JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.2677 of 2018.

Metro Flex Industries Pvt. Ltd. and others

Versus

Government of Pakistan and others

Petitioners by:	M/s Shahzada Mazhar and Khawaja Haseeb Ahmad, Advocates.
Respondent No.1 by:	Mr. Muhammad Irfan, DAG.
Respondents No. 2, 3 & 4 by:	Mr. Raheel Azam Khan Niazi, Advocate.
Assisted by:	Muhammad Yahya Khan Niazi, Judicial Law Clerk.
Date of Hearing:	**17.06.2025**

INAAM AMEEN MINHAS, J:- Through the instant writ petition, the petitioners have challenged the vires of Pakistan Standards and Quality Control Authority Act, 1996 **("PSQCA Act")**, the validity and legal sustainability of SRO No. 108(KE)/2015 dated 29.10.2015 **("Impugned SRO")**, issued under the PSQCA Act, and the compulsory certification and fee regime imposed on the petitioners for the manufacture and sale of flexible polyurethane foam for domestic mattresses imposed by respondent No. 2 i.e. Pakistan Standards and Quality Control Authority **("Respondent Authority")**.

2. The brief facts leading to the filing of the instant writ petition are that the petitioners are registered companies organized and existing under the laws of Azad Jammu & Kashmir **("AJK")**, engaged in the manufacturing and sale of flexible polyurethane foam mattresses for domestic and commercial use, along with related accessories. The Respondent Authority is

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a statutory organization functioning under respondent No. 1 i.e. Ministry of Science and Technology, established under the PSQCA Act, tasked with setting standards, certification, and quality control. The Impugned SRO, was issued by respondent No. 1 under Section 14 of the PSQCA Act, which prohibited the manufacture and sale of non-conforming articles.

3. The petitioners received multiple notices from respondent No. 3 i.e. Deputy Director of the Respondent Authority for compulsory certification under the PSQCA Act for their products and subsequently the final notices dated 15.02.2018 were issued. Consequently, upon failure of the petitioners to apply for the compulsory Certification Mark License, respondent No. 4 i.e. the Field Officer/Inspector of the Respondent Authority began to detain the petitioners' transport vehicles, carrying the specified products, under sections 15(2) (c) and (d) of the PSQCA Act, causing disruption in the business of the petitioners. Therefore, the petitioners have challenged the vires of the PSQCA Act, the Impugned SRO, and the compulsory certification and fee regime imposed on the petitioners for the manufacture and sale of flexible polyurethane foam for domestic mattresses.

4. The learned counsel for the petitioners contended that the Federal Government lacks constitutional authority to legislate on matters not enumerated in the Federal Legislative List contained in the Fourth Schedule of the Constitution of the Islamic Republic of Pakistan, 1973 **("Constitution")**. The learned counsel submitted that following the 18th amendment, the Concurrent Legislative List was abolished, and legislative competence on residuary subjects now exclusively vests in the provinces. He argued that Article 142(a) restricts the Parliament to legislate only on subjects in the Federal Legislative List, while Article 142(c) expressly prohibits Parliament and empowers Provincial Assemblies to legislate on matters outside that list and that the Federal Legislative List does not include standards of quality, certification schemes, or establishment of standards for products manufactured and sold within a province or territory such as AJK, which is not part of Pakistan and has not adopted the PSQCA Act. The learned counsel further submitted that petitioners' products are for local use and do not fall under entries related to inter-provincial or international trade,

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therefore, the PSQCA Act and the Impugned SRO, which purport to regulate and prohibit manufacture and sale of flexible polyurethane foam mattresses without certification, are beyond the Federal Government's legislative competence and violate the constitutional scheme. The learned counsel maintained that provincial laws already govern consumer protection for such goods, and any defective product is subject to the jurisdiction of the Consumer Courts.

