SYED ARSHAD ALI, J:- This consolidated judgment is directed to dispose of the instant petition as well as the connected Writ Petitions No.4022-P/2020, 4076-P/2020 and 4519-P/2020. In all 04 petitions, the petitioners have challenged the order/letters of the respondents declaring the Petitioners ineligible for allotment of apartments/flats.

2. Brief facts of the case are that respondent No.3, who is the Director General of Provincial Housing Authority (“PHA”), an authority established under Section 3 of Khyber Pakhtunkhwa Housing Authority Act, 2005 (“the Act”) had issued an advertisement in various daily newspapers dated 15.07.2020 intending to sell various categories of apartments/flats constructed, to be constructed in Phase-V Hayatabad, Peshawar “Scheme” to in-service
and retired government employees on deferred payments/instalments. The essential criteria for the applicant appearing in the said advertisement is as following:

3. The petitioner Muhammad Sajjad claims that he is serving in Frontier Corps as Accountant Officer BPS-17, the petitioner Syed Ashfaq Anwar claims that he joined the Provincial Civil Services Khyber Pakhtunkhwa in May, 1997 and continuously served the province for 06 years till July, 2003 whereafter he qualified Central Superior Services Exam and joined the Police Services of Pakistan and since then he is performing his duties against various positions. Petitioner FidaGohar has claimed in his petition that in the
year 2013, he was initially appointed as Deputy Assistant Director BPS-16 and then promoted to the post of Assistant Director BPS-17 since 2016 in National Accountability Bureau. Petitioner Fayaz Alam in his petition claims that he is serving as Audit Officer BPS-18 in Directorate General District Government Audit Khyber Pakhtunkhwa.

4. The Petitioners, being government servants, had applied for apartments/flats in the *Scheme* through online application and also deposited the required 10% fee with the respondent/PHA. In the lucky draw conducted by the respondent, the petitioners were declared successful for allotment of flat/apartment in the *Scheme* and as such they had requested the respondent for issuance of allotment letter; which was refused through the impugned letters, holding them ineligible for allotment of the apartments.

5. The respondents in their comments do not deny the terms and conditions mentioned in the advertisement and winning the lucky draw by the present petitioners; however they have contended in their comments that it was erroneously mentioned/published in the advertisement that
the serving Federal Government Officials are also eligible for allotment of the said apartments whereas under the policy of the respondents it is only the retired Federal Government Officers domiciled in the Province of Khyber Pakhtunkhwa who had served in the Province of Khyber Pakhtunkhwa or FATA for a period of 05 years and above and those Federal Government Officers belonging to other provinces who had served in province of Khyber Pakhtunkhwa for a period of 08 years and above are eligible to apply for the allotment of apartments. They have also averred that this criterion was uploaded on the official website of the respondents. Thus, on the basis of this erroneous publication, the present petitioners have acquired no vested right for allotment of apartments/flats. Along with the comments, the respondents have placed on file a last page of an alleged summary purportedly signed by the Secretary Housing Department, Special Assistant to CM for Housing and worthy Chief Secretary Khyber Pakhtunkhwa, reflecting the eligibility criteria for allotment of apartments in the scheme, which is reproduced as under:-
“6. Keeping in view the above and to implement Chief Minister’s directive the revised flat allotment criteria is proposed as under: -

i. **All Provincial Government retired officers/serving in BPS-17 and above including retired officers of Autonomous/Semi-Autonomous Bodies are eligible to apply for the allotment of flat.**

ii. **All Federal Government retired officers in BPS-17 and above who belong to Khyber Pakhtunkhwa or FATA and served for the affairs of the province for a period of 05 years and above and those Federal Government officers belonging to other provinces and served Khyber Pakhtunkhwa affairs for period of 08 years and above are eligible to apply for the allotment of flat.**

iii. **Legal heirs of all Provincial Govt. Servants in BPS-17 and above, who died on or after 01.01.2007, during service or after retirement are eligible to apply for the allotment of flats and the same condition is also applicable to the Federal Government officers.**

