to reconstitute an Inquiry Commission or to change its composition after it has been constituted. Under Section 10 of the 2017 Act, the Federal Government may, by notification in the official gazette, confer the additional powers enumerated in the said Section on the Inquiry Commission whereas under Section 13(2) of the said Act, the Federal Government is to provide all necessary funds and facilities to enable the Inquiry Commission to perform its functions

under the Act. These provisions enable the Federal Government to make the Inquiry Commission more effective in its functioning. We may, however, observe that the independence of an Inquiry Commission would be jeopardized if the Federal Government were to add members to or remove members from an Inquiry Commission. Removing members from or adding members to an Inquiry Commission after it has been duly constituted would be akin to reconstituting such a Commission. This Court cannot hold that adding one member to an Inquiry Commission is lawful but adding more is not. This Court can also not draw a line as to the stage in the working of an Inquiry Commission where adding members to or removing members from an Inquiry Commission would be permissible. An Inquiry Commission is expected to enter upon office and start functioning immediately after it is constituted. After an Inquiry Commission is constituted, neither can the Federal Government reconstitute it or interfere with its working so as to impede it in the performance of its functions. Once a notification regarding the membership of the Inquiry Commission has been issued in accordance with the requirements of Section 3(2) of the 2017 Act, such a notification cannot be rescinded, amended or varied under Section 21 of the General Clauses Act, 1897 to achieve the purpose of adding members to or removing members from the Inquiry Commission. In the case of State of Madhya Pardesh Vs. Ajay Singh (AIR 1993 S.C. 852), it has been held as follows:-

> ***"27. We have no doubt that the rule of construction embodied in Section 21 of the General Clauses Act cannot apply to the provisions of the Commissions of Inquiry Act, 1952 relating to reconstitution of a Commission constituted thereunder since the subject-matter, context and effect of such provisions are inconsistent with such application. Moreover, the construction made by us best harmonises with the subject of the enactment and the object of the legislation. Restoring public confidence by constituting a Commission of Inquiry to investigate into a 'definite matter of public importance' is the purpose of such an exercise. It is, therefore, the prime need that the Commission functions as an independent agency free form any governmental control after its constitution. It follows that after appointment, the tenure of members of the Commission should not be dependent on the will of the Government, to secure their independence. A body not so independent is not likely to enjoy the requisite public confidence***

and may not attract men of quality and self-respect. In such a situation, the object of the enactment would be frustrated."

72. As mentioned above, the 1956 Act was repealed by the 2017 Act. Although there are many provisions which were common in these two statutes in order to make an Inquiry Commission more independent and secure, the 2017 Act does not have a provision in *pari materia* to Section 7 of the 1956 Act which empowered the Federal Government to declare that the Inquiry Commission shall cease to exist from such date as may be specified if the Federal Government is of the opinion that the continued existence of an Inquiry Commission is unnecessary. The scheme of the 2017 Act does not envisage a situation where the Federal Government can dissolve an Inquiry Commission if its proceedings were being conducted in a manner or leading to an eventuality not palatable to the Federal Government or its functionaries. It also does not envisage a situation where the Federal Government can make a duly constituted Inquiry Commission weak by adding members to it. It must per force be held that adding members to an Inquiry Commission would indeed impede on the independence of the Inquiry Commission.

73. Since this case entails an addition of one member to the Inquiry Commission, and since the report of the Inquiry Commission was unanimous, we do not feel the need to interfere with the Inquiry Commission's report on the ground that one additional member was added to the Inquiry Commission nine days after it was constituted. It is not the appellants' case that the addition of the seventh member to the Commission was instrumental in the adverse observations that the Inquiry Commission gave against the appellants.

WHETHER THE DAMAGE TO THE REPUTATION CASUED BY THE ADVERSE OBSERVATIONS IN THE INQUIRY COMMISSION'S REPORT SHOULD BE A GROUND TO RESTRAIN FURTHER ACTION ON THE BASIS OF THE SAID REPORT:-

74. Learned counsel for the appellants complained that slanderous propaganda had been unleashed without any verification of the truth or otherwise of the allegations against the appellants in the report of the Inquiry Commission. He points out

that the object of this campaign of slander is mainly to tarnish the reputation of the appellants. He further submitted that since observations adverse to the appellants had been made in the inquiry report, the appellants should have been afforded an opportunity of a hearing by the Inquiry Commission.

75. The learned Attorney-General, on the other hand, submitted that the Inquiry Commission had primarily carried out a fact-finding exercise with no mandate or power to impose any penalty. He further submitted that no adverse action could be taken against any party on the basis of the findings of fact or even the recommendations made by the Inquiry Commission, and that at best the findings of fact may be a starting point for a competent statutory authority to apply its mind and then decide as to whether any action is required to be taken against the party concerned. He was also very fair in his submission that if the statutory authority decides to initiate proceedings, it has to provide adequate opportunity to the party to defend itself and refute the allegations against it.

76. It has consistently been held that an Inquiry Commission has to inquire and make a report and embody therein its recommendations. The Commission has no power of adjudication. It cannot pass an order which can be enforced *proprio vigore*. It merely investigates and records findings and recommendations without having the power to enforce them. The proceedings before it cannot serve as a substitute for proceedings before a Court of law invested with powers of adjudication as well as of awarding punishments or affording relief. Its report or findings cannot relieve Courts which may have to determine for themselves matters dealt with by a Commission. The evidentiary value of a Commission's report or findings on issues, which a Court may have to decide for itself are not conclusive. Its report or findings are not immune from criticism if they are, either, not fair and impartial, or are unsatisfactory. An Inquiry Commission has its own sphere and cannot impede other forms of action or modes of redress. It has also been held that in such proceedings there is no prosecution, no framing of a formal charge, no

accused before the Inquiry Commission, and there is no exercise of any supervisory jurisdiction by the Federal Government.

