

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present:

Justice Qazi Faez Isa, CJ
Justice Syed Mansoor Ali Shah
Justice Yahya Afridi
Justice Jamal Khan Mandokhail
Justice Athar Minallah
Justice Musarrat Hilali
Justice Naeem Akhtar Afghan

Suo Motu Case No. 1/2024

*(In the matter of letter dated 25 March
2024 of the Six Judges of the Islamabad
High Court)*

On Court Notice: Mr. Mansoor Usman Awan,
Attorney-General for Pakistan.

On Court's Call: Mr. Shahzad Shaukat, ASC,
President Supreme Court Bar Association.

Date of Hearing: 03.04.2024.

ORDER

Background

Six Judges of the Islamabad High Court wrote a letter dated 25 March 2024, which was received on 26 March 2024, (**'the Letter'**). The Letter was addressed to the Chairman and the Members of the Supreme Judicial Council (**'SJC'**) and was copied to all the Judges of the Supreme Court and the Registrar of the Supreme Court, who also acts as the Secretary of the SJC. In view of the seriousness of the issues raised in the Letter the Committee constituted under the Supreme Court (Practice and Procedure) Act, 2023 decided on Monday, 1 April 2024 that the Supreme Court may consider the matter under Article 184(3) of the Constitution of the Islamic Republic of Pakistan (**'the Constitution'**) and a bench comprising *'all available Judges at the principal seat, Islamabad be constituted on Wednesday, 3rd April 2024 at 11.30 am.'*

2. The learned Attorney-General for Pakistan (**'AG'**) is present in Court and read out the *Press Release* issued on Thursday, 28 March 2024 by the Public Relations Officer of the Supreme Court. The learned AG confirmed the facts mentioned therein which related to the Government of Pakistan and the meeting of the Prime Minister, Law Minister and AG with the Chief

Justice of Pakistan ('**CJP**'), the Senior Puisne Judge, Justice Syed Mansoor Ali Shah ('**SPJ**') and the Registrar of the Supreme Court, Ms. Jazeela Aslam. The said meeting took place on 28 March 2024 at 2 pm in the Conference Room of the Judges Block in the Supreme Court. The meeting lasted for about an hour and a half. Learned AG submitted that the Prime Minister had endorsed the views of the CJP and the SPJ that the independence of the judiciary should never be compromised and had agreed to form an inquiry commission, under the Pakistan Commissions of Inquiry Act, 2017, and had accepted the names suggested by the CJP and SJP of two former Chief Justices of Pakistan to head a single member inquiry commission. The learned AG stated that the Prime Minister acknowledged the gravity of the matter and stated that he will be calling a meeting of the Federal Cabinet immediately to seek its approval for the formation of the inquiry commission and convened the Federal Cabinet on Friday, 29 March 2024, however, as some of the members were out of station the meeting was postponed to Saturday, 30 March 2024. The learned AG stated that the promptitude with which the Prime Minister acted reflected the commitment and seriousness of the Government.

3. The learned AG informed that pursuant to the decision of the Federal Cabinet the Law Minister met the former Chief Justice of Pakistan, Justice Tassaduq Hussain Jilani, at his residence in Lahore and he agreed to head the inquiry commission; he was shown the proposed terms of reference of the commission and his suggestion to empower the commission to expand the scope of its inquiry was accepted. The learned AG stated that the said commission was an independent commission, and would have functioned without any government control over it, and independently given its findings. However, the commission was falsely portrayed by some detractors as one formed by the Executive to look into the affairs of the Executive. Unfortunately, an adverse propaganda attack was also launched on the person of Justice Tassaduq Hussain Jilani which, in the opinion of the learned AG, dissuaded him to undertake the exercise, and consequently Justice Tassaduq Hussain Jilani wrote letter dated 1 April 2024 recusing himself.

4. The learned AG read out the said letter dated 1 April 2024 which referred to Article 209 of the Constitution and had observed that it would not be appropriate to address any matter within the jurisdiction of the SJC,

which was a constitutional body. It was also pointed out that six judges of the Islamabad High Court had written to the SJC '*to seek guidance*'. Justice Tassaduq Hussain Jilani concluded by stating that the matter did not come *within the parameters of Article 209 of the Constitution, but the Honorable Chief Justice of Pakistan being the paterfamilias may address and resolve the issues raised in the letter at the institutional level.*

5. The CJP referred to the meeting he and the SPJ had with the Chief Justice and Judges of the Islamabad High Court on Tuesday, 26 March 2024, which had lasted for over two and a half hours. The six Judges who wrote the Letter were asked by the SPJ that, given that they had written to the SJC, the CJP and SPJ should intervene, and they said that they reposed full confidence in the CJP and SPJ who should attend to the matter as they deemed appropriate.

