

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

Writ Petition No.4217-P/2017
With C.M.Nos.2153, 2188, 2203 and 2244-P of 2017

JUDGMENT

Date of hearing 23-11-2017 (Announced on _____)

Petitioners: (Maulana Aman Ullah Haqani and another) by
Mr.Muhammad Isa Khan, Advocate.
(Shahid Nadeem Khan and Muhammad Khurshid
Khan) in person.

Respondents:(Government of Khyber Pakhtunkhwa through Secretary
Transport and Mass Transit Department, Peshawar and
others) by Mr.Abdul Latif Yousafzai, Advocate-General
Khyber Pakhtunkhwa alongwith Mr.Muhammad Bashir,
Director General, Environmental Protection Agency,
Mr.Riaz Ahmad, Superintendent Police (Traffic),
Peshawar. Mr.Shumail Ahmad Butt, Advocate.

YAHYA AFRIDI, C.J.- Through this single judgment,

this Court proposes to dispose of two writ petitions, as both
have common questions of facts and law involved therein.

The particulars of the said writ petitions are as follows:-

1. **Writ Petition No.4217-P/2017 (Petition No.1)**
*(Maulana Aman Ullah Haqani and another –
Vs- Government of Khyber Pakhtunkhwa
through Secretary Transport and others)*
2. **Writ Petition No.4508-P/2017 (Petition No.2)**
*(Abid Zareef Khan –Vs- Government of
Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and others)*

2. In essence the grievance of the petitioners is that
the Peshawar Sustainable Bus Rapid Transit Corridor Project

(“BRT”) is not only being carried out without lawful authority but against *public interest*.

3. Petitioner No.1 in petition No.1 is an elected representative who served as Provincial Minister from 2002 to 2008, while petitioner No.2 is the resident of District Peshawar.

4. The petitioner in petition No.2 during his submissions at the bar asserted that he, being a resident of Peshawar, was to be effected by the Project.

5. This Court finds both petitions to be *public interest litigation*, and *test* for its maintainability has already been adjudged by this Court in **Riaz Ahmad’s case (2013 CLC 1291)**, wherein seeking guidance from the pronouncements rendered by the Apex Court in **Molvi Haider’s case (PLD 2006 SC 394)** and **F-9 Park’s case (PLD 2010 SC 759)**, held that;

*“In this regard, this Constitutional Court can even take cognizance of the matters agitated ‘pro bono publico’, and the test for invoking the Constitutional jurisdiction in such matters has been determined by the august Supreme Court in **Javed Ibrar Paracha v. Federation of Pakistan (PLD 2004 SC 482)** on the touchstone that **Firstly** the matter is in public interest, and **Secondly**, that the petitioners aim for a ‘public good’ and for the welfare of the ‘general public’.*

Thus, in view of clear enunciation on the issue of ‘locus standi’ settled by apex Court, this Constitutional Court can even take up the present petition as “Pro bono Publico”

However, this would not diminish the ‘locus standi’ of the present petitioners to seek their legal remedy from this Court. It can safely be

said that the petitioners are “aggrieved” persons within the meaning of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as their fundamental rights under Articles 9 and 26 have been violated, as public funds for the establishment of a public park have been threatened to be mis-utilized for purpose other than for which they were validly allocated.”

6. Even otherwise, the petitioners being residents of Peshawar would surely be affected by the *works* to be carried out under the Project causing environmental impact upon this dwelling place and thereby infringing upon their *right to life*, as provided under Article 9 of the Constitution of Islamic Republic of Pakistan, 1973 (**“Constitution”**), thus, the petitioners in both the petitions would come within scope of an *aggrieved persons*, as envisaged in Article 199 of the Constitution.

7. Now, to the assertions of the worthy counsel for the petitioners in petition No.1; that the respondents have violated the mandatory provisions of the Khyber Pakhtunkhwa Environmental Protection Act, 2014 (**“Act of 2014”**); that the *works* under the Project have commenced without the requisite Environment Impact Assessment (EIA) Report; that acquisition of private property has been made without the requisite notice being issued under section 4 of the Land Acquisition Act, 1984 (**“Act of 1984”**); that *works* under the Project have commenced without their being valid contract with the Contractors; that the District Government

Peshawar having the exclusive jurisdiction to introduce the *mass transit* in a District Peshawar has been totally ignored in the impugned Project, reliance was placed upon the judgment rendered by the apex Court in **LDA's case (2015 SCMR 1739)**; that the Contractor awarded the Project, namely Chaudhry Amir Latif Brothers was not only *black listed* by the Punjab Government but in fact an inquiry against it had culminated in a *plea bargain* settlement with National Accountability Bureau (“NAB”); that the Project Manager of the Project, Mr.Amin-ud-Din Ahmad is under enquiry by the NAB; that the Project which was to conclude in the year 2021 would bring the entire City of Peshawar to a standstill because of the scope of *works* in the Project; and that finally the Project was not financially viable as would burden the tax payer and was thus against the *public interest*.

8. Abid Zareef Khan, the petitioner in Petition No.2 addressed the Court in person, and submitted that the *works* in the Project, if allowed to proceed would bring the City Peshawar to a halt; that 360 buildings under the Project were to be demolished and no notice had been issued to their owners or residents; that Cantonment Board, Peshawar and the Army had not granted any NOC for the *works* to be carried out under the Project; that logically and technically the Project was not feasible, and thus to result in disaster; that No *Alternate Traffic Plan* was in existence; and that finally the

Project amount had been unilaterally enhanced without legal sanction. In support, he also placed on record 24 pictures, depicting the traffic congestion and the excavation being carried out under the Project.

9. During the proceedings, Shahid Nadeem Khan, applicant, filed C.M.No.2153-P/2017 for impleadment as a party in W.P.No.4217-P/2017. Similarly, Muhammad Khurshid Khan, Advocate also moved an application, C.M.No.2244-P/2017, to be impleaded as a party in W.P.No.4217-P/2017. Both C.Ms were allowed, Muhammad Khurshid Khan addressed the Court in person and also submitted his contention in writing which are in terms that:-

