SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

Bench-I:
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Aqeel Ahmed Abbasi

Crl. O. P.1/2025 in CPLA 836-K of 2020, etc.
(Matter regarding non fixation of case as per court-order 16.01.2025)

In attendance:
Mr. Mansoor Usman Awan, AGP.
Mr. Hamid Khan, Sr. ASC, Amicus curiae.
Mr. Munir A. Malik, Sr. ASC, Amicus Curiae *(Through Video Link from Karachi)*
Kh. Haris Ahmad, ASC - Amicus curiae.
Mr. Muhammad Ahsan Bhoon, ASC, Amicus curiae
Mr. Salahuddin Ahmed, ASC, Mr. Shahid Jamil, ASC, *Counsel for respondents in CPLA 836-K of 2020, etc.)*

Mr. Nazar Abbas, Addl. Reg. (J), SCP.
(The respondent/accused in person)

Dates of hearing: 21, 22 and 23 January 2025.

ORDER

The underlying facts that have given rise to an unsavoury situation are that a three-member Bench of this Court (comprising Syed Mansoor Ali Shah, Ayesha A. Malik, and Irfan Saadat Khan, JJ.) heard certain cases (CPLA No. 836-K of 2020, etc.) on 13 January 2025. At the outset of the proceedings, an objection was raised regarding the Bench's jurisdiction to hear these cases, which involved a challenge to the constitutionality of a law, on the basis of Article 191A of the Constitution of the Islamic Republic of Pakistan ("Constitution"). After hearing arguments of the learned counsel on the jurisdictional objection, the Bench adjourned the hearing to 16 January 2025 by allowing time to the learned counsel for the parties to make preparation to further assist the Court on the points concerning the jurisdictional objection. The order dated 13 January 2025 is reproduced below:

> At the very outset, the learned counsel for the petitioners submitted that the present regular bench of the Court cannot hear these cases, as they involve a challenge to the constitutionality of a law, namely, subsection (2) of Section 221-A of the Customs Act, 1969. When asked why this bench cannot hear these cases, the learned counsel referred to the provisions of Article 191A, which was added to the Constitution of the Islamic Republic of Pakistan through the 26th Constitutional Amendment. In response to the petitioners' objection regarding the lack of jurisdiction of the present bench of the Court, the learned counsel for the respondents contended that Article

> 191A, the basis of the objection regarding jurisdiction, is constitutionally invalid as it infringes upon the salient features of the Constitution, including the independence of the judiciary and the separation of powers among the three organs of the State. He further submitted that a constitutionally invalid amendment cannot oust the constitutionally valid conferment of jurisdiction on the regular benches of the Court.
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> 2. When asked how the present bench of the Court can decide upon the constitutional validity of the newly added Article 191A, the learned counsel for the respondents took the position that since the objection raised and the basis thereof pertain to the jurisdiction of the present bench, it must be decided by it. In support of his stance, he referred to *Sabir Shah v. Shad Muhammad Khan* (PLD 1995 SC 66), *Fazlul Quader Chowdhry v. Abdul Haque* (PLD 1963 SC 486) and *Marbury v. Madison* (5 US 137 [1803]) and sought time to further assist the Court on this point.
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> 3. Given the objection raised and the reply thereto, we find that it would be necessary to first decide upon the same before proceeding further in the matter at hand. Therefore, the learned counsel for the parties are granted time to prepare their arguments and assist the Court on the said points. The hearing for arguments on those points is adjourned to **16.01.2025**.

On 16 January 2025, the three-member Bench stood reconstituted, with Aqeel Ahmed Abbasi, J., replacing Irfan Saadat Khan, J., and the said cases were posted before the reconstituted Bench. However, the reconstituted Bench could not proceed with the hearing, as Aqeel Ahmed Abbasi, J., was one of the two judges who had delivered the impugned judgment in these cases in the High Court of Sindh. Consequently, the reconstituted Bench (comprising Syed Mansoor Ali Shah, Ayesha A. Malik and Aqeel Ahmed Abbasi, JJ.) directed the office, by its order dated 16 January 2025, to fix these cases before the earlier Bench on Monday, 20 January 2025, at 1:00 pm. The order dated 16 January 2025 is reproduced below for ready reference:

> These cases were heard on 13.01.2025 by a bench comprising Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik and Mr. Justice Irfan Saadat Khan and were posted for 16.01.2025, however, the bench today cannot hear this matter, as the impugned judgment has been authored by one of us (Aqeel Ahmed Abbasi, J.). Considering that it was a part heard matter, let these cases be posted for 20.01.2025 at 01:00 p.m. before the same bench comprising Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik and Mr. Justice Irfan Saadat Khan. Notice shall also be issued to the Attorney General for Pakistan under Order XXVII-A of the Code of Civil Procedure, 1908 ("CPC").