6. The following day, that is, on Wednesday, 27 March 2024, a Full Court meeting of all the Judges of the Supreme Court was called by the CJP and all the Judges met at 4 pm in the Conference Room. The meeting lasted for two hours and a quarter. A consensus developed amongst the majority of the Judges that in view of the gravity of the situation the CJP may meet the Prime Minister with regard to the concerns of interference in judicial work raised in the Letter. After the meeting with the Prime Minister, Law Minister and AG another Full Court meeting was called by the CJP the same day, that is, Thursday, 28 March 2024, at 4 pm, when the Judges were informed about what had transpired in the said meeting.

7. The CJP stated that when the Supreme Court issues notice to the Government it is represented by the concerned Secretary, however, to impress upon the Prime Minister the gravity of the situation it was felt necessary to meet him; in this regard reference was made to Article 248 of the Constitution whereunder the Prime Minister and the Law Minister enjoy impunity and as such can not be called in Court for the exercise of powers and performance of functions of their office.

8. The learned AG referred to the Letter wherein it is stated that '*it is imperative to inquire into and determine*' into the allegations mentioned in the Letter. The learned AG stated that in this matter an investigation could be undertaken by the Police, the Federal Investigation Agency ('FIA') or by

an inquiry commission constituted under the Pakistan Commissions of Inquiry Act, 2017, which are the only available legal mechanisms for undertaking it. However, realizing the sensitivity of the matter, an inquiry commission headed by a retired Chief Justice of Pakistan was considered to be the most appropriate. Mr. Shahzad Shaukat, President, Supreme Court Bar Association ('**SCBA**'), stated that the SCBA was also of the view that constituting the said commission of inquiry headed by Justice Tassaduq Hussain Jilani, a former Chief Justice of Pakistan, was the only appropriate mechanism.

9. The learned AG also stated that all the incidents mentioned in the Letter are about a year old or even earlier. He referred to instances, for which those in the present government cannot be held responsible and mentioned the death threat extended to a Judge of the Supreme Court (the present CJP) and that the Police did not register the FIR of the complainant (CJP's wife Mrs. Sarina Isa). Instead the FIR which was eventually registered was by FIA and this was under the Prevention of Electronic Crimes Act, 2016, mentioning the offences therein and by removing the offence of terrorism. He stated that the Supreme Court had also issued contempt notice to the alleged contemnor and framed charge against him but then did not proceed further and the case was never fixed in Court again.

10. Learned AG stated that the present government fully believes in the independence of the Judiciary but should not be held responsible for the acts of the past, and submitted that if the recorded earlier incidents had been attended to by the then government and by the Supreme Court this would have helped insulate the Judiciary from outside pressure. Confirming that the Government believes in the independence of the Judiciary he stated that there was absolutely no policy nor instructions given to interfere with the working of the Judiciary or to undermine its independence.

11. The learned AG stated that no incident is mentioned in the Letter which occurred during the tenure of the present CJP, who assumed office on 17 September 2023. At this stage the CJP referred to paragraph 6(e) of the Letter and stated that his predecessor had never consulted him on the

matter nor held any meeting with the then senior puisne judge or with the then next senior Judge, Justice Sardar Tariq Masood.

12. During the hearing reference was made to Article 175(2) of the Constitution, which stipulates that, *'No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law'* and to the different jurisdictions of the Supreme Court: *original* (Article 184), *appellate* (Article 185), *advisory* (Article 186), *transfer* (Article 186A) and *review* (Article 188). The question also arose with regard to the Supreme Court's constitutional and legal powers in the instant matter with regard to ascertaining facts. Article 203 of the Constitution, whereunder the High Court is empowered to *supervise and control all courts subordinate to it*, was also referred to and it was noted that there is no equivalent provision in the Constitution empowering the Supreme Court to supervise and control the High Courts. Reference was also made to Article 202 of the Constitution which enables the High Court to make rules regulating its practice and procedure and those of the courts subordinate to it. The constitutional scheme thus mandates complete independence of the High Courts.

