

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

W.P No.8360 of 2023

Muhammad Riaz Khan Fatyana & 29 others

Versus

Speaker National Assembly & others

J U D G M E N T

Date of Hearing.	19-05-2023
PETITIONERS BY:	M/s Syed Ali Zafar, Muhammad Azhar Siddique, Zahid Nawaz Cheema, Sara Majeed, Fareeha Arif, Mehak Zafar, Muneeb Zahid, Rabbiya Ali, Sikandar Sultan, Jahanzeb Sukhera, Abdullah Arif, Ch. Sabir Ali, Ali Raza and Rana Muhammad Afzal Razzaq Khan, Advocates.
RESPONDENTS BY:	Barrister Lamia Niazi, Advocate for respondents No.1 & 2. Mirza Nasar Ahmad, Addl. Attorney General. Mr. Asad Ali Bajwa, Deputy Attorney General with Ch. Umar Hayat, Director Law, ECP and Bushra Rasheed, Senior Law Officer ECP and Hafiz Adeel Ashraf, Asst. Law Officer, ECP.

Shahid Karim, J:-. This litigation has its provenance in a notice of resolution dated 08.03.2022 given by the joint opposition to table a vote of no confidence against Mr. Imran Khan, the then Prime Minister of Pakistan under clause 1 of Article 95 of the Constitution of Islamic Republic of Pakistan, 1973 (“**The Constitution**”) read with rule 37 of the Rules of Procedure and Conduct of Business in the National Assembly, 2007 (“**the 2007 Rules**”). There is not much daylight between the parties on the basic facts which form the background of these three petitions (**W.P No.8360 of 2023, W.P No.11705 of 2023 and W.P No.11707 of 2023**) which have commonality of questions of law regarding legality or otherwise of the resignations submitted by the

petitioners and which were accepted by the Speaker National Assembly (**“the Speaker”**). The notification in respect of the petitioners in W.P No.8360 of 2023 was issued on 22.01.2023 and consequent upon that, the Election of Pakistan (**ECP**) issued a notification dated 25.01.2023 de-notifying certain Members of National Assembly which are now the petitioners before this Court. In W.P No.11705 of 2023 and W.P No.11707 of 2023 the impugned notifications are dated 20.01.2023 and 17.01.2023 respectively (**“The Impugned Notifications”**).

2. The facts are refreshingly simple and are stated below:

- On 10.04.2022 the No Confidence Motion was passed against the former Prime Minister Mr. Imran Khan. On 11.04.2022 on the directions of the leaders of Pakistan Tehreek-e-Insaf (PTI) with Mr. Imran Khan as its Chairman, 123 Members of the National Assembly including the petitioners submitted their resignations *en bloc*. On 13.04.2022 the then Acting Speaker accepted all 123 resignations under rule 43 of the 2007 Rules. The Deputy Speaker resigned on 16.04.2022 and Raja Pervaiz Ashraf was elected as the Speaker National Assembly. On the same date, the newly elected Speaker reviewed and reversed the decision of the Acting Speaker Mr.

Qasim Suri and directed the National Assembly Secretariat to resubmit the cases of resignations for verification in the light of rulings of the superior courts and rule 43 of the 2007 Rules. On 30.05.2022 the petitioners were invited in the Chamber of Speaker to verify their resignations and it is admitted on all hands that the petitioners did not appear before the Speaker and the matter was left undecided. There are intervening events which need not be adverted and which relates to resignations of 11 Members and their acceptance. Those Members are not before this Court. While PTI as a party stuck to its stance that the resignations had lawfully been accepted by the Acting Speaker on 13.4.2022, it brought a constitutional petition W.P No.2892 of 2022 before the Islamabad High Court. This was brought by the Secretary General of PTI seeking setting aside of the order of Speaker National Assembly in reviewing the earlier decision of the Acting Speaker dated 13.4.2022. The present petitioners were not petitioners before Islamabad High Court and so did not seek the relief which was being asked for by the Secretary General of the party and it is so contended by the learned counsel for the petitioners that this clearly showed that the petitioners had no intention of

