

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
(JUDICIAL DEPARTMENT)

W.P. No.1720/2020

Mian Muhammad Aslam

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	Rao Abdur Raheem and Syed Ghani Shah, Advocates for petitioner.

The petitioner namely, *Mian Mohammad Aslam* is a former parliamentarian and an office holder of one of the registered political parties. He has invoked the jurisdiction of this Court because he is aggrieved on account of the recent increase in the prices of petroleum products by the Federal Government. He has sought appropriate writs for declaring the increase in petroleum products as unconstitutional and a direction to the Federal Government to reduce the recently increased prices.

2. The learned counsel has been heard at length. He has placed reliance on the judgment of the august Supreme Court titled '*Human Rights Case No.14392 of 2013 (Action taken on news clipping published in Daily Pakistan dated 17-4-2013*

*regarding Unprecedented load-shedding in the Country)*' [2014 SCMR 220] in support of his contention that pricing of essential commodities is an integral part of the constitutionally guaranteed rights of the citizens.

3. It is noted that earlier this Court had dismissed the petition of Oil Marketing Companies, vide judgment, dated 25-06-2020 [W.P. No.1590/2020], and the relevant portion thereof is reproduced as follows.-

*"It has been consistently held by the august Supreme Court that the Constitution of Pakistan has been framed on the foundation of trichotomy of powers between three distinct branches i.e the Legislature, Executive and Judiciary. In the case titled "Dosani Travels Pvt. Ltd. and others v. Messrs Travels Shop (Pvt.) Ltd. and others" [PLD 2014 SC 1] it has been observed and held that one of the seminal principles of the Constitution of Islamic Republic of Pakistan is the concept of trichotomy of powers between the Legislature, Executive and the Judiciary. This principle underpins the rationale that framing of a government policy is to be undertaken by the Executive which is in a better position to decide such matters on account of its mandate, experience, wisdom and sagacity. The Judiciary, on the other hand, is entrusted with the task of interpreting the law and to play the role of an arbiter in cases of*

*disputes between the individuals inter se and between individual and the State. It has been emphasized that the Judiciary neither has sword nor power over the purse. The legitimacy and respect of the judgments rendered by the judiciary is dependent on peoples' confidence and in its strict adherence to the Constitution, its integrity, impartiality and independence. 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 eloquently stressed that the constitutional order is founded on the fundamental instruction that each organ must give effect to and act in accordance with the Constitution; insofar as an act of any one of the organs of the State travels beyond the limits laid down in the Constitution, the said organ can be said to have strayed from representing the 'will of the people of Pakistan' and as long all organs remain within the limits prescribed by the Constitution, they have a legitimate claim to being enforcers and exponents of the will of the people. The august Supreme Court in the case titled "Brig. (Retd.) Imtiaz Ahmad v. Government of Pakistan through Secretary, Interior Division, Islamabad and 2 others" [1994 SCMR 2142] has emphasized that the power vested under Article 199 of the Constitution is a great weapon in the hands of Judges, but the latter must observe the constitutional limits set in the parliamentary system under the principle of trichotomy of powers. It has been explicitly observed as follows:*

*"The power under Article 199 of the Constitution is the power of judicial review. That power "is a great weapon in the hands of Judges, but the Judges must observe the Constitutional limits set by our parliamentary system on their exercise of this beneficial power, namely, the separation of powers between the Parliament, the Executive and the Courts". (Lord Scarman in Nottinghamshire C.C. v. Secretary of State (1986) (All ER 199, 204). Judicial review must, therefore, remain strictly judicial and in its exercise, Judges must take care not to intrude upon the domain of the other branches of Government."*

*Moreover, the august Supreme Court in the case titled "Messrs Elahi Cotton Mills Ltd. and others v. Federation of Pakistan through Secretary Ministry of Finance, Islamabad and 6 others" [PLD 1997 SC 582] has cautioned against unnecessary intrusions by the courts in matters relating to utilities, tax and economic regulation. Likewise, in the case titled "Messrs Power Construction Corporation of China Ltd. through Authorized Representative v. Pakistan Water and Power Development Authority through Chairman WAPDA and 2 others" [PLD 2017 SC 83] the august Supreme Court has observed that the courts in exercise of their powers ordinarily avoid to interfere with the public policy decisions and rather exercise judicial restraint. It is, therefore, obvious that exercising judicial restraint in matters which fall within the*

*exclusive domain of the Executive and for which the latter is answerable to the people of Pakistan is inherent in the scheme of the Constitution. We as Judges are not representatives of the people nor accountable for those functions that fall within the exclusive jurisdiction and domain of the Executive branch of the State. In such matters intervention would only be justified if an aggrieved petitioner can demonstrably show violation of constitutionally guaranteed rights. Moreover, the interests of the public at large will prevail over individual rights or interests. The Executive is answerable to the people for performance of its duties and functions assigned under the scheme of the Constitution and, therefore, it should be free from unnecessary interference and intrusions thus warranting exercise of judicial restraint.”*

4. The grievance of the petitioner is regarding increase in prices of petroleum products by the Federal Government. The pricing of a commodity involves several factors and is obviously directed by market forces. It has nexus with the economic conditions and policies of the executive. It thus falls within the exclusive domain of the executive branch of the State. The executive is led by elected representatives and they are accountable to the people of Pakistan for their policies and its consequences. No executive would willingly invite the wrath of the people by allowing increase in prices of

essential commodities through deliberate or reckless decisions. It is also unimaginable that elected representatives would not want to keep the electorate content by ensuring availability of essential commodities at affordable prices. The Courts are neither equipped nor have the expertise to intervene or adjudicate upon matters relating to economic policies of the executive, particularly fixation of prices of essential commodities.

5. By entertaining the petition in hand, this Court would definitely be traveling beyond the limits prescribed by the Constitution and intruding in the domain of the executive without being competent to adjudicate the matter. The grievance of the petitioner is regarding an issue, which exclusively falls within the domain of the executive and the policies framed by the latter from time to time. The intervention by this Court could disturb the equilibrium contemplated by the Constitution. This Court has no reason to doubt that the executive would be oblivious of the hardship faced by the general public because it is led by chosen representatives of the people. We must, therefore, trust the elected representatives and their bonafides in formulating policies unless it can be demonstrably shown otherwise. In the instant case nothing has been placed on record to indicate that a

case is made out for interference by this Court in a matter, which exclusively falls within the domain of the executive. In the circumstances the prayers sought are not justiciable. Moreover, the matter is of a nature that this Court ought to exercise utmost restraint because intervention would prejudice the policies and actions of the executive in dealing with the challenges that relate to the economy.

6. For the above reasons, the prayers sought are not justiciable and thus the petition is accordingly dismissed.

(CHIEF JUSTICE)

Luqman Khan/\*

**Approved For Reporting**

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