

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Larger Bench

Mr. Justice Amin-ud-Din Khan
Mr. Justice Jamal Khan Mandokhail
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Shahid Waheed
Mr. Justice Irfan Saadat Khan
Mr. Justice Shahid Bilal Hassan

CMA No. 597 & 598 of 2024 in ICAs 16 & 24/2023

(For rejection of the appeals on behalf of the respondents 1 to 5)

Federation of Pakistan

.....Appellants

*The Province of Balochistan through the Chief
Secretary Services & General Administration
Department Quetta*

versus

Karamat Ali and others

....Respondents

For the Applicants:

Mr. Faisal Siddiqui, ASC
(in both CMAs)

For the Federation:

Mr. Mansoor Usman Awan, Attorney General
for Pakistan

Date of Hearing:

11.07.2024

ORDER

Amin-ud-Din Khan, J. The prayer made in the CMA No. 598 of 2023
is reproduced as follows:

*“In the view of the above, it is most respectfully and most
humbly prayed that this Honourable Court may graciously
be pleased to kindly restraint the Appellant (Federation of
Pakistan through the Ministry of Interior) from engaging
any private counsel from pleading and conducting this
present Appeal on their behalf and furthermore, only allow
the Office of the Attorney General to plead and conduct
this present Appeal.”*

2. Learned counsel for the applicants states that his applications be
decided first and thereafter the appeals may be heard. Despite the fact that

from the next week summer vacations are scheduled and this bench may not be available, learned counsel has consumed most of the time of today's hearing.

3. We have heard the learned counsel for the applicants as well as learned Attorney General for Pakistan ("**AGP**") at length. Learned counsel for the applicants has argued the case in the light of judgment of this Court reported as Rasheed Ahmad v. Federation of Pakistan thr. Secretary, Ministry of Information, Broadcasting and National Heritage, Government of Pakistan Islamabad, etc. (PLD 2017 SC 121) and argued that the Federation as well as ministries cannot engage a private counsel simultaneously the Provincial Government also cannot engage a private counsel as in the matter in hand a private counsel has been engaged and appeals have been filed through them. In response to the objection of the learned counsel for the applicants, learned AGP states that Rules of Business, 1973 ("**Rules**") with regard to the Federation have been amended and after the cited judgment, rule 14(1A) thereof was introduced which is as follows:

"(1A) A Division may, for compelling reasons for a particular case, engage a private counsel and for that purpose shall refer the case to Law and Justice Division which may, after consultation with the Attorney General, allow engagement of such counsel on payment of fee by the Division concerned."

4. Learned AGP further argued that even on the basis of the judgment cited by the learned counsel there was no closure of door for engaging a private counsel and there was a way even in the said judgment for engaging a private counsel. He states that when the Rules have also been amended after the promulgation of the judgment cited by him and rule 14(1A) has been added thereto. He states that the procedure has been complied with with regard to engagement of private counsel and there were compelling circumstances, the prayer of the learned counsel for the applicants is absolutely misconceived and the applications deserve to be dismissed.

5. We have gone through the Rules of Business, 1973 and the judgment reported as Rasheed Ahmad v. Federation of Pakistan thr. Secretary, Ministry of Information, Broadcasting and National Heritage, Government of Pakistan Islamabad, etc. (PLD 2017 SC 121) cited by the learned counsel for the applicants. We agree with the learned AGP that even in the judgment referred supra there was no closure of door for engaging a private counsel, there was a way mentioned in the said judgment for engaging a private counsel, after insertion of rule 14(1A) in the Rules, the power to engage a private counsel by a Division has been enhanced, though the Division is bound to follow the procedure provided under Rule 1A cited above. The learned AGP has apprised us with record whereby the procedure has been adopted and complied with and the learned AGP has also stated that there is no defect in engaging a private counsel and further we have gone through the record cited by the learned AG and found that the procedure provided in the Rules has been complied with. The other judgment of this Court in CP No. 1026 of 2021 has been cited by the learned counsel for the applicants for engaging private counsel. We have observed that the facts and circumstances mentioned in the said judgment are different and the same is not applicable to the facts of these matters.

6. We observe that for filing a petition or an appeal before this Court the procedure for filing of an appeal is provided under Supreme Court Rules, 1980 and that is primarily filed through AOR. In these appeals the AOR has been appointed by the concerned Division in accordance with the Rules, therefore, there is no defect in filing the same. Order IV Rule 6 of the Supreme Court Rules, 1980 is relevant, which is reproduced:

“No Advocate other than an Advocate-on-Record shall appear or plead in any matter unless he is instructed by an Advocate-on-Record.”

7. The appeals have been filed correctly through AOR and AOR can instruct the counsel to appear. There is no reason to allow these applications. The applications thus, stand dismissed.

Islamabad
11th July 2024
Rizwan

Shahid Waheed, J.- I have read the order put forth by my learned fellow judge, Amin-ud-Din Khan, J., regarding the two applications mentioned in the caption. I concur with the order. However, I will include a note to explain further the reasons provided in the order.