77. Since in the words of the learned Attorney-General, the report of an Inquiry Commission is akin to a complaint with allegations or an F.I.R. or a report in the nature of a preliminary inquiry, it would be safe to observe that the report of the Inquiry Commission in which observations adverse to the appellants had been made are, by no means, conclusive or sacrosanct. Such a report cannot be used as an instrument of condemnation against whom allegations have been made therein. All those against whom allegations have been made in the report will be presumed to be innocent unless such allegations are substantiated in the proceedings before the relevant regulatory/statutory or anti-corruption bodies. Therefore, it is our view that the inquiry report cannot be quashed on the ground that an opportunity of a hearing in the nature as a judicial or a *quasi* judicial authority would provide, was not provided to all the appellants.

WHETHER SOME OF THE MEMBERS OF THE INQUIRY COMMISSION WERE BIASED AGAINST THE APPELLANTS:-

78. Learned counsel for the appellants had contended that since the three members of the Inquiry Committee were also made members of the Inquiry Commission, and since the Inquiry Committee in its report dated 24.03.2020 and the Convener of the Inquiry Committee in his letter dated 09.03.2020 had accused the sugar mills of purchasing sugarcane off the books, price manipulation, major tax evasion, market manipulation, cartelization, hoarding and subsidy manipulation, they should not have been made members of the Inquiry Commission. It was also submitted that since three of the members of the Inquiry Commission had already disclosed their minds against the appellants in the said inquiry report, they were pre-disposed and biased against the appellants.

79. It is an admitted position that the Inquiry Committee did not have the same powers as the Inquiry Commission did under the provisions of the 2017 Act. Although the Inquiry Committee was constituted on 20.02.2020, the Convener of the Inquiry Committee

felt the need for the task given by the Prime Minister to the Inquiry Committee to be entrusted to an Inquiry Commission under the 2017 Act. Indeed under Section 4 of the 2017 Act, an Inquiry Commission has the powers of a Civil Court; an Inquiry Commission has the power to forward a case to a Magistrate in accordance with Section 5 of the 2017 Act, and can also order entry and search of buildings and seizure of documents under Section 6 of the said Act; under Section 8 of the said Act, an Inquiry Commission has been given the powers of the High Court to punish for contempt. In order to make the probe into the price hike of sugar more effective and purposeful, the Federal Government accepted the suggestion made by the Convener of the Inquiry Committee for the formation of the Inquiry Commission under the 2017 Act. Such a suggestion was by no means indicative of bias on the part of the Director General, F.I.A.

80. The learned counsel for the appellants took us to different portions of the inquiry report to demonstrate that the three members of the Inquiry Committee had pre-judged the matter by pinning the responsibility for the sugar price hike on the appellants. We cannot bring ourselves to agree with the learned counsel for the appellants. Neither does the inquiry report dated 24.03.2020 nor the Convener's letter dated 09.03.2020 give any conclusive finding against the appellants. The report of the Inquiry Committee was submitted after the Inquiry Commission had been constituted. There is a specific reference to this in the inquiry report. Since the TORs for the Inquiry Committee were the same as the ones for the Inquiry Commission save two additional TORs, and since there were no definitive findings given by the Inquiry Committee against the appellants in its report, we are of the view that the members of the Inquiry Commission were not pre-disposed against the appellants and therefore the report of the Inquiry Commission cannot be quashed on the ground of bias. Indeed, the members of the Inquiry Commission were public servants with impeccable credentials. During the proceedings of the Inquiry Commission, no allegation of bias had been made by the appellants.

81. In view of the above discussions, we find no merit in this appeal, which is dismissed with no order as to costs. It is, however, expected that expeditious compliance shall be shown with the directions given by the learned Judge-in-Chambers in the impugned judgment dated 20.06.2020.

(AAMER FAROOQ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2020.

(JUDGE) **(JUDGE)**

*Ahtesham**

APPROVED FOR REPORTING

SCHEDULE-A

a. Whether the production, this year, was low as compared to past years? Was low production the primary reason for increase in prices?
b. Was the minimum support price sufficient?
c. Did the Mills purchase sugarcane at exorbitantly higher prices than the minimum support price? If yes, then reasons thereof;
d. Reasons for mills not purchasing sugarcane, for a limited period of a few weeks, from the farmers and its impact, if any, on sugar prices;
e. Basis for determination of Ex-Mill price? Reasons for increase in Ex-Mill price;
f. Market manipulation/cartelization by sugar mills, if any;
g. Impact of forward contracts on the prices of sugar and whether any *malafide* is involved;
h. Whether margins between Ex-Mill and retail prices increased, compared to previous years, or otherwise. If yes, reasons thereof and potential beneficiaries;
i. Impact of tax increase on sugar prices at Ex-Mill/Retail level;
j. Hoarding at whole sale/Retail level and within sugar mils *vis-i-vis* stocks of last year;
k. Was export of sugar justified? Any subsidy given on export and its impact, with potential beneficiaries;
l. Basis for determination of retail price of sugar;
m. Role of various stakeholders, including government institutions and price sector in increase in sugar prices, including timely/preventive/pre-emptive remedial measures to control sugar prices and *malafide*, if any, of any stakeholder; and,
n. Any other issue, deemed appropriate, related to the increase in recent sugar prices;