

JUDGMENT SHEET

**IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

**W.P. No. 564-M/2021
With Interim Relief**

Zia Ullah Khan & 5 others(Petitioners)

v/s

*Govt: of Pakistan through secretary Interior
& others.....(Respondents)*

Present: Mr. Aurangzeb, Advocate.

Mr. Noroz Khan, Deputy Attorney General

Mr. Raza-ud-Din, Addl: Advocate Geneal.

*Mr. Fawad Khan, Advocate on behalf of
NADRA.*

Date of hearing: 29.09.2021

JUDGMENT

WIQAR AHMAD, J.- The Prime Minister's Performance Delivery Unit (hereinafter referred to as "**PMDU**") received a complaint through Pakistan Citizen's Portal (hereinafter referred to as "**PCP**"), on 02.02.2021 with the subject "**Acquisition of Chemical, Biological Weapons and Terrorists Facilitation**". The complaint contained allegations against the petitioners that they had acquired chemical and biological weapons and that they had also been harboring terrorists. The complaint was forwarded to District Police Officer, Swat (hereinafter referred to as "**DPO Swat**"). The DPO Swat responded on 23.02.2021 that

the anonymous complaint regarding acquisition of chemical, biological weapons and terrorists facilitation by Irfan Ullah, Amir Nawab, Mubarak Ali etc (petitioners herein) had been inquired through SDPO City. The DPO Swat further informed that relevant information had been collected during the process of inquiry and the persons i.e. petitioners had also been called and interrogated but the allegations could not be proved and opined that the complaint should be filed. Then on, 23.02.2021, the person who had lodged complaint on PCP had also requested dropping of the complaint beside reiterating his request that his identity should not be disclosed. Grievances of the petitioners as raised in the instant writ petition has been that frivolous complaint received from undisclosed source had made the petitioners suffer and humiliated at the hands of law enforcement agencies and that the complaint had no doubt been closed but mere filing of the complaint had not been sufficient for repairing the loss caused to the petitioners. It also merits mentioning here that petitioners had also lodged a request at PCP for giving them information about the person who had lodged complaint against them. The request had been denied by the concerned authorities of PCP. Petitioners

have also sought a declaration regarding the proceedings initiated by the PCP to be without lawful authority, illegal and of no legal effect. Same was also claimed to have been without backing of any law, without jurisdiction and amounting to undermining the authority of Parliament and derogation of fundamental rights as guaranteed in the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter referred to as "*the Constitution*"). The prayers sought by the petitioners in the writ petition are also reproduced hereunder for ready reference;

"In the light of the above and many other grounds to be advanced at the time of arguments it is therefore prayed;

- (i) *To declare that impugned proceedings through Pakistan Citizen Portal (Web) on anonymous complaint against the petitioners are void, ab initio, illegal, without lawful authority and the same may be quashed.*
- (ii) *Declared that the Act of the respondents launch/formation/promulgation of Pakistan Citizen Portal is without backing of law, without lawful jurisdiction, under mining the authority of the parliament and derogation of the fundamental right as protected under the Constitution.*
- (iii) *And it is further prayed if the proceedings initiated by the Pakistan Citizen Portal against the petitioners and completed the name of the complainant and complaint may be provided to the petitioners and if the anonymous complaint found false and frivolous, the respondents may kindly be directed to initiate criminal proceedings against the complainant.*

Any other remedy which is appropriate and peculiar of the case may also be granted in

favour of the petitioners though not specifically prayed for.”

2. Comments of respondents No. 3, 4, 6 & 11 were called. Respondents No. 4 & 5 have filed their comments while respondent No. 11 has also filed his para-wise comments separately. The DPO Swat i.e. respondent No. 11 has stated in his comments that a complaint had been received on PCP against the petitioners, which had been marked to the answering respondents for necessary action and report. He has also stated that the matter had been inquired through local police who informed that allegations against the petitioners had been baseless. Respondents No. 4 & 5 (Director PMDU as well as Chairman PCP) have filed their comments separately. In the comments, respondents No. 4 & 5 have not disowned lodging of the complaint against the petitioners as well as marking of same to the authorities concerned. They have stated that identity of the complainant could not be disclosed to petitioners. They have also explained the establishment as well as working of PMDU and PCP, in their comments. Respondents No. 2, 3 & 6 (NADRA) have also filed their

concise statement in respect of verification of the CNICs of the petitioners.

