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JUDGMENT SHEET

LAHORE HIGH COURT LAHORE

(JUDICIAL DEPARTMENT)

Writ Petition No.82278 of 2023

Shaukat Khanum Memorial Trust and another

Versus

The Province of Punjab through its Chief Secretary and others

Petitioners by:-	Mr. Raza Imtiaz Siddiqui, Advocate. Barrister Asad Rahim Khan, Ms. Nimra Arshad, Faiz-e-Azhar, M. Usman Ghani, Syed Zeeshan Haider Zaidi, Mian Muhammad Arshad Iqbal, Uzair Sajid, Allah Nawaz Sial, Hafiz Rahman Aziz, Muhammad Abdullah Arif, Barrister Asim Malik, Muhammad Naeem Beryar and Bukhtiar Hyder Khan, Advocates in the connected writ petitions.
Respondents by:	Barrister Ch. Muhammad Umar, Mufti Ahtsham Ud Din Haider and Abdul Rehman, Advocates for respondents No.3 and 4-PHC. Mr. Mohammad Osman Khan, Assistant Advocate General with Naveed Ahmad Goraya, Law Officer, Specialized Healthcare and Medical Education Department. Mr. Muhammad Azhar Siddique along with M/s. Salma Riaz and Amna Liaqat, Advocates for the applicant in C.M. No.1 of 2024 in W.P. No.65058 of 2023.
Dates of hearing: -	**23.09.2025**

JUDGMENT

RAHEEL KAMRAN, J.: This judgment shall decide the titled Writ Petition as well as Writ Petition Nos.65058 of 2023, 84729 of

2023, 17901 of 2024, 17907 of 2024, 17908 of 2024, 17895 of 2024, 17910 of 2024, 17914 of 2024 and 26011 of 2024 for all these cases primarily challenge the Punjab Healthcare Commission (Pricing of Healthcare Services) Regulations, 2023 (hereinafter to be referred as "impugned Regulations") on the grounds of being *ultra vires*, the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter, "the Constitution"), Punjab Healthcare Commission Act, 2010 (hereinafter, "the Act, 2010") along with subsequent proceeding, e.g., letters dated 12.07.2023 and 27.07.2023, notification dated 11.09.2023 and 27.09.2023 as well as framework formulated on 27.09.2023.

2. Specifically, Shaukat Khanum Memorial Trust, the petitioner in the titled petition, is a charitable and trans-provincial organization operating hospitals and diagnostic centers across Pakistan. Similarly, most petitioners in the connected cases are also engaged in providing trans-provincial diagnostic services, including blood evaluations, X-rays, Ultrasounds, Magnetic Resonance Imaging (MRI) and biopsies, among others.

3. It is contended by Mr. Raza Imtiaz Siddiqui, Advocate learned counsel for the petitioner in the titled petition that the impugned regulations are beyond the confines of the Act, 2010 for the commission is possessed with no lawful authority whatsoever to fix prices of the services provided by the healthcare institutions, including the ceiling price. He adds that the regulatory regime contemplated under section 40 of the Act, 2010 at the most, can ask the petitioners to provide and display a price list and investigate any complaint for charging over and above the said price for the services provided by the healthcare institutions. It is emphasized by the learned counsel that under no circumstances, prices for the services provided by healthcare institutions can be fixed under the garb of regulations. He further submits that in terms of section 4(4) read with section 10 of the Act, 2010, a Technical Advisory Committee is required to be constituted under the Act, 2010 in consultation with the Commission to address, *inter alia*, policy matters

including price regulation or unlawful fixation thereof. Adds that as the Technical Advisory Committee has not been constituted till date, the Commission is acting *coram non judice*. Learned counsel maintains that the petitioner is a trans-provincial entity extending its operations also to the other provinces, therefore, the Province of Punjab has no jurisdiction to regulate the affairs of such trans-provincial entity and that the impugned regulation may render operations of the petitioner in other provinces uncompetitive and not financially feasible.

4. Mr. Muhammad Usman Ghani, Advocate for the petitioner in Writ Petition No.65058 of 2023 contends that the application of the impugned regulations to the petitioner's Lab and Diagnostic Center is unwarranted due to a complete lack of evidence with the Commission qua overcharging by the petitioner. He adds that the imposition of such pricing controls, absent any demonstrated necessity, constitutes a disproportionate measure that fails both the test of necessity and minimum impairment. He maintains that these regulations are discriminatory, as they unfairly equate a non-hospital entity like the petitioner's with private hospitals. To elaborate on the difference in classification, the learned counsel points to the Punjab Healthcare Commission Licensing Regulations, 2020, specifically regulations 2(1)(d) and 2(1)(r), highlighting the Commission's recognition of 21 distinct types of healthcare facilities. He further submits that the Supreme Court's directives were specifically concerning hospitals and do not extend to diagnostic centers. The learned counsel argues that the Commission's broad and generalized classification approach is unreasonable in the *Wednesbury* sense. He strenuously argues that the impugned regulations are *ultra vires* the Act, 2010, primarily due to the Commission's failure to comply with two mandatory statutory requirements: neglecting to properly consider the policy advice of the Technical Advisory Committee under Section 4(4)(a) and critically, failing to publish the draft regulations for public opinion in the official gazette and widely circulated newspapers as mandated by Section 40(3)

of the Act, 2010. He concludes by submitting that Section 40 of the Act, 2010 also lacks specific legislative guidelines to structure the Commission's discretion in framing such regulations.

