

IN THE SUPREME COURT OF PAKISTAN
(Review Jurisdiction)

PRESENT

Mr. Justice Sh. Riaz Ahmed, CJ
Mr. Justice Qazi Muhammad Farooq
Mr. Justice Mian Muhammad Ajmal
Mr. Justice Syed Deedar Hussain Shah
Mr. Justice Abdul Hameed Dogar

**Civil Review Petition No.103 of 2002 in
Constitution Petition No.1 of 2002**

(On review from the order dated 10.4.2002 of this Court passed in Constitution Petition No.1 of 2002)

Supreme Court Bar
Association of Pakistan ... Petitioner

Versus

Federation of Pakistan
and others ... Respondents

For the petitioner : Mr.Hamid Khan, ASC

For the respondent : Not represented

Date of hearing : 28.10.2002

ORDER

SH.RIAZ AHMED, CJ.- This Review Petition is directed against an order of this Court dated 10th of April 2002 whereby the Constitution petition filed by Supreme Court Bar Association of Pakistan and others assailing the appointment of Judges in the Supreme Court of Pakistan was dismissed.

2. This Review Petition was fixed for hearing on 28th of October 2002 when a request for adjournment was received on behalf of Mr.Hamid Khan, ASC which was moved by Mr.Mehmood ul Islam AOR stating therein that counsel for the petitioner (Mr.Hamid Khan) regrets his inability to appear before this Court on the said date due to his unavoidable personal obligation and prior commitments. The Bench assembled in the Court to consider the aforesaid request for adjournment when surprisingly the Court noticed the presence of Mr.Hamid Khan ASC in Court room, who came at the rostrum and submitted an application under the caption “**STATEMENT AT THE BAR**”. In this application, a reference was made to a Resolution by the petitioner Association and the Pakistan Bar Council claiming to be the Apex representative bodies of the lawyers, inter alia, asserting that petitioner with a heavy heart declines to argue the Review Petition.

3. The contents of the application constitute gross contempt of this Court by using disparaging remarks about the Judiciary through the language which could not have been expected from the pen of the President of the Supreme Court Bar Association. Suffice it to state that Full Bench of the Supreme Court comprising 12 Judges upheld the taking of oath by Judges of the Superior Judiciary under the Oath of Offices (Judges) Order, 2000, and most of the Lawyers including senior lawyers like Mr.Khalid Anwar, Amicus Curia Mr.S.M.Zafar as well as the representatives of the Bar arguing the case were of the view that the Judges who declined to take oath did so according to their conscience and a heavy responsibility lay upon the Judges who took oath for dispensation of justice. The unanimous verdict of this Court in Zafar Ali

Shah's case was upheld in Review Petition. It was universally acclaimed and has been described as a landmark judgment. We had heard the main Constitution Petition for 11 days when Mr. Hamid Khan ASC and other counsel had argued the case at length and all the points raised at the Bar were dealt with by this Court in the judgment sought to be reviewed. We would have proceeded to take action against Mr. Hamid Khan ASC, President Supreme Court Bar Association of Pakistan, but it is always appropriate to exercise restraint. However, we reserve our right to take the proper action at an appropriate stage. Unfortunately, some Members of the Bar motivated by malice, extraneous considerations and for political reasons or ill will make irresponsible statements to tarnish the image of the Judiciary which is not at all in the supreme national interest. We would therefore, strongly deprecate and condemn this attitude on the part of Mr. Hamid Khan and considering the contents of this application scandalous, malicious and irrelevant, we order that paragraphs (I) and (ii) thereof be struck off. Needless to say that administration of system of justice rests upon the cooperation between judiciary and the Members of the Bar being the necessary limbs of the system. We have highest respect for the Bar and particularly for those Members who have shown respect to the Judiciary.

4. In fact, making of such attempts on the part of the Members of the Bar amounts to abuse of the sacred elected office. Such trend can neither promote the system nor would advance the cause of the administration of justice in the country. We may further observe that it is because of the judgment in Zafar Ali Shah's case and oath taken by Judges of the Supreme Court that a time schedule was given and the regime had to

hold elections and to go back to barracks after restoration of democratic institutions. We may further observe that in compliance with the judgment of this Court in Zafar Ali Shah's case, elections were held in the country on 10th of October 2002 and the process of transferring the power is in progress. We may further observe that Judges had taken oath under the Oath of Office (Judges) Order, 2000 and thus saved the independence of Judiciary as well as the system of administration of justice by preserving the Bar as well. Failing which, the Courts would have been replaced by altogether a new system unknown to a civilized society. This aspect of the matter has been discussed at length in the judgment of this Court in Zafar Ali Shah's case *supra* and the oath was taken in the highest national interest, therefore, we have deliberately not chosen to proceed against Mr. Hamid Khan in view of the interest of the Institution, but we reiterate that we reserve our right to proceed against Mr. Hamid Khan - contemner/signatory of the application referred to herein above.

5. Be that as it may, even otherwise no case for interference is made out on merits because we have gone through the contents of the Review Petition and each and every point canvassed in the Review Petition has already been dealt with in the judgment under review. Obviously, in our considered view the learned counsel knew this aspect very well and it is too well known that under the garb of review, this Court does not allow the re-hearing of the matter. Knowing fully well the consequence of the instant Review Petition the learned counsel has deliberately declined to argue the case motivated by malice, ill will and extraneous considerations. This is high time that counsel like Mr. Hamid Khan and

Members of the Bar should realize their responsibilities towards the courts and society as a whole because they hail from the legal profession which seeks redress of the grievances of the aggrieved persons from the Courts. If this state of affairs continues then God be with us and nothing more could be said about it. As a consequence of above, this Review Petition has no merit and the same stands dismissed accordingly.

CHIEF JUSTICE

Judge

Judge

Judge

Judge

Islamabad 28.10.2002

NOT APPROVED FOR REPORTING

Johnson