

SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial, CJ
Mrs. Justice Ayesha A. Malik

CONSTITUTION PETITION NO.10 of 2020

[Const. Petition under Articles 186A & 187 of the Constitution
seeking transfer of cases]

Muhammad Saleem Baig, Chairman
Pakistan Electronic Media Regulatory
Authority (PEMRA), Islamabad ...Petitioner(s)

Versus

M/s Labbaik (Pvt) Limited through Executive
Admin Bol TV Quetta and others ...Respondent(s)

For the Petitioner(s) : Hafiz Arfat Ahmad Ch., ASC

Respondent(s) : N.R.

Date of Hearing : 06.06.2022

JUDGMENT

AYESHA A. MALIK, J.- This is a Constitution
Petition filed by the Petitioner under Articles 186A and 187 of
the Constitution of the Islamic Republic of Pakistan, 1973
(**Constitution**) seeking transfer of the following cases to one
High Court:

1.	W.P. No.3637/2020 <i>"Umair Yasir v. FOP and others"</i>	Peshawar High Court
2.	W.P. No.2980-P/2020 <i>"Sajid Rehman v. FOP and others"</i>	Peshawar High Court
3.	W.P. No.65984/2020 <i>"Zaheer-ud-Din Babar v. Federation of Pakistan"</i>	Lahore High Court
4.	W.P. No.3661/2021 <i>"Haji Adam v. Federation of Pakistan"</i>	Islamabad High Court

2. The prayer of the Petitioner is that cases have been filed against him in different High Courts and are pending before different High Courts. Therefore, these may be transferred to a single High Court preferably the Islamabad High Court, within whose territorial jurisdiction, all parties have residences or offices.

3. The Petitioner is the Chairperson of the Pakistan Electronic Media Regulatory Authority (PEMRA) whose appointment has been challenged in different High Courts where the cases are pending. The learned counsel states that petitions were filed before the Peshawar High Court, Lahore High Court as well as the Islamabad High Court which are pending, however, the writ petition filed before the High Court of Balochistan has since been withdrawn vide order dated 12.10.2020. He submits that essentially the parties in these petitions are the same who have, under different names, approached the different High Courts and have challenged the appointment of the Petitioner. The learned counsel further submits that the Supreme Court has the power under Article 186A of the Constitution to transfer cases in appropriate circumstances in the interest of justice. In this case as the Petitioner is facing inconvenience due to pending litigation in different courts, throughout the country and further in order to avoid conflicting judgments, it is in the interest of justice and appropriate for the cases to be transferred to one High Court. The learned counsel adds that it becomes difficult for PEMRA to follow all the cases and attend to all the hearings

and possibly that this is precisely the objective of the Respondents to harass the Petitioner by filing so many cases. The learned counsel also stated that this Court has exercised its power under Article 186A of the Constitution in similar cases and has placed reliance on the cases reported as Federation of Pakistan v. Kahlid Malik Advocate, Quetta and others (1999 SCMR 275) and Haris Steel Industries (Pvt.) Ltd. And 4 others v. National Accountability Bureau and another (PLD 2009 SC 61).

4. Article 186A of the Constitution, deals with the transfer of cases and it provides as follows:

“The Supreme Court may, if it considers it expedient to do so in the interest of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court.”

The power vested in the Supreme Court to transfer a case from one High Court to another High Court is discretionary, to be exercised in the *interest of justice*. The term *interest of justice* is not a defined term under the Constitution but a concept which enables the courts to ensure fairness and equity in proceedings before it. The interpretation of what is in the interest of justice will vary, from case to case, based on the facts and circumstances of a case. Essentially Article 186 A of the Constitution is a constitutional safeguard that this Court has to ensure that a fair and just opportunity is given to a party to pursue their remedy under the law and to protect the interests of the party adversely affected while pursuing their

remedy under the law. This constitutional safeguard allows the Supreme Court to ensure that parties before a Court are able to access their right of fair trial with no hindrance. So Article 186A of the Constitution is a power which the Supreme Court can exercise, to ensure that a party will get a fair hearing in their case to meet the ends of justice.