5. In addition to the arguments already presented by learned counsel for the petitioners in other petitions, Barrister Asad Rahim Khan, Advocate, learned counsel for the petitioners in Writ Petition Nos.*17895, 17908, 17907, 17910, 17901 and 17914 of 2024* contends that section 40(2)(m) of the Act stands without the support of any independent provision within the Act, 2010 that specifically empowers the Commission or prescribes its functions concerning the regulation and mechanism for the fixation of prices. Learned counsel emphasizes this deficiency by drawing a contrast with other regulatory statutes, such as the Drug Regulatory Authority of Pakistan Act, 2012, the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997, and the Oil and Gas Regulatory Authority Ordinance, 2002, wherein powers for price regulation are clearly delineated in specific sections like section 7 in the former two and sections 6(2)(r) and 6(2)(s) in the latter. Learned counsel further argues that the underlying purpose and object of the Act, 2010, according to its preamble, were centered on regulating the quality and standards of healthcare services and effectively controlling quackery within the Province of Punjab. Learned counsel emphasizes that the Act, 2010 was not intended to serve as a tool for regulating or fixing the prices of healthcare services. This assertion, according to learned counsel, is manifest from the parliamentary debates at the time of the bill's proposal and enactment, where no mention was made of price regulation as a legislative objective. To properly discern the statute's true purpose and object, learned counsel advocates for the consideration of *Hansard*, citing the pronouncement of the UK House of Lords on the principles of statutory interpretation in the case of *Pepper v. Hart (UKHL)* (**1993 SCMR 1019**).

6. Notice under Order XXVIIA of the Code of Civil Procedure, 1908 (CPC) was issued to the Advocate General, Punjab, who filed report and parawise comments. Mr. Mohammad Osman Khan, the learned Assistant Advocate General, Punjab, in his arguments while affirming the report and parawise comments controverts the stance of the learned counsel for the petitioners. He further contends that the *vires* of section 40(2)(m) of the Act, 2010, which confers upon the commission the authority to regulate prices of healthcare services, have not been assailed in any of the petitions. He maintains that the impugned regulations have been issued in accordance with the mandate of the said section and are not *ultra vires* any provision of the Constitution or the law.

7. Barrister Ch. Muhammad Umer, Advocate for the Punjab Healthcare Commission in W.P. No.65058 of 2023, while making reference to the case of *Punjab Healthcare Commission v. Mushtaq Ahmed Chaudhary and others* **(PLD 2018 Lahore 762)** contends that matters concerning health, healthcare services, and hospitals are not included in the federal legislative list, thus falling under the exclusive jurisdiction of the Province, a judgment which upheld the constitutional validity of the Punjab Healthcare Commission Act, 2010. While referring to the preamble of the Act, 2010, it is emphasized that the Commission has been constituted, *inter alia*, for improvement of quality of healthcare services and the provision for ancillary matters. Reference has also been made to section 4(1) of the Act, 2010 to emphasize that performance of functions is required to improve the quality of healthcare services and clinical governance. Section 40(2)(m) is referred to contend that there is an express power to formulate regulations regarding control of prices and monitoring of healthcare services. It is further contended that regulating the quality of healthcare services inherently necessitates regulating their pricing. The ability to control quality is considered inseparable from the ability to control the cost of accessing such services. To further illustrate this point, learned counsel has referred to

section 14(2A) of the United Kingdom's Sale of Goods Act of 1979. This reference is aimed at highlighting that, under that Act, Parliament stipulated that the determination of quality should consider, among other relevant factors, the price and description of the goods. Learned counsel further relies on the Consumer Rights Act, 2015, section 9(2) whereof embodies similar considerations, including price, for the purpose of regulating quality. It is emphasized that these examples clearly demonstrate the nexus between price regulation under section 40 of the Act, 2010 and the regulation of quality and standards as outlined in section 4(1) as also the preamble of the Act, 2010. Learned counsel for the Commission emphatically argues that the regulation of price for healthcare services is not unique to Punjab, as similar provisions exist in the regulatory regimes introduced by other provinces. Reference in this regard has been made to the preamble and sections 4(1), 4(2)(c), 4(2)(m) and 4(2)(o) of Sindh Healthcare Commission Act, 2013; preamble and section 6(1) alongwith section 31 of The Khyber Pakhtunkhwa Healthcare Commission Act, 2015; preamble along with sections 4(1)(f), 4(1)(l), 4(1)(v) and 4(1)(p) of Islamabad Healthcare Regulation Act, 2018 and preamble and sections 4(1), 4(2)(b), and 4(2)(g) of Balochistan Healthcare Commission Act, 2019. He next submits that the Commission substantially complied with Section 40(3) of the Act, 2010, by publishing the draft price regulations in the official gazette, advertising for objections in major newspapers, and making the full draft available on its website, arguing that the petitioners' contention regarding full newspaper publication is misconceived given the absence of such a statutory requirement and the impractical burden it would impose. Emphasis is placed on the fact that it is not case of any of the petitioners that objections were raised by them which were not dealt with or taken into consideration by the Commission before finalizing the draft regulations. Learned counsel clarifies that it was only after promulgation of the regulations that objections were raised by some of the petitioners to the regulations and these objections were addressed to the extent

