JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.651 of 2016

Jahanzeb Shafiq Abbasi and 5 others

Versus

Federation of Pakistan through Secretary, Ministry of Human Resource Development and 2 others

Petitioners by	:	Ms. Zainab Janjua, Advocate.
Respondents by	:	Mr. Tariq Bilal, Advocate for EOBI. Syed Nazar Hussain Shah, learned Asstt: Attorney-General. M/s Mazhar Javed Rana, Dy. Sec. and Ishtiaq Ahmed, Section Officer, Finance Division. Raja Sheroz Abbas, Section Officer (EOBI) and Mr. Abdur Rehman, Asstt: Director (EOBI) and Mr. Hammad Nazar, Section Officer (L), M/o OP&HRD.
Dates of Hearing	:	11.02.2022, 04.04.2022, 05.04.2022. 27.04.2022, 11.05.2022, 03.06.2022, 15.06.2022 and 04.06.2022

ARBAB MUHAMMAD TAHIR,J.:- Through the present writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as "**the Constitution**"), the petitioners being aggrieved of and dissatisfied with the order dated 17.12.2015 issued by the Ministry of Overseas Pakistanis and Human Resource Development (hereinafter referred to as **"Ministry of OP & HRD"**), have prayed as under:-

> *a. Declare the Impugned Notification dated 17.12.2015 and Respondent No.2's instructions dated 16.12.2015 and 17.12.2015 are illegal, void, and ultra vires of the law and the Constitution and prejudicial to Petitioner's rights and direct the Respondents not to infringe upon the Petitioners' right to receive benefits and allowance approved by Respondent No.3 and presently being afforded to the employees of Respondent No.3.*

b. Declare the exercise of executive authority by Respondents (sic) No.1 pursuant to Section 6(2) of ht EOBI Act after the promulgation of the 18th Constitutional Amendment to be illegal and ultra vires of the law and the Constitution;

c. Declare that Respondent No.1's assumption of powers and authority of the office of President of Board of Trustees of Respondent No.3 under Section 7 of the EOBI Act and the Rules and Regulations of EOBI is illegal and ultra vires of the law and the Constitution and restrain Respondent No.1 from holding such office, exercise its powers or otherwise interfering with or influence the exercise of powers by the Board of Trustees of Respondent No.3.

d. Restrain the Respondents from acting in any manner and giving effect to any orders and decisions that change the benefits and allowance being provided to employees of Respondent No.3 to their detriment.

e. *Order the Respondents to pay the Petitioner's costs in relation to the instant Petition and grant any other relief that may be deemed just and appropriate."*

02. The facts essential for the disposal of the present writ petition are that the petitioners are the employees of Employees' Old-Age Benefits Institution ("hereinafter referred to as the **"EOBI"**) working on different posts. The petitioners along with other employees of the EOBI are drawing their pay and allowances under the EOBI (Employees Service) Regulations, 1980 (hereinafter referred to as the **"Service Regulations"**). The Affairs of the EOBI are administered through its Chairman who is empowered to make appointments in EOBI on the recommendations of the Selection Committee in terms of Regulation 10 of the Service Regulations. On 17.12.2015, the Ministry of OP & HRD (respondent No.1) issued letter dated 17.12.2015 (hereinafter referred to as "**the impugned order**") whereby it was decided to discontinue the payment of the following allowances to the employees of the EOBI with immediate effect being paid in contravention of the provision of Section

6(2) of the EOBI Act, 1976 (hereinafter referred to as "**the Act**"):-

i. *House Rent Allowance @ 90% of running basic for staff members;*
ii. *Head Office Allowance @ 10% of the basic pay for employees posted at EOBI Head Office;*
iii. *Special Allowance-2010 @ running basic pay as on June, 2011;*
iv. *Utility Bill Allowance @ 10% of minimum basic pay of relevant scale;*
v. *Tea Coupon Facility;*
vi. *Car maintenance Allowance; and*
vii. *Payment of Computer Allowance higher than the rate prescribed by the Federal Government.*

03. The said decision was taken by the Ministry of OP & HRD on the basis of the letter dated 17.12.2015 from the Financial Adviser (OP & HRD) (FA'S Organization), Finance Division. For the sake of clarity, the said letter is reproduced herein below in its entirety:-

"Government of Pakistan
Finance Division
(FA'S Organization)

Subject: Pay and allowances of the Employees of EOBI

This is in continuation with this Office U.O. of even number dated, 16.12.2015 on the subject noted above.