1. یہ کہ EPA کو حکم صادر فرمایا جائے کہ شہر کو ماحولیاتی آلودگی سے بچانے کے لئے کھدائی کی ہوئی جگہ پر اور منصوبہ کی دوسری جگہوں پر دن میں کئی مرتبہ پانی سے چھڑکاؤ کیا جائے۔ کیونکہ اس سے گرد و غبار ختم ہو جائے گا۔ لمبے کو اٹھا کر شہر سے باہر لے جانے والے ٹرکوں کو ڈھانپ کر گزارا جائے۔
2. یہ کہ سیکشش افراد کے لئے دیکھنے اور سننے کا سسٹم اور ویل چیئر کے لئے ریپ لازمی قرار دیا جائے۔
3. بی آر ٹی کے سلسلے میں عوام کی آگاہی یا دوسری کسی قسم کی انفارمیشن کے لئے اردو اخبارات کا سہارا لیا جائے۔
4. بی آر ٹی کی تعمیر کے دوران یونیورسٹی روڈ، جی ٹی روڈ اور ہائڈرو پور ریشوں، چنگ پٹی، گدھا گاڑی، گھوڑا گاڑی اور سٹرا گاڑی پر پابندی لگائی جائے۔ سروس روڈ اور فٹ پاتھ ختم کر کے ٹرانسپورٹ کی روانی کے لئے متبادل سڑک کے طور پر استعمال کیا جائے۔
5. یونیورسٹی روڈ پر (جمروڈ بس) اور ہائڈرو پور (ہائڈ بس) کی بڑی بسوں کو رنگ روڈ پر ڈالا جائے جس سے ٹریفک کی روانی میں کافی فائدہ ہو گا۔
6. بی آر ٹی کی تعمیر میں آنے والے پولیس سٹیشن اور سرکاری ادارے جنہوں نے سروس روڈ اور سڑکوں پر قبضہ کر رکھا ہے ان سے فوراً خالی کر لیا جائے۔ جس کی واضح مثال یونیورسٹی ٹاؤن پولیس سٹیشن، شرقی پولیس سٹیشن، قلعہ بالا حصار کے سامنے کی سڑک، گلہار پولیس سٹیشن اور تمام ایسی سڑکیں جہاں پر سینٹ کے بلاک رکھ کر سڑکوں کا بڑا حصہ بند کر رکھا ہے۔ جو ٹریفک کی آمد و رفت میں رکاوٹ ڈال رہے ہیں۔ ان کے اٹھانے کا حکم صادر فرمایا جائے۔
7. یونیورسٹی روڈ کی آدمی سے زیادہ ٹریفک یونیورسٹی ٹاؤن سے گزر کر آبد روڈ کے ذریعے ہائڈرو پور پہنچ رہی ہے۔ گاڑیوں کی زیادتی کی وجہ سے ٹریفک آہستہ ہے لیکن رواں دواں ہے۔ آرمی کی ہائڈ چیک پوسٹ پر

- بازہ روڈ سے آنے والی ٹریفک کے لئے صرف دو لائنیں ہیں۔ بائیں چیک پوسٹ کو تھوڑا سے آگے لے جا کر لائنوں میں اضافہ کیا جاسکتا ہے اور ٹریفک کی روانی میں آسانی پیدا ہو سکتی ہے۔
8. یونیورسٹی روڈ پر کار ڈیٹار کائی عرصہ سے گاڑیاں شوروم کے باہر کھڑی کر رہے ہیں جس میں انہیں ٹریفک پولیس کا تعاون حاصل ہے۔ شوروم کے باہر سردی روڈ پر گاڑی کھڑی کرنے یا پارکنگ پر پابندی لگائی جائے اور سختی سے اس پر عمل درآمد کیا جائے۔ ٹریفک وارڈن کے وجہ سے ٹریفک کا نظام بہتر ہوا ہے لیکن ٹریفک وارڈن کی تعداد بڑھا کر اس میں مزید بہتری کی گنجائش ہے۔
9. یہ کہ پشاور میں داخل ہونے کے مندرجہ ذیل بڑے راستے ہیں۔ پہلا نو شہر وہی ٹی روڈ سے آنے والی ٹریفک کو رنگ روڈ پر دائیں طرف اور بائیں طرف ڈال دیا جائے۔ گجہار اور اندرون شہر جانے والوں کے لئے تہذیب راستہ آفریدی گڑھی اختیار کیا جاسکتا ہے۔ مزید یہ کہ بائیں طرف کی رنگ روڈ کی ٹریفک کے لئے پشاور شہر اور کینٹ جانے کے لئے رنگ روڈ پر کئی راستے ہیں۔ چار سیدہ اڈہ کے بعد دائیں طرف دو نہروں کے ساتھ بڑے روڈ ہیں۔ جو کہ آگے جا کر تیلیفنی مرکز کے ساتھ کی سڑک سے سیدھا جاتے ہوئے ورسک روڈ پر اترتے ہیں۔ چار سیدہ اڈہ کے بعد دائیں طرف فقیر آباد پولیس سٹیشن کے ساتھ دلہ زاک روڈ کی ٹریفک سٹی ریلوے سٹیشن سے گزر کر پرانا ٹی ایس اڈے کے پاس ٹی ٹی روڈ پر لگتی ہے۔ دلہ زاک روڈ کی ٹریفک کو اگر دونوں نہروں کے ساتھ سڑکوں پر ڈال دیا جائے یا سیدھا پانچ خان چوک سے گزار کر سورسے پل پر نکالا جائے تو ٹریفک کی بحالی میں کافی فرق پڑ سکتا ہے۔ پرانی فروٹ منڈی کے ساتھ آرمی سپلائی ڈپو کی سڑک لگتی ہے۔ جو کہ آگے جا کر سٹی ریلوے سٹیشن اور دلہ زاک روڈ کی طرف جاتی ہے۔
10. ورسک روڈ تعلیمی اداروں کا گزرنے والا ہے۔ صبح سکولوں کے شروع ہونے اور چھٹی کے اوقات میں اگر وقت دے دیا جائے یعنی ان کو مختلف گروپوں میں تقسیم کر کے صبح اور چھٹی کے اوقات مختلف رکھا جائے تو ایک ہی وقت میں چھٹی کی وجہ سے سینٹ میری سکول چوک میں اکثر ٹریفک جام ہوتی ہے۔ اس میں کمی آجائے گی۔
11. یہ کہ ساگل نے ہذا بات خود دیکھا ہے کہ حیات آباد میں روڈ پر PDA کے سامنے کھدائی ہو رہی ہے۔ لیکن ٹریفک کی صورت حال بہت بہتر ہے۔ وجہ دونوں طرف پر سردی روڈ ہیں جن کی وجہ سے ٹریفک میں روانی ہے۔ مزید یہ کہ ابھی تک ٹریفک وارڈن ٹریفک جام کو کنٹرول نہیں کر سکتے۔ پہلا گورنمنٹ ہائیوے کنڈری سکول نمبر 1 کے سامنے کھدائی کی وجہ سے پشاور سے باہر جانے والی سڑک صرف ایک لائن روگنی ہے۔ دوسری جگہ شعبہ بازار چوک ہے، تیسرا سورسے پل کے نیچے آرمی چیک پوسٹ کی وجہ سے اکثر ٹریفک جام رہتا ہے۔ آرمی چیک پوسٹ کے آگے سے سینٹ جاکس ہسپتال لائنوں میں مزید اضافہ ہو سکتا ہے۔ ٹریفک وارڈن کی تعداد بڑھا کر اور گاڑیوں کو تہذیب راستوں پر ڈال کر ٹریفک جام کا مسئلہ حل کیا جاسکتا ہے۔
12. یہ کہ کئی سال پہلے دہلی ہائی کورٹ نے از خود نوٹس پر دہلی میٹرو پولیٹن کے لئے ٹریفک کے اڈھام اور شہر میں ماحولیاتی آلودگی ختم کرنے کے لئے ایک فیصلہ میں فریوٹ پالیسی دی۔ جس میں سب سے اہم ٹی آرمی