legally permissible. Moving to the next submission, the learned counsel asserts that the Commission, as a corporate body, is to operate under general superintendence, direction and management by the Board constituted under section 5(1) of the Act. He argues that the Technical Advisory Committee (TAC) is subordinate and only provides advice when specifically requested by the Commission. The learned counsel emphasizes that if TAC consultation were mandatory for regulation promulgation, it would have been explicitly stated in the Act, 2010. Responding to the claim that the impugned regulations lacked specific direction of the Supreme Court for diagnostic labs' pricing, the learned counsel argued that Section 40(2)(m) of the Act, 2010 broadly empowers the Commission to regulate and control prices across all healthcare establishments, including diagnostic centers. It is added that the categorization under the licensing regulations is solely for licensing purposes and does not apply to price regulations. Therefore, the question of treating dissimilarly placed entities similarly does not arise, and any plea of discrimination is unfounded. Learned counsel for the Commission further contends that recourse to Hansards is unnecessary when statutory provisions are clear in their meaning and scope, as Hansards cannot aid interpretation in such cases. In response to the plea of the petitioners qua trans-provincial status of some of the petitioners, it is contended that since the healthcare services in question are provided within the province of Punjab, regulating these activities falls squarely within the jurisdiction of the province of Punjab.

8. During the pendency of this matter, C.M. No.1 of 2024 was filed in Writ Petition No.65058 of 2023 by Judicial Activism Panel, human rights and public interest litigation association, which seeks to implead the applicant as party to this matter. Mr. Muhammad Azhar Siddique, Advocate for the applicant contended that the Act, 2010 has genesis in the order dated 30.12.2009 passed by the Supreme Court in C.P. No.2510-L/2009. He also pointed to several orders passed by the Supreme Court in the years 2018 and 2019 and order from W.P. No.

75490 of 2022, none of which was assailed or reversed. He stressed that healthcare is a necessary service that is controlled everywhere so Pakistan is not an exception in regulating its prices. He added that the impugned regulation fits with the government's duty under Article 3 of the Constitution to stop people from being taken advantage of.

9. Arguments heard and record perused.

10. All the petitions to be decided by way of this consolidated judgment primarily challenge the impugned regulations. It would not be out of context to mention here that none of the petitioners have assailed the *vires* of Section 40(2)(m) itself, thus accepting that price regulation is within the permissible scope of the Act, 2010. As the impugned regulations derive their legal force from the Act, 2010, the threshold question is to determine the legitimate scope and jurisdictional reach of the Act, 2010, particularly concerning its authority to regulate and control prices of healthcare services provided by healthcare establishments within the Province of Punjab.

11. Thrust of the arguments of the learned counsel for the petitioners in the connected petitions is on the point that regulation of prices of services provided by labs and Diagnostic Centres does not fall within the purposes embodied in the preamble of the Act, 2010. For better appreciation of its context, the preamble to the Act, 2010 is reproduced below.

> ***Preamble***:-
>
> *"Whereas it is expedient to provide for establishment of the Punjab Healthcare Commission, to make provisions for the improvement of quality of healthcare services, to ban quackery in all its forms and manifestations and to provide for ancillary matters."*

A careful reading of the preamble reveals that the legislative intent behind the Act is multi-faceted i.e. (i) to make provisions for the improvement of quality of healthcare services, (ii) to ban quackery in all its forms and manifestations and (iii) to provide for ancillary matters.

The term "healthcare services" has been defined in section 2(xvi) of the Act, 2010 as under: -

> *"healthcare services" means services provided for diagnosis, treatment or care of persons suffering from any physical or mental disease, injury or disability including procedures that are similar to forms of medical, dental or surgical care but are not provided in connection with a medical condition and includes any other service notified by the Government;"*

The services provided for diagnosis clearly fall within the above definition of healthcare services. In Section 2(xv) of the Act, 2010, the term "healthcare establishment" has been defined, which explicitly includes diagnostic centres. For ready reference, section 2(xv) is reproduced here-under: -

> *"healthcare establishment" means a hospital, diagnostic centre, medical clinics, nursing home, maternity home, dental clinic, homeopathy clinic, Tibb clinic, acupuncture, physiotherapy clinic or any other premises or conveyance–*

One of the purposes of the Act, 2010 according to its preamble is to make provisions for the improvement of quality of healthcare services. The phrase "ancillary matters" as used in the preamble of the Act, 2010, signifies that the Act is designed to address all incidental or supplementary issues necessary to achieve its primary goals.

12. Healthcare services cannot be regarded as mere commercial commodities. They constitute an essential and integral facet of the right to life and human dignity, guaranteed under the Constitution[1]. Access to timely and quality medical care is indispensable to the preservation of life, its denial leads to suffering which offends the basic tenets of a civilized society. The State, therefore, carries a constitutional and affirmative obligation to ensure the availability, accessibility and affordability of healthcare to all citizens. This obligation extends not only to the direct provision of such services by the State but also to the facilitation and regulation[2] of private participation in the healthcare

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[1] Article 9 and 14 of the Constitution
[2] Article 18 of the Constitution

sector. However, such participation must be subject to strict oversight so as to preclude exploitation[3] and the accrual of windfall profits at the expense of public welfare. In modern healthcare delivery, diagnostic laboratories play an indispensable and integral role, providing critical information for diagnosis, treatment and disease management. To assert that the scope of "healthcare services" or "ancillary matters" within the preamble does not extend to regulating such fundamental components would be to unduly narrow the legislative intent. Therefore, the regulation of diagnostic labs, including aspects related to their services and pricing, falls squarely within the broad objectives of improving the quality of healthcare services and addressing ancillary matters as envisioned by the preamble of the Act. The necessity for price regulation is not unique to the healthcare sector but is a well-established principle in industries characterized by inherent market imperfections or monopolistic tendencies, particularly in the provision of essential services. International experience, notably in the regulation of utility services, demonstrates that price control mechanisms, such as the RPI-X formula (Retail Price Index minus an efficiency factor)[4], are frequently employed to safeguard consumer interests where direct competition is absent or insufficient. These mechanisms are designed to prevent the exploitation of market power, incentivize efficiency, and ensure that essential services remain accessible and affordable for the populace. The very existence of such regulatory frameworks across diverse jurisdictions underscores the global recognition of the state's legitimate and often imperative role in intervening to regulate prices in vital sectors to prevent undue burden and exploitation of the public[5].