5. The learned counsel for the petitioners further contended that section 14 of the PSQCA Act, which empowers the Federal Government to prohibit manufacture, storage, and sale of articles not conforming to Pakistan Standards, is inconsistent with the fundamental right to freedom of trade and business guaranteed under Article 18 of the Constitution; that the Impugned SRO was not issued by the Federal Government as constitutionally mandated rather by the Ministry of Science and Technology itself, rendering it legally void. In this context he submitted that the term "Federal Government" is defined under the General Clauses Act, 1897, whereby the Prime Minister and the Federal Ministers act collectively; thus, the Impugned SRO issued by Ministry of Science and Technology lacks such authority. Lastly the learned counsel submitted that the Pakistan Standards Institution was dissolved upon promulgation of the PSQCA Act, and standards adopted prior thereto, have no legal effect, therefore, the coercive actions of the Respondent Authority, including illegal detention of vehicles and imposition of heavy fees, are unlawful, arbitrary, and infringe upon the petitioners' fundamental rights, causing irreparable harm to their business and reputation.

6. On the other hand, the learned counsel for the Respondent Authority contended that the Respondent Authority is a federal regulatory body established under the PSQCA Act, with the powers to formulate standards and ensure quality control for products listed under mandatory technical regulations and its powers are backed by multiple entries in the Federal Legislative List and Article 143 of the Constitution, which ensures federal laws override conflicting provincial laws. He also submitted that the Constitution also prohibits provinces from hindering inter-provincial trade

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except under specific conditions; that Pakistan being member of World Trade Organization **("WTO")** is bound by international agreements like the Technical Barriers to Trade Agreement **("TBT")**, which requires national uniformity in standards and compliance by all levels of government; that the Respondent Authority is a designated national body, which is responsible for ensuring compliance with these international obligations and standards across all provinces, therefore, provincial authorities like the Punjab Food Authority (PFA) must align their laws with the PSQCA Act to maintain legal uniformity, avoid conflicting regulations, and uphold Pakistan's international commitments. It was further contended that the Respondent Authority operates under the Ministry of Science and Technology, and the final notices in question were issued lawfully under the PSQCA Act; that the petitioners have an alternate remedy under section 18 of the Act, which allows them to file an appeal against any order by the Respondent Authority and since the alternate remedy has not been availed, the instant petition is premature and not-maintainable. The learned counsel also submitted that although the petitioners' manufacturing unit is based in AJK, their products are sold across Pakistan, making them subject to national quality standards and as per law, they must obtain certification from the Respondent Authority and that the Federal Government, through SRO 345(1)/2016, has also made it mandatory for imported goods like flexible polyurethane foam mattresses to meet domestic standards set by the Respondent Authority. Lastly, the learned counsel contended that Pakistan being member of WTO is bound to uphold international agreements like the TBT, which requires uniform technical standards across the country through PSQCA Act and the Respondent Authority is legally authorized to enforce these standards and collect certification fees as such all actions by the Respondent Authority are lawful, and the petitioners must comply with the applicable regulatory framework.

7. I have given anxious consideration to the arguments of the learned counsel for the parties and perused the record with their able assistance.

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8. While considering the background of this petition and the grounds raised by the parties, the following significant questions need adjudication by this Court:-

> *(i) Whether the Pakistan Standards and Quality Control Authority Act, 1996 is ultra vires the Constitution?*
>
> *(ii) Whether the Impugned SRO is unconstitutional and lacks lawful authority?*

9. The terms "*intra vires*" and "*ultra vires*" are Latin expressions that denote opposite legal concepts. The phrase "*ultra vires*" signifies an act performed beyond the scope of legal authority. Conversely, an act done within the bounds of the conferred authority is described as "*intra vires*." It is a well-established principle that the constitutionality of any legislation may be examined and, if found to exceed the law-making or jurisdictional competence, or to contravene fundamental rights guaranteed by the Constitution, such legislation may be declared void. Simultaneously, it is a settled rule of statutory interpretation, supported by judicial precedents and wisdom that Courts should strive to uphold and preserve the validity of legislation. A statute should be construed so as to maintain its constitutionality unless it is manifestly and clearly in conflict with the constitutional provisions or injunctions of Islam.