منصوبہ کے لئے ہم قادمہ اٹھا سکتے ہیں۔ وہ ایون آڈ (جنت، طاق) فارمولہ ہے۔ مینے کے "ایون" ہار نیوٹس میں "ایون" نمبر کی گاڑیوں کو سڑکوں پر آنے کی اجازت ہو۔ "آڈ" نمبر کی تاریخوں میں "آڈ" نمبر کی گاڑیوں کو سڑک پر آنے کی اجازت ہو۔ اس فارمولے سے سڑکوں پر ٹریفک کا بوجھ آدھا رہ جائے گا۔

آخر میں عدالت حضور سے گزارش ہے کہ پشاور شہر کے لئے ایک ٹرانسپورٹ پالیسی بھی دے دیں جو اس شہر کے شہریوں پر عدالت حضور کا احسان عظیم ہو گا۔ جس میں دوپڑا رسی سی سے زیادہ کی گاڑیوں کی رجسٹریشن اور پشاور میں داخلے پر پابندی ہو۔ تمام ڈیزل گاڑیوں کو سی این جی اور سرکاری گاڑیوں کو سی این جی پر منتقل کیا جائے۔ دس سال سے پرانی گاڑیوں کی پشاور شہر میں داخلے پر پابندی ہو۔

یہ کہ ساگل اپنی عدالتوں کو عبادت گاہوں کا درجہ دیتا ہے۔ کیونکہ دنیا کی مختلف مذاہب کی عبادت گاہیں انسانوں کو ریلیف دیتی ہیں۔ اور یہی کام ہماری عدالتیں عوام کو ریلیف کی صورت میں انصاف دیتی ہیں۔ یہ کہ ساگل مسجد، مندر، چرچ، گوردوارہ، گکوڈا (بدھ مت)، سنی گاک (ہیروئی) چاچکا ہے۔ اسے ہر عبادت گاہ میں انسان اپنے مذہب کے تحت عبادت کرتے ہوئے اور ریلیف مانگتے ہوئے ملے۔ 23/11/2017 کورٹ پیشین نمبر 2017/4217 میں ایڈوکیٹ جنرل صاحب نے ساگل کے بارے میں کچھ ریمارکس دیئے۔ میں آج اپنی لفظی تسلیم کرتا ہوں اور عدالت حضور سے دست بردست احترام کے ساتھ معافی کا خواستگار ہوں کہ میں نے اسے جی صاحب کو کیوں جواب دیا۔ مجھے خاموش رہنا چاہیے تھا کیونکہ خاموشی کی بھی ایک لہجہ زبان ہے۔

10. Mr.Riaz Ahmad, Superintendent Police (Traffic) Peshawar on notice appeared and explained the *Alternative Traffic Plan*.

11. To understand the apprehensions of the petitioners regarding the environmental impact of the Project, as highlighted in the petitions, the worthy Director General Environmental Protection Agency (“EPA”) Khyber Pakhtunkhwa was also put to notice. He, in compliance with the directions of this Court, placed on record the ***Brief Report*** on the Project, which entailed that;-

1. ***Peshawar Development Authority submitted Environmental Impact Assessment Report (EIA) under Section 13 of Khyber Pakhtunkhwa Environmental Protection Act, 2014 and IEE/EIA Rules Regulation 2000 to EPA on 11.05.2017. The report is forwarded to internal IEE/EIA review committee member for review on 26.05.2017.***
2. ***Presentation was made before the Review Committee on 19.06.2017 which was attended by the review committee members in EPA Conference Room.***

The following were the main issues raised in presentation.

- a) ***Provide Land acquisition and its details.***
- b) ***Provide NOC from Archeology Department.***
- c) ***Provide Base Line Data and Laboratory results regarding ambient air, noise etc.***
- d) ***Provide details of community /household affected by the project and their compensation method.***

- e) *Provide list of affected persons of the project with complete address and contact numbers.*
 - f) *Provide Traffic Management Plan for Reach-II and Excavation of land (in feet) for construction of pillars and other structures.*
 - g) *Provide Security clearance of the project from PAF/Army.*
 - h) *Provide alternate route for the project. (if any).*
 - i) *Provide details of tree cutting in the Row of the road.*
 - j) *Provide exact location of the batching plant and mitigation measures for impacts caused by batching plants.*
3. *Letter to proponent for clarification of the above issues on 19.07.2017 and reply submitted on 07.09.2017 by Peshawar Development Authority.*
4. *Advertisement for Public Hearing floated in newspaper on 20.06.2017.*
5. *Letters of invitation for Public Hearing to stakeholders on 07.07.2017.*
6. *Public hearing held on 20.07.2017 at Nishtar Hall, Peshawar. Following were the main issues raised in public hearing.*
- a) *Traffic Management Plan during construction phase to be submitted.*
 - b) *Comments/response on construction of alternate market/shops prior to demolishing the existing structures.*
 - c) *Compensation status of the affectee in Sardar Gharhi and others as several shops/structures are being demolished for the purpose.*
 - d) *Alternate routes/arrangement during construction phase to be advertised.*
 - e) *Arrangement for pedestrian routes after demolishing the underground passage at Firos, Peshawar.*

- f) Justification of change of rout from Saddar road to Sunehri Masjid road.*
 - g) Current Compensation/resettlement status of Gul/Noor Centers/ Sunehri Masjid road etc.*
 - h) Protection of sewer line passing though the Sunehri Masjid Road.*
 - i) Alternate arrangement for running of escalator in case of load shedding.*
 - j) Work plan/time frame of the project as per the proposed program to be completed in 6 months.*
 - k) Protection of cultural heritage (Bala Hisar Forte) and details in case of consultation with Archaeology Department.*
 - l) Provision of prayer place at stations.*
 - m) Ensure provision of resettlement plan and design of overhead market to the affectees.*
 - n) Dumping site for excavated materials.*
 - o) Provide a complete list of the affectees with contact numbers.*
 - p) Approval/Details of consultation with Corps Commander (FC), Corps Commander (Army) and CEO Cantonment Board etc as the project will pass through some strategic sites/check posts established by Pak-Army/ Security agencies for security purpose.*
- 7. Letter to Proponent for clarification of the above issues sent on 08.08.2017.*
 - 8. Reply to the observations received on 18.08.2017.*
 - 9. Further Clarification of un-satisfactory reply was asked on 28.08.2017 and its reply submitted on 07.09.2017.*
 - 10. Decision/Approval on EIA on 08.09.2017.*

12. The Brief Report was duly accompanied by the documents/annexures mentioned therein and also supported by a personal affidavit of the worthy Director General EPA.

