

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAJJAD ALI SHAH

Civil Appeal No.1729 of 2019.

*(Against the order dated 02.10.2019
passed by the Islamabad High Court,
Islamabad in ICA No.37 of 2019).*

Mirza Muhammad Nazakat Baig.

...Appellant(s)

Versus

Federation of Pakistan through Secretary Ministry
of Law & Justice, Islamabad and another.

...Respondent(s)

For the Appellant(s): Mr. M. Shahid Kamal Khan, ASC.

For the Federation: Mr. Sohail Mehmood, DAG.
 Mr. M. Kassim Mirjat, AOR.

For Pak. Bar Council: Mr. Zulfiqar Abbas Naqvi, ASC.
 Syed Rifaqat Hussain Shah, AOR.

Date of Hearing: 28.01.2020.

O R D E R

IJAZ UL AHSAN, J.- This appeal with the leave of
the Court arises out of a judgment of a Division Bench of the
Islamabad High Court, Islamabad through which an Intra
Court Appeal filed by the appellant was dismissed. The said
ICA arose out of a judgment of a Single Bench of the same
Court through which a constitutional petition filed by the
Appellant was dismissed.

2. Leave to appeal was granted by this Court vide its order dated 30.10.2019 which for ease of reference is reproduced below:

"It is contended by the learned counsel for the petitioner that Pakistan Bar Council is a Statutory body established under the Legal Practitioners and Bar Councils Act, 1973 and that such Bar Council registers the Bar Associations all over Pakistan, including the Supreme Court Bar Association and whatever the rules are framed for the Bar Associations, they are framed by the Pakistan Bar Council. He contends that Rule 9 of the Supreme Court Bar Association of Pakistan Rules, 1989, was amended by Notification of Pakistan Bar Council dated 18.08.2018 by which first proviso to clause (a) of Rule 9 was substituted by another proviso in which Islamabad and Rawalpindi were shown as one place among which the office of President of the Supreme Court Bar Association will be rotated. He contends that Islamabad is a Capital Territory while Rawalpindi is already part of the Province of the Punjab and thus these two cities cannot be clubbed together for providing a seat of one President rather Islamabad being a Capital Territory should have its own President and Rawalpindi being a part of Punjab should not be separated from it.

2. The submissions made by the learned counsel for the petitioner needs consideration. Leave to appeal is granted to consider inter alia the above submissions of the learned counsel. The appeal will be heard on the available record, however, the parties are allowed to file additional documents. As the matter pertains to the Bar Association Affairs, office is directed to fix the same expeditiously.

3. Notice be issued to the Attorney General for Pakistan under Order XXVIA CPC. Notice be also issued to the Secretary, Supreme Court Bar Association. Petitioner is directed to implead Supreme Court Bar Association as one of the respondents and file amended title of the case in this regard within a period of one week."

3. The brief facts necessary for decision of this lis are that the appellant who is a member of the Supreme Court Bar Association filed a constitution petition before the Islamabad High Court challenging the vires of Rule 9 (a) of the Supreme Court Bar Association of Pakistan Rules, 1989. Through the said rule while granting the right of Presidency of the

Supreme Court Bar Association to Islamabad Capital Territory on rotational basis, the territory of Rawalpindi was also bracketed with the Islamabad Capital Territory. The stance taken by the appellant was that Rule 9(a) was discriminatory inasmuch as the right of Presidency had been granted to every Province including Punjab, however, while Islamabad Capital Territory was also given such privilege, the area of Rawalpindi had been added with it which is a part of Punjab. Hence the amendment was discriminatory as a part of Punjab had been tagged with the Islamabad Capital Territory. On an objection was raised regarding competence and maintainability of a constitution petition in the matter. It was contended that the Supreme Court Bar Association of Pakistan Rules, 1989 were statutory in nature inasmuch as the rule in question was amended by the Supreme Court Bar Association, which amendment was subsequently notified by the Pakistan Bar Council. It was further argued that Pakistan Bar Council as well as Supreme Court Bar Association were statutory bodies owing their creation to the Legal Practitioners and Bar Councils Act, 1973 (**“Act of 1973”**). Hence a petition under Article 199 of the Constitution of Islamic Republic of Pakistan was competent. The learned Single Judge declined to interfere in the matter on the ground that the Legal Practitioners and Bar Councils Act, 1973 provides for various fora to its members for raising their grievances. He concluded that an adequate and efficacious remedy was available to the Appellant under the Act of 1973. Further, the Appellant could have raised his grievance