On 20 January 2025, Mr. Salahuddin, ASC (counsel for one of the respondents in the said cases), appeared before the Bench (comprising Syed Mansoor Ali Shah, Ayesha A. Malik, and Aqeel Ahmed Abbasi, JJ.) that had passed the aforementioned order and pointed out that the cases

had not been fixed for hearing as per the court order dated 16 January 2025. The Bench called for the Additional Registrar (Judicial); however, due to his unavailability, the Deputy Registrar (Judicial) appeared. The Deputy Registrar confirmed that the cases had not been fixed on that day, i.e., 20 January 2025 before any regular Bench but had instead been fixed for hearing before the Constitutional Bench on 27 January 2025, pursuant to the decision of the Committee constituted under the Supreme Court (Practice and Procedure) Act, 2023 ("Act"). He further submitted that the decision of the Committee had not yet been communicated to the office, in writing. Upon receiving information of these facts, the said Bench initiated *suo motu* contempt proceedings against the Additional Registrar (Judicial) for defiance of the court order and for obstructing the administration of justice. The Bench, while calling for his explanation, fixed the hearing of the contempt proceedings for 21 January 2025 by its order dated 20 January 2025. Relevant paragraphs 4 and 5 of the order dated 20 January 2025 are reproduced below:

> 4. It is a sad state of affairs that a judicial order of this Court has been ignored by the office and the cases put up before the Committee for a decision, despite the precedents of this Court to the contrary reported as *Asad Ali v. Federation of Pakistan* (1998 SCMR 15), *Asad Ali v. Federation of Pakistan* (1998 SCMR 130) and *Human Rights Case No.14959-K of 2018* (PLD 2019 SC 183). The defiance of the judicial order of this Court lowers the dignity and honour of this Court and hamper the administration of justice. In this background, let notice be issued to the Additional Registrar (Judicial) of this Court as to why contempt proceedings may not be initiated against him.
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> 5. Office shall number this petition and fix it for hearing before us tomorrow i.e., 21.01.2025, when the additional Registrar (Judicial) shall appear in person with the explanation as to why the above-mentioned cases have not been fixed before the Bench today.

On 21 January 2025, the Bench that had passed the aforementioned order was reconstituted, excluding Ayesha A. Malik, J., from the Bench, and the *suo motu* contempt proceeding was listed before this reconstituted two-member Bench (comprising Syed Mansoor Ali Shah and Aqeel Ahmed Abbasi, JJ.).

2. On 21 January 2025, in response to the notice issued to the Additional Registrar (Judicial) of this Court, the Registrar of the Court appeared on behalf of the Additional Registrar (Judicial), who was reported to be indisposed. The Registrar presented copies of two decisions made by two different Committees: first, the decision of the Committee constituted under Section 2 of the Act; and second, the decision of the Committee

constituted under Article 191A of the Constitution. He stated that the Committee constituted under Section 2 of the Act convened its meeting on 17 January 2025 and, by a majority decision, resolved to "withdraw" the said cases from the regular Bench and refer them to the Committee established under Article 191A of the Constitution. Subsequently, the latter Committee convened its meeting on the same date, i.e., 17 January 2025, and directed that all cases challenging the vires of the 26th Constitutional Amendment and vires of law be fixed for hearing before the Constitutional Bench on 27 January 2025. He explained that, because of these decisions by the two Committees, the said cases were not fixed by the office for hearing on 20 January 2025 before the regular Bench. The explanation provided by the Registrar, coupled with the contention raised by Mr. Salahuddin, ASC (counsel for one of the respondents in the said cases), gave rise to the following substantial questions of law of public importance:

(i) Whether the Committees constituted under Section 2 of the Act and Article 191A of the Constitution have the authority to withdraw a case [from a Bench], in which cognisance has already been taken by a regular Bench and serious questions of constitutional law relating to the jurisdiction of the regular Bench have been framed; and

(ii) Whether the said Committees can, by an administrative order, undo the effect of a judicial order, whereby next date of hearing a specific case has been fixed before a regular Bench [to hear arguments on the jurisdiction of the regular Bench].

The Court observed that "[u]nder Article 190 of the Constitution, all executive and judicial authorities throughout Pakistan, including officers within the establishment of this Court, are required to act in aid of the Supreme Court, meaning in aid of its judicial orders, not administrative orders. Furthermore, in accordance with the constitutional mandate of Article 5 of the Constitution, every citizen, including officers within the establishment of this Court, is bound to obey the Constitution and the law. Accordingly, the legality of the explanation put forth by the Registrar, as well as the outcome of the present contempt proceedings, hinges upon the determination of the aforementioned questions."

3. In light of the significance of the questions involved, the Court appointed Mr. Hamid Khan, Sr. ASC, and Mr. Muneer A. Malik, Sr. ASC, as amici curiae to assist in addressing the aforementioned questions. Additionally, the Court granted permission to Mr. Shahid Jamil Khan, ASC (counsel for one of the respondents in the main cases), to assist in the

matter. Notice was also issued to the learned Attorney-General for Pakistan to provide assistance on the above questions. The hearing was then adjourned to 22 January 2025 for arguments on these questions.

4. On 22 January 2025, the Court heard the arguments of Mr. Shahid Jamil Khan, ASC (counsel for one of the respondents in the main cases), as well as those of the learned amici curiae, Mr. Muneer A. Malik, Sr. ASC, and Mr. Hamid Khan, Sr. ASC. The Court also appointed two additional amici curiae, Mr. Ahsan Bhoon, ASC, and Khawaja Haris Ahmad, ASC, to assist in addressing the said questions, and adjourned the hearing to 23 January 2025.

5. On 23 January 2025, the Court heard further arguments of Mr. Hamid Khan, Sr. ASC, the learned amicus curiae, as well as from Mr. Salahuddin, ASC (counsel for one of the respondents in the main cases). The Court also heard the arguments of Mr. Ahsan Bhoon, ASC, and Khawaja Haris Ahmad, ASC, the learned amici curiae, as well as the learned Attorney-General for Pakistan.

