

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.4959/2018

Riaz Hanif Rahi

Versus

Federation of Pakistan
through Secretary, Ministry of Law and Justice & 14 others

Petitioner by : Mr G. M. Chaudhry, ASC.
Petitioner in person.

Date of Hearing : 31-12-2018

ATHAR MINALLAH, C.J.- The petitioner has invoked the jurisdiction vested in this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the 'Constitution'*) seeking multiple prayers. From a plain reading of the prayers sought in the petition it appears that the petitioner is aggrieved because, pursuant to issuance of production orders, the competent authority enabled two elected representatives, namely, Mian Muhammad Shehbaz Sharif (*hereinafter referred to as 'respondent no.8'*) and Khawaja Saad Rafiq (*hereinafter referred to as 'respondent no.12'*) to attend the proceedings, by exercising the powers 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'*). It is noted that the President, in pursuance of

clause (2) of Article 67 of the Constitution, had made the Rules of Procedure and Conduct of Business in the National Assembly. The latter unanimously adopted its own rules, fulfilling the requirement under clause (1) *ibid*. The Rules of 2007 were unanimously adopted by the National Assembly on 23-02-2007. It is also noted that the appointment of respondent no. 8 as Chairman, Public Accounts Committee has not been directly challenged in this petition as no prayer has been sought in this regard. It is his case that respondent no.8 cannot chair the meetings of Public Accounts Committee because his is required to be kept incarcerated.

2. The relevant facts for adjudication of this petition are that respondents no.8 and 12 were elected and notified as Members of the lower House of the Majlis-e-Shoora (Parliament). Respondent no.8 was appointed as Chairman of the Public Accounts Committee (*hereinafter referred to as the 'P.A. Committee'*). It is noted that the said appointment was pursuant to deliberations between the treasury and opposition benches. Both the respondents are facing inquiries/investigations under the National Accountability Ordinance, 1999 (*hereinafter referred to as the 'Ordinance of 1999'*) and in connection therewith they were arrested and continue to be in the custody of the National Accountability Bureau (*hereinafter referred to as the 'Bureau'*). It is essential to point out that, as elected Members, they continue to represent the constituents of the respective constituencies from where they were returned as successful candidates. In order to enable respondents no.8 and 12 to

attend the sittings of the National Assembly, the Speaker, in exercise of the powers conferred under Rule 108 of the Rules of 2007, issues from time to time their production orders. The petitioner, through this petition, has challenged the vires of Rule 108 of the Rules of 2007 and has simultaneously sought other prayers having nexus therewith.

3. The petitioner has appeared along with his Counsel. They were heard at great length. They were asked to satisfy this Court regarding maintainability of the petition in view of the bar contained under Article 69 of the Constitution. They have argued that; Rule 108 of the Rules of 2007 is in conflict with Articles 3, 4, 25, 66, 67 and 277 of the Constitution; placing reliance on the judgment rendered by the august Supreme Court, reported as '*Baz Muhammad Kakar and others v. Federation of Pakistan through Ministry of Law and Justice and others*' [PLD 2012 SC 923], it is their contention that this Court, while exercising powers under Article 199 of the Constitution, is vested with the jurisdiction to examine the constitutionality of the executive and legislative actions; they have also placed reliance on the law laid down by the august Supreme Court in the case of '*Messrs Mustafa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance, Islamabad and others*' [PLD 2016 SC 808] in support of the argument that the Rules of 2007, framed under the Constitution, are not immune from judicial review; the appointment of respondent no.8 as Chairman of the P.A. Committee is in violation of the Charter of Democracy which was executed by two political leaders on behalf of their respective political parties; Rule 108 cannot

have an overriding effect over the provisions of the Code of Criminal Procedure, 1898 (*hereinafter referred to as the 'Cr.P.C.'*) and the Ordinance of 1999; the release of respondents no.8 and 12 pursuant to the issuance of the respective production orders is illegal and ultra vires the Constitution; the release of respondents no.8 and 12 so as to enable them to attend sittings of the National Assembly interferes in the pending investigations under the Ordinance of 1999; the appointment of respondent no.8 as Chairman of the P.A. Committee tantamounts to conflict of interest; Chairing the P.A. Committee while investigations are pending offends the provisions of the Ordinance of 1999; respondent no.8 cannot act as a judge in his own cause. We also had the benefit of considering written submissions which were filed by the petitioner. The latter has asserted that the Rules of 2007 do not empower the Speaker to interfere with the investigations; section 167 of Cr.P.C has an overriding effect and that it is attracted in the case of the Ordinance of 1999.