5. The question that has arisen is when should this power be exercised. At the very onset we note that the fact that it's a constitutional safeguard means it has to be used with caution in compelling circumstances. This Court has held in Muslim Commercial Bank Limited Employees' Union, Islamabad, Rawalpindi and Wah Zones through its General Secretary v. Muslim Commercial Bank Limited, Karachi and others (1994 SCMR 1031) that the power under Article 186A of the Constitution can not be exercised due to simpliciter inconvenience of the parties. In such cases, the proper course for the petitioner is to agitate their case before the appropriate forum. Again, in the case reported as Mohtarma Benazir Bhutto, leader of the opposition, Bilawal House, Clifton, Karachi and another v. The State through Chief Ehtesab Commissioner, Islamabad (1999 SCMR 759), this Court concluded that the power under Article 186A of the Constitution is an extraordinary power, to be used only for meeting the ends of justice, being cases of extreme hardship and cannot be invoked in cases of convenience or inconvenience. The above case relates to the trial of different Ehtesab References against Benazir Bhutto pending before the High Court of Sindh and

Lahore High Court (Rawalpindi Bench and at Lahore) where the Supreme Court did not in totality accept the petition under Article 186A of the Constitution, that is, it declined to transfer all pending references to one Court, however, it transferred the cases pending in Lahore to the Rawalpindi Bench of the Lahore High Court, where they could be heard together. The Petitioner has relied on Federation of Pakistan v. Kahlid Malik Advocate, Quetta and others (1999 SCMR 275) wherein six writ petitions challenging the Presidential Order of 6th August, 1990 dissolving the National Assembly were transferred to one High Court. The facts of this case are totally distinguishable from the facts of the present case as the ground urged and allowed in the case of urgency and expediency. The Petitioner has also relied on Haris Steel Industries (Pvt.) Ltd. and 4 others v. National Accountability Bureau and another (PLD 2009 SC 61), where the allegation was of coercive tactics applied by the NAB authorities and other officials to handicap the petitioners from pursuing their remedy before the Lahore High Court freely. So the power under Article 186A of the Constitution was invoked and allowed to ensure a fair trial. Again, these facts are totally distinguishable from the current facts before this Court and do not support the contention of the Petitioner.

6. This Court has exercised this extraordinary power in exceptional circumstances, based on the compelling circumstances of the case. In a case reported as 1994 SCMR 1031 (*supra*) this Court held that for invoking Article 186 A of the Constitution, a strong case must be made out to advance

cause of justice. Simpliciter inconvenience is not such a cause. In a case where there has been a threat to life cited as Jalal-ur-Rehman v. Mrs. Salal Akbar Bugti and others (PLD 2008 SC 328) wherein due to animosity between two rival groups of Dera Bugti i.e. Nawab Akbar Bugti and Wadera Khan Muhammad, there was imminent threat to the life of the parties before the Court, it was in the interest of justice that their case was transferred from High Court of Balochistan Quetta to the High Court of Sindh at Karachi for its disposal in accordance with law. In the case reported as Raja Arshad Mahmood v. Mst. Maliha Malik and others (2020 SCMR 69), this Court again emphasized that Article 186A of the Constitution, being the power of transfer, should be sparingly and cautiously used in extraordinary circumstances. In this case, the cases were transferred on account of non-availability of judges who could hear the cases. Hence, in order to invoke this safeguard, a party has to demonstrate with a degree of certainty that it would not get a fair and impartial hearing, hence, transfer is necessary.

7. In the case before us, the petitions sought to be transferred have been filed before the Courts of competent jurisdiction and the only ground urged by the Petitioner is that of the inconvenience faced by him. This is not a ground in furtherance of the interest of justice nor does it call for invoking Article 186A of the Constitution as no right of fair hearing or trial are prejudiced or hampered by the pending cases. The Petitioner must face the litigation before the courts

of competent jurisdiction and cannot, on the ground of inconvenience, seek transfer of cases before a Court of his choice. Consequently, this petition is dismissed.

CHIEF JUSTICE

JUDGE

Islamabad
06.06.2022
'APPROVED FOR REPORTING'
*Azmat/**