

IN THE SUPREME COURT OF PAKISTAN

(Review Jurisdiction)

Present

Justice Qazi Faez Isa, CJ
Justice Amin-ud-Din Khan
Justice Jamal Khan Mandokhail
Justice Naeem Akhtar Afghan
Justice Mazhar Alam Khan Miankhel

Civil Review Petition No.197/2022 in Constitution Petition No.2/2022

*Supreme Court Bar Association of Pakistan through its
President*

....Petitioner

Versus

*Federation of Pakistan through Secretary, Ministry of
Interior, Islamabad and others*

....Respondents

For petitioner: Mr. Muhammad Shahzad Shaukat,
President SCBAP alongwith Mr. Muhammad
Ahsan Bhoon, Ex-President SCBAP.

For Federation: Ch. Aamir Rehman, AAGP.

For respondent No.3: Syed Ali Zafar, ASC.

For respondent No.5: Barrister Haris Azmat, ASC.

For PPPP: Mr. Farooq H. Naek, Sr. ASC.

Date of Hearing: 1 October 2024

ORDER

Presidential Reference No.1 of 2022, Constitution Petitions No.2 and 9 of 2022 were heard by a bench comprising of the following:

Umar Ata Bandial, CJ,
Ijaz Ul Ahsan, J,
Mazhar Alam Khan Miankhel, J,
Munib Akhtar, J, and
Jamal Khan Mandokhail, J.

2. The majority judgment was authored by Munib Akhtar, J with which Umar Ata Bandial, CJ, and Ijaz Ul Ahsan, J, concurred. The Judges in the minority, namely, Mahzar Alam Khan Miankhel and Jamal Khan Mandokhail, JJ, wrote their separate dissenting judgments/opinions. However, the instant

review petition (**the CRP**) was not fixed for hearing during Umar Ata Bandial, CJ, and Ijaz Ul Ahsan, J holding office. Therefore, their place on the Bench came to be occupied by Qazi Faez Isa, CJ and Amin Ud Din Khan, J.

3. However, Munib Akhtar, J, addressed a letter dated 30 September 2024 to the Registrar of the Supreme Court of Pakistan which concluded, '*I must express my inability, at the present time, to be part of the bench constituted to hear the CRP. It may be noted that this is not a recusal and my present inability should not be misconstrued or misinterpreted as such.*' Since Munib Akhtar, J, had headed Bench No.III and had conducted cases on 30 September 2024 and we were together in the Judges tea room, therefore, the Registrar was directed to convey our request to his lordship to join the Bench, but Munib Akhtar, J, *vide* another letter dated 30 September 2024 reiterated his earlier position and did not join the Bench.

4. It would be appropriate to reproduce the self-explanatory minutes of the Committee constituted under section 2 of the Supreme Court (Practice and Procedure) Act, 2023 hereunder:

Minutes of the 20th Meeting of the Committee

CRP NO 197/2022 and connected matters

This case was fixed on Monday 30 September 2024 before a Bench comprising of the following:

Qazi Faez Isa, Chief Justice
Munib Akhtar, J
Amin-ud-Din Khan, J
Jamal Khan Mandokhail, J
Mazhar Alam Khan Miankhel, J

2. Since one of the Hon'ble members of the Bench, namely, Hon'ble Justice Munib Akhtar had expressed his *inability* to attend for reasons mentioned in his letter dated 30th September 2024 cases were adjourned and the Registrar was directed to request his lordship to join the Bench. The Registrar complied with the stated order and conveyed the request on the same day, i.e., 30 September 2024, to the Hon'ble Justice Munib Akhtar. However, his lordship by another letter of the same date i.e., 30th September 2024 reproduced the stated note of the Registrar and reiterated his earlier position.

3. The Registrar put up a note the above mentioned letter of Hon'ble Justice Munib Akhtar before the Chief

Justice on 30th September 2024 who wrote the following thereon:

“Since Justice Munib Akhtar has not conceded to the request to take his place on the Bench a meeting of the Committee constituted under the Supreme Court (Practice and Procedure) Act, 2023 is convened at 9 am on Tuesday, 1 October 2024 to consider his lordship’s substitute. In this regard I propose that Justice Syed Mansoor Ali Shah to be on the said Bench. Members may be accordingly informed immediately. Copy of the said CRP may also be sent to his lordship today.

