

Athar Minallah, J.- The application was filed for seeking an order of the Bench to resume the live streaming of the proceedings. It is not disputed that during the last hearing held on 16.05.2024 the proceedings were not live streamed and no order to this effect had been passed by the Bench. However, the proceedings during the previous hearings held on 31.10.2023 and 14.05.2024 were streamed live. The questions raised through the application are; whether live streaming of the proceedings before us could have been discontinued and whether, by doing so, the principles enunciated by a larger Bench of this Court were breached and the people at large were deprived of their right, inter alia, guaranteed under Article 19-A of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**").

2. The respondent, Imran Ahmed Khan Niazi ('**respondent**'), is the founder and undisputed leader of a major political party, Pakistan Tehrik-e-Insaaf. The respondent, who at present is incarcerated in the Central Prison, Adiala had challenged the vires of the amendments brought about in the National Accountability Ordinance, 1999 ('**Ordinance of 1999**'). The petition was entertained and heard by this Court, invoking its jurisdiction conferred under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ('**Constitution**'). This Court, by a majority of 2 to 1, allowed the petition and declared the amendments ultra vires. The appeal before us essentially arises from and is a continuation of the proceedings initiated by this Court under Article 184(3) of the Constitution. The request made by the respondent to enable him to argue the matter was allowed vide order dated 14.05.2024 and he made his first appearance on 16.05.2024. It was on the said date that live streaming was discontinued without an order having been passed by the Bench. In order to answer the aforementioned questions, it would be beneficial to

examine the principles enunciated by a larger Bench of this Court in Justice Qazi Faez Isa's case.¹

Justice Qazi Faez Isa's case; principles enunciated by this Court regarding live streaming and the duty of this Court in this context:

3. A sitting Honourable Judge of this Court had filed an application seeking relief of ordering live streaming of the proceedings of his case. The application was strongly opposed by the Federal Government and the respondent then was holding the public office of the Prime Minister. A larger Bench of this Court, consisting of ten judges, had examined the matter and the judges were unanimous that the right of the people to have access to information in matters of public importance under Article 19-A of the Constitution was recognised. Though the application was dismissed by 6 to 4 but the differences were regarding the manner in which the recognised right could be enforced and executed by this Court. The majority was of the view that the modalities and details were to be decided by the Full Court while the minority had ordered live streaming of the proceedings in the matter which was being heard. The judgment has been implemented by giving effect to the recognised right as will be discussed later. As has been noted above, the dissent was to the extent of the execution and mode of enforcement of the recognised right. However, the minority view had elaborately dealt with the principles in the context of the unanimously recognised right which are summarised as follows;

- i) The right conferred by Article 19-A of the Constitution is operative and justiciable.
- ii) The right to have access to information in all matters of public importance conferred by Article 19-A is a corrective apparatus, which allows public scrutiny of the working of

¹Justice Qazi Faez Isa and others v. President of Pakistan and others (PLD 2023 SC 661)

public authorities and institutions and makes them answerable to the public.

- iii) It ensures transparency and accountability in the functioning of all public authorities and institutions.
- iv) The judicial definition of the expression 'public importance' as interpreted by this Court in *Manzoor Elahi*² and *Benazir Bhutto* cases³ is also attracted in relation to the expression 'matters of public importance' used in Article 19-A.
- v) The expression 'matters of public importance' used in Article 19-A means those matters that pertain to and affect the public at large, a whole community, and not an individual or a small group of individuals. It includes matters in which the general interest of the whole community, as opposed to the particular interest of individuals, are directly or vitally concerned.
- vi) Cases heard by this Court on its original jurisdiction under Article 184(3) of the Constitution, including review petitions and other matters arising therein, are matters of public importance within the meaning and scope of that expression used in Article 19-A of the Constitution.
- vii) The public has a fundamental right under Article 19-A of the Constitution to have access to information in its original jurisdiction under Article 184(3) of the Constitution, including the right to know and see how court proceedings in these cases are conducted by the Court.

