

SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Bench-I:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Aqeel Ahmed Abbasi

Crl.O. P. No.1/2025

(In the matter regarding non fixation of the case, CPLA 836-K of 2020, etc.)

In attendance:

Mr. Muhammad Salim Khan, Registrar, SCP.
Mr. Zulifqar Ahmed, D.R. (Judl.), SCP.
Mr. Aamir Rehman, Addl. AGP.
Mr. Salahuddin Ahmed, ASC.
Mr. Shahid Jamil Khan, ASC.
Mr. Hamid Khan, Sr. ASC.

Date of hearing: 21 January 2025

ORDER

In response to the notice issued to the Additional Registrar (Judicial) of this Court, requiring an explanation as to why the cases (*CPLA No. 836-K of 2020, etc.*) were not fixed on 20.01.2025 in compliance with the court order dated 16.01.2025 and to show cause why contempt proceedings should not be initiated against him for such non-compliance of the court order, Mr. Muhammad Salim Khan, the Registrar of this Court, has appeared on behalf of the Additional Registrar (Judicial), Mr. Nazar Abbas, who is reported to be indisposed.

2. The Registrar has presented copies of two decisions made by two different Committees: first, the decision of the Committee constituted under Section 2 of the Supreme Court (Practice and Procedure) Act, 2023 ("Act"); and second, the decision of the Committee constituted under Article 191A of the Constitution of the Islamic Republic of Pakistan ("Constitution"). He stated that the Committee constituted under Section 2 of the Act convened its meeting on 17.01.2025 and, by a majority decision, decided 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., 17.01.2025, and directed that all cases challenging the vires of the 26th Constitutional Amendment be fixed for hearing before the Constitutional Bench on 27.01.2025. He explained that, because of these decisions of the two Committees, the aforementioned cases were not be fixed by the office for hearing on 20.01.2025 before the regular Bench.

3. Mr. Salahuddin Ahmed, counsel for the respondents (CPLA 836-K/2022), has submitted that the vires of the 26th Constitutional Amendment were not challenged in the cases being heard by the regular Bench; rather, the issue under consideration was limited solely to the jurisdictional bar of regular Benches under Article 191A of the Constitution. Therefore, it appears that the said cases do not fall within the purview of the decision rendered by the Committee established under Article 191A of the Constitution. Even otherwise, he submitted, the Committee established under Article 191A of the Constitution is required to pass a speaking order to determine whether the matter should be placed before the Constitutional Bench or a regular Bench as required under Section 2A of the Act. He has further submitted that there are two preliminary issues involved in the proceedings. First, the explanation advanced by the Registrar is that the case was not fixed before this Court due to the decisions of the Committees constituted under Section 2 of the Act and under Article 191A of the Constitution, both dated 17.01.2025. Therefore, the legal validity of the explanation of the Registrar must be examined and determined by the Court. Second, whether the decisions of the Committees taken on the administrative side cannot undo the effect of a judicial order. In support of this contention, learned counsel relied upon *Malik Asad Ali v. Federation of Pakistan* (1998 SCMR 15, 1998 SCMR 130, PLD 1998 S.C. 161) and *Human Rights Case No.14959-K* (PLD 2019 S.C. 183). Additionally, he cited the unreported order dated 21.05.2024 passed by the Islamabad High Court, Islamabad, in *W.P. No. 3061/2022*, titled *Muhammad Sajid v. Imran Khan*. He also placed reliance on *Nusrat Bhutto v. Chief of the army staff* (PLD 1977 SC 657), *Syed Zafar Ali Shah v. General Pervez Musharaf* (PLD 2000 S.C. 869), and *CJP Iftikhar Muhammad Chaudhry v. President of Pakistan* (PLD 2010 S.C. 61) to contend that the judicial powers of this Court cannot be taken away through administrative orders. Lastly, learned counsel submitted that the issue at hand affects the judicial powers of all judges of this Court. Therefore, propriety demands that this matter be placed before the Full Court. In support of this contention, learned counsel referred to *Justice Qazi Faez Isa v. President of Pakistan* (2019 SCMR 1875), *CJP Iftikhar Muhammad Chaudhry v. President of Pakistan* (PLD 2010 S.C. 61) and *Malik Asad Ali v. Federation of Pakistan* (PLD 1998 S.C. 161).

4. The above contentions of the learned counsel have given 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 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.

Under 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.

5. In light of the significance of the questions involved, we hereby appoint Mr. Hamid Khan, Sr. ASC, and Mr. Muneer A. Malik, Sr. ASC, as amici curiae to assist the Court in addressing the aforementioned questions. Further, Mr. Shahid Jamil Khan, ASC, has also sought permission to assist the Court in the matter. As he represents one of the respondents in the main cases, his request is granted. Notice is also issued to learned Attorney General for Pakistan to conduct these proceedings as well as assist the Court on the above questions.

6. The hearing is adjourned to tomorrow, i.e., 22.01.2025, for arguments on the above questions.

Judge

Islamabad,
21 January 2025.
Approved for reporting.
Iqbal

Judge