Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD (JUDICIAL DEPARTMENT)

W.P. No.2379-2017

Pakistan Engineering Council
through its Chairman & 3 others

Versus

Federal Investigation Agency
through Director General & 10 others

Petitioners by	:	Mr Zahid Asif Chaudhry, Advocate. Ms Zainab Janjua, Advocate.
Respondents by	:	Mr Khalid Mehmood Dhoon, Assistant Attorney General. Mr Rizwan Mehdi, Assistant Director, FIA (ACC). Mr Danish Sarfraz, SI, FIA.
Date of Hearing	:	**06-12-2022.**

Arbab Muhammad Tahir, J.- The petitioners, through this constitutional petition seeks the following prayer.-

> *"In view of the foregoing, it is most respectfully prayed as follows.-*
>
> *i. Declare that the Impugned Investigation and the Impugned FIR are without jurisdiction and illegal for being in contravention with the provisions of the PEC Act, abuse of authority by the Respondent No.1 and usurpation of authority vested in the Petitioners under the PEC Act;*
> *ii. Declare that the Impugned Investigation and the Impugned FIR are mala fide and colourable exercise of jurisdiction by Respondent No.1 and are tantamount to imposing a fraud on the PEC statute, which prescribes offences to be investigated and prosecuted by the Petitioners and not Respondent No.1;*
> *iii. Declare that the subject matter of the Impugned Investigation and the Impugned FIR fall*

squarely within section 27(3) of the PEC Act and no court can take cognizance of such matter except in accordance with section 27(6) of PEC Act;

iv. *Declare that the offences specified under the PEC Act ought to be investigated and prosecuted pursuant to the mechanism specified under the said Act, which being a special law ousts the jurisdiction Respondent No.1 from the said matters;*

v. *Quash the Impugned FIR for being registered on the basis of colourable exercise of authority without jurisdiction, misapplication and for being in breach of the PEC Act read together with Articles 4, 8, 9, 10A, 14 and 25 of the Constitution;*

vi. *Set aside the Impugned Investigation and the Impugned FIR for being abuse of authority, undermining the regulatory autonomy of the Petitioners and for being against public interest;*

vii. *Permanently restrain Respondents from exercising jurisdiction under the FIA Act in matters falling within the PEC Act and from proceeding any further with the Impugned Investigation; and*

viii. *Any other relief that may be deemed fit and proper by the Honourable Court in the circumstances of the case."*

2. The facts, in brief, are that on the complaint of one Razaq Ali Bhatti, the Federal Investigation Agency, Police Station Corporate Crime Circle, Punjab (*the* ***"Agency"***) registered Enquiry No.30/2016 on 30-04-2016. The complaint was filed in relation to mismanagement in the Pakistan Engineering Council (*the* ***"Council"***) in relation to renewal and upgradation of licences on fake documents in connivance with the officials of the Council. After inquiry, the FIR No.08/2017 was registered under sections 420, 467, 468, 471, 109, 409 of Pakistan Penal Code, 1860 read with section 5(2) of the Prevention of Corruption Act, 1947 at FIA Special Investigation Unit, Islamabad. Feeling aggrieved, the petitioners invoked the jurisdiction of this Court by filing the instant petition. As per the statement made by the

Investigating Officer, present in the Court, the report under section 173 of Code of Criminal Procedure, 1898 (*the* ***"Cr.P.C."***) has not yet been submitted before the trial court.

3. The learned counsel for the petitioners have contended that; section 27(6) of the Pakistan Engineering Council Act, 1976 (*the* ***"Act of 1976"***) bars the jurisdiction of courts to take cognizance the offences punishable under the said Act; the allegations mentioned in the FIR squarely fall within the ambit of section 27 of the Act of 1976; the FIR has been lodged without jurisdiction by the Agency; the Council is creation of the statute and is regulator of the engineers; the bar contained under section 27(6) cannot be ignored or bypassed on technical grounds; every word of the statute has to be given effect; the scheme provided under the Act cannot be circumvented on flimsy grounds; the Act of 1976 is a special law; special law prevails over the general law; the Agency can take cognizance of any matter directly or indirectly relating to the Federal Government; the matter in hand does not involve any matter directly or even remotely relating to the Federal Government; Section 27 of the Act of 1976 cannot be made redundant; registration of the FIR amounts to usurpation of authority vested in the Council; in order to bring the matter within the jurisdiction of the Agency, offences not attracted in the case have illegally been added; when the law requires an act to be done in a particular manner, it ought to be done in that manner alone and not otherwise.