13. Even otherwise, it is a well-established principle of statutory interpretation that if an enactment and its provisions are well defined and

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[3] Article 3 of the Constitution

[4] Stephen C. Littlechild Regulation of British Telecommunications' Profitability (London, HMSO, 1983).

[5] Understanding Regulation, 2nd Edn., by Robert Baldwin, Martin Cave and Martin Lodge, Regulating Public Utilities, by Cosmo Graham and The Regulatory State, edited by Dawn Oliver, Tony Prosser and Richard Rawlings

unequivocal, preamble cannot be relied upon solely to override express provisions of law without considering its pith and substance. Reliance is placed on the case of *"Ghulam Mustafa Insari and 48 others v. Government of the Punjab and others"* **(2004 SCMR 1903)**, wherein the Supreme Court of Pakistan has held as under: -

> *"In our view, the preamble of a statute is a useful aid for interpretation where its language is not clear, or the same is otherwise susceptible to more than one meaning. But the validity or vires of a statute cannot be tested merely on the basis of a preamble. So many statutes do not contain preambles. The preamble of a statute can neither restrict nor control the meaning of the enacting part of entire statute. If the enacting part of the statute goes beyond the preamble it is the enacting part which prevails and not the preamble. In the case of v. Basudev (1949) FCR 657, the Federal Court of India had the occasion of interpreting the true scope of the preamble of United Provinces Prevention of Black Marketing (Temporary Powers) Act, 1947. It was observed that whilst a. statement in the preamble of a statute as to its ultimate objective might be useful as throwing light on the nature of the matter legislated upon and must undoubtedly be taken into consideration it could not be conclusive on the question of vires of a statute. The Courts were to see whether the subject-matter of the impugned legislation was really within those powers. In the case of Darbar Patiala (supra), a Division Bench of the Lahore High Court, had taken the view that preamble of a statute was a good means of finding out its meaning and was a key to understanding of it but it could not furnish basis of declaring a provision of the Statute as ultra vires. In case of Sh. Liaquat Hussain v. Federation of Pakistan PLD 1999 SC 504, Mr. Justice Saiduzzaman Siddiqui, J. (as His Lordship then was) observed that the preamble could not control the meaning of the enacting part of the statute and if the enacting part of the statute went beyond the, preamble it was the enacting part which was to prevail and not the preamble. In Murree Brewery Co. Limited v. Pakistan through the Secretary to Government of Pakistan and 2 others PLD 1972 SC 279 this Court took the view that the preamble was a preliminary statement which usually set out the reason for making the Act of Parliament and the scope of the Act and that preamble was a legitimate aid in construing the enacting parts. In Attorney-General v. H.R.H. Prince Ernest Augustus of Honover (1957) 1 All. E.R.49, the House of Lords observed that the preamble could not be made use of to control the enactments themselves where they were expressed in clear and unambiguous terms."*

The Supreme Court of Pakistan in its recent judgment in the case of *"Sui Northern Gas Pipelines Ltd. (SNGPL), Islamabad v. Messrs S.K. Pvt. Limited and others"* **(2025 SCMR 570)** held: -

> *"No doubt, a preamble can play both constructive and contextual roles in statutory interpretation. If the scope of the preamble is*

> *narrower than that of a substantive section, the statutory provision in such an enactment cannot be restricted inconsiderately merely because the preamble of the statue is narrower. A straightforward and uncomplicated provision in any law cannot be controlled, restrained, or limited by a narrow preamble. Equally, a wide-ranging preamble cannot be deemed to have automatically enlarged the scope of any law. In interpreting any statute, the Court must adopt a holistic approach. However, there are two vivid rules of interpretation: first, the preamble of any law may articulate the purpose the legislature intended to achieve; and second, if the enactment and its provisions are well-defined and unequivocal, the preamble cannot be relied upon solely to expurgate or override the express provisions of the law without considering its pith and substance."*

Following the above referred case law, it is concluded that while the preamble of the Act may provide guidelines, the core of the Commission's powers must be found in the substantive provisions of the Act.

14. Section 40 of the Act, 2010, titled "Regulations," specifically Clause (2)(m) thereof, unequivocally states that the Commission may formulate regulations regarding control of prices of healthcare services. For better understanding of the context, section 40 of the Act, 2010 is reproduced below.