7. **The cost of the construction will be revised at the market rate as and when notified by Finance Department.**

8. **Being Chairman of the Special Committee, para-6 and 7 are submitted for approval please.”**

6. The respondents have also placed on file a document which they claim to have been downloaded from their official website re-affirming the aforesaid criteria. Thus, it is the claim of the respondents that on the basis of the aforesaid criteria the present petitioners were issued letters holding them ineligible for the allotment.
It is evident from the record that as per the criteria for allotment in the Scheme, as advertised in the newspapers at the time of soliciting applications for allotment of flats/apartments, the Petitioners being either the employees of the Federal Government or statutory bodies of the federation had applied for purchasing an apartment in the Scheme; deposited the initial amount and in the lucky draw they were declared successful for allotment of a flat/apartment, however, they were refused issuance of allotment letter on the pretext that, according to the ibid relevant criteria of the respondent, the present petitioners are not eligible for allotment of the apartments/flats. The respondents in their comments have not placed on file the entire record pertaining to the criteria for eligibility of the applicant for allotment of flats/apartments. Instead, they have opted only to place on file the last page of some summary, referring to the approval of the worthy Chief Minister, prescribing certain eligibility criteria for allotment of the apartment in the Scheme, which does not encompass the present Petitioners. As the Respondents could not persuade us
regarding the legality and propriety of the said criteria, this
Court deems it appropriate to examine the legality of the
said criteria through the prism of relevant law governing the
subject.

8. The Khyber Pakhtunkhwa Housing Authority Act,
2005 ("The Act") is a provincial law governing the
establishment of Khyber Pakhtunkhwa Housing Authority,
its purpose and functions. The provisions of the Act
germane to the controversy are reproduced as under:-

3. Establishment of the 2 [Khyber Pakhtunkhwa] Housing
Authority

(1) As soon as may be, after the commencement of this Act, Government shall establish an Authority to be called the 3 [Khyber Pakhtunkhwa] Housing Authority for carrying out the purposes of this Act.

(2) The Authority shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire and hold property, both movable and immovable and may, by the said name, sue and be sued.

(3) The Authority shall consist of –

(i) Minister for Housing or Advisor or Special Assistant to Chief Minister on Housing, Khyber Pakhtunkhwa, nominated by the Minister for Housing; Chairman.

(ii) Secretary to Government of 5 [Khyber Pakhtunkhwa], Housing Department; Member.

(iii) a representative of Planning and Development Department not below the rank of an Additional Secretary; Member.
(iv) a representative of Finance Department not below the rank of an Additional Secretary; Member.

(v) a representative of Local Government Election and Rural Development Department not below the rank of an Additional Secretary; Member.

(vi) Member Board of Revenue; Member.

(vii) three representatives of the Builders/Construction Industry and Architects and Consultants; Member.

(viii) any two persons to be nominated by Government from amongst the retired Engineers; and Member.

(ix) Director General of the Authority; Member/Secretary.”

“4. Powers and functions of the Authority. (1) Subject to the provisions of this Act and any rules made thereunder, the Authority may exercise such powers and take such measures as may be necessary for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing sub-section the Authority shall-

(i) ………………..

(ii) ………………..

(iii) identify state and other lands for developing low income and low cost housing schemes;

(iv) facilitate construction of multi storey flats (low cost housing) in collaboration with the District Governments and Tehsil and Town Municipal Administrations by arranging finances from the House Building Finance Corporation, Finance Institutions and commercialized banks for developments;

(v) ………………..

(vi) facilitate public and private partnership or ventures in housing and development of recreational activities;

(vii) ………………..

(x) mobilize resources and generate funds in order to provide finance for housing especially to the low income group;
(xi) develop land disposal systems which are unified, transparent and market oriented with open auction policy and exception for special needs;

(xv) formulate provincial land use policy, plan and prepare regional development plans (Inter District Spatial Planning-Master Plans) for an integrated, coordinated and systematic planning to ensure orderly growth and development of physical infrastructure such as highways, railways, industrial zones, conservation of forest reserves and provision of electricity, telephone, sui gas, etc;

6. Appointment and term of office ---

(1) There shall be Director General of the Authority, who shall be appointed by Government from amongst the officers holding degree in Civil Engineering.

