ORDER SHEET

THE PUNJAB INFORMATION COMMISSION

64 Nursery Lane, Near China Chowk, Lahore, Punjab.

Case Tracking Portal: https://rti.punjab.gov.pk/cases

042-99205794

Appeal # 10-11-2022-7

Sadia Mazhar

Vs

Punjab Assembly Lahore

Subject: **RTI Case Titled "Sadia Mazhar vs Punjab Assembly" (A Letter by PIO)**

Order

30.01.2023 (Mahboob Qadir Shah)----------

We disposed of Sadia Mazhar's RTI Complaint on 23.01.2023 directing PIO Punjab Assembly (PA) to improve website making the uploaded information easily accessible for citizens. Sadia Mazhar had to file RTI Complaint when she failed to easily access to information about the performance of all 7 Worthy MPAs of Sahiwal District from the website on a click of button. She being a journalist intended to do a story on comparative performance of all worthy members of her district before next elections of Punjab Assembly.

2. We are apprised that one can retrieve information of the performance of one particular member only if he has the perseverance to click hundred and thousand items under 64 browser links / folders. That each item of information is veiled under a particular date so one needs to click countless dates to reach out to the desired item of information through a cumbersome & complex exercise. It is understood that it was almost impossible for Complainant to retrieve information of 7 worthy members from 64 browser links / folders and even PIO PA frankly admitted that he cannot collect such information unless assisted by a team of assistance for weeks and weeks.

3. As already observed that Sect. 4 of PT & RTI Act 2013 provides only the contents or material relating to any public body required to be pro-actively disclosed on official website. Whereas Sect. 8 describes the mode of disclosure to be easily accessible for citizens. Both Sections 4 & 8 of the Act need to be read in conjunction with each other to comprehend the wisdom of legislature of "*Pro-Active Disclosure*". Consequently, it was directed vide order dated 23.01.2023 that the website of PA be improved accordingly with the

help of technical interventions like *searches, filters and links* to make it user friendly. s

4. In above background we were waiting for PIO's positive response of compliance of above directions based on statutory provisions of law but he has filed yet another application twisting the constitutional provisions in a manner to nullify the constitution itself.

5. Article 69 r/w Article 127 of the Constitution no doubt provides immunity to the proceedings of Provincial Assembly along-with acts of officers/officials of assembly from being called in question before any court of law but PIO's claiming immunity for Punjab Assembly from RTI Law on the basis of said constitutional provisions is irrelevant and disappointing. PT & RTI Act 2013 was a historic legislation of Punjab Assembly to implement fundamental right to information guaranteed under Article 19/A of the Constitution of Pakistan. The Provincial Assembly in its wisdom was pleased to vividly place itself under the definition of public body at sub-clause (v) of clause (h) of Sect. 2 of PT & RTI Act 2013, thereby making itself amenable to said Act. In this background the far-fetched argument of PIO PA is nothing but an attempt to subvert the sacrosanct statutory provisions and to spoil the credit of Punjab Assembly.

6. PIO's yet another flight of imagination is based on Article 67 r/w Article 127 of the Constitution which empowers the Punjab Assembly to frame rules of business. PIO maintained in his application that since Rules of Procedure of the Punjab Assembly 1997 were framed in exercise of powers conferred under above-mentioned constitutional provisions, therefore, said Rules are supreme and shall take precedence over PT & RTI Act 2013 making the Punjab Assembly immune from the enforcement of RTI Law. PIO forgot to notice Sect. 24 of PT & RTI Act 2013 whereby legislature (Punjab Assembly) declared that the said Act shall take precedence over any other law in respect of access to information from any public body obviously including Punjab Assembly vide Sect. 2(h)(v) of the Act. It is also a matter of common knowledge that Rules are termed as subordinate legislation and can never prevail upon laws (including PT & RTI Act 2013) being primary legislation. In our view the Rules of Procedure of the Punjab Assembly 1997 shall operate if a citizen opts for access to information under said Rules through private communications made to Speaker as provided under Rules 59 & 235-A of the Rules ibid.

However, in case of any RTI request filed under PT & RTI Act 2013, the procedure provided under said Act shall take precedence as envisaged u/s 24 of the Act. It is unfortunate that PIO PA has twisted the constitutional provisions in sharp contradiction to the plain interpretation of the Constitution at the risk of causing damage to the prestige of Punjab Assembly for the historic legislation to implement fundamental right to information.

7. *We are concerned with a growing trend for quite some time that public bodies established under the constitution have started claiming immunity from RTI law on the ground that they are constitutional bodies and their rules are also framed in exercise of powers conferred under the Constitution. For example, Punjab Public Service Commission (PPSC) in RTI Complaint titled "Nouman-ul-Haque vs PPSC", wherein we decided solved answer sheets as sharable public information vide order dated 01.02.2021, resisted tooth and nail the enforcement of PT & RTI Act 2013 on the same ground. It was ironically maintained that PPSC being a constitutional body is bound to follow its rules instead of Article 19/A of the Constitution r/w PT & RTI Act 2013 for access to information by citizens. Recently a private member bill introduced in the Senate also seeks amendment in the Pakistan Information Act 2017 to exclude the Parliament from the definition of public body on the ground that it is also a constitutional body, therefore, immune from the operation of RTI Law. Now PIO PA is also defying the operation of historic legislation of Punjab Assembly on the ground that Rules of Procedure of the Punjab Assembly 1997 were framed in exercise of powers conferred under the constitution, therefore, Punjab Assembly is immune from operation of RTI Law. In our view, a constitutional body incur greater responsibility to protect the sanctity of the Constitution than an ordinary public body. All above-mentioned instances of claims of "Constitutional Immunity" amount to subversion of constitution and not sustainable in the eyes of law and constitution.*

8. Once again coming back to the substantive order dated 23.01.2023 in RTI Complaint of Sadia Mazhar, it is observed that the information of the parliamentary work of worthy MPAs (call attentions, questions, bills, speeches etc.) is scattered under 64 browser links / folders of the website of PA, in a static or pdf form. On opening of each browser link / folder one sees only dates without description of information lying underneath. One has to obviously click

each date one by one to reach out to the desired information at the cost of considerable time. The said state of affairs certainly makes it almost impossible for an individual to retrieve entire information of the parliamentary work of any worthy member from all browser links / folders. In our view, it is not a big job to link each item of parliamentary work of any worthy member in any browser link / folder with his / her relevant profile page. In addition by providing maximum *searches* and *filters,* both session-wise & department-wise, the website can be made user friendly without major re-structuring. This will not only fulfil the mandatory requirement of law but will also contribute for participatory democracy.

Final Direction:

9. As a result of above discussion, the fresh application based on twisted interpretation of constitutional provisions is hereby dismissed, re-iterating the earlier direction to improve the website making the information easily accessible. It shall be appreciated if the task is completed before next elections of Punjab Assembly to enable the citizens to reap the fruits of transparency by knowing the performance of their chosen representatives. The RTI Complaint finally stands disposed of in the light of above observations and directions.

Announced.

(Mahboob Qadir Shah)
Chief Information Commissioner

(Mr. Shaukat Ali)
Information Commissioner

(Dr. Arif Mushtaq Chaudhary)
Information Commissioner