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PART IV

PROVINCIAL ASSEMBLY OF SINDH

NOTIFICATION

Karachi, the 23rd January, 1992.

No. PAS/Legis-B-13/91.—The Establishment of the Office of Ombudsman for the Province of Sindh Bill, 1991 having been passed by the Provincial Assembly of Sindh on 25th September, 1991 and assented to by the Governor of Sindh on 23rd January, 1992 is hereby published as an Act of the Legislature of Sindh.

THE ESTABLISHMENT OF THE OFFICE OF OMBUDSMAN
FOR THE PROVINCE OF SINDH ACT, 1991.

SINDH ACT NO. 1 OF 1992.

(First published after having received the assent of the Governor of Sindh in the Gazette of Sindh (Extra-Ordinary) dated 23rd January, 1992.

AN

ACT

to provide for the establishment of the office of Provincial Ombudsman

WHEREAS it is expedient to provide for the appointment of the Provincial Ombudsman to diagnose, investigate, redress and rectify any injustice done to a person through mal-administration: Preamble

It is hereby enacted as follows:—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Establishment of the Office of Ombudsman for the Province of Sindh Act, 1991.

(2) It extends to the whole of the Province of Sindh.

(3) It shall come into force on and from 14th August, 1991.

Definitions

2. In this Act unless there is anything repugnant in the subject or context:—

(1) "Agency" means a Department, Commission or office of the Provincial Government or a statutory corporation or other institution established or controlled by the Provincial Government but does not include the High Court;

(2) "mal-administration" includes:—

(i) a decision, process, recommendation, act of omission or commission which:—

(a) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bonafide and for valid reasons; or

(b) is perverse arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory; or

(c) is based on irrelevant grounds; or

(d) involves the exercise of powers or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favouritism, nepotism and administrative excesses; and

(ii) neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities;

(3) "Office" means the office of the Ombudsman;

(4) "Ombudsman" means the Ombudsman for the Province of Sindh appointed under section 3;

(5) "prescribed" means prescribed by rules made under this Act;

- (6) "Public servant" means a public servant as defined in section 21 of the Pakistan Penal Code, 1860, and includes a Minister, Adviser, Parliamentary Secretary and the Chief Executive, Director or other officer or employee or member of an Agency; and
- (7) "staff" means any employee or commissioner of the Office and includes co-opted members of the staff, consultants, advisers, bailiffs, liaison officers and experts.

3. (1) There shall be a Ombudsman for the Province of Sindh who shall be appointed by the Governor.

Appointment
of Ombuds-
man

(2) Before entering upon office, the Ombudsman shall take an oath before the Governor in the form set out in the First Schedule to this Act.

(3) The Ombudsman shall, in all matters, perform his functions and exercise his powers fairly, honestly, diligently and independently of the Executive; and all executive authorities throughout the Province shall act in aid of the Ombudsman.

4. (1) The Ombudsman shall hold office for a period of four years and shall not be eligible for any extension of tenure or for re-appointment as Ombudsman under any circumstances.

Tenure of
the Ombuds-
man.

(2) The Ombudsman may resign his office by writing under his hand addressed to the Governor.

5. (1) The Ombudsman shall not—

- (a) hold any other office of profit in the service of Pakistan; or
- (b) occupy any other position carrying the right to remuneration for the rendering of services.

Ombudsman
not to hold
any other
office of
profit, etc.

(2) The Ombudsman shall not hold any office of profit in the service of Pakistan before the expiration of two years after he has ceased to hold that office; nor shall he be eligible during the tenure of office and for a period of two years thereafter for election as a member of Parliament or a Provincial Assembly or any local body or take part in any political activity.

6. (1) The Ombudsman shall be entitled to such salary, allowances and privileges and other terms and conditions of service as the Governor may determine and these terms shall not be varied during the term of office of an Ombudsman.

Terms and
conditions of
service and
remuneration
of Ombuds-
man.

(2) The Ombudsman may be removed from office by the Governor on the ground of misconduct or of being incapable of properly performing the duties of his office by reason of physical or mental incapacity.