2. It is also requested that the irregular House Rent Allowance @ 90% of the running basic pay for staff members and Head Office Allowance @10% of ht basic pay for employees posted at Head Office as well as posted at Islamabad as referred in para 4 of the above U.O. dated 16.12.2015 shall also be discontinued with immediate effect. The EOBI management may further be directed to pay the House Rent Allowance to the staff members as per Government Policy and not at the present rates.

--Sd—
(Dr. Alamdar Hussain Malik)
Financial Adviser (OP&HRDC)

Secretary, M/o Overseas Pakistanis and Human Resource Development, Islamabad
FA's Organ's U.O. Dy. No.1467-FA (OP&HRD) dated 17.12.2015."

04. Perusal of the record reflects that the impugned order dated 17.12.2015 was also challenged before the Hon'ble Lahore High Court in writ petition No.5572/2016. The said writ petition stood dismissed by the Hon'ble Lahore High Court vide its order dated 22.02.2022. Subsequently, pursuant to the said order dated 22.02.2022 of the Hon'ble Lahore High Court as well as the impugned order dated 17.12.2015, the EOBI vide office order dated 29.03.2022 withdrew the allowances listed in the impugned order dated 17.12.2015 with immediate effect and until further orders.

05. It is the petitioners' assertion that the Ministry of OP & HRD had no jurisdiction whatsoever to issue the impugned order on the instructions of respondent No.2 [(Finance Adviser (OP & HRD) Finance Division)], and that the EOBI was not bound to comply with the policy directives contained in the impugned order. Furthermore, the petitioners assert that the Ministry of OP & HRD and Finance Divisions were not vested with the power to alter, change or withdraw any allowance/remuneration that had been granted to the employees of the EOBI in accordance with the Service Regulations. Hence, this writ petition.

06. Ms. Zainab Janjua, Advocate, learned counsel appearing on behalf of the petitioners has contended that respondent No.2 is not vested with the authority to issue any policy guidelines to the EOBI; that respondent No.2 was also not conferred with the authority to determine the EOBI's Regulations *qua* perks and privileges of its

employees; that respondent No.1 is also vested with no lawful authority to undo the Regulations of the EOBI and to withdraw any of the allowances paid to the EOBI's employees; that respondents No.1 & 2 cannot deprive the employees of the EOBI of their vested rights; that no opportunity was afforded to the petitioners in utter disregard of the doctrine of **"*locus poenitentiae*"**; that the allowances so withdrawn had been paid to the petitioners for decades pursuant to legitimate exercise of authority under the Act; that the impugned order is detrimental to the petitioners' **vested rights**; that the decisions of respondents No.1 and 2 are not binding on the EOBI's Board of Trustees (hereinafter referred to as the **"Board"**); that the Board is empowered under the applicable Regulations to grant or deduct any allowance of the EOBI's employees; that it is well settled that policy directives cannot override the Rules and Regulations framed by a validly constituted Board in exercised of the powers under Section 45 of the Act; that in terms of Section 45 of the Act, the Board can frame new Regulations and can amend the Service Regulations; that presently, the Board is not validly constituted; that Section 7 of the Act clearly sets out the number of the Board members; that Section 7 of the Act provides that the Secretary or the Additional Secretary of the Labour Division is to be the President of the Board; that the present incumbent of the Board is the Secretary of the Ministry of OP & HRD; that the law does not provide for the Secretary of OP & HRD to preside over the Board since post the Constitution (18th Amendment) Act, 2010 (hereinafter referred to as **"the 18th Amendment"**), the Labour Division of the Federal Government has been dissolved and the matter with respect to Labour has been devolved onto the provinces; that the EOBI presently stands as a provincial

subject after the 18th Amendment; that the combined reading of Sections 4, 6 and 45 of the Act makes it clear that no policy directives can be given by the Federal Government with respect to matters which come within the competence of the Board; that the Federal Government has no role in the EOBI's internal affairs since the latter is an autonomous body; that it is well settled that the Federal Government lacks the jurisdiction to interfere with the terms and conditions of the employees of autonomous bodies; that an autonomous body is to be reverenced and such a body is itself empowered to take decisions independently.