Order in Suo Motu Case

13. In their letter, the Judges of the Islamabad High Court have mainly requested to undertake *"intuitional consultation"* in the background of the issues raised by them *"to consider how best to protect independence of the judiciary"* and to *"put in place a mechanism to affix liability for those who undermine such independence and clarity for the benefit of individual judges the course they must take when they find themselves at the receiving end of interference and/or intimidation by members of the executive"*. We are, therefore, of the view that it would be an appropriate starting point, in the present proceedings, to call for proposals from the main stakeholders in the judicial system and the independence of the judiciary, i.e., (i) the Pakistan Bar Council, (ii) the Supreme Court Bar Association, (iii) the High Courts, and (iv) the Federal Government as to what should be the institutional response and mechanism to address the issues like the ones raised in the letter and ensure that such issues do not arise in future and if they do, to fix liability and proceed against those responsible. In any such process the idea is to empower the High Courts and their respective Chief Justices to deal with issues relating to the Hon'ble Judges of the High Courts or the

District Judiciary. We expect that the proposals shall be made after proper consultation within the respective bodies and be filed by 25 April 2024.

14. The SCBA and the Pakistan Bar Council (**PBC**) are committed to upholding the independence of the Judiciary therefore both these organizations should be arrayed as parties to assist this Court and notices be issued to them.

15. The office shall serve the notice of this order to the Vice-Chairman of the Pakistan Bar Council, (ii) the President of the Supreme Court Bar Association (iii) the Registrars of the High Courts, and (iv) the Attorney-General for Pakistan for the Federal Government. Further, as the matter involves questions as to the interpretation of constitutional law which concern the Federal Government the notices shall also be given to the Attorney-General for Pakistan under rule 1 of Order XXVIA, CPC.¹

16. Learned senior counsel Mr. Hamid Khan and learned Mr. Khawaja Ahmed Hosain pointed out that they had filed petitions under Article 184(3) of the Constitution with regard to the Letter and requested that the same be fixed with the instant case. They were reminded that the matter is governed by the Supreme Court (Practice and Procedure) Act, 2023 and is required to be first placed for consideration before the Committee constituted thereunder, and once the Committee approves their cases and any other such cases which may be fixed together with this matter.

17. To come up on Tuesday, 30 April 2024 at 11.30 am.

Chief Justice

Judge

For reasons noted in my separate note, I very respectfully recuse myself from the bench hearing the present suo motu proceedings.

Judge

Judge

¹ The Code of Civil Procedure, 1908.

With utmost respect I have not been able to persuade myself to endorse paragraphs 1 to 12. However, I will be adding my separate note.

Judge

Judge

Judge

Islamabad
03.04.2024
(Farrukh)

Yahya Afridi, J.- Invoking the original jurisdiction of this Court vested under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973 (“**Constitution**”), and that too, on a *suo motu* motion, should be scarcely exercised. This caution of judicial restraint should be further guarded when the matter for determination is inquisitorial, requiring a factual probe before a definite declaration, and/or, direction is rendered by this Court.

2. In the instant matter, none can doubt the *bone fide* of invoking the *suo motu* jurisdiction under Article 184(3) of the Constitution. However, when the letter of the six worthy Judges of the Islamabad High Court craves for formulating the administrative course of conduct for serving judges to not only address any intrusion of the executive in their judicial functions, but more importantly, their mode and manner of interaction with the executive, to judicially proceed in the present proceedings would surely lead to an adverse spectacle – a sight I seriously urge should be avoided.

3. To proceed on the proposed action of *suo motu* would negate the lessons we have learnt from our recent judicial precedents and, thus, we must not be moved into action by public sentiments no matter how pressing the issue may appear.

4. One must also not ignore that the High Courts under the Constitution are independent establishments, envisaged to regulate not only their administrative functions, but also provide security to and safeguard judicial officers in their discharge of judicial functions. Law on the matter is already in the field. The inaction on the part of the Chief Justice or the Judges of the High Court not to exercise the jurisdiction and powers vested in him or them, should not lead this Court to super-impose the exercise of its jurisdiction under Article 184(3) of the Constitution. This may affect the functioning of the worthy Chief

Justices and worthy Judges of the High Courts, and would to my mind amount to interference in the independence of the High Courts.

5. Given the above, none can dispute that the anxiety of the six worthy Judges of the Islamabad High Court raised in their letter dated 25.03.2024 addressed to the Supreme Judicial Council, most certainly warrants positive consideration, *inter alia*, for inserting appropriate provisions to regulate the interaction of judges with the executive and the remedial response of the judiciary to any attempt or actual interference in its judicial functions in the Code of Conduct of Judges of the superior judiciary, as provided under Article 209(8) of the Constitution.

6. And thus, I respectfully recuse myself from the bench hearing the present *suo motu* proceedings.

Judge