13. In addition to the Brief Report submitted by the worthy Director General EPA, he appeared and explained that the;

I. *Project envisaged three phases;*

First Phase being the civil works, was to be completed within six months;

Second Phase being the operational part, would take three years; and

Final Phase which was for the left over works which was to be concluded in one year.

II. *As far as the EIA Report is concerned, the worthy DG, EPA brought to the attention of the Court that the process envisaged under the Act of 2014 for grant of an approval was duly carried through in terms thereof. He further explained the steps taken, which were narrated in chronological terms that;*

11.05.2017. Application under section 13 of the Act of 2014 was filed with EPA.

26.05.2017 Internal Review Committee processed the Project.

20.06.2017 A public notice was published in the National Dailies.

07.07.2017 Brief note on the Project was distributed along the route envisaged under the Project amongst two hundred affectees/ shop keeper/ residents.

20.07.2017 Public hearing took place as Nishtar Hall Peshawar.

III. *The worthy Director General EPA also responding to the anxiety of the petitioners as reflected in their petitions and oral submissions at the bar, assured the Court that all affectees shopkeepers/residents would be duly compensated, and the compensation plan was an integral part of the Project. He further assured the Court that in*

addition to the supervisory role of the Government of Khyber Pakhtunkhwa, Asian Development Bank (“ADB”) is also appointing a consultant to monitor the works being carried out under the Project.

14. The worthy Advocate-General, Khyber Pakhtunkhwa in support of the viability, feasibility and legality of the project addressed the Court by contending that;

- I. *The Project is in fact an outcome of dire public need and intense study, which dates back to the year 2013, when the Government of Khyber Pakhtunkhwa requested the City Development Initiative for Asia to help improve Peshawar Urban Transport System and to provide technical and financial support to implement the same. This request was accepted which led to the Prefeasibility of the Project being completed in May, 2014 laying out the 20 years Urban Transport Strategy with a ten year action plan. The Prefeasibility Study was followed by Feasibility Study, which on the request of the Government of Khyber Pakhtunkhwa was carried out by the Asian Development Bank, and the same was concluded in January, 2017.*
- II. *The worthy Advocate General further submitted that the engineering design of the Project was carried out by International Consultant appointed by ADB and cost estimates were also completed leading to the preparation of PC-2, which was approved by CDWD. The Project PC-1 was presented to CDWD on 28th March, 2017 and it recommended the Project for consideration of ECNIC, where the cost was rationalized, and was finally brought to Rs.59.346 billion, with ADB share as Rs.41.881 billion and that of Khyber Pakhtunkhwa at Rs.7.465 billion. The Project infrastructure development was at the cost of Rs.31.524 billion, which was to mainly cover the civil work station, bridges, tunnels etc.*
- III. *The total route envisaged in the project was 26 Kilometer, which was divided in to three sections, and the Contractors for each section was finally selected by the ADB through International competitive biddings.*
- IV. *In response to the query regarding acquisition of property required for the Project, the worthy Advocate General contended that 914 Kanal would be required for the Project, and in this regard notification under section 4 had already been issued under the Provisions of the Act of 1894. In support thereof, the said notification was placed on record.*

- V. *As for the permission to proceed with the Project in the Cantonment Area of Peshawar is concerned, the worthy Advocate General placed on record the NOC from the Cantonment Board, Peshawar.*
- VI. *Similarly, the worthy Advocate General also placed on record the NOC from the District Nazim, Peshawar and the minutes of the proceedings of the District Council, Peshawar dated 04.04.2017. The said documents, the worthy Advocate General contended clearly demonstrated that the District Government was kept abreast with the Project, and in this regard the District Nazim, Peshawar was included as a member of Board of Director of the Urban Mobility Company vide notification 05.08.2016, which was to supervise the Project.*
- VII. *The worthy Advocate General also explained that the scale of the Project was so vast and financial implication so steep that the District Government did not have the capacity to proceed with the same and for which International assistance was required. Keeping the nature and scope of the Project, the Government of Khyber Pakhtunkhwa introduced an enactment the Khyber Pakhtunkhwa Urban Mass Transit Act, 2016 (“Act of 2016”) to ensure its safe execution and completion.*
- VIII. *The worthy Advocate General also placed on record the resettlement plan for the Project, and the contract agreements executed by the Government of Khyber Pakhtunkhwa through PDA and the Contractors for each track of Project.*

As for the legal issues, the worthy Advocate General vehemently contended that the Act of 2016 being later in time would prevail over the provisions of LGA, 2013. In addition, the worthy Advocate General also submitted written submissions on the legality of the Project being initiated and carried out under the Act of 2016 in terms that;

- I. *Article 140-A was inserted by Constitution (Eighteenth Amendment) Act, 2010. Under the said Article each Province shall by Law established a local government system and devolved political, administrative and financial responsibility and authority to the elected representatives of the Local Government.*

2. *Accordingly, the Khyber Pakhtunkhwa Local Government Act, 2013 was enacted and election to the Local Councils were held and the Local Councils had been functionalized. Under section 19(c) one of the functions of the District Council is to approve proposals for public transport and mass transit system, construction of express ways, fly-overs, bridges, roads, under passes and inter-town streets.*
3. *In order to overcome the transport problem in Peshawar City, the Government of Khyber Pakhtunkhwa decided to initiate a “Mega Project” by the name style of Bus Rapid Transit (BRT).*
4. *Since it was a Mega Project, beyond the resources and capacity of the Local Government, a law the Khyber Pakhtunkhwa Urban Mass Transit Act, 2016 was promulgated for planning, establishment, regulation and management of modern, sustainable Mass Transit and Complementary Urban Mobility System in the Province of Khyber Pakhtunkhwa. It was provided in section 6 thereof, that for management and operation a Board shall be constituted under the Chairmanship of the Chief Minister, Khyber Pakhtunkhwa and beside other the Secretary to the Local Government Elections and Rural Development Department shall be one of its Members. Section 36 of the Act has provided for an over-riding effect to this law.*
5. *A question has arisen as to whether this law (Khyber Pakhtunkhwa Urban Mass Transit Act, 2016) is in conflict with Article 140-A of the Constitution of Pakistan, 1973 or with the Khyber Pakhtunkhwa, Local Government Act, 2013. The answer to this question has been provided by the Hon`ble Supreme Court of Pakistan in its Judgment Reported as 2015 SCMR 1739.*
6. *The rationale of the Supreme Court judgment cited hereinabove and paragraphs of which have been reproduced hereinabove is as under;-*
 - a. *One that the Provincial Government shall by law establish a Local Government System under Article 140A of the Constitution of Pakistan.*
 - b. *The creation of a Local Government System does not spell the end of the Provincial Government in the Province.*
 - c. *Even after the insertion of Article 140A of the Constitutions the Provincial Government would continue to have the*

authority to enact and amend statutes, make general or special laws with respect to Local Government and Local Authorities to enlarge or diminish the authority of Local Government and extend or curtail municipal boundaries.