6. On the same day, i.e., 23 January 2025, the respondent-accused, Mr. Nazar Abbas, the Additional Registrar (Judicial), filed his written reply (Crl.M.A. No. 134/2025) to the show cause notice. He explained his position mostly in the same terms as the explanation provided by the Registrar of the Court, on his behalf on 21 January 2025, as noted above. Some relevant portions of his reply are reproduced below:

> 1. That the answering respondent in reply to the subject Notice begs to submit that the undersigned has held this Hon'ble Court in the highest respect and esteem throughout his 36 long years of service with unblemished service record. Accordingly, the undersigned cannot even imagine wilful flouting or disregarding any order passed by this Hon'ble Court especially on the last leg of his service career which is going to end in a couple of weeks.
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> 7. That as per the Court Roster, the requisite Bench for the purpose of hearing CPLA No.836-K/2020 etc. was not available on 20.01.2025, therefore, a note was initiated for constitution of **Special Bench** comprising Hon'ble Judges as mentioned in the order dated 16.01.2025, which partly heard the matter on 13.01.2025.
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> 8. That upon perusal of the office note, the HCJ was pleased to place the matter before the Committee constituted under Section 2(1) of the Supreme Court (Practice and Procedure) Act, 2023 in the following terms:
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> > **"May be placed before the Committee tomorrow at 12 noon."**
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> 9. That on 17.01.2025, the Committee constituted under Section 2(1) of the Supreme Court (Practice and Procedure) Act,

2023 decided through majority vote that the matter be placed before the Committee constituted under Article 191A(4) of the Constitution of Islamic Republic of Pakistan 1973.

10. That the Committee constituted under Article 191A(4) of the Constitution of Islamic Republic of Pakistan 1973 held its meeting at 12:45 pm on 17.01.2025 and resolved that all cases challenging the 26th Constitution amendment and vires of Law be fixed before the 8 members Constitutional Bench on 27.01.2025, the Court Roster be issued accordingly.

12. That the constitution of Benches or approval of the Roster is beyond the capacity as well as jurisdiction of the answering respondent. The responsibility of the answering respondent at the most is to apprise the Competent Authority to the non-availability of any appropriate bench, which has been not only conveyed before time but also has been suggested to be met with by formation of special Bench so there is no lapse on the part of the answering respondent in the whole scenario.

13. That act of the office regarding non-fixation of the case before the Bench, was neither deliberate not wilful, it was in pursuance of the decisions taken by the two Committees. The answering respondent initiated an office note to comply with the order of the Court dated 16.01.2025 in letter and spirit by the constitution of the requisite Special bench and having no intention to withhold or disobey the order of the Hon'ble Court.

PRAYER

Inspite of the above facts, the answering respondent surrenders himself at the mercy of this Hon'ble Court with further prayer that the Show Cause Notice dated 20.01.2025 may kindly be withdrawn in the interest of justice.

7. We have considered the explanation provided by the respondent-accused in his reply to the show cause notice, as well as the arguments of the learned amici curiae, the learned Attorney-General and the learned counsel for some of the respondents in the main cases.

Preliminary points regarding the jurisdiction of the Benches that passed the orders dated 13 and 16 January 2025

8. First, we find it appropriate to address two preliminary points raised before us regarding the jurisdiction of the Benches that passed the orders dated 13 and 16 January 2025.

9. The first point raised was that the three-member Bench, which passed the order dated 13 January 2025, lacked jurisdiction to hear cases involving a challenge to the constitutionality of a law, as such matters fall within the exclusive domain of the Constitutional Bench under Article 191A of the Constitution. It was also argued that the said Bench could not examine the vires of the 26th Constitutional Amendment, whereby Article 191A was added to the Constitution, as this too falls within the exclusive domain of the Constitutional Bench under Article 191A.

10. The said point was also rebutted before us with the submissions that the Bench which passed the order dated 13 January 2025 had not commenced hearing the matter concerning the constitutionality of the law. Instead, it was hearing arguments on the objection raised to its jurisdiction to entertain such matters based on Article 191A. Furthermore, the Bench was also deliberating on whether it could examine the constitutionality of Article 191A itself, as the objection to its jurisdiction was rooted in that very Article. Thus, the Bench was addressing the jurisdictional question rather than the substantive matter of the constitutionality of the law involved in the cases before it. Since Khawaja Haris Ahmad, the learned amicus curia, has provided his written articulation on this point, we find it expedient to reproduce the relevant portion here:

> It is noteworthy that when, on 13.01.2025, the learned Bench took up the matter relating to its jurisdiction to entertain and decide the CPLAs (filed under Article 185(3) of the Constitution) fixed before it, this involved neither assuming jurisdiction over the merits of the CPLAs, nor decision of constitutionality of any law point involved in the CPLAs. Rather, in effect, it only took upon itself the task of ascertaining if Article 191A(3) could be so construed as to exclude the Bench's jurisdiction to hear the CPLAs. To do so, the learned Bench was dealing with the matter like any other case where question of jurisdiction is raised - i.e. (i) first looking at the wording of the provision itself to see if it per se excluded the Court's jurisdiction; and, (ii) if so, to see whether the provision of law relied upon for excluding the Court's jurisdiction constitutes valid law or not. Thus, in the instant case, the learned Bench would first examine the words of Article 191A(3) to ascertain if a plain reading of it excludes the Court's jurisdiction in the matter; and, if such exclusion is a necessary consequence, then the Court would proceed to ascertain the constitutional validity of Article 191A(3). Prima facie it appears that the aforesaid exercise in not covered by exclusionary provisions of Article 191A(3) of the Constitution.