²*Manzoor Elahi v. Federation of Pakistan* (PLD 1975 SC 66)

³*Benazir Bhutto v. Federation of Pakistan* (PLD 1988 SC 416)

- viii) The right conferred under Article 19-A is a positive right. The right not only operates as a limitation on the power of the State to act in a manner that would negate the right of the citizen to have access to information in all matters of public importance but also requires the State to take some appropriate actions to fulfil this right.
- ix) Article 19-A of the Constitution creates a positive obligation on all State organs, authorities and institutions, including the judiciary, to take necessary measures to ensure the realization of the fundamental right of citizens to have access to information in matters of public importance.
- x) Article 19-A can only be interpreted with a progressive, liberal and dynamic approach and it is the duty of every institution to explore modern means for the enforcement of the right guaranteed there under, which have been made available by the latest technology of the day.
- xi) It is a duty of this Court to abide by the principles of openness and transparency because it has been consistently held for other organs of the State that their functioning should manifest the said principles.
- xii) The access of the public to the court proceedings in cases heard under Article 184(3) of the Constitution through live streaming would serve democracy as much as it would make the exercise of judicial power by the court transparent.
- xiii) Live streaming (audio and video) of the court proceedings in cases heard by this Court on a petition or Suo Moto, under Article 184(3) of the Constitution, must be made

available for the information of the public through a link on the official website of the Court, in conferment of the fundamental right of the public and for the fulfilment of the obligation of the Court under Article 184(3) of the Constitution.

- xiv) The right to have access to court proceedings through live streaming is operative and justiciable even without the enactment of a law that may provide for the regulation of and reasonable restriction on such right.

4. This Court has thus declared access of the public to the court proceedings in all cases in matters of public importance through live streaming as a recognised fundamental right guaranteed under Article 19-A of the Constitution. As a corollary, the cases entertained and heard under Article 184(3) of the Constitution, including other matters arising therein, necessarily fall within the ambit of the expression 'matters of public importance. An appeal, therefore, arising from the proceedings under Article 184(3) of the Constitution is a matter of public importance and, thus, in each case the public has a right to have access to the court proceedings through live streaming. As a consequence, the discretion exercised by a Bench to order live streaming or otherwise, has to be guided and in accordance with the right guaranteed under Article 19-A. The exercise of discretion not to order live streaming of court proceedings by a Bench, to which the facility is available, will be lawful and justified only in exceptional circumstances and for compelling reasons. Keeping in view the importance of the guaranteed fundamental right, the public cannot be deprived of access to the court proceedings through live streaming except in exceptional circumstances and for compelling reasons. Moreover, once the proceedings in a particular case have been live

streamed then they cannot be ordered to be discontinued unless the Court is satisfied that it was necessary to do so in the public interest for a demonstrably substantial reason. It is manifest from the explicitly recognised right that the public is not required to put the exercise of this crucial fundamental right into motion by making a request or filing an application, because ensuring the enforcement of the right of the public to have access to court proceedings through live streaming is essentially a duty and obligation of this Court.

5. Pursuant to the above principles enunciated in the Justice Qazi Faez Isa case, the Full Court, in its meeting held on 18-09-2023, decided to start a pilot project and a committee consisting of two judges was constituted to execute the pilot project and to consider future telecast/streaming and to work out modalities regarding telecast/streaming of other Courts. The pilot project was successfully executed and as a consequence all cases heard under Article 184(3) in Court Room No. 1 have been live streamed since then. A report dated 16-10-2023, was forwarded by the committee, proposing modalities regarding telecast/streaming of the Courts. The framing of SOPs is subject to approval of the modalities proposed by the committee in its report by the Full Court. However, non framing of SOPs is not in any manner an impediment to give effect to the right recognised by a larger Bench of this Court and this is obvious from the live streaming of all matters heard by the Bench No. 1 pursuant to the successful execution of the pilot project. Notwithstanding the non framing of the rules, all cases entertained and heard under Article 184(3) in Court Room No. 1 are required to be live streamed in order to enforce the right of the people guaranteed under Article 19-A of the Constitution unless the Bench is satisfied that exceptional circumstances exist to order otherwise and that doing so would be in the public interest.

The public importance involved in the appeal before us.

6. As already noted, all cases entertained and heard by this Court in exercise of the jurisdiction under Article 184(3) are matters of public importance in the context of the fundamental right guaranteed under Article 19-A of the Constitution. The appeal before us has arisen from the proceedings heard by this Court under Article 184(3) and, therefore, it fulfils the condition of falling in the category of a matter of public importance. The public importance in case of the appeal in hand cannot be understated. The vires of the amendments made in the Ordinance of 1999 were challenged by the respondent. The role of the National Accountability Bureau (**'Bureau'**) itself is a matter of highest public importance. The Bureau was the successor of the anti-corruption agency of the Ehtesab Cell (**'Cell'**) established under the Ehtesab Act, 1997 (**'Act of 1997'**). By now there is sufficient documented evidence to show that the Cell or the Bureau, as the case may be, were established mainly to hold the chosen representatives of the people accountable for corruption and corrupt practices. It was extensively used for political engineering. The draconian and arbitrary powers were used to intimidate, harass and humiliate opponents and the critics of the government. The arbitrary arrests and humiliation of dissenters and political opponents led to grave violations of the fundamental rights guaranteed under the Constitution. Almost all those who had held the public office of Prime Minister had fallen victim to the draconian and arbitrary powers of the Cell or the Bureau, as the case may be. The violation of the right to fair trial and due process through the use of arbitrary powers was highlighted by various constitutional courts in their judgements, including this Court. The arbitrary exploitation of the power vested in the Cell and the Bureau to undermine democracy and democratic institutions was