through the Islamabad Bar Council which he had failed to do. Therefore the petition was not maintainable and was dismissed in limine. In Intra Court Appeal, the learned Division Bench came to the conclusion that the Supreme Court Bar Association of Pakistan Rules, 1989 were non-statutory and the Supreme Court Bar Association did not fall within the definition of “person” within the contemplation of Article 199 of the Constitution of the Islamic Republic of Pakistan. It was further concluded that neither the Supreme Court Bar Association of Pakistan nor the Pakistan Bar Council fulfilled the requirements of the, “**functionality rule**” and as such were not amenable to the writ jurisdiction of the High Court. The appellant being dissatisfied of the afore-noted judgments has approached this Court and has more or less repeated the arguments made before and rejected by the High Court.

4. We have heard the learned counsel for the parties and gone through the record.

5. The appellant has challenged the amendment made by the Supreme Court Bar Association of Pakistan in the Rules, 1989. The extract of the resolution whereby the amendment was made in the Rules of 1989 is as follows:

“Amendments in Rule 9 of the Supreme Court Bar Association of Pakistan Rules, 1989:-

- (i) The words NWFP are proposed to be amended by the words Khyber Pakhtunkhwa in Rule 9(a) ii, so that the name of the Province be amended in the light of the provisions of the Constitution of the Islamic Republic of Pakistan, 1973.*

(ii) *At the end of the first proviso to clause (a) of Rule 9, signs, figures and words, province, Islamabad/Rawalpindi may be added in the following manner:-*

- i. Balochistan;*
- ii. Khyber Pakhtunkhwa;*
- iii. Punjab;*
- iv. Sindh;*
- v. Islamabad/Rawalpindi; and*
- vi. Punjab.”*

6. A perusal of the afore-noted amendment shows that the territory of Islamabad and Rawalpindi has been added to the rotational Presidency mechanisms provided for the President-ship of the Supreme Court Bar Association. Rule 9(a) is designed to ensure that the Presidency of the Supreme Court Bar Association goes to all regions of Pakistan and is not monopolized by one region owing to numerical strength. In the first place we have been informed by the learned counsel appearing on behalf of the Pakistan Bar Council as well as the Supreme Court Bar Association that the aforesaid amendment was tabled in the Annual General Meeting of the Association in which all members of the Association including members of the Islamabad Bar Association and the Rawalpindi Bar Association had a right to cast their votes and express their grievances (if any). Admittedly, the said resolution was passed without any major objection from any side. Further, it is clear and obvious to us that mechanism for redressal of such grievances is available under the Legal Practitioners and Bar Councils Act, 1973. There is no denial of the fact that the said mechanism and alternate remedies have not been availed by the Appellant

either directly or through the good offices of the Islamabad Bar Council.

7. A bare reading of the provisions of the Legal Practitioners and Bar Councils Act shows that the Act provides for establishment of Bar Councils in the Provinces as well as the Islamabad Capital Territory. It deals with all matters relating to elections of office bearers, disciplinary and other professional matters, constitution of committees, their powers and other related and incidental matters. However, it is clear that other than the Attorney General for Pakistan being the ex-officio, Chairman Pakistan Bar Council and Advocates Generals of the Provinces and Islamabad Capital Territory being ex-officio, Chairman of the Provincial Bar Councils and Islamabad Capital Territory neither the Provincial nor the Federal Government exercise any administrative control over the affairs of the Pakistan Bar Council or the Provincial Bar Councils. Pakistan Bar Council is a statutory body which is autonomous and generates its own funds independently. The Government does not have any control over it. Likewise, the Islamabad Bar Council acts as a regulator for affairs of the Advocates in Islamabad Capital Territory, admits Advocates to practice before the said High Court and maintains rolls of such Advocates. The functions of the Council also inter-alia include initiating proceedings for misconduct against Advocates on its rolls and award punishment in such cases. That being so, neither the Respondent nor any of its constituents or committees can be

regarded as persons performing functions in connection with the affairs of the Federation, Provinces or Local Authority within the contemplation of the Article 199 of the Constitution of Islamic Republic of Pakistan. As such we are in no manner of doubt that Respondent No.2 is not amenable to the jurisdiction of the High Court in terms of Article 199 of the Constitution.

