

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

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. Mansoor Usman Awan, A.G.P.
 Mr. Hamid Khan, Sr. ASC
 Mr. M. Waqar Rana, ASC
 Mr. Salah ud Din, ASC
 Mr. Shahid Jamil Khan, ASC
 Mr. Nazar Abbas, Addl. Reg. (J), SCP
 Mr. Zulfiqar Ahmed, D.R.(J), SCP

 Mr. Munir A. Malik, Sr. ASC
 (via video link, Karachi)

Date of Hearing: 22.01.2025

ORDER

Mr. Nazar Abbas (accused person) has tendered appearance and seeks time to file his written statement. Let the needful be done by tomorrow i.e. **23.01.2025**. It is clarified that on 21.01.2025 the Registrar of the Court had tendered appearance on behalf of Mr. Nazar Abbas and submitted on his behalf that the case was not fixed on 20.01.2025 because of the two decisions of the Committees constituted under Section 2 of the Supreme Court (Practice and Procedure) Act, 2023 (the "**2023 Act**") and Article 191(A)(4) of the Constitution. Hence the defence presented by the Registrar on behalf of the Additional Registrar were the two Committees decisions dated 17.01.2025.

2. The learned Attorney General for Pakistan has pointed out that the *amicus curiae* appointed by this Court yesterday are already counsel in cases challenging the 26th Constitutional Amendment before the Constitutional Bench. Be that as it may, the question before us is the scope of Section 2 of the 2023 Act and does not directly relate to the 26th Constitutional Amendment. Even otherwise, we have asked the learned A.G.P. to suggest other names for appointing as *amicus curiae*, who are not associated with the challenge laid against the 26th Constitutional Amendment. He remained reluctant to suggest a name. We, therefore, appoint Mr. Ahsan Bhoon, learned ASC, and Khawaja Haris Ahmad, learned ASC as *amici curiae* in addition to the *amici*

already appointed. Office is directed to intimate them so that can make it convenient to appear in person or through video link before the Court tomorrow.

3. Mr. Shahid Jamil Khan, learned ASC, representing respondents in the main case tendered appearance and requested to assist the Court on the question framed by the Court vide order dated 21.01.2025. He referred to Articles 204(c) and 175(2) of the Constitution to submit that the jurisdiction under Article 187 (Complete Justice) is also available to the Bench and hence the decisions of the Committee can be examined by the Bench. He submits that the administrative order cannot override a judicial order and to the extent of inconsistency the administrative order is void and *non est*. He has placed reliance on para-43 of case reported as Malik Asad Ali and others vs. Federation of Pakistan through Secretary, Law, Justice and Parliament Affairs, Islamabad and others (PLD 1998 SC 161), *Human Right case in the matter regarding disposal of infectious wastes in the Province of Khyber Pakhtunkhwa* (PLD 2019 SC 183) and Muhammad Imtiyaz vs. Ch. Muhammad Naeem and others (PLD 2023 SC 306). Walking us through the Supreme Court (Practice and Procedure) Act, 2023, the learned counsel read Sections 2 and 2A and submitted that all the cases pending in the Supreme Court must first be taken-up by the original Committee under Section 2 of the 2023 Act and if the question arises before that Committee whether a case ought to be heard by the Constitutional Bench or the Regular Bench it ought to be referred to the Committee constituted under Article 191A of the Constitution under Section 2A. In the end he submits that the question as to how the Benches are to be regulated is a matter of some serious concern and therefore ought to be heard by a Full Court of this Court.

4. Mr. Munir A. Malik, learned counsel has tendered appearance as *amicus curiae*. He submits that two fundamental questions arise in this case: (i). that all the cases pending in the Supreme Court are to be first examined by the Committee constituted under Section 2 the 2023 Act and only if a question arises that the matter ought to be sent to the Committee constituted under Article 191A(4) of the Constitution (Section 2A of the Supreme Court (Practice and Procedure) Act, 2023), can the case be sent to the said Committee. (ii). that judicial order cannot be trumped by an administrative order because that directly affects the independence of the judiciary. He added that a case being heard by a Bench cannot be withdrawn

through an administrative order. He submits that these questions are of fundamental importance and go to the root of the independence of the judiciary and submits that it ought to be heard by a Full Court of this Court so that the matter is settled once and for all. When asked whether such an order can be passed in contempt proceedings, he submits it can be as in the present case the very defence presented by the accused person is that the case was not fixed before the Court because of the decisions of the two Committees dated 17.01.2025.

5. Mr. Hamid Khan, learned counsel has tendered appearance as *amicus curiae* and has referred to para-4 of the order passed by this Court on 21.01.2025. He read out the two questions of public importance framed in the said paragraph. Rephrasing the two questions he submits; i). whether a judicial order and its implementation can be undone or varied by a Committee exercising administrative and procedural powers of the Court; and ii). whether a constitutional question coming-up before a Bench of the Court could be decided by it or referred to a Full Court for its determination. He then referred to Articles 175 and 176 of the Constitution to submit that the Supreme Court has been constituted under Article 175 and its constitution has been described under Article 176 of the Constitution. Both these Articles read together do not envisage any divisibility within the Supreme Court regarding the exercise of judicial power. The learned *amicus* was on his legs when the Court had to rise for today. To come-up tomorrow i.e. **23.01.2025**.

Judge

Judge

Islamabad:

22.01.2025

(Nasir Khan)

'Approved for Reporting'