> ***"40. Regulations**.— (1) The Commission may, by notification in the official Gazette, make regulations for carrying out the purposes of this Act.*
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> *(2) Without prejudice to the generality of sub-section (1), the Commission may make regulations with respect to all or any of the following matters:-*
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> *(a) the forms, fees and registers for the purposes of this Act;*
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> *(b) the records of patients treated in a healthcare establishment are provided;*
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> *(c) the records of the staff of a healthcare establishment;*
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> *(d) the requirements as to the number and qualifications of nursing and other staff in a healthcare establishment;*
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> *(e) the apparatus, appliances, equipment and instruments to be provided and maintained in a healthcare establishment;*
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> *(f) the ambulances to be provided and maintained by a healthcare establishment;*
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> *(g) the standards of accommodation, sanitation, and other amenities in a healthcare establishment;*
>
> *(h) fix penalties according to offence;*
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> *(i) the cleanliness and hygiene in a healthcare establishment;*

> *(j) the safety and welfare of patients in a healthcare establishment are provided;*
> *(k) the management, control, superintendence and care of a healthcare establishment;*
> *(l) the composition, procedures, duties and responsibilities of quality assurance committees of healthcare establishments; and*
> *(m) the regulation and control of prices of the healthcare services.*
>
> *(3) The power to make regulations conferred by this section shall be subject to the condition of previous publication and, before making any regulations, the draft thereof shall be published, in the official Gazette, two newspapers of wide circulation and on the website of the Commission, for eliciting public opinion thereon within a period of not less than fifteen days from the date of publication."*

The above express provision, within the operative part of the Act, 2010 directly addresses the power to make regulations for control of prices of healthcare services and as noted above, the services provided for diagnosis fall within the definition of healthcare services and a diagnostic centre/lab is included in the meaning of healthcare establishment. Clause (4) of Chapter I of the impugned regulations states that the Regulations apply, *inter alia*, to healthcare establishments, including but not limited to public or private hospitals and diagnostic centres. For ready reference, clause (4) ibid is reproduced hereunder:-

> *"(4) These Regulations shall apply to all healthcare establishments, including but not limited to public or private hospitals, diagnostic centres, non-profit organizations, charitable hospitals, trust hospitals, semi-government and autonomous healthcare establishment."*

In view of the unequivocal and unambiguous language used by the Legislature, this Court finds that the Act, 2010, clearly confers upon Punjab Healthcare Commission the authority to regulate and control the prices of healthcare services, including those provided by diagnostic labs.

15. The contention that the Act, 2010 only permits asking for display of price lists and investigating overcharging, without the power to control prices, appears to unduly restrict the plain language of Section 40(2)(m). The word "control" in legal parlance often implies the power

or authority to manage, direct, superintend, restrict, regulate, govern, administer or oversee[6], which includes price control or the setting of a profit margin. Guidance is also found in the case of *"Ghulam Rasool v. Muhammad Hayat"* **(PLD 1984 SC 385)**, wherein the Supreme Court of Pakistan quoted with approval the following instructive passage from the publication titled "The Law relating to Government Control over private enterprise" authored by Mr. Menson:

> *"Broadly speaking there are two types of techniques through which the objectives of economic planning are achieved outside the area of the public sector. Firstly, there is the overall regulation of economic activity through fiscal, monetary and credit policies. . . . The second category of controls includes devices like commodity controls, export and import controls, regulation of capital issues, fixation of profit margins, allocation of scarce raw material, or foreign exchange and direct financial assistance in the form of loans and subsidies etc."*
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> (Emphasis supplied by this Court).

It was further observed in the aforementioned judgment that the regulatory power of the State is all pervading and transcends the proprietary or ownership rights in property.

16. The impugned Regulations establish a structured and comprehensive pricing mechanism. At its core, the Regulations mandate that every healthcare establishment must determine the cost of its services through a process of activity-based costing. This costing exercise must be performed by a certified chartered or cost accountancy firm. A crucial aspect of this mechanism is the imposition of a ceiling on profit margins. After calculating the actual cost of a service, a healthcare establishment is permitted to add a profit margin, but this margin cannot exceed 20%. The proposed price, along with the complete costing record, is then submitted to the Commission for formal approval. To ensure fairness and accuracy, the Commission's Pricing Cell/Department is empowered to verify, re-assess, and validate the submitted costing

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[6] Black's Law Dictionary (Eighth Edition).

data. If inaccuracies are found, the Commission can determine a "rationalized price" to be charged by the establishment.

17. There is no force in the argument of learned counsel for the petitioners in Writ Petition No.65058 of 2023 that the imposition of pricing controls in the absence of demonstrated necessity, constitutes a disproportionate measure. Regulating prices for essential healthcare services directly serves the constitutional mandate by preventing arbitrary overcharging and ensuring equitable access. Therefore, the pricing controls, framed reasonably within the express powers conferred by the Act, 2010 are not only necessary but also represent a proportionate measure to fulfill a vital public interest and prevent undue financial burden on patients.

18. So far as argument of the learned counsel for the petitioners qua discerning the true purpose of the Act, 2010 by way of considering the Hansards (parliamentary debates) at the time of the bill's proposal and enactment as no mention was made of price regulation as a legislative object, is concerned, it is pointed out that recourse to Hansards is unnecessary when, as discussed in the preceding paragraphs, provisions of the Act, 2010 are clear in their meaning and scope. The primary rule of statutory interpretation is to discern the legislature's intention from the statute's language itself. Extrinsic aids, such as legislative debates (hansards), are typically not the primary means for this purpose. Only when the language is ambiguous or leads to absurdity can extrinsic aids like legislative history or hansards be consulted[7]. Furthermore, Section 40(2)(m) of the Act, 2010, unequivocally grants the Commission the power to formulate regulations regarding the control of prices of healthcare services. To prioritize the non-mention of an objective in parliamentary debates over the clear and express language of an enacted statutory provision would fundamentally misinterpret the

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[7] *Muhammad Mubeen-us-Salam and others v. Federation of Pakistan through Secretary, Ministry of Defence and others* (PLD 2006 SC 602) and *Pepper (Inspector of Taxes) v. Hart* (1993 SCMR 1019).

principles of statutory interpretation and undermine the legislative intent explicitly codified within the Act itself.