tendering resignations which was merely done on dictation of higher office bearers of the party. In short, according to the petitioners, they were merely following the directions of the party leadership which had made a political decision for the resignations to be tendered and which would, in the opinion of the party leadership, have a spiral effect leading to elections and a fresh mandate from the people of Pakistan. The constitutional petition was dismissed. In doing so, the previous judgment of Islamabad High Court reported as Syed Zafar Ali Shah v. Federation of Pakistan through Secretary Ministry of Law, Justice and Parliamentary Affairs, Government of Pakistan (PLD 2015 Islamabad 156) was reiterated. That judgment addressed the broader question regarding prerequisites for acceptance of a resignation by the Speaker National Assembly which we shall see is a well-worn path. More significantly the Islamabad High Court refused to set aside the decision of the Speaker National Assembly in reviewing the earlier decision dated 13.4.2022 by the then Acting Speaker of the National Assembly. Further the Islamabad High Court concluded that the then Acting Speaker National Assembly had, on 13.4.2022, accepted the

resignations without following the principles laid down in the precedents of the superior courts as well as the 2007 Rules and thus the notification dated 13.4.2022 was issued in violation of the Constitution and those precedents. The Speaker National Assembly has also accepted the judgment handed down by the Islamabad High Court and makes a reference to that judgment in the letters which were addressed to the petitioners calling upon them to visit the Chamber of the Speaker National Assembly and to verify their resignations individually. On 15.12.2022 the Vice Chairman PTI, Shah Mehmood Qureshi wrote a letter to the Speaker calling upon him to accept the resignations of the Members of the National Assembly belonging to PTI. A reply was sent by the Speaker National Assembly to the Vice Chairman PTI on 22.12.2022 (**the Speaker's Reply**) and that reply had some significant features and is set out below:

“I am directed to refer to the letter dated 15th December, 2022 on the above subject and to state that verification of resignations is settled principle and indispensable according to the Rules of Procedure and Conduct of Business in the National Assembly, 2007, parliamentary practices, Ruling of the Chair and decisions of superior courts. In this regard Rule 43 of the Rules of Procedure and Conduct of Business in the National Assembly, 2007 is reproduced here for ready reference:-

43. Resignation of seat. (1) A member under clause (1) of Article 64 may, by writing under his hand addressed to the Speaker, resign his seat.

(2) If,-

(a) A member hands over the letter of resignation to the Speaker personally and informs

him that the resignation is voluntary and genuine and the Speaker has no information or knowledge to the contrary; or

(b) The Speaker receives the letter of resignation by any other means and he, after such inquiry as he thinks fit, either himself or through the National Assembly Secretariat or through any other agency, is satisfied that the resignation is voluntary and genuine, the Speaker shall inform the Assembly of the resignation:

Provided that if a member resigns his seat, when the Assembly is not in session, the Speaker shall direct that intimation of his resignation specifying the date of the resignation be given to every member immediately.

(3) The Secretary shall, after the Speaker satisfies himself that the letter of resignation is voluntary and genuine, cause to be published in the Gazette a notification to the effect that the member has resigned his seat and forward a copy of the notification to the Election Commission for taking steps to fill the vacancy thus caused.

(4). The date of resignation of a member shall be the date specified in writing by which he has resigned or if no date is specified therein the date of receipt of such writing by the Speaker.

2. The Islamabad High Court vide judgment 2015 PLD 156 and again in W.P. 2892/2022 upheld the decisions of the Speakers regarding not accepting resignations of Members of the National Assembly without verification thereof. The Supreme Court of Pakistan has seconded the said decision of the Islamabad High Court. It has been held that before accepting a resignation of a member the Speaker has to satisfy himself regarding genuineness and voluntary character of the resignation.

3. The MNAs of Pakistan Tehreek-e-Insaf who submitted their resignations on 11th April 2022 were invited in the Chamber of Honourable Speaker vide this Secretariat letters dated 30th May, 2022 for verification of their resignations from 6th to 10 June, 2022 in pursuance of paragraph (b) of sub-rule (2) of rule 43 of the Rules of Procedure and Conduct of Business in the National Assembly, 2007, but none of them came for verification of their resignations.

4. In view of above, Honourable Speaker shall again invite these MNAs in his Chamber one by one for verification of their resignations in pursuance of paragraph (b) of sub-rule (2) of rule 43 of the Rules of Procedure and Conduct in the National Assembly, 2007, please.”