3. Learned counsel appearing on behalf of petitioners argued that PMDU as well as PCP have been working without any lawful authority. He stated that the establishment of PMDU as well as PCP has not been backed by any law or provisions of the Constitution and its working has therefore been without lawful authority. Learned counsel added that petitioners have been subjected to harassment at the hands of law enforcement agency for a ridiculous complaint of a complainant, whose identity was also not disclosed to petitioners. He reiterated the stance taken in the writ petition and placed reliance on the judgments reported as PLD 2012 Supreme Court 80, PLD 2014 Supreme Court 232, 2015 SCMR 1724, 2021 SCMR 387, PLD 2021 Supreme Court 600, 1998 P Cr.LJ 864, 2014 YLR 1331, 2020 P Cr.L J 1132 and PLD 2021 418.

4. Learned Deputy Attorney General appearing on behalf of respondents submitted in rebuttal that PMDU as well as PCP have been established by making relevant amendments in

Schedule-II of the Rules of Business, 1973 (hereinafter referred to as "*Rules of Business*") and that same have lawfully been functioning. He also added that when a complaint had been received by PCP, it had just been forwarded to the local police and then it was for the local police to have satisfied itself about genuineness of the complaint.

5. The learned Addl: Advocate General while appearing on behalf of DPO Swat stated that when the DPO Swat had received a complaint from the PCP, it had been his duty to inquire the complaint and when he found it baseless, same had been recommended to the concerned authorities for dropping and filing.

6. We have heard arguments of learned counsel for petitioners, learned Deputy Attorney General for Pakistan as well as learned Addl: Advocate General Khyber Pakhtunkhwa and perused the record.

7. We would first address the issue of establishment of PMDU, PCP and its legal backing. Article 90 of the Constitution provides for the

exercise of executive authority of the Federation in the following words;

“90. Exercise of executive authority of the Federation.—1) Subject to the Constitution, the executive authority of the Federation shall be exercised in the name of the President by the Federal Government, consisting of the Prime Minister and the Federal Ministers, which shall act through the Prime Minister, who shall be the chief executive of the Federation.

2) In the performance of his functions under the Constitution, the Prime Minister may act either directly or through the Federal Minister.”

Similarly, Article 99 of the Constitution provides for conduct of business of the Federal Government in the following words;

“99. Conduct of business of Federal Government.— 1) All executive actions of the Federal Government shall be expressed to be taken in the name of the President.

2) The Federal Government shall by rules specify the manner in which orders and other instruments made and executed in his name of the President shall be authenticated, and the validity of any order or instrument so authenticated shall not be questioned in any Court on the ground that it was not made or executed by the President.

3) The Federal Government shall also make rules for the allocation and transaction of its business.”

Rules of business have been framed by the Federal Government under sub Article (3) of Article 99 of the Constitution. The Federal Government has made the requisite amendments for establishment of PMDU as well as PCP by inserting both the establishments at Sr. No. 84 of

Schedule-II of the Rules of Business. The authority of the Federal Government to constitute new departments or reorganizing any existing department for exercising of the executive authority of the Federation cannot be denied. Necessary amendment in the Rules of Business has also been effected and we do not see any unconstitutionality in establishment and constitution of PMDU and PCP.

8. The next question would be related to operation and management of the PMDU. Entry No. 84 of Schedule-II of the Rules of Business, while providing for establishment of PMDU and PCP has also provided;

“Prime Minister’s Performance Delivery Unit (PMDU) including Pakistan Citizen Portal (PCP), operation and management of which shall be managed by Prime Minister’s Office (Public).”