Provided that the Ombudsman may, if he sees fit and appropriate to refute any charges, request an open public evidentiary hearing before the Supreme Judicial Council and, if such a hearing is not held within thirty days of the receipt of such request or not concluded within ninety days of its receipt, the Ombudsman will be absolved of any and all stigma whatever. In such circumstances, the Ombudsman may choose to leave his office and shall be entitled to receive full remuneration and benefits for the rest of his term.

(3) If the Ombudsman makes a request under the proviso to sub-section (2), he shall not perform his functions under this Act until the hearing before the Supreme Judicial Council has concluded.

(4) An Ombudsman removed from office on the ground of misconduct shall not be eligible to hold any office of profit in the service of Pakistan or for election as a member of Parliament or a Provincial Assembly or any local body.

Acting
Ombudsman.

7. At any time when the office of Ombudsman is vacant, or the Ombudsman is absent or is unable to perform his functions due to any cause, the Governor shall appoint an acting Ombudsman.

Appointment
and terms
and conditions
of
service of
staff.

8. (1) The members of the staff, other than those mentioned in section 20 or those of a class specified by the Governor by order in writing, shall be appointed by the Governor in consultation with the Ombudsman.

(2) It shall not be necessary to consult the Provincial Public Service Commission for making appointment of the members of the staff or on matters relating to qualifications for such appointment and methods of their recruitment.

(3) The members of the staff shall be entitled to such salary, allowances and other terms and conditions of service as may be prescribed having regard to the salary, allowances and other terms and conditions of service that may for the time being be admissible to other employees of the Provincial Government in the corresponding Basic Pay Scales.

(4) Before entering upon office a member of the staff mentioned in sub-section (1) shall take an oath before the Ombudsman in the form set out in the second Schedule to this Act.

Jurisdiction,
functions
and powers
of the Om-
budsman.

9. (1) The Ombudsman may on a complaint by any aggrieved person, on a reference by the Governor or the Provincial Assembly, or on a motion of the Supreme Court or the High Court made during the course of any proceedings before it or of his own motion, undertake any investigation into any allegation of mal-administration on the part of any Agency or any of its officers or employees:

Provided that the Ombudsman shall not have any jurisdiction to investigate or inquire into any matters which:—

- (a) are subjudice before a court of competent jurisdiction or judicial tribunal or board in Pakistan on the date of the receipt of a complaint, reference or motion by him; or
- (b) relate to the external affairs of Pakistan or the relations or dealings of Pakistan with any foreign state or government; or
- (c) relate to, or are connected with, the defence of Pakistan or any part thereof, the Military, naval and air forces of Pakistan, or the matters covered by the laws relating to those forces.

(2) Notwithstanding anything contained in sub-section (1), the Ombudsman shall not accept for investigation any complaint by or on behalf of a public servant or functionary concerning any matters relating to the Agency in which he is, or has been, working, in respect of any personal grievance relating to his service therein.

(3) For carrying out the objectives of this Act and, in particular for ascertaining the root causes of corrupt practices and injustice, the Ombudsman may arrange for studies to be made or research to be conducted and may recommend appropriate steps for their eradication.

(4) The principal seat of the Office of Ombudsman shall be at Karachi, but he may set up regional offices as, when and where required.

10. (1) A complaint shall be made on solemn affirmation or oath and in writing addressed to the Ombudsman by the person aggrieved or, in the case of his death, by his legal representative and may be lodged in person at the Office or handed over to the Ombudsman in person or sent by any other means of communication to the Office.

Procedure
and evi-
dence.

(2) No anonymous or pseudonymous complaints shall be entertained.

(3) A complaint shall be made not later than three months from the day on which the person aggrieved first had the notice of the matter alleged in the complaint, but the Ombudsman may conduct any investigation pursuant to a complaint which is not within time if he considers that there are special circumstances which make it proper for him to do so.

(4) Where the Ombudsman propose to conduct an investigation he shall issue to the principal officer of the Agency concerned, and to any other person who is alleged in the complaint to have taken or authorised the action complained of, a notice calling upon him to meet the allegations contained in the complaint, including rebuttal:

Provided that the Ombudsman may proceed with the investigation if no response to the notice is received by him from such principal officer or other person within thirty days of the receipt of the notice or within such longer period as may have been allowed by the Ombudsman.

