

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Faqir Muhammad Khokhar
Mr. Justice M. Javed Buttar
Mr. Justice Ch. Ejaz Yousaf

Civil Petition No.1512 of 2008

Commodore (R) Shamshad ... Petitioner

Versus

Federal Board of Intermediate &
Secondary Education & others ... Respondents

For the petitioner: Raja Abdul Rehman, ASC
 Mr. Arshad Ali Chaudhry, AOR

For respondents No.1 & 2: Agha Tariq Mahmood, ASC/Legal Advisor,
 F.B.I.S.E., Islamabad.

For respondents No.4 & 5: Mr. Muhammad Azam Sultanpuri, Adv. In person.

For respondent No.3. &
On Court Notice: Sardar Muhammad Latif Khan Khosa, Attorney
 General for Pakistan

For respondent No.6: Nemo.

Date of hearing: 19.12.2008.

JUDGMENT

FAQIR MUHAMMAD KHOKHAR, J.- The respondents No. 4 and 5 filed writ petition No.1576 of 2008 before the Islamabad High Court, stating therein that certain news items had appeared in the newspapers to the effect that the petitioner, ex-Chairman of the Federal Board of Intermediate & Secondary Education, Islamabad had awarded 21 additional marks to the daughter of the Hon'ble Chief Justice of Pakistan in the F. Sc. (Pre-medical)

Examination, 2008, by re-evaluating her answer-books, against the rules and regulations of the Board. It was prayed that the additional marks so awarded to her be struck down. The writ petitioners also filed civil miscellaneous No.3448 of 2008 for procurement of the record of the candidate through the bailiff of the High Court. The matter came up for hearing on 3.12.2008 and 4.12.2008. Then the case was adjourned to 5.12.2008 on which date the record of the candidate produced by the Legal Advisor of the Board was sealed by the High Court and handed over to the Deputy Registrar (Judicial) for safe custody in order to avoid apprehension of being tampered with. On 4.12.2008 the petitioner, being a former Chairman of the Federal Board of Intermediate & Secondary Education, Islamabad allegedly appeared and presented two applications in the Office of High Court which were orally refused to be registered.

2. On the same day he filed this petition for leave to appeal without there being any formal order of the High Court. A learned Single Judge of this Court, by order dated 4.12.2008 restrained the Standing Committee of National Assembly & its Members or any other forum to initiate any proceedings or to hold any inquiry against the petitioner and other officials of the Board till final decision of the Islamabad High Court. Notice to the respondents as well as to the Attorney General for Pakistan were directed to be issued.

3. The learned counsel for the petitioner submitted that he wanted to file two applications in the High Court, one under Order 1 Rule 10 CPC for impleading the Standing Committee of the National Assembly on Education as a party and the other seeking an injunctive order against the Standing

Committee as the matter was subjudice before the High Court. However, the office of the High Court refused to entertain both the applications without passing any formal written order. He further argued that in view of the provisions of Articles 66 and 68 of the Constitution of Islamic Republic of Pakistan and Rule 201(5) of the Rules of Procedure & Conduct of Business in the National Assembly, the Standing Committee was not empowered to hold an inquiry into the matter which was subjudice before the High Court nor it could issue any process to discuss the conduct of a Judge of the Supreme Court in any manner on the principles of trichotomy of power. He further submitted that the Chairman of the Committee was biased and was conducting the proceedings mala fide.

4. The learned Attorney General for Pakistan, appearing on Court's call, frankly stated that neither the applications of the petitioners were on the record of the High Court nor the High Court had passed any order. Therefore, the petitioner was required to approach the High Court in the first instance.

5. The learned counsel for the respondents No.1 and 2 submitted that he was not in a position to state full facts of the case as the record had already been sealed and taken into custody by the High Court.

6. The respondent No.5, an Advocate of the High Court, appearing in person and also for the respondent No.4, stated that the matter was already subjudice before the High Court which was to be decided on its merits and the next date of hearing of the writ petition was fixed for 13.1.2009.

7. We have heard the learned counsel for the parties and the learned Attorney General for Pakistan at length and have also perused the available record. It is highly doubtful that any applications were formally

presented to the learned Bench of the High Court which was seized with the case. Even no such applications were annexed with this petition. We are certain that had the applications been duly filed the same would have been dealt with in accordance with law. The petitioner acted with unholy haste in rushing to this Court without any formal order of the High Court. In the absence of any material on record, it is not possible or desirable for us to go into the questions of bias or malafides of the Chairman of the Committee.

8. As regards the other plea of the learned counsel for the petitioner, we may observe that Article 66 of the Constitution provides for the freedom of speech in Parliament and Committees thereof and also the immunities and privileges of the Parliament and its Members including the power to punish for contempt by making a law which may empower a Court to punish a person who refuses to give evidence or produce documents. However, Article 66 itself has been made subject to the other provisions of Constitution and the Rules of Procedure of the Parliament. This obviously means that while exercising powers pursuant to Article 66 or the Rules of Procedure of the National Assembly there can be no violation or transgression of other provisions of the Constitution. For instance, Article 63 Clause (g) of the Constitution provides for disqualification of a candidate or a Member of Parliament if he is propagating any opinion or acting in any manner, prejudicial to the ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or morality, or the maintenance of public order, or the integrity or independence of judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the Armed Forces of Pakistan. Article 68 of the Constitution also states that no discussion shall take place in the Parliament with respect to the conduct of a Judge of the Supreme Court or a High Court

in discharge of his duties. Not only that Article 204 of the Constitution empowers the Supreme Court or a High Court to punish any person who:-

- a) Abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court;
- b) Scandalizes the Court or otherwise does anything which tends to bring the Court or a Judge of the Court into hatred, ridicule or contempt;
- c) does anything which tends to prejudice the determination of a matter pending before the Court; or
- d) does any other thing which, by law, constitute contempt of the Court.

9. We do not claim supremacy but at the same time it is our constitutional duty to uphold the independence of judiciary and rule of law. The legislature, executive and judiciary are enjoined by the Constitution to perform their functions and discharge their duties within the limits set by the Constitution and the law. The existence and extent of a privilege of a House are matters which can only be judicially determined by a Court of law by exercise of power of judicial review. The mere assertion by the House or its Committee that it has certain privilege is not conclusive and the same has to be established before the Court of law. But once the same is established, the Courts are required to stay their hands off ungrudgingly. The proceedings, by a Court or the Parliament or its Committee, are not to be taken in a manner which may lead to unnecessary confrontation and chaos. The provisions of sub-rule (5) of rule 201 of the Rules of Procedure & Conduct of Business in the National Assembly seem to have been wisely introduced with a view to avoid any conflict or encroachment with the exercise of judicial power which can not be taken away or abridged in any manner. In the absence of any

material on record, it is neither possible nor desirable for us at this stage to go into the questions of bias or mala fides of the Chairman of the Standing Committee.

10. We do not find any merit in this petition which is hereby dismissed and leave to appeal is refused but with the above observations.

Islamabad,

19.12.2008.

M. Azhar Malik/*

Approved for reporting.