07. Furthermore, she submitted that EOBI itself is competent to frame Service Regulations for its employees under the Act; that the impugned order as well as the instructions issued by respondents No.1 and 2 are violative of the parent statute and as such, the same cannot be implemented; that the Federal Government cannot compel an autonomous and independent institution to act in stark violation of the applicable Regulations; that it is also well settled that an independent and autonomous body cannot be bound by the policy/instructions issued by the Federal Government; that the impugned order was passed by respondents No.1 and 2 in contravention of Articles 4, 8 and 10-A of the Constitution, concluded the learned counsel for the petitioners. Learned counsel for the petitioners prayed that the impugned order may be set aside. Reliance is placed upon case law reported as ***1997 SCMR 641, PLD 2007 SC 642, 2016 PLC (CS) 491, 2007 SCMR 1460, 2017 SCMR 838, 2020 PLC (C.S) 654 & 2011 SCMR 117.***

08. On the contrary, learned counsel for EOBI has contended that the general directions and superintendence of the EOBI have been entrusted to the Board in terms of Section 6 of the Act; that the Federal Government is empowered under Section 6(2) of the Act to guide the EOBI on policy matters from time to time; that respondent No.1 being the controlling Ministry has issued the impugned order; that the order impugned in the present writ petition was also impugned before the Hon'ble Lahore High Court in a writ petition, which was dismissed vide order dated 22.02.2022; that respondent No.1 is the legitimate supervisory authority of the EOBI; that respondent No.1 being the Secretary of the controlling Ministry is lawfully holding the office of the President of the Board; that the Chairman of the EOBI can make appointments in the EOBI subject to such general or specific directions as the Federal Government may give from time to time; that the petitioners being employees of the EOBI have efficacious and alternate remedy under Regulation 33 of the Service Regulations; the respondent No.1 being the controlling body has lawfully issued the impugned instructions/order to the EOBI; and that the petitioners have no *locus standi* to file the present writ petition, concluded the learned counsel for EOBI. He prayed that the writ petition may be dismissed.

09. In the written comments filed on behalf of respondent No.1 (Ministry of OP & HRD), it has been pleaded that the petitioners have no *locus-standi* to file the present writ petition; that the present writ petition in its present form is not sustainable in the eye of law; that the instant writ petition is liable to be dismissed in terms of the judgment dated 15.05.2009 passed by the Hon'ble Lahore High Court in ICA No.334/2009 wherein it was held that the decision

taken by the EOBI's Board in connection with the affairs of the EOBI are subject to the approval by the Federal Government; that all the decisions taken by the Federal Government are binding on the EOBI; that the allowances that have been withdrawn were not part of the Service Regulations; that the said allowances had been paid to the petitioners without the approval of the Federal Government; that EOBI is not competent to finalize the terms and conditions of its employees without the approval by the Federal Government. It has been prayed in the written comments that the present writ petition merits outright dismissal.

10. Similarly, the stance taken by respondent No.2 (Finance Division) in the written comments is that under Schedule–II [Rules.03(3)] titled "Distribution of Business among the Divisions" of Rules of Business 1973, the EOBI is functioning under Ministry of OP & HRD, therefore, the issue in question primarily concerns the EOBI and respondent No.1 and not the Finance Division. It has been prayed that the Finance Division may be excluded/deleted from the array of the respondents.

11. Heard the arguments advanced by the learned counsel for the parties and perused the record with the valuable assistance.

12. The question that has been raised in the present petition is perhaps a question of first impression in which certain perks and privileges/allowances that were earlier granted to the petitioners, who are employees of the EOBI, have been withdrawn/discontinued. This unconventional inaction on the part of the Ministry of OP & HRD and the

Finance Division has forced the petitioners to invoke the Constitutional jurisdiction of this Court under Article 199 of the Constitution.