4. The learned Counsel and the petitioner have been heard and the record perused with their able assistance.

5. A plain reading of the memorandum of petition and the assertions made therein manifests that the petitioner is aggrieved due to powers exercised by the Speaker of the National Assembly under Rule 108 of the Rules of 2007 whereby respondents no.8 and 12 are enabled to attend the sittings of the National Assembly. Admittedly, both the respondents were arrested under the Ordinance

of 1999 and they are in the physical custody of the respective Investigating Officers of the Bureau. Their physical remand is regulated by a competent Court. It is also not denied that they are brought to the National Assembly for attending the session while they are in the custody of the respective Investigating Officers. It is also an admitted position that both the respondents continue to represent the constituents of their respective constituencies. The Rules of 2007 have been framed and unanimously adopted by the National Assembly in exercise of powers vested under Article 67 of the Constitution. The appointment of respondent no.8 as Chairman of P.A. Committee has been made by the Speaker in accordance with the procedure prescribed under the Rules of 2007 and pursuant to an understanding reached between the treasury and opposition benches. The production orders are issued by the Speaker of the National Assembly under the Rules of 2007. For the purposes of adjudication of the instant petition and the multiple prayers sought therein, it would be beneficial to reproduce Article 69 of the Constitution as follows.-

"69. Courts not to inquire into proceedings of [Majlis-e-Shoora (Parliament)].- (1) The validity of any proceedings in [Majlis-e-Shoora (Parliament)] shall not be called in question on the ground of any irregularity of procedure.

(2) No officer or member of [Majlis-e-Shoora (Parliament)] in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order in [Majlis-e-Shoora

(Parliament)]], shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers.

(3) In this Article, [Majlis-e-Shoora (Parliament)] has the same meaning as in Article 66."

6. It is obvious from a plain reading of Article 69 that the Constitution bars a Court from inquiring into the proceedings of the Majlis-e-Shoora (Parliament). Clause (1) provides that the validity of any proceedings in the Majlis-e-Shoora (Parliament) shall not be called in question on the ground of any irregularity of procedure, while clause (2) bars the jurisdiction of any Court regarding any matter relating to an officer or member of the Majlis-e-Shoora (Parliament) in whom powers are vested by or under the Constitution for regulating the procedure or the conduct of business or for maintaining order in the Majlis-e-Shoora (Parliament). Clause (3) of Article 69 explicitly declares that in the context of the said Article, Majlis-e-Shoora (Parliament) has the same meaning defined in Article 66. Article 66(5) defines Majlis-e-Shoora as meaning either House or a joint sitting or a committee thereof. The Rules of 2007 have been framed and unanimously adopted by the National Assembly in order to fulfill the requirements of clause (2) of Article 67. The aim and object of these rules are to regulate the procedure and conduct of business of the National Assembly. Moreover, Rule 108 of the Rules of 2007 vests a discretion in the Speaker of the National Assembly to issue a production order. It is obvious, therefore, that framing of the Rules of 2007, exercising discretion by the Speaker under Rule 108 *ibid* or constituting Committees, including the PA Committee, falls

within the expression "proceedings" of the Majlis-e-Shoora (Parliament). Whether the bar contained under Article 69 is attracted has to be answered essentially in the light of the precedent law, which is discussed hereinafter.

7. The question of internal proceedings was examined by the august Supreme Court in the case of *'Lt. Col. Farzand Ali and others vs. Province of West Pakistan through the Secretary, Department of Agriculture, Government of West Pakistan, Lahore'* [PLD 1970 Supreme Court 98]. The august Supreme Court affirmed the earlier view taken in the cases of *'Pakistan vs. (1) Ahmad Saeed Kirmani (2) Ch. Fazal Elahi, (3) Secretary, West Pakistan Legislative Assembly, (4) Mumtaz Hassan Qizalbash'* [PLD 1958 Supreme Court (Pak) 397] and *'Badru Haque Khan vs. (1) The Election Tribunal, Dacca, (2) The Chief Election Commissioner and (3) Jamalus Sattar Rahman'* [PLD 1963 SC 704]. While referring to the former judgments the august Supreme Court observed in the context of Article 89 sub article (1) of the Constitution of 1956 as follows.-

"This Court was of the opinion that the principle was too broadly stated by the High Court and was apt to lead to dangerous misconceptions. But this Court itself did not attempt to lay down in what particular circumstances proceedings within an Assembly could possibly fall within the

jurisdiction of the Courts, except to point out that matters which fell squarely within the definition of internal proceedings of the House would not be subject to scrutiny by the Courts. It was said that whatever can be "fairly described as internal proceedings relating to the proper business of the House would be wholly outside the corrective jurisdiction of the High Court."

8. After examining the precedent law from other jurisdictions and quoting with approval the test indicated by Sir Erskine May in his treatise titled 'Parliamentary Practice' the apex Court observed and held as follows.-

"It will be observed that in none of these cases had any attempt been made to define as to what constitute "internal proceedings" but this much is clear that they do not extend to anything and everything done within the House. Thus as a general rule a criminal act done in the House would perhaps not be outside the course of criminal justice (vide observations of Stephen, J. In Bradlaugh v. Gossett). The test indicated by Sir Erskine May in his book on Parliamentary

Practice is as to whether what is said or done "forms part of a proceeding of the House in its technical sense, i.e. the formal transaction of business with the Speaker in the Chair or in a properly constituted committee". It would be neither possible nor desirable to attempt any exhaustive classification of the matters that may be comprised within the term "internal proceedings" but it will be sufficient for my purpose to indicate that whatever is not related to any "formal transaction of business" in the House cannot be said to be a part of its "internal proceedings".

