

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL, J
MR. JUSTICE IJAZ UL AHSAN, J

CMA No. 6786 of 2020

And

CPLA No. 3171 of 2020

Against judgment dated 27.10.2020
passed by the Lahore High Court, Lahore
in Writ Petition No. 53310 of 2020.

Syed Iqbal Hussain Shah Gillani

Petitioner(s)

Versus

Pakistan Bar Council through its Secretary,
Supreme Court Bar Building, Islamabad
and others.

Respondent(s)

For the Petitioner:

Mr. M. Latif Khan Khosa, ASC
Mr. Shahbaz Ali Khosa, ASC
Chaudhry Akhtar Ali, AOR

For the Respondents:

N.R

Date of Hearing:

28.10.2020

ORDER

IJAZ UL AHSAN, J.- For the reasons stated in the application (CMA No. 6786 of 2020), it is allowed and the office is directed to number the petition.

2. CPLA No. 3171 of 2020. The Petitioner seeks leave to appeal against the judgement dated 27.10.2020 passed by the learned Lahore High Court (hereinafter referred to as the "Impugned Judgement"). Through the Impugned Judgement the constitutional petition filed by the Petitioner challenging the order dated 20.10.2020 passed by the Executive Committee Pakistan Bar Council ("PBC")

disqualifying him from contesting the Supreme Court Bar Association Pakistan ("SCBAP") elections was dismissed.

3. The necessary facts giving rise to this *lis* are that the Petitioner, a member of the SCBAP, was disqualified from contesting in the SCBAP elections for the office of Vice President for the province of Khyber Pakhtunkhwa ("KP") vide an Order of the Executive Committee Pakistan Bar Council (hereinafter "the Executive Committee") dated 20.10.2020. The Executive Committee vide the said order declared that in order to contest for the post of Vice President from KP, the nominee should not only belong to the province of KP but should also be on the Roll of Advocates of the concerned Provincial Bar Council for not less than seven years. Accordingly, it decided that the Petitioner, unable to meet this basic qualification owing to the fact that his practice was mainly based in Punjab, was disqualified from contesting in the SCBAP elections for the post of Vice President from the province of KP.

4. The Petitioner challenged the Order of the Executive Committee before the Lahore High Court. However, the High Court, vide the Impugned Judgement dated 27.10.2020, dismissed the constitutional petition on the ground of it being non-maintainable. Aggrieved of the same, the Petitioner has approached this Court.

5. Learned counsel for the Petitioner contends that by holding that the constitutional petition was not

maintainable, the Impugned Judgement renders the Petitioner remediless. It has also been argued that the decision of the Executive Committee is in violation of the SCBAP Rules, 1989 and therefore the rights of the Petitioner should be enforced by exercising constitutional jurisdiction. Learned counsel further submits that the Impugned Judgement prevents the Petitioner from exercising his fundamental right to contest the elections. Therefore, a violation of fundamental rights conferred by the Constitution Writ jurisdiction of the High Court can be invoked for enforcement of fundamental rights under Article 199(1)(c) of the Constitution.

6. We have heard the learned counsel for the parties and gone through the record. The question of law which falls for the determination of this Court is regarding the maintainability of a constitutional petition against the Pakistan Bar Council under Article 199 of the Constitution.

7. Pakistan Bar Council is a body established under an Act of Parliament namely "The Legal Practitioners & Bar Councils Act, 1973" ("Act of 1973"), whereas, the SCBAP is an association of Supreme Court Lawyers, working under the control of the Pakistan Bar Council. The Act of 1973 provides for the establishment of the Bar Council as well as matters relating to elections, disciplinary proceedings, constitution formation and powers of the committees and all other relevant matters. A bare reading of the 1973 Act reveals that other than the Attorney General

for Pakistan being the ex-officio Chairman Pakistan Bar Council, nothing in the Act suggests any administrative control being exercised by the Federal or Provincial Government over the affairs of the PBC. The PBC is an entirely autonomous body which has independent elections and generates its own funding without any Government control. Thus, the State does not have any financial or other interests in the affairs of the PBC, nor does it perform any function in connection with the affairs of the Federation, a Province or a local authority.

8. It is settled law that a constitutional petition is only maintainable if the association/body performs public functions in connection with the affairs of the Federation, Provinces or Local Authority, as envisaged under Article 199 of the Constitution (*Pakistan Olympic Association v Nadeem Aftab Sindhu*, 2019 SCMR 221). However, a bare perusal of the 1973 Act reveals that neither the Provincial nor the Federal Government exercise any administrative, financial or other control over the affairs of the Pakistan Bar Council. Thus, neither the Pakistan Bar Council nor any of its committees can be regarded as persons performing functions in connection with the affairs of the Federation, Provinces or Local Authority within the contemplation of Article 199 of the Constitution of Pakistan. Accordingly, Respondents No.1 & 2 are not amenable to writ jurisdiction of High Court.