explicitly highlighted by this Court in the Khawaja Saad Rafique case⁴ and the relevant portion is reproduced as follows:

“66. Rather than doing any good to the country or our body politic and cleansing the fountainheads of governance, these laws and the manner in which they were enforced, caused further degeneration and created chaos, since the same were framed and applied with an oblique motive of arm twisting and pressurizing political opponents into submission, subjugation and compliance, or remove them from the electoral scene at least temporarily. These laws were successfully employed as tools to change political loyalties, for splintering and fracturing political parties. Pygmies were selected, nurtured, promoted, and brought to prominence and power. People with notorious backgrounds and criminal credentials were thrust to rule us in various capacities with predictable results. Similarly, those, who caused death, destruction and mayhem in our society were trained, financed, protected, promoted and eulogized, thus, turning them into Frankensteins. Meanwhile corruption, misconduct and malpractice in governance kept growing at exponential rates and became all pervading. None of the state institutions which so ever remained free from this morass.

67. The NAO was promulgated by the Military regime of General Pervaiz Musharaf on 16.11.1999, repealing the previously enacted Ehtesab Act, 1997. The NAB Ordinance from its very inception became increasingly controversial, its image has come under cloud and there is a wide spread perception of it being employed as a tool for oppression and victimization of political opponents by those in power. It is frequently alleged that the Bureau is being flagrantly used for political engineering. Discriminatory approach of NAB also is affecting its image and has shaken the faith of the people in its credibility and impartiality. The bureau seems reluctant in

⁴ Khawaja Salman Rafique v. National Accountability Bureau and others (PLD 2020 SC 456)

proceeding against people on one side of the political divide even in respect of financial scams of massive proportion while those on the other side are being arrested and incarcerated for months and years without providing any sufficient cause even when the law mandates investigations to be concluded expeditiously and trial to be concluded within 30 days. Nonetheless, investigation is often not concluded for months and cases remain pending for years. It is because of lack of professionalism, expertise and sincerity of cause that the conviction rate in NAB cases is abysmally low. The above is certainly not serving the national interest, rather causing irretrievable harm to the country, nation and society in multiple ways. It was in view of the above distressful situation that the former Chief Justice Asif Saeed Khan Khosa, speaking for this Court during the opening ceremony of the Judicial Year 2019-20 observed as follows:-

*"We as a relevant Organ of the State also feel that the growing perception that the **process of accountability** being pursued in the country at present is lopsided and is a part of political engineering is a dangerous perception and some remedial steps need to be taken urgently so that the process does not lose credibility. Recovery of stolen wealth of the citizenry is a noble cause and it must be legitimately and legally pursued where it is due but if in the process the constitutional and legal morality of the society and the recognized standards of fairness and impartiality are compromised then retrieval of the lost constitutional and legal morality may pose an even bigger challenge to the society at large in the days to come".*

7. The distinguished human rights defender and journalist, late I.A Rehman, in one of his publications⁵ had referred to a fact sheet

⁵ NAB versus human rights, Dawn October 15, 2020)

prepared by a parliamentarian, highlighting twelve deaths for which the Bureau was held responsible. The former Prime Minister, Mohtarma Benazir Bhutto Shaheed and her husband Mr. Asif Ali Zardari, who is the current President of the Islamic Republic of Pakistan, were acquitted by this Court⁶ because it was declared that the trial was not fair on account of the bias of the judges on the Ehtesab Branch. The powers of the Bureau were subsequently used to prosecute, humiliate and violate the dignity of other former Prime Ministers, Mian Mohammad Nawaz Sharif, Shahid Khaqan Abbasi, Yousaf Raza Gillani etc. It is ironic that at present the respondent has fallen a victim after his removal from the office of Prime Minister. The perception that the establishment and complicit courts are responsible for such grave abuses of human rights and humiliation of the representatives of the people does not appear to be unfounded. The respondent, a former Prime Minister, had claimed in an interview reported in leading newspapers⁷ that the former Chief of Army Staff, General (rtd.) Qamar Javed Bajwa, used to call the shots while he was holding the office of Prime Minister. While referring to the former Chief of Army Staff he had stated that, 'he was a super king. He was above everyone. He was controlling NAB (National Accountability Bureau) and no one could be held accountable without Bajwa's nod'. Another former Prime Minister Mian Muhammad Nawaz Sharif was reported to have stated, while addressing his party's Central Executive Committee, that according to his information someone else was "running the parliament".⁸ These statements made by the two former elected Prime Ministers were, prima facie, confirmed by the former Chief of Army Staff, General (ret'd.) Qamar Javed Bajwa during his last public

