

**JUDGMENT SHEET.**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD.**

**Writ Petition No.2171 of 2019**

Arif Chaudhry, Advocate Supreme Court of Pakistan

**Versus**

Federation of Pakistan through Secretary, Ministry of Law & Justice, Government of Pakistan, Islamabad and 03 others.

**Intra Court Appeal No.37 of 2019**

**In**

**Writ Petition No.300 of 2019**

Mirza Muhammad Nazakat Baig

**Versus**

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

Petitioner's By	:	Mr. Ghulam Mehboob Khokhar, Advocate (in W.P. No.2171 of 2019). Mr. Arif Chaudhry, Advocate, Petitioner in person (in W.P. No.2171 of 2019).
Appellant's By	:	Mr. Muhammad Shahid Kamal Khan, Malik Babar Hameed and Ch. Amjad Ali, Advocates (in I.C.A No.37 of 2019)
Respondent's By	:	Mr. Tariq Mehmood Khokhar, Additional Attorney General. Mr. Saqlain Haider Awan, Assitant Attorney General. Syed Zulfiqar Abbas Naqvi, Advocate, Member IBC. Qazi Rafi-ud-Din Babar, Advocate, Member IBC. Mr. Haroon-ur-Rasheed, Advocate, Member IBC. Raja Ghazanfar Ali Khan, Advocate.
Date of Decision	:	02.10.2019

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**AAMER FAROOQ, J. -** This judgment shall decide the instant petition as well as Intra Court Appeal No.37 of 2019, as common questions of law and facts are involved.

2. The petitioner in the writ petition as well as the appellant in Intra Court Appeal have challenged Rule 9 (a) of the Supreme Court Bar Association of Pakistan Rules, 1989, whereby while granting the right of Presidency of the Bar Association to Islamabad Capital Territory the area of Rawalpindi has also been added. In the Intra Court Appeal, same challenge was made in the writ petition, however, the petition was dismissed, by the Hon'ble Chief Justice of this Court, in *limine*, vide order dated 25.01.2019.

3. The petitioner, in person, in Writ Petition No.2171 of 2019, *inter-alia*, contended that Rule 9 (a) in its present form is discriminatory inasmuch as the right of Presidency has been granted to every province including Punjab, however, while Islamabad Capital Territory was also given such privilege the area of Rawalpindi has been added, which is part of Punjab, hence the amendment is discriminatory as Punjab has been tagged with Islamabad Capital Territory. It was also contended that the Supreme Court Bar Association of Pakistan Rules, 1989 are statutory inasmuch as the rule was amended by Supreme Court Bar Association and subsequently notified by Pakistan Bar Council. It was further submitted that Pakistan Bar Council as well as Supreme Court Bar Association are the statutory bodies created under the Legal Practitioners and Bar Councils Act, 1973.

4. Learned counsel for the appellant, in I.C.A No.37 of 2019, *inter-alia*, contended that the area of Islamabad Capital Territory is part of Pakistan under Article 1 of the Constitution and the referred area can only be altered by making appropriate amendment as provided in Article 239 of the Constitution, which has not been done. It was further submitted that the Supreme Court Bar Association

of Pakistan Rules, 1989 are statutory in nature, hence amenable to scrutiny by this Court under Article 199 of the Constitution.

5. Mr. Ghulam Mehboob Khokhar, learned counsel for the petitioner in Writ Petition No.2171 of 2019 submitted that this Court has ample jurisdiction to examine the vires of Rule 9 (a) as any objection taken by the respondents regarding the maintainability is not tenable. In support of his contentions, learned counsel placed reliance on cases reported as "*Farrukh Nawaz Bhatti Vs. Federal Government through Prime Minister of Pakistan and 3 others*" (**2018 CLC 1275**), "*The Federal Board of Revenue and others Vs. Messrs Chenone Stores Ltd.*" (**2018 PTD 208**), "*Messrs Sui Southern Gas Company Ltd. and others Vs. Federation of Pakistan and others*" (**2018 SCMR 802**), "*Syed Hussain Haider Vs. Government of the Punjab through Chief Secretary, Lahore and others*" (**2019 PLC (C.S.) 1**), "*Muhammad Junaid Alam Vs. Federation of Pakistan, through Secretary, Islamabad and 3 others*" (**2019 CLC 453**), and "*AN Industries (Pvt.) Ltd. through Director Vs. Federation of Pakistan, through Secretary and others*" (**2017 PTD 665**).