10. Since vires of the Federal Statute have been put to challenge, this Court, has examined the principles developed over a period of time for adjudicating vires of any statute. The landmark judgment in this regard is of the Honourable Supreme Court of Pakistan cited as ***Lahore Development Authority vs. Ms. Imrana Tiwana, (2015 SCMR 1739),*** wherein the principles for striking down the law or upholding the same have been enunciated upon. The principles are summarized in paragraph 65 of the judgment and are as follow:-

> *"I. There is a presumption in favour of constitutionality and a law must not be declared unconstitutional unless the statute is placed next to the Constitution and no way can be found in reconciling the two;*

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II. Where more than one interpretation is possible, one of which would make the law valid and the other void, the Court must prefer the interpretation which favours validity;

III. A statute must never be declared unconstitutional unless its invalidity is beyond reasonable doubt. A reasonable doubt must be resolved in favour of the statute being valid;

IV. If a case can be decided on other or narrower grounds, the Court will abstain from deciding the constitutional question;

V. The Court will not decide a larger constitutional question than is necessary for the determination of the case;

VI. The Court will not declare a statute unconstitutional on the ground that it violates the spirit of the Constitution unless it also violates the letter of the Constitution;

VII. The Court is not concerned with the wisdom or prudence of the legislation but only with its constitutionality;

VIII. The Court will not strike down statutes on principles of republican or democratic government unless those principles are placed beyond legislative encroachment by the Constitution;

IX. Mala fides will not be attributed to the Legislature."

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11. The crux of the petitioners' contention is that the Federal Government has no constitutional authority to legislate or regulate matters not listed in the Federal Legislative List, especially after the 18th Constitutional Amendment, which abolished the Concurrent List and thus in the present matter the manufacture and regulation of flexible polyurethane foam mattresses falls under provincial jurisdiction. Therefore, the entire PSQCA Act is *ultra vires* the Constitution and the Impugned SRO issued without proper authority is also *ultra vires.*

12. In order to address the contention of the petitioners, the doctrine of harmonious construction is appropriate, which mandates that constitutional

provisions be read together to avoid conflict and preserve the Constitution's integrity. Reference can be made to the judgments reported as ***Combind Investment (Pvt.) Ltd. vs. Wali Bhai (PLD 2016 SC 730), Lucky Cement Ltd. vs. Commissioner Income Tax, Zone Companies, Circle-5, Peshawar (2015 SCMR 1494), Aftab Shahban Mirani vs. Muhammad Ibrahim (PLD 2008 SC 779), Mirza Shaukat Baig vs. Shahid Jamil (PLD 2005 SC 530),*** and ***D.G. Khan Cement Company Ltd. vs. Federation of Pakistan and others (2004 SCMR 456).*** Before applying this doctrine on the constitutional provisions relevant to the instant matter, it is apt to reproduce the constitutional framework governing legislative competence provided under Article 142 of the Constitution, which is reproduced hereunder:-

> ***"142. Subject-matter of Federal and Provincial laws.***
> *Subject to the Constitution—*
> *(a) Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to any matter in the Federal Legislative List;*
>
> *(b) Majlis-e-Shoora (Parliament) and a Provincial Assembly shall have power to make laws with respect to criminal law, criminal procedure and evidence;*
>
> *(c) subject to paragraph (b), a Provincial Assembly shall, and Majlis-e-Shoora (Parliament) shall not, have power to make laws with respect to any matter not enumerated in the Federal Legislative List;*
>
> *(d) Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to all matters pertaining to such areas in the Federation as are not included in any Province."*

13. Perusal of the above referred Article reflects that it vests exclusive powers in the Majlis-e-Shoora (Parliament) to legislate on matters enumerated in the Federal Legislative List. The 18th amendment abolished the Concurrent Legislative List, thereby enhancing provincial autonomy over subjects not enumerated federally. However, this does not diminish Parliament's exclusive competence over matters expressly listed in the Federal Legislative List.