Similarly, Mr. Shahid Jamil Khan, ASC, adopted the same stance. In addition to the cases of *Pir Sabir Shah*,[1] *Fazlul Quader Chowdhry*[2] and *Marbury*[3] referred to by Barrister Salahuddin, he also cited extracts from Justice Fazal Karim's *Judicial Review of Public Actions* (2nd Edition, Volume 3, pages 1403–1406), where the learned author has discussed several cases from American, English and Pakistani jurisdictions on this point.

11. The second point raised was that the three-member Bench, which passed the order dated 16 January 2025 directing the office to fix certain

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[1] Pir Sabir Shah v. Shad Muhammad Khan PLD 1995 SC 66.
[2] Fazlul Quader Chowdhry v. Abdul Haque PLD 1963 SC 486.
[3] Marbury v. Madison 5 US 137 [1803].

cases before a particular Bench, acted without lawful authority, and that the said order was passed in contravention of the law governing the constitution of Benches and the assignment of cases. It was contended that the constitution of Benches falls within the domain of the Committee established under Section 2 of the Act, whereas the assignment of cases to Benches is the exclusive authority of the Chief Justice of Pakistan under the Supreme Court Rules, 1980. This point was also contested before us by referring to several precedents where Benches have issued directions for fixing cases even before the Full Court.

12. We are afraid we cannot address or adjudicate upon the above points in the present contempt proceedings, as the said points raised before us are misplaced. This Bench is not seized with a review petition against the orders of the three-member Benches dated 15 and 16 January 2025. Instead, we are only dealing with the contempt proceedings initiated for the alleged non-compliance with that order. A similar point was raised before this Court during the contempt proceedings against Syed Yousaf Raza Gilani, the then Prime Minister of Pakistan, regarding non-compliance with the directions issued in a judgment.[4] In that case, a seven-member Bench of this Court rejected the same in the following terms:

> The Respondent's stand amounts to saying that the order of this Court is non-implementable, as he believes that the same is not in accord with the Constitution of Pakistan and the International law. This argument, if accepted, would set a dangerous precedent and anyone would then successfully flout the orders of the Courts by pleading that according to his interpretation they are not in accord with the law. A judgment debtor would then be allowed to plead before the executing Court that the decree against him was inconsistent with the established law. No finality would then be attached to the judgments and orders of the Courts, even those by the apex Court of the Country. ... The executive authority may question a Court's decision through the judicial process provided for in the Constitution and the law but is not entitled to flout it because it believes it to be inconsistent with the law or the Constitution. Interpretation of the law is the exclusive domain of the judiciary.
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> *(Emphasis added)*

Guided by the above reasoning of a larger Bench of this Court, we similarly dispose of the said points with the observation that if any of the parties to the cases in which the said orders were passed, or any other person, was aggrieved by the same, he could have availed of the legal remedy of seeking

[4] Contempt proceedings against Syed Yousaf Raza Gillani PLD 2012 SC 553.

a review of the order through the judicial process provided under the Constitution and the law. But, no one is entitled to disobey or decline compliance with the court order merely because he believes it to be inconsistent with the Constitution and the law.

13. Next, we proceed to take up and address the aforementioned questions of law, for which the assistance of the learned amici curiae was sought.

(i) Whether the Committees constituted under Section 2 of the Act and Article 191A of the Constitution have the authority to withdraw a case from a Bench in which cognisance has already been taken by a regular Bench and serious questions of constitutional law relating to the jurisdiction of the regular Bench have been framed.

14. The practice of hearing part-heard cases by the same Bench is so well-established in our jurisdiction that neither the learned counsel assisting this Court on the above question nor our research assistants could find and cite any case from our jurisdiction in which a dispute arose and was adjudicated regarding the withdrawal of a part-heard case from one Bench and its reassignment to another, without a request being made by the original Bench hearing the case in its judicial order. However, such disputes have arisen and been adjudicated upon in the neighbouring jurisdiction, i.e., the Indian jurisdiction, in several cases. Since the bench constitution and case-assignment legal framework in both our jurisdiction and the neighbouring jurisdiction are largely similar, the jurisprudence developed there would offer valuable insights for the determination of the question under consideration before this Court. The relevant portions of some of these cases are, therefore, cited below:

> **Zikar v. Govt. of State of M.P. AIR1951 Nag 11 (DB)**[5]
> The point for consideration is whether the power to regulate the sittings of the High Court which the Chief Justice undoubtedly possesses can be invoked for withdrawing and transferring a case of which a Division Court is in seisin. The power to regulate the sittings of the Court which is an administrative power cannot afford any basis for regulating the mode of hearing of a case by a Court properly seized of it. The power to withdraw and transfer a case from such a Court without its concurrence is a power to prevent the exercise of jurisdiction by that Court which can only be done by virtue of a superior power of control or correction, for which authority must be found either in an express provision or by necessary implication. There is no express provision and in our view there is no warrant for any such implication.

[5] The decision taken in this case was later implicitly affirmed by the Supreme Court, in an appeal arising out of contempt proceedings in M.Y. Shareef v. Hon'ble Judges of The High Court of Nagpur AIR 1955 SC 19.

The argument of the learned Counsel for the applicant that the application should have been placed before the Honourable the Acting Chief Justice or that the Acting Chief Justice has the power to withdraw or transfer a case before us without our concurrence is devoid of any basis in law and is in fact opposed to precedents.