9. The Hon'ble Hamoodur Rahman, C.J, as he was then, concluded as follows:-

"In this view of the matter, while I am prepared to concede that all that fairly concerns the internal proceedings of the House relating to its proper business is immune from challenge in Courts, I am not in a position to agree that a question relating to the title of a person to be a Member of the House or to continue to sit therein is a question pertaining to the internal proceedings of the House."

10. In the case of *'Muhammad Azhar Siddiqui and others vs. Federation of Pakistan and others'* [PLD 2012 Supreme Court 774], the provisions of Article 69 of the Constitution were elaborately examined by the august Supreme Court in the context of a ruling of the Speaker under Article 62 (2) *ibid*. To the extent of the ruling of the Speaker given under Article 62(2) it was held that the same was not part of the parliamentary process as the Speaker was performing an administrative task of determining whether a question of disqualification had arisen or not, and thus it was held that the bar under Article 69 did not cover such an act of the Speaker. However, the apex Court reaffirmed the earlier laid down principles and law relating to the bar in respect of 'internal proceedings' of the Parliament. It is, therefore, obvious that the proceedings or acts falling under clauses (1) or (2) of Article 69 are not subject to judicial review. The Rules of 2007, constituting Committees or issuance of production orders for attendance of a member fall within the ambit of the expression "proceedings" for the purposes of Article 69 and the bar of jurisdiction contained therein.

11. It is also noted that the august Supreme Court has consistently affirmed the principle of trichotomy of powers amongst the organs of the State and in this regard reliance is placed on the case of *'Muhammad Azhar Siddiqui and others v. Federation of Pakistan and others'* [PLD 2012 SC 774] and the relevant portion is reproduced as follows.-

"The principle of trichotomy of powers upon which the scheme of the Constitution is based, envisages three organs of the State, namely, Legislation, Executive and Judiciary, each of whom has to perform its functions within its domain. In line with the said principle, this Court has always performed its functions strictly remaining within the area of its jurisdiction and shown utmost respect to the other organs of the State by not intruding upon the domain reserved for them. In Al-Jehad Trust v. Federation of Pakistan (PLD 1996 SC 324) the august Supreme Court held as under:-

"...There is no cavil with the proposition that the Legislature has to legislate; the Executive has to execute laws and the Judiciary has to interpret the Constitution and laws. The success of the system of governance can be guaranteed and achieved only when these pillars of the State exercise their powers and authority within their limits without transgressing, into the field of the others by acting in the spirit of harmony, cooperation and coordination. So far the powers of the Judiciary are concerned, we are exactly going to do that and we are going to interpret the relevant provisions of the Constitution within the limits prescribed so that the provisions are harmonized and the Constitution becomes workable."

12. In view of the above settled principles and law, most of the prayers sought in this petition are not justiciable because we would be transgressing the explicit limits prescribed by the framers of the Constitution under Article 69. 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. In this case respondents no. 8 and 12 were arrested in connection with investigations which are pending under the Ordinance of 1999. They have not been convicted and at this stage they are only accused in the proceedings. Their status as accused entitles them to be treated as innocent till they are proven guilty. They are not disqualified from being members of the Majlis-e-Shoora (Parliament) and, therefore, they cannot be restrained from attending the sessions of the National Assembly because it would then be violative of the constitutional rights of the constituents and consequently they would suffer if they remain unrepresented.

13. The learned Counsel and the petitioner have laid great stress on the provisions of the Cr.P.C, particularly section 167 thereof. A bare perusal of the latter provision shows that it has no relevance in the context of the facts and circumstances of the case at hand. The respondents are in the physical custody of the Bureau and they are subject to investigations. The respective Investigating Officers do not appear to be aggrieved because, if attending the sessions pursuant to the issuance of production orders had been a hindrance in the pending investigations, then the Bureau would have definitely taken up the matter with the Speaker. In such an eventuality it would be one of the factors which ought to be considered by the latter for exercising discretion under Rule 108 of the Rules of 2007. The petitioner obviously cannot be treated as an aggrieved person in the context of Article 199 of the Constitution

because he is not associated with the pending investigations under the Ordinance of 1999.

14. In view of the above discussion we are satisfied that this petition is without merit and it is, therefore, accordingly dismissed in limine.

(MOHSIN AKHTAR KAYANI)
JUDGE

(CHIEF JUSTICE)

Announced in the open Court on 22-01-2019.

JUDGE

CHIEF JUSTICE

Approved for reporting.

Luqman Khan/*

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