4. On the other hand, the learned Assistant Attorney General has argued that; the Agency is vested with jurisdiction to proceed with the matter; the bar contained in section 27(6) of the Act of 1976 does not attract; other courts can take cognizance of the matter; employees of the Council are "public

servants" within the meaning of section 21 of PPC; the allegations attract scheduled offences.

5. The learned counsel for the petitioners and the learned Assistant Attorney General have been heard and the record perused with their able assistance.

6. The instant petition has been filed by the Council to enforce the autonomy envisaged under the Act of 1976 and quashment of the FIR. The Council has been established under the Act of 1976 to regulate the engineering profession and to set and maintain realistic and internationally relevant standards of professional competence and ethics for engineers, and licence engineers, and engineering institution to competently and professionally promote and uphold the standards. The expression "Council" has been defined in section 2(viii) as Pakistan Engineering Council constituted under section 3 of the Act of 1976. The Council is established under section 3 of the Act of 1976. Section 8 describes the functions of the Council. The Act of 1976 provides for multi-level administrative and functional hierarchy. Sections 9 and 9A provides for establishment of Governing Body and Management Committee, respectively. Section 16 provides that the Council shall maintain in the prescribed manner a Register in which the names and other particulars of persons possessing accredited engineering qualifications whose application for registration as registered engineers, professional engineers, consulting engineers, constructors and operators are, from time to time, granted by the Council. Section 17(1) provides that every case for registration and removal of a name from the Register shall be considered by an enrollment committee. Sub-section (2) of section 17 provides that the enrollment committee in its discretion may refuse to permit the registration of any person or

direct the removal altogether or for a specified period from the Register of the name of any constructor or operator who has been convicted of any such offence as implies in the opinion of the committee a defect of character. Section 20 provides that a complaint made against any registered engineer, professional engineer, consulting engineer, constructors or operators as to work or conduct shall be considered by the enrollment committee itself or can be referred to the Tribunal of Inquiry. Section 21 deals with the Tribunal of Inquiry and provides that the Governing Body can constitute as many Tribunals of Inquiry to hold inquiries into the professional conduct of registered engineers, professional engineers, consulting engineers, constructors and operators. The Tribunal of Inquiry is vested with power to recommend to the Enrollment Committee a case for prosecution of the person against whom the inquiry is conducted, for the offence constituted by his or its conduct under section 22(3)(c). Under section 23, the Tribunal of Inquiry is vested with powers as are exercised by a court under the Code of Civil Procedure, 1908, in respect of matters relating to enforcing the attendance of any person, compelling production of documents and issuing commissions for the examination of witnesses. Furthermore, the Tribunal has been vested with extensive powers to serve the purpose of its constitution. Section 27 provides for penalties and procedure, which is reproduced as follows.-

> ***"27. Penalties and procedure.—*** *(1) After such date as the Federal Government may, after consultation with the Council, by notification in the official Gazette, appoint in this behalf, whoever undertakes any professional engineering work shall, if his name is not for the time being borne on the Register, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both, and, in the case of a continuing offence, with a further fine which may extend to two hundred rupees for*

every day after the first during which the offence continues.

(2) After the date appointed as aforesaid, whoever employs for any professional engineering work any person whose name is not for the time being borne on the Register shall be punishable, on first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both, and on a second or subsequent conviction, with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.

(3) Whoever willfully procures or attempts to procure himself or itself to be registered under this Act as a registered engineer, professional engineer, consulting engineer, constructor or operator by making or producing or causing to be made or produced any false or fraudulent representation or declaration, either orally or in writing, and any person who assists him therein shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(4) Whoever falsely pretends to be registered under this Act, or not being registered under this Act, uses with his name of title any words or letters representing that he is so registered, irrespective of whether any person is actually deceived by such pretence or representation or not, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(5) No person undertaking any professional engineering work shall, unless he is registered under this Act, be entitled to recover before any court or other authority any sum of money for services rendered in such work.

(5A) No person shall, unless registered as a registered engineer or professional engineer, hold any post in an engineering organization where he has to perform professional engineering work.

(6) No court shall take cognizance of any offence punishable under this Act save on complaint made by, or under the authority of, the Council.

(7) No court inferior to that of a Magistrate of the first class shall try any offence punishable under this Act."

