

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 of 2022 in
Constitution Petition No. 2 of 2022**

*Supreme Court Bar Association of Pakistan
through its President.* ... *Petitioner*

Versus

*Federation of Pakistan through Secretary M/o Interior,
Islamabad and others.* ... *Respondents*

For the Petitioner: Mr. M. Shahzad Shaukat, ASC

For the Federation: Ch. Aamir Rehman, Addl. AGP

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: 02.10.2024

ORDER

Qazi Faez Isa, CJ.

CMA No. 4598/2022: We had enquired from the office *vide* order dated 1 October 2024 to inform the Court when the detailed reasons of the decision were issued. The Registrar has responded to the query as under:

‘that the detailed reasoning of the majority view (comprising 95 pages) was received to this Office on 14.10.2022 and separate Notes of (1) Justice Mazhar Alam Khan Miankhel (comprising 17 pages) on 14.07.2022, (2) Justice Jamal Khan Mandokhail on 30.07.2022.’

The need to ascertain when the detailed reasons were issued could have been avoided if the majority judgment had inscribed the date on which it was issued. In the case of *Commissioner Inland Revenue v Sui Northern Gas Pipeline Limited* (PLD 2023 Supreme Court 241) it was held that ‘*every judgment must inscribe the date when it is written, signed and pronounced*’.

2. The office has noted that the Civil Review Petition No. 197/2022 (**CRP**) was filed with a delay of three days. The petitioner is the Supreme Court Bar Association of Pakistan (**SCBAP**) and it has filed the listed application seeking the three-days delay in filing to be condoned. The President of the SCBAP stated that the review petition was filed on 23 June 2022, which was well before the detailed reasons were issued. He further submitted that a *review* is filed in respect of the reasons given in a judgment or order and provided the same does not accord with the law or there is material error on the face of the record, and is, therefore, unlike an appeal against a judgment/order from which a party may be aggrieved. It is further stated that the matter relates to *great constitutional public importance* and as such a few days delay should not disentitle the SCBAP, which represents the Advocates of the Supreme Court and who have no personal interest in the matter to file the CRP.

3. The learned Additional Attorney-General for Pakistan and learned Mr. Farooq H. Naek do not oppose the said CMA and for the delay to be condoned, however, learned Syed Ali Zafar, representing Pakistan Tehreek-e-Insaf (**PTI**) and Mr. Imran Khan (**Mr. Khan**), states that the delay should not be condoned. In this regard he submits that an institution such as SCBAP, which exclusively comprises of the Advocates of the Supreme Court, know the period within which a review petition should be filed which is '*within thirty days*' as prescribed in Order XXVI, rule 2 of the Supreme Court Rules, 1980 (**the Rules**).

4. Article 188 of the Constitution of the Islamic Republic of Pakistan (**the Constitution**), creates the constitutional right to seek review of any judgment or order of the Supreme Court, and it is reproduced hereunder:

'The Supreme Court shall have power, subject to the provisions of any Act of Majlis-e-Shoora (Parliament) and of any rules made by the Supreme Court, to review any judgment pronounced or any order made by it.'

The matter of review is attended to in the Rules in Order XXVI and its rule 1 states that the review may be filed '*on grounds similar to those mentioned in Order XLVII, rule I of the Code*', that is, the Code of Civil Procedure, 1908 (**the Code**). Order XLVII rule 1 of the Code stipulates that a review may be filed if there is '*some mistake or error apparent on the face of the record, or for any other sufficient reason*'.

5. Order XXVI, rule 3 of the Rules stipulates that '*review shall be accompanied by a certified copy of the judgment or order complained of*' and rule 4 thereof states that:

'The Advocate signing the application shall specify in brief the points upon which the prayer for review is based and shall add a certificate to the effect that consistently with the law and practice of the Court, a review would be justifiable in the case. The certificate shall be in the form of a reasoned opinion.'

6. From the abovementioned provisions it is quite clear that without knowing what the reasons for the judgment or order a proper review thereof cannot be sought. Only once the detailed reasons are given can the same be read and mistake or error or other justifiable reason to file a review become apparent. Moreover, an Advocate filing a review would be handicapped to certify in the form of reasoned opinion the mistake, error or other justifiable reason on the basis of which the review merits filing.