13. The EOBI is an Institution which provides old-age benefits, pensions and other social insurance. It came into formation in the year 1976. On 19.04.1976, the Employees' Old-Age Benefits Act, 1976 was published in the Official Gazette and was implemented with effect from 01.07.1976. It came into force at once and extended to the whole of Pakistan. Since the promulgation of this statute, many amendments were incorporated in the said Act from time to time. The sole purpose of the Act is *inter alia* to provide old age benefits to the persons employed in an Industrial, Commercial and/or other organizations / establishments. There is no denial to the fact that EOBI is an autonomous body with independent powers and has own means and ways to invest and work for the welfare and protection of the rights of the employees. It has also independent regulatory framework and does not fall within the meaning of a person or an entity performing functions in connection with the affairs of the Federation. The EOBI has been established in terms of Section 4 of the Act. For ease of reference, the said Section reads as follows:-

> *4. Administration.-(1)* ***As soon as may be, after the commencement of this Act, the Federal Government shall establish or nominate by notification an Institution to be called the Employees' Old-Age Benefits Institution.***
> *(2)* ***The Institution shall be a body corporate having perpetual succession and a common seal****, with powers, subject to the provisions of the Act, to acquire, hold and dispose of property, both movable and immovable, and shall by the aforesaid name sue or be sued.*
> **(Emphasis is supplied)**

14. The Board is responsible for general direction and superintendence of the affairs of the EOBI and it exercises, with the assistance of the Chairman of EOBI, all powers and does all acts and things, which may be exercised or done by the EOBI. Thus it is clear that the general directions and superintendence in connection with the affairs of the EOBI shall vest in the Board. Section 6 of the Act talks about the general supervision and superintendence in respect of the EOBI in the following terms:-

> ***"6. Management.-(1) The general direction and superintendence of the affairs of the Institution shall vest in Board which may, with the assistance of the [Chairman] of the Institution, exercise all powers and do all acts and things which may be exercised or done by the Institution.***
> *(2)* ***In discharging its functions, the Institution shall be guided by such instructions on questions of policy as may be given to it from time to time, by the Federal Government,*** *which shall be the sole judge as to whether any instructions are on a question of policy or not.*
> **(Emphasis is supplied)**

15. The Board has been defined in Section 7 of the Act, which is reproduced herein below for ease of reference:-

> ***"7. Board of Trustees.-(1)*** *The Board of Trustees shall consist of the following members to be appointed by the Federal Government, by notification, namely:-*
>
> > *(a) the Secretary of Additional Secretary in the Labour Division, who shall also be the [President] of the Board of Trustees;*
> > *(b) four persons to represent the Federal Government, one each from the Ministries of Finance and Labour;*
> > ***(c) four persons to represent the Provincial Governments, one to be nominated by each of the Provincial Government*** *;*
> > *(d) four persons to represent employers;*
> > *(e) four persons to represent insured persons; and*
> > *(f) one persons to represent the Institution.*

(2) Members to be appointed under clause (d) and (e) of sub-section (1) shall respectively be chosen from a list of names submitted in the prescribed manner by the organizations to the employers and employees recognized by the Federal Government for that purpose.

Provided that, pending the making of rules in this behalf, the first members to be so appointed shall be chosen from such persons as the Federal Government may deem fit."

16. The Board has been vested with the power to make Regulations in relation to the functioning of the EOBI. The said Section is reproduced herein below for reference:-

45. Power to Make Regulations.-(1) The Board may, subject to condition of previous publication, by notification in the official Gazette, make regulations not inconsistent with the provisions of this Act or the rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(i) the time and places at which meetings of the Board shall held ;

(ii) the manner in which daily wages shall be calculated for the purpose of determining the contribution payable;

(iii) determination of wages for computation of contributions where the mode of payment of remuneration, in cash or kind, makes such computation difficult.

(iv) records to be kept and returns to be submitted by employers, time at which and the form in which such returns are to be submitted, and particulars relating to the insured persons to be stated in such returns and the manner and from for registration of employers and insured persons;

(v) the manner in which any claim of the Institution for unpaid contributions may be extinguished;

(vi) powers and duties of internal auditors.

(vii) [omitted.]

(viii) the form and manner in which claims for a benefit shall be preferred, and the documents, information and evidence which shall accompany such claims;

(ix) the manner in which and the time and places at which payment in respect of [a benefit] shall be made;

> *(x) the manner in which and the time within which complaints, questions and disputes shall be decided;*
> *(xi) the circumstances and the manner in which, on new facts coming to light, the Institution may review decisions;*
> *(xii) the method of payment of contributions and liability thereof;*
> *(xiii) the manner in which invalidity shall be assessed and the procedure thereof;*
> *(xiv) the manner in which proof of age shall be furnished for the purposes of this Act ;*
> ***(xv) the manner in which the services of the Institution shall be organised; and***
> ***(xvi) any other matter not provided for in this Act or the rules and necessary to give effect to the provisions of this Act.***
> **(Emphasis is supplied)**