7. The Act of 1976 provides for comprehensive mechanism to deal with complaints relating to professional conduct of registered engineers, professional engineers, consulting engineers, constructors and operators and penal

consequences have been provided under section 27 *ibid*. The inquiries are held by committees/tribunals of inquiry vested with extensive powers are available to the Agency. The Council is a specialized statutory regulatory body and equipped with necessary tools, manpower and experts required to investigate professional misconduct of the registered persons. Furthermore, the Council has the power to remove from the register any delinquent registered person and forward a complaint to a Court of Magistrate of the First Class under section 27 of the Act of 1976.

8. Sub-section (6) of section 27 is the ouster clause. It bars the jurisdiction of the courts to take cognizance of any offence punishable under the Act of 1976, unless a complaint is made by or under the authority of the Council. The purpose of this clause is to uphold the sanctity of the proceedings envisaged under the Act of 1976. The legislature has barred the jurisdiction of the courts till a time the Council itself files a complaint after thoroughly probing the matter as per the scheme provided under the Act of 1976. The legislature has used explicit words which bar the courts to take cognizance in respect of offences punishable under the Act of 1976.

9. In the case titled *"Bahawalpur Medical and Dental College v. Pakistan Medical Commission through Secretary and others"* [2022 CLC 775 Lahore], it has been held as follows.-

> *"Legislature is competent to exclude jurisdiction of a court, however, there exists a presumption against the ouster of jurisdiction. Any law or statutory provision which denied access to courts was to be construed strictly. Ouster of jurisdiction must either be explicitly expressed or clearly implied and is not to be readily inferred. Language used by the legislature in this regard ought to show express and unequivocal manifestation of legislative intent to exclude jurisdiction of the courts. If language of an*

ouster clause is so clear and unmistakable that it left no doubt as to intention of the legislature in ousting jurisdiction in all circumstances, then the same should be given effect. Reliance in this regard is placed on the cases of Karamat Ali and another v. Muhammad Younas Haji and others (PLD 1963 SC 191); Muhammad Ismail and others v. The State (PLD 1969 SC 241); and Abbasia Cooperative Bank (Now Punjab Provincial Cooperative Bank Ltd) and another v. Hakeem Hafiz Muhammad Ghaus and 5 others (PLD 1997 SC 3). If an ouster of jurisdiction clause is reasonably capable of having two meanings, that meaning shall be taken which preserves the ordinary jurisdiction of the court. Reliance in this regard is placed on decision of House of Lords (UK) in the case of Anisminic Limited v. The Foreign Compensation Commission and another {{1969} 1 All E.R. 2008}."

10. In the case titled *"Dr Omar Masood and another v. Syed Amir Hussain Naqvi and another"* [2019 CLD 931 Islamabad] has dealt with in detail the effect of ouster clause. The relevant portions are reproduced as follows.-

"20. The principles of interpretation relating to the ouster of jurisdiction of a Court under a statute was yet again affirmed by the august Supreme Court in the case titled "Evacuee Trust Property Board and others v. Ahmed and others" [2004 SCMR 440], the relevant portion is as follows;-

> *"It is now well settled that ouster of jurisdiction under the statute has to be interpreted strictly and it can only operate, if it is shown and proved on the record that certain proceedings are without jurisdiction or coram non judice or the action was tainted with mala fide."*

21. In the judgment titled "Munir Hussain Bhatti, Advocate and others v. Federation of Pakistan and another" [PLD 2011 SC 407], the august Supreme Court interpreted Article 175-A of the Constitution. After examining the precedent law and the various provisions of the Constitution the apex Court observed.-

> *"There is a vast body of precedent in our legal corpus which has consistently held that the Court's jurisdiction may only be ousted through express words in a legal text. This principle of law is by now well settled. Even Mr. Agha did not give any valid reason to question this legal principle or to show that it does not apply to the circumstances of this case. On the other hand, any number of cases can be cited in support of the argument advanced by learned counsel for the petitioners that while interpreting a legal text, ouster of jurisdiction should not be inferred."*

22. In the case of "Pir Sabir Shah v. Federation of Pakistan and others" [PLD 1994 SC 738], the august Supreme Court, in the context of the constitutional provisions whereby the jurisdiction of the Courts is ousted expressly and by using clear language, held and observed that even where such a protection has been given the superior Courts still have the jurisdiction to interfere with three categories of cases, namely, without jurisdiction, coram-non-judice and mala fide. Reference may also be made to judgment in the case of PLD 2006 SC 1442.