⁶ Asif Ali Zardari v. The State (PLD 2001 SC 568)

⁷ Tribune, February 12, 2023

⁸ Dawn September 30, 2020

address⁹, when he admitted interference of his institution in politics. He was reported to have acknowledged that the reason for criticism of the institution was its 'interference in politics for the last 70 years which was unconstitutional. He explicitly stated; "that is why in February last year the army, after great deliberations, decided that it would never interfere in any political matter". The role of this Court in the perpetuation of brazen violations of fundamental rights through the use of arbitrary and draconian powers by the Bureau and its complicity, despite being guardian of the guaranteed rights, is a blemish difficult to wash away. Can there be a matter of higher public importance than the amendments made in the Ordinance of 1999 followed by declaring them unconstitutional. There is yet another crucial factor.

8. When the deposed Prime Minister Zulfikar Ali Bhutto was arrested and sent to the gallows by this Court he was not an ordinary prisoner or convict. He was a victim of the coercive apparatus of the State imposed by a uniformed usurper, who was purportedly given legitimacy by this Court. Likewise, Benazir Bhutto Shaheed and Mian Mohammad Nawaz Sharif were made to profoundly suffer on account of the grave abuse of the powers vested in the Bureau. They were not ordinary prisoners and convicts because their persecutions were perceived to be motivated. They had millions of followers and the perception that, as representatives of the people, they were being humiliated and harassed for other than *bona fide* reasons on the basis of alleged corruption and corrupt practices at the behest of unelected office holders was not without substance. It is ironic that yet another elected former Prime Minister, the respondent, is incarcerated today and facing multiple trials, some having ended in convictions and also

⁹ Dawn November 24, 2022

set aside by appellate forums. The respondent, like other former elected Prime Ministers, has millions of followers across the country as has become evident from the results of the last general elections. He is definitely not an ordinary prisoner or convict. The perception of the existence of a coercive apparatus of the State cannot be ignored by a constitutional court, particularly having regard to the unjustified treatment of representatives of the people in the past. The perception of complicity of this Court in or by allowing the elected representatives to be humiliated, harassed and persecuted for other than *bona fide* reasons is not unfounded. This Court, after more than four decades, has recently attempted to remedy the grave wrong done in denying an elected Prime Minister, Zulfikar Ali Bhutto, the right to a fair trial but regrettably the damage was irretrievable. The chequered history and role of this Court in relation to the treatment of elected representatives has remained unflattering. The approach of this Court, therefore, should be to err in favour of the millions of followers and their representatives now, lest attempts be made after decades to remove an irretrievable blemish. The last seventy six years of treatment of elected representatives leaves no other choice for a constitutional court but to exercise discretion in favour of caution. The Courts and the judges can no more bury their heads in the sand by ignoring the obvious realities. The reported restrictions on freedom of expression are manifest from the fact that censorship has been imposed on court reporting as well. The existence of the coercive apparatus of the State is also manifest from the reported grave abuses of powers and the consequent infringement of the guaranteed rights. In this background, it becomes inevitable for this Court to walk the extra mile to ensure transparency and enforcement of the guaranteed right under Article 19-A of the Constitution by giving access to the public to the court proceedings

through live streaming. Denial of access will unjustifiably give rise to suspicions and erode the confidence of the people in this Court. It is an obligation for this Court to be seen as impartial, fair and independent and to dispel any perception to the contrary. The trust of the people will be maintained and promoted by enabling them to know and see for themselves the court proceedings.

9. There is no substantive reason nor exceptional circumstances exist for denying the public their right to have access to the Court proceedings through live streaming. In the circumstances, denial of this guaranteed right will amount to violating the principles laid down in the Justice Qazi Faez Isa case, as highlighted above.

10. The above are the reasons for allowing the application and ordering access to the public to the proceedings in the case in hand through live streaming.

(Justice Athar Minallah)

APPROVED FOR REPORTING