6. Learned counsel for Pakistan Bar Council at the very outset objected to the maintainability of the instant petition as well as Intra Court Appeal. It was submitted that the Supreme Court Bar Association of Pakistan Rules, 1989 are non-statutory and their vires cannot be examined by this Court under Article 199 of the Constitution. Reliance was placed on "*Abdul Sattar Chughtai Malik Vs. Pakistan Bar Council through Secretary and another*" (**PLD 2007 Lahore 170**). It was also submitted that since remedy of appeal is provided under the Rules and the law, hence Intra Court Appeal is not maintainable in light of Section 3 of Law Reforms Ordinance, 1972.

7. Learned Additional Attorney General, Islamabad also objected to the maintainability of the petition and Intra Court Appeal. In this behalf, it was submitted that the rules are non-statutory and even otherwise a petition under

Article 199 of the Constitution is not maintainable against the Supreme Court Bar Association and the Pakistan Bar Council. Reliance was placed on cases reported as "*Muhammad Zaman and others Vs. Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad and others*" (**2017 SCMR 571**), "*Abdul Sattar Chughtai Malik Vs. Pakistan Bar Council through Secretary and another*" (**PLD 2007 Lahore 170**), "*Muhammad Tariq Badr and another Vs. National Bank of Pakistan and others*" (**2013 SCMR 314**), "*Shafique Ahmed Khan and others Vs, NESCOM through Chairman, Islamabad and others*" (**PLD 2016 SC 377**). Qazi Rafi-ud-Din Babar, Advocate, Member Islamabad Bar Council stated that no decision has yet been taken by the Council on the issue.

8. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

9. As noted above, the petitioner and appellant have challenged the amendment made by Supreme Court Bar Association of Pakistan in Supreme Court Bar Association of Pakistan Rules, 1989. The extract of the resolution, whereby the amendment was made in 1989 Rules *ibid* 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.*

10. The bare perusal of the amendment shows that the Territory of Islamabad/ Rawalpindi has been added and the grievance of the petitioner and appellant is that it should be only Islamabad Capital Territory. Since objection has been raised to the maintainability of the instant petition and Intra Court Appeal, therefore, before adverting to the merit, it is just and proper that the same be addressed. It is the case of Pakistan Bar Council that a petition under Article 199 of the Constitution is not maintainable against it. This objection has already been entertained by this Court in decision titled "*Muhammad Aslam Ghuman Vs. Returning Officer, Chairman, Election Board, Islamabad, etc.*" (**Writ Petition No.4127 of 2017**, dated 18.01.2018). This Court in the referred decision discussed various provisions of Legal Practitioners and Bar Councils Act, 1973 regarding the composition of Pakistan Bar Council and also placed reliance on its earlier decision. The observation made by this Court while reaching the conclusion that a petition under Article 199 of the Constitution is not maintainable against Pakistan Bar Council and/ or Supreme Court Bar Association observed as follows:-

7. *Section 11 of the said Act provides the composition of Pakistan Bar Council and under section 12 of the same, Chairman and Vice Chairman of Pakistan Bar Council. In this behalf, Attorney General for Pakistan is the ex-officio Chairman of Pakistan Bar Council and under subsection (2) to section 12, Vice Chairman of Pakistan Bar Council is elected in the prescribed manner by the Members from amongst themselves. The functions of the Bar Council/Respondent No.2 are provided in Section 13 of the Act.*

