

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 2247-2021

Syed Khursheed Ahmed Shah

Versus

Federation of Pakistan
through Secretary Ministry of Interior, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	24-06-2021	Mr Farooq H. Naek, Sr. ASC, Sardar Zulqarnain, Barrister Shiraz Shaukat Rajper and Mr Aqeel Akhtar Raja, Advocates for petitioner.

Athar Minallah, C.J.- The petitioner namely, *Syed Khursheed Ahmed Shah (hereinafter referred to as the '**Petitioner**') was a returned candidate from the constituency NA-206, Sukkur-I. He was notified as Member of the National Assembly of Pakistan. He was arrested on 18-09-2019 by the National Accountability Bureau (hereinafter referred to as the '**Bureau**') and has remained incarcerated since then. The Petitioner has not been convicted by a competent court and, therefore, he is not disqualified to represent the constituents of NA-206, Sukkur-I. The Petitioner has invoked the constitutional jurisdiction of this Court seeking a direction to the worthy Speaker of the National Assembly of Pakistan to issue his production*

orders in exercise of powers conferred under Rule 108 of the Rules of Procedure and Conduct of Business in the National Assembly, 2007 (*hereinafter referred to as the 'Rules of 2007'*).

2. *Mr Farooq H. Naek*, learned Sr. ASC has been heard at length. He has argued that the Petitioner is presumed to be innocent and, therefore, he continues to represent the constituents of NA-206, Sukkur-I as their chosen representative. He has further argued that the constituents of NA-206, Sukkur-I will suffer if the constituency remains unrepresented in the National Assembly of Pakistan during the crucial budget session. He has, therefore, argued that refusal on part of the worthy Speaker to exercise powers conferred under Rule 108 of the Rules of 2007 will deprive the constituents of NA-206, Sukkur-I of meaningful participation while the proposed budget is being debated.

3. It is noted that a Division Bench of this Court in the judgment reported as '*Riaz Hanif Rahi v. Federation of Pakistan through Secretary, Ministry of Law and Justice and 14 others*' [PLD 2019 Islamabad 230] has held that Rule 108 of the Rules of 2007 and the powers conferred *ibid* falls within the expression 'proceedings' of the Majlis-e-Shoora (Parliament) and, therefore, the bar under Article 69 of the Constitution of

the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the '**Constitution**'*) is attracted. The jurisdiction of this Court is thus ousted and any direction given by this Court would amount to transgression of the permissible constitutional limits. This Court is a creation of the Constitution and, therefore, its jurisdiction is subject to the limitations which have been expressly prescribed therein.

4. It is a duty of this Court to protect and uphold the sanctity of the Majlis-e-Shoora (Parliament). Its sanctity is sine qua non for ensuring the independence of the judiciary and security of the citizens. The Majlis-e-Shoora (Parliament) consists of the chosen representatives of the people. The people or constituents are the actual stakeholders of the supreme elected forum. The interest of the people of Pakistan is supreme and their will ought to be respected. The wisdom and intent of powers conferred under Rule 108 of the Rules of 2007 has been highlighted in the judgment of this Court reported as '*Riaz Hanif Rahi v. Federation of Pakistan through Secretary, Ministry of Law and Justice and 14 others*' [PLD 2019 Islamabad 230] and the relevant portion is reproduced as follows.-

"There is yet another aspect which ought to be considered for understanding the wisdom for enabling an elected member

of the Majlis-e-Shoora (Parliament) to attend the sessions of the Majlis-e-Shoora (Parliament) and it has been eloquently highlighted by a learned Division Bench of the Lahore High Court in the case titled 'Makhdoom Javed Hashmi v. The State and 2 others' [2003 PCrLJ 266]. The relevant observations are as follows.-

"There is yet another aspect of the matter. The petitioner during his period of custody contested the election for the seat of National Assembly. His nomination papers were scrutinized, the objections were repelled and he stands elected as member of the National Assembly from Lahore. This development has two fold dimensions, firstly as a Legislator he has to attend the sessions of National Assembly to contribute his bit to the business of Parliament and, secondly, he has to represent his constituency. If the opportunity to attend the sessions of Parliament is not given to the petitioner it would be denial of his right to represent the people. In that event even his constituents would go unrepresented which would be violative of their constitutional rights."

The above observations made by two most honourable and distinguished jurist Judges manifests the embedded principle of law that allowing constituents to go unrepresented offends their constitutional

rights. This is the obvious wisdom for incorporating Rule 108 in the Rules of 2007. Moreover, since the expression 'may' has been used therein, therefore, the power vested in the Speaker is of a discretionary nature. The Speaker, while exercising discretion under the said rule, has to, inter alia, take into consideration the rights of the constituents, particularly that they cannot be allowed to go unrepresented."

5. This Court is, therefore, bereft of jurisdiction to issue a direction or writ to the worthy Speaker in the context of powers conferred under Rule 108 of the Rules of 2007. However, even if this Court had the jurisdiction, it would have shown restraint because issuing a direction to the worthy Speaker would have undermined the sanctity and supremacy of the Majlis-e-Shoora (Parliament). This Court has been informed that the worthy Speaker has not even exercised his powers under Rule 108 of the Rules of 2007 nor refused to do so. This Court is confident that the worthy Speaker would consider the matter and exercise his powers under Rule 108 of the Rules of 2007 in the best interest of the constituents of NA-206, Sukkur-I so that they are not deprived of their right to be represented during the budget session.

6. For the above reasons, this Court's jurisdiction is barred under Article 69 of the Constitution to give a direction to the worthy Speaker. The petition is, therefore, disposed of with the expectation and confidence that the worthy Speaker will decide the matter in the best interest of the constituents of NA-206, Sukkur-I. The Petitioner or any other competent person would be at liberty to approach the worthy Speaker.

(CHIEF JUSTICE)

Approved for reporting.