➤ The first feature which strikes the reader is regarding the reliance of the Speaker National Assembly on rule 43 of the 2007 Rules as well as the judgment of the Islamabad High Court in

Zafar Ali Shah. In so relying the Speaker National Assembly was of the considered view that the resignations ought to be verified and for the purpose an inquiry was a *sine qua non* on the part of the Speaker National Assembly and which was yet to be held and for which the Members are required to be present before the Speaker National Assembly to individually and personally verify the tendering of resignations. In paragraph 4 of this reply sent on his behalf the Speaker National Assembly has indicated that *“Honourable Speaker shall again invite these MNAs in his Chamber one by one for verification of their resignations in pursuance of paragraph (b) of sub-rule (2) of rule 43 of the Rules of Procedure and Conduct of Business in the National Assembly, 2007, please.”*

- It is the case of the petitioners in W.P No.8360 of 2023 is that they had signified their intention to withdraw their resignations but without adverting to this aspect the impugned notification was issued by the Secretariat of the National Assembly on 22.01.2023. In the other two petitions viz. W.P No.11705 of 2023 and W.P No.11707 of 2023 the petitioners do not contend that they withdrew their resignations prior to issuance of the impugned notifications. This is

the only distinction amongst these constitutional petitions.

- During the interregnum, a delegation of PTI met with the Speaker National Assembly on 29.12.2022 to impress upon the Speaker for individual verification of the resignations as a legal requirement and further to hammer in the importance of individual verification prior to acceptance of the resignations. Apparently by this, PTI had decided in its political wisdom to join the National Assembly and required its Members to attend the proceedings of the National Assembly and to play its part as the Opposition in the House. The petitioners in W.P No.8360 of 2023 contend that the letters of withdrawal of their resignations were sent to the Speaker National Assembly by the petitioners through an email at 8:30 a.m. on 23.01.2023 and the Secretary of the National Assembly was also informed that the petitioners had withdrawn their resignations. This was also done through a *WhatsApp* message. They also visited the Secretary of the National Assembly on 23.01.2023 and filed an application regarding withdrawal of their resignations. Despite this, the Speaker National Assembly accepted the

resignations and consequently the impugned notification was issued by the Secretary.

3. The facts adumbrated lead to the ineluctable conclusion that the Speaker National Assembly did not complete the inquiry regarding the tendering of resignations by the Members of PTI and no decision was made in this regard as none has been placed on record. The only document from which this decision can be inferred is the impugned notification issued by the Secretariat of the National Assembly. The further conclusion that can be drawn is that the Speaker National Assembly contrary to his own showing as reflected in various letters written to the Members as well as to the Vice Chairman PTI, proceeded to accept the resignations and directed the Secretary of the National Assembly to issue the impugned notifications. In the letter dated 30.05.2022 issued by the Addl. Secretary, National Assembly Secretariat to the individual members who are now the petitioners before this Court, it was stated that:

“I am directed to refer to the letter dated 11-4-2022 regarding your resignation from the seat of the National Assembly and to state that in pursuance of paragraph (b) of sub-rule (2) of rule 43 of the Rules of Procedure and Conduct of Business in the National Assembly, 2007, Honourable Speaker has desired to invite you in his Chamber for inquiry regarding voluntary character and genuineness of aforesaid resignation letter before its acceptance.

2. *You are, therefore, requested to call on Honourable Speaker on Tuesday, the 7th June, 2022 at 12:05 p.m in his Chamber, please.”*

4. Doubtless, by the above letter, Speaker National Assembly set in motion the process for an inquiry into the submission of resignations from individual members and relied upon rule 43 of the 2007 Rules in this regard. This was followed by reiteration of the same principle in the Speaker's reply on 22.12.2022 to the Vice Chairman PTI which has already been set out above. This stated position of the Speaker National Assembly was firstly reflected in the act of reviewing the earlier notification dated 13.4.2022 by which the Acting Speaker of the National Assembly had accepted the resignations of 123 members of PTI. In sum, there is absolutely no doubt as inferred from the documents explicated above that Speaker National Assembly was of the firm view that an inquiry into the genuineness of the resignations was a prerequisite and must be completed by the Speaker before a decision was reached with regard to the resignations. The impugned notifications issued by the Secretariat of the National Assembly are contrary to the stated position of the Speaker National Assembly as also offend the precedents of the superior courts as well as the obligation cast upon the Speaker National Assembly in terms of paragraph (b) of sub-rule (2) of rule 43 of the 2007 Rules.