8. *This Court, while determining the status of Islamabad Bar Council, which also is the creation of the Legal Practitioners and Bar Councils Act, 1973, observed as follows:-*

*"08. On the basis of the above case law it is essential to see the composition of Respondent No.1 and examine whether it meets the criteria of function test as laid down by the Apex Court. Section 3 of the Legal Practitioners and Bar Councils Act, 1973 (the Act) provides for Constitution and incorporation of Bar Councils. In this behalf under Section 3(1) (2) there is to be incorporated and constituted a Bar*

*Council for each Province and Islamabad Capital Territory (ICT). Under subsection 2 to section 3 every Bar Council shall be a body corporate having perpetual succession and common seal with powers to acquire and hold property both moveable and immovable and may sue or be sued. The term of every Bar Council is five years following the General Elections where-after the term of the Members shall cease, however, under the proviso notwithstanding on expiry of the term every Bar Council shall continue to function till the new council is elected and the list of the Members is published in the Official Gazette. Section 5 provides for the composition of the each Bar Council and under the same the Advocate General is the ex-Officio Chairman and the Members are elected as provided in the referred section. Under section 6 there is to be a Chairman and Vice Chairman of Islamabad Bar Council. In this behalf the Advocate General is the Chairman and Vice Chairman is elected by the Members of the Bar Council from amongst themselves. The functions of the Bar Council are provided in Section 9 and Section 10 ibid provides for the constitution of the Committees. The referred provisions of law do not in any way suggest that the Government (in the present case the Federal Government) has any financial or administrative control over the affairs of Respondent No.1. Apart from the fact that the Advocate General, Islamabad Capital Territory is the Chairman of the Council by virtue of designation, there is no role of Government in the affairs of the Council. Respondent No.1 is a statutory body which is autonomous and generates its funds independently and the Government does not even have financial control over it. The council has been formed to act as a regulator for the affairs of the Advocates in Islamabad Capital Territory and to admit Advocates to practice before the High Court and to maintain a roll of such Advocates. The functions of the council also, inter alia, include cases of misconduct against the Advocates on its roll and to order punishment in such cases.”*

9. *The composition of Respondent No.2 is similar to a Provincial Bar Council or Bar Council for Islamabad Capital Territory. It is an autonomous body and generates its funds independently and the Federal Government has no control over it. Attorney General of Pakistan is only ex-officio Chairman of the Council, but that does not provide any control to the Federal Government, administrative or financial, with respect to the affairs of the Council. In such state of affairs, Respondent No.2 and/or its Committees cannot be regarded as a ‘person’ carrying on the affairs of*

*the Federation, Province or a Local Authority for the purposes of Article 199 of the Constitution.”*

11. Similarly, in so far as the status of the Supreme Court Bar Association of Pakistan Rules, 1989 is concerned, the matter came up for examination before the Hon'ble Division Bench of Lahore High Court in case reported as "*Abdul Sattar Chughtai Malik Vs. Pakistan Bar Council through Secretary and another*" (**PLD 2007 Lahore 170**), the Hon'ble Division Bench observed as follows:-

*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.”*

12. In view of the above judgment, the Supreme Court Bar Association of Pakistan Rules, 1989 are non-statutory and Supreme Court Bar Association does not fall within the concept of person as provided in Article 199 *ibid*.

13. The above position of law makes it clear that the writ petition is not competent against Pakistan Bar Council and Supreme Court Bar Association and the order impugned in the Intra Court Appeal also does not suffer from any error of law or fact. It is interesting to observe that in the comments filed by Supreme Court Bar Association stance has been taken that the amendment made in the rules is unreasonable, unfair and discriminatory, hence the petition be allowed; if such is the position of Bar Association, there is no impediment for it to amend or change the rule. Since the petition and appeal are being decided on the question of maintainability no finding is being on merit.



14. For the above reasons, the instant petition as well as Intra Court Appeal are without merit and are accordingly **dismissed**.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

**(AAMER FAROOQ)**  
**JUDGE**

M. Zaheer Janjua/.

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