- d. *Instead of enumerating Local Government Powers the Constitution makers left these to be worked out in harmony between the Provincial and Local Government.*
 - e. *The Provincial Government can perform the functions and exercise the authority devolved on the Local Government in the following three situations;*
 - I. *When the Local Government lacked capacity or was ineffective;*
 - II. *When the function was of a nature which spilled over from the territory of one Local Government into that of another; and*
 - III. *When economies of scale justified such intervention.*
7. *The rationale of the Supreme Court judgment is that even if the Local Government is established by law, even then the Provincial Government would continue to have authority to enact and amend statutes, make general or special laws with regard to Local Government and Local Authorities.*
8. *In case of Mega Project like the BRT where not only huge finances and capacity to do the work is involved, the Provincial Government while taking into confidence the Members of the Provincial Assembly enacted Khyber Pakhtunkhwa Urban Mass Transit Act, 2016. This legislation is in no way in conflict with either Article 140A of the Constitution or Khyber Pakhtunkhwa Local Government Act, 2013, as this Act has empowered the Provincial Government to negotiate and complete the said Mega Project. The law was enacted as the Local Government lacked capacity and the finances involved were beyond their budget. The Provincial Government can work in harmony with the Local Government in the Public Interest Project.*
9. *The Provincial Government in exercise of its*

legislative and executive authority can add and support the Local Government. The Provincial Government has taken the initiative for the growth and development of the people in the Public Interest.

10. *As far as section 38 of the Khyber Pakhtunkhwa Urban Mass Transit Act, 2016 regarding the “over-riding effect”, this is only with respect to the particular subject of Mass Transit. This law is in no way in conflict with the Local Government Act, 2013. It has to be read harmoniously and in aid of the each other law. Thus, the Provincial Government has made a valid law for Mass Transit.*
11. *It is evident from the documents submitted that the Local Government is on board in the BRT Project. The Project was discussed in the District Council, Peshawar and the minutes of Meeting in which it was discussed have been provided to the Hon`ble Court. Moreover, the Secretary Local Government, KP are the Members of the Board notified under section 6 of the Khyber Pakhtunkhwa Urban Mass Transit Act, 2016.*

15. On going through the contentions raised by the petitioners in both the petitions and the response of the Provincial Government, it is noted that the challenges made to the Project can generally be grouped into three distinct categories;

Firstly, the technical, financial, supervisory and executing capacity of the Provincial Government to carry out the Project was lacking, hence would lead to disaster;

Secondly, the adverse environmental impact of the Project was severe and thus warranting its immediate closure; and

Finally, the lack of constitutional authority of the Provincial Government to undertake the Project under Act of

2016 without adhering to the provision entailed for such a Project under LGA, 2013 and thereby rendering it to be without lawful authority.

16. Let us take the *first challenge* made by the petitioners regarding the technical, financial, supervisory and executing capacity of the Provincial Government. Findings on issues relating to technical and financial aspects of any project, much so of a project which is highly specialized requiring engineering and financial expertise, such as the present Project, ought not to be passed by a Constitutional Court. Moreso, when the assertions of the petitioners on the factual aspect of the Project are vehemently disputed by the Provincial Government. Accordingly, this Court would not like to enter into such controversies and pass any findings on technical and financial viability of the Project. Suffice it to state that, the Project was duly considered and approved, at the highest Provincial Government level by the CWPD, and at the Federal level by the ECNIC.

17. Before parting with the issue in hand, it would be pertinent to mention that the presentation of Mr. Riaz Ahmad, SP (Traffic), Peshawar was not at *par* with what is warranted in view of the scope of the inconvenience to be caused to public in Peshawar. The situation demands more attention of the Provincial Government and public awareness thereof and in particular, the *alternative traffic plan*.

18. As far as the objection of the petitioners regarding Mr.Amin-ud-Din Ahmad, the Senior Director PIU of the Project on behalf of PDA, it is noted that he is presently facing charges of corruption in a reference filed by the National Accountability Bureau and the trial whereof is being proceeded before the Accountability Court at Peshawar. In such circumstances, allowing him to proceed with supervising the Project pending the said trial would be contrary to the well cherished principle of *good governance*. The worthy Director General, PDA is to assume the role of the Project Manager.

19. Now to the objection of the petitioners regarding one of the Contractors appointed to carry out the Project, namely, *M/s Chaudhry Amir Latif and Brothers*, having been '*black listed*' by the Government of Punjab, it was also brought to the attention of this Court that the said order had been set aside by the Lahore High Court vide its decision in W.P.No.39099/2016 decided on 07.09.2017. As far as the other objection of the petitioners that one of the Directors of a Joint Venture Company awarded the contract to execute the Project having entered into a Plea Bargain Settlement with the National Accountability Bureau is concerned, the learned counsel representing the said Contractor filed written submissions, which read as;

“Although not specifically raised as a ground in his main writ petition, it is alleged by the petitioner’s counsel in his arguments that one Ch.Aamir Latif had entered into a plea bargain with NAB and thus is not qualified for award of contract.

As explained at certain length, BRT Corridor is divided into three separate sections known as Reach-I, Reach-II and Reach-III. Reach-1 starts from Chamkani and ends at Firdous Chowk. Reach-2 starts from Fidous Chowk and goes until Aman Chowk and Reach-3 goes from Aman Chowk to Phase V, Hayatabad. Three separate contracts have been awarded for these three independent Reaches.

Reach-I is awarded to a Joint Venture namely SGEC-Maqbool-Calsons JV being the lowest bidder. SGEC, a renowned state-owned public-sector engineering and construction enterprise from China is the Chinese partners in the Joint Venture having 70% equity exposure while Maqbool Associates (Pvt) Limited and M/s Chaudhry Abdul Lateef and Sons (CALSONS) are partners with 15% shares each in the joint venture.

Reach-II is awarded to a Joint Venture CRG21-Maqbool Calsons JV. CRG21, a state-owned subsidiary of China Railway Group is 70% partners in the Joint Venture while rest of the share-holding is divided equally amongst Maqbool Associates and CALSONS.

Reach-III is awarded to SGEC-Maqbool-Calsons JV. Share-holding is the same as above.

So far as the Company namely M/S Chaudhry Abdul Latif & Sons (Pvt) Ltd., (CALSONS) is concerned, it is a 15% partners in Contractor’s JVs in each of three Reaches. This company is being managed by Chaudhry Imran Latif while Chaudhry Aamir Latif is a minority shareholder. Even the agreements with Provincial Government were signed by Chaudhry Imran Latif on behalf of CALSONS Pvt Ltd.