The above-reproduced entry says that operation and management of PMDU and PCP shall be conducted by the Prime Minister’s Office. The Worthy Prime Minister may well manage performance of his executive functions through any of his subordinate officers or offices. There remains no doubt that PMDU as well as PCP have been

established under the executive authority of the Federation and functioning within the domain of executive authority of the Federation. Authority of PMDU as well as PCP is coextensive with executive authority of the Federation and bounded by the limits of executive authority of the Federal government. Extent of executive authority of the Federation has been provided in Article 97 of the Constitution, which says;

Article 97: Extent of executive authority of Federation

Subject to the Constitution, the executive authority of the Federation shall extend to the matters with respect to which Majlis-e-Shoora (Parliament) has power to make laws, including exercise of rights, authority and jurisdiction in and in relation to areas outside Pakistan:

Provided that the said authority shall not, save as expressly provided in the Constitution or in any law made by Majlis-e-Shoora (Parliament), extend in any Province to a matter with respect to which the Provincial Assembly has also power to make laws.

Extent of executive authority of provinces is provided in Article 137 of the Constitution, which is also reproduced hereunder for ready reference;

Article 137: Extent of executive authority of Province

Subject to the Constitution, the executive authority of the Province shall extend to the matters with respect to which the Provincial Assembly has power to make laws;

Provided that, in any matter with respect to which both [Majlis-e-Shoora (Parliament)] and the Provincial Assembly of a Province have power to make laws, the executive authority of the Province shall be subject to, and limited by, the executive authority expressly conferred by the Constitution or by law made by [Majlis-

e-Shoora (Parliament)] upon the Federal Government or authorities thereof.

The executive authority of the Federation extends to matters with respect to which Parliament has power to make laws and same also include the exercise of rights, authority and jurisdiction in and in relation to areas outside Pakistan. The executive authority of a Province on the other hand extends to all the subjects in which the provincial legislation has the competence to enact laws. Proviso to Article 97 is carrying great significance and has been added with a purpose and object, which should not skip our attention in the present discourse. It provides that the authority of the Federation shall not extend in any province to a matter with respect to which the Provincial Assembly has also power to make laws, except when it is so provided by the Constitution or a law made by Parliament (in its competence), expressly. The text of Article 97 of the Constitution aims to regulate two matters i.e. to provide for executive authority of Federation on one hand and to circumscribe limits of the executive authority of the Federation on the other. The matters with respect to which Parliament has the legislative competence is being regulated by Article

141 as well as Article 142 of the Constitution, which provide;

Article 141. Extent of Federal and Provincial laws.

Subject to the Constitution, Majlis-e-Shoora (Parliament) may make laws (including laws having extra-territorial operation) for the whole or any part of Pakistan, and a Provincial Assembly may make laws for the Province or any part thereof.

Article 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 also, shall have power to make laws with respect to any matter in the Concurrent Legislative List;

(c) A Provincial Assembly shall, and Majlis-e-Shoora (Parliament) shall not, have power to make laws with respect to any matter not enumerated in either the Federal Legislative List or the Concurrent Legislative List; and

(d) Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to matters not enumerated in either of the Lists for such areas in the Federation as are not included in any Province.

The legislative authority of Parliament has been enumerated in the Federal Legislative List, which has been annexed as Fourth Schedule to the Constitution. All the residuary subject has been left to the provincial legislature. Perusal of the Federal Legislative List nowhere provides that law and order has been shown as Federal subject. It needs mention here that clause (b) of Article 142 provides that

Parliament and Provincial Assembly shall have the power to make laws with respect to criminal law, criminal procedure and evidence. Despite omission of the concurrent Legislative List a regime akin to the concurrent list has been introduced in respect of criminal law, criminal procedure and evidence in clause (b) of Article 142 of the Constitution. No doubt that criminal law and criminal procedure are subjects which have still been concurrent between Parliament and Provincial Assembly but the executive authority of Federation would not extend in the matters of criminal law and procedure, unless so provided in the Constitution or the laws so framed on those subjects. In this respect, we may once again refer to provisos to Articles 97 and 137 of the Constitution. Proviso to Article 97 of the Constitution lays down that the executive authority of the Federation shall not, save as expressly provided in the Constitution or in any law made by Parliament, extend in any province to a matter with respect to which the Provincial Assembly has also power to make laws. The executive authority of a province shall no doubt be subject to the executive authority of the Federation according to text of proviso to Article 137, but only when the Constitution or a law