5. In resolving the controversy, Article 64 of the Constitution and rule 43 of the 2007 Rules would be engaged. Article 64 of the Constitution provides that:

“64. (1) A member of Majlis-e-Shoora (Parliament) may, by writing under his hand addressed to the Speaker or, as the case may be, the Chairman resign his seat, and thereupon his seat shall become vacant.

(2) A House may declare the seat of a member vacant if, without leave of the House, he remains absent for forty consecutive days of its sittings.”

6. At first blush, Article 64 is couched in simple terms and states that a member of Parliament may by writing under his hands addressed to the Speaker or to the Chairman of the Senate resign his seat. There could not be a simpler procedure for an act of resignation by a member of the Parliament. Yet in the peculiar political landscape of Pakistan, the superior courts have intervened to carve out rules which cast an obligation on the Speaker National Assembly to undertake an inquiry into the circumstances which led to the tendering of a resignation by a member of the Parliament who intends to resign his seat. These rules and the prerequisites so enunciated by the superior courts are now cast on a tablet of stone and this aspect is not disputed by the Speaker National Assembly and is clearly discernable from the missive that were exchanged between the Speaker National Assembly and the members as well as with the PTI leadership.

7. Rule 43 of the 2007 Rules provides that:

“43. Resignation of seat. (1) A member under clause (1) of Article 64 may, by writing under his hand addressed to the Speaker, resign his seat.

(2) If,-

(a) A member hands over the letter of resignation to the Speaker personally and informs him that the resignation is voluntary and genuine and the Speaker has no information or knowledge to the contrary; or

(b) The Speaker receives the letter of resignation by any other means and he, after such inquiry as he thinks fit, either himself or through the National Assembly Secretariat or through any other agency, is satisfied that the resignation is voluntary and genuine, the Speaker shall inform the Assembly of the resignation:

Provided that if a member resigns his seat, when the Assembly is not in session, the Speaker shall direct that intimation of his resignation specifying the date of the resignation be given to every member immediately.

(3) The Secretary shall, after the Speaker satisfies himself that the letter of resignation is voluntary and genuine, cause to be published in the Gazette a notification to the effect that the member has resigned his seat and forward a copy of the notification to the Election Commission for taking steps to fill the vacancy thus caused.

(4). The date of resignation of a member shall be the date specified in writing by which he has resigned or if no date is specified therein the date of receipt of such writing by the Speaker.”

8. Therefore, apart from the holding of the superior courts on this aspect, the Rules of Procedure and Conduct of Business in the National Assembly have also been enacted which oblige the Speaker National Assembly to conduct an inquiry to satisfy himself that a resignation is voluntary and genuine. This process has to be set in motion upon receipt of the letter of resignation and only upon completion of this process shall the Speaker inform the Assembly of the resignation. This obligation was sought to be performed by the Speaker National Assembly when it was suddenly terminated and the impugned notifications were issued by the Secretariat of the National Assembly. The fact that the Speaker failed in his duty

to comply with the terms of rule 43 is sufficient for the impugned notifications to be declared without lawful authority and of no legal effect.

9. The courts, however, put further constraints upon the Speaker National Assembly in accepting or rejecting the resignation of a member of the Parliament. These precedents have been handed down in the peculiar backdrop of the history of this country where resignations have been tendered or procured by the leadership of a political party sans independent decision-making on the part of an individual member. Not only that a reading of Article 64 would clearly show that its tenor refers to the resignation of an individual member. In our political history however, there have been instances where *en bloc* tendering of resignations has been taking place and this has led the courts to formulate prior conditions to be fulfilled for their acceptance.

10. Mirza Tahir Beg v. Syed Kausar Ali Shah and others (PLD 1976 Supreme Court 504) is a watershed case and has been followed in later judgments. It will not be necessary to refer to each judgment which dealt with the issue of resignations. I will only be referring to three major cases in which the question fell for determination. The consideration of case law therefore starts with *Mirza Tahir Beg*.