7. We have also noted that the CRP was filed three months and twenty-one days before the detailed reasons by the majority were issued. And, though the review does not assail the minority judgments yet it was filed even before their issuance. Under these circumstances, the said application, seeking the delay to be condoned, is allowed.

8. Learned Syed Ali Zafar stated that he had drafted a number of applications and had brought them to file today in the office, but since the CRP was fixed for hearing today the office did not accept them. Therefore, we permitted him to verbally submit what he had sought. Learned counsel stated that he had sought permission to meet his client, who is confined in Adiala Jail. Surprisingly, such a request was not made earlier when we had permitted him to represent his client. Be that as it may, we direct the learned Additional Attorney-General for Pakistan ('**AAG**') to immediately issue instructions to ensure that such meeting is enabled today and also tomorrow morning, if Mr. Zafar wants to have two meetings. The learned AAG assures that this will be done. In case Mr. Zafar encounters any difficulty he should directly contact the learned AAG on his cell phone.

9. Learned Mr. Zafar next stated that formal notices of the CRP be issued to all parties before it is heard. However, the CRP has not been filed in an ordinary case nor in one where a particular person's property or

rights may be effected, which may have merited such request. The objection cannot be taken by one who was heard throughout and is before us.

10. The SCBAP had filed Constitution Petition No.2/2022 on 17 March 2022 which came up for hearing before a two-member Bench on 19 March 2022, and notices were issued to the respondents and to certain political parties, including PTI for 21 March 2022.

11. Order of 19 March 2022 was passed by a two-member Bench of this Court comprising Umar Ata Bandial, CJ and Munib Akhtar, J., as under:

‘To come up for hearing of this petition alongwith reference, if any, that is filed under Article 186 of the Constitution on 21.03.2022 at 1 pm.’

Whereafter the then President of Pakistan Dr. Arif Alvi submitted a presidential reference under Article 186 of the Constitution, which was numbered as Presidential Reference No. 1 of 2022.

12. Both the Constitution Petition No. 2/2022 and the Presidential Reference were listed together before the same Bench on 21 March 2022. The reason for clubbing these two together as stated in the order was that a relief claimed by the SCBAP was the same as the questions referred to by the President for the opinion of the Supreme Court.

13. Thereafter, the then Chief Justice constituted a five-member Bench for hearing the two matters which came up for hearing on 24 March 2022, when it was recorded that they were ‘*partly heard*’. Thereafter, hearing of these two matters took place on 28 and 29 March and on 4, 5, 6, 7 and 12 April 2022.

14. On 14 April 2022 Constitution Petition No. 9/2022 was filed by PTI, ‘*through its chairman, IMRAN KHAN*’ and it was ordered, by the Registrar, to be fixed alongwith Constitution Petition No. 2/2022 and the Presidential Reference. Constitution Petition No. 9/2022 was filed by Mr. Babar Awan, ASC. PTI was represented by Messrs Babar Awan and Ali Zafar. Thereafter, these three matters were heard together on 19, 20, 21 and 22 April and then on 9, 10, 11, 16 and 17 May 2022. On 17 May 2022 the short order was announced. Umar Ata Bandial, CJ and Ijaz ul Ahsan and Munib Akhtar, JJ were in the majority and Mazhar Alam Khan Miankhel and Jamal Khan Mandokhail, JJ, were in the minority.

15. Significantly, an earlier Presidential Reference (No. 1/2011) was filed on 2 April 2011 by the same ASC, namely, Mr. Babar Awan, however, the said learned counsel did not point out to the Court that Presidential Reference No. 1/2011 was filed eleven years earlier and was still pending, let alone that it be heard first.

16. Needless to state that the President is a symbol of the unity of the Federation and represents all citizens. And, there is no requirement in the Constitution or any law nor any emanating from the dictates of common sense to issue notice to all the citizens of Pakistan, who as a consequence of the opinion rendered by the Supreme Court may be affected thereby. Moreover, we had already ordered that:

‘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.’

17. In any event it is the learned counsel alone who has taken such objection, which in his case is not at all justified since he had represented his client throughout before this Court. The learned counsel then contended that the CRP has been fixed for hearing out of turn. This is incorrect as all review petitions have been ordered to be fixed as soon as possible and the instant CRP is probably amongst the oldest review petitions pending in the Supreme Court. Accordingly, the said objections are overruled.