made by Parliament so provides. In other words, it signifies that the executive authority of the Federation shall not extend to those matters in which the Provincial Assembly has the concurrent powers to make laws, except where it is specifically provided in the Constitution or under any of the laws on concurrent subjects. We are fortified in our opinion in this regard by the observations of Hon'ble Supreme Court of Pakistan given in the case of "Messrs Gadoon Textile Mills and 814 others v/s WAPA & others" reported as 1997 SCMR 641, wherein it was held;

The executive authority of the Federation extends to all such matters and subjects in respect of which Majlis-e-Shoora (Parliament) has power to make laws. But this authority under Article 97 is subject to the Constitution. Thus, if Constitution anywhere limits the executive authority of the Federation conferred under Article 97, it shall stand so curtailed to that extent. Article 97 is subservient to the other provisions of the Constitution. Although the executive authority of the Federation extends to the matters in respect of which the Parliament has power to make laws, restriction has been placed in respect of matters mentioned in the Concurrent Legislative List. The proviso to Article 97 has placed embargo on the executive authority of the Federation of matters in the Concurrent Legislative List.

The Federation can exercise executive authority in matters which also fall within the legislative competence of the Provincial Assembly only if it is specifically so provided by the Constitution or in any law made by the Parliament. Thus, the Federation does not enjoy unfettered executive authority over the matters with respect to which Provincial Assembly has also power to make laws. At this stage to complete the entire picture it is appropriate to mention that under Article 137 the executive authority of the Province extends to matters with respect to which Provincial Assembly has power to make law. Proviso to Article 137 incorporates the same principle which is contained in proviso to Article 97, viz., in matters with respect to which both Parliament and Provincial Assembly of a Province have power to make laws, the executive authority of the Province shall be subject to, and limited by, the executive

authority expressly conferred by the Constitution or the law made by the Parliament upon the Federal Government or authorities thereof. It is by express provision in the Constitution or under the law made by the Parliament that the Federation can exercise executive authority in respect of subjects and matters in the Concurrent Legislative List.

9. Two entries in the Federal Legislative List giving legislative competence to parliament and executive authority of the Federation also need consideration here. These subjects are enumerated at Sr. No. 56 of Part (i) and Sr. No. 16 of Part (ii) of Fourth Schedule to the Constitution. Both the entries are reproduced hereunder for ready reference;

Part (i) Item No. 56;

“offences against laws with respect to any of the matters in this part”.

Part (ii) Item No. 16

“offences against laws with respect to any of the matters in this parts”.

The offences which relate to matters in the Federal Legislative List have no doubt been falling in the domain of the Federation and same may be regulated by the Federation, for which purpose Federal Investigating Agency has *inter-alia* been established and working, but such entries do not include the ordinary course of maintaining law and order as well as regulating the entertaining of complaints containing allegations of commission of offences and lodged by one citizen against another. Such matters have no

doubt been a residuary subject. So far as entertaining of criminal complaint of a citizen containing allegations of commission of criminal offences by another citizen is concerned, the learned Deputy Attorney General could not point out any provision of the Constitution or any provision in the Criminal Procedure Code (hereinafter referred to as "*Cr.P.C*") or Pakistan Penal Code (hereinafter referred to as "*PPC*") where, in normal situation the Federation has the authority to entertain a complaint or order any inquiry, investigations or other actions in respect thereof. Such powers are only available to the Federation when an emergency is declared under Article 232 of the Constitution. The limits of this authority of the Federation have also been described in detail by the Constitution as well as the relevant laws but that is not related to our present discussion and need not be dilated upon in detail. What is important is, that the executive authority of the Federation does not extend to maintaining law and order in a province and entertaining and disposing of criminal complaint of one citizen against another. Such powers have expressly been provided to be vested in provincial police by Chapter XIV of *Cr.P.C* containing sections

154,155,156 and 157 and the criminal Courts established under the authority of provincial government are also having like powers to entertain complaints under Chapter XVI of *Cr.P.C* containing sections 200, 202 and 203 etc. The Investigating Agency under the control of Federation, like the Federal Investigating Agency can only entertain complaints under laws promulgated in the Federal domain or in relations to other Federal laws and the departments of Federal Government established under Federal laws or other such legal instruments. Such investigative activities have also been provided a cover by Item No. 56 of Part-1st and Item No. 16 of Part-II of the Fourth Schedule, but to the extent of those offences only, which relates to matters included in the Federal Legislative List.