11. The facts which formed the background of the case and which led the Supreme Court to lay down the rules to be followed by the Speaker National Assembly are peculiar in nature and merely signify one of numerous instances in which resignations may be tendered and so enhances the importance of an inquiry to be conducted.

12. The appellant Mirza Tahir Beg was the President of Lahore Branch of Pakistan Peoples Party (PPP) and his resignation was received by the Speaker of the Punjab Legislative Assembly. The resignation was accepted and a notification was duly issued. A report was later on lodged by one Mirza Aziz Ullah who was the cousin of the appellant and it was stated that the appellant had been kidnapped earlier in the day and had been forced to resign his seat from the Provincial Assembly. On 17.2.1974, Mirza Tahir Beg sent telegram to the Speaker as well as the Prime Minister, the Governor and other authorities complaining that he had been made to sign his resignation and there was no intention on his part to resign his seat. It was under these circumstances that the Supreme Court analyzed the question regarding validity of a resignation. The following observations of the Supreme Court will be reproduced *in extenso* in order to appreciate the circumstances under which the holding of the Supreme Court was handed down:

“In the instant case, the Speaker if I may say so with respect, treated the whole matter casually. Apart from the mechanical endorsement on the resignation brought to him by Syed Kausar Ali Shah, he remained insensitive to the

extraordinary circumstances surrounding the resignation. The appellant is a resident of Lahore and in the normal course should have himself handed over his resignation to the Speaker, or should have dispatched it to the Speaker through ordinary mail. No question appear to have been asked from Syed Kausar Ali Shah as to how he secured the resignation and whether he was authorised to present it before the Speaker. Ordinarily, this should have raised curiosity if not suspicion in the mind of the Speaker.

Needless to say that the Speaker in a parliamentary form of Government holds an office of highest distinction and has the sole responsibility cast on him of maintaining the prestige and the dignity of the House and each and every member composing the House. It is precisely for this reason that the Constitution has ordained that a resignation by a member is effective only when it is "addressed" to the Speaker: it was not intended to be an idle formality. To relinquish a parliamentary seat by resignation is a grave and solemn act. By and large our political institutions are fashioned on the pattern of those obtaining in England and it is a settled principle of parliamentary law in England that a member of Parliament after he is duly chosen, cannot relinquish his seat by unilaterally resigning his membership. In order to evade this restriction a member who wishes to relinquish his seat, accepts office under the Crown which legally vacates his seat. This is enough to underline the gravity of the matter. (See May's Parliamentary Practice, 18th Edn., p. 45).

The Speaker in the instant case laboured under the false notion that he need not look beyond the surface of the document presented to him by Syed Kausar Ali Shah, particularly when the appellant did not disown his signature on it. Unfortunately, this stand was endorsed by the High Court while dismissing Writ Petition No. 286/74 moved by the appellant and in support of its decision, the High Court relied on this Court's judgment in A.K. Fazalul Qadir Chuudhry v. Shah Nawaz. In that case a member of the National Assembly addressed his resignation to the President instead of the Speaker. Like the appellant herein, he did not deny his signature on the resignation. Later, his resignation was forwarded by the President to the Speaker who acting on it declared the seat of the resigning member vacant resulting in a bye election. With reference to Article 107 of the 1962 Constitution which is in pari materia with Article 64 of the present Constitution. But what the learned Judges missed was that it was held by this Court that the communication to the Speaker "is an essential ingredient of the application of Article 107 of the Constitution". The Court went on to observe in that case "that the transmission of the resignation to the Speaker in the absence of express authorisation by the member concerned was not valid" and therefore the notification by the Speaker declaring the vacancy and the resulting bye election were set aside with one sweep as being without lawful authority.

A fortiori in a case where the genuineness or validity, of resignation is challenged or ex facie is doubtful, the Speaker shall be under a duty to enquire; into the matter, before he allows the resignation to take effect. This is notwithstanding that the resignation takes effect automatically once it reaches the Speaker for it is implicit

in the provision that the resignation is genuine and voluntary and was intended to reach the Speaker. This interpretation accords with the dictates of justice, equity and good conscience. The Courts, have always presumed the existence of such implicit power in the appropriate authority. See Craies on Statute Law, 6th Edition, page 111, under the caption "Implication". Where an enabling or remedial statute omit details, the treatise mentioned numerous cases in which omission relating to matters of procedure were supplied by the rule of liberal construction. Similarly, in Article 168 under the caption "Implications" in the Statutory Construction by Crawford, 1940, it is stated :-

"The implications and intendments arising from the language of a statute are as much a part of it as if they had been expressed One may find numerous situations where statutes have extended by implication. Thus, a statutory grant of a power, privilege or property carries with it by implication everything necessary to its enjoyment or exercise."