Sd/-
30/9/2024”

4. The meeting of the Committee was convened at 9 am today. The members waited for Hon’ble Justice Syed Mansoor Ali Shah, however, his lordship did not attend the meeting, therefore, his SPS, Mr. Sadaqat Hussain, was contacted telephonically and he, after inquiring from his lordship, stated that he will not be participating nor wants to be a member of the said Bench.

5. Therefore, the Committee decided to appoint the second senior member of the Bench on the Chief Justice’s Bench, namely, Hon’ble Justice Naeem Akhtar Afghan, on the Bench, as his lordship would be available since Bench No.1 work would conclude at 11 am and work of no other Bench will be disturbed. During the meeting Hon’ble Justice Naeem Akhtar Afghan was asked about his availability and his lordship informed that he is available.

Islamabad, 1 October 2024

Sd/-
Secretary

Sd/-
Qazi Faez Isa,
Chief Justice/Chairman

Sd/-
Amin-ud-Din Khan,
Judge/Member’

5. Therefore, Mr. Naeem Akhtar Afghan, J joined Bench, and a five-member Bench is restored.

6. The Supreme Court Bar Association of Pakistan (**‘SCBAP’**) has filed Civil Review Petition No.197 of 2022 (**‘the CRP’**) with a delay of three days. Civil

Miscellaneous Application No.4598 of 2022 to condone the delay has been submitted on the ground that the short order was issued on 17 May 2022 and the CRP was filed on 23 June 2022 and till then the detailed reasons had not been issued. The majority judgment, review whereof is sought, mentions the date 17 May 2022 but it is stated that it could not have been written on the said date because then it, and not the short order, would have been issued. The office is directed to inform when the detailed reasons by the majority were issued.

7. President of the SCBAP made his submissions in support of the CRP which he stated was filed when Mr. Ahsan Bhoon was the President. Mr. Ahsan Bhoon, who is present, states requisite resolution/approval of SCBAP was obtained before the filing of the CRP and that he supports the CRP. It is further stated that after the tenure of the then President, namely, Mr. Ahsan Bhoon, ended Mr. Abid S. Zuberi was elected as President of SCBAP who also supported the CRP which is evident from the fact that he did not withdraw the CRP. Mr. Muhammad Shahzad Shaukat is now the present President of the SCBAP states that three Presidents of SCBAP support the CRP.

8. All concerned, that is, the President of Pakistan, the SCBAP and Pakistan Tehreek-i-Insaf (**'PTI'**) are represented before us. Senior Advocate Mr. Farooq H. Naek represents the Pakistan Peoples Party and Mr. Haris Azmat, ASC, represents the Speaker of the National Assembly. This case has been widely reported in the media (print, television and social) and the impugned majority judgment determines constitutional provision, therefore, if anyone else wants to be heard they may submit an application stating whether they support/oppose the CRP and record their submissions in support thereof.

9. A number of questions arose including the following:

(1) The law/practice with regard to not abiding by the party or its leader's directions in the countries whose judgments are cited in the impugned judgment, that is, United Kingdom, United States of America, Canada, India as well as other countries.

(2) Whether a Presidential Reference under Article 186 of the Constitution of the Islamic Republic of Pakistan (**'the Constitution'**) and Constitution Petitions filed under Article 184(3) of the Constitution are in respect of the same jurisdiction of this Court, and if not, whether

they could be heard together and decided or rendered an opinion thereon.

(3) The effect of a Member of Parliament abstaining from voting despite directed to do so by his/her parliamentary party.

(4) The effect, if any, of the impugned judgment on Articles 95 and 136 of the Constitution.

10. To be treated as part-heard. Adjourned to Wednesday, 2 October 2024 at 11.30 am.

Chief Justice

Judge

Judge

Judge

Judge

Islamabad
1 October 2024.
Umair