10. The complaint in the case in hand has been marked to the police authorities including Provincial Police Officer, Regional Police Officer as well as DPO by office of the Worthy Prime Minister of Pakistan through the instrumentality of Pakistan Citizen Portal which have also been asking for feedback regarding the action taken on the complaint and the local police after interrogating the petitioners and conducting an inquiry reported back that the complaint was baseless and that

same should be dropped. Dropping of the complaint was again within the domain of the authorities running PMDU and PCP. The respondents in reply to Para "C" of the writ petition have stated in their comments that they had just marked the complaint to the concerned police authority for appropriate action. Said reply being relevant is reproduced hereunder for ready reference;

"The respondent has no such authority, neither any such intentions nor any role in the entire processing of the complaint that can be ascertained from the history of complaint (Annex-V) except being the custodian of a system that is in place for facilitation of general public. Whereby, they can connect to the concerned authorities to raise their issues/complaints for their consideration and disposal on merit. Any complaint initially lodged on the portal by a citizen is routed automatically to the officer concerned based on the category/subcategory selected by the complainant. Furthermore, there are standing instructions as per Manual that complaints referred through PCP should be dealt as per prevailing laws/rules/regulations. Furthermore, in the instant case it was responsibility of the organization concerned to properly examine the case at their level before initiating any action/inquiry as the Manual clearly provides that any complaint lodged on the portal does not make it entitled to be dealt above the law. As far as provision of identity of complainant to the petitioners is concerned. PMDU stands by its stance submitted in Para 4 above."

But it is important to be noted that the Pakistan Citizen Portal has been an instrumentality established and working under the executive authority of the Federation, in office of the Prime Minister of Pakistan. The office of Worthy Prime Minister of Pakistan is not a mere post office. The office of

Worthy Prime Minister of Pakistan is an office of the Chief Executive of the country, who is head of the cabinet where the entire executive authority of the Federation is housed. When the matter comes from the office of Worthy Prime Minister of Pakistan and received by a District Police Officer in a District and such matter is also pursued thereafter in a sense that feedback is taken back from the District Police Officer and the decision to drop or not to drop the complaint lies with the authorities overseeing Pakistan Citizen Portal, then it cannot be termed as a mere forwarding of complaint. It will have substantial effects down the country, from which the authorities at PMDU appears to have been oblivious, as it appears from their reply (reproduced above). We have seen a glimpse of the effects of such forwarding of complaint to the DPO in the case in hand. The DPO in his comments have himself stated as;

“Correct to the extent that an anonymous complaint was filed through Pakistan Citizen Portal against the petitioners which was marked to respondent No. 11 for further report. The matter was enquired through local police and it was found that the allegations against the petitioners were baseless

As stated above, that the complaints against the petitioners were marked to the respondent and for the purpose of enquiry, the petitioners were called to enquire into the matter as per law.”

There remains no doubt that thorough probe and inquiry have been conducted by the local police, in which the petitioners have also been interrogated which is also evident from the reply of DPO given to Pakistan Citizen Portal, extracts of which have been annexed with the comments of respondents No. 4 & 5 as Annexure (v). There the DPO has responded back that the alleged persons had been called and interrogated. It is not a hidden truth, what is meant by interrogation at the hands of police in a police station. Here we have seen the demonstration of the effects of forwarding of a complaint by the Prime Minister office.