(2) The Director General shall be the Chief Executive of the Authority and shall perform such duties as may be assigned to him, and exercise such powers as may be delegated to him, by the Authority.

7. Delegation ---The Authority may, by general or special order, delegate to the Director General, a committee constituted under section 9, a member or an officer of the Authority any of its powers, duties or functions under this Act or the rules made thereunder subject to such conditions as it may deem fit.

10. Special Committee ---(1) There shall be a Special Committee for Government servants housing scheme in order to introduce a plan for providing houses on no profit no loss basis to Government servants on their retirement, or to their families in case of death during service and to make provisions for matters connected therewith or ancillary thereto.

(2) The Special Committee shall consist of the following:

(a) Chief Secretary, 1 [Khyber Pakhtunkhwa]: Chairman.

(b) Additional Chief Secretary, 2 [Khyber Pakhtunkhwa]: Member.

(c) Senior Member Board of Revenue: Member.
(d) Secretary Finance Department; Member. (e) Secretary Establishment Department; Member.

(f) Secretary Administration Department; Member.

(g) Secretary Housing Department; Member. (h) three civil servants, one representing each of the employees in BS-1 to 16, BS-17 to 18 and BS-19 and above to be nominated by Government; Members.

(i) three other persons as may be appointed by Government for a specified period; and Members.

(j) Director General, Khyber Pakhtunkhwa Housing Authority. Member/Secretary.

(3) The members appointed under clauses (h) and (i) of sub-section (2) shall hold office for a period of three years.

(4) Decisions shall be taken by the Special Committee by simple majority and in case of equality of votes the Chairman shall have a second or casting vote.

11. Functions of the Special Committee

Subject to the provisions of this Act, the Special Committee shall for the purpose of this Chapter, undertake the following functions: (a) to identify and recommend the steps for the establishment of a fund in the manner hereinafter provided, for carrying out the purposes, including incurring of expenditure and investment of money;

(b) to arrange, purchase and acquire land, wherever necessary, within the Province;

(c) to exercise control over the housing scheme for Government servants in the manner as may be prescribed;

(d) to adopt such measures and mechanism/procedure for allotment of the houses to Government servants in the prescribed manner;

(e) to authorize the PHA for spending from the fund established under section 12 for housing schemes for Government servants; and

(f) to do such other acts as are ancillary and incidental to the above functions.

15. Location, categorization, allocation and price of residential units

---(1) The
housing schemes shall be carried out at such locations as may be determined by the Special Committee but initially a scheme shall be started at Peshawar as a pilot project at one or more suitable places and when the housing schemes are commenced at other locations a Government servant may be given three options of preference of the locations of his choice.

(2) A Government servant shall be allocated by the Special Committee, a residential unit of a particular category, keeping in view his seniority, date of retirement or any other deserving special circumstance.

(3) Price of each residential unit or each category of residential units shall be determined by the Special Committee.

(4) All payments made by a Government servant and the mark-up accrued thereon at the rate determined by the Special Committees from time to time shall be updated annually.

(5) Possession of a residential unit shall not be delivered unless the price of the unit is paid in full.

(6) A Government servant shall not alienate the allocated residential unit for a prescribed period."

9. The perusal of the aforesaid scheme of law would show that there is an authority by the name, Provincial Housing Authority “PHA” established for overseeing implementation of the purpose of the Act which inter-alia includes facilitating construction of multi storey flats etc.

The Director General is the Chief Executive of the Authority/PHA, however, he performs those duties and functions which are assigned/delegated to him by the PHA.