(Emphasis added)

M. Ranka v. Hon'ble the Chief Justice (1991) 2 L.W. 225 (DB)[6]

With respect we disagree with the last observation of S. Ramalingam, J. that a party or a counsel may make a special mention before the Chief Justice so that the case pending before one Bench may be posted before another Bench. So far as other two observations are concerned, we think it right to say that if for some reasons, the learned Judges assigned with a case or cases, find that they should not hear the case or the cases, they may direct the papers to be placed before the Chief Justice for posting such case or cases before some other Bench and in some extraordinary circumstances, the counsel appearing in a case may make a special request that a particular case or cases may not be heard by a particular Bench for reasons none other than the reasons that are spelt out in the principles that no one shall be a judge in his own cause (Nemo debet esse judex propria cause). So far as the first rule is concerned, if the Judge himself or the Judges themselves say that a particular case or cases assigned to him/them say be taken out of his/their list, there should be no difficulty. So far as the second rule is concerned in which it is said that a counsel may bring to the notice of the court that a particular case or cases may not be heard by a particular Bench or a Judge of the court means to say only that the counsel would being a fact to the notice of the court and no more. He cannot be allowed to insist or ask this Court not to hear a case. It will be again for the Judge or the Judges hearing the case to decide whether they should say that the cases be listed before another Judge or Bench or not. Judges of the court including the Chief Justice are equals and exercise the same judicial power except such powers that are specifically assigned to the Chief Justice. There is no reason to concede a power in the Chief Justice to transfer a case from one Bench to another Bench of the Court or from one Judge to another Judge of the Court. Act of allocating business or portfolio or assigning case or cases is different from the act of recalling the case from the file of a particular Judge or a Bench of the court and from transferring a case from the file of a particular Judge or a Bench of the court and from transferring a case from the file of a particular Judge or a Bench of the court, to another Judge or a Bench of the court because any decision about it would partake the character of a judicial order.

(Emphasis added)

Jawahar Ram Gupta v. Hon'ble Chief Justice 1996 (27) ALR 557

The Chief Justice is free to assign a case where he will, but transferring an already assigned case from one Judge to another, we reiterate with emphasis, is not an authority which the Supreme Court observed for itself was with it. After April 13, 1996 when the Chief Justice had assigned this matter to this Court, the sanctity of the proceedings, as the Supreme Court has held, cannot be interfered with even by the legislature.

Activity outside the courtrooms in Court cases, and such Sunday residence orders of Chief Justices, could have disastrous

[6] This opinion of Division Bench was approved by the Full Bench in M. Ranka v. Hon'ble Chief Justice of Tamilnadu High Court, Madars (1994) 2 L.W. 135.

> consequences in the High Court's handling of matters, particularly those sensitive matters which many already try to avoid hearing.
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> This Court records with great humility, and concern, that what the Supreme Court could not do, the Hon'ble the Chief Justice was misled to do and at his residence, not in Court. Whatever be the degree of the in facie curiae contemptuous situation, it will be judged by the Division of the High Court concerned. The reservation also will be considered by that Division. Otherwise, what will be happen is that the record will remain within the portals of the court of Record in perpetuity as no Division will be able to enter judgment. On this the Supreme Court clearly reflected: "As for transfer from one Judge to another, there again is no original jurisdiction which we can exercise. It is not a fundamental right and so Article 32 has no application and there is no other law to which recourse can be had".
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> *(Emphasis added)*

The above extracts illustrate a well-established practice that once a case is assigned to a Bench and that Bench has taken seisin (assumed jurisdiction) of the matter and partly heard it, the Chief Justice cannot unilaterally withdraw it and reassign it to another Bench except under specific, judicially recognised circumstances. This practice is firmly rooted in the high constitutional value of judicial independence whereby a Bench enjoys the freedom and independence to adjudicate upon a lis it has taken cognisance of. When a Bench is seized of a case and has partly heard it, the matter becomes part of judicial proceedings, and the Bench hearing the case assumes exclusive jurisdiction over it. Any interference—whether through withdrawal or reassignment—without judicial justification undermines the principle of judicial independence.

15. The said practice imposes a significant limitation on the administrative powers of the Chief Justice. While the Chief Justice has the authority to regulate the formation of Benches and allocate cases as an administrative function, these powers do not extend to withdrawing or transferring a part-heard case from a Bench that has already assumed jurisdiction. Such withdrawal or reassignment is not merely an administrative act but a judicial one. Consequently, any such action must either stem from a judicial order passed by the Bench seized of the matter or be supported by express statutory authority if carried out by another court or authority.

16. The principles of judicial propriety and case continuity require that a Bench, once seized of a case, must see it through to its conclusion, barring exceptional circumstances. Arbitrary withdrawal or reassignment of a case after it has been partly heard sets a dangerous precedent,

undermines the sanctity of judicial proceedings and erodes public confidence in the judiciary. Exceptional circumstances that may justify the reassignment of a case include instances where the Bench seized of the matter makes a judicial request for reassignment due to recusal, conflict of interest or other valid reasons. As the decision regarding the withdrawal or reassignment of a case partakes of the character of judicial process. Such decisions cannot rely solely on administrative discretion, as this would compromise the finality and integrity of judicial orders. These principles collectively affirm that the sanctity of judicial proceedings takes precedence over administrative powers, thereby safeguarding the impartiality and independence of the judiciary.