23. It would also be relevant to refer to the Halsbury's Laws of England, Fourth Edition, in the context of ouster of jurisdiction by statute and the same is as follows.-

> *"The subject's right of access to the courts may be taken away or restricted by statute, but the language of any such statute will be jealously watched by the courts and will not be extended beyond its least onerous meaning unless clear words are used to justify such extension. Moreover, a statutory provision ousting the jurisdiction of the courts must now be interpreted, as far as possible, so as to be compatible with the right to a fair and public hearing under the European Convention on Human Rights as incorporated into domestic law."*

26. The above principles and law regarding construing statutory provisions couched in language ousting the jurisdiction of the Courts may be

summarized as follows.-

(i) The legislature is competent to oust or exclude the jurisdiction of courts.

(ii) There is a presumption against the ouster of jurisdiction. Any law or statutory provision which denies access to the courts is to be construed very strictly and narrowly.

(iii) Ouster or exclusion of jurisdiction must be expressly and clearly implied and not readily inferred. The language used by the legislature ought to show express and unequivocal manifestation of the legislative intent to exclude the jurisdiction of the courts.

(iv) If the language is so clear and unmistakable that it leaves no room for doubt as to the intention of the legislature in ousting jurisdiction in all circumstances then that will be given effect to and even cases of mala fide and without jurisdiction would not be open to judicial review and the courts would not be concerned with the consequences.

(v) Ordinarily, unless the intention of the legislature is so clear that no other meaning can be given to the language used, the jurisdiction of the courts will not be ousted in three categories of decisions/orders i.e. a) without jurisdiction, b) coram non judice and c) tainted with mala fide.

(vi) Ordinarily, when the legislature declares an order or decision to be final, it has reference to such orders/decisions which is within the powers of the authority making it, the authority should have been constituted in accordance with the statute, the person proceeded against should be subject to jurisdiction, the order passed or action taken should be such as could have been made under a statute and if these conditions are fulfilled then an omission or irregularity committed in following the statutory procedure will not be a sufficient

ground to avoid giving effect to the exclusion of jurisdiction.

11. In the case titled *"Ali Azim Afridi, Advocate High Court, Peshawar v. Federation of Pakistan through Secretary, Ministry of Law and Justice, Islamabad and 3 others"* [PLD 2020 Peshawar 105] it has been held as follows.-

"We are indebted to the principles of interpretation in general and to the four Rules of Statutory Interpretation, these are the literal rule, the golden rule, the mischief rule and the purposive approach, in particular.

Golden rule of interpretation allows judges to depart from a normal meaning of a word in order to avoid an absurd result. According to Maxwell, "The golden rule is that words of statute must prima facie be given their ordinary meaning.

Literal interpretation means that text is to be interpreted according to the "plain meaning" conveyed by its grammatical construction and historical context. The literal meaning is held to correspond to the intention of the authors.

The reason behind purposive approach is to clarify the meaning of the words used in the statutes which might not be that clear. According to Salmond, "Interpretation" is the process by which the court seeks to ascertain the meaning of the legislature through the medium of authoritative forms in which it is expressed.

Mischief rule is a principle used for the interpretation of a statute. This principle is used by the courts to determine the intention of the

legislators. This principle aims at finding out the mischief and defect in a statute and to implement a remedy for the same. This principle was first applied in an English case in the early 16th century.

9. The courts while applying and interpreting the principle behind ouster clause tries to find out the real intention behind the enactment. These rules of interpretation has thus one thing in common, that is to assist the courts in identifying the proper construction of statutory wording according to the original intention of the legislators not only to avoid absurdity but to elucidate it's true meaning. Trichotomy of powers and independence of judiciary being of prime importance. One feels dwarfed to get into the intricacies in following the philosophies behind interpretation. In myriad of circumstances our courts have interpreted different provisions and declared it void ab initio if it had the effect of offending the fundamental rights."