9. With regard to the argument that the SCBAP is a statutory body and its 1989 Rules are statutory in nature, hence they should be enforced though constitutional petition, we find the argument to be misconceived as the preconditions for conferring and exercising jurisdiction under Article 199 of the Constitution and the test to determine if a person is performing a sovereign function are not met/satisfied in the present case. This argument is therefore repelled. This very question was addressed by this Court in Mirza Muhammad NazakatBaig v Federation of Pakistan through Secretary Ministry of Law & Justice, Islamabad and another {2020 SCMR 631}, wherein it was categorically held that the SCBAP is a non-statutory body, therefore, conditions or rules framed by this body would also be non-statutory rules and having no statutory backing. Accordingly, any violation of the SCBAP Rules, 1989 is not amenable to writ jurisdiction of the High Court under Article 199 of the Constitution.

10. It must be noted that when the learned Counsel for the Petitioner presented his arguments before this Court, it appeared that learned counsel was not aware of the Order of this Court dated 28.01.2020 {2020 SCMR 631} wherein it was categorically held that any violation of the SCBAP Rules, 1989 is not amenable to writ jurisdiction of the High Court. The argument that the Petitioner was unaware and should be given the benefit of ignorance of law is without substance and has not impressed us. The

Petitioner should have been diligent about pursuing a remedy against the Order of the Executive Committee Pakistan Bar Council, he should have adopted the right course at the right forum rather than filing a constitutional petition which was non-maintainable from the outset in light of settled law.

11. Even otherwise, adequate and efficacious remedies were available to the Petitioner. There is no denial of the fact that the available alternate remedies were not availed by the Petitioner. Hence, we are not convinced of the argument that the refusal of the High Court to exercise its jurisdiction under Article 199 on ground of non-maintainability of the constitutional petition rendered the Petitioner remediless.

12. It must also be noted that the Executive Committee of the PBC disqualified the Petitioner from contesting in the SCBAP elections for the post of Vice President from the province of KPK on ground that his practice was mainly based in Punjab. On the other hand, learned counsel for the Petitioner has argued that he practiced substantially in the province of KPK. Thus, the matter involves a factual dispute requiring a factual inquiry and accordingly demands an evidential probe to resolve the factual controversy between the parties. However, we are in no manner of doubt that while exercising jurisdiction under Article 199 of the Constitution, this was not a fit case for the High Court to launch into an exercise of undertaking a

factual inquiry and recording evidence which the High Court correctly declined to do.

13. As far as the argument of the learned counsel for the Petitioner that the Impugned Judgement prevents the Petitioner from exercising his fundamental right to contest in the elections and therefore writ jurisdiction should have been exercised, we are not convinced of the same. It must first be considered whether an Order of the Executive Committee Pakistan Bar Council disqualifying a candidate from contesting in the SCBAP elections amounts to a violation of fundamental rights protected by the Constitution. We do not find that the internal functioning of an Association, particularly the criterion and method for contesting in the Association's elections, raises a violation of fundamental rights envisaged in the Constitution. Therefore, the High Court had valid reasons and lawful justification for refusing to exercise jurisdiction. In this regard reliance is placed upon the ratio of 2019 SCMR 321 (*Pakistan Olympic Association v Nadeem Aftab Sindhu*).

14. In addition, it must be noted that it is settled law that fundamental rights are by in large (very exceptional circumstances apart) are enforceable against the State and not against private individuals. The Petitioner however seeks relief against the Executive Committee Pakistan Bar Council, which is an autonomous private body and not a State institution. Therefore, an argument regarding the enforceability of fundamental rights against such a body is

flawed at the outset. Accordingly, we hold that a constitutional petition against Pakistan Bar Council or its Executive Committee is not maintainable under Article 199(1)(c) of the Constitution.

15. The exercise of jurisdiction under Article 199 of the Constitution by the High Court is equitable discretionary in nature. The High Court exercised such discretion in a lawful and valid manner on the basis of well entrenched principles on the exercise of such discretion. In the instant matter we have not found any illegality, wrongful withholding of or perversity in the exercise of such jurisdiction. Therefore, we find the impugned judgment to be well-reasoned and based upon the correct interpretation of the applicable principles of law on the subject and in accordance with principles of law settled by this Court. The learned counsel for the Petitioner has been unable to persuade us otherwise.

16. For reasons recorded above, we find no merit in this petition. It is accordingly dismissed. Leave to appeal is refused.

ISLAMABAD, THE
28th of October, 2020
Fizza, LC
Not Approved For Reporting

18/11/20