*On the above analysis therefore, I have no doubt in my mind that Speaker had the right and duty under the Constitution to satisfy himself as to the, genuineness and the validity of the resignation by a member, before it is allowed to take effect. As a necessary corollary of that, the Speaker will have to make proper enquiry, if there appears anything tending to create any doubt with regard thereto. **What will be the magnitude of the enquiry or whether, in a particular case, any such enquiry will at all be necessary, will depend on the facts of each case and it is not possible nor even desirable to lay down a criterion for general application. For example, if in the instant case, the appellant had himself appeared and presented his resignation to the Speaker and there was nothing to show that it was involuntary, then there is hardly any need for an enquiry. If on the other hand the resignation is not presented personally, but is sent through a messenger, as in the instant case, then Speaker will have to further satisfy himself that the transmission is by an authorized person.** If for instance, a resignation, otherwise complete, but is stolen from the drawer of the member by another person who actually, presents it to the Speaker, it will not be ineffective for the purpose of Article 64. In the case of Syed Shah Nawaz noticed already, one of the defects which had rendered the resignation ineffective was that the then President who actually transmitted the resignation to the Speaker had no, authority from Syed Shah Nawaz to do so.*

"...The argument conveniently overlooks the fact that under the Constitution as interpreted in the earlier part of this judgment, the resignation could not have taken effect unless it was voluntary and intended to reach the Speaker in a manner chosen by the appellant himself. There is nothing whatever, to show that the Speaker had satisfied himself about either of two conditions, and therefore failed to do what he was required by law and the Constitution as interpreted above, to do. Thus there was no question of his becoming functus officio."

13. The first principle that was laid down was that the resignation has to be submitted by the member himself and if that is not the case then the acceptance of the resignation by the Speaker in the absence of expressed authorization by the member concerned was not valid. That the Speaker was under a duty to inquire into the matter before he allows the resignation to take effect in order to gauge and determine the genuineness or validity of the resignation. Further the Supreme Court held that there was no doubt that an inquiry was an essential part of the acceptance or rejection of the resignation and the magnitude of the inquiry was in the discretion of the Speaker and will depend on the facts of each case. In case the member had himself appeared and presented his resignation, perhaps the Speaker was not required to draw an inference that the resignation was not voluntary and so there was hardly any need for an inquiry. In case the resignation is not presented personally and is sent through a messenger, the Speaker is required to satisfy himself that the transmission is by an authorized person. A very interesting incidence was also quoted by the Supreme Court which could be one of the myriad of instances that could take place in our political lives and which would tend to cast doubt on the validity and genuineness of a resignation. Finally it was concluded by the Supreme Court that resignation could not take effect unless it was voluntary and intended to

reach the Speaker in a manner chosen by the member of the Parliament himself. In the present case the Speaker National Assembly himself harbored doubts regarding genuineness and validity of the resignation and did call upon the individual members to appear before him for verification. Moreover, the resignations were not submitted by the members personally and it can be inferred that those members did not choose the manner in which the resignations were submitted to the Speaker National Assembly.

14. Mian Muhammad Nawaz Sharif v. President of Pakistan (PLD 1993 Supreme Court 473) is a case whose facts have closer affinity to the facts in the present case. One of the questions was regarding tendering of resignations by the members of the Parliament *en bloc*. It was noted by the Supreme Court of Pakistan that the majority of resignations were obtained by persons of authority and power in political life and delivered to the President. It was alleged by the learned counsel for the petitioners that the resignations had been collected by the leaders of the parties beforehand and utilized at the relevant time and delivered to the President. The Supreme Court further noted that “*there was an on-going practice among the political parties to obtain resignation of the members. In the absence of any effective and proper law for controlling horse-trading and floor-crossing, the*

political parties have adopted a method of controlling them by obtaining resignation from each member which may be utilized at their own convenience.” In this respect, it was observed that:

“Resignation is a voluntary act of a member or person, submitted with the intention to relinquish, relieve or quit that particular post or position and to vacate the same. It cannot be a two-way traffic or an act to use it for any purpose liked by any third person. The resignations obtained by any person politically or officially in authority or not from the members and delivery to a third party other than the person authorised to receive them, with the intention to achieve political gains and create a ground for dissolution of the Assembly can neither form basis for such action nor be justified by any principle of law, morality and ethics.