Furthermore, in order to understand whether a plea-bargain effects award of a contract in any manner, one can cite with benefit Section 15 of the NAO, 1999, which reads;

“15. (a) Where an accused person is convicted of an offence under section 9 of this Ordinance he shall forthwith cease to hold public office, if any, held by him and further he shall stand disqualified for a period of ten years, to be reckoned from the date he is released after serving the sentence, for seeking or from being elected, chosen, appointed or nominated as a member or representative of any public body or any statutory or local authority or in service of Pakistan or of any Province:

Provided that any accused person who has availed the benefit of sub-section (b) of section 25 shall also be deemed to have been convicted for an offence under this Ordinance, and shall forthwith cease to hold public office, if any, held by him and further he shall stand disqualified for a period of ten years, to be reckoned from the date he has discharged his liabilities relating to the matter or transaction in issue, for seeking or from being elected, chosen, appointed or nominated as a member or representative of any public body or any statutory or local authority or in service of Pakistan or of any Province.

(b) Any person convicted of an offence under section 9 of this Ordinance] shall not be allowed to apply for or be granted or allowed any financial facilities in the form of any loan or advances or other financial accommodation by] any bank or financial institution owned or controlled by the Government] for a period of 10 years from the date of conviction.

As evident from the language of section 15 of the NAO, 1999, law stipulates only two kinds of disqualifications for somebody who has availed option of plea bargain under section 25(b) ibid, namely,

- a. Disqualification from holding public office.*
- b. Disqualification from receiving financial assistance from Banks.*

Mandate of the law does not stipulate any disqualification from seeking a livelihood or from pursuing any lawful business even after plea bargain under section 25(b) of the NAO, 1999. Mr.Aamir Latif, after availing plea-bargain is not precluded in any manner from eking a respectable livelihood. He is not debarred, precluded or prevented from participating in tenders for work in any

competitive regime by offering lowest bid. Section 15 of the NAO, 1999 does not stipulate any restriction over award of any contract to someone who has been proceeded under section 25(b) ibid.

More importantly the work has not been awarded to Mr.Aamir Latif in his individual capacity but to a corporate entity, having independent judicial personally in total exclusion to its shareholders and that too as one minority partner (15%) of big joint Ventures.”

(emphasis

provided)

20. What is crucial to note is that all three sections of the Project were duly advertised seeking *competitive international bidders*, which was finally awarded to three successful Joint Venture Companies after verification by a third party independent source; Asian Development Bank. In case there is any impropriety in awarding the contracts for the execution of the Project, the same can surely be inquired into by the National Accountability Bureau under the enabling provisions of the NAB Ordinance, 1999. However, for the present, and that too from the available record, no impropriety requiring immediate attention or directions of this Court is forth coming. Disqualifying the entire Joint Venture Company for the past record of a single partner/director, and that too of a minority stake holder, would not be legally appropriate. But for the nature of the Project, Mr.Amir Latif should not have any managerial or supervisory role in running the Joint

Venture Companies or execution of the of the *works* under the Project.

21. Now, moving on to the *second challenge* relating to the adverse environmental effect of the Project. The *Brief Report* submitted and the oral submissions of the worthy Director General EPA clearly demonstrate that, *prima facie*, the prescribed requirements for rendering EIA, as provided under section 13 of the Act of 2014, have been complied with. The only issue which *irks* the Court is that the EIA approval of the Project granted by the Director General, EPA is *conditional*, which warrants to be periodically considered and extended till its *final approval*. In the interim period, the worthy Director General, EPA should periodically consider the circumstances highlighted in the EIA, and if the same are found in order, only then the EIA approval be extended. Surely, granting a *conditional approval* would not absolve the worthy Director General, EPA from his legal duty to ensure that the Project fulfils and qualifies the prescribed environmental standards under the law. Even otherwise, the objections of the petitioners regarding EIA approval can be challenged by them before the Khyber Pakhtunkhwa Environmental Tribunal under Section 23 of the Act of 2014. It would also be pertinent to note that any order passed by the worthy Tribunal on their petitioners would then be amenable in

appeal before a Bench of this Court under Section 24 of the Act of 2014.

22. Let us now consider the *third challenge* made by the petitioners, regarding the constitutionality of the Project being undertaken by the Provincial Government under the Act of 2016 without adhering to the procedure provided under the LGA, 2013.

23. In the last four decades, it is noted that Local Governments in Khyber Pakhtunkhwa were seldom allowed to flourish by elected governments. Ironically, non-elected government introduced Local Government Ordinances in all four Provinces. These enactments were protected by inserting provisions in the Constitution, expressly barring any amendment thereto without consent of the President. This move appears to be taken to protect and ensure that Local Governments continue to function without interruption. The legal development, as it progressed, can be categorized in the following phases;

First Phase. (Pre 2001).

Article 268 read with 6th *Schedule* of the Constitution did not mention the Local Government Laws, which required previous sanction of the President for any amendments repeal or alternation therein. The relevant constitutional provisions read that;

268. Continuance in force, and adaptation of, certain laws.—(1) *Except as provided by this Article, all existing laws shall, subject to the Constitution, continue in force, so far as applicable and with the necessary adaptations, until altered, repealed or amended by the appropriate Legislature.*

(2) *The laws specified in the Sixth Schedule shall not be altered, repealed or amended without the previous sanction of the President.*

(3) *For the purpose of bringing the provisions of any existing law into accord with the provisions of the Constitution (other than Part II of the Constitution), the President may by Order, within a period of two years from the commencing day, make such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient, and any such Order may be made so as to have effect from such day, not being a day earlier than the commencing day, as may be specified in the Order.*

(4) *The President may authorize the Governor of a Province to exercise, in relation to the Province, the powers conferred on the President by clause (3) in respect of laws relating to matters with respect to which the Provincial Assembly has power to make laws.*

(5) *The powers exercisable under clauses (3) and (4) shall be subject to the provisions of an Act of the appropriate Legislature.*

(6) *Any Court, tribunal or authority required or empowered to enforce an existing law shall, notwithstanding that no adaptations have been made in such law by an Order made under clause (3) or clause (4), construe the law with all such adaptations as are necessary to bring it into accord with the provisions of the Constitution.*

(7) *In this Article, “existing laws” means all laws (including Ordinances, Orders-in-Council, Orders, rules, bye-laws, regulations and Letters Patent constituting a High Court, and any notifications and other legal instruments having the force of law), in force in Pakistan or any part thereof, or having extra-territorial validity, immediately before the commencing day.*

Explanation.—*In this Article, “in force” in relation to any law, means having effect as law whether or not the law has been brought into operation.*

Second Phase (2002).

Vide Legal Framework Order, 2002 various constitutional amendments were introduced including Clause 2 of Article 268, which after amendment read;

“(2) The laws specified in the Sixth Schedule shall not be altered, repealed or amended expressly or impliedly without the previous sanction of the President accorded after consultation with the Prime Minister.”

Third Phase (2003)

The Constitution (Seventh Amendment) Act, 2003 further amended Article 268 by inserting a *proviso* which read;

“Provided that the laws mentioned at entries 27 to 30 and entry 35 in the Sixth Schedule shall stand omitted after six years.”