8. The next question that needs to be addressed is whether the Supreme Court Bar Association of Pakistan Rules, 1989 are statutory in nature which is yet another reason that correctly prevailed with the learned Division Bench of the High Court in recording a finding that the constitutional jurisdiction cannot be invoked against the Supreme Court Bar Association. This question came up for hearing before a Division Bench of the Lahore High Court in the case of Abdul Sattar Chughtai Malik. v. Pakistan Bar Council through Secretary and another (**PLD 2007 Lahore 170**). The following excerpt from the said judgment elaborates correctly interprets the law on the subject and is reproduced below:

“8. The rules are not statutory in nature, therefore, any violation of the statutes, regulations or rules would not attract the Constitutional jurisdiction of this Court under Article 199 of the Constitution. In this context reference can be made to the cases of Dr. M. Afzal Beg v. University of Punjab and others (1999 PLC (C.S.) 60), Khalid Hussain v. The Chancellor, (Governor of Punjab) and others (NLR 1995 CLJ 219), Muhammad Umar Malik v. The Muslim Commercial Bank through its President, Karachi and 2 others (1995 SCMR 453) and Anwar Hussain v. Agricultural Development Bank of Pakistan and others (PLD 1984 SC 194).

10. The Parliament is the law-making authority. It passes the Acts and empowers the Government under the relevant Act to make Rules for carrying on the business. A statute is the formal “expression” in

writing of the will of the legislative organ in a State. A 'Statute' is a declaration of the law, as it exists or as shall be from the time at which such statute is, to take effect. It is usually called an Act of the Legislature. It expresses the collective will of that body. A Statute is the highest constitutional formulation of law, the means by which supreme legislature, after the fullest deliberation expresses its final will.

11. "Statute law" is defined as the will of the nation, expressed by the Legislature, expounded by the Courts of Justice. If the Parliament is not in session then the laws are enforced through the Ordinances issued by the President or the Governor expressing will of the nation as the case may be. So, the Act passed by the Parliament and the Ordinance issued by the nation would be called the "Statutory Law".

12. The Rules framed under the powers conferred by an Act are integral part of the Act and these Rules are called Statutory Rules and these are held to be part of the parent Act. It can do anything if within its scope. The Rules or the Bye-Laws made under the Statutes or Act cannot over ride the provisions of other Statute. Neither the Rules control the construction to be placed on the provisions of the Act nor they can enlarge the meaning of the section. The Rules are framed under the Act in aid to construction of ambiguous Statutes. The Rules under the Act shall be made by the Authority, empowered under the Act to frame the Rules or Bye-Laws. No other authority who is not empowered under the Act make the Rules. A Rule Making Body also cannot frame the Rules in conflict with or derogating from the substantive provisions of law or Statute under which the Rules are framed.

14. The Supreme Court Bar Association is a Body, the Organization of lawyers, who are entitled to practise in the Supreme Court of Pakistan it has not been constituted under any Act of the Parliament. It is a non-statutory body, therefore, conditions or rules framed by this body would also be non-statutory rules and having no legal backing. The writ petition under Article 199 of the Constitution against a body, organization not constituted under the law would not be competent."

9. Learned counsel for the appellant was unable to persuade us to take a contrary view than the one taken by the Islamabad High Court in the impugned judgment, by the Lahore High Court in the afore-noted judgment and by this Court in a number of judgments including Abdul Sattar Chughtai Malik. v. Pakistan Bar Council through Secretary and another (PLD 2007 Lahore 170), Muhammad Tariq Badr

and another. v. National Bank of Pakistan and others (2013 SCMR 314), Shafique Ahmed Khan and others. v. NESCOM through Chairman, Islamabad and others (PLD 2016 SC 377) and Muhammad Zaman and others. v. Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad and others (2017 SCMR 571). Further, the learned counsel for the appellant has not been able to demonstrate or point to any legal, procedural or jurisdictional error, defect or flaw in the reasoning and exposition of law undertaken by the Islamabad High Court in the impugned judgment. After carefully going through the provisions of the Legal Practitioners and Bar Councils Act, 1973 as well as the Supreme Court Bar Association of Pakistan Rules, 1989, we have arrived at the same conclusions as the learned High Court and find no reason to interfere in the impugned judgment.

10. For the afore-noted reasons, we find no merit in this appeal. It is accordingly dismissed with no order as to costs.

Chief Justice

Judge

Judge

ISLAMABAD.

28.01.2020.

Zubair/*

'Not Approved For Reporting'