17. A combined reading of the afore-mentioned Sections manifests that EOBI is an independent body corporate with perpetual succession and common seal and establishing its own independent Board empowered to make regulations for smooth functioning of the EOBI. It is also manifest from the plain reading of Section 6 of the Act that it is the Board which has been vested with independent and autonomous administrative control onto the affairs of the EOBI including but not limited to the powers *qua* framing of the Regulations in respect of terms and conditions of the EOBI's employees which include certain allowances. Furthermore, it also evinces from perusal of Section 6 Sub-Section 2 *ibid* that in discharge of its function, the Board shall be guided by the instructions issued by the Federal Government from time to time and the instructions so issued by the Federal Government have binding effect on the Board. The EOBI shall only be guided by such instructions on questions of policy matters as may be given to it from time to time by the Federal Government, which shall be the sole judge as to whether any instructions are on a question of policy or not. It was the Federal Government, which was authorized to issue policy

directives and make such decisions as it would deem appropriate. The mere issuance of the policy directives and decisions by the Secretary, Ministry of OP & HRD would not *ipso facto* mean that the said Division had been transformed into Federal Government. The role of the Federal Government in the affairs of the EOBI is limited only to the extent of providing guidelines to it (EOBI) on policy matters and it is well settled that polices have no overriding effect on the Acts and/or the Rules/Regulations. Indeed, the policy guidelines exactly meant for the purposes for which they purport to be i.e. at best the guidelines only and none other. In the statute, it has explicitly been stipulated that the regulatory functions are to be performed by an entity/institution which is independent in nature in the performance of its own functions. An independent body/entity such as the EOBI is not bound by the policy guidelines of the Federal Government. Reference in this regard may be made to the law laid down in the case titled ***"Iqbal Zafar Jhagra and others Vs. Federation of Pakistan and others (PLD 2013 SC 224),*** wherein the Hon'ble Apex Court had the occasion to hold as follows:-

> *"5. It is correct, therefore, that the policy guidelines issued by the Federal Government are to be given consideration by OGRA. Section 21 of the OGRA Ordinance also states in similar vein that " the Authority [OGRA] shall comply with the policy guidelines [issued by the Federal Government] " If read out of context, these provisions could create the impression that in matters such as price determination, the Federal Government enjoys co-extensive powers with OGRA; or that, at least, its policy guidelines trump any other considerations which OGRA may have before it.* ***However, this reading of the text runs against the overall scheme and text of the OGRA Ordinance. Policy guidelines are exactly what they purport to be i.e. guidelines at most. The statute envisages that the regulatory functions are to be***

> ***performed by an Authority which is "independent in the performance of its functions",*** *(S. 3(2)). This independence is actualized by laying down stringent objective appointment criteria of "eminent professionals of known integrity and competence" for key decision-makers (Section 3), vesting them with security of tenure (S.3(8) and S. 5) and funding OGRA through its own statutory fund (S.18). Clearly, all of these measures were taken by the legislature to provide OGRA with a strong measure of independence from the Federal Government. The measures would be rendered entirely superfluous if we construe section 21 of the Ordinance and Rule 13 in a manner which makes OGRA bound by the directives of the Federal Government.* ***Since, the general principle of statutory interpretation is that the language of the legislature must not be rendered superfluous, we take it that that section 21 and Rule 13 imply only that OGRA must include the policy guidelines of the Federal Government in its consideration and decision-making process; it is not, however, bound by the same. That the legislature chose the term "policy guideline" instead of "directive" or "order", corroborates this interpretation."***
> **(Emphasis is supplied)**

18. Similarly in the case titled ***Bushra Imran Vs. WAPDA (2009 PLC (C.S.) 752,*** the Hon'ble Lahore High Court has held as follows:-

> ***The clarification given by the Federal Government exempting autonomous organizations from the directive reinforces the statutory mandate. As such, therefore, the policy of the Federal Government, dated 6-8-2003 does not having binding effect on the terms and conditions of employees of WAPDA****. In any event, the writ jurisdiction is exercised to promote justice. An, executive measure that promotes merit and transparency obviously finds support from the Court.*
> **(Emphasis is supplied)**

19. Since the Hon'ble Judge, who had authored the said judgment, has been elevated to grace the Hon'ble Apex Court, therefore, the said judgment deserves to be respected and reverenced.