Forth Phase (2010)

The Constitution (Eighteenth Amendment) Act, 2010 inserted Article 140-A which read;

*“140A (1) Each Province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments.
(2) Elections to the local governments shall be held by the Election Commission of Pakistan.*

The said constitutional amendments, further amended Article 268 by omitting clause (2) of Article 268, and also omitted Sixth Schedule and Seventh Schedule of the Constitution in terms that;-

*“94. **Amendment of Article 268 of the Constitution.**- In the Constitution, in Article 268, Clause (2) shall be omitted.*

*102. **Omission of the Sixth and the Seventh Schedule in the Constitution.**- In the Constitution, the Sixth Schedule and the Seventh Schedule shall be omitted.”*

Final Phase (Post Eighteen Amendment).

On 7th November, 2013, Khyber Pakhtunkhwa Local Government Act, 2001 (**“Ordinance of 2001”**) after being repealed by earlier legislative enactments, was finally replaced by Khyber Pakhtunkhwa Local Government Act, 2013, where under Section 19(c), the District Council in City District was vested to perform the following functions, *inter alia*, :-

“(c) Approve proposals for public transport and mass transit systems, constructions of express ways, fly-overs, bridges, roads, under passes, and inter-town streets.”
(emphasis provided)

Interestingly, the said enactment also provided in Section 3 and further under section 119 overriding effect in terms;

*“3. **Ordinance to override the other laws.** The provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force.*

*119. **Act to override other laws on the subject.**--- The provisions of this Act shall have overriding effect, notwithstanding anything contained in any other law, on the subject, for the time being in force.”*

24. The respondent-Government enacted the Khyber Pakhtunkhwa Urban Mass Transit Act, 2016 (**“Act of 2016”**),

the *preamble* whereof truly depicts the intention of the legislature, as it states;-

“Whereas it is expedient and necessary to establish the Khyber Pakhtunkhwa Urban Mobility Authority and to empower it for the purpose of planning, establishing coordinating and regulating mass transit system and supporting systems and Urban Transport Companies for coordinating, constructing developing, operating, maintaining and carrying out all ancillary functions thereto for providing safe, efficient comfortable, affordable, sustainable and reliable forms of mass transit system and supporting systems and to make provisions for matters connected herewith or incidental thereto.”

(emphasis provided)

Under this enactment, an authority having an independent legal personality was established under the name and style of “*Khyber Pakhtunkhwa Urban Mobility Authority*” having its Board of Directors, the functions thereof included;

“4(d) Arrange studies, surveys, experiments and technical research, financially and environmentally sustainable urban transport plans with respect to mass transit system and ancillary matters to be made or undertaken and contribute towards the cost of such studies, surveys, experiments or technical research made or undertaken by any other agency, authority, private body or Departments of Government, as the case may be;

(e) change or divert and cause to be implemented various transport routes, structures or alignment and take such steps as may be necessary or useful in the construction and reconstruction, repair, maintenance and operation of mass transit system and other modes of transportation as may be relevant;”

(emphasis provided)

What is also interesting to note is that the provisions contained in the Act of 2016 were provided overriding effect under section 36 *supra*, which reads that;

“36. **Overriding effect.**--- *The provisions of this Act shall have an overriding effect, notwithstanding anything contained in any other law for the time being in force.*”

25. No doubt, the stance taken by the worthy counsel for the petitioners rendering prominence to the provisions of LGA, 2013 would have been accepted had the same being made during the *Second* or the *Third Phases*, when the protection provided in Clause 2 of Article 268 and the *proviso* introduced thereto under the LFO, 2002 and the Seventeenth Amendment were in place. These express *Constitutional protections* were, however, removed after the introduction of the Eighteenth Amendment, whereby Clause 2 of Article 268 and the *Sixth Schedule* were omitted from the Constitution. Now, when we review Article 140-A of the Constitution, it stands without the protecting provisions provided in Clause 2 of Article 268, and the *Sixth Schedule*, and thus what emerges is a much *diluted constitutional protection* provided by the legislature to the Local Government System. In essence, Article 140-A of the Constitution, only mandates each Province to ensure Local Governments to continually function, and thereby devolving political, administrative and financial responsibilities and authority to the grass root level. There is

no express constitutional bar upon the Provincial Assemblies to amend the enactments governing local governments. There appears to be a harmonious co-relation between the authority of the Provincial Government, as reflected in Article 137 read with 142 of the Constitution, with the functioning or restriction of the Local Governments, as protected under Article 140-A of the Constitution. This crucial constitutional co-relation has been very aptly discussed by the apex Court in **LDA's Case** (*supra*), in terms that;-

“49. If this were so once the Province had exercised its legislative authority to devolve certain political, administrative or financial functions or authority on the Local Government its legislative and executive authority would be correspondingly abridged. If political, administrative and financial powers were devolved to the fullest extent, the Province would be left with no legislative or executive authority. It would also lose the means to recoup such authority by legislation. This would mean that once a Provincial Legislature conferred the full panoply of political, administrative and financial responsibility on the Local Government, its own constitutional, legislative and executive authority would be taken over by that of the Local Government now and forever. The impractical results that it may lead to and the constitutional principles against which such an interpretation runs have already been identified by us.....”

54. The Province is under an obligation under Article 140A of the Constitution to establish, by law, a Local Government System and to devolve political, administrative and financial responsibility on the Local Government. Yet, in doing so it is not stripped bare of its executive and legislative authority under Articles 137 and 142 of the Constitution. The Provincial and the Local Governments are to act in a manner, which complements one another. The Constitution, therefore, envisages a process of participatory democracy, where

the two governments act in harmony with one another to develop the Province. The authority of neither destroys the other. Article 140A cannot be used to make the provisions of Articles 137 and 142 either subordinate to it or otiose. One constitutional provision cannot, unless it is so specifically provided, override another and must be harmoniously construed together.”

(emphasis provided)

26. In the said decision, the apex Court went on to further explain the limits to which the Provincial Government could ingress into the domain of the Local Governments. And one of such permissible situation was when the local governments due to lack of resources or capacity were unable to perform their functions as provided under the enabling laws. In fact, the apex Court considered it the wisdom of the parliament not to *fix* the limits of the Provincial Government in matters relating to the domain of the local governments. These views of the apex Court were expressed in terms that;-

“56. That even after the insertion of Article 140A the Provincial Government would continue to have the authority to enact and amend statutes, make general or special laws with regard to Local Government and local authorities, enlarge or diminish the authority of Local Government and extend or curtail municipal boundaries. This power of amendment has, however, to be informed by the fact that if the Provincial Government oversteps its legislative or executive authority to make the Local Government powerless such exercise would fall foul of Article 140A of the Constitution. An excessive or abusive exercise of such authority would not be countenanced by this Court. It would be struck down.”