15. Thus, there was no doubt in the estimation of the Supreme Court that a resignation was a voluntary act of a member submitted with the intention to relinquish and to resign his seat. Further the resignations obtaining by a person politically or officially in authority from the members and delivered to a third party with intention to achieve political gains and create a ground for dissolution of the Assembly can neither form basis for such an action nor such resignations would have any validity. With regard to the duty cast upon the Speaker it was stated that:

“To relinquish the parliamentary seat by resignation is a grave and a solemn act”. The letter of resignation should be signed by the member voluntarily and submitted personally to the Speaker or transmitted through duly authorized person for delivery to the Speaker. In A.K Fazlul Quader Chaudhry’s case the resignation of Shah Nawaz was rendered ineffective as it was transmitted by the President to the Speaker without any authority from him (Shah Nawaz). The Constitution ha thus cast onerous duty on the Speaker to make inquiry into the genuineness and voluntary nature of the resignation and also that it has come through an authorised person, if not submitted personally. The Speaker can neither refuse to discharge this duty nor can any authority bypass him. The solemnity and sanctity attached to the resignation by a member of the National Assembly shall be eroded if it is made in contravention of the provisions of the Constitution and the rules and

furthermore if they are intended not to vacate the seat, but for any other purpose, ulterior, oblivious or clandestine. Such letters of resignation which do not have any validity or sanction under law can hardly be accepted muchless by a person of high position like the President to assess the confidence the members have in the Assembly and also to assess a situation whether the Government can be run in accordance with the Constitution. Even after tendering resignations of 88 persons the majority members were still in the Assembly.'

16. Let me emphasis the crucial observations that “**furthermore** if they are intended not to vacate the seat, but for any other purpose, ulterior, oblivious or **clandestine**”. These observations are so aptly applicable to the present cases which have uncanny similarity. The petitioners acted mechanically and reflexively on the command of party leaders with the object of forcing fresh elections.

17. This was followed in another judgment reported as Abdul Razique Khan v. The Province of Sindh through Chief Secretary Govt. of Sindh Karachi and 3 others (PLD 1994 Supreme Court 79). This case too related to the tendering of resignation of a member of Sindh Provincial Assembly who filed a petition in the High Court of Sindh stating that his resignation was not voluntary and thus the notification regarding his resignation was *ultra vires*. While relying upon the earlier case of *Mirza Tahir Beg*, the Supreme Court had this to say:

“9. The comments reproduced from the written statement of the Acting Speaker clearly show that the inquiry which was anticipated and which was withholding action on the resignations already submitted was with regard to determination whether these resignations were voluntary or genuine. Just by comparing the signatures and holding it to be of the appellant, it could not be deduced that the

resignations were voluntary and genuine in the sense of being intended to be resignations. Therefore, the inquiry which was required, which was anticipated, which had, in any case to take place under the law never took place at the hands of the Acting Speaker. Anybody receiving the resignation has a duty to ascertain personally whether it is signed by the man resigning, whether it is voluntary and whether it is intended to act as a resignation. Unless all the three requirements of the resignation are satisfied it is dangerous in the political milieu in which we are living to give effect to such resignations. Mere prolonged absence of the person resigning, his non-appearance after notice or his absence from the proceedings even after notice could not prove these requirements. Unless these are positively proved, the resignations cannot be given effect to as resignations. The Rules of Procedure drawn up by the National Assembly in the matter of dealing with resignations are fairly exhaustive and consistent with the law laid down by the Supreme Court of Pakistan in the cases of Mr. A.K. Fazalul Quader Chaudhury PLD 1966 SC 105 and Mirza Tahir Beg PLD 1976 SC 504. The Provincial Assembly Procedure Rules have so far no provision on the subject.”