19. The Challenge posed by some of the petitioners, qua the application of the impugned regulations owing to their trans-provincial status, is now taken up. The legal position in Pakistan, as gleaned from constitutional provisions (Articles 141 and 142) and consistent case law, is that while a provincial government cannot unilaterally regulate the entire affairs of a trans-provincial entity, it is authorized to establish regulations applicable within its territorial jurisdiction. Healthcare is primarily a provincial subject[8]. Therefore, where healthcare services are provided within the province of Punjab, the Provincial Government and its authorized Commission retain the legislative and regulatory competence over those activities. The argument that regulating a trans-provincial entity within its provincial operations would render its operations in other provinces uncompetitive or unfeasible is a policy consideration, not a legal bar to the Province's authority to regulate activities occurring within its territorial limits. This position is further strengthened by the fact that the Federation has enacted its own regulatory regime for healthcare services in Islamabad Capital Territory[9] without encroaching upon provincial jurisdiction, demonstrating the distinct jurisdictional spheres.

20. Taking up now the concern of some of the petitioners that the impugned regulations have been disproportionately applied, specifically equating non-hospital entities with private hospitals, it is pointed out that the Punjab Healthcare Commission Licensing Regulations, 2020, indeed delineate 21 distinct types of healthcare facilities solely for licensing purposes and does not apply to price regulations. This classification does not dictate the scope of price regulation. The core objective of price control under Section 40(2)(m) of the Act, 2010 is to ensure fair and

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[8] See Fourth Schedule to the Constitution concerning Legislative lists and the case of *Punjab Healthcare Commission v. Mushtaq Ahmed Chaudhary and others* (PLD 2018 Lahore 762),

[9] The Islamabad Healthcare Regulation Act, 2018.

controlled pricing across all healthcare services, regardless of the specific type of establishment providing them. The services offered by diagnostic centers, such as lab tests, are integral to healthcare delivery, and allowing varied pricing for identical services based solely on the facility type would undermine the very purpose of regulation—that is, to protect the consumer from exploitation. The application of uniform pricing controls for specific services across all relevant healthcare establishments is a rational and non-discriminatory approach to achieve objectives of the Act, 2010. Therefore, the question of treating dissimilarly placed entities similarly does not arise, and any such plea of discrimination is manifestly unfounded.

21. Another key aspect of the petitioners' challenge relates to the statutory role of the Technical Advisory Committee (TAC). For better understanding the issue, it would be apt to reproduce the relevant provisions of the Act, 2010.

> ***3. Establishment of the Commission***.— *(1) The Government may, by notification, establish a Commission to be called the Punjab Healthcare Commission for carrying out the purposes of this Act.*
> *(2) The Commission shall be a body corporate having perpetual succession and a common seal, with powers to enter into contract, sue and be sued by its name.*
> *(3). . . . .*
> ***4. Functions and powers of the Commission***.— *(1) The Commission shall perform such functions and exercise such powers as may be required to improve the quality of healthcare services and clinical governance and to ban quackery.*
> *(2). . . . . .*
> *(3). . . . . .*
> *(4) In the performance of its functions, the Commission shall– take into consideration the policy advice of the Technical Advisory Committee; and coordinate with the Government.*
> ***5. Constitution of the Board***.— *(1) The general superintendence, direction and management of the affairs of the Commission and overall policy making in respect of its operations shall vest in the Board which may exercise all such powers and do all such acts, deeds and things that may be exercised or done by the Commission under this Act.*
> *(2). . . . . .*
> *(3). . . . . .*
> ***10. Technical Advisory Committee***.— *(1) The Board shall constitute a Technical Advisory Committee consisting of the following members:-*
> *(a) one person each to be nominated by the*

(i) Medical and Dental Council;
(ii) College of Physicians and Surgeons Pakistan established under the Pakistan College of Physicians and Surgeons Ordinance 1962 (XX of 1962);
(iii) Nursing Council;
(iv) Pharmacy Council of Pakistan established under the Pharmacy Act 1967 (XI) of 1967);
(v) Federal Mental Health Authority constituted under the Mental Health Ordinance 2001 (VIII of 2001);
(vi) Council for Homeopathy;
(vii) Council for Tibb;
(viii) Auditor General of Pakistan;
(ix) University of Health Sciences, Lahore;
(x) Punjab Medical Faculty constituted under the Medical and Dental Degrees Ordinance 1982 (XXVI of 1982);
(xi) King Edward Medical University, Lahore;
(xii) Pakistan Medical Association; and
(xiii) Government from amongst the young doctors;

(b) one representative of the Government;
(c) one member of the Provincial Assembly of the Punjab to be nominated by the Speaker of the Assembly;
(d) one representative each of the six District Governments selected by the Government for one year on non-recurring basis;
(e) one person each to be nominated by the Government from the private healthcare establishment;
(f) five experts in healthcare services to be nominated by the convener of the Technical Advisory Committee in consultation with the Chairperson; and
(g) two international health experts to be nominated by the Government.

(2) Except for the ex-officio members, all the members of the Technical Advisory Committee shall hold office for a period of three years and shall be eligible for re-appointment for another term of three years.
(3) The Technical Advisory Committee shall elect one of its members as the convener.
(4) The convener of the Technical Advisory Committee shall chair meetings of the Technical Advisory Committee and the chief executive officer may attend any meeting of the Committee.
(5) The Board may determine the remunerations payable to the members of the Technical Advisory Committee for attending a meeting.
(6) The Technical Advisory Committee may organize itself into sub-committees and shall provide advice on any matter referred to it by the Commission, including the matters relating to–

(a) policy and strategic framework of the Commission;
(b) healthcare standards, accreditation and quality assurance;
(c) governance process of the Commission;
(d) advocacy, promotion and contribution towards development and sustainability of the work of the Commission; and
(e) stakeholder consultation for the promotion of quality and standards of the healthcare services.