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14. Moreover, Article 143 of the Constitution deals with inconsistency between federal and provincial laws, which is reproduced hereunder:-

> ***"143. Inconsistency between Federal and Provincial laws.***
>
> *If any provision of an Act of a Provincial Assembly is repugnant to any provision of an Act of Majlis-e-Shoora (Parliament) which Majlis-e-Shoora (Parliament) is competent to enact, then the Act of Majlis-e-Shoora (Parliament), whether passed before or after the Act of the Provincial Assembly, shall prevail and the Act of the Provincial Assembly shall, to the extent of the repugnancy, be void."*

The above referred Article stipulates that if a provincial law clashes with a federal law that the parliament is competent to enact, the federal law will prevail, and the conflicting part of the provincial law will be void. This principle is known as the repugnancy test. In cases where a matter falls within the explicit domain of the Federation, the provincial jurisdiction must yield, and the federal law must prevail, particularly in light of above referred Article, which gives overriding effect to federal law in case of inconsistency. The upshot of the above principles is that the Parliament is the sovereign and has competence to legislate on matters specified under the Legislative List within its domain.

15. In this regard entries of the Legislative List are also relevant. It is a well-known principle that the entries in the Legislative List represent fields of legislation, which must receive the broadest and most expansive interpretation, and are construed to encompass all ancillary or subsidiary matters, which can reasonably be said to be comprehended in them. In case of discord or overlap with other entries, the rule of harmonious construction is applied to reconcile the conflict for giving effect to each of the entries. The items mentioned in the Legislative List cannot be read in a narrow or restricted sense but rather should be given a wide and liberal interpretation without constricting it with technical considerations, and each general word should be held to extend to all ancillary or subsidiary matters, which can reasonably be said to be comprehended in it. In ***Messrs Sui Southern Gas***

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Company Ltd. vs. Federation of Pakistan, (2018 SCMR 802), the Honourable Supreme Court of Pakistan laid down principles for interpretation of entries in the Legislative Lists in the following manner:-

> *"(1) The entries in the Legislative Lists of the Constitution are not powers of legislation but only fields of legislative head.*
>
> *(2) In construing the words in an Entry conferring legislative power on a legislative authority, the most liberal construction should be put upon the words.*
>
> *(3) While interpreting an Entry in a Legislative List, it should be given widest possible meaning and should not be read in a narrow or restricted sense.*
>
> *(4) Each general word in an Entry should be considered to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it.*
>
> *(5) If there appears to be apparent overlapping in respect of the subject matter of a legislation, an effort has to be made to reconcile the Entries to give proper and pertinent meaning to them.*
>
> *(6) A general power ought not to be so construed so as to make a particular power conferred by the same legislation and operating in the same field a nullity.*
>
> *(7) Legislation under attack must be scrutinized in its entirety to determine its true character in pith and substance.*
>
> *(8) After considering the legislation as a whole in pith and substance, it has to be seen as to with respect to which topic or category of legislation in the various fields, it deals substantially and directly and not whether it would in actual operation affect an item in the forbidden field in an indirect way."*

16. Entry 27 of Part I of the Federal Legislative List, which empowers Parliament to legislate on "inter-provincial trade and commerce", is particularly relevant and reproduced hereunder:-

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> *"27. Import and export across customs frontiers as defined by the Federal Government, inter-provincial trade and commerce, trade and commerce with foreign countries; standard of quality of goods to be exported out of Pakistan."*

This entry encompasses the regulation of all commercial activities involving the movement of goods or services across provincial borders. The practical and legal significance of Entry 27 becomes particularly relevant when goods are manufactured in one territorial unit and subsequently distributed and marketed in multiple provinces across Pakistan, same as in the present case, where the petitioners manufacture polyurethane foam mattresses in AJK for use both domestically and throughout Pakistan. In such circumstances, the activity transcends local or provincial boundaries and clearly engages inter-provincial commerce, which squarely falls within the federal legislative competence. Therefore, the constitutional assignment of residuary powers to the provinces cannot be interpreted to nullify or dilute Parliament's clear and express jurisdiction in regulating inter-provincial trade under Entry 27.