(5) Every investigation shall be conducted in private, but the Ombudsman may adopt such procedure as he considers appropriate for such investigation and he may obtain information from such persons and in such manner and make such inquiries as he thinks fit.

(6) A person shall be entitled to appear in person or be represented before the Ombudsman.

(7) The Ombudsman shall, in accordance with the rules made under this Act pay expenses and allowances to any person who attends or furnishes information for the purposes of an investigation.

(8) The conduct of an investigation shall not affect any action taken by the Agency concerned, or any power or duty of that Agency to take further action with respect to any matter subject to the investigation.

(9) For the purpose of an investigation under this Act the Ombudsman may require any officer or member of the Agency concerned to furnish any information or to produce any document which in the opinion of the Ombudsman is relevant and helpful in the conduct of the investigation and there shall be no obligation to maintain secrecy in respect of disclosure of any information or document for the purposes of such investigation:

Provided that the Governor may, in his discretion, on grounds of its being a State secret, allow claim of privilege with respect to any information or document.

(10) In any case where the Ombudsman decides not to conduct an investigation, he shall send to the complainant a statement of his reasons for not conducting the investigation.

(11) Save as provided in this Act, the Ombudsman shall regulate the procedure for the conduct of business or the exercise of powers under this Act.

11. (1) If, after having considered a matter on his own motion, or on a complaint or on a reference by the Governor or the Provincial Assembly, or on a motion by the Supreme Court or the High Court, as the case may be, the Ombudsman is of the opinion that the matter considered amounts to mal-administration, he shall communicate his findings to the Agency concerned—

Recommendations for implementation.

- ✓ (a) to consider the matter further;
- (b) to modify or cancel the decision, process, recommendation, act or omission;
- (c) to explain more fully the act or decision in question;
- (d) to take disciplinary action against any public servant of any Agency under the relevant laws applicable to him;

- (e) to dispose of the matter or case within a specified time;
- (f) to take action on his findings and recommendation to improve the working and efficiency of the Agency within a specified time; or —
- (g) to take any other steps specified by the Ombudsman.

(2) The Agency shall, within such time as may be specified by the Ombudsman, inform him about the action taken on his recommendations or the reasons for not complying with the same.

(3) In any case where the Ombudsman has considered a matter, or conducted an investigation, on a complaint or on a reference by the Governor or the Provincial Assembly or on a motion by the Supreme Court or the High Court, the Ombudsman shall forward a copy of the communication received by him from the Agency in pursuance of sub-section (2) to the complainant or, as the case may be, the Governor, the Provincial Assembly, the Supreme Court or the High Court.

(4) If, after conducting an investigation, it appears to the Ombudsman that an injustice has been caused to the person aggrieved in consequence of mal-administration and that the injustice has not been or will not be remedied, he may, if he thinks fit, lay a special report on the case before the Governor.

(5) If the Agency concerned does not comply with the recommendations of the Ombudsman or does not give reasons to the satisfaction of the Ombudsman for non-compliance, it shall be treated as "Defiance of Recommendations" and shall be dealt with as hereinafter provided.

12. (1) If there is a "Defiance of Recommendations" by any public servant in any Agency with regard to the implementation of a recommendation given by the Ombudsman, the Ombudsman may refer the matter to the Governor who may, in his discretion, direct the Agency to implement the recommendation and inform the Ombudsman accordingly.

Defiance of
Recommendation

(2) In each instance of "Defiance of Recommendations" a report by the Ombudsman shall become a part of the personal file or Character Roll of the public servant primarily responsible for the defiance:

Provided that the public servant concerned had been granted an opportunity to be heard in the matter.

13. Where, during or after an inspection or an investigation, the Ombudsman is satisfied that any person is guilty of any allegations as referred to in sub-section (1) of section 9, the Ombudsman may refer the case to the concerned authority for appropriate corrective or disciplinary action, or both corrective and disciplinary action, and the said authority shall inform the Ombudsman within thirty days of the receipt of reference of the action taken. If no information is received within this period, the Ombudsman may bring the matter to the notice of the Governor for such action as he may deem fit.