Plain reading of the above sections of the Act, 2010 indicates that the Commission is a body corporate with perpetual succession and a seal, which is to operate under general superintendence, direction and management by the Board constituted under section 5(1) of the Act, 2010. It is the Board which holds the mandate to make decisions regarding overall policy formulation on behalf of the Commission. Section 4(4) of the Act, 2010 cannot be read in isolation and the same has to be construed harmoniously with Section 10(6) of the Act, 2010. The TAC is mandated to provide advice on matters, including the following matters enumerated in subsection (6) of section 10, only when specifically referred to it by the Commission/Board:

> *(a) policy and strategic framework of the Commission;*
> *(b) healthcare standards, accreditation and quality assurance;*
> *(c) governance process of the Commission;*
> *(d) advocacy, promotion and contribution towards development and sustainability of the work of the Commission; and*
> (e) *stakeholder consultation for the promotion of quality and standards of the healthcare services.*

It is abundantly clear that the matters enumerated in subsection (6) of section 10 ibid do not include the framing of regulations. Therefore, the contention that the Commission is acting *coram non judice* due to the alleged non-constitution or lack of mandatory consultation with the TAC is unsustainable, as the Act, 2010 does not delineate the role of such committee as prerequisite for the Commission's delegated legislative function under section 40(2)(m) of the Act, 2010.

22. The petitioners have also raised objections concerning the procedure followed for the promulgation of the impugned Regulations, specifically challenging compliance with the publication requirements mandated by Section 40(3) of the Act, 2010. Learned counsel for the Commission while responding this objection, clarified that in compliance with the provisions of section 40(3) of the Act, 2010 a proposed draft of price regulations was published in the official gazette on 02.02.2023 and an invitation was also advertised in this regard on

10.02.2023 in the daily 'Nation' (English) and daily 'Express' (Urdu) and such draft regulations were also uploaded on the official website of the Commission on 07.02.2023 for inviting objections to the proposed draft from public and all concerned, which is substantial compliance (if not full compliance) of subsection (3) of section 40 of the Act. It has been further clarified by the learned counsel for the Commission that the plea of petitioners that entire draft regulation was not published in the newspaper is misconceived for the reason that neither such requirement is clearly specified in the Act, 2010 nor such compliance can be practically carried out for the reason that it would be an unnecessary burden on the exchequer, whereas for the purpose of eliciting public opinion, it was sufficient that the draft regulations were available on the website of the Commission to which objections were invited from all concerned. Significantly, the assertion by the learned counsel for the Commission regarding the factual compliance of Section 40(3) of the Act, 2010 – specifically the publication of the draft in the official gazette, advertisement in widely circulated newspapers, and availability on the Commission's website – remained uncontroverted by any of the learned counsel for the petitioners on the factual side. This Court, therefore, finds force in this contention of the learned counsel for the Commission. It is pertinent to note and indeed remains an uncontroverted fact on record that despite the publication of the draft regulations for public input, none of the petitioners lodged any objections or raised concerns regarding the proposed draft before its finalization. It was, however, clarified by the learned counsel for the Commission that while no pre-promulgation objections were received from the petitioners, concerns were indeed raised by some following the enforcement of the regulations against healthcare establishments, and the Commission responded to the same within the bounds of law. Indeed, the Commission's approach to public consultation on the proposed draft regulations aligns with evolving best practices in regulatory governance. While statutory provisions often lay down minimum requirements for

public participation in rulemaking, progressive regulatory bodies, particularly those overseeing essential services, increasingly strive for broader engagement. International experience, notably in the regulation of utilities, demonstrates a growing emphasis on enhancing transparency and public input[10] beyond mere formal compliance, by actively publicizing draft proposals, soliciting detailed feedback, and making information readily accessible. The Commission's proactive measures of publishing the draft in the official gazette, advertising in widely circulated newspapers, and uploading it to its official website, even if exceeding a literal interpretation of the statutory minimum, reflect a commendable commitment to fostering an open, accountable and transparent regulatory process, allowing all concerned parties a meaningful opportunity to contribute to the finalization of crucial public policy.

23. It is evident from the perusal of impugned Regulations that the pricing mechanism laid down therein is not an arbitrary exercise of power by the Commission. Instead, the Regulations require healthcare establishments to perform their own activity-based costing, thereby entrusting them with the primary role of determining their service prices. The Commission's intervention is limited to setting a maximum profit margin of 20%, which serves as a fair and rational cap to ensure that prices remain accessible without undermining the concerned healthcare establishments' financial viability. For ready reference, Chapter III of the impugned regulations, that lays down mechanism for pricing, is reproduced hereunder.

"**Chapter III**
Pricing Mechanism.

> ***4. Determination of Price(s)***. *– (1) Each healthcare establishment shall undertake an activity based costing, through a chartered accountancy/cost accountancy firm duly registered with Securities & Exchange Commission of Pakistan (SECP) / State Bank of Pakistan (SBP) of all healthcare services being provided by it, including but not limited to commonly*

[10] Administrative Procedure Act (APA) of 1946. (USA), The Aarhus Convention, 1998 (Europe), The Utilities Act 2000 (UK), The Independent Health and Aged Care Pricing Authority (IHACPA) under National Health Reform Act, 2011 (Australia).

undertaken procedures, other procedures and ancillary facilities provided in connection with or with reference to the healthcare services, in such order as may be required/notified by the Commission.