For overseeing government servant housing schemes, there
is yet another statutory Special Committee (“SC”), established under section 10 of the Act, comprising of high ranked Civil Servants, the worthy Chief Secretary being its Chairman. The SC under Section 11(C) has the mandate to exercise control over the housing scheme for government servant in the manner as may be prescribed. The respondents could not place on record any rules or regulations framed by the competent authority structuring/regulating the discretion of the SC relating to their control over the housing scheme for government servants, as envisaged by Section 11(C) of the Act. It is the case of respondent that the present petitioners do not qualify for allotment of flat/apartment in view of the aforesaid policy of the Provincial Government which is based on the directions of the worthy Chief Minister. We have minutely gone through the Act but were unable to find any place/role for the worthy Chief Minister to interfere or issue direction to the PHA. Indeed the legal preposition is very clear that when a law requires a thing to be done in a particular manner it should be done in that manner alone. Any action of a statutory body which is not within the contemplation of
law can well be corrected by the Constitutional court in the
exercise of its writ jurisdiction. In the case of “Iqbal

Hussain Vs Province of Sindh(2008 SCMR 105)” the
Apex Court in similar circumstances has held that: -

“We are in complete agreement with the view taken by the Division Bench of the High Court when it says that public functionaries including the Chief Minister can deal with the public property only under a prescribed procedure within the parameters of law under a duly sanctioned scheme and not at their whims. Even if such order was passed by the Chief Minister in favour of the petitioner, authorities concerned would not be bound to follow such illegal and void order of a superior authority. It would rather be in the exigencies of good order of administration and their duty to point out to the high-ups that they were acting in excess of their lawful authority and in violation of law and the constitutional mandate. They may be apprised of the legal consequences flowing from such acts. The compliance of any illegal and arbitrary order is neither binding on the subordinate forums nor valid in the eyes of law. Reference in this behalf may be made to decision of this Court in Abdul HaqIndhar v. Province of Sindh (2000 SCMR 907) and Taj Muhammad v. Town Committee (1994 CLC 2214)”

Similarly, in case American International School System v. Mian Muhammad Ramzan and others (2015 SCMR 1449)

has reaffirmed the above view: -

“We are in complete agreement with the view taken by the Division Bench of the High Court when it says that public functionaries including the Chief Minister can deal with the public property only under a prescribed procedure within the parameters of law under a duly sanctioned scheme and not at their whims. Even if such order was passed by the Chief
Minster in favour of the petitioner, authorities concerned would not be bound to follow such illegal and void order of a superior authority. It would rather be in the exigencies of good order of administration and their duty to point out to the high-ups that they were acting in excess of their lawful authority and in violation of law and the constitutional mandate. They may be apprised of the legal consequences flowing from such acts. The compliance of any illegal and arbitrary order is neither binding on the subordinate forums nor valid in the eyes of law. Reference in this behalf may be made to decision of this Court in Abdul HaqIndhar v. Province of Sindh (2000 SCMR 907) and Taj Muhammad v. Town Committee (1994 CLC2214).

10. No doubt under section 41 read with other enabling provisions of the Act, the Provincial Government can make rules for carrying the purpose of the Act, however, as stated above, no such rules have so far been framed on the subject by the Provincial Government. Needless to mention that in view of the law laid down by the Apex court in the case of Mustafa Impex (PLD 2016 SC 808) the office of worthy Chief Minister is not synonymous with the provincial government, hence any instruction issued by the said office can’t be clothed with the status of rules as envisaged by section 41 of the Act.

11. Indeed, it is the case of the respondents that due to an inadvertent mistake in the advertisement the application for
allotment of apartments/flats was also accepted from the serving employees of Federal Government belonging to the province of Khyber Pakhtunkhwa which is contrary to the policy of the respondent. However, in this regard the respondent has not conducted any inquiry as to whether this was an inadvertent mistake or an intentional insertion holding the serving employees of the Federal Government eligible for allotment of apartments. What has irked this Court is the conduct of the respondents that right from the advertisement till the time of issuing the impugned letter they have neither issued any corrigendum in the newspaper nor had informed the petitioners regarding the existence of the policy contrary to the advertisement.