18. It can be seen from the observations set out above that the Supreme Court once again emphasized the need for verification of the resignations as to their voluntary nature and genuineness. It was stated that it was the duty of the Speaker National Assembly to ascertain personally whether it was signed by the member who had resigned his seat, whether it was voluntary and whether it was intended to act as a resignation. Unless three requirements of the resignation were satisfied, it was dangerous to set down a general rule that the resignation must be accepted once it is received by Speaker National Assembly without more. None of these requirements of the resignations was fulfilled by the Speaker National Assembly while accepting the resignations of the petitioners. At the time when the Supreme Court of Pakistan decided *Abdul Razique Khan*, and it has been noted in the paragraph reproduced

above, there were no rules of procedure drawn up by the National Assembly in the matter regarding resignations. Now that the 2007 Rules have been enacted, the National Assembly has itself laid stress upon need for verification and for a proper inquiry to be conducted.

19. Lastly, I may allude to the case of *Zafar Ali Shah*, to which a reference has been made above which robustly deals with the survey of case law on the issue regarding proper course to be adopted in accepting or rejecting a resignation. That judgment also reiterated the conditions set down by the Supreme Court of Pakistan in prior cases and takes stock of the peculiar political circumstances in which politics are played out in this country to hold that an inquiry by the Speaker National Assembly would serve a public purpose and strengthen the political process and constitutional democracy. A common thread that permeates the precedents cited above is that the relinquishment of a parliamentary seat by a resignation is a grave and solemn act and must not be taken lightly and casually. Undoubtedly, the rights of the voters of the constituency are inextricably involved in the entire process.

20. Another factor which would impact the impugned notifications and which ought to have been considered in the peculiar circumstances of the case was that 2023 is an election year and very little time would intervene between acceptance of resignations and the holding of

fresh elections. Will it be sensible for huge funds to be expended on bye-elections to 123 National Assembly seats. There are circumstances of which judicial notice may be taken that the Federal Government suffers from severe financial and economic constraints and it would not be a proper exercise of discretion to accept the resignations at this juncture which would put enormous pressure on the public exchequer. In the ultimate analysis the people of Pakistan would have to suffer on this account who would ultimately bear the economic brunt. This may not have been a conclusive factor yet the Speaker National Assembly in his political wisdom could have abstained from accepting the resignations while taking into account this additional factor.

21. The learned counsel for the Speaker raised a flanking rather than frontal attack on a challenge to the Speaker's act. This may receive a short shrift. Firstly, the challenge is on the basis of 2007 rules, which are statutory, and their contravention by the Speaker. Secondly, this Court is only concerned with reviewing the process by which the decision was reached and not on the merits. The latter is the exclusive domain of the Speaker. Third, this question has been authoritatively determined in Muhammad Azhar Siddique v. FBR (PLD 2012 SC 774).

22. In view of the above, these petitions are allowed in the following terms:

- a. The impugned notifications challenged in these petitions and issued by the Secretariat of the National Assembly purportedly having been issued with the concurrence of the Speaker National Assembly are held to be without lawful authority and of no legal effect having been issued in contravention of the provisions of the Constitution, the 2007 Rules of the National Assembly and the judgments of the superior courts.
- b. As a consequence, the impugned notifications issued by the ECP are also set aside having been issued without lawful authority.
- c. The Speaker National Assembly shall complete the process of inquiry initiated by him. He shall call upon the petitioners personally and for the purpose two opportunities would be provided to each petitioner to appear before the Speaker National Assembly for verification of their resignations. A clear inference not only from a reading of rule 43 of the 2007 Rules as well as the precedents of the superior courts is that while taking any decision the Speaker National Assembly shall pass an order which would reflect application of mind on each individual resignation with regard to which the inquiry is conducted by him. It is also made clear that the petitioners may withdraw the resignations before the inquiry is concluded and this

opportunity shall be afforded to each member by the Speaker National Assembly at the very outset. This is in consonance with the holding of Islamabad High Court in *Syed Zafar Ali Shah*, on which the Speaker has relied upon himself. The petitioners may also signify their intent to retract / withdraw the resignations by informing the Secretary, National Assembly in writing whereupon the Secretary shall make arrangements for them to attend the sittings of the National Assembly as members. Thereupon the resignations shall become ineffective.

(SHAHID KARIM)
JUDGE

Approved for reporting.

JUDGE

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Rafaqat Ali