17. For almost similar reasons that create a bar on the power of assignment of cases concerning the withdrawal and reassignment of part-heard cases, this Court held in *Human Rights Case No. 14959-K of 2018* (PLD 2019 SC 183) that a similar limitation also applies to the constitution of benches. It was held and observed in that case:

> The above Rule [of Order XI of the Supreme Court Rules 18980] provides for administrative powers of the Chief Justice to constitute benches. However, once the bench is constituted, cause list is issued and the bench starts hearing the cases, the matter regarding constitution of the bench goes outside the pale of administrative powers of the Chief Justice and rest on the judicial side, with the bench. Any member of the bench may, however, recuse to hear a case for personal reasons or may not be available to sit on the bench due to prior commitments or due to illness. The bench may also be reconstituted if it is against the Rules and requires a three-member bench instead of two. In such eventualities the bench passes an order to place the matter before the Chief Justice to nominate a new bench. Therefore, once a bench has been constituted, cause list issued and the bench is assembled for hearing cases, the Chief Justice cannot reconstitute the bench, except in the manner discussed above.
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> 7. In the absence of a recusal by a member of the Bench, any amount of disagreement amongst the members of the Bench, on an issue before them, cannot form a valid ground for reconstitution of the Bench. Any reconstitution of the Bench on this ground would impinge on the constitutional value of independence of judiciary. The construct of judicial system is pillared on the assumption that every judge besides being fair and impartial is fiercely independent and is free to uphold his judicial view. This judicial freedom is foundational to the concept of Rule of Law. Reconstitution of a bench while hearing a case, in the absence of any recusal from any member on the bench or due to any other reason described above, would amount to stifling the independent view of the judge. Any effort to muffle disagreement or to silence dissent or to dampen an alternative viewpoint of a member on the bench, would shake the foundations of a free and impartial justice system, thereby eroding the public confidence on which the entire edifice of judicature stands.

> Public confidence is the most precious asset that this branch of the State has. It is also one of the most precious assets of the nation.
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> *(Emphasis added)*

While relying on the above observations in the case of *Muhammad Imtiyaz*,[7] this Court reiterated that the arbitrary reconstitution of Benches undermines the integrity of the judicial system and may have serious repercussions. If Benches are changed arbitrarily without justifiable reasons, it creates doubts and raises concerns about the fairness of the system. The public may question the impartiality of a judicial process that appears arbitrary. To uphold the rule of law, transparency and fairness in the matters of the constitution of Benches and the assignment of cases is imperative to maintain the independence, integrity and prestige of this Court.

18. We may mention here that it was argued before us that the cases concerning the powers of the Chief Justice, decided prior to the promulgation of the Act, have become irrelevant following the establishment of the Bench Constitution Committee under Section 2 of the Act, which has been endorsed by the Full Court of the Supreme Court on the judicial side in the case of *Raja Amer*.[8] We, however, are not persuaded by this argument for the simple reason that it was categorically held in *Raja Amer* that the powers of the Committee under Section 2 of the Act are the same as those previously exercised by the Chief Justice. The relevant observation is as follows:

> Both the powers of suo motu invoking original jurisdiction and constituting benches were earlier being exercised by one person, the Chief Justice; it is these administrative powers that have now been conferred on the Committee comprising three persons, i.e., the Chief Justice and the two most senior Judges - nothing more nothing less.[9]

Therefore, whatever was stated in the referred cases regarding the powers of the Chief Justice to assign or withdraw cases from Benches fully applies to the Committees as well.

19. In view of the settled jurisprudence of the subcontinent on the constitution of Benches and the assignment of cases discussed above, we answer question (i) in the negative. We hold that the Committees constituted under Sections 2 of the Act and 191A of the Constitution lack

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[7] Muhammad Imtiyaz v. Muhammad Naeem PLD 2023 SC 306.
[8] Raja Amer v. Federation of Pakistan PLJ 2024 SC 114 (2024 SCP 91).
[9] Ibid, per Syed Mansoor Ali Shah, J., para 30 (Majority Judgment).

the authority to withdraw a case that has been partly heard, where cognisance has already been taken by a regular Bench, and transfer it to another Bench, unless the Bench itself refers the case to the Committees for its assignment to another Bench for some justifiable reason. Such partly heard cases may include those where serious questions of constitutional law concerning the jurisdiction of the regular Bench have been framed, some arguments on those questions have been heard and the hearing has been adjourned for further arguments.

(ii) Whether the said Committees can, by an administrative order, undo the effect of a judicial order, whereby next date of hearing a specific case has been fixed before a regular Bench to hear arguments on the jurisdiction of the regular Bench.

20. This question need not detain us long, as a similar issue was addressed and decided by a Full Court of this Court in the case of *Malik Asad Ali*.[10] It was held in the said case that an administrative order passed by the Hon'ble Chief Justice (acting under restraint) passed in derogation of a judicial order would be without lawful authority and of no legal effect. In that case, the Chief Justice's administrative declaration, which sought to invalidate the convening of a Full Court under a judicial order of a Bench for hearing cases listed in Supplementary Cause List No. 405 of 1997, was declared illegal.

21. The above cited observations of a seven-member Bench of this Court in the contempt case against Syed Yousaf Raza Gillani are equally relevant. It was observed therein that "the executive authority may question a Court's decision through the judicial process provided for in the Constitution and the law but is not entitled to flout it because it believes it to be inconsistent with the law or the Constitution." This principle applies with equal force to the executive authority of the Chief Justice or the Committees, as the case may be.