18. Learned Mr. Zafar next objected to the constitution of the present Bench and alleged that the discretion exercised in constituting the Bench was improper, resultantly, the hearing of the CRP would be *coram non iudice*. In this regard he referred to a judgment of this Court in the case of *Raja Amer Khan v Federation of Pakistan* (PLJ 2024 Supreme Court 114) which had upheld the constitutional validity of the Supreme Court (Practice and Procedure) Act, 2023 (**‘the Act’**), except the retrospective grant of right to file an appeal in respect of cases decided under Article 184(3) of the Constitution. Subsequently, Ordinance No. VIII of 2024 was promulgated on 20 September 2024 (**‘the Ordinance’**) wherein in section 2 sub-section (1) in the Act the following was substituted:

‘(1) Every cause, appeal or matter before the Supreme Court shall be heard and disposed of by a Bench constituted

by the committee comprising the Chief Justice of Pakistan, the next most senior Judge or the Supreme Court and a Judge of the Supreme Court nominated by the Chief Justice of Pakistan, from time to time.'

He submitted that the Senior Puisne Judge had expressed his reservations with regard to the Ordinance through his letter dated 23 September 2024 which concluded by requiring the constitutional validity of the Ordinance to be determined or a Full Court meeting be convened with regard thereto or restore the composition of the earlier Committee. The learned counsel was advised to desist from proceeding further in this regard as it may constitute disrespecting the Hon'ble Judge, however, he insisted and persisted. Therefore, he was posed the question whether the Constitution or any law requires that a Judge can call upon the Chief Justice of Pakistan or the said Committee to determine the constitutional validity of any law or that it could be determined on the administrative side by the Full Court. The learned counsel candidly conceded that there is no such provision.

19. The learned counsel also referred to the reply dated 25 September 2024 of the Chief Justice to the letter of the Senior Puisne Judge. Again he was cautioned not to bring the same into open Court as it may be disrespectful, but once again the learned counsel insisted and persisted. Though the Chief Justice of Pakistan was under no legal obligation to justify his decision to nominate another Judge on the Committee in place of Munib Akhtar, J, however, in his reply he gave a number of reasons. Therefore, the said objection having no basis in law is overruled.

20. Learned Mr. Zafar objected to the Bench on the ground that one of the author Judges, that is, Munib Akhtar, J, was not on the Bench. The learned counsel was reminded that this five-member Bench as it was originally constituted included Munib Akhtar, J, but his lordship had expressed his *inability* to be part of it as was recorded in the order dated 30 September 2024. To ensure his lordship's presence on the Bench an attempt was made to formally request his lordship to attend the Court but his lordship declined by another letter of the same day, that is, 30 September 2024 and maintained his earlier position. Thereafter, the Chief Justice of Pakistan proposed the name of the Senior Puisne Judge to be on the Bench to the Committee, however, his lordship did not want to be part of the Bench, therefore, another Judge was nominated, who was part of

Bench No. 1 and was available. Whilst the learned counsel is correct that ideally Munib Akhtar, J should have been part of the Bench, however, since his lordship had repeatedly expressed his inability and as the matter could not be left unattended the Bench was re-constituted in accordance with the law. Reference in this regard may also be made to Order XXVI, rule 8 of the Rules, which states, as under:

‘As far as practicable the application for review shall be posted before the same Bench that delivered the judgment or order sought to be reviewed.’

The operative words in the provision are ‘*as far as practicable*’ and to ensure this every effort was made. However, neither this Court nor the Committee nor the Chief Justice of Pakistan has the power to compel the Hon’ble Judge to sit and hear the case if he is not so inclined. Accordingly, the objection taken in this regard is overruled.

21. The learned Mr. Zafar also referred to section 7B of the Act and stated that there should be a recording of the present proceedings. He was informed that this was being done and requisite instructions in this regard have also been issued.

22. We may conclude by stating that learned Mr. Zafar has challenged the constitutionality of the Ordinance but at the same time wanted compliance with some of its provisions, that is, sections 7A and 7B thereof.

23. Since considerable time was taken in hearing the aforesaid objections raised by the learned Mr. Zafar the hearing of the CRP was adjourned on his request. To come up on Thursday, 3 October 2024 at 11.30 am.

Chief Justice

Judge

Judge

Judge

Judge