17. Furthermore, Entry 39 of Part I of the Federal Legislative List expressly includes matters relating to "establishment of standards weights and measures". This entry grants the Parliament clear legislative competence to enact laws ensuring uniform measurement and quality standards across the country. Entry 6 of Part II of the Federal Legislative List inherently covers the establishment and functioning of federal regulatory authorities such as the Respondent Authority. Additionally, the regulation of national quality standards, especially in the context of international trade obligations and treaties, falls within the ambit of Entry 3 (External Affairs) and Entry 59 (matters ancillary to entries in the list). These constitutional entries provide the Federal Legislature with the authority to legislate in matters relating to the implementation of international treaties and obligations, such as those arising under the WTO's TBT**.** Pakistan's international obligations under the WTO's TBT require a harmonized national framework of technical regulations. Article 3 of the TBT requires central governments to ensure subnational entities do not act contrary to these obligations. The Respondent Authority, as the designated National Enquiry Point, has a mandate not only

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under domestic law but also under treaty law to uphold national uniformity in standards.

18. In this regard it is equally important to underscore the role of the Council of Common Interests **("CCI")**, a constitutionally mandated body established under Article 153 of the Constitution, which plays a vital role in harmonizing federal and provincial policies on matters in Part II of the Federal Legislative List. The CCI's inclusive composition and periodic meetings embody cooperative federalism and provide a forum for resolving intergovernmental disputes. The 41st and subsequent meetings of the CCI on 23.12.2019 reaffirmed the consensus among the Federation and Provinces on maintaining Pakistan as a single national market with uniform standards regulated by the Respondent Authority. The case of *"Harmonization of Standards and Enforcement Mechanism between Pakistan Standards and Quality Control Authority (PSQCA) and Provincial Food Authorities",* was considered by the CCI and its decision is reproduced below:-

> *"There was consensus that there should be uniform standards at national level. Provinces and local authorities will enforce the standards. It was also decided that Minister for Science & Technology will convene a separate meeting with all stakeholders, to amicably resolve the issues raised by the provinces."*

This decision underscores the constitutional and institutional support for federal regulation of standards and quality control. The CCI's resolution emphasizes the elimination of variations in standards, and reflects a commitment to national uniformity and cooperative governance in standards regulation. This is essential for achieving both national regulatory coherence and compliance with Pakistan's international trade commitments.

19. By virtue of Articles 141 and 143 of the Constitution, any conflict between a federal and provincial law on a subject within the exclusive domain of the Parliament must be resolved in favour of the federal legislation. The doctrine of pith and substance supports this interpretation by focusing on the true nature and purpose of the legislation, which in this case is the standardization and quality control of goods throughout Pakistan, an

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essential federal function. Thus, a harmonious reading of Articles 142, 143, and Entry 27 along with other entries of the Constitution leads to the conclusion that federal regulation of goods circulating across provinces is constitutionally legitimate and cannot be challenged on the basis of provincial legislative autonomy. Hence, the PSQCA Act, withstands the test of constitutionality, as it is firmly rooted in the legislative competence of the Federal Government, therefore, is not only a validly enacted federal statute but also derives its legitimacy from a combined reading of these constitutional provisions.

20. The petitioners have also sought declaration that the Pakistan Standard Rules, 2008 to be declared *ultra* vires, however, in this regard no assistance was rendered by the learned counsel. Even otherwise this Court observes that the Pakistan Standard Rules, 2008 are not in contradiction of the PSQCA Act and have been promulgated by the Federal Government lawfully, therefore, the Pakistan Standard Rules, 2008 are not in contravention with the Constitution.

21. Now this Court shall proceed to the second question i.e. whether the Impugned SRO is unconstitutional and lacks lawful authority. The Impugned SRO was issued in exercise of the powers conferred by section 14 of the PSQCA Act, which empowers the Federal Government to prohibit manufacture, storage, and sale of articles not conforming to Pakistan Standards. The learned counsel for the petitioners contended that this is inconsistent with the fundamental right to freedom of trade and business guaranteed under Article 18 of the Constitution. In ***Abdul Wahab and others vs. HBL and others, (2013 SCMR 1383)***, the Honourable Supreme Court observed that the fundamental rights guaranteed by our Constitution are sacred, and one of the primary duties of the State and its institutions at all levels is to respect and enforce them.