22. Therefore, it can be held unequivocally that no administrative authority, including the Committees constituted under Section 2 of the Act and 191A of the Constitution, can, by an administrative order, undo the effect of a judicial order. Question (ii) is answered accordingly.

23. We may mention here that it was also argued before us that the Committees did not pass any administrative orders to undo the effect of

[10] Malik Asad Ali v. Federation of Pakistan 1998 SCMR 130 and PLD 1998 S.C. 161.

the judicial orders. Instead, it was contended, the cases were transferred to the Constitutional Bench through the operation of law under Clause (4) of Article 191A, which states that all petitions, appeals or review applications against judgments rendered or orders passed, to which Clause (3) applies, pending or filed in the Supreme Court prior to the commencement of the Constitution (Twenty-sixth Amendment) Act 2024, stand transferred to the Constitutional Bench. However, we find this argument misconceived, and it is sufficiently answered by the formulation provided by Khawaja Haris Ahmad, the learned amicus curiae. For ease of reference, his formulation is again reproduced here:

> It is noteworthy that when, on 13.01.2025, the learned Bench took up the matter relating to its jurisdiction to entertain and decide the CPLAs (filed under Article 185(3) of the Constitution) fixed before it, this involved neither assuming jurisdiction over the merits of the CPLAs, nor decision of constitutionality of any law point involved in the CPLAs. Rather, in effect, it only took upon itself the task of ascertaining if Article 191A(3) could be so construed as to exclude the Bench's jurisdiction to hear the CPLAs. To do so, the learned Bench was dealing with the matter like any other case where question of jurisdiction is raised - i.e. (i) first looking at the wording of the provision itself to see if it per se excluded the Court's jurisdiction; and, (ii) if so, to see whether the provision of law relied upon for excluding the Court's jurisdiction constitutes valid law or not. Thus, in the instant case, the learned Bench would first examine the words of Article 191A(3) to ascertain if a plain reading of it excludes the Court's jurisdiction in the matter; and, if such exclusion is a necessary consequence, then the Court would proceed to ascertain the constitutional validity of Article 191A(3). Prima facie it appears that the aforesaid exercise in not covered by exclusionary provisions of Article 191A(3) of the Constitution.

As evident from the above, the three-member Bench that passed the order dated 13 January 2025 was not deliberating on the constitutionality of the law challenged in those cases but was addressing the jurisdictional question, which every court inherently has the power to adjudicate. The Bench, which had previously referred such cases to the Constitutional Bench, was confronted with the principles governing a court's inherent power to decide jurisdictional questions. When the argument was prima facie supported by the referred precedents of the cases of *Pir Sabir Shah*, *Fazlul Quader Chowdhry* and *Marbury*, the Bench decided to adjudicate the jurisdictional matter after obtaining full assistance from the learned counsel for the parties, and the cases were adjourned to allow for further preparation and assistance on the jurisdictional issue.

24. In *Pir Sabir Shah*, the Court addressed the jurisdictional question of whether appeals filed before it under Section 8-B of the Political Parties

Act, 1962, were competent and whether that provision was ultra vires the Constitution. Similarly, in *Fazlul Quader Chowdhry*, the Court dealt with the question of whether Clause (4) of Article 224 of the 1962 Constitution, which barred all courts from questioning the validity of constitutional amendments, was ultra vires the Constitution. The principle emerging from these cases is that if a dispute arises concerning a court's jurisdiction over a particular matter, the court has the power to hear and determine that dispute—even if its conclusion leads to the finding that it lacks jurisdiction. Moreover, in determining its jurisdiction, the court may examine the constitutionality of the law, including any constitutional provision, that confers or bars its jurisdiction. Based on this principle, the Bench that passed the order dated 13 January 2025 was acting within its jurisdiction. If, ultimately, it had determined that Article 191A validly excluded its jurisdiction, it would have transferred the cases to the Constitutional Bench in accordance with Clause (5) of Article 191A of the Constitution, and would not have proceeded to address the matter of the constitutionality of the law challenged in those cases.

25. For these reasons, we find that it was the administrative decisions of the Committees that illegally nullified the judicial orders and unlawfully deprived the regular Bench of its judicial power to decide the jurisdictional question raised before it. Such jurisdictional questions, as contended by Khawaja Haris Ahmad, do not fall within the ambit of Clauses (3) and (5) of Article 191A of the Constitution.

26. As both the above questions have been answered in the negative. We are sanguine that the office shall fix the main case i.e. CPLA No. 836-K of 2020, etc before the original three-member bench comprising Syed Mansoor Ali Shah, Ayesha A. Malik, and Irfan Saadat Khan, JJ. in the first week of February 2025.

Decision on the Explanation of the Alleged Contemner

27. Having answered the questions of law, we now turn to the validity of the explanation furnished by the alleged contemner in response to the show-cause notice. Under Section 17(3) of the Contempt of Court Ordinance 2003, we must determine whether the interests of justice require further action and whether a charge for contempt of court should be framed against him. As required by law, the alleged contemner was given an opportunity for a preliminary hearing, and we have duly

considered his written reply, along with the documents filed in support thereof.