20. Now, I intend to address the argument advanced by the learned counsel for the petitioners that presently, the Board is not validly constituted in terms of Section 7 of the Act. Prior to the 18th Amendment, the EOBI was a Federal subject but post 18th amendment it became the subject matter of the Provinces and through the said amendment, it devolved to the provinces however, Provincial EOBIs have not so far been established. The matter with respect to the enactment of legislation at the Provincial level as well as the establishment of the EOBI at the Provincial level is presently under consideration before the Hon'ble Apex Court in H.R.C. No.19731-P of 2014 in Constitution Petition No.35 of 2014 and other connected matters. The relevant excerpt of the order dated 11.05.2017 passed by the Hon'ble Apex Court in the said Constitution Petition is reproduced herein below:-

> *"6. Ms. Asma Hamid, learned Additional Advocate General, Punjab states that the matter in issue between the Province of the Punjab and the Federation is to be resolved and a special committee, in this behalf, has been set up and the matter is not being considered by the Council of Common Interest (CCI). However, she is hopeful that the entire exercise will be completed in near future. However, the learned Deputy Attorney General for Pakistan further states that the matter is being placed before the CCI and it shall be resolved."*

21. On 05.03.2020, the Hon'ble Apex Court in the said case has passed the following order:-

> *"learned DAG has pointed out that a decision has been made by a Council of Common Interest (CCI) in respect of the matter before the Court. Let such decision be placed on record before the time recorded above with an advance copy to all the contesting counsels. The counsels in attendance*

may also assist the Court as to the implications of such decision and its constitutional validity or otherwise."

22. Similarly, the matter with respect to the establishment of the EOBI at the provincial level came up for hearing before the Hon'ble High Court of Sindh at Karachi in CP NO.D-4668/2015 and 1917/2017, and the Hon'ble High Court had passed the following order:-

3. Petitioners are employers and seeking declaration with regard to demand of contributions by the Federal EOBI under EOBI Act 1976 and before the 18th amendment that was a federal subject. On last date of hearing viz. 30.08.2021 this court called Secretary, Labour and Human Resources Department, with following order:-

> *"At the outset, learned counsel for the petitioner contends that Employees' Old Age Benefits Institution (EOBI) is a provincial subject after 18th amendment though that enactment was promulgated on 2014, yet Sindh Government has failed to establish the same. He further contends that the petitioner is depositing contribution with the Nazir of this court, whereas, Federal EOBI has stopped pension and other benefits to their employees though they collected the amount before 18th amendment. Accordingly, Nazir shall submit complete description of funds received by different provincial organizations in respect of EOBI particularly. Office shall submit list of cases of identical nature. Besides, Secretary Labour and Human Resources Department, Government of Sindh shall be in attendance and shall explain with regard to non-establishment of EOBI establishment in Sindh. He shall be aware with regard to applicability of EOBI laws in other provinces as well."*

Secretary Labour and Human Resources Department present, ***contends that inspite of 18th amendment, that department has not been devolved to the Provinces and there is only Sindh Province that has enacted the law on the subject (Sindh EOBI Act 2014) whereas in other provinces there is no such enactment and all employers and employees are being regulated by the EOBI Act 1976; though under the Act, Board was constituted but that is disfunctional as per decision of the (CCI) (Council of Common Interests)****; he has placed minutes of the meeting and*

decision taken by the CCI. .....Secretary Labour and Human Resources Department submits letter dated 06.08.2020 containing therein ***"EOBI shall remain with Federal Government and WWF shall remain with the Federal Government till such time a mutually agreed mechanism is developed."*** *This is extract of Minutes of 41st Meeting of CCI."*

6. What, prima facie, surfaces from above background could well be summarized as follows:-

i) The EOBI, before 18th amendment, was the Federal subject and EOBI was functioning under Act 1976;
ii) After 18th amendment the EOBI became subject of provinces but except enactment of Act 2014 by Sindh Province, the affairs relating to EOBI continued under Act, 1976 in other provinces;
iii) The Sindh Province did enact the Act 2014 but could not establish the Institution;

These had been the reasons because of which the extract of Minutes of 41st Meeting of CCI came as:-

"EOBI shall remain with Federal Government and WWF shall remain with the Federal Government till such time a mutually agreed mechanism is developed."
(Emphasis is supplied)

23. Presently, the issue *qua* the devolution of the EOBI to the Provinces is under consideration before the Hon'ble Apex Court and the question in respect of the constitution of the Board could only be determined once the issue is finally resolved by the Hon'ble Apex Court. Therefore, the argument regarding the invalid constituted Board does not carry much weight. Even otherwise, it is not the core issue before this Court. The entire controversy revolves around the question as to whether or not the Ministry OP & HRD was vested with the power to issue the impugned order.