22. While the fundamental rights enshrined in the Constitution have to be safeguarded, it transpires that from the precedents cited above, that the first and foremost priority for the Court is to endeavor to save law instead of destroying it and, a derogation from such fundamental right, as an exception

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may be made subject to constitutional cover. One such exception is enshrined in Article 151 of the Constitution, which is reproduced hereunder:-

> *"**151. Inter-Provincial trade.--***
> *(1) Subject to clause (2), trade, commerce and intercourse throughout Pakistan shall be free.*
>
> *(2) Majlis-e-Shoora (Parliament) may by law impose such restrictions on the freedom of trade, commerce or intercourse between one Province and another or within any part of Pakistan as may be required in the public interest.*
>
> *(3) A Provincial Assembly or a Provincial Government shall not have power to—*
>
> > *(a) make any law, or take any executive action, prohibiting or restricting the entry into, or the export from, the Province of goods of any class or description, or*
> >
> > *(b) impose a tax which, as between goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favour of the former goods or which, in the case of goods manufactured or produced outside the Province discriminates between goods manufactured or produced in any area in Pakistan and similar goods manufactured or produced in any other area in Pakistan.*
>
> *(4) An Act of a Provincial Assembly which imposes any reasonable restriction in the interest of public health, public order or morality, or for the purpose of protecting animals or plants from disease or preventing or alleviating any serious shortage in the Province of any essential commodity shall not, if it was made with the consent of the President, be invalid."*

23. The above referred Article stipulates that restrictions on the freedom of trade, commerce or intercourse between one province and another or within any part of Pakistan may be imposed as may be required in the public interest. Therefore, this derogation is allowed on the basis of a public purpose. In this regard, the test for determining whether the Impugned SRO infringes the fundamental right under Article 18 of the Constitution is to

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examine both its object and effect. The object of the Impugned SRO can be determined from the section under which it was issued i.e. section 14 of the PSQCA Act, which empowers the Federal Government to prohibit manufacture, storage, and sale of articles not conforming to Pakistan Standards. Its effect can be inferred both from the contention of the learned counsel for the Respondent Authority and from logic, since the Impugned SRO naturally ensures uniformity in quality standards, consumer protection, and the facilitation of seamless inter-provincial trade. Therefore, the petitioners' reliance on Article 18 does not invalidate reasonable regulatory measures enacted under valid federal legislation, which are in conformity with the Constitution. The certification regime is a legitimate restriction in the public interest and does not amount to an unconstitutional infringement of right to trade or business.

24. The learned counsel for the petitioners remained unsuccessful in persuading me as to how the Impugned SRO infringes or contravenes the fundamental rights of any person, or how the same is against the public interest. Therefore the compulsory certification and fee regime imposed on manufacturers of flexible polyurethane foam mattresses is a lawful exercise of regulatory authority aimed at consumer protection, public safety, and compliance with international trade obligations. Thus, the Impugned SRO was lawfully issued under the PSQCA Act by the Federal Government in consultation with the Respondent Authority and therefore *intra vires* the Constitution.

25. In view of the foregoing constitutional, statutory, and doctrinal interpretation, this Court is of the considered view that:-

i. The PSQCA Act, 1996 is a valid federal legislation enacted pursuant to the legislative competence of Parliament under multiple entries of the Federal Legislative List and therefore intra vires the Constitution.

ii. The Impugned SRO No. 108(KE)/2015, issued pursuant to said Act, is intra vires the Constitution and does not violate Article 18.

iii. The certification and fee requirements imposed upon the petitioners by PSQCA are lawful and consistent with both domestic and international legal obligations.

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iv. The Pakistan Standards Rules, 2008 are in conformity with the PSQCA Act, 1996 and the same are lawful and *intra vires.*

26. Consequently, the instant writ petition is hereby **dismissed** with no order as to costs.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 17.07.2025

JUDGE

APPROVED FOR REPORTING

Muhammad Yahya Khan Niazi. L.C.

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