(2) The Commission shall design and notify a framework for carrying out activity-based costing of healthcare services including but not limited to commonly undertaken procedures, other procedures and ancillary facilities provided in connection with or with reference to the healthcare services being provided by any healthcare establishment in such order as may be required/notified by the Commission.

(3) The framework notified by the Commission shall inter alia contain the features/requirements that every healthcare establishment would be required to follow and fulfill during determining the cost of their services and procedures.

(4) Upon completion of the costing exercise in accordance with the notified framework and adding profit margin not exceeding 20% of the actual cost, each healthcare establishment shall submit the same to the Commission along with complete record of the costing in the notified format, for further processing and formal approval.

(5) Subject to sub-regulation (2), an existing healthcare establishment shall, within a period of ninety days of the coming into force of these Regulations, submit its proposed prices along with complete record in accordance with sub-regulation (1) & (4).

Provided that all other healthcare establishments shall submit their proposed prices along with complete record of the activity based costing, conducted in accordance with sub-regulation (1) & (4) with their respective applications for Registration in accordance with section 13 of the Act.

(6) In case the Pricing Cell/Department finds or determines that the costing of any procedure(s) and/or services submitted by any healthcare establishment is inaccurate and/or exaggerated, it may verify/re-assess/validate the entire costing data or part thereof, submitted to the Commission through any means considered appropriate and shall intimate the rationalized price to be charged by the concerned healthcare establishment, provided that the cost of such exercise/activity, if any, shall be borne by the concerned healthcare establishment.

(7) The Commission shall have the power to verify the authenticity of the costing done and submitted by any healthcare establishment.

(8) If a healthcare establishment fulfills all requirements as contained in sub-regulations (1), (3), (4) and (5) and subject to sub-regulation (6), the Commission shall grant approval in accordance with sub-regulation (4) within 30 days, otherwise the proposed prices submitted by the healthcare establishment shall be deemed to have been provisionally approved by the Commission.

(9) The price(s) determined pursuant to these Regulations would constitute the maximum/ceiling for healthcare services and healthcare establishment(s) shall be at liberty to charge any price lower than that determined hereunder.

(10) Nothing contained in these Regulations shall prevent the Commission from determining the cost of any healthcare service(s), at any time, including but not limited to commonly undertaken procedures, other procedures and ancillary facilities provided in connection with or with

> *reference to the healthcare service by any healthcare establishment on its own, using such means as it considers appropriate and notifying the price(s) to be charged for the same for a specified time period.*
> ***5. Updating and/or Review of Price.*** *– (1) The Pricing Cell/Department may on its own accord or on an application submitted by a healthcare establishment in this regard, review and revise the prices from time to time.*
> *(2) An application submitted by a healthcare establishment in accordance with sub-regulation (1) shall be in writing and shall contain detailed reasons for the required review/revision of prices and shall also be supported by evidence/activity based costing in accordance with sub-regulations (1), (3), (4) and (6) of Regulation 4.*
> *(3) While revising/updating prices, the Pricing Cell/Department shall inter alia consider the rate of inflation as well as exchange rate as and when applicable."*

The primary mechanism of self-costing by healthcare establishments, as detailed in sub-regulations(1) to (9), is predicated on the assumption of good faith and accurate reporting. Sub-regulation (10) provides the Commission a crucial safety valve to intervene where submitted costing data is found to be unreliable, to address emergent situations that demand immediate price stability, or to establish benchmark prices for commonly undertaken procedures in the public interest. This provision of sub-regulation (10) of Regulation 4 operates not as the primary mode of price fixation, but as a residuary power to be sparingly exercised by the Commission to meet special circumstances. Such reserved power is a critical component of the Commission's mandate to prevent exploitation and ensure equitable access to essential services. It ensures that the Commission can fulfill its functions even in the face of non-compliance, market failures or systemic irregularities by a healthcare establishment, thereby upholding the integrity of the entire pricing mechanism and safeguarding the public from undue financial burden. This Court, therefore, finds this provision to be a legitimate and proportionate exercise of the Commission's authority under the Act, 2010. It is also pertinent to note that the learned counsel for the petitioners could not assert and provide any substantial material to demonstrate that capping the profit margin at 20% is unreasonable or represents an irrational return on investment in the provision of healthcare services. The

Wednesbury principle[11] serves as the yardstick for examining the exercise of discretionary power under section 40(2)(m) of the Act, 2010, however, no clear violation of this standard has been demonstrated in the instant case.

24. Upshot of the above discussion is that this Court is satisfied that the Punjab Healthcare Commission is duly empowered to regulate and control the pricing of healthcare services rendered by healthcare establishments including diagnostic facilities and laboratories throughout the Province of Punjab. The objections raised to the validity of the Punjab Healthcare Commission (Pricing of Healthcare Services) Regulations, 2023, are thus found to be untenable. Resultantly, all writ petitions stand dismissed. There shall be no order as to costs.

25. As regards C.M. No.1 of 2024 in Writ Petition No.65058 of 2023, which was filed by the Judicial Activism Panel to be impleaded as a party, with the dismissal of the main writ petition, the purpose of the application no longer subsists. Consequently, the application has become infructuous and is disposed of as such.

(RAHEEL KAMRAN)
JUDGE

Announced in the open Court on _____

JUDGE

Approved for reporting

JUDGE

*Azhar**

[11] *"Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation"* (1947 2 All E.R. 680)