24. As discussed above, the Federal Government's role in the EOBI is only with respect to the provision of guidance and that too on policy matters. The impugned order dated 17.12.2015 has not been issued by the Federal Government

rather the same has been issued by the Ministry of OP & HRD, to say the least. The said Ministry alone cannot, by no stretch of imagination, be termed as the "Federal Government" as the same cannot be conflated with the Federal Government as the latter comprises of the Cabinet and the Prime Minister as has exclusively been defined by the Hon'ble Apex Court in the case titled "***Messrs Mustafa Impex, Karachi and others Vs. the Government of Pakistan through Secretary Finance, Islamabad and others (2016 PLD SC 808)"***, whereby the Hon'ble Apex Court while dealing with the question regarding composition of the Federal Government has held as follows:-

> *"Certain powers had been conferred on the Federal Government under the Sales Tax Act, 1990. The conferment of such a power on any other authority would be clearly unconstitutional.* ***It was up to the Federal Government to allocate, through the modality of the Rules of Business, 1973 which of the different Divisions was to deal with the matter. But this did not mean that the Revenue Division had been transformed into the Federal Government. Secretary of the Revenue Division had full power and authority to process a case relating to fiscal matters. Once he had processed it, he then had to forward it, in accordance with the normal constitutional channels, to the Federal Government, for decision. In other words, the decision would then be taken by the Cabinet comprising of the Prime Minister and the Ministers. The mere fact that the Secretary of the Revenue Division had processed the case did not elevate his status to that of the Federal Government. Neither the constitutional provisions, nor the Rules of Business, 1973 conferred power on a Secretary or head of a Division, to be treated as the Federal Government."***
>
> **(Emphasis is supplied)**

25. Furthermore, it was held as under:-

> ***"Secretary, a Minister or the Prime Minister were not the Federal Government and the exercise, or purported exercise, of a statutory power exercisable by the Federal Government by any of them, especially, in relation to fiscal matters, was constitutionally invalid and a nullity in the eyes of the law."***
> **(Emphasis is supplied)**

26. Even otherwise, interference into the affairs of an autonomous and independent body by the Federal Government is deprecated. The Federal Government cannot compel an entirely independent and autonomous body to act in a way which is otherwise contrary to the applicable Regulations of such an autonomous body. The autonomous and independent bodies cannot be compelled to act on such directions / policy decisions of the Federal Government which are otherwise in contravention of the former's own Rules and Regulations. Guidance may be sought from the law laid down in the case titled ***"Pakistan Telecom Mobile Limited Vs. Pakistan Telecommunication Authority (PLD 2014 SC 478)"***, wherein, it was held as follows:-

> *---Policy directives issued by the (Federal) Government under S.8 of the Pakistan Telecommunication (Re-Organization) Act, 1996---* ***Such directives did not have binding effect to compel Pakistan Telecommunication Authority (PTA) to modify the terms of an existing license."***
> **(Emphasis is supplied)**

27. In the case titled ***Commissioner of Income Tax Vs. Messrs Media Network and others (2006 PTD 2502),*** it was held as follows:-

> *"Policy guidelines---Scope---Policy guidelines were administrative in nature meant for internal consumption of Income Tax functionaries, which did not create any rights nor did they impose any obligations---Such instructions did not take away any vested right of assesses and did not*

govern the adjudicatory proceedings of quasi-judicial nature"
(Emphasis is supplied)

28. As observed in the preceding paragraphs, the impugned order dated 17.12.2015 has been issued by the Ministry of OP & HRD and not by the Federal Government. If at all it is presumed that the impugned order has been issued by the Federal Government even then it is not tenable in the eye of law since the Federal Government could only guide the EOBI and that too on policy matters only.

29. In sequent to what has been discussed *supra*, the present writ petition is **ALLOWED.** Consequently, the impugned order dated 17.12.2015 issued by the Ministry of OP & HRD is **SET ASIDE** leaving the parties to bear their own costs.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on 30.09.2022.

JUDGE

//Kamran//