2. These two applications (*i.e., CMA No.597 of 2024 in ICA No.16 of 2023 and CMA No.598 of 2024 in ICA No.24 of 2023*) are intended to restrain the Government from engaging private counsel to plead and conduct its cases. It is important to briefly outline the background that explains the necessity of filing these applications. Several petitions were filed in this Court under Article 184(3) of the Constitution, challenging the lawfulness of sections 2(1)(d)(i)&(ii) and section 59(4) of the Pakistan Army Act, 1952. The Federation of Pakistan was arrayed as one of the respondents in these petitions through various Ministries such as Defence, Interior, Law & Justice, etc. The Province of Baluchistan was also a respondent in some petitions. After these petitions were allowed, intra-court appeals were filed under section 5 of the Supreme Court (Practice and Procedure) Act, 2023. Instead of filing a single appeal on behalf of the Federation of Pakistan, each Ministry was instructed to engage private counsel to pursue their respective appeals. The Province of Baluchistan also engaged private counsel to pursue its appeal. This approach raised concerns about the possible misuse of public funds and unnecessary delays in the disposal of appeals affecting the lives and liberties of citizens, especially when, in one appeal, the Attorney General under Article 100 of the Constitution is seeking the right to present arguments to the Court. As I understood from the arguments canvassed at the Bar, the bedrock

of these concerns is Rasheed Ahmad's case¹, which led to the objections made by the applicants.

3. Be it noted in the beginning that the Federal Government's approach of allowing Ministries to file separate appeals was imprudent. One consolidated appeal was sufficient. Since we are not concerned here with the maintainability of multiple appeals, we will focus on the question that comes up for our determination: whether private counsel can be restrained from pleading on behalf of the Government, given the circumstances. This question makes it necessary to review the scheme of law governing the legal practice of Advocates before this Court. It must be remembered that the license to practice law confers twofold rights on an Advocate: the "right to act" and the "right to plead." The "right to act" refers to taking steps to lay the case before the Court, for instance, making an application or presenting a petition or appeal. No Advocate can exercise this right for any person unless he has been appointed by a document in writing signed by such person or his authorised agent or some other person duly authorized by him to make such appointment, and such document has been filed in the Registry². A document appointing an Advocate to act on behalf of any person is called *Wakalatnama* (power of attorney). Rule 15 of Order IV of the Supreme Court Rules, 1980 says that no Advocate other than an Advocate-on-Record is entitled to act for a party in any proceeding in the Supreme Court. For this reason, in the cases at hand, the Government has engaged Advocates-on-Record, and the applicants have not questioned their appointments and their right to act for the Government, so there is /

¹ Rasheed Ahmed v. Federation of Pakistan through Secretary, Ministry of Information, Broadcasting and National Heritage, Government of Pakistan, Islamabad and others [PLD 2017 Supreme Court 121].

² Order IV, Rule 22 of the Supreme Court Rules, 1980.

no need to dilate further on this aspect. Given the facts, the filing of appeals on behalf of the Government cannot be held invalid.

4. The “right to plead”, as it suggests, is a right by which an Advocate appears before the Court to present and argue a position on behalf of a person or party. Rule 6 of Order IV of the Supreme Court Rules, 1980 enacts that no Advocate other than an Advocate-on-Record shall appear or plead in any matter before this Court unless an Advocate-on-Record instructs him. In line with this rule, Form No.5 of Sixth Schedule to the Supreme Court Rules, 1980 provides a specimen of the Power of Attorney to Advocate-on-Record, which, among other things, gives power to an Advocate-on-Record “to appoint and instruct counsel”. So viewed, it is under this power the Advocate-on-Record has appointed and instructed private counsel to argue the matter on behalf of the Government. Here, the applicants’ objection needs consideration: when a competent and proficient Attorney General and his team were available to the Government, why were private counsel instructed to plead the Government’s stance? The applicants sought strength in their argument from Rasheed Ahmad’s case (*supra*). This objection might have been weighty if it had been a case of a particular individual involving a simple question of law. On the contrary, the substantive questions involved in the appeals are out of the ordinary, with broad implications that will significantly impact the lives and liberties of citizens. These questions partake of the colour of criminal, constitutional and international human rights. Standing at the rostrum in the courtroom, the Attorney General stated that although he was conversant with criminal law, he lacked that much expertise which required to address the complex questions of criminal law so raised /

in appeals, and therefore, being compelled, private counsels have been engaged to render comprehensive and effective assistance to this Court in the public interest. The Attorney General's honesty and sincerity in admitting his limitations are appreciated. His statement shows that he is a thorough professional and leads us to conclude that the engagement of private counsel was not for any improper motive. What's more, it is to be noted that the scope of appeal under section 5 of the Supreme Court (Practice and Procedure) Act, 2023, is also to be settled, and since all the questions raised in the appeals have never been brought before this Court for consideration, they ought to be discussed extensively to arrive at a sagacious answer. In my opinion, such a situation constitutes a "compelling reason" within the contemplation of Rule 14(1-A) of the Rules of Business, 1973, for engaging private counsel. It also meets the test set out in Rasheed Ahmed's case for engaging private counsel, which held that the engagement of a private counsel could only be sanctioned for compelling reasons and in the public interest and not to protect or save a particular individual or for any other ulterior reason. It has been brought to our notice that there has been no departure from the procedure for engaging private counsel. So, we find that the applicants' objection does not hold water. As a result, we conclude that private counsel, given the circumstances, cannot be restrained from pleading the cause of the Government.

5. These applications fail and are dismissed accordingly.