12. The principle laid down in precedent law is that the court endeavors to ascertain the intention of the legislature behind the law which ousts jurisdiction under the ordinary law. In the case in hand the legislature has used explicit words to oust the jurisdiction of courts in relation to offences mentioned under the Act of 1976, unless a complaint is made by the Council or under its authority. The Act of 1976 is a special statute enacted with the object of dealing with the engineering profession and other connected matters. On the contrary, the Federal Investigation Agency Act, 1974 has been enacted with the object to provide for constitution of the Federal Investigation Agency for the investigation of certain offences committed in

connection with matters concerning the Federal Government, and for matters connected therewith. The Act of 1976 is later in time and the legislature is presumed to be cognizant of the existing law, therefore, this Court cannot ignore the expression of the legislative will. The presumption is that the legislature does not make any mistake. It is settled law that in case of any inconsistency between the provisions of two statutes in respect of a matter, the provisions of a statute enacted later in time shall prevail. Reliance is placed on the case of *"Saiyyid Abdul A'la Maudoodi and others v. the Government of West Pakistan and another"* [PLD 1964 SC 673]. Furthermore, the Act of 1976 being special law, particularly enacted to deal with the affairs of engineering profession shall prevail over the general law. Reliance is placed on the cases of *"Capt. (R) Nayyar Islam v. Judge Accountability Court No.III and others"* [2012 SCMR 669] and *"Neimat Ali Goraya and 7 others v. Jaffar Abbas, Inspector/Sergeant Traffic through S.P. Traffic, Lahore and others"* [1996 SCMR 826]. Furthermore, it is settled law the redundancy cannot be attributed to the legislature. This Court is fortified with the view of the learned High Court of Sind in the case reported as *"Abida Rashid v. Secretary to the Government of Sindh and others"* [PLD 1995 Karachi 587] and the relevant portion is reproduced as follows.-

> *"It is trite law that power vested in an authority should only be exercised by that authority, in default whereof, the exercise of power and, authority becomes without jurisdiction, illegal, void ab initio and of no legal effect. The term "without jurisdiction" has been judicially interpreted to include usurpation of power unwarranted by law (The Chief Settlement Commissioner Lahore v. Raja Muhammad Fazil Khan arid others PLD 1975 SC 331 at p.339); an Act done*

which the person doing it has no jurisdiction at all to do or which was clearly outside the sphere of his activities (The State v. Zia-ur-Rahman PLD 1973 SC 49); and a judgment or order delivered by a Court or a judicial or quasi-judicial authority not competent to deliver it (Muhammad Saleh and another v. Messrs United Grain and Fodder Agencies PLD 1964 SC 97). The Constitutional jurisdiction can thus be exercised when it is shown that the order is passed without jurisdiction or in excess of jurisdiction. As observed earlier the respondent No.l has no jurisdiction to pass the impugned order. As such we declare the same to be of no legal effect. Accordingly, we allow this petition C but (cave the parties to bear their own costs."

13. In the matter in hand, the allegations squarely fall within the ambit of the offences provided under section 27 of the Act of 1976. The Agency has taken the stance that allegations have been leveled against the employees of the Council and they are public servants within the meaning of section 21 of PPC, therefore, by virtue of the offences mentioned in the Schedule to the Federal Investigation Agency Act 1974, it has jurisdiction to proceed with the matter. Perusal of the record shows that the allegations mentioned in the FIR are mainly related to renewal and upgradation of licences on fake documents in connivance with employees of the Council. Renewal or upgradation of the licences is one of the functions of the Council described under the Act of 1976 and the Council is the competent forum to examine whether any licence was validly renewed or upgraded and for this reason the relevant statute has explicitly barred the jurisdiction of courts unless a complaint is made by the Council. When the Council in exercise of its powers under the Act of 1976

reaches a conclusion that such renewal or upgradation was without lawful authority and result of connivance of its employees, it is only then that the a complaint is sent for trial of the offences mentioned in section 27 to a court of a Magistrate of the First Class. Determination of the Council regarding allegation of the commission of offences mentioned in section 27 is a pre-condition to presume that any employee of the Council may have been complicit in relation thereto. Therefore, the act of registration of the FIR by the Agency is in disregard to the explicit bar contained under section 27(6) of the Act of 1976. In the facts and circumstances of the case in hand, registration of the criminal case and subsequent proceedings would be an exercise in futility, wastage of time and abuse of the process of the court in view of the explicit bar contained in section 27(6) of the Act of 1976.

14. In view of the above, the instant petition is **allowed**. The act of registration of the impugned FIR No.08/2017, registered at Police Station FIA (Special Investigation Unit), Islamabad is hereby declared as without lawful authority and jurisdiction. Consequently the said FIR is, therefore, accordingly **quashed**. The Pakistan Engineering Council is directed to consider the allegations mentioned in the complaint and proceed with the matter strictly in accordance with law.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in the open Court on _____

JUDGE

Approved for reporting.

Luqman Khan/*