Referenc
by
Ombudsman

14. (1) The Ombudsman shall, for the purposes of this Act have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

Powers of
the
Ombudsman.

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents;
- (c) receiving evidence on affidavits; and
- (d) issuing commission for the examination of witnesses.

(2) The Ombudsman shall have the power to require any person to furnish information on such points or matters as, in the opinion of the Ombudsman, may be useful for, or relevant to, the subject matter of any inspection or investigation.

(3) The powers referred to in sub-section (1) may be exercised by the Ombudsman or any person authorized in writing by the Ombudsman in this behalf while carrying out an inspection or investigation under the provisions of this Act.

(4) Where the Ombudsman finds the complaint referred to in sub-section (1) of section 9 to be false, frivolous or vexatious, he may award reasonable compensation to the Agency, public servant or other functionary against whom the complaint was made; and the amount of such compensation shall be recoverable from the complainant as an arrear of land revenue:

Provided that the award of compensation under this sub-section shall not debar the aggrieved person from seeking civil and criminal remedy.

(5) If any Agency, public servant or other functionary fails to comply with a direction of the Ombudsman, he may, in addition to taking other actions under this Act, refer the matter to the appropriate authority for taking disciplinary action against the person who disregarded the direction of the Ombudsman.

(6) If the Ombudsman has reason to believe that any public servant or other functionary has acted in a manner warranting criminal or disciplinary proceedings against him, he may refer the matter to the appropriate authority for necessary action to be taken within the time specified by the Ombudsman.

(7) The staff and the nominees of the Office may be commissioned by the Ombudsman to administer oaths for the purposes of this Act and to attest various affidavits, affirmations or declarations which shall be admitted in evidence in all proceedings under this Act without proof of the signature or seal or official character of such person.

15. (1) The Ombudsman, or any member of the staff authorised in this behalf, may, for the purpose of making any inspection or investigation, enter any premises where the Ombudsman or, as the case may be, such member has reason to believe that any, article, book of accounts, or any other document relating to the subject matter of inspection or investigation may be found, and may—

Power to enter and search any premises.

- (a) search such premises and inspect any article, book of accounts or other documents;
- (b) take extract or copies of such books of accounts and documents;
- (c) impound or seal such articles, books of accounts and documents; and
- (d) make an inventory of such articles, books of accounts and other documents found in such premises.

(2) All searches made under sub-section (1) shall be carried out, *mutatis mutandis*, in accordance with the provisions of the Code of Criminal Procedure, 1898.

16. (1) The Ombudsman shall have the same powers, *mutatis mutandis*, as the High Court has to punish any person for its contempt who:—

Power to
punish for
contempt.

- (a) abuses, interferes with, impedes, imperils, or obstructs the process of the Ombudsman in any way or disobeys any order of the Ombudsman;
- (b) scandalises the Ombudsman or otherwise does anything which tends to bring the Ombudsman, his staff or nominees or any person authorised by the Ombudsman in relation to his office, into hatred, ridicule or contempt;
- (c) does anything which tends to prejudice the determination of a matter pending before the Ombudsman; or
- (d) does any other thing which, by any other law, constitutes contempt of court:

Provided that fair comments made in good faith and in public interest on the working of the Ombudsman or any of his staff, or on the final report of the Ombudsman after the completion of the investigation shall not constitute contempt of the Ombudsman or his Office.

(2) Any person sentenced under sub-section (1) may, notwithstanding anything herein contained, within thirty days of the passing of the order, appeal to the High Court.

17. (1) The Ombudsman may constitute an Inspection Team for the performance of any of the functions of the Ombudsman.

Inspection
Team.

(2) An Inspection Team shall consist of one or more members of the staff and shall be assisted by such other person or persons as the Ombudsman may consider necessary.

(3) An Inspection Team shall exercise such of the powers of the Ombudsman as he may specify by order in writing and every report of the Inspection Team shall first be submitted to the Ombudsman with its recommendations for appropriate action.