12. The documents placed on file by the respondents clearly reflect that the affairs of the PHA are being governed quirkily and in a fanciful manner. There are no clear or open rules, plans, policies, and/or a fair procedure framed by the competent authority regulating the affairs of the PHA. Such a structure, giving unbridled discretion to the officials working at the helm of any department/authority, has never
been approved by the superior Courts. The Apex Court in the case of “Peer Imran Sajid(2015 SCMR 1257)” has held that object of good governance could not be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind. Such objective could be achieved only by following the rules of justice, fairness and openness in consonance with the command of the constitution enshrined in its different articles.

13. The initial advertisement, soliciting applications of government servants for sale/purchase of apartments, clearly envisages that an employee of the Federal Government working in BPS-17 and above, who has worked with the affairs of Province of Khyber Pakhtunkhwa for 05 years, is eligible for the allotment of apartments. To hold public servants responsible for their words, the Courts have always resorted to the well enshrined principles of legitimate expectation and promissory estoppel. Fazal Karim in his famous book ‘Judicial Review of Public Actions’ while referring to the cases of “Aziz-ud-din(PLD 1970 SC 439) and Al-Samraiz(1986 SCMR 1917)” has
stated that vested rights and estoppel are one and the same concept. However, if one claims a vested right while relying upon the representation of the government, he has to establish that the person making the representation had the legal authority to make such a representation; the said representation was not against any rules and the person claiming vested right has acted on such a representation, then in such a situation the government functionary is left with no authority to rescind or modify the said representation, if pursuant to the same, the claimant has taken a decisive step.

14. In the present case we have not been provided clear instructions holding the present Petitioners ineligible for allotment of apartment issued by the competent authority. The respondent had also placed on file a decision purportedly rendered by the PHA for re-advertising the flats as a result of the non-qualification of the allottees/the present petitioners. However, the perusal of the said decision clearly shows that before passing the said decision no opportunity of hearing was provided to the present
petitioners. In the case of “\textit{Aneesa Rehman} (1994 SCMR 2232)” the Apex Court while emphatically insisting upon adherence to the principle of natural justice has laid down that the said principle would be applicable to judicial as well as to non-judicial proceedings and it would be read into every statute as its part where right of hearing has not been expressly provided therein; violation of the principle of natural justice could be equated with the violation of the provision of law warranting pressing into service constitutional jurisdiction. Similarly in the case of \textit{Hazara (Hill Tract) Improvement Trust versus Qaisara Elahi} (2005 SCMR 678) the Apex court disapproving the action of the trust while cancelling the plot earlier allotted to the allottee has opined that the Principal of Natural Justice has to be applied in all kinds of proceedings strictly and departure therefrom would render subsequent actions illegal in the eyes of law.

\textbf{15.} The record is further silent that on whose directions the Assistant Director EM-1 of the Provincial Housing Authority has informed the petitioners of their ineligibility
because on the record there is no decision either of the PHA
or the Special Committee declaring the present Petitioners
ineligible for allotment of the apartment/flats. Similarly, the
respondents could not place on record any
authorization/delegation of power by the PHA to the
Director General in this regard.

16. From reading of Section 10 of the Act, we
understand that it is the Special Committee, constituted
under Section 10 of the Act, to deal with the matter of
launching housing scheme for the government employees
and to exercise control over the said housing scheme. The
Special Committee is headed by the worthy Chief Secretary
and a good number of senior ranked civil servants as
provided under Section 10 sub-Section 2 of the Act.
However, Section 10(4) of the Act clearly envisages that the
decision of the Special Committee shall be by simple
majority and in case of equality of votes the Chairman shall
have a second or casting vote. Thus, the impugned
letter/order holding the present Petitioners ineligible for the
apartments/flats has been passed by a person who has no
jurisdiction in the matter albeit based on alien considerations.

17. In view of the above we :-

i. Declare and hold that the impugned letters dated 27.08.2020 or any other letter on the subject holding the present Petitioners ineligible for allotment of apartments/flats as illegal and without lawful authority and accordingly set aside;

ii. Direct the respondent No.3 to place the cases of the present petitioners before the Special Committee established under Section 10 of the Act for appropriate decision in the matter but after giving opportunity of hearing to the present petitioners.

ANNOUNCED.
Dated: 13.04.2021

JUDGE

JUDGE

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