74. The solution, therefore, lies in reading the provisions of the two statutes in harmony. The LDA Act, 1975 is to be regarded as an enabling statute. It allows LDA to act in support of and to complement the Local

Government in the exercise of its functions and responsibilities. Where the Local Government is unable to act because of a lack of resources or capacity, or where the project is of such a nature that it spills over from the territory of one Local Government to another or where the size of the Project is beyond the financial capacity of the Local Government to execute; the LDA can step in and work with the Local Government. Economies of scale, spillovers and effectiveness are merely illustrative of the situations in which the LDA can act in the exercise of its functions to carry out developmental and other work and perform its statutory functions. These are not exhaustive. Life and time may throw up other situations and create circumstances which may warrant LDA action to be taken in consultation with the Local Government within the purview of PLGA, 2013. Closing the categories today will freeze growth and retard progress.

(emphasis provided)

27. In view of the above deliberation, this Court is in consonance with the legal submissions of the worthy Advocate General, Khyber Pakhtunkhwa *qua* the mandate of the Provincial Government to carry out the Project under the Act of 2016, and further to the conclusion drawn by the worthy Advocate General in his written submission regarding the *ratio decidendi* of the apex Court in **LDA's case** *supra*.

28. Moving on to the other defence set by the worthy Advocate-General in support of the Act of 2016 being later in time and thus to prevail over the earlier enactment of LGA, 2013. Under normal circumstances, a later enactment would expressly state its dominance over the earlier enactment by expressly repealing the same. There may also be a situation where without expressly repealing an earlier enactment, the

later enactment impliedly repeals the same. The *test* for such an *implied repeal* has been discussed in **NS Bindra's Interpretation of Statutes ("10th Edition")**, in terms that;

"An implied repeal of an earlier law can be inferred only where there is the enactment of a later law which had the power to override the earlier law and is totally inconsistent with the earlier law that is where the two laws-the earlier law and the later law-cannot stand together."

(emphasis provided)

29. When we apply the above test of *implied repeal* to LGA, 2013 and the Act of 2016, it is noted that the latter does not impliedly repeal the former, as the two laws are neither totally inconsistent nor it can be stated that the two cannot stand together. The Act of 2016 is in fact taking only a specific subject matter relating to *Urban Transit System* from the District Government, and that too only because it was beyond its resources. Thus, in such circumstances, the Act of 2016 can safely be regarded as an *enabling statute*, complementing and supporting the local governments. Moreover, it is also to be noted that this ingression by the Provincial Government over the District Government has not been kept in isolation, but in fact, the District Council and District Nazim have been kept abreast of the Project and District Nazim has been made part of the Board of Directors of the *Khyber Pakhtunkhwa Urban Mobility Authority*. In similar circumstances, the Indian Supreme Court in **Shiv Shanker's case** (1971) 3 SCR 607, where the subsequent enactment

related to a part of the general subject matter in a more minute manner, but as it did not irreconcilably contradict the earlier enactment, the same was termed as *supplementary enactment* in terms that;

“Statutes in pari material although in apparent conflict should also so far, is reasonably possible, be construed to be in harmony with each other and it is only when there is an irreconcilable conflict between the new provision and the prior statute relating to the same subject matter, that the former, being the later expression of the legislature, may be held to prevail, the prior law yielding to the extent of the conflict. The same rule of irreconcilable repugnancy controls implied repeal of a general by a special statute. The subsequent provision treating a phase of the same general subject matter in a more minute way may be intended to imply repeal pro-tanto. When there is no inconsistency between the general and the special statute the latter may well be construed as supplementary.”

Accordingly, for the reasons stated hereinabove, this Court declares and holds;-

- I. That both the petitions fulfill the test of *public interest litigation* and thus maintainable.
- II. That the petitioners in both the petitions are *aggrieved persons* within the contemplation of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as the issue raised relates to their fundamental *right to life* enshrined under Article 9 *supra*.

- III. That the objections raised regarding technical, financial, supervisory and executing capacity of the Provincial Government to undertake the Project being not only highly technical and specialized but also disputed by the respondent-Government ought not be commented upon by this Constitutional Court.
- IV. That the *alternative traffic plan*, as presented by Mr.Riaz Ahmad, SP (Traffic), Peshawar was not at *par* with what was warranted in view of the magnitude and scope of *works* under the Project. The worthy DIG (Traffic) is stated to be on a course and has not relinquished his charge, the worthy Inspector General of Police is to ensure that the charge of the DIG (Traffic) is immediately assigned to a responsible officer who may personally supervise the *alternative traffic plan*.
- V. That the worthy Deputy Inspector General (Traffic) and Commanding Officer of the Military Police of Cantonment, Peshawar are to streamline *alternative traffic plan* and ensure that senior officers are to personally supervise all the critical check points during the rush hours for the smooth

flow of traffic and convenience of the public.

- VI. A fortnightly joint reports of the worthy Deputy Inspector General (Traffic) and Commanding Officer of the Military Police of Cantonment, Peshawar are to be submitted to the Human Rights Cell of this Court confirming the steps taken and their satisfaction regarding the efforts made in regard to the *alternative traffic plan*. Furthermore, any request in writing to any person or authority made by the worthy Deputy Inspector General (Traffic) in the City of Peshawar in furtherance of the *alternative traffic plan* is to be complied with forthwith.
- VII. Mr.Amin-ud-Din Ahmad, the Senior Director PIU of Peshawar Development Authority shall not be involved in any manner whatsoever regarding the affairs of the Project pending trial before the Accountability Court at Peshawar. And during the interim period the worthy Director General, PDA is to personally perform the functions of Project Director of the Project.
- VIII. Mr.Amir Latif of *M/s Chaudhry Abdul Latif and sons (Pvt) Ltd* shall in no way have any

managerial or supervisory role in running the Joint Venture Companies or execution of *works* under the Project.

- IX. The conditional EIA approval granted by the worthy Director General EPA purportedly under Section 13 of the Khyber Pakhtunkhwa Environmental Protection Act, 2014 (“**Act of 2014**”), requires to be finalized. The worthy Director General EPA shall fortnightly consider the conditions highlighted in the EIA report, and thereafter, if found in order, to extend the same till its final approval.
- X. The suggestions highlighted by Muhammad Khurshid Khan, Advocate be placed for appropriate directions before the *Khyber Pakhtunkhwa Urban Mobility Authority* in its next meeting.
- XI. The action of carrying out Peshawar Sustainable Bus Rapid Transit Corridor Project (“**BRT**”) under the Khyber Pakhtunkhwa Urban Mass Transit Act, 2016 (“**Act of 2016**”) is with lawful authority.
- XII. That the provision of Khyber Pakhtunkhwa Urban

Mass Transit Act, 2016 is neither in violation of Article 140-A of the Constitution nor irreconcilably contradicts the provision of the Khyber Pakhtunkhwa Local Government Act, 2013.

- XIII. The progress reports submitted to the Director, Human Rights Cell, Khyber Pakhtunkhwa shall be placed before the Chief Justice in his Chamber.

Both these writ petitions are disposed of, in the above terms.

Announced.

Dated.

CHIEF JUSTICE

J U D G E

*F.Jan/**
(DB) Hon`ble Mr.Justice Yahya Afridi, Chief Justice
Hon`ble Mr.Justice Syed Afsar Shah, Judge