11. The conduct of business of Pakistan Citizen Portal is regulated by Users Guidelines Manual which is also being revised from time to time. Presently third edition issued in January 2020 has been in-vogue. The authority of issuance of the User's Manual has not been explained either in the comments or User's Manual itself but it appears that the PCP or PMDU have itself devised this User's Manual. Whatever may be the situation the learned Deputy Attorney General has not been denying that this User's Manual has not been having a force of law, as it has

neither been a law in the primary nor in the secondary sense. It has neither been enacted by any legislature nor by the executive authority under the exercise of powers of subordinate legislation. But this User's Manual may be referred so as to know the nature of complaint handling and its effects. We may also have a glimpse of the outreach of authority of PCP and PMDU. PMDU has been introduced in the User's Manual as follows;

1.1. Prime Minister's Performance Delivery Unit (PMDU)

Prime Minister's Performance Delivery Unit (PMDU) established in 2013 has been reorganized with a new vision to promote citizen-centric and participatory governance. PMDU is pioneering a nation-wide complaints and grievance redressal mechanism with special emphasis on facilitation of overseas Pakistanis, women, special persons and foreigners. The system will be operated from the Prime Minister's Office and will be regarded as an ICT-based extension of the Prime Minister's Public Affairs and Grievance Wing under the Rule of Business, 1973. The primary objective of the unit is to provide citizens' an opportunity to seamlessly communicate with all government entities and have their issues resolved efficiently and in accordance with the relevant laws/rules/regulations. The Unit will enable establishment of a culture of quantified performance management and make the various government entities accountable for their mandated roles and responsibilities. Besides, the Unit will put forward policy recommendations and proposals for amendments or simplification in cumbersome official procedures for the purpose of public facilitation.

The Unit strives to assure that the registered citizens/members on Pakistan Citizen's Portal (PCP) get every possible relief under the law and

on merit from the Government Organizations being interacted. The citizen/members may use the portal to place any plausible before the authorities or personal complaints/grievances or complaints as social responsibility or to report violations of laws by the people or to seek guidance etc. The Unit takes it as a prime responsibility to ensure that all complaints and suggestions are handled fairly and efficiently through concerned organizations. This manual is designed to help the Government Organizations to efficiently respond to the matters raised on the Portal. The process described in this manual are intended for understanding and use of all concerned stakeholders.”

Similarly, Pakistan Citizen Portal has been introduced in the Manual as follows;

“Pakistan Citizen’s Portal (PCP) is a Government owned system based on Mobile Application (available on Android, iOS and other recognized play stores) and is being used as a tool to promote citizen-centric participatory governance. One citizens’ side, it provides a nation-wide window to connect people with Government Organizations at all levels for raising their issues/complaints with authorities for redressal and suggestion for improvement in the existing service delivery regime. On Government’s side, it helps to promote the culture of qualified performance management and make the various government entities accountable for their mandated roles and responsibilities. It also helps in identification of gray areas in the service delivery regime for timely intervention and improvement.”

The objectives provided in Para 1.3 would also be relevant, which are also reproduced hereunder;

Objectives

The Manual aims to ensure that complaints, guidance seeking queries and suggestions from registered members of the Portal are handled in a clearly defined and effective manner. Objectives of the Manual are to;

- *Enable Government Organizations/ Departments (both Federal & Provincial) to respond and attempt to resolve complaints of the registered citizens/members in a*

timely and appropriate possible manner in accordance with relevant laws/rules/regulations.

- *Ensure that complaints & suggestions are timely forwarded to the concerned officer/office for necessary action under the law within the organization or other organizations (if not related).*
- *Respond and keep the members/citizens well informed at all levels of the complaint Redressal process.*
- *Ensure that complaints are resolved in the manner of a possible relief provided to the complainant.*
- *Provide focal persons with an understanding about complaints & suggestions handling processes i.e. lodging, forwarding, retrieving, reopening, resolving, responding and closing.*
- *Identify how complaints & suggestions are used as basis for evidence based policy making.*
- *Establish review and summarization procedures, internal/external reporting procedures, and procedures for handling confidentiality issues.*
- *Enable organizations to integrate all existing complaint cells/systems with Pakistan Citizen's Portal.*

