

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.1712/2020

M. Tariq Asad, ASC

Versus

Federation of Pakistan, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	01-07-2020	Mr M. Tariq Asad, Advocate Supreme Court in person.

The petitioner, namely, Mr Mohammad Tariq Asad, ASC is enrolled as an advocate of the Supreme Court of Pakistan. He has filed this petition because he is aggrieved due to the public statements made by respondent no. 5 i.e. *Mr Ghulam Sarwar Khan*, Federal Minister for Aviation Division regarding the alleged irregularities in certification and licensing of pilots by the Civil Aviation Authority. It is the case of the petitioner that the statements were factually incorrect and irresponsible. The petitioner has asserted that because of the alleged irresponsible, unverified and factually flawed statements made by one of the members of the Federal Cabinet, irretrievable loss has been suffered by the people of Pakistan, the national

airline i.e. Pakistan International Airline Corporation and the reputation of those Pakistani citizens who are engaged in the profession as 'pilots'. The petitioner asserts that the alleged irresponsible statements of one of the members of the Federal Cabinet has led to suspension of the operations of the national airline abroad. The petitioner has sought multiple prayers including declaring respondent no.5 i.e. *Ghulam Sarwar Khan*, Minister of Aviation as having become disqualified to hold the public office under Article 63 of the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the 'Constitution'*). The public spirited petitioner has been heard at length.

2. The grievance of the petitioner is regarding the consequences of the public statements made by *Mr Ghulam Sarwar*, Minister of Aviation. It is the case of the petitioner that the statements regarding certification and licensing of professional pilots were factually flawed, defamatory and that they have led to consequences which have the effect of violating the fundamental rights of the people of Pakistan besides damaging the

reputation of the national flag carrier and its pilots. The assertions and allegations are against respondent no.5 who is one of the members of the Federal Cabinet.

3. Article 91 of the Constitution provides that "there shall be a Cabinet of Ministers, with the Prime Minister at its head, to aid and advise the President in the exercise of his functions". Article 92 explicitly provides that "subject to clauses (9) and (10) of Article 91, the President shall appoint Federal Ministers and Ministers of State from amongst the Members of the Majlis-e-Shoora (Parliament) on the advice of the Prime Minister". Sub article (6) of Article 91 has made the Cabinet, together with the Ministers of State, collectively responsible to the Senate and the National Assembly. Moreover, the parliamentary scheme envisaged under the Constitution is based on the fundamental principle that each member of the Federal Cabinet is accountable for his or her acts and omissions, as the case may be, to the Majlis-e-Shoora (Parliament) as well as to the Prime Minister and the cabinet. The convention of collective cabinet responsibility is one of the

most important pillars of the working of the parliamentary system of governance under the scheme of the Constitution.

4. It is noted that our Constitution is based on the foundation of trichotomy of powers between the legislature, executive and the judiciary. As held by the august Supreme Court in the case titled '*Dossani Travels Pvt. Ltd and others v. Messrs Travels Shop (Pvt) Ltd and others*' [PLD 2014 SC 1], the judiciary is entrusted with the task of interpreting the law and to play the role of an arbiter in cases of disputes between individuals and the State. In the case titled '*Syed Yousaf Raza Gillani, Prime Minister of Pakistan v. Assistant Registrar, Supreme Court of Pakistan and another*' [PLD 2012 SC 466], the apex Court has emphasized the need to give effect to the intent of the fundamental instruction that each organ must respect the domain of others. In the case titled '*Brig. (R) Imtiaz Ahmed v. Government of Pakistan through Secretary, Interior Division, Islamabad and 2 others*' [1994 SCMR 2142], it has been observed and held that the power vested under Article 199 of the Constitution is a great weapon in the hands of the Judges, but

the latter must observe the constitutional limits set in the parliamentary system under the principles of trichotomy of powers. It has been emphasized that juridical review must remain strictly judicial and in its exercise, Judges must take care not to intrude upon the domain of the other branches of the State. The Courts exercise judicial restraint when a matter relates to public policy decision or when the scheme of the Constitution provides for effective forums and accountability mechanism. The Prime Minister and members of his cabinet are chosen representatives and they are answerable to the people of Pakistan for their performance, acts and omissions. Representing the executive, they are expected to take decisions and act in accordance with the oath administered under the Constitution.

5. In the case in hand, there is no reason for this Court to doubt that the Prime Minister and other members of the Cabinet would not be aware of the sensitivity of the matter and its serious implications for the image of Pakistan, the reputation of professional pilots and the national carrier, which in the past was acknowledged as one of

the best in the aviation industry worldwide. This Court would definitely not be justified to assume that the Prime Minister and members of the cabinet will ignore or fail to take appropriate action on the basis of the principle of collective responsibility, if the acts and omissions of respondent no.5 i.e. *Ghulam Sarwar Khan*, Minister for Aviation, are in any manner found to have harmed the reputation of the national flag carrier and the professional pilots licensed by Civil Aviation Authority, whether rendering services in Pakistan or abroad. Moreover, it can also not be assumed that the Senate or the National Assembly would fail in its constitutional duty under sub article (6) of Article 91 of the Constitution to hold a Minister accountable.

6. The assertions stated in the memorandum of the instant petition and its consequences are indeed of a serious nature. Nonetheless, by intervening in the matter, this Court would be demonstrating its lack of trust in the accountability mechanism prescribed in the Constitution and the principle of collective responsibility of the Cabinet, which is the foundation of the parliamentary system of

governance. The Senate, National Assembly, the Prime Minister of Pakistan and members of the Cabinet are not only empowered but it is their constitutional duty to hold a member accountable, if the latter is found to have violated his oath or his/her acts or omissions have prejudiced the interests of the people of Pakistan or the State.

7. For the above reasons, this Court exercises restraint because intervention in the matter would amount to bypassing the scheme of accountability of a member of the Cabinet prescribed under the Constitution and undermine the principle of collective accountability of the Cabinet. The jurisdiction of this Court under Article 199 of the Constitution is discretionary and its exercise can be refused in appropriate cases. Reliance is placed on '*Secretary to the Government of the Punjab, Forest Department, Punjab Lahore v. Ghulam Nabi*' [PLD 2001 S.C. 415]. This Court is confident that the Prime Minister and members of the cabinet will not hesitate in proceeding against a Minister or the regulator, if the latter are found involved, in any manner, to have caused harm to the interests of the

State or the reputation of professional pilots and the national flag carrier. In the circumstances this Court is not inclined to exercise the extra ordinary discretion vested under Article 199 of the Constitution and thus the petition is accordingly dismissed.

(CHIEF JUSTICE)

Approved for reporting.

Luqman Khan/*

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