28. It has become evident from the record that in compliance with the court order dated 16 January 2025, the alleged contemner initiated a note on the same day—16 January 2025—regarding the constitution of a Special Bench comprising the Judges mentioned in the said order. However, the Committee constituted under Section 2 of the Act, by a majority comprising the Hon'ble Chief Justice and Hon'ble Justice Amin-ud-Din Khan, passed an order on 17 January 2025, withdrawing the cases from the regular Bench and directing that they be placed before the Committee constituted under Article 191A of the Constitution for fixation before the Constitutional Bench.

29. We find that the alleged contemner did what he could to comply with the court order. As stated in his written reply, he had no authority to constitute the Bench of Judges as mentioned in the court order. At most, he could inform the Competent Authority, which was done by him not only in a timely manner but also with a proposal for the constitution of the Special Bench comprising the Judges specified in the court order, for the fixation of cases before it as directed. The alleged contemner's failure to fix the case before the Bench specified in the court order, therefore, does not constitute a contumacious act on his part.

30. In a contempt appeal by the Registrar of the High Court of Sindh,[11] a fourteen-member larger Bench of this Court drew a distinction between a case of contempt against a party to the case and a case of contempt against an officer of the Court, in the following words:

> A distinction has to be made between a case of contempt of Court based on defiance or violation of a judicial order in the nature of temporary injunction by a party whereby such party was restrained from acting in a particular manner but in spite of service of notice or having come to know of the passing of such order, acts in a manner to alter the position to his advantage so as to frustrate the temporary injunction and an act of mere non-submission of a report called for by the Court by an Officer of the Court. In the former case, the Court would take strict view and mere act of defiance of the judicial order would by itself justify raising of presumption that the doer of the act was guilty of contempt of Court unless he proves otherwise whereas in the latter case, it has to be determined on application of judicial mind as to whether the accused deliberately did not submit the report on account of having personal interest in any of the parties to cause damage to the other party in the case in

[11] In re: Muhammad Sadiq Leghari, Registrar High Court of Sindh PLD 2002 SC 1033.

> which the report was called or had any personal interest which, if proved or established, would make the act of non-submission of the report mala fide. In the absence of any of these factors and element of contumacy, his conduct could not be held to have suffered from mala fides or contempt of Court. Mere non-compliance of an order, in the absence of contumacy, would not amount to contempt of Court.
>
> **Per Rana Bhagwandas, J. (Additional note)**
>
> It may be pertinent to observe further that every failure to comply with an order may not amount to be criminal contempt warranting action therefor. There may be cases where there are justifiable reasons or causes for non adherence of an order of a Court which would depend on the facts of each case. There may also be cases where non-compliance of the order was not wilful or deliberate. Likewise, there may be instances where compliance with an order of a Court may be beyond the scope of authority of a person to whom it is directed. Each-case, therefore, has to be examined in its proper perspective having regard to the facts and circumstances of a case.
>
> *(Emphasis added)*

Upon examining the case of the present alleged contemner, the Additional Registrar (Judicial) of this Court, we find that he did not deliberately avoid the fixation of the cases before the Bench as directed in the court order. There is no evidence to suggest that he had any personal interest in the matter or had connived with any of the parties to the case, nor did he act with the intention of causing damage to any of the parties to the case. There is no indication of mala fide intent in his actions. In the absence of any such factors or elements of contumacy, his conduct cannot be considered contumacious, nor can it be said to have suffered from mala fides, requiring contempt proceedings against him. For these reasons, by accepting his explanation, the show-cause notice issued against him for contempt proceeding is discharged.

Contempt Proceedings Against the Members of the Committees

31. We have also deliberated on the question of whether, following the discharge of the show-cause notice against the alleged contemner, the Additional Registrar (Judicial), the matter should be considered concluded or whether it should proceed further against the members of the two Committees, where the first Committee unlawfully withdrew the part-heard cases from a Bench and transferred it for the consideration of the other Committee, through an administrative order by undoing the effect of a judicial order. While the second Committee, in total disregard of the judicial order passed by the regular Bench, simply in pursuance of the direction of the first Committee, went ahead and fixed the case before the Constitutional Bench on 27 January 2025. Both the Committees were not

legally authorized to take administrative decisions dated 17 January 2025 in violation of the judicial order. In this background, it appears that the matter has to proceed further against the members of the two Committees. However, judicial propriety and decorum demand that the said question be considered and decided by the Full Court of the Supreme Court so that it is authoritatively decided once and for all. We note with advantage that the matter of contempt proceedings against the Registrar of a High Court[12] was treated with such gravity that a larger bench of 14 Judges was convened to adjudicate it. Therefore, in our view, this issue is even more serious, warranting the collective and institutional deliberation of all Judges of this Court. Consequently, we refer this matter to the Hon'ble Chief Justice for the convening of the Full Court to deliberate and decide on this important issue.

32. We may clarify here that we have not referred this matter to the Committee constituted under Section 2 of the Act, as its authority is limited to constituting benches of the Supreme Court. The Full Court of the Supreme Court, however, is constituted by the Constitution itself under Article 176. The distinction between the benches of a Court and the Full Court is well-established and constitutionally recognised in the provisions of Article 203J(2)(c) and (d) of the Constitution and the responsibility of convening the Full Court conventionally falls within the domain of the Chief Justice.

33. Before parting with this judgment, we find it necessary to acknowledge and express our appreciation for the invaluable assistance rendered to us by all the learned amici curiae, especially on such short notice.

Judge

Announced.
Islamabad,
27 January 2025.

Judge

Judge

Approved for reporting
Iqbal

[12] In re: Muhammad Sadiq Leghari, Registrar High Court of Sindh PLD 2002 SC 1033.