The introduction of PMDU as well as PCP and the objectives for its establishment and working has everywhere been clearly providing that it has the purpose of enabling government organizations and departments both Federal as well as provincial to respond and attempt to resolve complaints of registered citizens/members in a timely and appropriate possible manner according to relevant laws, rules and regulations. The other objectives have also been similar in nature, which need not be discussed in detail. Chapter-4 of the Manual bears the heading of efficiency and follow-up mechanism. The mechanism

provided for follow-up of the complaints that related to the provinces has been provided in Para 4.2 as well as 4.3 of the Manual. The criteria for performance evaluation has also been provided therein beside providing for post evaluation corrective measures. All the complaints handling mechanism right from date of lodging of the complaint till filing of same nowhere indicates that the respective provincial governments would ever be taken in the loop. The administrative officers like Chief Secretary, heads of administrative departments, divisional heads and district administration have all been directly given the entire responsibility to receive instructions in this respect from authorities of PMDU and PCP and their functions are also being evaluated therein. Such a model of administration, be it for the purpose of redressal of the complaints, cannot be said to be complying with the constitutional mechanism wherein provinces have been given autonomy in their given domain. What is important to be noted and most relevant for determination of the present case, is that the PMDU and PCP do not distinguish and differentiate between the departments and organizations of the Federal as well as provincial governments in performance of their

respective duties and achievement of their objectives. Their objectives may be noble and better service delivery oriented, but we are living in a Federation. Not only the authorities of various departments of government has been well defined and well prescribed but the respective executive authorities of the Federal government and provincial governments have also been well defined and prescribed by no less a document than the Constitution Itself. In the zeal of redressing public grievances and complaints against public sector bodies, the constitutional scheme of provincial autonomy, division and distribution of powers cannot be allowed to be sacrificed. The constitutional scheme of distribution of powers and adherence thereto is more important than redressal of grievances through instrumentality of the PCP or PMDU. The grievance redressal mechanism can only be made effective if the institutions made for the purpose are made accountable, effective and responsive to such complaints by none else than the respective provincial governments, in whose domain such departments or organizations lies. Outside interventions in such departments and those also in contravention of the Constitutional schemes and laws

of the land would not produce any good, but would rather cause more harm.

12. There remains no doubt that PMDU and PCP have been operating beyond the limits prescribed for the executive authority of the Federation, across the length and breadth of the county and have been directly dealing with provincial government departments in matters which have exclusively been falling in the domain of the provincial governments. Here they have expressly been transgressing the limits of their lawful authority. The provincial government departments should better be looked after, regulated, made accountable and effective by the provincial government itself. If a citizen portal or system for checking maladministration of provincial departments is required, it can well be established at the provincial levels.

13. So far as request of the petitioners for getting identity of the complainant or initiation of criminal proceedings against him are concerned, in that respect the decision of PCP and PMDU have been appropriate, as it had been promised with the complainants at the concerned end that their identities would not be disclosed. Identities of those

complainants, who lodge complaints of maladministration or other matters, may be kept confidential for the reason that disclosure of such identity would deter prospective complainants from lodging complaints on the portal. Such was a reasonable exercise of authority and a logical decision, which has not been calling for interference of this Court.

14. As a corollary to our above made discussion, we hold and declare;

(a) That the impugned proceedings initiated and conducted on the authority of Pakistan Citizen Portal, which include entertaining of the complaint and referring same to DPO Swat for taking necessary action, are declared to have been unconstitutional for being beyond the executive authority of the Federation, illegal, without lawful authority and resultantly null and void;

(b) The proceedings initiated by Pakistan Citizen Portal being within the exclusive domain of the provincial authorities and those conducted by local police against the petitioners on the direction of PCP, are also declared to have been initiated without lawful

authority, in an unlawful manner and resultantly quashed.

The prayer of the petitioners for initiating criminal proceedings against the complainant or furnishing them information about identity and whereabouts of the complainant, is however declined. The instant writ petition is accordingly disposed of.

Announced
Dt: 29.09.2021



JUDGE



JUDGE

Office
12/10/2021