

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL, HCJ

MRS. JUSTICE AYESHA A. MALIK

MR. JUSTICE ATHAR MINALLAH

CIVIL PETITION NO.5633 AND 5833 OF 2021

(Against the judgment dated 29.09.2021 of the Peshawar High Court, Mingora Bench (Dar ul Qaza) Swat passed in Writ Petition No.564-M/2021)

Government of Pakistan thr.
Secretary Interior, etc.

... (in CP-5633/21)

Government of Khyber Pakhtunkhwa
thr. Chief Secy.Peshawar, etc.

... (in CP-5833/21)

Petitioners

Versus

Zia Ullah Khan and others

...Respondents *(in both cases)*

For the petitioner(s):

Mr. Rashdeen Nawaz Qasoori, Addl. Attorney General
a/w Mujahid Khan, Dy. Director, NADRA
(In CP-5633/21)

Atif Ali Khan, Addl. A.G. KPK.
a/w Ali Rahman, Inspector
Shakirullah, S.O.
(in CP-5833/21)

Respondent(s):

Mubarak Ali, in person.
Amir Nawab, in person.
Zia Ullah, in person.

Date of hearing:

01.12.2022

ORDER

Athar Minallah, J.- The Federal Government and the Provincial Government of Khyber-Pakhtunkhwa have sought leave against the judgment dated 29.09.2021 of the Peshawar High Court, whereby the proceedings initiated and actions taken by the Prime Minister's Performance, Delivery Unit ('Unit') and Pakistan Citizen's Portal ('Portal') have been declared as unconstitutional. The Unit was established by the Federal Government to promote citizen-centric and participatory governance. It serves as a complaints and grievance redressal forum particularly to facilitate overseas Pakistanis, women, special persons and foreigners. It was established under the Rules of Business, 1973. The Portal is a government owned system based on mobile application intended to be used as a tool to promote citizen-centric and participatory governance. It enables the citizens to raise issues/complaints.

2. A complaint was received on the Portal on 02.02.2021 alleging that the private respondents had acquired chemical and biological weapons and that they were terrorist facilitators. The complaint was transmitted to the Inspector General of Police, Khyber Pakhtunkhwa and was forwarded by the latter to the District Police Officer, Swat. After investigating, it was concluded that the allegations were false and, therefore, the competent authority ordered that the complaint be filed. The private respondents were aggrieved because they felt being subjected to harassment during the course of investigation. They filed a complaint on the Portal and sought information regarding the identity of the complainant. After their request was denied, they invoked the constitutional jurisdiction of the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. The prayers sought by the private respondents were not granted but the working and functions of the Unit and the Portal were declared to be unconstitutional. The High Court was of the opinion that the working of both the forums was transgression of the executive authority of the Province.

3. We have heard the learned Additional Attorney General who has argued that the High Court had not properly appreciated the working and functioning of the Unit and the Portal. With the assistance of the learned Additional Attorney General, we have perused the record and we are of the opinion that the High Court had assumed that the Unit and Portal had exercised powers in the nature of transgression into the domain of the provincial government. The Unit and the Portal merely receive complaints and they are automatically transmitted to the concerned authorities for consideration. Neither the Unit nor Portal exercises any power that would amount to prejudicing the rights of the citizens or treated as interference in the executive domain of the province. The transmission of information to the concerned authorities of a province, by no stretch of imagination, can be construed as interference or transgression in its domain. After receiving the information transmitted by the Unit or the Portal as the case may be, the concerned provincial authorities are expected to consider the same and

thereafter proceed in accordance with the law. They are not bound to act in a particular manner nor can any direction or order be passed by the Unit or the Portal. In the case in hand, the complaint received on the Portal was of a serious nature and its transmission to the competent authority in the province of Khyber Pakhtunkhwa was not in the nature of exercise of executive authority by the Federal Government. The High Court had also not served a notice on the Attorney General for Pakistan as required under Order XXVII-A of the Civil Procedure Code, 1908 ("**CPC**"). The constitutionality of the working and functioning of the Unit and the Portal was not challenged by the private respondents. They were aggrieved because the investigation had subjected them to inconvenience and harassment and, therefore, they sought details of the identity of the complainant. To that extent, their prayer was not granted because the identity of the complainant was to be kept protected. The grievance of the Federal Government is restricted to the declaration made by the High Court regarding the constitutionality of the working and functioning of the Unit and the Portal. The High Court had indeed not appreciated the working and functioning of both the mobile application forums. Moreover, the transmission of a complaint or information by the Federal Government to the concerned authorities of a province does not constitute interference or transgression in the executive domain of that province. The impugned judgment, therefore, has not correctly appreciated and interpreted the status and functioning of the Unit and the Portal. The petitions are, therefore, disposed of in terms of the above observations.

Chief Justice

Judge

Judge

Islamabad the,

1st December, 2022

NOT APPROVED FOR REPORTING.

M. Azhar Malik.